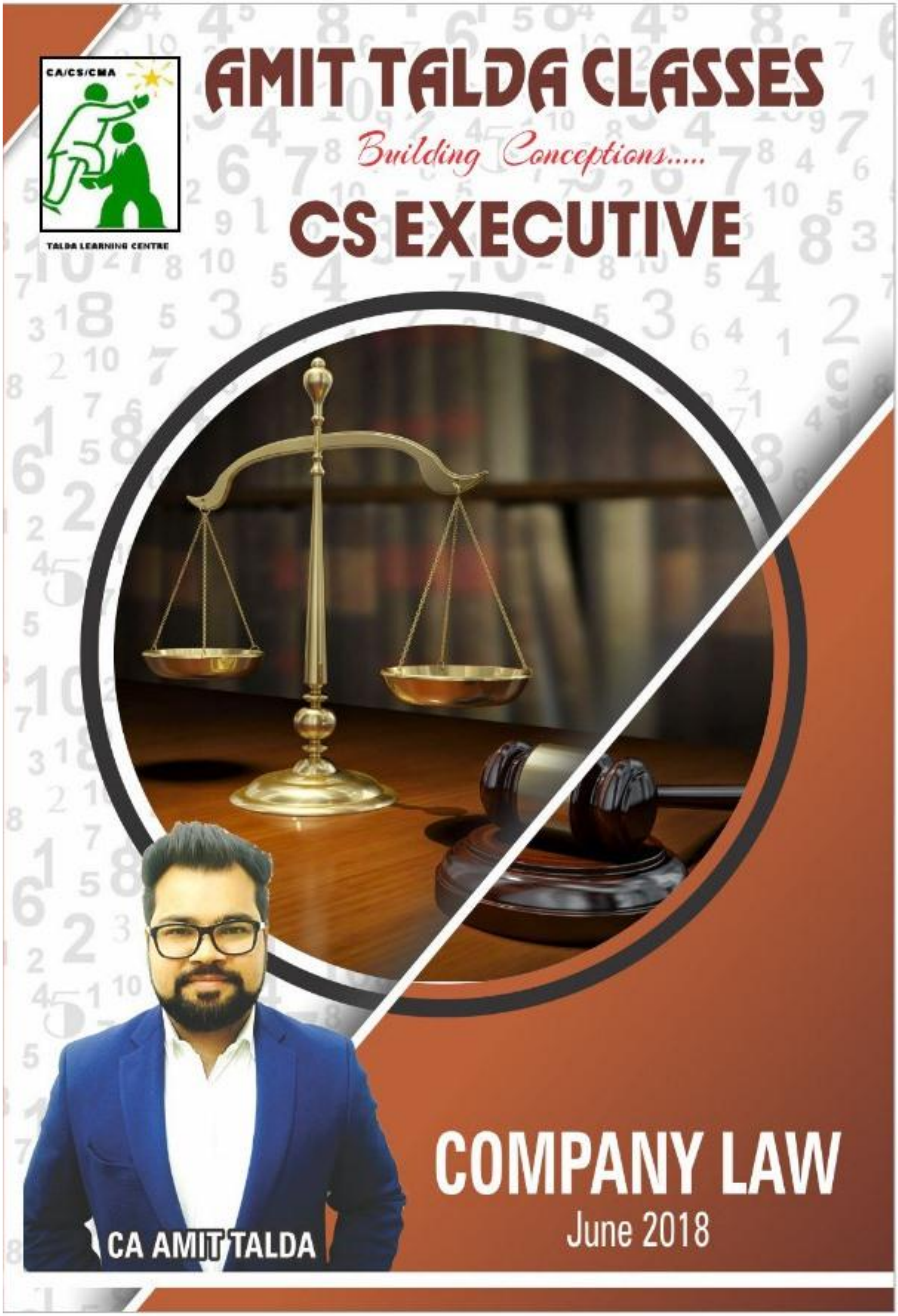
CA/CS/CMA
TALDA LEARNING CENTRE
AMIT TALDA CLASSES
Building Conceptions.....
CS EXECUTIVE
COMPANY LAW
June 2018
CA AMIT TALDA

Contents

ALL DISTINGUISH BETWEEN (16 Marks)

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

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

DEBENTURE	SHARES
Debenture holders are the creditors of the company	Shareholders are the owners of the company
Debenture holders have no voting right	Shareholders have voting rights and hence control the total affairs of the company
Debenture interest is paid at a predetermined fixed rate. It is payable whether there is any profit or not.	Dividend on shares is payable at a variable rate which is mainly affected by the profitability of the company.
Interest on debentures is a charge on the profits of the company and hence deductible as an expense under income tax	Dividends is the appropriation of the profits of the company hence are not deductible as an expense under income tax
In balance sheet, debentures are shown under secured loans	In balance sheet, shares are shown under share capital
Debenture can be converted into shares as 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 liquidator	In a members' voluntary winding – up the liquidator can exercise some of his powers with the sanction of a special resolution of the company;	In a creditors' voluntary winding up, creditors can do so with the sanction of the Court.

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

BASIS	PRIVATE COMPANY	OPC
Board of directors	Minimum number of Directors required in a private company is two.	There is no concept of directors in OPC, as the entity managed by single person.
Number of persons required for Incorporation	To incorporate a private company minimum 2 persons are required.	To incorporate a OPC minimum 2 persons are required, the director of OPC & nominee director.
Shareholding	In a private company minimum number of members is two, so entire shareholding cannot held by single person.	The 10% of share capital of OPC is held by single person.
NRI or Foreign nationals	Private company can be started & managed by NRI's foreign nationals.	Only Indian citizen or Indian national are allowed to start OPC.
Conversion limitation	No such limitation or compulsion of conversion.	OPC must be mandatorily converted into private Company: • If annual Sales turnover exceeds Rs 2 Crore; or • Paid up capital exceeds Rs 50 Lakhs.

BASIS	PRIVATE COMPANY	PRODUCER COMPANY
Number of persons	The private company can be formed by two members.	Producer company can be formed by minimum 10 members.

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

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

EXECUTIVE DIRECTOR	INDEPENDENT DIRECTOR
This is an employee of company	This is not an employee of company
ESOPs can be granted to such director	ESOPs cannot be granted to such director
They are liable to retire by rotation	They are not liable to retire by rotation
They are appointed for one year and can be reappointed	They can be appointed for 5 years at a time and can serve 2 consecutive terms.
They cannot become chairman of various committees of board	Chairman of committees of board has to be independent director
They can have monetary relationship with the company	They cannot have any monetary relationship with the company
No Need to hold a separate meeting of executive	At least one meeting must be held of

directors only	Independent directors only
No minimum number of executive directors required to be appointed	Listed: 1/3rd of total director must be independent directors Unlisted: at least 2 directors should be independent directors
Every Company is required to appoint executive directors	Only companies fulfilling certain parameters are required to appoint independent directors

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

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

BASIS	EQUITY SHARES	PREFERENCE SHARES

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

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

ESOP	SWEAT EQUITY SHARES
ESOPs are given in the nature of Incentive and retention plan these can be issued to employees and officers. ESOPs cannot be issued to Promoter or person belonging to the promoter group.	Sweat Equity Shares are issued as consideration for creation or transfer of IPRs to the company or as other value addition these can be issued to employees, Officers and Directors of the Company.
These options can be issued with conversion right at a pre-determined price. The issue price can be less than the intrinsic value of the shares.	These shares can be issued at discounted price or free for know-how and services to the company.
The consideration has to be paid in cash.	The consideration can be partly cash and partly IPRs/value addition or fully non-cash consideration.

These are generally issued based on a scheme to be formulated by the company stipulating the eligibility criteria such as number of years of services, employee grade etc.	These are mainly intended to be issued to build up equity for directors or promoters with technical capability but with meager financial resources.
Lock-In period is not specified for the ESOP.	These Shares have compulsory Lock-In Period of 3 years.
No Pricing guidelines are defined.	Pricing Guidelines are defined for Sweat Equity Shares.
There is no separate register required to be maintained.	A separate register of Sweat Equity Share issued has to be maintained.
Sweat Equity shares cannot be issued by Unlisted Public Company more than 15% without the approval of Central Government.	There is no such restriction on ESOP.

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

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 is the formal expression of the decision of the

	a resolution. A motion becomes a resolution only after the requisite majority of members have adopted it.	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

SMALL COMPANY VS. INACTIVE COMPANY:

Small Company:
(i) Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; **AND**
(ii) Turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees

Inactive Company:
“inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

VARIOUS LIMITS UNDER COMPANY LAW

<table>
<tr><td>SMALL COMPANY

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

20%</td><td>As per Section 2(6), Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a Subsidiary Company of the company having such influence and includes a Joint Venture Company.

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

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

The shareholders can buy back upto 25% of the total paid up Equity Share Capital and Free Reserves of the company by passing SR in GM.</td></tr>
<tr><td>WOMEN DIRECTOR
L
S = 100
T = 300</td><td>The following class of companies must appoint at least 1 woman director on its Board :
(i) Every listed company;
(ii) Every Unlisted public company having :-
(a) Paid-up share capital of Rs.100 or more; or
(b) Turnover of Rs.300 crore rupees or more.</td></tr>
<tr><td>SECRETARIAL AUDIT
L
S = 50
T = 250</td><td>The following companies are required to do the secretarial audit :
(a) Every listed companies; or
(b) Every public company having a paid – up share capital of Rs.50 crore or more; or
(c) Every public company having a turnover of Rs.250 crore or more.</td></tr>
<tr><td>CSR
NP = 5
NW = 500
T = 1000</td><td>A CSR Committee is required to be constituted if a Company has :
(a) Net worth of Rs.500 crores or more or
(b) Turnover of Rs.1,000 crores or more or
(c) Net profit of Rs.5 crores of more during any financial year</td></tr>
<tr><td>DIRECTORS MIN/MAX</td><td><table><tr><th></th><th>Minimum</th><th>Maximum</th></tr><tr><td>OPC</td><td>1</td><td>15</td></tr><tr><td>Private Company</td><td>2</td><td>15</td></tr><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</td><td>Following Companies are required to have Independent Directors:
1. Every Listed Company
2. Unlisted Public company:
(a) Paid up share capital of Rs.10 crore or more; or</td></tr>
</table>

L = 50 **T = 100**	(b) Turnover of Rs.100 crore or more; or (c) In aggregate, outstanding loans, debentures and deposits, exceeding Rs.50 crore. ***Minimum 1/3rd Directors Should be Independent Directors***
AUDIT COMMITTEE **L** **S = 10** **L = 50** **T = 100**	1. Every listed Companies; or 2. Unlisted public companies having: (a) Paid up Share capital of Rs.10 crore or more; (b) Turnover of Rs.100 Crore or more; (c) Aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 crore or more.
NOMINATION AND REMUNERATION COMMITTEE **L** **S = 10** **L = 50** **T = 100**	1. Every listed Companies; or 2. Unlisted public companies having: (a) Paid up Share capital of Rs.10 crore or more; (b) Turnover of Rs.100 Crore or more; (c) Aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 crore or more.
STAKEHOLDERS' RELATIONSHIP COMMITTEE **S/D/D > 1000**	A company has to constitute a "Stakeholders Relationship Committee" where such company has more than 1000 shareholders, debenture – holders, deposit – holders and any other security holders at any time during a financial year.
INTERNAL AUDIT **L** **U-PUBLIC** **D = 25** **S = 50** **L = 100** **T = 200** **U-PRIVATE** **L = 100** **T = 200**	Internal Audit applies to all companies as under : 1. Every **listed** company; 2. Every **unlisted** public company having : (a) Paid – up share capital of Rs.50 crore or more during the preceding financial year; or (b) Turnover of Rs.200 crore rupees or more during the preceding financial year; or (c) Outstanding loans from banks or public financial institutions exceeding Rs.100 crore or more at any point of time during the preceding financial year; or (d) Outstanding deposits of Rs.25 crore or more at any point of time during the preceding financial year; and 3. Every **private** company having : (a) Turnover of Rs.200 crore or more during the preceding financial year; or (b) Outstanding loans from banks or public financial institutions exceeding Rs.100 crore or more at any point of time during the preceding financial year.
SITTING FEES (ALL DIRECTORS)	The maximum sitting fees payable to the **each director** for attending the Board Meeting or any committee meeting **shall not exceed Rs.1 lakh per meeting**.
ROTATION OF AUDITORS **L** **PUBLIC "S=10"** **PRIVATE "S=20"** **ALL "L=50"**	As per rules prescribed in Companies (Audit and Auditors) Rules, 2014, for applicability of section 139(2) the class of companies shall mean the following classes of companies **excluding one person companies and small companies**:- (I) all unlisted public companies having paid up share capital of rupees ten crore or more; (II) all private limited companies having paid up share capital of rupees twenty crore or more; (III) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.
INTER CORPORATE LOANS AND	HIGHER OF: (i) 60% of (Paid up Share Capital + Free Reserves + Securities Premium)

ADVANCES

(ii) 100% of (Free Reserves + Securities Premium)

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

BORROWING BY DIRECTORS

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

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

ANNUAL GENERAL MEETINGS TIME LIMIT

❖ **1^{st} AGM**
A Company should convene its first AGM within 9 months from the end of its 1^{st} Financial Year.

❖ **2^{ND}& SUBSEQUENT AGM**
Every company must hold subsequent AGM within 6 months from the closing of the financial year; or

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

❖ **EXTENSION OF TIME OF 2^{ND}& SUBSEQUENT AGM**
In case, it is not possible to hold a 2^{nd}& subsequent AGM within the prescribed time, the Registrar may grant extension of time. Such extension can be for a period *not exceeding 3 months.*

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

QUORUM OF GENERAL MEETINGS

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

ELIGIBLE COMPANY FOR ACCEPTANCE OF PUBLIC DEPOSITS

Eligible Company means a public company, having :

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

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

MANAGERIAL REMUNERATION

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

MANAGERIAL REMUNERATION IF CASE NO PROFITS/ INADEQUATE PROFITS

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

Effective Capital	Remuneration (Annually)
Negative or less than 5 Crore	30 Lacs
More than 5 crore but less than 100 Crore	42 Lacs
More than 100 crore but less than 250 Crore	60 Lacs
250 crore and above	60 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**: 1/3rd 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 of an AGM (not being the first AGM) by a period not exceeding 3 months. **QUORUM of GM**: ¼ of Total Members
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) 1/10th Of total number of Small Shareholders *"Small shareholder" means a shareholder holding shares of nominal value of not more than Rs.20,000/- or such other sum as may be prescribed*
ROTATION OF DIRECTORS	(a) Articles of a public company have the provisions relating to retirement of the **all directors by rotation**. (b) If there is **no provision in the AOA**, then not less than 2/3 of the total number of directors of a public company shall be persons whose period of office is liable to retire by rotation and eligible to be reappointed at AGM. At every Annual General Meeting of a public company 1/3 of total number of the directors for the time being as are liable to retire by rotation or if their number is neither 3 nor a multiple of 3, then the number nearest to 1/3, shall retire from office.

	The directors to retire by rotation at every annual general meeting shall be those who have been **longest in office** since their last appointment.
APPOINTMENT OF KMP	1. Every Listed Company 2. Unlisted Public Company having Paid up Share Capital of 10 Crores or More shall appoint whole time KMP But Unlisted Public Company having Paid Up Share Capital of 5 Crores or more shall appoint a Whole Time Company Secretary.
POLITICAL CONTRIBUTIONS	1. No Political Contribution can be made by Government Company and Company who has not completed 3 years. 2. Company other than Government Company and Company who has existence of more than 3 years can make political contributions not exceeding 7.5% of average net profits of past 3 years.
MAXIMUM AUDITS BY AUDITOR	An Individual can audit 20 Companies. (No bifurcation of Public and Private) Firm (20 Companies per Partner who is not in full time employment)
MAXIMUM DIRECTORSHIP BY A PERSON	A person can be a director of maximum 20 Companies (out of which Maximum 10 public Companies can be there)

IMPORTANT SHORT NOTES

LIFTING OF CORPORATE VEIL (December 2015)	When the corporate entity is being abused for an unjust and inequitable purpose, the Courts have lifted the veil of corporate personality and looked into the realities and have held the persons behind the company, guilty and liable. Where the Courts have done it, the doctrine has been described as the doctrine of the "lifting of corporate veil". **Statutory Recognition of Lifting Of Corporate Veil** The Companies Act, 2013 itself contains some provisions [Section 7(7), 251(1) and 339] which lift the corporate veil to reach the real forces of action. Section 7(7) deals with punishment for incorporation of company by furnishing false information; Section 251(1) deals with liability for making fraudulent application for removal of name of company from the register of companies and Section 339 deals with liability for fraudulent conduct of business during the course of winding up.
LIFTING OF CORPORATE VEIL UNDER JUDICIAL INTERPRETATION	
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. [Connors Bros. v. Connors]
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.] *Comment on the following*: A company can be regarded as having enemy character under certain circumstances. (June 2011)
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.
COMPANY NOT FOR PROFIT/NON-PROFIT COMPANIES [SECTION 8]	The name of a company must end with word 'Limited', in the case of a public limited company, and with the words 'Private Limited', in the case of a private limited company. But Section 8 permits the registration, under a license granted by the Central Government **(Power delegated to ROC),** of associations not for profit with limited liability without adding the word 'Limited' or words 'Private Limited' to their names. An association not for profit must satisfy the following two conditions :- ➢ It is formed for promoting commerce, science, art, religion, charity, sports, education, research, social welfare, protection of environment or other useful objects; and ➢ It does not intend to pay any dividend to its members but apply its profit or other income in the promotion of its object. **Section 8 Companies, since working without motive of earning any profit, may be exempted from certain provisions of the Companies Act, 2013, which shall be prescribed by the Central Government from time to time, pursuant to powers conferred by Section 462 of the Companies Act, 2013.** A company which has been granted license under Section 8 cannot alter any of the provisions of its memorandum as well as the articles of association except with the previous approval of the Central Government. It may be noted that a Section 8 Company shall amalgamate, only with another company registered under this section and having similar objects. It may further be noted that in general a partnership firm, not being a person in the eyes of law, cannot become a member of a company. However, it can become a member of a Section 8 Company.
SMALL COMPANY	**Definition and Meaning of Small Company** The term 'small company' has been defined under **Section 2(85).** 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 **Five** Crores rupees; **AND** (ii) Turnover of which as per profit and loss account for immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than **Twenty** Crores rupees. 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. It is basically a private company meeting prescribed threshold. **PRIVILEDGES OF SMALL COMPANY** • The financial statement, with respect to One Person Company, may not include the cash flow statement; • Small company need not have more than two directors in its Board.

	• Need not appoint Independent directors on its Board • A proportion of directors need not to retire every year. • Need not prepare a report on Annual General Meeting • The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company. In other words it need not be signed by the company secretary in practice.
DORMANT COMPANY (SECTION 455)	(*1*) Where a company is formed and registered under this Act for: • a future projector • 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. *Explanation.*—For the purposes of this section,— (*i*) "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; (*ii*) "significant accounting transaction" means any transaction other than— (*a*) payment of fees by a company to the Registrar; (*b*) payments made by it to fulfill the requirements of this Act or any other law; (*c*) allotment of shares to fulfill the requirements of this Act; and (*d*) Payments for maintenance of its office and records. (*2*) The Registrar on consideration of the application ***shall allow the status*** of a dormant company to the applicant and ***issue a certificate*** in such form as may be prescribed to that effect. (*3*) The ***Registrar shall maintain a register of dormant companies*** in such form as maybe prescribed. (*4*) 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) (*5*) 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. (Public Company: 3, Private Company: 2 & OPC: 1) 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*) The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section. (7) Rotation of auditors shall not apply to a dormant company. (8) 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.
LIABILTIES OF A PROMOTER	❖ **<u>Incorporation Company by furnishing False Information</u>**: if it is proved that company has been incorporated by: o Furnishing any false or incorrect information or representation; or o Suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company; or o By any fraudulent action; The promoters, persons named as the first directors of the company and persons making declaration shall be liable for fraud u/s 447. *Any person who is found guilty of fraud 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.* **<u>GENERAL PENALTY U/S 450</u>** In case no penalty is specified in case of any contravention, Fine up to ₹10,000 and further fine up to ₹1,000 for each day of default in case of contravention continues can be levied. ❖ **<u>Civil Liability for misstatements in Prospectus</u>**: A promoter is liable for any misleading statement in the prospectus to a person who has subscribed for any securities of the company on the faith of prospectus. Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company including a promoter of the company shall be liable to pay compensation to every person who has sustained such loss or damage. *No promoter shall be liable under this section, if he proves that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.* ❖ **<u>Contravention of provisions relating to private placement:</u>** If a company makes an offer or accepts monies in contravention of the provisions of private placement as stated in section 42, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two Crores rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.
COMPANY REGISTRATION PROCEDURE (SECTION 7)	Following is the procedure, in brief, for the incorporation of a company: **<u>I. Selection of the type of company</u>** The promoters of a company may select type of the company as they wish to form themselves into viz. one person company, private company, public company, non-profit company, etc. **<u>II. Preliminary Requirements</u>** All the directors of the proposed company must ensure that they are having Directors' Identification Number (DIN).

Out of all the directors of the proposed company, atleast one director should have digital signature to digitally sign the incorporation and other related documents.

III. Reservation of Name

One of the promoters should apply to the Registrar of Companies (ROC) regarding the reservation of name. While applying, the following points should be kept in mind :-

1. He should apply in e-Form No. INC.1 along with the fees of ₹1,000/-, as prescribed in the Companies (Registration Offices and Fees) Rules, 2014 which may be approved or rejected, as the case may be, by the Registrar, Central Registration Centre.

2. Maximum of six proposed names can be given in order of preference.

The name shall not:

(a) be identical with or resemble too nearly to the name of an existing company registered under this act; or

(b) be such that its use by the company:

- Will constitute an offence under any law;
- Is undesirable in the opinion of the central government.

A company shall not be registered with a name which contains any word or expression which is likely to give an impression that the company is in any way connected or having the patronage of, the CG or any SG or any LA, Corporation or body constituted by CG or SG ***unless the previous approval of CG has been obtained for use of any such word or expression.***

Upon receipt of the application in the Form INC-1 for reservation of name, the Registrar of Companies, after verification of all the criteria and guidelines, shall approve any of the name, which shall be valid for a period of 60 days from the date of Approval by the Registrar/MCA. *If documents for incorporation are not filed with the Registrar within the aforesaid 60 days, the reservation made by the Registrar shall lapse automatically.*

CRC shall process forms pertaining to registration of companies i.e. INC 2, 7, 29 along with linked forms INC 22, DIR 12.

IV. Preparation of the Memorandum of Association and Articles of Association

Drafting of the MOA and AOA is generally a step subsequent to the reservation of name made by the Registrar. MOA and AOA shall be in the respective forms as specified in Schedule – 1. It should be noted that the main objects must be matched with the objects shown in e-Form INC.1. These two documents are basically the charter and internal rules and regulations of the company.

Therefore, it must be drafted with utmost care and with the advice of the experts and the ancillary clause for attainment of the main object clause should be drafted in a very broader sense.

Get memorandum and articles of association printed and number of copies should be available with the company. One of the copies should be got stamped (self-adhesive) by the Collector of Stamps. It may be noted that the dating and execution of the memorandum and articles of association should not take place prior to the date of stamping. It may be noted that in most of the states, facility of e-stamping through MCA-21 system is available. (*details of MOA and AOA are covered in next chapter*)

V. Filing of the documents with the Registrar of Companies

An application shall be filed, with the Registrar of Companies within whose jurisdiction the registered office of the company is proposed to be situated, in Form No. INC.2 (for One Person Company) and Form no. INC.7 (other than One

Person Company) along with the following documents, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 for registration of a company, **within 60 days** from the date of Approval regarding the reservation of name :-

(a) The **MOA and AOA** of the company duly signed by all the subscribers to the memorandum in such manner as prescribed under the Companies (Incorporation) Rules, 2014;

(b) A **Declaration** in the prescribed Form INC-8 *by an advocate or chartered accountant or cost accountant or company secretary in practice*, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

(c) An **Declaration** in Form INC-9 by each of the subscribers to the memorandum and by all the persons named as the first directors, if any, in the articles that:

- ❖ *they are not convicted of any offence in connection with the promotion, formation or management of any company, or*
- ❖ *that they has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and*
- ❖ *that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of their knowledge and belief*;**(June 2016)(Contents of Affidavit)**

(d) The **address for correspondence** till its registered office is established;

(e) The **certain prescribed particulars** of every subscriber to the memorandum along with proof of identity;

(f) The **particulars of the persons** mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identify in the prescribed Form DIR-12;

(g) The particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate (in Form MBP-1) along with their consent to act as directors of the company (in Form DIR-2) to be attached with the Form DIR-12;

(h) A copy of **power of attorney** – signed by subscribers to the memorandum delegating power in favor of a person to do all acts/deeds in relation to incorporation of the company. It should be on a non-judicial stamp paper of appropriate value.

(i) E-Form INC-22 for verification of the location of the registered office, along with the company; or
(ii) Notarized copy of lease/rent agreement in the name of the company along with a copy of rent paid receipt not older than one month; or
(iii) Authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
(iv) The proof of evidence of any utility service like telephone, gas, electricity, etc.

A company shall, ***within thirty days of its incorporation*** and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

	VI. Certificate of Incorporation and allotment of Corporate Identify Number If the Registrar of Companies is satisfied that everything has been complied with in regard to incorporation of companies, he shall issue a certificate of incorporation in Form No. INC.11, normally within 7 days of the receipt of documents, to the company signed & dated under his hand. The date of registration of a company is the date mentioned in the certificate and not that date on which the signature of the Registrar was written. In Jubilee Cotton Mills v. Lewis, the Registrar issued a back-dated certificate. It was held that the company should be treated as having existed from the date shown on the certificate and that transactions falling between that date and the actual date of signing could not be challenged on the ground of non-incorporation. The validity of the registration cannot be challenged after the issue of certificate of incorporation [Moosa v. Ebrahim].But that does not mean that COI legalizes the illegal object mentioned in the memorandum. In fact, it is for the incorporation only that the certificate is made conclusive evidence by the legislature. On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate. **VII. Effect of Registration [Sec.9]** Section 9 provides that from the date of incorporation, the subscribers become the members of the company. The company shall be a body corporate with a name, capable of exercising all the functions of an incorporated company under this Act and shall have perpetual succession with power to acquire, hold and dispose of property, to contract, to sue and be sued, by the said name.
INTEGRATED PROCESS OF INCORPORATION (SPICe) **(Simplified Proforma for Incorporating Company Electronically)**	(1) For the purpose of simplifying the filing of forms for incorporation of a company, the integrated process shall apply with effect from 1st May, 2015. (2) For the purposes of sub-rule (1), the application for allotment of Director Identification Number (DIN) upto 3 Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed company shall be filed in Integrated Form No. INC-32, for One Person Company, Private company, Public Company and producer company, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, alongwith the fee of rupees two thousand in addition to the registration fee as specified in Companies (Registration of Offices and Fees) Rules, 2014. (3) For the purposes of filing Integrated Incorporation form, the particulars of maximum of 3 directors shall be allowed to be filled in INC-32 and allotment of DIN of maximum of 3 proposed directors shall be permitted in Form INC-32 in case of proposed directors not having approved DIN. (4) The promoter or applicant of the proposed company shall propose only one name in e-form No. INC-32. (5) The promoter or applicant of the proposed company may prepare Memorandum of Association as per templates in Form INC-32 and may opt for templates of Articles of Association in Form INC-34 in accordance with the provisions of rule 13 for preparation of Memorandum of Association and Article of Association. (6) The promoter or the applicant shall sign and witness, the Memorandum of Association and Articles of Association in the forms downloaded from the portal of the Ministry of Corporate Affairs and scanned legibly and attach to e-form INC-32

	in accordance with the provisions of rule 16 for preparation of Memorandum of Association and Articles of Association. (7) The facility to file Integrated application for incorporation in Form INC-32 is available as an option to the process for separate applications for allotment of Director Identification Number, reservation of name and Incorporation of a company as provided in these rules. (8) For an application filed using the Integrated process of incorporation as provided in this rule, the provisions of sub clause (i) of sub-section (5) of section 4 of the Act and rule 9 of these rules shall not apply. (9) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filling e-Form INC -32 in which case the company shall attach along with such e-Form INC-32, any of the documents referred to in sub-rule (2) of rule 25. (10) The requirement of filing e-Form INC-28 may be dispensed with if, the proposed company maintains its registered office at the given correspondence address. (11) The Registrar within whose jurisdiction the registered office of the company is proposed to be situated shall process INC-32 including application for allotment of DIN. (12) (a) Where the Registrar, on examining e-form INC-32, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar. (b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies. (c) In case, the Registrar is of the opinion that the document is defective or incomplete in any respect after giving such two opportunities, the e-form INC-32 of the proposed company shall be rejected. (13) The Certificate of Incorporation shall be issued by the Registrar in Form No. INC-11.
PRE – INCORPORATION/ PRELIMINARY/ PROMOTERS' CONTRACT	Pre-incorporation Contracts are contracts purported to be made on behalf of a company before its incorporation. Before incorporation, a company is non-existent and has no capacity to contract. *Hence a contract, by a promoter purporting to act on behalf of a company prior to its incorporation, never binds the company because at the time the contract was concluded, the company was not in existence.* The promoters alone, therefore, remain personally liable for any contract they purport to make on behalf of the company. *Even a company cannot ratify a pre-incorporation contract.* However, it is always open for a company to **enter into a new contract** after its incorporation to give effect to a contract made before its formation. This is called **Novation** of promoters' contracts. Since the pre – incorporation contract is a nullity, even the Company cannot sue the vendor of property, if he fails to carry out such contract. In India, however, Section 15 and 19 of the Specific Relief Act, 1963 have considerably alleviated the difficulty. Section 15(h) provides that where a pre – incorporation contract is warranted by the terms of incorporation of company, the Company may, if it has accepted the contract and has communicated such acceptance to the other party to the contract, obtain specific performance of the contract. Similarly, Section

	19(e) provides that specific performance may be enforced against the Company by other party to the contract under similar circumstances. If company adopts a pre-incorporation contract then: i) Contract can be enforced by the company. ii) Contract becomes binding on the company as well. iii) Promoters are not personally liable on such a contract. However, if company does not adopt a Pre-Incorporation Contract Then: i) Contract shall not be a binding on the company. ii) Even if the company takes the benefits of the pre-incorporation contract, it will not be bound by it. iii) A company cannot ratify a pre-incorporation contract. iv) The promoters shall be personally liable on pre-incorporation contract.
POWERS OF TRIBUNAL IN CASE A COMPANY IS INCORPORATED BY FURNISHING FALSE INFORMATION	As per Section 7(7), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants:- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or (b) direct that liability of the members shall be unlimited; or (c) direct removal of the name of the company from the register of companies; or (d) pass an order for the winding up of the company; or (e) pass such other orders as it may deem fit:
ENTRENCHMENT PROVISIONS IN THE ARTICLES [SECTION 5]	❖ A new provision on entrenchment has been provided under the Companies Act, 2013 which provides that articles **may contain** provision for entrenchment to the effect that the **specified provisions** of articles can be altered only if the more restrictive conditions or procedures as compared to those applicable in case of special resolution are met or complied with. ❖ Such provision for entrenchment in the articles shall only be made: o Either at the time of formation of a company, or o By an amendment in the articles agreed by: ▪ **all the members** of the company in the case of a private company and ▪ by a **special resolution** in the case of a public company. ❖ It is further provided that the company shall give **notice to the ROC** of entrenchment provisions in the prescribed form.
ACT TO OVERRIDE MEMORANDUM, ARTICLES, ETC. [SECTION 6]	Section 6 provides that the provisions of the sections of Companies Act, 2013 shall have overriding effect over the provisions contained in memorandum and articles of the company, <u>unless a particular section expressly provides otherwise.</u> Any provision, contained in the memorandum or articles, which is contrary to the provisions of the Act, shall be void. It may, however, be noted that the provisions of the articles will prevail over the provisions of the Act, provided they are more stringent or more strict than what is specified in the Act and that there is no inconsistency with the provisions of the Act. For example, where the Act specifies that for a particular act an ordinary resolution is to be passed, but the articles specify for a special resolution, in such a case, provision of the articles will prevail.
CHANGE OF NAME	The name of the company can be changed by a special resolution and with the

[SECTION 13]	written approval of the Central Government. The powers of the Central Government for approving change in the name have been delegated to the Registrar of Companies. Approval of the Central Government is not necessary if the change relates to the addition/deletion of the word 'private' to the name. **Form MGT.14** shall be filed to the Registrar of Companies within 30 days of passing the special resolution. Further, a copy of the approval of the Central Government shall also be filed with ROC. Any change in the name shall be subject to the following Z: (i). The name of a company shall not be identical with or too nearly resembles the name of an existing company. If further provides that no company shall have a name which, in the opinion of the Central Government, is undesirable. The name should not be such that its use by the company will constitute an offence under any law. (ii). Unless the previous approval of the Central Government is obtained, a company shall not be have a name which contains any word or expression which suggest of any connection with Government or of State patronage or which contain such word or expression, as may be prescribed. Because of the aforesaid reasons, for adopting the new name, the company shall have to follow the same procedure as is applicable for reservation of name at the time of incorporation of a company. [Application to be made to the ROC for reservation of name in **e-Form INC.1**] ***<u>Rectification of Name (Sec. 16):</u>*** This section empowers the Central Government to give directions to the company to rectify its name if in its opinion, the name registered is identical with or too nearly resembles the name, by which a company in existence has been previously registered. The company shall change its name within a period of **three months** from the issue of such directions after passing an ordinary resolution. Further also, on an application made to the Central Government by the registered proprietor of a trade mark that the name is identical with or too nearly resembles to an existing trade mark, the Central Government may direct the company to change its name. The company shall change it name within a period of **six months** from the issue of such directions after passing an ordinary resolution. A registered trade mark owner has to file an application to the Central Government for rectification of name which is similar to name of its trade mark within **3 years** of incorporation of company or change of name. Where a company changes its name or obtains a new name, it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum. ***<u>Effect of change of name:</u>*** The change of name will not affect any rights and obligations of the company, or legal proceedings commenced under the old name. However, where a company changes its name and the new name has been registered by the Registrar, the commencing of legal proceedings in the former name is not competent. Inspite of a change in name, the entity of the company continues. The company is neither dissolved nor does any new company come into existence. It may be noted that whenever there is a change in the name of accompany because of any reason whatsoever, the new name becomes effective, only after the issue of revised or fresh certificate of incorporation by the ROC.

CHANGE OF REGISTERED OFFICE	Section 12 provides that a company **shall within 30 days of its incorporation** shall have a registered office. The company shall furnish to the Registrar verification of its registered office within a period of 30 days of its incorporation in Form INC.22. Every company is required to affix or paint its name and the address of the registered office in any of the language in general use in the locality where the company's registered office is situated, besides any other language if the company chooses to have it painted or affixed in such other language. Name and address is to be affixed and painted outside every office or place in which business is carried on at a conspicuous position. Every company is required to print name, address of it's registered office and corporate identify number (CIN) along with telephone number, fax number, if any, e-mail and website addresses if any, on all its business letters, bill heads, letter papers and in all its notices and other official publications. Where a company has changed its name in last two years, the company shall paint or affix its former names along with the name of the company. A private company which is OPC shall mention the words "One Person Company" in bracket below its name. Notice of every change of the situation of the registered office, shall be given to the ROC within **30 days** of the change **in Form INC.22.** **Methods of shifting of Registered Office** ***(I) Change within the local limits of same town [Sec. 12]:***A company can change its registered office from one place to another within the local limits of the city, town or village, where it is situated by passing a Board Resolution. This change of registered office does not involve alternation of memorandum. A notice of the change is to be given to the Registrar of Companies in Form INC.22 within 30 days of such change. ***(II) Change from one city to another within the same State [Sec. 12]:*** If the registered office is to be shifted from one city, town or village to another city, town or village within the same State and which does not involve the change of jurisdiction of Registrar of Companies, a special resolution has to be passed in the general meeting of the company. This change of registered office also does not involve alternation of memorandum. 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. ***(III) Change from one city to another within the same State involving change of jurisdiction of Registrar of Companies [Sec. 12]:*** (1) An application seeking confirmation from Regional Director for shifting the registered office within the same State from the Jurisdiction of one ROC to the Jurisdiction of another ROC, shall be filed by company with Regional Director in Form INC 23 along with the fee and following Documents: (a) Board Resolution for shifting of registered office; (b) Special Resolution of the members of the company approving the shifting of Registered office; (c) A Declaration given by Key Managerial Personnel or any two directors authorized by Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment

thereof;

(d) A Declaration not to seek change in the Jurisdiction of the Court where cases for prosecution are pending;

(e) Acknowledged copy of intimation to the Chief Secretary of the State as to the proposed shifting and that the employees interest is not adversely affected consequent to the proposed shifting.

(IV) Change from one State to another State [Sec. 13]:

(1) An application under Sub Section 4 of section 13 for the purpose of seeking approval for alteration of Memorandum with regard to the change of place of registered office from one state government or Union Territory to another, shall be filed with Central Government in Form INC 23 along with the fee and shall be accompanied by following documents;

(a) A copy of MOA with proposed alterations;

(b) A copy of minutes of general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution;

(c) A copy of Board Resolution or Power of Attorney or the Executed Vakalatnama, as the case may be;

(2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:

(a) The names and address of every creditor and debenture holder of company;

(b) The nature and respective amounts due to them in respect of debts, claims or liabilities;

Provided that the list of creditors and debenture holders, accompanies by declaration signed by Company Secretary of the company, if any, not less than two directors of the company, one of whom shall be a Managing Director, where is there is one, stating that

(i) they have made a full enquiry into the affairs of the company and having done so, have concluded that the list of creditors are correct and that the estimated value as given in the list of debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge and

(ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the Concerned State Government or Union Territory;

(3) A duly authenticated copy of list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company;

(4) There shall also be attached to the application a copy of acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of State Government or Union Territory where the registered office is situated at the time of filing the application;

(5) The company shall, not more than 30 days before the date of filing the application in Form INC 23:

(a) Advertise in form INC 26 in vernacular newspaper in the principal vernacular language in the district and in English language in an English

	Newspaper with the widest circulation in the state in which the registered office of company is situated; Provided that a copy of advertisement shall be served on the Central Government immediately on its publication; (b) Serve, by registered post with acknowledgment due, individual notice, to the effect set out in Clause (a) on each debenture holder and creditor of the company; and (c) Serve, by Registered post with acknowledgment due, a notice together with the copy of the application to the Registrar and to SEBI in case of listed companies and to the regulatory boy, if the company is regulated under any special act or law for time being in force; (6) There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under Sub Rule 5, a copy of each of the objection received by the applicant, and tabulated details of responses along with the counter response from the company received either in electronic mode or in physical mode in response to the advertisements and notices issued under sub rule 5; (7) Where no objection has been received from any person in response to the advertisement or notice under sub rule 5 or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within 15 days of the receipt of application; (8) Where no objection has be received; (i) The CG shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the CG shall pass an order approving the shifting, within 60 days of filing the application; (ii) Where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which CG shall pass an order confirming or rejecting the alteration within 60 days of filing the application; (9) The order passed by the CG confirming the alteration may be on such terms and conditions, if any, as it thinks fit, and may include such order as to costs as it thinks proper; Provided that the shifting of registered office shall not be allowed, if any enquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act. (10) On completion of such enquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.
LIMITATION ON ALTERATION OF ARTICLES	Following are some of the limitation on power to alter articles of association :- 1. The articles must not exceed the powers given by the memorandum or conflict with its provisions. 2. It must not be inconsistent with any of the provisions of the Companies Act, 2013 or any other Statue/Law. 3. The alteration must be bona fide for the benefit of the company as a whole. 4. The altered articles must not contain anything illegal or against public policy. 5. The articles cannot be altered in a way providing for expulsion of a member.
DOCTRINE OF ULTRA VIRES	The meaning of the term 'ultra vires' is 'beyond the powers of'. Anything which is outside the specified objects and powers or not reasonably incidental to or

	necessary for the attainment of objects of the company is ultra vires the company and therefore is void. No rights and liabilities on the part of the company, arise out of such transactions and it remains nullity even if every member assents to it. Consequently, an act, which is ultra vires the company, does not bind the company and neither the company nor the other contracting party can sue on it. **CASE LAW**: The doctrine of 'ultra vires' was first enunciated by the House of Lords in a classic case, Ashbury Railway Carriage and Iron Co. Ltd. v. Riche. The company entered into a contract with M/S. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation of this contract by the company on the ground of its being 'ultra vires;, Riche brought a case for damages on the ground of breach of contract, as according to him the words "general contractors" in the objects clause gave power to the company to enter into such a contract and therefore, it was within the powers of the company. More so, because the contract was ratified by majority of shareholders. The House of Lords held that the contract was 'ultra vires' the company and, therefore, null and void. The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. Further, the Court held that the company cannot make an "ultra vires" act to be valid, even if every shareholder of the company assents to it.
DOCTRINE OF CONSTRUCTIVE NOTICE	**MEANING** 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. **CASE LAW** In Kotla Venkata Swamy v. Ramamurthy, the articles required that all deeds etc. should be signed by the managing director and the secretary but the plaintiff accepted the deed not signed by the managing director. It was held that the plaintiff could not claim under this deed and thus every person dealing with the company is deemed to have notice of the contents of its memorandum and articles and also to have understood them according to their proper meaning.
DOCTRINE OF INDOOR MANAGEMENT	**MEANING** 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. 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. **CASE LAW** 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.
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 at least 7 and that the number of directors should be increased to at least 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.
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.
WHO CAN BECOME A MEMBER	Subject to the memorandum and articles of a company, any sui juris (a person who is competent to contract) can become a member of a company. However, it is important to note the following points in relation to certain organizations and persons :- **1. COMPANY AS A MEMBER OF ANOTHER COMPANY:** A company is a legal persona and so is competent to contract. Therefore, it can become a member of any other company. However, it must be authorized by its memorandum of association to invest in the shares of that company or any other company. It may be noted that Section 19 provides that a subsidiary company cannot become a member of its holding company. However, there are certain exceptions to this rule enumerated below :- (i) Where a subsidiary company acts as the legal representative of a deceased member of the holding company; (ii) Where the subsidiary company acts as a trustee for some shareholder of the holding company; and (iii) A subsidiary company can continue to be a member of its holding co., if it was its member before becoming subsidiary. But in this case, the subsidiary co.

	cannot exercise any right of vote at any meeting of the holding company. Further this section also prohibits holding company to allot or transfer its shares to any of its subsidiary companies. Any such allotment or transfer of shares of a company shall be void. **2. PARTNERSHIP FIRM AS A MEMBER:** A partnership firm is not a legal person and so much it cannot, in its own name, become member of a company. However, it can become a member of Section 8 company. **3. FOREIGNERS AS MEMBERS:**A foreigner may take shares in an Indian company and become a member with the general or special permission of the RBI under the FEMA, 1999, but in the event of war with his country, he becomes an alien enemy and his power of voting and his right to receive notices are suspended. **4. MINOR AS MEMBER:** A minor cannot become a member of a company since he is not competent to enter into a contract. Consequently, an agreement by a minor to take shares is void ab – initio. But the Company Law Board in Miss Nandita Jain v. Bennett Coleman & Co. Ltd. has held that a minor applying through his natural guardian for being registered as a member was entitled to be so registered, if the shares are fully paid – up. **5. PAWNEE:** A Pawnee has no right to foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law. In this sense, a pledge differs from a mortgage. In view of the foregoing, a Pawnee cannot be treated as the holder of the shares pledged in his favor, and the pawner continues to be a member and can exercise the rights of a member. **6. RECEIVER:** A receiver whose name is not entered in the register of members cannot exercise any of the membership rights attached to a share unless in a proceeding to which company is a party, an order is made therein. **7. BANKRUPT:** A bankrupt may be a member of a company, as long as he is on the register of members. He is entitled to vote. **8. TRADE UNION:** A trade union, registered under the Trade Union Act, can be registered as a member and can hold shares in the company in its own corporate name.
EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS **(Section 43)**	**Section 43 of the Companies Act 2013 & Rule 4 of Companies (Share capital and Debentures) Rules, 2014** No Company Whether Unlisted or Listed public company shall issue equity shares with differential rights as to Dividend, Voting or Otherwise, unless it complies with the following conditions: (a) **Authorization in the Articles of Association (AOA)**: the AOA of the company authorizes the issue of shares with differential rights. (b) **Shareholder's Approval**: the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders. (c) **Maximum Limit**: 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. (d) **Distributable Profits**: The company having consistent track record of distributable profits for the last 3 years.

	(e) **<u>No Default in Statutory Filing</u>**: The company has not defaulted in filing financial statements and annual returns for 3 financial years immediately preceding the financial year in which it is decided to issue such shares. (f) **<u>No Default in the payment of dividend, Deposits or Debentures</u>**: The company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend. (g) **<u>No Penalty</u>**: The company has not been penalized by Court or NCLT during the last 3 years of any offence under the RBI Act, SEBI Act, SCRA, FEMA, or any other Special Act.
ISSUE OF SWEAT EQUITY SHARES (Section 54)	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 Pari Passu** with other equity shareholders. **<u>CONDITIONS AS PER RULE 8 OF COMPANIES (SHARE CAPITAL AND DEBENTURE) RULES, 2014:</u>** (a) **<u>Special Resolution:</u>** Issue of Sweat Equity shares to be authorized by Special Resolution at a General meeting. <u>Explanatory Statement to the Special resolution:</u> The Explanatory Statement to be annexed to the Notice of General meeting shall contain the following details: a) Date of Board Meeting wherein Sweat Equity Shares proposal was approved. b) Reasons/ Justification for the issue of Sweat Equity Shares. c) Total numbers of shares to be issued as sweat equity including the class of shares are intended to be issued. d) Class of directors or employees to whom such equity shares are to be issued.

	e) Principal Terms and Conditions on which sweat equity shares are to be issued. f) Time period of association of Directors or employees with the company; g) The price at which Sweat equity shares are proposed to be issued; h) The consideration including consideration other than cash. i) Ceiling on Managerial remuneration, if any. j) A statement to the effect that the company shall conform to the applicable Accounting Standards, and diluted EPS pursuant to the issue of sweat equity shares calculated in accordance with the applicable accounting standards. (b) **Validity:** The Special Resolution shall be valid only for 12 months for allotment of sweat equity shares. (c) **Maximum Limit:** A company cannot issue sweat equity shares not more than 15% of the existing paid up equity share capital in a year or shares of the issue value of ₹ 5 Crores, whichever is higher and 25% of paid up share capital of the company at any time. (d) **Valuation:** The sweat equity shares to be issued shall be valued at a price determined by a registered valuer, if the shares to be issued for intellectual property rights. A copy of the valuation report obtained in both the above cases shall be sent to the shareholders along with the notice of the general meeting. (e) **Register of Sweat Equity Shares:** The company shall maintain a register of sweat equity shares in form SH 3. (f) **Lock in Period:** Sweat Equity Shares shall be non-transferable for 3 years from the date of allotment. **ADDITIONAL REQUIREMENTS FOR SWEAT EQUITY SHARES:** **Part of Managerial Remuneration:** The amount of Sweat Equity Shares issued shall be treated as part of managerial remuneration subject to the fulfillment of the following conditions: (a) The Sweat Equity Shares are issued to the Director or Manager; and (b) They are issued for consideration other than cash. **Disclosure in Director's Report:** The Board of Directors shall disclose the following details in Director's Report with regard to sweat equity shares: a) Class of director/ employee to whom Sweat Equity Shares were issued; b) Class of Shares issued as Sweat Equity Shares; c) The number of Sweat Equity Shares issued to directors, KMP or other employees showing separately the number of such shares issued to them, if any, for consideration other than cash and the individual names of allottees holding 1% or more of issued share capital; d) The reasons/Justification for the issue; e) Total number of shares arising as a result of issue of sweat equity shares; f) Percentage of sweat equity shares of total post issued and paid up share capital; g) Consideration including consideration other than cash received; h) Diluted Earnings per share pursuant to issuance of Sweat Equity Shares;
ISSUE OF SHARES AT A PREMIUM (Section 52)	Premium means an amount collected by the company from its shareholders over the face value of securities. Company may issue securities at a premium when it is able to sell them at a price above par or above nominal value. The companies act, 2013 **does not impose any conditions** regulating the issues of securities by a company at a premium. A company can receive an amount as premium and will be kept in the Securities premium account. The Securities premium account may be applied by the

company for the following purposes:
a) Towards the issue of fully paid bonus shares;
b) in writing off the preliminary expenses of the company;
c) in writing off the expenses of, or the commission paid or discount allowed on any issue of shares or debentures of the company;
d) in providing for premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
e) for buy back of its own shares or securities;

BONUS SHARES (Section 63)

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 prosperous 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.

<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.
(f) No bonus shares shall be issued by capitalizing reserves created by the revaluation of fixed assets.

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

BUY BACK OF SECURITIES (Section 67 & 68)

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.

Objectives of Buy Back:
(a) To return the surplus cash to shareholders.
(b) To increase the current Market price of the company.
(c) To discourage unwelcome takeover bids of the company.
(d) To increase promoter's Shareholding

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:

Methods for Buy Back: the buyback may be:
(a) From the existing shareholders;
(The offer should be opened for a period not less than 15 days and not more than 30 days from the date of dispatch of letter of offer to the security holders. Where all member of company agree, the offer for buy back may remain open for a period of less than 15 days.)

(b) From the Open Market;
(c) by purchasing the securities from employees which have been issued under ESOP or Sweat Equity.

AUTHORISATION & APPROVALS:
(a) **Authorization 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 buyback shall be **authorized by AOA**.

(b) **Approved**: The buyback 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.
Debt to Capital and Free reserves Ratio shall be 6:1 for Government Companies which carry on Non-Banking Finance Institutions and Housing Finance Activities.

(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 buyback 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 buyback 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 IN CERTAIN CASES:
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 & financial statements; (ii) Payment of dividend after declaration
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. **<u>Rule 12 of Companies (Share Capital and Debenture) Rules, 2014:</u>** 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**. ***<u>Who are eligible for an ESOP Scheme?</u>*** (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; ***<u>Who are not eligible for an ESOP Scheme?</u>*** (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; ***<u>Disclosures in Explanatory Statement of Notice for passing Special Resolution:</u>*** (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; ***<u>Varying the Terms of ESOP requires Special Resolution:</u>*** 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; ***<u>Minimum One year Vesting Period:</u>*** 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. **Status of ESOP in case of Death/Permanent Disablement/ Resignation of Employees:** (a) in the event of death of employee while in employment, all the option granted to him till such date vest in the legal heirs or nominees of the deceased employee. (b) In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day. (c) In the event of resignation or termination of employee, all options not vested in the employee as on that day shall expire. **Disclosure in the Board's Report:** The BOD shall disclose the details in the Director's report in a particular year of ESOP scheme i.e. option granted, options vested, option exercised, the total number of shares arising as a result of exercise of option, options lapsed, exercise price, variation in terms of option, money realised by exercise of options, total number of options in force, employee wise details of options granted.
REDUCTION OF SHARE CAPITAL	**Procedure for Reduction of Share Capital:** (a) Pass a special resolution. (b) Apply to the tribunal (NCLT). (c) The tribunal shall give notice to CG, ROC and SEBI in case of listed companies, and the creditors of the company. (d) NCLT shall take into consideration the representations, if any, made by the Government, ROC, the SEBI and the creditors within 3 months from the date of receipt of the notice. (e) The NCLT may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit. (f) The order of NCLT regarding the reduction of share capital shall be published by the company. (g) The company shall deliver a certified copy of the order of the NCLT and of a minute approved by the NCLT showing : (a) The amount of share capital; (b) The number of shares into which it is to be divided; (c) The amount of each share; and Reduction of share capital; (d) The amount, if any, at the date of registration deemed to be paid-up on each share.

PRIVATE PLACEMENT	Private Placement means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in section 42. **Note:** A company may make private placement through issue of a private placement offer letter in Form PAS – 4 to investors. **<u>Maximum number of persons to whom private placement can be offered:</u>** Private Placement offer can be made to such number of persons not exceeding 50 or such higher number as may be prescribed excluding qualified institutional buyers (QIBs) and employees of the company being offered securities under a scheme of employee's stock option, in a financial year. **<u>Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014</u>** Private Placement Offer shall be made to not more than 200 persons in the aggregate in a financial year. Any offer or invitation made to qualified institutional buyers or to employees of the company under a scheme of employee's stock option shall not be considered while calculating the limit of 200 persons. **Special Note :** (a) **<u>Restrictions</u>**: The above restrictions would be considered individually for each kind of security i. e. equity share, preference share or debenture etc. (b) **<u>Minimum Investment Size</u>**: The value of such offer or invitation per person shall be with an investment size of not less than ₹ 20,000/- of face value of the securities. (c) **<u>Investment only through Bank Account</u>**: The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payments for subscriptions have been received. (d) **<u>Joint Holders</u>**: Monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.
CONDITIONS AND COMPLIANCES FOR PRIVATE PLACEMENT	**<u>CONDITIONS:</u>** 1. **<u>APPROVALS:</u>** The proposed offer of securities must have been previously approved by a special resolution of the shareholders of the company. Special Note : (a) <u>Explanatory Statement</u>: The explanatory statement to the notice in respect of special resolution for General Meeting must justify the price (including premium) at which the offer or invitation is being made. (b) <u>Validity of Special Resolution for Non-convertible debentures</u>: In case of offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year. (c) <u>No Fresh Offer</u>: No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company. (d) <u>Public Offer</u>: Any offer or invitation not in compliance with the provisions of the Companies Act, 2013 shall be treated as a public offer, and the Securities

	Contracts (Regulation) Act, 1956 and the SEBI Act, 1992 shall be required to be complied with. 2. **<u>MODE OF PAYMENT:</u>** All monies payable towards subscription of securities shall be paid through cheque or demand draft or other banking channels but not by cash. 3. **<u>TIME LIMIT FOR ALLOTMENT:</u>** 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. **<u>REFUND OF SUBSCRIPTION MONEY:</u>** 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. **<u>SUBSCRIPTION MONEY TO BE KEPT IN A SEPARATE BANK ACCOUNT:</u>** 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 within 30 days in PAS 3 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 ₹ 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 authorized 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 ₹ 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) **<u>Validity Period</u>**: 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) **<u>No requirement of filing fresh prospectus within 1 year</u>**: 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) **<u>Changes in the Material Information</u>**: 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) **<u>Refund of Money without filing Information Memorandum</u>**: 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) **<u>Filing with ROC</u>**: Any class or classes of companies as may be prescribed by the SEBI, shall file a shelf prospectus with ROC. **<u>Special Note</u>**: 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. 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. 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. **<u>Important Provisions :</u>** (a) **<u>Issue of RHP prior to Prospectus</u>**: A company proposing to issue of securities, issues a RHP prior to the issue of a prospectus. (b) **<u>Filing with ROC</u>**: 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.
THE GOLDEN RULE OR GOLDEN LEGACY	The Golden Rule or Golden Legacy is in respect of issue the prospectus. This Golden Rule was pronounced by Kindersley, V. C. in New Brunswick, etc., Co. v. Muggeridge, and has come to be known as the "Golden Legacy or Golden Rule". The Golden Rule in respect of issue of prospectus is no concealment of material facts or no suppression of facts. In other words, the company must disclose all the real and correct details and information in the prospectus for proposed public issue. **Case Law:** In re. R. V. Kylsant (1932) K. B. 442 **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.
LIABILITY FOR UNTRUE STATEMENT (Section 35)	From the above discussion, it is now clear that a prospectus must contain true and complete information and details. In other words, nothing should be omitted and nothing must be untrue in a prospectus. For such untrue statement, every Director at the time of the issue of the prospectus, every promoter and every person, including an expert, who has authorized the issue of a prospectus, shall be liable for civil and criminal liabilities. **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): Any person who is found guilty of fraud 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.

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.

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. **Judgment:** 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.
GLOBAL DEPOSITORY RECEIPTS (SECTION 41)	A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions, as may be prescribed. **Conditions for Issue of Depository Receipts.** (1) The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorising the company to do so. (2) The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting: Provided that a special resolution passed under section 62 for issue of shares underlying the depository receipts, shall be deemed to be a special resolution for the purpose of section 41 as well. (3) The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank. (4) The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts. (5) The company shall appoint a merchant banker or a practising chartered accountant or a practising cost accountant or a practising company secretary to oversee all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practising chartered accountant or practising cost accountant or practising company secretary, as the case may be, shall be placed at the meeting of the Board of Directors of the company or of the committee of the Board of directors authorised by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts: Provided that the committee of the Board of directors referred to above shall have at least one independent director in case the company is required to have independent directors. **Manner and Form of Depository Receipts.** (1) The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent abroad and may be listed or traded in an overseas listing or trading platform. (2) The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Central Government or Reserve Bank of India may prescribe or specify from time to time. (3) The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the

	overseas depository bank abroad. **Voting Rights** (1) A holder of depository receipts may become a member of the company and shall be entitled to vote as such only on conversion of the depository receipts into underlying shares after following the procedure provided in the Scheme and the provisions of this Act. (2) Until the conversion of depository receipts, the overseas depository shall be entitled to vote on behalf of the holders of depository receipts in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard. **Proceeds of Issue.** The proceeds of issues of depository receipts shall either be remitted to a bank account in India or deposited in an Indian bank operating abroad or any foreign bank (which is a Scheduled Bank under the Reserve Bank of India Act, 1934) having operations in India with an agreement that the foreign bank having operations in India shall take responsibility for furnishing all the information which may be required and in the event of a sponsored issue of Depository Receipts, the proceeds of the sale shall be credited to the respective bank account of the shareholders.
PROVISIONS OF COMPANIES ACT, 2013 FOR ISSUE OF DEBENTURES	A company proposes for the Issue of Debentures, should take the approval from the **shareholders via special resolution**. A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. The issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a **special resolution passed at a general meeting**. **COMPLIANCE FOR ISSUE OF SECURED DEBENTURES** (a) **Redemption period**: Secured debentures can be issued subject to the maximum redemption period i.e. **not exceeding 10 years** from the date of issue. A company engaged in the setting up of **infrastructure projects** may issue secured debentures for a period exceeding 10 years but not exceeding 30 years. (b) **Creation of Charge**: Issue of secured debentures must be secured by the creation of a charge on the assets of a company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon. (c) **Appointment of Debenture Trustee**: The Company shall appoint a debenture trustee before the issue of prospectus for subscription of its debentures and **not later than 60 days** after the allotment of the debentures, execute a **debenture trust deed** to protect the interest of the debenture holders. (d) **Creation of Charge in favor of Debenture Trustee** : The security for the debentures by way of a charge or mortgage shall be treated in favour of the debenture trustee on : (a) Any specific movable property of the company (not being in the nature of pledge) ; or (b) Any specific immovable property. **CREATION OF DEBENTURE REDEMPTION RESERVE (DRR)** When debentures are issued by a company, the company shall create a debenture redemption reserve account out of the profits of the company, shall not be utilized by the company except for the redemption of debentures. **Conditions for creation of DRR** : The Company shall create a Debenture Redemption Reserve (DRR) for the purpose of redemption of debentures subject to

the following conditions :

(a) DRR shall be created out of the profits which is available for payment of dividend. (from Free Reserves)

(b) The company shall create DRR as follows :
(i) No DRR is required for Financial Institution & Bank.
(ii) The DRR should be maintained at least 25% of the value of debentures issued by the NBFCs registered with RBI.
(iii) For other companies including listed & unlisted, the DRR should be maintained at least 25% of the value of debentures.

(c) Every Company required to create DRR shall on or before the 30th day of April in each year. **Not less than 15%** of the Total amount in the DRR shall deposit or invest the specified fund or bank.

(d) In case of partly convertible debentures, DRR shall be created in respect of **non-convertible portion** of debenture issue.

(e) The amount credited to the DRR shall not be utilized by the company except for the purpose of redemption of debentures.

APPOINTMENT OF DEBENTURES TRUSTEES
No company shall issue a prospectus or make an offer to its members exceeding 500 for the subscription of its debentures, unless the company has appointed debenture trustee.

CONDITIONS FOR APPOINTMENT OF DEBENTURE TRUSTEES
1. The names of the debenture trustees must be stated in letter of offer for debentures.

2. A written consent must be obtained from the debenture trustee before his appointment as debenture trustee.

3. The following person shall not be appointed as a debenture trustee :
(a) He must not be beneficially of shares in the company;
(b) He should not be promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
(c) He is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
(d) He is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
(e) He is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

DUTIES OF DEBENTURES TRUSTEES
A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with such rules as may be prescribed.

It shall be the duty of every debenture trustee to –
(a) Satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;
(b) Satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;
(c) Call for periodical status or performance reports from the company;
(d) Communicate promptly to the debenture holders defaults with regard to payment of interest or redemption of debentures and action taken by the trustee;

	(e) Appoint a nominee director on the Board of the company in the event of – (i) Two consecutive defaults in payment of interest to the debenture holders; or (ii) Default in creation of security for debentures; or (iii) Default in redemption of debentures. **<u>DEBENTURE CERTIFICATE</u>:** Every company shall, within 6 months of allotment of any of its shares, debentures or debenture stock and within 1 month after the application for registration of the transfer of any such debentures or debenture stock, deliver the certificates of all debentures and debenture stock allotted or transferred in accordance with the procedure laid down. **<u>REGISTER OF DEBENTURE HOLDERS</u>**: Every company has to keep an Index and register of debenture holders. **<u>CLOSURE OF REGISTER OF DEBENTURES</u>** (Section 91) Register of debentures can be closed by the company after giving at least 7 days previous notice by advertisement for a period not exceeding 45 days in a year but not exceeding 30 days at a time. If company closes register exceeding 45 days then company and every officer of company who is in default shall be liable to penalty of ₹ 5,000 for every day subject to a maximum of ₹ 1,00,000 during which the register is kept closed.
KINDS OF CHARGES	Charge on the property of the company as security for debts may be of the following kinds: (i) **<u>Fixed or Specific Charge</u>**: A charge is fixed or specific when it covers assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating charge. Example: Charges created on land, building, or heavy machinery. A fixed charge is a charge created against certain specific property and **the company loses its right to dispose off that property**. (ii) **<u>Floating Charge</u>**: A floating charge is a charge created on floating assets or unidentified assets of the Company. In other words, a floating charge is not attached to any definite property but covers property of a fluctuating type like stock-in-trade. A floating charge is a charge on a class of assets present and future which in the ordinary course of business is changing from time to time and leaves the company free to deal with the property as it deems fit until the holders of charge take steps to enforce their security. "The essence of a floating charge is that the security remains dormant until it is fixed or crystallized". The advantage of a floating charge is that the company may continue to deal in any way with the property which has been charged. The company may sell, mortgage or lease such property in ordinary course of its business if it is authorized by its memorandum of association.
CRYSTALLISATION OF FLOATING CHARGE	A floating charge attached to the company's property generally remains dormant till it crystallizes or becomes fixed. The company has a right to carry on its business with the help of assets having a floating charge till the happening of some event which determines this right. 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)
REGISTRATION OF CHARGE [Section 77]	Every company is responsible to create a charge within or outside India on its property or assets by registering the particulars of the charge duly signed by the company and the charge-holder. ***The company is responsible to register the charge within 30 days from the date of its creation.*** Form CHG – 1 (For other than the debentures) or Form CHG – 9 (for debentures) shall be filed by the Company with ROC for registration of charge. The ROC shall issue a certificate of registration after registering the charge in favor of the person who has created the charge. The ROC may allow the registration of charge within a period of 300 days on payment of additional fees. If registration is not made within a period of 300 days of its creation, the company shall seek extension of time from the Central Government provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered. Any Subsequent registration of a Charge shall not prejudice any right acquired in respect of any property before the charge is actually registered. No charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2). *Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India.* **FAILURE BY COMPANY TO REGISTER THE CHARGE:**(Section 78) Where a company fails to register the charge within the period of 30 days specified in Sub Section (1) of Section 77, without prejudice to its liability in respect of any offence under this Chapter, the person in whose favor the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge, within such time and in such form and manner as may be prescribed and the Registrar may, on such application, within a period of fourteen days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fees, as may be prescribed: Provided that where registration is effected on application of the person in whose favor the charge is created, that person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge. **Modification of Charge:** It shall be the duty of the Company to register the modification of charge in Form CHG – 3 in the same way as above for 1st creation of charge even in change of Interest rate.
CERTIFICATE OF REGISTRATION OF CHARGE	When a charge is registered with the ROC, ROC shall issue a certificate of registration of charge in Form No. CHG – 2 and for registration of modification of charge in Form No. CHG – 3 to the company and to the person in whose favor the charge is created.

	The certificate issued by the ROC whether in case of registration of charge or registration of modification shall be treated as conclusive evidence of the Compliances of the requirements of the Companies Act, 2013 (Registration of Charges) and its rules. **<u>EFFECT OF NON-REGISTRATION</u>**: If a charge is not registered with the prescribed period with the ROC, then such charge shall become void against the liquidator and the creditors of the company. An unregistered charge shall remain valid and be treated as unsecured charge. **<u>PUNISHMENT FOR CONTRAVENTION (SECTION 86)</u>**: If a company makes any default with respect to the registration of charges, penalty shall be levied from ₹ 1 lakh to ₹ 10 Lakhs. Every defaulting officer is punishable with imprisonment for a term not exceeding 6 months or fine which shall not be less than ₹25,000/-, but not exceeding ₹ 1 lakh or both.
CONDONATION OF DELAY TO REGISTER A CHARGE [Section 87]	If a company fails to register the charge even within 300 days, such company may seeks extension of time from the Central Government. The Central is empowered to extend the time for registration of the charge. The Central Government has to be satisfied that the failure to register the charge : (a) Was accidental; or (b) Was due to inadvertence or some other sufficient reason; or (c) Is not of a nature to prejudice the position of creditors or shareholders of the company; or (d) On any other grounds just and equitable. **<u>RULE 12 OF COMPANIES (REGISTRATION OF CHARGES) RULES, 2014</u>** When the instrument creating or modifying a charge is not filed within 300 days from the date of its creation or modification and where the satisfaction of the charge is not filed within 300 days from the date of final payment made, the ROC shall not register the same unless the delay is condoned by the Central Govt. (a) The application for condonation of delay shall be filed with CG in Form No. CHG – 8 along with the fee. (b) The order passed by the CG shall be required to be filed with the ROC in Form No.INC – 28 along with the fee.
SATISFACTION OF CHARGES [Section 82]	Satisfaction of charge means full payment of the outstanding loan amount. After making full payment to the Bank or Charge holder, the company has to inform to the ROC for registration of the satisfaction of charge. **<u>SATISFACTION PROCESS</u>** 1. **Notice to ROC**: The Company shall give intimation to the ROC in respect of the full payment or satisfaction in full of any charge within 30 days from the date of such payment or satisfaction in Form No. CHG – 4 along with the fee. *Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed* 2. **Notice to Charge Holder by ROC**: On receipt of such intimation, the ROC shall issue a notice to the charge-holder calling a show cause within such time not exceeding 14 days regarding the full payment or satisfaction of the charge.

	3. **Opposition of Charge**: If no cause is shown, by such holder of the charge, the ROC shall order that a memorandum of satisfaction shall be entered in the register of charges maintained by the ROC and shall inform the company. If the cause is shown to the ROC shall record a note to that effect in the register of charges and shall inform the company accordingly. 4. **Certificate of Registration for Satisfaction**: After completion of above formalities, the ROC will issue a certificate of registration for satisfaction in Form CHG – 4.
ALLOTMENT OF SECURITIES (SECTION 39)	❖ **ALLOTMENT BY BOARD**: The Board of Directors or its committee authorized to allot the securities after receiving the minimum subscription. ❖ **MINIMUM APPLICATION MONEY [SECTION 39(2)]:** The amount payable on application on every security shall not be less than 5% of the nominal amount of the security or such other percentage or amount, as may be specified by SEBI. If minimum amount has not been subscribed and the sum payable on application is not received within 30 days from the date of issue of the prospectus, the amount so received shall be returned within 15 days from the closure of the issue. If any such money is not so repaid within such period the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at **15% p.a.** ❖ **SEPARATE BANK ACCOUNT**: The company shall receive in cash the amount payable on application which shall not be less than 5% of the nominal value of the shares and such amount shall be kept in separate bank account i. e. "ESCROW A/C" till the allotment is made and until the certificate to commerce business has been obtained. ❖ **FILING OF RETURN OF ALLOTMENT:** Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in Form PAS – 3. **Companies (Prospectus and Allotment of Securities) Rules, 2014: Rules for allotment of securities** The following documents should be attached with the return of allotment: (a) A list of allottees stating their names, address, occupation and number of securities allotted to each of the allottees. (b) Copy of contract in case securities allotted as fully or partly paid up for consideration other than cash. (c) In the case of issue of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form PAS – 3. **PENALTY FOR DEFAULT:** In case of any default, the company and its officer who is in default shall be liable to a penalty, for each default, of ₹ 1000/- for each day during which such default continues or ₹ 1,00,000/-, whichever is less.
PROVISIONS RELATING TO SHARE CERTIFICATE	**MEANING:** A share certificate is a certificate issued to the members by the company under its common seal specifying the number of shares held by him and the amount paid on each share. The certificate is the only documentary evidence of title in the possession of the shareholder.

SIGNIFICANCE OF SHARE CERTIFICATE: A certificate of shares is evidence to the effect that the allottee is holding a certain number of shares of the company showing their nominal and paid-up value and distinctive numbers.

DISTINCTIVE NUMBERS: Every share in a company having a share capital shall be distinguished by its distinctive number:

Provided that nothing in this section shall apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository. (Section 45)

TIME OF ISSUE OF SHARE CERTIFICATE: A Company must deliver share certificate to the shareholders :

- Within 2 months from the date of Incorporation; in case of Subscribers to Memorandum or
- Within 2 months from the date of allotment; or
- Within 1 month from the date of receipt of Instrument of Transfer by the company or as the case may be, of intimation of transmission;
- Within a period of six months from the date of allotment in the case of any allotment of debenture.

ISSUE OF SHARE CERTIFICATES

When a company issues any capital, no share certificate shall be issued, except :
(i) In pursuance of a Board resolution; and
(ii) On surrender to the company of its letter of allotment or its fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares:

PROVIDED that if the letter of allotment is lost or destroyed the Board may imposed such reasonable conditions as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence as the Board thinks fit. Every certificate of share or shares shall be in Form No. SH – 1.

WHEN CAN A COMPANY ISSUE DUPLICATE SHARE CERTIFICATE?

A duplicate certificate of shares may be issued, if such certificate :
(a) Is provided to have been lost or destroyed; or
(b) Has been defaced, mutilated or torn and is surrendered to the company.

RECORDS OF CERTIFICATES

(i) Particulars of every share certificate issued shall be entered in the Register of Members as circumstances admit against name of person to whom it has been issued.

(ii) Particulars of every share certificate issued shall be entered in a Register of Renewed and Duplicate Certificates indicating against the name of the person to whom the certificate is issued the number and the date of issue of the share certificate in lieu of which the new certificate is issued, and the necessary changes indicated in the Register of Members.

(iii) All entries made in the Register of Members or the Register of Renewed and Duplicate Certificates shall be authenticated by the secretary or such other person as appointed by the Board for the purpose of sealing and signing the share certificate.

SEALING AND SIGNING OF CERTIFICATE

Every share certificate shall be issued under the seal, if any, of the company, which shall be affixed in the presence of, and signed by-

	(a) two directors duly authorized by the Board of Directors of the company for the purpose or the committee of the Board, if so authorized by the Board; and (b) the secretary or any person authorised by the Board for the purpose: Provided that in case a company does not have a common seal, the share certificate shall be signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary: Provided further that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than a managing director or a whole time director: Provided also that, in case of a One person Company, every share certificate shall be issued under the seal, if any, of the company, which shall be affixed in the presence of and signed by one director or a person authorised by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorised by the Board for the purpose, and in case the One person Company does not have a common seal, the share Certificate Shall be signed by the persons in the presence of whom the seal is required to be affixed in this proviso. **LEGAL EFFECT OF SHARE CERTIFICATE** A share certificate once issued by the company binds it in two ways, namely : ➢ **Estoppel as to Title:** A share certificate once issued binds the company in two ways. In the first place, it is a declaration by the company to the entire world that the person in whose name the certificate is made out and to whom it is given is a shareholder in the company. In other words the company is stopped from denying his title to the shares. ➢ **Estoppel as to Payment:** If the certificate states that on each of the shares full amount has been paid, the company is stopped as against a bona fide purchaser of the shares, from alleging that they are not fully paid. Further a certificate is not evidence as to the equitable interest in shares. Also, where an individual is aware of the false statements in a certificate, he will not be entitled to claim estoppels.
CALLS AND FORFEITURE	**CALLS:** A call may be defined as a demand made by a company on its shareholders to pay the whole or a part of the balance, remaining unpaid on each share at any time during the continuance of a company. In other words, Call is a demand, by the company in pursuance of a Board resolution and in accordance with the articles of the company, upon its shareholders to pay the whole or part of the balance still due on each class of shares allotted or held by them made at any time during the life of the company. A company issuing shares to its members may call the money due on shares at intervals depending upon the requirements for funds for implementing the project and the shareholders also prefer to pay the Issue price on their shares in installments an and when demanded by the company. **PROVISIONS RELATING TO CALLS:**

1. **Minimum Call Money**: The amount payable in application on each share shall not be less than 5% of the nominal amount of the share.

2. **Balance Amount**: The balance may be payable as and when called for in one or more calls. The prospectus and the articles of a company generally specify the amount payable at different times, as call(s).

3. **Call in case of Winding-up**: A call may also be made by the liquidator in the course of winding up of the company.

REQUISITES OF A VALID CALL:

(i) Board of Directors to make call(s) on shares:
The power to make calls is exercised by the Board in its meeting by means of a resolution. The Board, in making a call, must observe the provisions of the articles, otherwise the call will be invalid, and the shareholder is not bound to pay.

A proper notice must be given, and the notice must specify the amount called up and manner i. e. the date for payment and place and to whom it is to be paid.

(ii) Call(s) to be made bonafide in the Interest of the Company:
The power to make call is in the nature of trust and must be exercised only for the benefit of the company, and not for the private ends of the directors. If the call is made for the personal benefit of directors, the call will be invalid.

(iii) Call(s) must be made on Uniform Basis:
Calls on same class of shares must be made on a uniform basis. Hence a call cannot be made only on some of the members unless they constitute a separate class. In other words, there cannot be any discrimination between shareholders of the same class as regards amount and time of payment of call.

(iv) Notice of Call(s):
The notice of call must specify the exact amount and time of payment. A call must be made by serving upon member formal notice.

QUANTUM AND INTERVAL BETWEEN TWO CALLS :
The companies Act provides that no call shall exceed 25% of the nominal value of the share or be payable at less than 1 month from the date fixed for the payment of the last proceeding call.

If the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment of the issue and if any applicant fails to pay the call money within the said twelve months, the equity shares on which there are calls in arrear along with the subscription money already paid on such shares shall be forfeited.

FORFEITED OF SHARES:
Forfeiture may be termed as penalty for violation of terms of contract. Forfeiture of shares means taking back of shares by the company from the shareholders.

If the shareholder makes default in payment of calls on shares, then the company can use the option of forfeiting the shares.

For a valid forfeiture, satisfaction of following conditions is necessary :

(i) Articles of Association must authorize the forfeiture of shares:
Where power is given in the articles, it must be exercised in accordance with the regulation regarding notice, procedure and manner stated therein; otherwise the

	forfeiture will be void. If Articles authorize, the forfeiture shall include forfeiture of all dividends declared in respect of the forfeited shares and such dividend is not actually paid before the forfeiture of the shares. **(ii) Resolution for Forfeiture:** If the defaulting shareholder does not pay the amount within the specified time as required by the notice, the directors may pass a resolution forfeiting the shares. **(iii) Proper Notice:** Before the shares of a member are forfeited, a proper notice to that effect must have been served. A notice shall name a further day (not less than 14 days from the date of service of the notice) on or before which the payment is to be made. The notice must also mention that in the event of non-payment, the shares will be liable to be forfeited. **(iv) Power of forfeiture must be exercised bona fide and for the benefit of the company:** The power to forfeiture must be exercised bona fide and for the benefit of the company. The power must be used in order to coerce reluctant shareholders into paying their calls. The power of forfeiture cannot be exercised to relieve unwilling shareholders from the liability of making the payment. Such a shareholder continues to be responsible for the unpaid part of the shares. **<u>RE-ISSUE OF FORFEITED SHARES</u>:** Shares forfeited by a company may either be cancelled or re-issued to another person at the discretion of the Board. Generally, such shares are re-issued at a discount which cannot exceed the amount already paid on such shares. This is done by a Board resolution. After the money due is received from the new member(s), the company executes a transfer deed and issues a share certificate, and if the original holder has already surrendered the share certificate, it is duly transferred, otherwise after a public notice in a newspaper, a new share certificate is issued. If the shares are re-issued at a price more than the face value, the excess of the proceeds of sale is not payable to the former owner, if the articles provide otherwise. The excess of the proceeds to retained shall constitute a premium and must therefore be transferred to the securities premium account. **<u>SURRENDER OF SHARES</u>:** A company cannot accept a surrender of its shares **"as every surrender of shares, whether fully paid-up or not involves a reduction of capital which is unlawful. Forfeiture is a statutory exception and is the only exception"**. <u>(Bellerby v. Rowland and Marwood's S.S. Co. Ltd)</u> Surrender can be accepted in circumstances absolutely parallel to the requirements of forfeiture, the only difference being that instead of going to the length of the formalities of forfeiture, the company accepts in good faith in its own interest the shares which the shareholder is voluntarily surrendering. <u>(Collector of Moradabad vs. Equity Insurance Co. Ltd)</u>
APPEAL AGAINST THE REFUSAL OF TRANSFER (Section 58 of the Companies Act, 2013)	The holder of securities has the right to transfer his securities and such right is absolute in nature. **<u>Private Company</u>**:

	❖ If a **private company** limited by shares refuses (whether in pursuance of any power of the company under its articles or otherwise), to register the transfer of, or the transmission of the right to any securities or interest of a member in the company, then the company shall send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of **thirty days** from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company. Notice shall contain the reasons for refusal to register the transfer or transmission. ❖ The transferee may appeal to the Tribunal (NCLT) against the refusal within 30 days from the date of receipt of the notice or in case no notice has been sent by the company, within 60 days from the date on which the instrument of transfer or the intimation of transmission was delivered to the company. **<u>Pubic Company:</u>** If a public company without sufficient cause refuses to register the transfer of securities within 30 days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal. ❖ The **Tribunal**, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order— (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of **ten days** of the receipt of the order; or (b) direct **rectification of the register** and also direct the company to pay damages, if any, sustained by any party aggrieved. ❖ If a person contravenes the order of the Tribunal he shall be punishable with imprisonment for a term not less than one year but may extend to three years and with fine not less than one lakh rupees which may extend to five lakh rupees.
BLANK TRANSFER	❖ **<u>MEANING:</u>** When a shareholder signs transfer form without filling in the name of the transferee and the date of execution and hands it over with the share certificate to the transferee thereby enabling the transferee to deal with the shares, he is said to have made a transfer "in Blank" or "Blank Transfer". ❖ In other words, Blank transfer means purchase and sale of shares by mere delivery of share certificate along with transfer deed without mentioning the name of transferee in the transfer deed. ❖ Generally, the practice of blank transfer is prevalent for the following purposes : (a) Avoidance of transfer stamps (b) Concealment of the identity of the real beneficial owners (c) Evasion of taxes by suppression of profits ❖ A blank transfer accompanied by the delivery of the share certificates vests in the transferee both equitable as well as legal rights in the shares. But until the registration of his name in the register of members, the transferee does not acquire a title and thus he cannot exercise any right as shareholder in respect of those shares. Shares are usually transferred in blank when a shareholder borrows money on its security, e.g., by pledging the shares; the pledger make default in payment of the

	amount due at the time appointed for repayment, the pledgee or the holder of the share certificate and the blank transfer instrument has implied power to fill up the blanks in the instrument by inserting the date and his own name as transferee and to get himself registered as a member of the company. The pledger is under an implied obligation not to prevent or delay such registration. This right to get himself registered as a member is available to the transferee even after the death of the transferor [In *Re. Bengal Silk Mills Co. Ltd.]*
FORGED TRANSFER	An instrument on which the signature of the transferor is forged is called a forged transfer which is null and void. A forged instrument of transfer is presented to the company for registration. In order to avoid the consequences because of a forged transfer, companies normally write to the transferor about the lodgment of the transfer instrument so that he can object if he wishes. The company informs him that if no objection is made by him before a day specified in the notice, it would register the transfer. **CONSEQUENCES OF A FORGED TRANSFER:** (i) **Transfer null and void**: A forged transfer is a nullity and, therefore, the original owner of the shares continues to be the shareholder and the company is bound to restore his name on the register of members. (ii) **No denial of transfer of shares sold to innocent purchaser:** If company issues a share certificate to transferee and he sells the shares to an innocent purchaser, the company is liable to compensate such a purchaser, if it refuses to register him as a member, or if his name has to be removed on the application of the true owner. (iii) **Indemnify the losses:** If the company is put to loss by reason of the forged transfer, as it may have paid damages to an innocent purchaser, it may recover the same independently from the person who lodged the forged transfer.
TRANSPOSITION OF NAME	• In the case of joint-shareholders, one or more of them may require the company to **alter or rearrange the serial order of their names in the register of members** of the company. • In this process, there will be need for effecting consequential changes in the share certificates issued to them. • If the company provides in its articles that the senior-most among the joint-holders will be recognized for all purposes like service of notice, a copy of balance sheet, profit and loss account, voting at a meeting etc., the request of transposition may be duly considered and approved by the Board or other authorized officer of the company. Since no transfer of any interest in the shares take place on such transposition, the question of insisting on filling transfer deed with the company, may not arise. • Transposition does not also require stamp duty. • The Stock Exchange Division of the Department of Economic Affairs has clarified that there is no need of execution of transfer deed for transposition of names if the request for change in the order of names was made in writing, by all the joint-holders. If transposition is required in respect of a part of the holding, execution of transfer deed will be required.
ANNUAL GENERAL MEETING (Section 96)	Every company (other than OPC) should hold an Annual General Meeting (AGM) **every Calendar year** for considering the **ordinary business** of the Company.

	• **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.**
DAY & TIME	**DAY :** Every AGM should be held on **<u>any day except on National Holiday</u>** as specified by the GOI. (15th August, 26th Jan., 2nd Oct. or any other day as notified by the Central Govt.). National Holiday means and includes a day declared as National Holiday by the Central Government. **TIME :** Every AGM should be held during the **<u>business hours</u>** on any day excluding national holiday. Here, business hour is between **<u>9.00 A. M. to 6.00 P. M.</u>**
PLACE OF MEETING	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. In case of a Government company, the Annual General Meeting shall be held at its registered office or any other place with the approval of the Central Government, as may be required in this behalf.
BUSINESS TRANSACTED AT AN AGM	An AGM of a company must consider the following *Ordinary Businesses*: (a) Annual Accounts; (b) Declaration of dividend; (c) Appointment of directors (retire by rotation); and (d) Appointment and fixing of remuneration of the auditors. The above ordinary businesses can only be passed at the AGM. Other than the above mentioned businesses are treated as special business which can be passed either at AGM or EGM.
DEFAULT IN HOLDING ANNUAL GENERAL MEETING	If any default is made in holding the annual general meeting of a company, any member of the company may make an application to the NCLT to call or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient. Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute quorum for the meeting. **<u>PENALTY:</u>** The Company and every officer of the Company who is in default shall be punishable with fine which may extend to ₹1,00,000/- and in case of

	continuous default with a further fine which may extent to ₹ 5,000/- for every day during which such default continues. In the case of <u>Smith v. Paringa Mines Ltd.,</u> the Board of Directors gave notice of a general meeting and later desired to adjourn by a subsequent notice. It was held that the Board of Directors does not have this power.
EXTRAORDINARY GENERAL MEETING (SECTION 100)	An extraordinary general meeting (EGM) is any general meeting of a company other than the statutory meeting or the annual general meeting. Generally, a company convenes an EGM to transact all urgent matter for which it cannot wait till next annual general meeting. An EGM may call to transact any business other than the ordinary business for fixed Annual General Meeting. An extraordinary general meeting may be convened : (a) By the Board of Directors on its own, or (b) By the Board of Directors on the requisition of members, or (c) By the requisitionists, or (d) By the Tribunal (NCLT)
BUSINESS TO BE TRANSACTED	An EGM shall ***only transact the special business*** and an explanatory statement to be attached with the notice of an EGM.
PLACE OF MEETING	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.
DAY & TIME	**<u>DAY :</u>** An EGM can be held on any day including National Holiday as specified by the GOI. (15th August, 26th Jan., 2nd Oct. or any other day as notified by the Central Govt.). **<u>TIME :</u>** An EGM can be held on any time.
QUORUM (Section 103)	**<u>Meaning</u>**: Quorum means presence of minimum number of members in a meeting. Quorum is required for transaction of business. **<u>Quorum</u>**: Unless the Articles provide for a larger number, the Quorum for a General Meeting shall be: (a) in case of a public company, – (i) five Members personally present if the number of Members as on the date of Meeting is not more than one thousand; (ii) fifteen Members personally present if the number of Members as on the date of Meeting is more than one thousand but up to five thousand; (iii) thirty Members personally present if the number of Members as on the date of the Meeting exceeds five thousand; (b) in the case of a private company, two Members personally present. **<u>Rules for Computing Quorum</u>**: 1. Members need to be personally present at a Meeting to constitute the Quorum. 2. Proxies shall be excluded for determining the Quorum. 3. Two joint holders shall be counted as two for quorum if both joint holders personally present in the General Meeting.

	4. A duly authorised representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys all the rights of a Member present in person. 5. The stipulation regarding the presence of a Quorum does not apply with respect to items of business transacted through postal ballot. **Consequences of 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. **Notice of an adjourned meeting:** In case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated. **No quorum in an 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, being not less than two in number, shall form the quorum.
NOTICE [SECTION 101(3)]	**Time Limit**: A general meeting of a company may be called by giving not less than clear 21 days' notice either in writing or through electronic mode. For the purpose of reckoning twenty-one days clear Notice, the day of sending the Notice and the day of Meeting shall not be counted. Further in case the company sends the Notice by post or courier, an additional two days shall be provided for the service of Notice. **Contents of Notice**: The notice of a general meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting. Notice shall clearly specify the nature of the Meeting and the business to be transacted thereat. In respect of items of Special Business, each such item shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon. In respect of items of Ordinary Business, Resolutions are not required to be stated in the Notice. **Right to receive Notice**: The notice of every meeting of the company shall be given to : (a) Every member of the company, legal representative of any deceased member or the assignee of an insolvent member; (b) The auditor or auditors of the company; and (c) Every director of the company. **Shorter Notice:** A general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting. **Validity of Meeting in case of Omission:** Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not

	invalidate the General Meeting.
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. ✓ Proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. ✓ 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 authorized in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorized by it.
CHAIRMAN	The Chairman plays a crucial role in a company meeting and is usually appointed by the articles. The members present in person at a meeting shall elect on a show of hands one of their members to be the chairman. Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands. If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting. • **ROLE OF CHAIRMAN** The Chairman is responsible for the successful conduct of a meeting. The Chairman has a duty to keep order, to see that the business is properly conducted and to ensure that the sense of the meeting is properly ascertained in regard to any question before 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.
SPECIAL AND ORDINARY	There are two types of business i. e. special business or ordinary business which

BUSINESS	are being placed in the General Meeting of the Company for Approval. There are four types of ordinary businesses which can only be approved in AGM : (i) The consideration of the accounts, balance sheet and the reports of the Board of Directors and auditors; (ii) The declaration of a dividend; (iii) The appointment of directors in the place of those retiring; and (iv) Appointment of and fixation of remuneration of auditors. All businesses, other than the above mentioned are treated as special business. It means all general meetings other than Annual General Meeting consider only special businesses whereas an Annual General Meeting may consider both types of businesses. It the notice convening the meeting (where at special business will be transacted) does not state the nature of the special business, the meeting would be deemed to have been convened irregularly. Consequently, that special business cannot be dealt with at the meeting.
RESOLUTIONS	Decisions of a company are made by resolutions passed by the prescribed majority of the members present at the meetings. The purpose of a meeting is to arrive at decisions and the sense of a meeting is ascertained by voting upon proposals put to the meeting. A formal proposal put to the meeting is resolution. A company expresses its will by the means of resolutions. There are three types namely, ordinary, special and resolutions requiring special notice. **ORDINARY RESOLUTIONS (SECTION 114)** A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast (whether on a show of hands, or electronically or on a poll) in favour of the resolution, including the casting vote (Chairman) by members who vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes cast against the resolution by members. **SPECIAL RESOLUTIONS (SECTION 114)** A resolution shall be a special resolution when it is duly specified in the notice calling the general meeting and the votes cast in favour of the resolution (whether on a show of hands, or electronically or on a poll) by members who vote in person or by proxy or by postal ballot are required to be not less than 3 times the number of the votes cast against the resolution by members. **RESOLUTION REQUIRING SPECIAL NOTICE (SECTION 115)** (a) **Eligibility for sending Special Notice:** A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than ₹ 5,00,000/- has been paid-up on the date of the notice. (b) **Notice Period:** Such notice shall be sent by members to the company not earlier than three months but at least 14 days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting. (c) **Notice for holding meeting:** The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meeting.

	(d) ***Publication in the Newspapers:*** If it is not practicable to give the notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated. Such notice shall be published at least 7 days before the meeting, exclusive of the day of publication of the notice and day of the meeting. **RESOLUTION PASSED AT ADJOURNED MEETING(SECTION 116)** Where a resolution is passed at an adjourned meeting (of a company, or the holders of any class of shares in a company; or the Board of Directors of a company) there the resolution shall be treated as having been passed on the date it was actually passed, and not on any earlier date.
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 be 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** **Every company, except a company having less than or equal to two hundred Members, shall transact items of business as prescribed, only by means of postal ballot instead of transacting such business at a General Meeting.** **Definition**: Section 2(65) – "Postal Ballot" means voting by post or through any electronic mode. The postal ballot is applicable to all types of companies except One Person Company, Small Company or Private Company or a Company having members upto 200. **ITEMS OF BUSINESS WHICH SHALL BE PASSED ONLY BY POSTAL BALLOT** 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 of any 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 **Ordinary Business shall not be transacted by means of a postal ballot.** *Comment on the following:* "A Limited company will have to get certain resolution passed only through postal ballot instead of transacting the business in general meeting of company." Discuss (Dec 2009 **PROCEDURE FOR CONDUCTING BUSINESS THROUGH POSTAL BALLOT** **Notice**: Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders in writing on a postal ballot or by electronic means within a period of 30 days from the date of dispatch of the notice. Notice shall specify the day, date, time and venue where the results of the voting by postal ballot will be announced and the link of the website where such results will be displayed. The notice shall be sent either (a) By Registered Post or speed post, or (b) Through electronic means like registered e-mail id, or (c) Through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within 30 days. **Advertisement:** An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district. **In case of companies having a website, Notice of the postal ballot shall also be placed on the website.** **PROCESS FOR POSTAL BALLOT** ➢ Step 1: Send Notice along with Postal Ballot Form:

	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 form within a period of 30 days from the date of posting of the letter. **The postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutiniser.** ➢ Step 2: Request Reply from Shareholders: The notice shall be sent by registered post acknowledgement due, or by any other method as may be prescribed by the Central Government in this behalf. Also with the notice, there shall be included a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period. ➢ Step 3: Passing of Resolution: 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. ➢ Step 4: Appointment of Scrutiniser: (i) The board of directors shall appoint one scrutinizer, who is not in employment of the company; *The scrutiniser may be a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, an Advocate or any other person of repute who is not in the employment of the company and, who can in the opinion of the Board, scrutinise the postal ballot process in a fair and transparent manner.* *The scrutiniser shall however not be an officer or employee of the company.* *The scrutiniser so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system. Prior Consent to act as a scrutiniser shall be obtained from the scrutiniser and placed before the Board for noting.* (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. ➢ Step 5: Declaration of Results: Based on the scrutiniser's report, the Chairman or any other Director authorised by him shall declare the result of the postal ballot on the date, time and venue specified in the Notice, with details of the number of votes cast for and against the Resolution, invalid votes and the final result as to whether the Resolution has been carried or not.

	Comment on the following: "Postal ballot mechanism improves shareholder's participation in corporate decision making" (Dec 2010) **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'. **PROVISIONS RELATING TO E-VOTING:** 1. Every company that is required or opts to provide e-voting facility to its Members shall comply with the provisions in this regard. 2. Every company providing e-voting facility shall offer such facility to all Members, irrespective of whether they hold shares in physical form or in dematerialized form. 3. The facility for Remote e-voting shall remain open for not less than three days. 4. The Board shall: (a) appoint one or more scrutinizers for e-voting or the ballot process, (b) appoint an Agency; (c) decide the cut-off date for the purpose of reckoning the names of Members who are entitled to Voting Rights; (d) authorize the Chairman or in his absence, any other Director to receive the scrutinizer's register, report on e-voting and other related papers with requisite details. 5. Notice of the Meeting, wherein the facility of e-voting is provided, shall be sent either by registered post or speed post or by courier or by e-mail or by any other electronic means. 6. Notice shall inform the Members about procedure of Remote e-voting, availability of such facility and provide necessary information thereof to enable them to access such facility. 7. Based on the scrutinizer's report received on Remote e-voting and voting at the Meeting, the Chairman or any other Director so authorised shall counter sign the scrutinizer's report and declare the result of the voting forthwith with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.
MINUTES OF PROCEEDINGS OF MEETINGS (SECTION 118)	Every company is required to keep minutes of the proceedings of general meetings and of the meetings of Board of directors and its committees. Important provisions relating to the Minutes of the Meeting : Every company shall record minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board.

	(a) **RECORD MINUTES WITHIN 30 DAYS:** Every company shall record within 30 days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered. (b) **FAIR AND CORRECT SUMMARY:** The minutes of each meeting shall contain a fair and correct summary of the proceedings. (c) **APPOINTMENT TO BE INCLUDED:** All appointments made at any of the meetings shall be included in the minutes of the meeting. In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain – (a) The names of the directors present at the meeting; and (b) In the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution. The Chairman of the meeting has the authority to add or delete anything which : (a) Is or could reasonably be regarded as defamatory of any person; or (b) Is irrelevant or immaterial to the proceedings; or (c) Is detrimental to the interests of the company. The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes. (d) **THE MINUTES KEPT SHALL BE EVIDENCE** of the proceedings recorded therein. No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting. (e) **COMPLIANCES WITH SECRETARIAL STANDARD:** Every company shall observe secretarial standards with respect to general and Board meetings specified by the ICSI. (f) **FINE & PUNISHMENTS:** If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of ₹ 25,000/- and every officer of the company who is in default shall be liable to a penalty of ₹5,000/-. (g) **FINE & PUNISHMENT FOR TEMPERING OF MINUTES**: If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ₹ 25,000/- which may extend to ₹ 1,00,000/-.
REPORT ON ANNUAL GENERAL MEETING(SECTION 121)	**REPORTING BY EVERY LISTED COMPANY:** Every listed public company is required to prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the rules made thereunder. **FILING WITH ROC:** A copy of the report is to be filed with the ROC in Form No. MGT – 15 within 30 days of the conclusion of annual general meeting along with the prescribed fee. **Rules 31 of the Companies (Management and Administration) Rules, 2014** The report shall be prepared in the following manner : 1. A report shall be prepared in addition to the minutes of the general meeting. 2. The report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one.

	3. Such report shall contain the details in respect of the following : (a) The day, date, hour and venue of the annual general meeting. (b) Confirmation with respect to appointment of Chairman of the meeting. (c) Number of members attending the meeting. (d) Confirmation of quorum. (e) Confirmation with respect to compliance of the Act and the Rules, secretarial standards made thereunder with respect to calling, convening and conducting the meeting. (f) Business transacted at the meeting and result thereof. (g) Particulars with respect to any adjournment, postponement of meeting, change in venue. (h) Any other points relevant for conclusion in the Report. 4. Such Report shall contain fair and correct summary of the proceedings of the meeting. **Default in filing the Report:** If the company fails to file the report with the prescribed period then the company shall be liable for fine not less than ₹ 1 lac but not more than ₹ 5 lacs and every officer who is in default shall be punishable with not less than ₹ 25,000/- but not more than ₹ 1,00,000/-.
DEPOSITS	**WHAT IS DEPOSITS?[SECTION 2(31)]** Deposit *includes* any receipt of money by way of deposit or loan or in any other form by a company, *but does not include* such categories of amount as may be prescribed in consultation with the Reserve Bank of India. **WHAT IS NOT A DEPOSIT?** (i) Any amount received from: o the Central Government (CG) or o a State Government (SG) or o any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government, or o any amount received from a local authority, or o any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature; (ii) Any amount received from: o foreign Governments, o foreign/international banks, o multilateral financial Institutions, o foreign government owned development financial institutions, o foreign export credit agencies, o foreign collaborators, o foreign bodies corporate and o foreign citizens etc.; (iii) Any amount received as a loan or facility from any banking company or from the State Bank of India or its associates or from any banking institution; (iv) 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; (v) 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;

	(vi) Any amount received by a company from any other company; (vii) any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for; (viii) Any amount received from a person who, at the time of receipt of amount, was a director of the company or relative of directors of private company; *Provided that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;* (ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within ten years: *Provided that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer;* (ixa) any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India; (x) 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; (x) Any amount received as security deposit for the performance of the contract for supply of goods or provision of services; (xi) any non-interest bearing amount received and held in trust; (xii) any amount received in the course of, or for the purposes of, the business of the company,- (a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance: Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty five days shall not apply; (b) as advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property under an agreement or arrangement, provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement;

	(c) as security deposit for the performance of the contract for supply of goods or provision of services; (d) as advance received under long term projects for supply of capital goods except those covered under item (b) above: (e) as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less; (f) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government; (g) as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications; Provided that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules: Explanation: For the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund. (xiii) Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions, namely:- (a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance; (b) the loan is provided by the promoters themselves or by their relatives or by both; and (c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter; (xiv) Any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act. **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.
ACCEPTANCE OF DEPOSITS	❖ **ACCEPTANCE OF DEPOSITS FROM MEMBERS: [Section 73(2)]** Conditions for Acceptance of Deposits: 1. Passing of Resolution in General meeting 2. Rules as may be prescribed in consultation with RBI; 3. Conditions Specified in Section 73(2): a) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as prescribed;

	b) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular; c) depositing such sum which shall not be less than 15% of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account; d) providing such deposit insurance in such manner and to such extent as prescribed under Rule 5 of Companies (Acceptance of deposits) Rules, 2014. e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and f) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company. In case when a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits. **<u>Exemption for Private Companies</u>** The MCA vide notification no. G.S.R. 464 dated 5th June 2015 has allowed private companies to accept deposits from its members, monies not exceeding 100% of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified without complying with Section 73(2) (a) to (e). Thus a private company will have to follow only the condition mentioned in Section 73(2) (f). ❖ **<u>ACCEPTANCE OF DEPOSITS FROM PUBLIC:</u>** Eligible companies, may accept deposits from persons other than its members • subject to the fulfillment of all requirements provided in Section 73(2) • subject to such rules as may be prescribed in consultation with the Reserve Bank of India and Such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits. [First Proviso to Section 76(1)] Every company accepting secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favor of the deposit holders in accordance with such rules as may be prescribed. [Second Proviso to Section 76(1)] Section 76(2) states that all the provisions for acceptance of deposits shall, mutatis mutandis, apply to the acceptance of deposits from public under this section.
ELIGIBLE COMPANY FOR ACCEPTANCE OF PUBLIC DEPOSITS	Eligible Company means a public company, having : (a) A net worth of not less than ₹ 100 Crore; or (b) A turnover of not less than ₹ 500 Crore Apart from the above, the issuer company has to obtain the prior consent of the company in general meeting by means of a special resolution.
MAXIMUM LIMIT FOR	**<u>FOR A COMPANY OTHER THAN AN ELIGIBLE COMPANY</u>**: No company (other than

ACCEPTANCE OF DEPOSITS (Section 73)	private company) shall accept or renew any deposits if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 25% of the aggregate of the paid-up share capital, free reserve and Securities Premium of the company . Provided that **a specified IFSC Public Company** and a Private Company may accept from its members monies not exceeding 100% of aggregate of paid up share capital, free reserves and securities premium and such company shall file details of monies so accepted to ROC in Form DPT 3. **Explanation**: For the purpose of this rule, a Specified IFSC Public Company means an unlisted public company which is licensed to operate by RBI or SEBI or IRDA from International Financial Services Centre located in an approved multi services SEZ set up under SEZ act, 2005 read with SEZ Rules, 2006: Provided further that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies namely: (**No Limit**) (i) A Private company which is a startup, for five years from date of its incorporation; (ii) A Private company which fulfills all of the following conditions namely: (a) Which is not an associate or a subsidiary company of any other company; (b) The borrowings of such a company from banks or Financial Institutions or anybody corporate is less than twice of its paid up share capital or ₹ 50 Crores, whichever is less and (c) Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73; Provided that all the companies accepting deposits shall file the details of monies so accepted to ROC in form DPT 3. **FOR AN ELIGIBLE COMPANY** : No eligible company shall accept or renew any deposits : (a) **Deposits from any Members**: Any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium of the company. (b) **Deposits from others**: If the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in (a), outstanding on the date of acceptance or renewal exceeds 25% aggregate of the paid-up share capital, free reserve & securities premium of the company. **FOR GOVERNMENT COMPANY:** No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds 35% of the aggregate of its paid up share capital, free reserves and securities premium account of the company.
TENURE OF DEPOSITS	**PERIOD:** Minimum period – **6 months** from the date of acceptance of deposit Maximum period – **36 Months** from the date of acceptance or renewal of such deposit

	A company may accept or renew deposits for the purpose of meeting any of its short term requirements for a period less than 6 months if such deposits. • Do not exceed 10% of the aggregate of paid-up capital and free reserves • Are repayable not earlier than 3 months
RETURN OF DEPOSITS	Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT – 3 along with the prescribed fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.
REPAYMENT OF DEPOSITS ACCEPTED BEFORE COMMENCEMENT OF COMPANIES ACT 2013 (Section 74)	(1) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall— (a) file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar **a statement of all the deposits accepted by the company** and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and *(b) repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier* (2) The Tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.
PENAL PROVISIONS (Section 76A) **Inserted by Amendment Act 2015**	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 ₹ 1 Crore but which may extend to ₹ 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 ₹ 25 Lakhs and ₹ 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 willfully 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. If any company contravenes any provisions of Companies (Acceptance of Deposit) Rules, 2014 for which no punishment is provided in the Act, then the company and every officer in default shall be punishable with fine which may extend to ₹ 5000/- and in case contravention is continuing one, with a further fine which may extend upto ₹ 500/- per day for every day after the first day during which the default continues. [Rule 21]
DECLARATION OF DIVIDEND (SECTION 123)	**1. <u>Payment of dividend to be authorized by the articles</u>**: As per section 51 of the Companies Act, 2013, a company may, if so authorized by its articles, pay dividend in proportion to the amount payable on each share. If not, the

	Articles have to be amended accordingly. **2. Sources for payment of dividend** No dividend shall be declared or paid for any financial year except current and previous year profits or money provided by the Central Govt. or State Govt. (A) **Current & Previous Year Profits** : The dividend shall be payable (i) Out of the current year profits of the company as arrived after providing depreciation, or (ii) Out of the previous year profits of the company arrived at after providing for depreciation and remaining undistributed, or (iii) Out of both; or **The Company (Amendment) Act, 2015:** A Company shall not declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set – off against profits of Company for the current year. (B) **Money Provided by CG or SG**: The dividend shall also be payable out of the money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government. **3. Provisions for Depreciation** Depreciation must be provided before any dividend (including interim and final dividend) can be declared out of current and previous year profits of any financial year and the depreciation must be as per Schedule II of the Companies Act, 2013. **4. Transfer of profits to reserves** A company **may** transfer some specified of its profits percentage to the reserves of the company before the declaration of any dividend in any financial year. **5. Payment of Dividend:** After declaration of dividend, the company has to pay the dividend within 30 days from the date of declaration. **Note:** The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of dividend. The dividend shall only be payable in cheque or warrant or in any electronic mode to the shareholder who are entitled for the dividend. **6. 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.
DIVIDEND IN CASE OF ABSENCE OR INADEQUACY OF PROFITS	In case of inadequacy or absence of profits in any financial year, any company may declare the dividend out of the previous year's accumulated profits. **Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014** In the event of inadequacy or absence of profits in any year, a company may declare dividend out of previous year surplus subject to the fulfillment of the following conditions : (a) **Rate of dividend:** The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year.

	Note: This rule shall not apply to a company which has not declared any dividend in immediately preceding 3 financial years. (b) **Total withdrawal from accumulated profits:** The total amount to be drawn from such accumulated profits shall not exceed 1/10 of the sum of its paid – up share capital and free reserves as per the latest audited financial statement. (c) **Setting off the losses:** The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared. (d) **To maintain reserve :** The balance of reserves after withdrawal shall not fall below 15% of its paid – up share capital as per the latest audited financial statement.
UNPAID DIVIDEND ACCOUNT (SECTION 124)	**1. <u>Transfer of dividend to a Special Account</u>:** In any reason, the dividend has not been paid to the members, the company has to open a special account "unpaid dividend account of ABC Ltd.", and transfer the unpaid or unclaimed dividend account to the special account. The unpaid or unclaimed dividend amount shall be kept in this account for 7 years from the date of transfer. **Note:** In case of any default in transfer of the unpaid or unclaimed dividend within 7 days from the expiry of 30 days of declaration, the company shall be liable to pay interest at the rate of 12% on remaining unpaid amount. **2. <u>Transfer to Investors Education and Protection Fund (IEPF)</u>:** After 7 years, the company has to transfer the entire unpaid or unclaimed amount to the Investors Education and Protection fund. The company shall send a statement of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer. **3. <u>Offence & Penalty</u>:** For Company : Find – Minimum ₹ 5 lakh & Maximum ₹ 25 lakh, For Officer : Fine – Minimum ₹ 1 lakh & Maximum ₹ 5 lakh
INVESTOR EDUCATION AND PROTECTION FUND (IEPF) (SECTION 125)	The Central Government has established an Investor Education and Protection Fund for the purpose to educate investors and to protect the interest of investors. The following amount is being credited to this fund : (a) Amounts in the unpaid dividend accounts of companies; (b) Unpaid or unclaimed application moneys received by companies for allotment of any securities and due for refund; (c) Unpaid or unclaimed amount of matured deposits with companies; (d) Unpaid or unclaimed amount of matured debentures with companies; (e) The interest accrued on the account referred to in clauses (a) to (d); (f) Grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and (g) The interest or other income received out of the investments made from the Fund. **<u>UTILIZATION OF INVESTOR EDUCATION AND PROTECTION FUND</u>** The amount of IEPF shall be utilized for : (a) The refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon; (b) Promotion of investors' education, awareness and protection; (c) Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture – holders or

	depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement; (d) Reimbursement of legal expenses incurred in pursuing class action suits by members, debenture – holders or depositors as sanctioned by the NCLT; and any other purpose.
DIVIDEND DURING REGISTRATION OF TRANSFER OF SHARES (SECTION 126)	When any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act : (a) **Transfer such fund to unpaid dividend account :** Transfer the dividend in relation to such shares to the Unpaid Dividend Account unless the company is authorized by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and (b) **Keep in abeyance:** Keep in abeyance in relation to such shares, any offer of rights shares and any issue of fully paid – up bonus shares.
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 ₹ 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. **<u>EXCEPTIONS:</u>** 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.
REQUIREMENT OF KEEPING BOOKS OF ACCOUNT (SECTION 128)	Every company shall keep proper books of account of the company. The main features of the proper books of account are as under :- (a) The company must keep the books of account., (b) The books of account must show all money received and expended, sales and purchases of goods and the assets and liabilities of the company. (c) The books of account must be kept on accrual basis and according to the double entry system of accounting. (d) The books of account must give a true and fair view of the state of the affairs of the company or its branches. <u>Books of Account</u> include the records maintained in connection with : (a) All sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (b) All sales and purchases of goods and services by the company; and (c) The assets and liabilities of the company.
PLACE OF KEEPING	➢ Every company has to prepare and keep the books of account and other

BOOKS OF ACCOUNT (Section 128)	relevant books and papers and financial statements **at its registered office**. ➢ The books of accounts may be kept at **other place in India** as decided by the Board of Directors. ➢ In case of any change about the place of keeping Books of accounts, the company is required to **file a notice to ROC within 7days** in writing giving the full address of that other place. ➢ Where a company has a branch office in India or Outside, The book of accounts of the branch office relating to transactions of a branch office may be kept at **that branch 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 or that other place mentioned above.
MAINTENANCE OF BOOKS OF ACCOUNT	✓ A company may maintain the books of account in electronic mode and/or in physical form. The information contained in the records shall be retained completely in the format in which they were **originally generated, sent or received**, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered. ✓ The information received from branch offices **shall not be altered** and shall be kept as it is originally received. The information in the electronic record of the document shall be **capable of being displayed in a legible form**. ✓ The back – up of the books of account shall be kept in a server physically located in India and shall be updated time to time. ✓ The company shall **intimate to the ROC** on an Annual Basis along with financial statement : (a) The name of the service provider; (b) The internet protocol (IP) address of service provider; (c) The location of the service provider; (d) Where the books of account are maintained on cloud, such address of the service provider.
PRESERVATION OF BOOKS OF ACCOUNT	❖ Every company shall preserve their books of accounts together with the vouchers for **at least 8 years** immediately preceding the current year. ❖ If the company has not been in existence for 8 years, then for the whole period of its existence.
INSPECTION OF BOOKS OF ACCOUNT	(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. **Note:** The right of inspection can be refused if it is found that the inspection is being sought to pass on the information to a rival business of the company. (b) **Inspection by the ROC/Officers of SEBI**: The ROC and any other officer authorized 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 authorized 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 (June 2016)	The following persons are responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts : (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.
PUNISHMENT FOR CONTRAVENTION	Such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.
NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA) (Section 132)	• Through Section 132 of the Companies Act, 2013, the Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (NFRA) with **wide powers to recommend, enforce and monitor** the compliance of accounting and auditing standards. • The Companies Act, 1956 empowers the Central Government to form a Committee for recommendations on Accounting Standards which is National Advisory Committee on Accounting Standards (NACAS). This is now being renamed with enhanced independent oversight powers and authority as National Financial Reporting Authority (NFRA). • NFRA shall be responsible for **monitoring and enforcing compliance** of auditing and accounting standards and for that purpose, oversee the quality of professions associated with ensuring such compliances. • The Authority shall **investigate** professional and other misconducts which may be committed by Chartered Accountancy members and firms. There is also a provision for appellate authority. • The National Financial Reporting Authority shall be a **quasi – judicial body** to regulate matters related to accounting and auditing. • With increasing demand of non – financial reporting, it may be referred to as a National level business Reporting Authority to regulate standards of all kind of reporting- financial as well as non – financial, by the companies in future. • National Financial Reporting Authority shall **give its recommendations on accounting standards and auditing standards**. It shall only recommend and it is the Central Government who shall prescribe such standards.
FINANCIAL STATEMENTS, BOARD REPORT, ETC (SECTION 134)	(1) **SIGNING OF FINANCIAL STATEMENTS:** 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. (2) The auditors' report shall be attached to every financial statement. (3) There shall be attached to statements laid before a company in general meeting, a **REPORT BY ITS BOARD OF DIRECTORS**, which shall include— (a) the extract of the **annual return** as provided under sub-section (3) of section 92; (b) number of meetings of the Board; (c) Directors' Responsibility Statement; **(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government. (i.e. Amount involved in less than ₹ 1 Crore)** (d) a statement on declaration given by independent directors under sub-section (6) of section 149; (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178; (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made— (i) by the auditor in his report; and (ii) by the company secretary in practice in his secretarial audit report; (g) particulars of loans, guarantees or investments under section 186; (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form; (i) the state of the company's affairs; (j) the amounts, if any, which it proposes to carry to any reserves; (k) the amount, if any, which it recommends should be paid by way of dividend; (l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report; (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed; (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company; (o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year; (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

	(q) such other matters as may be prescribed (4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report. (5) The **DIRECTORS' RESPONSIBILITY STATEMENT** referred to in clause (c) of sub-section (3) shall state that— (a) in the preparation of the annual accounts, the applicable accounting standards had been followed 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. Explanation.—For the purposes of this clause, the term "internal financial controls" means 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; (f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. (6) **SIGNING ON BOARD'S REORT:** 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. (7) **CIRCULATION OF FINANCIAL STATEMENTS:**A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of— (a) any notes annexed to or forming part of such financial statement; (b) the auditor's report; and (c) the Board's report referred to in sub-section (3). (8) **CONTRAVENTION WITH THIS SECTION:** 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 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 three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees,

<table>
<tr><td></td><td>or with both.</td></tr>
<tr><td>ANNUAL COMPLIANCES OF FINANCIAL STAEMENT (SECTION 137)</td><td><u>For Private or Public Company</u> :

(a) <u>Adoption of Financial Statement in AGM</u>: Every company is required to file the financial statements (including consolidated financial statement) in Form AOC – 4with the ROC within 30 days from the day on which the AGM held and adopted the financial statements.

(b) <u>Non – adoption of Financial Statement in AGM</u>: If the financial statements are not adopted at the AGM or adjourned AGM, such unadopted financial statements along with the required documents to be filed with the ROC within 30 days of the date of AGM.

If AGM has not been held, the financial statement duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with ROC within 30 days of the last day before which the AGM should have been held.

<u>For One Person Company</u>: An OPC shall file the copy of financial statements duly adopted by its members within 180 days from the closure of financial year.

Note: The Company shall also attach the financial statements of its subsidiaries incorporated outside India not having place of business in India.

Special Note: The Certain class of companies as notified by the Central Government, shall mandatorily file their financial statement in XBRL format.

<u>Penal Provisions</u>: If company fails to comply with the requirement of submission of financial statement before ROC, the company shall be punishable with fine of ₹ 1000/- per day till the continuance of default subject to maximum of ₹ 10 Lakhs.

The MD and CFO if any, and in the absence of MD or CFO, any other director who is charged by the Board with the responsibility of complying with this provision, in the absence of such delegation of authority, all directors of the company shall be punishable with imprisonment upto 6 months or with fine which shall not be less than ₹ 1 lakh but not more than ₹ 5 lakh or with both.</td></tr>
<tr><td>QUALIFICATION & DISQUALIFICATION OF AUDITOR (SECTION 141)</td><td><table>
<tr><td>(1)</td><td>A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:

Provided that a firm whereof <u>majority of partners</u> practicing in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.</td></tr>
<tr><td>(2)</td><td>Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and <u>sign</u> on behalf of the firm.</td></tr>
<tr><td>(3)</td><td>Under sub-section (3) of section 141 along with Rule 10 of the Companies (Audit and Auditors) Rule, 2014 (hereinafter referred as CAAR), the following persons shall not be eligible for appointment as an auditor of a company, namely:- (Disqualifications)

<table><tr><td>BODY CORPORATE</td><td>(a) A Body Corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;</td></tr></table></td></tr>
</table></td></tr>
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OFFICER OR EMPLOYEE	(b) An Officer Or Employee of 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	<u>(d) A person who, or his relative or partner -</u> (i) Is HOLDING ANY SECURITY OF OR INTEREST in 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; *Explanation.—For the purposes of this clause, the term "relative" means the spouse of a person; and includes a parent, sibling or child of such person or of the spouse, financially dependent on such person, or who consults such person in taking decisions in relation to his investments.*
BUSINESS RELATIONSHIP	(e) a person or a firm who, whether directly or indirectly has business relationship with the Company, or its Subsidiary, or its Holding or Associate Company or Subsidiary of such holding company or associate company, of such nature as may be prescribed; Student may note that for the purpose of clause (e) above, the term “business relationship” shall be construed as any transaction entered into for a

			commercial purpose, **except** – (i) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts; (ii) commercial transactions which are in the ordinary course of business of the company at arm's length price - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.
		RELATIVE IS A DIRECTOR OR IS IN THE EMPLOYMENT	(f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel; **Meaning of Relative:** 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 (June 2016)	(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company. 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**.
	(4)	Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) **AFTER HIS APPOINTMENT**, he shall **VACATE** his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.
APPOINTMENT OF AUDITOR (SECTION 139)	**APPOINTMENT OF FIRST AUDITORS IN THE CASE OF A COMPANY, OTHER THAN A GOVERNMENT COMPANY**	As per Section 139(6), the first auditor of a company, other than a Government company, shall be appointed by the **Board of Directors** within 30 days from the date of registration of the company. In the case of failure of the Board to appoint the auditor, it shall inform the **members of the company**. The members of the company shall within 90 days at an extraordinary general meeting appoint the auditor. Appointed auditor shall hold office till the conclusion of the first annual general meeting.
	APPOINTMENT OF FIRST AUDITORS IN THE CASE OF GOVERNMENT COMPANY:	Section 139(7) provides that in the case of a Government company or any other company owned or controlled, directly or indirectly, 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, the first auditor shall be appointed by the **Comptroller and Auditor-General of India** within 60 days from the date of registration of the company. In case the Comptroller and Auditor-General of India does not appoint such auditor within the above said period, the **Board of Directors of the company** shall appoint such auditor within the next 30 days. Further, in the case of failure of the Board to appoint such auditor within next 30 days, it shall inform the

		members of the company who shall appoint such auditor within 60 days at an extraordinary general meeting. Auditors shall hold office till the conclusion of the first annual general meeting. **PRACTICAL QUESTION:** *One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj a qualified Chartered Accountant was appointed as an auditor of the Company at the Annual General Meeting held on 30th April, 2014 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act 2013. Decide, whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act.*
	APPOINTMENT OF SUBSEQUENT AUDITOR/ REAPPOINTMENT OF AUDITOR IN CASE OF COMPANIES OTHER THAN GOVERNMENT COMPANY	Section139(1) of the Companies Act, 2013 provides that every company shall, at the first annual general meeting appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting. The following points need to be noted in this regard- (i) The company shall place the matter relating to such appointment of ratification by member at every Annual General Meeting. (ii) Before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor. (iii) The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141. (iv) The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.
	APPOINTMENT OF SUBSEQUENT AUDITORS IN CASE OF GOVERNMENT COMPANIES:	As per Section 139(5), in the case of a Government company or any other company owned or controlled, directly or indirectly, 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, the **Comptroller and Auditor-General of India** shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of 180 days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

	FILLING OF A CASUAL VACANCY	As per Section 139(8), any casual vacancy in the office of an auditor shall- **<u>COMPANIES OTHER THAN GOVERNMENT COMPANY:</u>** (i) In the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the **Board of Directors** within thirty days. If such casual vacancy is as a result of the **<u>RESIGNATION OF AN AUDITOR</u>**, such appointment shall also be approved by the **company at a general meeting** convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting; **<u>GOVERNMENT COMPANY:</u>** (ii) In the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the **Comptroller and Auditor-General of India** within thirty days: It may be noted that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period the **Board of Directors** shall fill the vacancy within next thirty day.
	CASUAL VACANCY BY RESIGNATION:	As per section 140 (2) the auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form ADT–3 (as per Rule 8 of CAAR) with the company and the Registrar, and in case of the companies referred to in section 139(5) i.e. subsequent auditor of Government company, the auditor shall also file such statement with the Comptroller and Auditor General of India, indicating the reasons and other facts as may be relevant with regard to his resignation. In case of failure the auditor shall be punishable with fine which shall not be less than fifty thousand rupees *<u>or the remuneration of the auditor, whichever is less</u>* but which may extend to five lakh rupees as per section 140 (3).
	OTHER IMPORTANT PROVISIONS REGARDING APPOINTMENT OF AUDITORS	1. A retiring auditor may be re-appointed at an annual general meeting, if- (a) he is not disqualified for re-appointment; (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

	2. Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company
ROTATION OF AUDITOR	**<u>Applicability of section 139(2) Rotation of Auditor</u>**: 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 Fifty 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. As per Section 139(2) , No listed company or a company belonging to such class or classes of companies as mentioned above, shall appoint or re-appoint- (a) an individual as auditor for more than one term of five consecutive years; and (b) an audit firm as auditor for more than two terms of five consecutive years: Provided that - (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term; (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term. The following points merit consideration in this regard- 1. As on the date of appointment, no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years: 2. Every company, existing on or before the commencement of this Act which is required to comply with provisions of this sub-section, shall comply with the requirements of this sub-section within three years from the date of commencement of this Act. 3. It has also been provided that right of the company to remove an auditor or the right of the auditor to resign from such office of the company shall not be prejudiced. 4 Subject to the provisions of this Act, members of a company may resolve to provide that- (a) In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or (b) The audit shall be conducted by more than one auditor. 5. The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors.
AUDITOR'S	As per section 142 of the act the remuneration of the auditor of a company shall

REMUNERATION	be fixed in its **general meeting (Members)** or in such manner as may be determined therein. However, **board** may fix remuneration of the **first auditor** appointed by it. Further, the remuneration, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company. Therefore, it has been clarified that the remuneration to Auditor shall also include any facility provided to him.
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 ₹ 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 along with 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 ₹ 1 Crore, the auditor shall report the matter to Audit Committee constituted under Section 177 or to the Board immediately but not later than 2 days of his knowledge of the fraud and he shall report the matter specifying the following: o Nature of Fraud with description]

	o Approximate Amount involved o Parties involved ❖ The following details of each of the fraud reporting to the Audit Committee or the Board shall be disclosed in the Board's Report: o Nature of Fraud with description o Approximate Amount involved o Parties involved, remedial action not taken o Remedial actions taken ❖ The provision of this Rule shall also apply mutatis mutandis to a Cost auditor and a Secretarial Auditor during the performance of his duties under section 148 & 204 respectively.
INTERNAL AUDIT (Section 138)	**<u>Applicability of Internal Audit</u>** Internal Audit applies to all companies as under : 1. Every **listed** company; 2. Every **unlisted public** company having : (a) Paid – up share capital of ₹ 50 Crore or more during the preceding financial year; or (b) Turnover of ₹ 200 Crore rupees or more during the preceding financial year; or (c) Outstanding loans from banks or public financial institutions exceeding ₹ 100 Crore or more at any point of time during the preceding financial year; or (d) Outstanding deposits of ₹ 25 Crore or more at any point of time during the preceding financial year; and 3. Every **private company** having : (a) Turnover of ₹ 200 Crore or more during the preceding financial year; or (b) Outstanding loans from banks or public financial institutions ₹ 100 Crore or more at any point of time during the preceding financial year. Provided that an existing company covered under the above parameter shall comply within 6 months with the provisions Internal Audit. **<u>Who can be appointed as Internal Auditor?</u>** The following professional may conduct the Internal Audit of the above mentioned Companies : (a) A Chartered Accountant; (Whether engaged in Practice or not) or (b) A Cost Accountant; (Whether engaged in Practice or not) or (c) Other professional as may be decided by the Board of Directors to conduct internal audit of the functions and activities of the Company. **It may be noted that Internal Auditor may be an Individual, Partnership Firm or Body Corporate.** For conducting the internal audit by the above mentioned professional, the Internal Auditor should have knowledge about : (a) Legal and regulatory framework within which the auditee entity operates. (b) Accounting, internal control systems and procedure along with accounting policies. (c) Determine the effectiveness of internal control and check procedures adopted by the entity. (d) Understand the business and other technical details of the auditee entity. (e) Determine nature, timing and extent of procedures to be carried out or performed.
SECRETARIAL AUDIT (Section 204)	• Secretarial Audit means **correction and verification** of secretarial records and compliances to be maintained by the Company. In other words, secretarial

(December 2015)	audit is a **compliance audit** and it is a part of total compliance management in an organization. • It is an effective tool for corporate compliance management. • It helps to detect non – compliance and to take corrective measures. • Secretarial Audit is a process to **check compliance with the provisions of various laws** and rules/regulations/procedures, maintenance of books, records etc., by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed the due process. It is essentially a mechanism to monitor compliance with the requirements of stated laws. • 1st Time, the Companies Act, 2013 gives statutory recognitions to the Secretarial Audit. As per section 204 of the Companies Act, 2013, every listed company and other class of companies as notified have to annex a Secretarial Audit Report. • Secretarial Audit should be an independent, objective assurance intended to add value and improve an organization's operations. • It helps to accomplish the organization's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes. • The Board of Directors shall explain, in their report, in full any qualification made in the Secretarial Audit Report.
Every: L U: S: 50 T: 250	**Applicability of Secretarial Audit**: The following companies are required to do the secretarial audit : (a) Every listed companies; or (b) Every Unlisted public company having a paid – up share capital of ₹ 50 Crores or more; or (c) Every Unlisted public company having a turnover of ₹ 250 Crores or more. **Who will conduct the Secretarial Audit of the Companies?** Only a practicing company secretary can conduct the secretarial audit of the Companies. It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records.
COST RECORDS & AUDIT (Section 148)	The Central Government may direct for conducting cost audit of certain class of companies which are engaged in the production of such goods or providing such services relating to the utilization of material or labor or to other items of cost. If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies. **Who will conduct the Cost Audit of the Companies?** The cost audit shall be conducted by a Cost Accountant who shall be appointed by the Board of Directors. The qualifications, disqualifications, rights, duties and obligations applicable to auditors shall also apply to a cost auditor and it shall be the duty of the company to give all assistance and facilities to the cost auditor for auditing the cost records of the company.

	The report on the audit of cost records shall be submitted by the cost accountant in practice to the Board of Directors of the company. A company shall within 30 days from the date of receipt of the cost audit report, furnish with the Central Government with such report along with full information and explanation on every reservation or qualification. **<u>The Companies (Cost Records and Cost Audit) Rules, 2014</u>** (a) <u>Applicability for cost audit</u>: The Central Government may direct for the audit of cost records of certain class of companies. (b) <u>Maintenance of records</u>: Every company covered under these rules including all units and branches thereof, shall, in respect of each financial year commencing on or after the 1st day of April, 2014, maintain cost records in **Form CRA – 1.** (c) <u>Cost audit</u>: Every company covered under these rules shall appoint a cost auditor within 180 days from the commencement of every financial year. (d) <u>Qualification of Cost audit Report</u>: Every cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestion in **Form CRA – 3.**
COST AUDIT REGULATIONS **Regulated:** **O:50** **I:25** **Unregulated:** **O:100** **I:35**	**A. REGULATED SECTORS** Companies having an overall turnover from all its products and services of ₹ 50 Crores or more during the immediately preceding financial year AND The aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained is ₹ 25 Crores or more. **B. NON REGULATED SECTORS** Companies having an overall turnover from all its products and services of ₹ 100 Crores or more during the immediately preceding financial year AND The aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained is ₹ 35 Crores or more.
COST RECORDS	• **REGULATED SECTORS & UNREGULATED SECTORS BOTH** Companies having an overall turnover from all its products and services of ₹ 35 Crores or more during the immediately preceding financial year.
EXEMPTION FROM THE REQUIREMENTS	The Requirement for cost audit under these rules shall not apply to a company which is covered rule 3, and- o whose revenue from exports, in foreign exchange, exceeds seventy five per cent of its total revenue; or o which is operating from a special economic zone.
MINIMUM/ MAXIMUM NUMBER OF DIRECTORS **[SECTION 149(1)]**	**<u>Minimum Directors</u>:** Every public company must have a minimum number of **3** directors. In case of private company, there must be **2** directors and whereas **1** director is required in One Person Company. **<u>Maximum Directors:</u>** Any company can appoint maximum **15** directors. Any company can appoint **more than 15 directors** subject to the approval of shareholders via a special resolution in general meeting. CG approval is not required. <u>*The restriction of maximum number of directors shall not apply to Section 8 Companies*</u>.

NUMBER OF DIRECTORSHIP **(SECTION 165)**	✓ An individual **cannot hold more than 20** directorships in companies including alternate directorship. Provided that the maximum number of **public companies** in which a person can be appointed as a director **shall not exceed ten**. **Explanation 1**: For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included (Can be called as *Deemed Public Companies*) **Explanation 2**: For reckoning the limit of directorships of twenty companies, the Directorship in a Dormant Company & Section 8 Companies shall not be included. ✓ This limit is maximum, however, company may, by its AOA, provide for lesser number of companies in which a director of company may act as director. ✓ **FINE FOR DEFAULT:** Not less than ₹ 5,000/- but not more than ₹25,000/- for every day after the first day during which the contravention continues.
RESIDENTIAL STATUS OF DIRECTOR **[SECTION 149 (3)]**	Every company shall have at least 1 director who has stayed in India for a period of **not less than 182 days** in the Financial year. *Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.*
WOMEN DIRECTOR (Second Proviso to SECTION 149) **EVERY L** **U** **S: 100** **T: 300**	The following class of companies must appoint at least 1 woman director on its Board : (i) Every listed company; (ii) Every other public company having :- (a) Paid-up share capital of ₹ 100 Crores or more; or (b) Turnover of ₹ 300 Crores rupees or more. *The paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.* Any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or 3 months from the date of such vacancy, whichever is later. **Special Note:** The paid-up share capital or turnover as on the last date of latest audited financial statements shall be taken into account.
SMALL SHAREHOLDERS DIRECTORS **(SECTION 151)** **(LISTED COMPANY ONLY)**	Every listed company may have one director elected by such small shareholders. Here, "Small shareholder" means a shareholder holding shares of nominal value of not more than ₹ 20,000/- or such other sum as may be prescribed. **RULE 7 OF COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) RULES, 2014** Terms and Conditions for appointment of small shareholder's director: (i) **ELECTION OF SMALL SHAREHOLDER DIRECTOR:** A listed company, may upon notice of not less than (a) One thousand small shareholders; or (b) one-tenth of the total number of such shareholders,

	Whichever is lower; have a small shareholder's director elected by the small shareholder. A 'Small Shareholders' Director' may be elected voluntarily by any listed company. Thus, a listed company, may, on its own, act to appoint a Small Shareholders' Director. In such a case, no notice from small shareholder(s) is required. (ii) **NOTICE TO THE COMPANY BY SMALL SHAREHOLDERS:** 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 TO ACT 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 OF OFFICE:** 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 ASSOCIATION FOR 3 YEARS AFTER EXPIRY OF TENURE:** 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.
APPOINTMENT OF DIRECTORS (SECTION 152)	**FIRST DIRECTOR** Generally, the first director of the companies are named in AOA of the Company. If the names of the First Directors are not given in the AOA of a company, then subscribers to the MOA who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed. In case of OPC, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member. **PROVISIONS RELATING TO APPOINTMENT OF DIRECTORS:** 1. **APPOINTMENT OF DIRECTORS IN THE GENERAL MEETING:** Every director shall be appointed by the company in general meeting except otherwise provided. 2. **DIN:** Director Identification Number is compulsory for appointment of director of a company. Every person proposed to be appointed as a director shall furnish his DIN and a declaration that he is not disqualified to be appointed as director.

3. **FILLING OF CONSENT:** A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical Form DIR – 2 i. e. Consent to act as a director of a company.

   The Company has to file Form DIR – 12 (particulars of appointment of directors and KMP along with the Form DIR – 2) within 30 days of the appointment of a director.

   The consent to act as director and intimation to Registrar is not required in case of section 8 company and where appointment of such director is done by the Central or State Government, as the case may be.

4. **APPOINTMENT OF DIRECTORS TO BE VOTED INDIVIDUALLY (Section 162):** 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.

   The Ministry of Corporate Affairs has clarified via Notifications No. 464(E) dated 5th June, 2015, that section 162 of the Companies Act, 2013, shall not apply to
   (A) Government company in which the entire paid up share capital is held by CG, or by any SG or Governments or by CG and one or more SG;
   (B) A Subsidiary of Government Company referred to in (a) above, in which the entire paid up share capital is held by Government Company;
   (C) a private company.

5. **RETIRE BY ROTATION:**

Applicability : The provisions relating to retire by rotation only applies to the Public Companies provided:

(a) Articles of a public company may 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.

Note: The independent directors shall not be included for the computation of total number of directors retires by rotation.

6. **WHO SHALL RETIRE FIRST?**

Longest in the 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. At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

	7. <u>FILLING OF VACANCY</u>: If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place. If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless : (a) A resolution for the re-appointment of such director has been put to the meeting and lost; (b) The retiring director has expressed his unwillingness to be so re-appointed; (c) He is not qualified or is disqualified for appointment; (d) A resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or (e) Appointment of directors to be voted individually. **8. <u>PUNISHMENT</u>:** If any individual or director of a company, contravenes any of the provisions of section 152, such individual or director of the company shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first day during which the contravention continues.
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.
ALTERNATE DIRECTOR [SECTION 161 (2)]	**1. <u>APPLICABILITY:</u>** this section applies to all companies, whether public or private **2. <u>POWER & MODE OF APPOINTMENT:</u>** The Board of Directors of a company may, (i) if so authorized by its articles or (ii) 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 *<u>or holding directorship in the same company</u>*, 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 (Tenure) 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.
CAUSAL VACANCY [SECTION 161 (4)]	if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which *shall be subsequently approved by members in the immediate next general meeting*. Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.
APPOINTMENT OF A PERSON AS DIRECTOR OTHER THAN RETIRING DIRECTORS (SECTION 160)	**Notice:** A person who is not a retiring director shall be eligible for appointment as director shall give notice not less than 14 days before the general meeting at the registered office of the company. **Deposits:** The notice must be in writing under his hand signifying his candidature along with a deposit of ₹ 1,00,000/- which shall be refunded to such person if the person proposed gets elected as a director or gets more than 25% of the valid votes casted. **7 days' advance Notice:** The Company shall inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office, at least 7 days before the general meeting by serving individual notices to members through e-mail and by post. **Advertisement**: If a company advertises such candidature in a vernacular newspaper in the principal vernacular language of the registered office's district and also in English language not less than 7 days before the General Meeting then there is no requirement for serving individual notices to the members. **NON APPLICABILITY:** Section 160 is not applicable to Government Company where the entire paid up share capital is held by Central Government jointly or severally or in case of subsidiary of Government Company in which the entire paid up capital is held by that Government Company. Further, Section 160 is not applicable to Private Companies, Section 8 Companies whose article provide for election of directors by Ballot.
DIRECTOR INDENTIFICATION NUMBER [DIN] **(SECTION 153 TO SECTION 159)**	**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. The Central Government shall provide an electronic system to facilitate

	submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs. (Section 153) **SUBMISSION OF DOCUMENTS**: The applicant shall download the DIR – 3 from the MCA Portal, fill in the required particulars and attach the following documents: (a) Photograph; (b) Proof of identity; (c) Proof of residence; And specimen signature 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; (Section 153) **TIME LIMIT FOR ALLOTMENT: (Section 154)** (1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode an application number shall be generated by the system automatically. (2) After generation of the application number, the Central Government shall process the application received for allotment of DIN under Sub-rule (2) of Rule 9 decide on the approval or rejection thereof and communicate the same to the applicant along with DIN allotted. In case of approval by way of a letter by post or electronically or in any other mode within a period of one month from the receipt of such application. (3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email. Provided that Central Government shall- (a) 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; (b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and (c) inform the applicant either by way of letter by post or electronically or in any other mode. (4) In case of rejection or invalidation of application, the fee so paid with the application shall neither be refunded nor adjusted with any other application. **VALIDITY OF DIN:** 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. (f) on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN but after verification of e-records. **<u>PROHIBITION TO OBTAIN MORE THAN ONE DIN:</u>** According to Section 155, No individual shall apply for/obtain/ possess another Director Identification Number who has already been allotted a Director Identification Number under section 154. **<u>DIRECTOR TO INTIMATE DIN:</u>** Section 156 stipulated that Every existing director shall intimate his DIN to the company or all companies wherein he is a director within one month of the receipt of DIN from the Central Government. **<u>COMPANY TO INFORM DIN TO REGISTRAR:</u>** Every company shall, within fifteen days of the receipt of intimation of DIN from director, furnish the DIN to the Registrar/authorised office by the Central Government in e-form DIR-3C. The e-form is to be digitally signed by Company Secretary of the company or Company Secretary in Practice. If a company fails to furnish Director Identification Number under section 157 (1), before the expiry of the 270 days period from the date by which it should have been furnished with additional fee, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. **<u>OBLIGATION TO OBTAIN DIN:</u>** Section 158 specified that every person or company shall mention the DIN in return, information or particulars as required to be furnished under this Act, in case such return etc. relate to the director or contain any reference of any director. **<u>PUNISHMENT FOR CONTRAVENTION</u>** Section 155 of the Act provides that no individual who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number. Section 159 of the Act, further provides that for contravention of the provisions relating to appointment, obtaining more than one DIN or non-intimation of DIN, the individual shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.
DISQUALIFICATIONS OF A DIRECTOR **(SECTION 164)**	**<u>Basic disqualifications (Section 164(1):</u>** 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.** **<u>ADDITIONAL</u> 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. <u>Note</u>: Default in Interest payable to Banks & Financial Institutions in not covered above. **<u>Impact of the above Disqualifications</u>**: 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. *"Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.";* *"Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."* **<u>Rule 14 of the Companies (Appointment and Qualification of Directors) Rules, 2014</u>** Every director who is disqualified as above, shall inform to the company before he appointment or re-appointment (in From DIR – 8). The company shall immediately file Form DIR – 9 to the ROC relating to such directors of the company within 30 days from the date of failure. Upon receipt of the Form DIR – 9, the Registrar shall immediately register the document and place it in the document file for public inspection. A private company may by its articles provide for any disqualifications for appointment as a director in addition to aforesaid mentioned.

	The above disqualification mentioned in clauses (d), (e) and (g) shall not take effect : (a) For 30 days from the date of conviction or order of disqualification; (b) Where an appeal or petition is preferred within 30 days as aforesaid against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed off; or (c) Where any further appeal or petition is preferred against order or sentence within 7 days, until such further appeal or petition is disposed off.
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 ₹ 1,00,000/- but not more than ₹ 5,00,000/- or with both.
REMOVAL OF DIRECTORS **(SECTION 169)**	❖ A Company may remove a director except the director appointed by NCLT, before the expiry of the period of his office after giving him a **reasonable opportunity of being heard** and passing the **ordinary resolution**. ❖ A special notice of the meeting shall be required of such resolution, to remove a director or to appoint somebody in place of a director so removed. The intention to move the resolution for removal of a director must be- (a) Given to the company not earlier than 3 months before the date of general

	meeting **but at least 14 days before the general** meeting (excluding the day on which such notice is given and the day of the general meeting) (b) Signed by member(s) holding not less than 1% of total voting power or member(s) holding paid up share capital of rupees five lakhs. ❖ On receipt of notice of a resolution regarding removal of a director, the company shall forthwith send a copy thereof to the director concerned. ❖ Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,— (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting. Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it. ❖ A vacancy created by the removal of a director may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given. ❖ **Tenure for Appointment:** A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed. ❖ If the vacancy is not filled, it may be filled as a casual vacancy by the Board of Directors.
DIRECTORS CAN NOT BE REMOVED UNDER SECTION 169 (SITUATION)	**(a)** Directors appointed by the Central Government. **(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. **(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.
WHICH COMPANIES ARE REQUIRED TO HAVE INDEPENDENT DIRECTORS?	The Companies Act, 2013 provides that every listed company to have at least 1/3 of the total number of directors as independent directors and further states that the Central Government may prescribe the minimum number of independent directors for a class of companies.

Every L **U:** **S: 10** **L:50** **T: 100**	The Rule & prescribes at least two directors as independent directors for the following classes of public limited companies having: (a) Paid up share capital of ₹ 10 crore or more; or (b) Turnover of ₹ 100 crore or more; or (c) In aggregate, outstanding loans, debentures and deposits, exceeding ₹ 50 crore. An unlisted public company which is **Joint Venture**, a **Wholly owned Subsidiary** or a **Dormant Company** will not be required to appoint Independent Directors. Joint Venture would mean a Joint arrangement, entered into in writing, whereby the parties that have Joint control on the arrangement, have rights to the net assets of the arrangement.
INDEPENDENT DIRECTOR [Section 149(6)] **(December 2015)**	**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 (Money) relationship *other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed* 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— (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year: Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed; (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii) (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 non-profit 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 may be prescribed.
ROLE AND FUNCTIONS OF AN INDEPENDENT DIRECTOR	

To help in taking independent decisions	The independent director helps the Board of Director to take independent decisions relating to the strategy, performance, risk management, resources, key appointments and standards of conduct of the Company.
Evaluation of the performance	The independent director evaluates the performance of board and management.
To Scrutinize the performance	The independent director scrutinizes the performance of management in the Board meeting agreed goals and objectives and monitor the reporting of performance.
To safeguard the interests of all stakeholders	The independent director has to take all measure to safeguard the interests of all stakeholders, particularly the minority shareholders of the Company.
To determine remuneration of KMP	The independent directors are to determine the remuneration of executive directors, key managerial personnel and senior management according to their role.

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.
TENURE OF INDEPENDENT DIRECTOR [Section 149(10)]	❖ An independent director shall hold office for 5 years in a row, but shall be eligible for reappointment on passing of a special resolution and other conditions.

	❖ No independent director shall hold office for more than 2 consecutive terms. It means no independent director shall hold office for more than 10 years in a row. ❖ An independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. The above appointment is only possible when an independent director has not been associated with the company in any other capacity either directly or indirectly.
MCA CLARIFICATION REGARDING THE TERMS OF AN INDEPENDENT DIRECTOR	**Appointment of 'IDs' for less than 5 years:** Clarification has been sought as to whether it would be possible to appoint an individual as an ID for a period less than five years. It is clarified that section 149(10) of the Act provides a term of "upto five consecutive years" for an 'ID'. As such while appointment of an 'ID' for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term. No person can hold office of 'ID' for more than '2 consecutive terms'. Such a person shall have to vacate the office after completion of 2 consecutive terms even if the total number of years of his appointment in such two consecutive terms is less than 10 years.
REMUNERATION OF INDEPENDENT DIRECTOR	An independent director **shall not be entitled to any stock option scheme** (i. e. ESOP & Sweat equity) but shall receive remuneration by way of sitting fee, reimbursement of expenses for participation in the Board Meetings and other meetings and profit related commission as approved by the members.
BOARD MEETING (Section 173)	**For Private or Public Company** **1st Board Meeting**: The 1st Board meeting should be held within 30 days from the date of incorporation. **2nd & Subsequent Board Meeting**: There must be at least 4 Board Meetings in a year. The gap between two consecutive Board Meetings shall not be more than 120 days. The Board shall meet at least once in every calendar quarter. **For OPC, Dormant Company & Small Company** There must be at least one board meeting in each half of the calendar year and the gap between two meetings should not be less than 90 days. **An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.** **Where a company is required to appoint Independent Directors under the Act, such Independent Directors shall meet at least once in a Calendar Year.** A Director shall not be reckoned for Quorum in respect of an item in which he is interested and he shall not be present, whether physically or through Electronic Mode, during discussions and voting on such item. For this purpose, a Director shall be treated as interested in a contract or arrangement entered into or proposed to be entered into by the company: (a) with the Director himself or his relative; or (b) with any body corporate, if such Director, along with other Directors holds more than two percent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or (c) with a firm or other entity, if such Director or his relative is a partner, owner or Member, as the case may be, of that firm or other entity.

NOTICE FOR BOARD MEETINGS	**Issued by:** Notice shall be issued by the Company Secretary or where there is no Company Secretary, any Director or any other person authorised by the Board for the purpose. **Time Limit**: Notice should be given to every directors of the Company **not less than 7 days before the date of Board Meeting**. The notice should be sent to the registered address of every director as available with the company or in case of absence of details of address, any of such addresses appearing in the Director Identification Number (DIN) registration of the Director. **Mode of Sending Notice:** Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means. **Shorter Notice**: 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. **Video Conferencing Option:** The Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information. **Agenda:** The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period. Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting. **Board Note:** Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.
QUORUM FOR BOARD MEETINGS (Section 174)	**Quorum** means the minimum number of directors which is required to validate meeting of the Board. Quorum should be present throughout the meeting of Board, it means at beginning of the meeting and also at conclusion of the Meeting. If any decision (resolution) is taken without the presence of quorum, then such decision (resolution) shall be treated as null and void. (a) **General Quorum**: **1/3rd of total strength of Board or 2 directors, whichever is higher**, shall be treated the quorum for a Board Meeting of a Company. If due to resignations or removal of director(s), the number of directors of the company is reduced below the quorum as fixed by the Articles of Association of the company, then, the continuing Directors may act for the purpose of increasing the number of Directors to that required for the quorum or for summoning a general meeting of the Company. It shall not act for any other purpose. (b) **Quorum in case of Interested Director**: If at any time the number of interested directors exceeds or is equal to 2/3 of the total strength of Board, the remaining directors shall be counted for quorum provided the number should not be less

	than 2. If a Board meeting has been adjourned due to want of quorum, unless the articles provide otherwise, the Board Meeting shall be held on the same day at the same time and same place in the next week or if the day is National Holiday, the next working day at the same time and place. **If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.**
PLACE OF BOARD MEETING	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. Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year; ***Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.***
PROCEDURES & REQUIREMENT OF A BOARD MEETING	**RULE 3 OF THE COMPANIES (MEETINGS OF BOARD AND ITS POWERS) RULES, 2014** 1. **Convening of Board Meetings**: A Board Meeting may be conducted physically or also through video conferencing or other audio visual mode. **Note:** Every Company shall make necessary arrangements to avoid failure of video or audio visual connection during the Board Meeting. Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means. *Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso.* **Safeguards during Board Meetings**: The Chairperson and the company secretary shall take due and reasonable care: (a) To safeguard the integrity of the meeting by ensuring sufficient security and identification procedures; (b) To ensure the availability of proper video conferencing or other audio visual equipment or facilities for transmission of the communications for effective participation in the Board Meeting; (c) To record the proceedings of the Board Meeting and prepare the minutes of the meeting; (d) To store for safekeeping and marking the tape recordings(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year; (e) To ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means.

2. **Notice to the Directors**: The notices of the meeting shall be sent to all the directors.

(a) The notice of the meeting shall inform about the other option available to participate in the Meeting through video conferencing mode or other electronic mode.

(b) A director intending to participate through video conferencing mode or audio visual means shall communicate his intention to the Chairman or the company secretary.

(c) The director, who desires, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for 1 calendar year.

Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.

(d) In the absence of any such intimation from the director, it shall be assumed that the director will attend the meeting in person.

3. **Roll call by Chairperson**: At the commencement of the meeting, the Chairperson shall check and ensure the participation of every director through video conferencing or other audio visual for the record and verify the following details:
(a) The name of the directors;
(b) The location from where a director is participating;
(c) Ensure that the directors can completely and clearly see, hear and communicate with the other participants;
(d) Ensure that the directors have received the agenda and all the relevant material for the meeting; and
(e) Ensure that no one other than the concerned director is attending.

However, the roll call shall also be made at the conclusion of the board meeting and at the re-commencement of the board meeting after every break to confirm the presence of a quorum throughout the meeting.

Note: After the roll call, the Chairperson or the Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairman.

4. **Place of Board Meetings**: In case of Board Meeting convened by video conferencing or other electronic mode, the place of recording of proceedings of the board meetings shall be deemed as place of Board Meeting.

5. **No accessibility of the place of Board Meeting**: No person other than the Chairperson, directors, Secretary and any authorized person shall be allowed access to the place where the Board Meeting is going on without the permission of the Board.

6. 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.

PREPARATION OF MINUTES	(a) **Circulation of draft minutes**: Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board or the Committee, as on the date of the Meeting, for their comments. (b) **Confirmation from Directors**: The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days. If any Director communicates his comments after the expiry of the said period of seven days, the Chairman, if so authorised by the Board, shall have the discretion to consider such comments. In the event a Director does not comment on the draft Minutes, the draft Minutes shall be deemed to have been approved by such Director. A Director, who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not. (c) **Recording in the Minute Books**: After completion of above confirmation procedure of the meeting, the minutes shall be entered in the minute book and signed by the Chairperson within 30 days from the date of conclusion of meeting. (d) **No Alteration**: Minutes, once entered in the Minutes Book, shall not be altered. Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent Meeting at which the Minutes are noted by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent Meeting. (e) **Signing & Dating**: Minutes of the Meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the Chairman of the next Meeting. Minutes of the previous Meeting may be signed either by the Chairman of such Meeting at any time before the next Meeting is held or by the Chairman of the next Meeting at the next Meeting. (f) **Preservation**: Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp. Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board. (g) **Custody**: Minutes Books shall be in the custody of the Company Secretary. Where there is no Company Secretary, Minutes Books shall be in the custody of any Director duly authorised for the purpose by the Board.
RESOLUTION PASSED BY CIRCULATION (Section 175 Of The Companies Act, 2013)	• The Act requires certain business to be approved only at Meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.

- Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration at a Meeting of the Board. Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors.

PROCEDURE: (SS 1)

1. A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, individually to all the Directors including Interested Directors on the same day.

2. The draft of the Resolution to be passed and the necessary papers shall be circulated amongst the Directors by hand, or by speed post or by registered post or by courier, or by e-mail or by any other recognised electronic means.

3. Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal, the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed and the draft of the Resolution proposed. The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.

4. The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting.

5. The Resolution, if passed, shall be deemed to have been passed on the last date specified for signifying assent or dissent by the Directors or the date on which assent from more than two-third of the Directors has been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.

6. Resolutions passed by circulation shall be noted at the next Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.

7. Passing of Resolution by circulation shall be considered valid as if it had been passed at a duly convened Meeting of the Board.

Illustrative list of items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting

General Business Items

• Noting Minutes of Meetings of Audit Committee and other Committees.

• Approving financial statements and the Board's Report.

• Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company.

• Specifying list of laws applicable specifically to the company.

• Appointment of Secretarial Auditors and Internal Auditors.

Specific Items

• Borrowing money otherwise than by issue of debentures.

	• Investing the funds of the company. • Granting loans or giving guarantee or providing security in respect of loans. • Making political contributions. • Making calls on shareholders in respect of money unpaid on their shares. • Approving Remuneration of Managing Director, Whole-time Director and Manager. • Appointment or Removal of Key Managerial Personnel. • Appointment of a person as a Managing Director / Manager in more than one company. • According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis. **<u>Corporate Actions</u>** • Authorize Buy Back of securities • Issue of securities, including debentures, whether in or outside India. • Approving amalgamation, merger or reconstruction. • Diversify the business. • Takeover another company or acquiring controlling or substantial stake in another company.
AUDIT COMMITTEE (Section 177) **Every: L** **<u>U</u>** **S: 10** **L: 50** **T: 100**	Earlier the provisions relating to the Audit Committee was captured under section 292A of the Companies Act, 1956. This Act further extends the role & responsibilities of Audit Committee in certain class of Companies. In fact, Clause 49 of the listing agreement also talks about the constitution of the Audit Committee for all listed public companies irrespective of their paid – up share capital. This Act makes responsible to an Audit Committee relating to monitor & evaluate of auditor's performance, approval or modification of related – party transactions, scrutiny of loans and investments etc. it has to establish a vigil mechanism and protection for any whistle – blower. **<u>Constitution of Audit Committee</u>**: As per the provisions of the Companies Act, 2013, the following companies are required to constitute an Audit Committee: 1. Every Listed Public Companies; or 2. Unlisted public companies having: (a) Paid up share capital of ₹ 10 Crores or more; (b) Turnover of ₹ 100 Crores or more; (c) Aggregate, outstanding loans or borrowings or debentures or deposits exceeding ₹ 50 Crores or more. **<u>Note:</u>** The calculation of above paid – up share capital or turnover or outstanding loans etc. shall be based on the last audited Financial Statements. The Companies Act, 2013 provides 1 year from the date of its enforcement for reconstitution of the Audit Committee. **<u>Members</u>:** The Audit Committee shall comprise of **minimum 3 directors** with majority of the directors being Independent Directors. The majority of members of audit committee should be financial literate. **<u>Role of Audit Committee</u>**:

	(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. **Establishment of Internal Control Systems**: The Audit Committee recommends the establishments of Internal Control Systems (relating to financial) and may also call the auditors for comments relating to internal control systems, the scope of audit etc. **Investigation**: The audit committee can start investigation in the matter or referred by the Board and also have the authority to obtain advice from external sources and have full access to records of the company. **Establishments of vigil Mechanism**: Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report genuine concerns or grievances: (1) The companies which accept deposits from the public; (2) The companies which have borrowed money from banks and public financial institutions in excess of ₹ 50 crore.
NOMINATION AND REMUNERATION COMMITTEE (Section 178)	The nomination and Remuneration Committee helps the Board relating to the appointment of the members of the Board. This Committee finalizes the conditions of employment and remuneration of senior management, and to management's and personnel's remuneration and incentive schemes. **Constitution of nomination Committee**: The following companies are required to constitute a nomination Committee: 1. Every listed Public Companies, or 2. Unlisted public companies having; (a) Paid up capital of ₹ 10 Crores or more; (b) Turnover of ₹ 100 Crores or more; (c) Aggregate, outstanding loans or borrowings or debentures or deposits exceeding ₹ 50 Crores or more. **Note:** The calculation of above paid – up share capital or turnover or outstanding loans etc. shall be based on the last audited Financial Statements. **Members**: This committee shall consist of 3 or more non – executive directors out of which not less than ½ shall be independent directors.

	<u>Formulation of Policy</u>: The Nomination and Remuneration Committee shall consider the following while formulating the policy: (a) The level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully. (b) Relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and (c) Remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long – term performance objectives appropriate to the working of the company and its goals. *Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.* **<u>ROLE & RESPONSIBILITIES OF NOMINATION AND REMUNERATION COMMITTEE(June 2016)</u>** (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) Formulation of the parameters for determining qualifications, positive attributes and independence of a Director; and (d) Recommend a policy relating to the remuneration for the Directors, KMP and other employees.
STAKEHOLDERS' RELATIONSHIP COMMITTEE [Section 178(5)]	❖ 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. ❖ The Chairperson of a Stakeholders Relationship Committee shall be a non – executive director or other member of the Board. This Committee considers and resolves the grievances of security holders of the company. ❖ The chairperson of each of the committees or in his absence, any other member of the committee duly authorized by him, shall attend the general meetings of the company. **<u>Penalty for Contravention:</u>** For Company: Minimum Fine – ₹ 1,00,000/- Maximum Fine – ₹5,00,000/- For Every officer who is in default: Imprisonment – upto one year or Minimum Fine – ₹ 25,000/-, Maximum Fine – ₹ 1,00,000/- or both. *Provided that inability to resolve or consider any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.*
CORPORATE SOCIAL RESPONSIBITY COMMITTEE (Section 135) **P: 5**	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 ₹ 500 Crores or more or

W: 500 T: 1000	(b) Turnover of ₹ 1000/- Crores or more or (c) Net profit of ₹ 5 Crores 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. **Members:** 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.* **COMPOSITION OF CSR COMMITTEE** (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. **FUNCTIONS OF THE CSR COMMITTEE** 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) **By Charity** : A company can donate money to various charitable trusts, societies, NGOs etc. who work for social economic welfare of society. (b) **By Contract** : 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) **By itself**: 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) **<u>Protection of national heritage</u>**: Protection of national heritage, art and culture including restoration of building and sites of historical important and works of art; (f) **<u>Contribution to the Prime Minister's National Relief Fund</u>**: Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio – economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women. **<u>ROLE OF THE BOARD OF DIRECTORS</u>:** The Board of every company shall – (a) Ensure that the activities which formulate by CSR Committee are duly undertaken by the company. (b) Ensure that the company spends in every financial year, at least 2% of the average net profits of the company made during the 3 immediately preceding financial years, in pursuance of its CSR Policy. (c) Ensure that the company shall give preference to the local area and areas around it where it operates. **Note:** If the company fails to spend CSR amount (2%), the Board shall give reasons for not spending the amount in the Director's report. **Penalty** <u>For Company</u> : If a Company fails to comply with the above provisions, it shall be punishable with fine which shall not be less than ₹50,000/- which may extend up to ₹ 25 lakh. <u>For every officer</u> : Every officer who is in default shall be punishable with imprisonment upto 3 years or with fine which shall not be less than ₹ 50 thousand which may extend up to ₹ 5 lakh or with both.
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 centre's 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 Labor 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.
POWER OF BOARD (Section 179)	The Board may take the decisions including on the following matters: (a) To make calls on shareholders in respect of money unpaid on their shares; (b) To authorize buy – back of securities under section 68; (c) To issue securities, including debentures, whether in or outside India; (d) To borrow monies; (e) To invest the funds of the company; (f) To grant loans or give guarantee or provide security in respect of loans; (g) To approve financial statement and the Board's report. The Board may delegate its power to any committee of directors, the managing director, the manager or any other principal officer of the company, by a resolution passed at a meeting.
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**

	<u>from temporary loans obtained from the company's bankers in the ordinary course of business</u>; Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause. **<u>Explanation</u>**.—For the purposes of this clause, the expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature; (d) To remit, or give time for the repayment of, any debt due from a director. The special resolution relating to borrowing money exceeding paid – up capital and free reserves specify the total amount up to which the money may be borrowed by Board.
CONTRIBUTIONS TO CHARITABLE FUNDS AND POLITICAL PARTIES (Section 181 of Companies Act)	<u>Section 181:</u> The contribution must be authorized by board in its meeting by resolution. The permission of company in general meeting is required if such contribution **exceeds 5%** of its average net profits for the 3 immediately preceding previous years. <u>PROHIBITIONS AND RESTRICTIONS REGARDING POLITICAL CONTRIBUTIONS: SECTION 182</u>: <u>Who Cannot Give Political Contributions:</u> Government Company and Company who has a Existence of Less than 3 years. <u>Quantum of Contribution:</u> The non – government company or the company which has been in existence less than 3 financial years may contribute any amount directly or indirectly to any political party. Further, the limit of contribution to political parties is **7.5% of the average net profits during the 3 immediately preceding financial years**. <u>Manner of Contribution:</u> • The donation may be directly or indirectly. • The contribution so made if or likely to affect the public support for a political party deemed to be the contribution for political purpose. • If the expenditure incurred on advertisement in any publication souvenir, brochure, pamphlet or the like is deemed as political contribution if such publication is by or on behalf of political party for a political purpose. <u>Disclosure:</u> The company is required to disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year and the particular of total amount contributed and the name of the political party to whom the contribution so made. <u>Penalty for Contravention:</u> The company shall be punishable for an amount of which may extend to 5 times of the amount so contributed and every officer who is in default shall be punishable with imprisonment for a term which may extend to 6 months and with fine which may extend to 5 times of the amount so contributed.
RELATED PARTY TRANSACTIONS	The concept of related party transactions is captured under the Companies Act, 2013 or previous company law for the purpose to protect the interest of the

General Public (other than promoter's Investors). Related party transaction means any transaction with a company where a director or his relative is directly or indirectly interested in such transactions.

RELATED PARTY TRANSACTIONS UNDER THE COMPANIES ACT, 2013

A transaction shall be treated as the related party transaction if it is made between a Company and its directors or their relative, KMP or their relative, with a firm or company in which directors are interested.

For understanding the entire concept of Related Party Transactions, we have to know the meaning of the following terms:
(a) Related Parties
(b) Related Party Transactions
(c) Office or Place of profit
(d) Arm's Length transactions

RELATED PARTIES (Section 188)

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.

Note: Read the above definition in connection with a company because there is no such clarity given in section 188 of the Companies Act, 2013

RELATED PARTIES TRANSACTIONS

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.

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution

Provided further that no member of the company shall vote on such [1][resolution], to approve any contract or arrangement which may be entered into by the company, if such member is a related party

Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent or more members, in number, are relatives of promoters or are related parties.

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement ***shall be voidable at the option of the Board or, as the case may be, of the shareholders*** *and if the contract or arrangement is with a related party to any director, or is authorized by any other director, the directors concerned shall indemnify the company against any loss incurred by it.*

OFFICE OR PLACE OF PROFIT means any office or place:
(i) For Director: Where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent – free accommodation, or otherwise;

(ii) For Individual: Where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent – free accommodation, or otherwise.

ARM'S LENGTH TRANSACTION:
Arm's length transaction means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

In simple words, it means a transaction which is made at the market price (without giving any special discount or concession) that is Arm's length transaction between a company or related parties.

In other words, Arm's length transaction would mean transaction between two related or affiliated parties that is conducted as if they were unrelated. The concept of an arm's length transaction is to ensure that both parties in the deal are acting in their own self – interest and are not subject to any pressure from either party.

How to enter into Related Party Transactions or Contracts: Rule 15 of the Companies (Meeting of Board and its Powers) Rules, 2014: A company shall enter into any related party transaction subject to the following conditions:

Non – presence of Interested Director: An interested director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement in which he is interested.

	<u>Approval form shareholders</u>: The prior approval from shareholders via ***Ordinary resolution***(as per the **<u>Companies (Amendment) Act, 2015</u>**) is required in the following circumstances: 1. A company having a paid – up share capital of ₹ 10 crore or more; or 2. A company shall not enter into a transaction or transactions except the prior approval in special resolution, where the transaction or transactions to be entered into: (a) Sale, purchase or supply of any goods or materials directly or through appointment of agents exceeding 25% of the annual turnover; (b) Selling or otherwise disposing of, or buying, property of any king directly or through appointment of agents exceeding 10% of net worth; (c) Leasing of property of any kind exceeding 10% of the net worth or exceeding 10% of turnover; (d) Availing or rendering of any services directly or through appointment of agents exceeding 10% of the net worth; or 3. Appointment of any related parties or their relatives to the office or place of profit in the company or its subsidiary company or its associate company at a monthly remuneration exceeding ₹2.50 lacs; or 4. Remuneration for underwriting the subscription of any securities, if exceeding 1% of the net worth. **<u>Companies (Amendment) Act, 2015</u>** 1. The Audit Committee may make **omnibus (all power) approval** for related party transaction proposed to be entered into by the company. 2. There is no requirement of Special Resolution whereas the **ordinary resolution** is sufficient. 3. Related Party Transactions (RPT) between holding company and its wholly owned subsidiary does not require any approval from the members, even of the holding company. It means RPT transactions are exempted from the purview of Related Party Transactions. **Special Note:** In case of any ordinary course of business and on the arm's length transaction basis, then there is no requirement of obtaining approval from the audit committee. **<u>Disclosure of Interest by Director (Section 184)</u> (June 2016)** Every director shall disclose his interest or concern in any company or firms or other association of individuals in writing in **Form MBP – 1** at the 1st Board Meeting after his appointment as director ad also at 1st Board Meeting of every financial year. In addition to the above disclosure, the director shall also disclose any change after previous disclosure in next board meeting. (a) **<u>No participation</u>**: Every director is required to disclose his interest at the Board Meeting in which such contract or arrangement is discussed. The participation of the interest of director is not allowed in such meeting. (b) **<u>Time of disclosure</u>**: Every interested director shall disclose his interest at the meeting held immediately after the date of the board notice. (c) **<u>Preservation of record</u>**: All notices shall be kept at the registered office and preserved for a period of 8 years from the end of the financial year. **Note:** If a contract entered into by the company without disclosure of interest by director or with participation by a director who a interested whether directly or

	indirectly, in the contract or arrangement, shall be voidable at the option of the company. **<u>Exemption from this Section:</u>** 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.* **<u>Penalty for Non – Disclosure</u>**: Punishment – upto 1 year or with fine which may extend to ₹ 1,00,000/- or both.
LOANS TO DIRECTORS (Section 185)	(1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,— (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or (b) any firm in which any such director or relative is a partner. (2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that— (a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security and any other relevant fact; and (b) the loans are utilized by the borrowing company for its principal business activities. **<u>Explanation</u>**.—*For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—* *(a) any private company of which any such director is a director or member;* *(b) anybody corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or* *(c) anybody corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.* (3) **<u>Exemptions from this Section</u>**: Nothing contained in sub-sections (1) and (2) shall apply to— (a) the giving of any loan to a managing or whole-time director— (i) as a part of the conditions of service extended by the company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution; or (b) a company which in the ordinary course of its business provides loans or gives

	guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company: Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities. (4) **Punishment for Contravention**: If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both. **Case Law:** Dr. Fredie Ardesir Mehta v. Union of India 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 installments 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. **Note:** A company may give loan to managing or whole – time director as part of the conditions of service extended by the company to all its employees or pursuant to any scheme approved by the members by a special resolution. Penalty: Punishment – upto 6 months or Fine – Minimum ₹ 5 Lakhs to Maximum ₹ 25 Lakhs or with both.
REGISTER OF RELATED PARTY TRANSACTIONS **(SECTION 189)**	Every company is required to keep one or more registers in **Form MBP – 4** and enter all particulars of all related party transactions (Contract or arrangement) particulars of Companies, firms or other association of individuals, in which any director has any concern or interest. **Important provisions** (a) The entries in the register shall be made at once, whenever there is a cause to make entry, in chronological order and shall be authenticated by the company secretary or by any authorized person. (b) The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary or any authorized person. (c) Such register or registers are required to be placed before the next meeting of the Board and signed by all the directors present at the meeting. (d) Every director within 30 days of his appointment or reappointment is required to disclose his concern or interest in other association, which are required to be included in the register.

	(e) The register is to be kept at the registered office of the company and also open for inspection during business hours. <u>Penalty</u>: Every director who fails to comply is liable to a penalty of ₹25,000/-. **<u>RESTRICTION ON NON – CASH TRANSACTIONS INVOLVING DIRECTORS</u>**(Section 192) A company can't enter 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.
PROVISIONS RELATING TO KMP **(December 2015)**	**<u>Appointment of Key Managerial Personnel</u>** Section 203 of the Companies Act, 2013 & Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, w. e. f. 1st April, 2014. Every listed company and every unlisted public company having a paid – up share capital of ₹ 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. Insertion of New Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, w. e. f. 9th June, 2014. 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. **<u>Appointment of KMP by the Board</u>** 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 including the remuneration. **Note:** No KMP shall become the Chairperson unless the articles of such a company provide otherwise. 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. **<u>Re – appointment of KMP by the Board</u>** 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. **Note:** A whole – time key managerial personnel holding office in more than one company at the same time has to choose one company within 6 months from the date of commencement of this Act.
OVERALL LIMIT OF	The maximum ceiling for payment of managerial remuneration by a public

MANAGERIAL REMUNERATION (SECTION 197 OF THE COMPANIES ACT, 2013) (December 2015)	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. **Note:** The calculation of net profit for the purpose of Managerial Remuneration shall be made in accordance with section 198. ***A company may pay more than 11% of the Net Profit with authority of shareholders.*** **Individual limit of Managerial Remuneration to MD, WTD or Manager** 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. **Individual Limit to directors other than MD, WTD or Manager** The remuneration payable to Directors other than MD or WTD 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. **Note:** The Company may increase the above limit of Managerial Remuneration subject to the approval of shareholders in general meeting by Special Resolution. *Provided also that, where any term loan of any bank or public financial institution is subsisting or the company has defaulted in payment of dues to non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.* **Provisions relating to sitting fees** The above mentioned limit of managerial remuneration shall be exclusive of sitting fees payable to directors for attending the board meetings/committees meetings. The maximum sitting fees payable to the each director for attending the Board Meeting or any committee meeting shall not exceed ₹ 1 lakh per meeting. **Note:** The Board may decide different sitting fee payable to independent and non – independent directors other than whole – time directors. Any director can take sitting fees including MD or WTD. **Remuneration to Directors in other Capacity**: The remuneration payable to the directors including MD, WTD or Manager shall be inclusive of the remuneration payable for the services rendered by him in any other capacity except the services of a professional nature and in the opinion of the Nomination and Remuneration Committee or the Board, the director possesses the requisite qualification for the services of the professional nature. **Other provisions relating to Monthly Remuneration to Director or Manager** (a) Permissible forms of Remuneration: A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other. (b) Commission or remuneration from holding or subsidiary company: Any director who is in receipt of any commission from the company and who is a MD, WTD or Manager of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.

	(c) Independent directors are not entitled to stock options: An independent director shall not be entitled to any stock option and may receive remuneration by way of fees, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. (d) Insurance Premium not part of Remuneration: Where any insurance is taken by a company on behalf of its MD, WTD, Manager, CEO, CFO or CS for indemnifying against any liability in respect of any negligence, default, or breach of trust for which they may be guilty in relating to the company, such insurance premium shall not be treated managerial remuneration.
COMPENSATION FOR LOSS OF OFFICE (Section 202)	1. A company can pay compensation to its directors for loss of office as provided in sections 202 of the Companies Act, 2013. 2. Under section 202, such compensation can be paid only to managing director, director holding the office of the manager and to a whole time director but not to others. 3. The compensation payable shall be on the basis of average remuneration actually earned by such director for three years, or such shorter period as the case may be, immediately preceding the ceasing of holding of such office and shall be for the unexpired portion of his term or for three years whichever is shorter. 4. No such payment can be made, if winding up of the company is commenced before or commences within 12 months after he ceases to hold office if the assets of the company on the winding up, after deducting expenses thereof, are not sufficient to repay to the shareholders the share capital (including the premium, if any) contributed by them. 5. However, no payment of compensation can be made in the following cases: (a) where a director resigns on the ground of amalgamation or reconstruction and is appointed the office of managing director or manager or other officer of such reconstructed or amalgamated company, (b) where the director resigns his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid, (c) where the director vacates office under section 167 of the Companies Act, 2013, (d) where the winding up of the company is due to the negligence of the director concerned, (e) where the director has been guilty of any fraud or breach of trust, (f) where the director has instigated or has taken part directly or indirectly in bringing about, the termination of his office. **1. Recovery of Compensation paid wrongly:** *Bell vs. Lever Brothers, (1932)*, Lever Brothers removed their managing director of a subsidiary by paying him compensation. It was afterwards discovered that during his tenure of office he had been guilty of so many breaches of duty and corrupt practices that he could have been removed without compensation. An action was then commenced to recover back the compensation money. It was held that Bell was not bound to refund the compensation money and to disclose any breach of his fiduciary obligation so as to give the company an opportunity to dismiss him. Thus, the Managing Director is not bound to refund the compensation.
RESTRICTION ON NUMBER OF LAYERS OF INVESTMENTS (w.e.f 20.09.2017)	1. **Restriction on number of layers for certain classes of holding companies**: (1) on and from the date of commencement of these rules, No Company, other than company belonging to Class specified in Sub Rule 2, shall have more than two layers of subsidiaries: Provided that provisions of this Sub Rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two

	layers as per the laws of such country; Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account. (2) The provisions of this rule shall not apply to the following classes of companies, namely: (**BING**) (a) a **B**anking Company (b) a **N**BFC (c) an **I**nsurance Company (d) a **G**overnment Company (3) The provisions of this rule shall not be in derogation of the proviso to sub section (1) of Section 186 of the Act. (4) Every company, other than company referred to in sub rule 2, existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of layers specified in sub rule 1: (i) Shall file with Registrar a return in form CRL – 1 disclosing the details specified therein, within a period of 150 days from the date of publication of these rules in official gazette; (ii) Shall not, after the commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and (iii) Shall not, in case one or more layers are reduced to it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub rule 1, whichever is more. (5) if any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to 10,000 and where the contravention is a continuing one, with a further fine which may extend to 1000 for every day after the first day during which such contravention continues.
LIMIT ON INTER CORPORATE LOANS & INVESTMENTS [SECTION 186(2)]	No Company shall, directly or indirectly: (a) Give any loan to any person or other body corporate; (b) Give any guarantee or provide security in connection with a loan to any other body corporate or person; and (c) Acquire, by way of subscription, purchase or otherwise, the securities of any other body corporate, ❖ Exceeding 60% of its paid – up share capital, free reserves and securities premium account or ❖ 100% of its free reserves and securities premium account, whichever is more Unless the same is previously authorized by a special resolution passed in a general meeting. *Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company* **Meaning of Free reserves** Section 2(43): "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 recognized 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; **PROVISIONS RELATING PRIOR APPROVAL VIA SPECIAL RESOLUTION [Section 186(3)]** Where the aggregate of the loans and investments exceed the limits as specified under section 186, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorized by a special resolution. A resolution passed at a general meeting to give any loan or guarantee or investment or providing any security or the acquisition shall specify the total amount up to which the Board of Directors are authorized to give such loan or guarantee, to provide such security or make such acquisition. **Note:** The Company shall disclose to the members in the financial statement the full particulars. Exception to the above: When a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase, the securities of its wholly owned subsidiary company.
CONTRAVENTION WITH THE PROVISIONS [Section 186(3)]	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 ₹ 1,00,000.
EXEMPTIONS [Section 186(11)]	Sub-section (*11*) of section 186 provides that nothing contained in section 186, except sub-section (*1*), shall apply— (a) to a loan made, guarantee given or security provided by a **banking** company or an **insurance** company or a **housing finance** company in the **ordinary course** of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities; (b) to any acquisition— (i) made by a **non-banking financial company** registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities: Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities; (ii) made by a company whose principal business is the acquisition of securities; (iii) of shares allotted in pursuance of clause (*a*) of sub-section (*1*) of section 62. (iv) made by banking company or an insurance company or a housing finance company, making acquisitions of securities in the ordinary course of its business. In view of the Central Government's notification dated 5th June 2015 under Section 462 of the Companies Act, 2013, **Section 186 shall not apply to :** (a) a Government company engaged in defence production; (b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State

	Government before making any loan or giving any guarantee or providing any security or making any investment under the section.
REGISTER OF INVESTMENTS NOT HELD IN COMPANY'S OWN NAME [Section 187(3)]	Any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to inspection by any member or debenture – holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose. Therefore, a company is only required to maintain a register for securities not held in the name of the company, when the investments are held in the name of a depository.
LLP FOR THE PROFESSIONALS	LLPs are eminently suited to the professionals like Company Secretaries and others. They will get the benefit of limited liability and insulate them from third party claims against professional negligence or deficiency. A cross section of the professionals may come together under the banner of LLP to carry on the professional work in their respective filed of specialization, with the respective statutes according sanction for such a dispensation. Such an arrangement will bring the professionals closer and this will benefit the corporate and other clients, as they may be able to get solutions to their problems under one roof. This will also create a strong organization of professionals and acts as a bulwark against keen competition expected to happen from the professionals abroad, with the opening of legal field under the WTO dispensation.
MAINTENANCE OF BOOKS OF ACCOUNT, OTHER RECORDS& AUDIT	1. The LLP shall maintain proper books of account relating to its affairs for each year of its existence on cash or accrual basis and according to double entry system of accounting. Such books of account shall be maintained at the registered office for 8 years from the date on which they are made. 2. Every LLP shall, within a period of 6 months from the end of each financial year, prepare a Statement of Account and Solvency in Form No. 8 and such statement shall be signed by the designated partners of the LLP. 3. Every LLP shall file the Statement of Account and Solvency with the ROC every year in within the prescribed. 4. The accounts of LLPs shall be audited in accordance with prescribed rules. However, the Central Government may exempt any class or classes of LLPs from the requirements of auditing accounts by notification in the Official Gazette. As per **Rule 24(10),** a LLP shall be exempt from the audit of its accounts if its turnover does not exceed, in any financial year, **₹40,00,000**or its contribution does not exceed **₹ 25,00,000.** **Appointment of auditor [Rule 24(13) to (17)]:**An auditor or auditors of a LLP shall be appointed for each financial year of the LLP, unless the LLP is exempt from the provisions of audit. For each financial year for which an auditor or auditors is or are to be appointed (other than the LLP's first financial year), the appointment must be made within 30 days before the end of the financial year. The designated partners may appoint an auditor or auditors – (a) At any time for the first financial year but before the end of the first financial year, or (b) Within 30 days before the end of the each financial year or (c) To fill a casual vacancy in the office of auditor or (d) To fill up the vacancy caused by removal of an auditor.

	The partners may appoint an auditor or auditors where the designated partners fail to appoint the auditor as stated above. Only a chartered accountant in practice shall be qualified for appointment as auditor of a LLP.
WHISTLE BLOWING UNDER THE LLP ACT	The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that – (a) Such partner or employee of a LLP has provided useful information during investigation of LLP or (b) When any information given by any partner or employee leads to LLP or its partner or employee being convicted under the Act or any other Act. Partner or employee of any LLP cannot be discharged, demoted, suspended, threatened, harassed or discriminated merely because of he provides information pursuant to Section 31(1).
UNLIMITED LIABILITY IN CASE OF FRAUD [SECTION 30]:	If any act is carried out by a LLP or its partners with intent to defraud creditors or any other person or for any fraudulent purpose, the liability of the LLP and its partners shall be unlimited for all or any of the debts or other liabilities of the LLP. In case any fraudulent act is carried out by a partner, the LLP is liable to the same extent as the partner. However, if it is established by the LLP that such act was without the knowledge or the authority of the LLP then LLP will not be liable. **Punishment:** Where any business is carried on with to defraud creditors or any other person or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business shall be punishable with imprisonment for a term which may extent to 2 years and with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5,00,000. In addition to penalty as stated above, partner may be liable for criminal proceeding and also liable to pay compensation to any person who has suffered any loss or damage due to such fraudulent acts. However, LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.
EXTENT OF LIABILITY OF LLP [SECTION 27]:	(1) A LLP is not bound by anything done by a partner in dealing with a person if - - The partner in fact has no authority to act for the LLP in doing a particular act and - The person knows that he has no authority or does not known or believe him to be a partner of the LLLP. (2) The LLP is liable if a partner commits a wrongful act or omit do on his part in the course of the business of the LLP. (3) An obligation of the LLP shall be solely the obligation of the LLP. Thus, obligation of LLP is not obligation of partners. (4) The liabilities of the LLP shall be met out of the property of the LLP. **<u>Extent of liability of partner [Section 28]:</u>**A partner is not personally liable, directly or indirectly for an obligation of the LLP. A partner shall not be personally liable for the wrongful act or omission of any other partner of the LLP. LLP done after his death.
INVESTIGATION OF THE AFFAIRS OF LLP	The Central Government shall appoint one or more inspectors to investigate the affairs of a LLP and to report thereon if –

[SECTION 43] **(June 2016)**	(a) The Tribunal, either suomoto, or on an application received from not less than 20% of the total number of partners, by order, declares that the affairs of the LLP ought to be investigated or (b) Any Court, by order, declares that the affairs of a LLP ought to be investigated. The appointment of inspectors may be made, - (a) If not less than 20% of the total number of partners of the LLP make an application along with supporting evidence and security amount as may be prescribed; or (b) If the LLP makes an application that the affairs of the LLP ought to be investigated or (c) If, in the opinion of the Central Government, there are circumstances suggesting – - That the business of the LLP is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the LLP was formed for any fraudulent or unlawful purpose; or - That the affairs of the LLP are not being conducted in accordance with the provisions of this Act or - That, on receipt of a report of the ROC or any other investigating or regulatory agency, there are sufficient reasons that the affairs of the LLP ought to be investigated.
FOREIGN LIMITED LIABILITY PARTNERSHIP	Any foreign LLP which is proposing to establish a place of business in India and such LLP has to comply with LLP Rules, 2009. As per rule 34(1) of the said Rules, a foreign limited liability partnership shall, within 30 days of establishing a place of business in India, file with the Registrar in Form 27: (a) Copy of the **certificate of incorporation** or registration and other instrument(s) constituting or defining the constitution of the limited liability partnership; (b) The full address of the **registered or principal office** of the limited liability partnership in the country of its incorporation; (c) The **full address** of the office of the limited liability partnership in **India** which is to be deemed as its principal place of business in India; and (d) **List of partners and designated partners,** if any, and the names and addresses of two or more persons resident in India, authorized to accept on behalf of the limited liability partnership, service of process and any notices or other documents required to be served on the limited liability partnership.
WINDING UP AND DISSOLUTION	The winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up may be dissolved.' **Circumstances in which LLP may be wound up by Tribunal [Section 64]:**A LLP may be wound up by the Tribunal – (a) If the LLP decides that LLP be wound up by the Tribunal; (b) If the number of partners is reduced below 2 for a period of more than 6 months; (c) If the LLP is unable to pay its debts;

	(d) If the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order; (e) If the LLP has made a default in filing with the ROC the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or (f) If the Tribunal is of the opinion that it is just and equitable that the LLP be wound up. **The Limited Liability Partnership (Winding up and Dissolution) Rules, 2012**prescribes the details provisions relating to winding up. Any LLP may be wound – up voluntarily if the LLP passes a resolution to wind up the LLP with approval of at least 75% of the total number of its partners. However, where the LLP has creditors, whether secured or unsecured, the winding up shall not take place unless approval of such creditors takes place. A copy of the resolution shall be filed with the ROC within **30 days** of passing of such resolution in **Form No.1.**
INSPECTION OF REGISTERS, RETURNS ETC. (SITUATION)	• The registers and copies of return shall be open for inspection during business hours for a reasonable time (not being less than two hours on any working day) **by any member, debenture holder, other security holder or beneficial owner** without payment of fee and by any other person on payment of such fee as may be specified in the articles of association of the company but not exceeding fifty rupees for each inspection. • **Any such member, debenture holder, security holder or beneficial owner or any other person** may ***require a copy*** of any such register or entries therein or return on payment of such fee as may be specified in the articles of association of the company but not exceeding ten rupees for each page and the copy or entries or returns ***shall be supplied with in seven days*** from the date of deposit of Such fees and if it is refused the company and every officer of the company shall be punishable with fine. • The Central Government may by order direct inspection of documents and to have an extract or copy of such registers by any person.
ANNUAL RETURN (Section 92)	(*1*) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding— (*a*) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies; (*b*) its shares, debentures and other securities and shareholding pattern; (*c*) its indebtedness; (*d*) its members and debenture-holders along with changes therein since the close of the previous financial year; (*e*) its promoters, directors, key managerial personnel along with changes there in since the close of the previous financial year; (*f*) meetings of members or a class thereof, Board and its various committees along with attendance details; (*g*) remuneration of directors and key managerial personnel; (*h*) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment; (*i*) matters relating to certification of compliances, disclosures as may be prescribed; (*j*) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and(*k*) such other matters as may be prescribed,

	and 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.*****(June 2016)** (*2*) The annual return, filed by a **listed company** or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act. (*3*) An extract of the annual return in such form as may be prescribed shall **form part of the Board's report**. (*4*) Every company shall file with the Registrar a copy of the annual return, **within sixty days** from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403. (*5*) If a company **fails to file its annual return** under sub-section (*4*), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall **not be less than fifty thousand rupees but which may extend to five Lakhs 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 fifty thousand rupees but which may extend to five lakh rupees, or with both***. (*6*) If a **company secretary in practice** certifies the annual return otherwise than inconformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall **not be less than fifty thousand rupees but which may extend to five lakh rupees**.
POWERS OF ROC TO CALL FOR INFORMATION, INSPECT BOOKS & CONDUCT ENQUIRIES **(Section 206 Of The Companies Act, 2013)**	• If on a scrutiny of any *document filed* or *any information received by ROC*, the ROC may ask for additional information or explanation or any further document relating to the company. The ROC may call such other information by a written notice and require the company – (a) To furnish the information or explanation in writing; or (b) To produce such document, *within the reasonable time* specified in notice. • On the receipt of a notice under sub-section (1), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar. • If o no information or explanation is furnished to the Registrar within the time specified under subsection (1) or o if the Registrar on an examination of the documents furnished is of the

	opinion that the information or explanation furnished is *inadequate* or o if the Registrar is satisfied on a scrutiny of the documents furnished that an *unsatisfactory state of affairs exists* in the company and does not disclose a full and fair statement of the information required, o he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice. • If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard: Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this subsection: Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447. • Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose. • The Central Government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies. • If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.
CONDUCT OF INSPECTION & INQUIRY **(SECTION 207)**	• Where a Registrar or inspector calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection. • The Registrar or inspector, making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be,—

	(a) make or cause to be made copies of books of account and other books and papers; or (b) place or cause to be placed any marks of identification in such books in token of the inspection having been made. • Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry *shall have all the powers as are vested in a civil court* under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:— (a) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry; (b) summoning and enforcing the attendance of persons and examining them on oath; and (c) inspection of any books, registers and other documents of the company at any place. • (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. (ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.
SUBMISSION OF INSPECTION REPORT TO CG **(Section 208)**	❖ The ROC or inspector shall, after the inspection of the books of account or an inquiry of other books and papers of the company, submit a report in writing to the Central Government along with concerned documents. ❖ A copy of report may be obtained by making an application to CG by Members, Creditors or any other person whose interest is likely to be affected. ❖ The report of Inspector shall be authenticated either; a. By the Seal, if any of the company whose affairs have been investigated; b. By certificate of a public officer having the custody of the report and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
ESTABLISHMENT OF SERIOUS FRAUD INVESTIGATION OFFICE (SFIO) BY CG	The CG shall also appoint a Director in the SFIO not below the rank of Joint Secretary and may also appoint such experts and other officers as it considers necessary for the efficient discharge of functions. **INVESTIGATION BY SERIOUS FRAUD INVESTIGATION OFFICE** **Basis of ordering investigation by the Central Government** When the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office: (a) On receipt of a report of the Registrar or inspector; (b) On intimation of a special resolution passed by a company that its affairs are required to be investigated; (c) In the public interest; or (d) On request from any Department of the Central Government or a State Government,

	The Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and the Director of SFIO may designate such number of inspectors, as he may consider necessary for the purpose of such investigation. **RESTRICTIONS ON OTHER INVESTIGATING AGENCIES** Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office. **MANNER OF INVESTIGATION AND SUBMISSION OF REPORT** Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall – (a) Conduct the investigation in the manner and follow the procedure provided in this Chapter; and (b) Submit its report to the Central Government within such period as may be specified in the order. **INVESTIGATING OFFICER TO EXERCISE POWERS OF INSPECTOR** The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector. **RESPONSIBILITY OF COMPANY AND ITS OFFICERS TO PROVIDE INFORMATION TO THE INVESTIGATING OFFICER** The company and its officers and employees, who are or have been in employment of the company, shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation. ❖ If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. ❖ The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed. ❖ Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.
INVESTIGATION OF OWNERSHIP OF COMPANY	The CG may if it has reason to believe or shall upon the direction of the Tribunal that the affairs of the company ought to be investigated as regards membership of company, appoint one or more inspectors to investigate and report on matters

[SECTION 216]	relating to the company and its membership for determining the true persons: (a) Who are or have been financially interested in the success or failure; or (b) Who are or have been able to control or materially able to influence the policy of the company; or *(c) who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company.*
TIME LIMIT FOR KEEPING UP OF BOOKS AND PAPERS BY THE INSPECTORS	The Inspector shall not keep in his custody any books and papers produced for more than 180 days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced. However, the books and papers may be called for by the inspector if they are needed again for a further period of 180 days by an order in writing. **POWERS OF INSPECTORS** The inspector, being an officer of the Central Government, making an investigation under this Chapter shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:- (a) The discovery and production of books of account and other documents, at such place and time as may be specified by such person; (b) Summoning and enforcing the attendance of persons and examining them on oath; and (c) Inspection of any books, registers and other documents of the company at any place. **PUNISHMENT FOR DISOBEDIENCE OF DIRECTIONS ISSUED BY THE INSPECTOR** If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to 1 year and with fine which shall not be less than 25,000 rupees but which may extend to 1,00,000 rupees. **VACATION OF OFFICE BY THE CONVICTED DIRECTOR OR OFFICER AND DISQUALIFICATION** If a director or an officer of the company has been convicted of an offence, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, he shall be disqualified from holding an office in any company.
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, ***<u>unless</u>***—

(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.

<u>Meetings of Creditors (Section 306)</u>

- 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 *<u>either on the same day or on the next day</u>* 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.
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 the following 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.
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 file an 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. **TRIBUNAL'S ACTION TO CG APPLICATION:** 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 as per 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. **EFFECTS OF REGISTRATION OF SCHEME:** (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 of the 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 or settlement of debt due to dissenting creditors, such amount, to

	the extent it is unpaid, shall become the 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 *with the prior approval of the Reserve Bank of India*, 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 *in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts*, 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 body corporate 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 for the time being in force, shall apply *mutatis mutandis* to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government. The Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.
POWER OF CG TO PROVIDE FOR AMALGAMATION IN PUBLIC INTEREST	**Power of CG:** Section 237(1) states that when the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order. **No effect on Pending Legal Proceedings:** Section 237(2) states that the order under sub-section (1) may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation. **No effect on Rights of Members, Debenture holders or Creditors:** As per Section 237(3), every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the 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 his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company. **Appeal to Tribunal:** As per Section 237(4), any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within a period of thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation 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 it has been made, be laid before each House of Parliament. **<u>PRESERVATION OF BOOKS OF ACCOUNTS:</u>** As per section 239, the books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter **<u>shall not be disposed of without the prior permission of the Central Government</u>** and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.
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 be 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) **<u>Ultra Vires Acts:</u>** 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) **<u>Fraud on Minority:</u>** Where an act done by the majority amounts to a fraud on the minority; an action can be brought by an individual shareholder. (c) **<u>Wrongdoers in Control:</u>** 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) **<u>Resolution requiring Special Majority but is passed by a simple majority:</u>** 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) **<u>Personal Actions:</u>** 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) **<u>Breach of Duty:</u>** 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) **<u>Prevention of Oppression and Mismanagement:</u>** The minority shareholders are empowered to bring action with a view to preventing the majority from oppression and mismanagement.
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.
POWER OF ROC TO REMOVE NAME OF COMPANY FROM REGISTER OF COMPANIES (SECTION 248)	(1) Where the Registrar has *reasonable cause to believe* that— (a) a company has failed to commence its business within one year of its incorporation [or]; (b) [Omitted]. (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice. (2) Without prejudice to the provisions of sub-section (1), a company may, after

	extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner: Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application. (3) Nothing in sub-section (2) shall apply to a company registered under section 8. (4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public. (5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved. (6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company: Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies. (7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved. (8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.
RESTRICTION ON MAKING APPLICATION IN CERTAIN CASES (SECTION 249)	(1) An application under sub-section (2) of section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company— (a)has changed its name or shifted its registered office from one State to another; (b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business; (c)has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement; (d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

	(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.".] (2) If a company files an application under sub-section (2)of section 248 in violation of sub-section (1), it shall be punishable with fine which may extend to one lakh rupees. (3) An application filed under sub-section (2) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.
FRAUDULENT APPLICATION FOR REMOVAL OF NAME (SECTION 251)	(1) Where it is found that an application by a company under sub-section (2) of section 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved— (a) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and (b) be punishable for fraud in the manner as provided in section 447. (2)Without prejudice to the provisions contained in sub-section (1), the Registrar may also recommend prosecution of the persons responsible for the filing of an application under sub-section (2) of section 248.
APPEAL TO TRIBUNAL (SECTION 252)	(1) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies: Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned : Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company. (2) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation. (3)If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other

	persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.
KEY BENEFITS OF MCA – 21 PROJECT	The key benefits of MCA – 21 project are: ♦ Expeditious incorporation of companies ♦ Simplified and ease of convenience in filing of Forms/Returns ♦ Better compliance management ♦ Total transparency through e – Governance ♦ Customer centric approach ♦ Increased usage of professional certificate for ensuring authenticity and reliability of the Forms/Returns ♦ Building up a centralized database repository of corporate operating ♦ Enhanced service level fulfillment ♦ Inspection of public documents of companies anytime from anywhere ♦ Registration as well as verification of charges anytime from anywhere ♦ Timely redressal of investor grievances ♦ Availability of more time for MCA employees for monitoring and supervision
explain the following terms used under e – filing: (i) Pre – fill (ii) Attachment (iii) Check Form (iv) Pre - scrutiny	**PRE – FILL:** Pre – fill is functionality in an e – Form that is used for filling automatically, the requisite data from the system without repeatedly entering the same. For example, by entering the CIN of the company, the name and registered office address of the company shall automatically be pre – filled by the system without any fresh entry. **ATTACHMENT:** An attachment refers to a document that is sent as an enclosure with an e – Form by means of an attached file. The objective of the attachment is to provide details relevant to the e – Form for processing. While some attachments are optional some are mandatory in nature. The attachments to an e – Form will be only in Adobe PDF format. MCA portal shall not accept attachment file of more than 2.5MB and the user is advised to keep the attachment size to minimum. **CHECK FORM:** By clicking "Check Form", the user will be in a position to find out whether the mandatory fields in an e – Form are duly filled – in. For example, if the user enters alphabets in "Date of Appointment of Director" field, he/she will be asked to correct the entered information. If the size of attachment is much bigger than the details may be submitted in a floppy or compact disc at the ROC office. For example, In the case of Annual Return filed by the companies having large shareholders base, the list of shareholders may be submitted separately in a CD at the concerned ROC office indicating SRN No. of e – form filed. **MODIFY:** Once the user has done "Check Form", the form gets locked and it cannot be edited. If the user wishes to make any alternations, the form can be overwritten by clicking "Modify" button. **PRE – SCRUTINY:** Pre – Scrutiny is a functionality that is used for checking whether certain core aspects are properly filled in the e – Form. The user has to login on MCA portal to perform the pre – scrutiny of e – Form. The necessary attachments and digital signatures should be affixed before submitting the e – Form for pre – scrutiny. **ADDENDUM TO E – FORM:** The user may have to submit some additional supporting documents that are not submitted during the e – Form (application) filing but are required for the

	processing of the e – Form. MCA may also ask the applicant to provide some additional documents in support of the e – Form already filed so as to expedite the processing of the same. The user can initiate this on their own by checking the track transaction status on My MCA portal or on being notified by MCA through email. Payment of fees is not required for filing an addendum. The supporting documents that the applicant uploads, as an addendum, gets duly associated with the e – Form that was submitted earlier with the given SRN.
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 website 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 analysis, 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 Inc. (XII). XII is made up of many hundred members, including government agencies, accounting firms, software companies, large and small corporations, academics and business reporting experts. XII has agreed the basic specifications which define how XBRL works.
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 ₹ 5 Crores or above; (iii) All companies having turnover of ₹ 100 Crores or above; (iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015 *Provided that the companies in Banking, insurance, Power Sector and NBFC are exempted from XBRL Filing.*
COMPOUNDING OF OFFENCES	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 with Imprisonment; or with fine or Imprisonment or with both may be compoundable with the permission of ***Special Court***. Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine ***shall not be compoundable***.

	Offences may be compounded by • Regional Director • National Company Law Tribunal • Special court ***Compoundable offences***: Where the complainant agrees to enter into compromise and drop the charges against accused i.e., the offences which are eligible to compromise are compoundable. The offences are not of serious nature.

IMPORTANT CASE STUDIES

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

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

Salomon sold his business (which was perfectly solvent at that time) to the Company for the sum of 38,782 pounds. He got the following payments :-
<table>
<tr><td>10,000 Secured Debentures of 1 pound each</td><td>10,000 pounds</td></tr>
<tr><td>20,000 Fully – paid Shares of 1 pound each</td><td>20,000 pounds</td></tr>
<tr><td>Cash</td><td>8,782 pounds</td></tr>
</table>

The company soon ran into difficulties and the debenture holders appointed a receiver and the company went into liquidation. The total assets of the company amounted to 6,050 pounds, its liabilities were 10,000 pounds secured debentures and 8,000 pounds owing to unsecured trade creditors. The unsecured trade creditors claimed the whole of the company’s assets, viz. 6,050 pounds on the ground that as the company was a mere agent for Salomon and thus they were entitled to payment of their debts in priority to debentures.

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

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

In general, the experience of a shareholder cannot be regarded as experience of a company. However, in the case, of joint venture companies the experience of the company can only mean the experience of the constituent of the joint venture. This is so because a joint venture company is in the nature of a partnership between the two or more constituent companies and each constituent company undertakes to contribute towards the resources of joint venture company in the form of machines, equipment, expertise, etc.</td>
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<td>Gilford Motor Co. v. Horne</td>
<td>In Gilford Motor Co. v. Horne, a former employee of a company agreed not to solicit its customers. He formed a company to carry on his business and it undertook the solicitation. An injunction was granted against him and the company to restrain them.</td>
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<tr>
<td>Jones v. Lipman

“Lifting of Corporate Veil”</td>
<td>Lipman agreed to sell certain land to Jones. Pending completion of formalities of the said deal, Lipman sold and transferred the land to a company, which he had incorporated with a nominal capital of 100 pounds and of which he and a clerk were the only shareholders and directors. This was done in order to escape a decree for specific performance in a suit brought by Jones. The Court asked the company to transfer its land to Jones.</td>
</tr>
<tr>
<td>Boreland’s Trustee v. Steel Brother and Co. Ltd

“Members bound to the Company by Articles”</td>
<td>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</td>
</tr>
</table>

	articles of the company.
Wood v. Odessa Waterworks Co *"Company bound to Members by Articles"*	The articles provided that the directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members. Instead of paying the dividend in cash to the shareholders a resolution was passed to give them debentures/bonds. The directors were restrained from acting on the resolution.
Rayfield v. Hands *"Members bound to Members by Articles"*	The plaintiff was a shareholder of a company. The articles required him to inform the directors of his intention to transfer his shares and the directors (who were also members) were to take those shares at a fair price. The plaintiff notified the directors, who contended that they were not bound to take the shares and pay for them. It was held that the articles were binding upon the plaintiff as a member and the directors as members, so that the member-directors were bound to purchase plaintiff's shares and pay for them.
Eley v. Positive Life Insurance Co *"Company not bound to Outsiders"*	The articles provided that Eley should act as a solicitor for life to the company and should not be removed from office except for misconduct. Eley acted as a solicitor to the company and also became a member of the company. The company, however, discontinued his services, whereupon he sued the company for damages for breach of contract. It was held that he had no cause of action because the articles did not constitute any contract between the company and himself as solicitor. His action was dismissed.
Ashbury Railway Carriage and Iron Co. Ltd. v. Riche *"Doctrine of Ultra Vires"*	The doctrine of 'ultra vires' was first enunciated by the House of Lords in a classic case, <u>Ashbury Railway Carriage and Iron Co. Ltd. v. Riche.</u> The company entered into a contract with M/S. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation of this contract by the company on the ground of its being 'ultra vires;, Riche brought a case for damages on the ground of breach of contract, as according to him the words "general contractors" in the objects clause gave power to the company to enter into such a contract and therefore, it was within the powers of the company. More so, because the contract was ratified by majority of shareholders. The House of Lords held that the contract was 'ultra vires' the company and, therefore, null and void. The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. Further, the Court held that the company cannot make an "ultra vires" act to be valid, even if every shareholder of the company assents to it.
Kotla Venkata Swamy v. Ramamurthy *"Doctrine of Constructive Notice"*	The articles required that all deeds etc. should be signed by the managing director and the secretary but the plaintiff accepted the deed not signed by the managing director. It was held that the plaintiff could not claim under this deed and thus every person dealing with the company is deemed to have notice of the contents of its memorandum and articles and also to have understood them according to their proper meaning.
Royal British Bank v. Turquand *"Doctrine of Indoor Management"*	The directors of a banking company were authorized by the articles to borrow on bonds such sums of money as should from time to time, by resolution of the company in general meeting, be authorized to borrow. The directors gave a bond to Turquand without the authority of any such resolution. The shareholders claimed that there had been no such resolution authorizing the loan and therefore it was taken without their authority. Once it was found that the directors could borrow subject to a resolution, Turquand had the right to conclude that the necessary resolution must have been passed. It was held that Turquand could sue the company on the bond as he was entitled to assume that the necessary

	resolution has been passed.
In re. R. V. Kylsant *"Golden Rule or Golden Legacy"*	**Facts**: All statements in the prospectus were literally true but it failed to disclose that the dividends stated in it as paid, were not paid out of trading profits, but out of realized capital profits (secret reserves). The statement that the company had paid dividends for a number of years was true. But the company had incurred losses for all those years (1921 – 27) and no disclosure was made of this fact. **Judgement**: The prospectus was held to be false in material particulars and the managing director and chairman, who knew that it was false, were held guilty of fraud.
Peek v. Gurney *"Misstatement in Prospectus"*	**Facts:** A deceitful prospectus was issued by the directors on behalf of the company, P received a copy of it but did not take any shares originally in the company. The allotment of shares to applicants was completed, and several months afterwards he bought 2,000 shares on the stock exchange. His action against the directors for deceit was rejected. **Judgement:** It was observed by the Court that the offer of a prospectus is to invite persons to become allottees, and, allotment having been completed, such offer is exhausted and liability to allottees does not follow the shares into the hands of subsequent transferees.
Sri GopalJalan& Co. v. Calcutta Stock Exchange Association Ltd *"No Return of Allotment for Reissue of Forfeited Shares"*	**Facts:** In this case, Calcutta Stock Exh. (Company) was not file return of allotment after re-issue of forfeited shares with the Registrar of Companies. **Judgment:** In this case, the Supreme Court held that the Calcutta Stock Exchange was not liable to file any return of the forfeited shares under Section 75(1) of the Companies Act, 1956 [Corresponds to section 39 of the Companies Act, 2013] when the same were re-issued. The Court observed that when a share is forfeited and re-issued, there is no allotment, in the sense of appropriation of shares out of the authorised and unappropriated capital.
Shri Nirmal Kumar v. Jaipur Metal and Electrical Limited *"Refusal to register Shares in the name of an Employee"*	**Facts :** A company was refused to register the transfer of shares in favour of its employee on the following grounds : (a) The employee would create nuisance in general meetings, and (b) Would seek access to the records of the company. **Judgement:** In this case, the court held that refusal to register share transfer on suspicion that the employee if admitted as a member will attend general meetings of the company and may create nuisance by raising irrelevant issues and also obtain access to the records to the company as a shareholder is not a valid reason.
Dr. Fredie Ardesir Mehta v. Union of India *"Deferred Credit terms does not amount to loan"*	In this case, the Bombay High Court held that where company sells flat to one of its directors on receipt of 50% cash and 50% agrees to receive by instalments does not amount to loan. It is like a sale credit and shall not be treated loan to directors, therefore section 185 does not attract.
Dushyant D. Anjaria v. Wall Street Finance Ltd	**Facts:** In this case, a director intimated resignation to the company and the company failed to communicate the same to ROC. **Judgment:** In this case, the Bombay High Court held that the resignation of a Director would be effective from the date it was submitted because the letter brings out clearly his intentions to resign. However, the delayed intimation to the ROC was delayed on the part of the company about the date of the resignation; the resigning Director could not be burdened with responsibility and liability for

	such delay.

IMPORTANT PENALTIES

CONTRAVENTION	PENALTY PRESCRIBED
MISSTATEMENT IN PROSPECTUS	Against Company: Fine of Not Less than Amount Involved but not more than 3 times of Amount Involved Against Officer/Directors: Fine of Not Less than Amount Involved but not more than 3 times of Amount Involved Imprisonment of Not less than 6 months but not more than 10 years. If public interest is involved than not less than 3 years.
CONTRAVENTION WITH PRIVATE PLACEMENT REGULATIONS	Not Less than Amount involved or 2 Crores; Whichever is Higher
DEFAULT IN PROVISIONS OF DEPOSITS	Company: Fine of Not less than 1 Crore but maximum Rs. 10 Crores Officer: Fine of not less than Rs. 25 Lakhs but maximum Rs. 2 Crores Imprisonment of upto 7 years.
CONTRAVENTION WITH THE REGULATIONS OF ALTERATION OF SHARE CAPITAL	Fine which may extend to Rs.1,000/- for each day during which such default continues, or Rs.5 Lacs, whichever is less.
NON SUBMISSION OF COPY OF PROSPECTUS WITH ROC	Against Company: Fine which shall not be less than Rs.50,000/- but which may extend to Rs.3 lacs Against Officer/Director: Every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to 3 years or with fine not less than Rs.50,000/- but which may extend to Rs.3 lacs, or with both.
CONTRAVENTION WITH ISSUE OF ABRIDGED PROSPECTUS	Rs. 50,000 for each default
ILLEGAL ASSOCIATION CARRYING ON BUSINESS	Upto Rs. 1,00,000
DEFAULT IN REGISTRATION OF CHARGE	Company: Rs. 1 Lakh to Rs. 10 Lakhs Officers: Rs. 25,000 to Rs. 1 Lakh& Imprisonment not exceeding 6 months
RETURN OF ALLOTMENT	Company & Officers: Rs. 1,000 each day or Maximum Rs. 1,00,000. No Criminal Liability
DEFAULT IN HOLDING AGM	Company: Fine upto Rs. 1,00,000 & in case of Continuing default Rs. 5,000 per day.
CONTRAVENTION WITH RULES OF MINUTES	Company: Fine upto Rs. 25,000 Officer: Fine upto Rs. 5,000.
TAMPERING WITH	Officers: Fine not less than Rs. 25,000 but maximum Rs. 1,00,000.

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

AFTER DECLARATION	Company: Simple Interest @ 18% p.a till the default continues.
ISSUE OF SHARES AT DISCOUNT	Company: Fine not less than Rs. 1 lakh but which may extend to Rs. 5 Lakh Officer: Imprisonment of upto 6 months or Fine not less than Rs. 1 lakh but which may extend t o Rs. 5 Lakh or both.
FAILURE TO FILE ANNUAL RETURN	Fine on company – shall not be less than Rs. 50,000 but which may extend to Rs. 5,00,000. for officers fine shall not be less than Rs. 50,000 but may extend to Rs. 5,00,000
PENALTY WHERE NO SPECIFIC PENALTY IS PROVIDED (SECTION 450)	Company and Every Officer in Default shall be punishable with a fine upto Rs. 10,000 and where the contravention is of continuing nature Rs. 1,000 per day till the default continues.
REPEATED DEFAULTS (section 451)	In the case of repeated default committed for the second or subsequent occasions within a period of **three years**, then the company and every officer thereof who is in default is punishable with **twice** the amount of fine for such offence, in addition to any imprisonment for the same.

EXPLANATORY STATEMENTS

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

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

	(e) the method to be adopted for the buy-back; (f) the price at which the buy-back of shares or other securities shall be made; (g) the basis of arriving at the buy-back price; (h) the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed (i) the time-limit for the completion of buy-back;

IMPORTANT DEFINITIONS

PROMOTER	As per Section 2(69), promoter means a person: (a) Who has been **named** as such in a prospectus or is identified by the company in the annual return; or (b) Who has **control** over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (c) In accordance with **whose advice**, directions or instructions the Board of Directors of the company is accustomed to act (but does not include a person who is acting merely in a professional capacity).
MEMBER	According to Section 2(55) of the Companies Act.2013 : "(1.) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on registration, shall be entered as members in its register o members. (2.) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members shall, be a member of the company. (3.) Every person holding shares of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be member of the concerned company."
FINANCIAL STATEMENT	"financial statement" in relation to a company, includes— (i) a balance sheet as at the end of the financial year; (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year; (iii) cash flow statement for the financial year; (iv) a statement of changes in equity, if applicable; and (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv): Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;
FREE RESERVES	"free reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend: Provided that— (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or (ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;
PUBLIC FINANCIAL INSTITUTION (JUNE 2016)	"public financial institution" means— (i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956; (ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act; (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002; (iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act; (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India: Provided that no institution shall be so notified unless— (A) it has been established or constituted by or under any Central or State Act; or (B) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by

	one or more State Governments;
NIDHI COMPANY	"Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.
FOREIGN COMPANY	"foreign company" means any company or body corporate incorporated outside India which— (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner.
NET WORTH	"net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits, **securities premium account and debit or credit balance of Profit or Loss Account**, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;
TURNOVER	"turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;'.
SWEAT EQUITY SHARES	"sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;
KEY MANAGERIAL PERSONNEL ***	"key managerial personnel", in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed;
GOVERNMENT COMPANY	"Government company" means any company in which not less than fiftyone per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;
CONTROL	"control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
BOOKS OF ACCOUNT	"books of account" includes records maintained in respect of— (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (ii) all sales and purchases of goods and services by the company; (iii) the assets and liabilities of the company; and (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;
ASSOCIATE	"Associate company", in relation to another company, means a company in which that

COMPANY	other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Explanation.— For the purposes of this clause, "significant influence" means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

SITUATIONS

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

Short title, application and commencement	(1) This Order may be called the **Companies (Auditor's Report) Order, 2016**. (2) It shall apply to every company including a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013 (18 of 2013) [hereinafter referred to as the Companies Act], except– (i) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949); (ii) an insurance company as defined under the Insurance Act,1938 (4 of 1938); (iii) a company licensed to operate under section 8 of the Companies Act; (iv) a One Person Company as defined under clause (62) of section 2 of the Companies Act and a small company as defined under clause (85) of section 2 of the Companies Act; and (v) a private limited company, not being a subsidiary or holding company of a public company, having a paid up capital and reserves and surplus not more than rupees one crore as on the balance sheet date and which does not have total borrowings exceeding rupees one crore from any bank or financial institution at any point of time during the financial year and which does not have a total revenue as disclosed in Scheduled III to the Companies Act, 2013 (including revenue from discontinuing operations) exceeding rupees ten crore during the financial year as per the financial statements.
Auditor's report to contain matters specified in paragraphs 3 and 4	Every report made by the auditor under section 143 of the Companies Act, 2013 on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after 1st April, 2015, shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable: Provided the Order shall not apply to the auditor's report on consolidated financial statements.
Matters to be included in the auditor's report	The auditor's report on the accounts of a company to which this Order applies shall include a statement on the following matters, namely:- (i) (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets; (b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account; (c) whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof; (ii) whether physical verification of inventory has been conducted at reasonable intervals by the management and whether any material discrepancies were noticed and if so, whether they have been properly dealt with in the books of account; (iii) whether the company has granted any loans, secured or unsecured to companies, firms, Limited Liability Partnerships or other parties covered in the register maintained under section 189 of the Companies Act, 2013. If so, (a) whether the terms and conditions of the grant of such loans are not prejudicial to the company's interest; (b) whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular; (c) if the amount is overdue, state the total amount overdue for more than ninety days, and whether reasonable steps have been taken by the company for recovery

	of the principal and interest; (iv) in respect of loans, investments, guarantees, and security whether provisions of section 185 and 186 of the Companies Act, 2013 have been complied with. If not, provide the details thereof. (v) in case, the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act, 2013 and the rules framed thereunder, where applicable, have been complied with? If not, the nature of such contraventions be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not? (vi) whether maintenance of cost records has been specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013 and whether such accounts and records have been so made and maintained. (vii) (a) whether the company is regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated; (b) where dues of income tax or sales tax or service tax or duty of customs or duty of excise or value added tax have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not be treated as a dispute). (viii) whether the company has defaulted in repayment of loans or borrowing to a financial institution, bank, Government or dues to debenture holders? If yes, the period and the amount of default to be reported (in case of defaults to banks, financial institutions, and Government, lender wise details to be provided). (ix) whether moneys raised by way of initial public offer or further public offer (including debt instruments) and term loans were applied for the purposes for which those are raised. If not, the details together with delays or default and subsequent rectification, if any, as may be applicable, be reported; (x) whether any fraud by the company or any fraud on the Company by its officers or employees has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated; (xi) whether managerial remuneration has been paid or provided in accordance with the requisite approvals mandated by the provisions of section 197 read with Schedule V to the Companies Act? If not, state the amount involved and steps taken by the company for securing refund of the same; (xii) whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1: 20 to meet out the liability and whether the Nidhi Company is maintaining ten per cent unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability; (xiii) whether all transactions with the related parties are in compliance with sections 177 and 188 where applicable and the details have been disclosed in the Financial Statements etc., as required by the applicable accounting standards; (xiv) whether the company has made any preferential allotment or private placement of shares or fully or partly convertible debentures during the year under review and if so, as to whether the requirement of section 42 of the Companies Act,

	2013 have been complied with and the amount raised have been used for the purposes for which the funds were raised. If not, provide the details in respect of the amount involved and nature of non-compliance; (xv) whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 have been complied with; (xvi) whether the company is required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 and if so, whether the registration has been obtained.

Misc Topics

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

Place of Holding Board Meeting	Place of holding AGM	Place of holding EGM

Board meeting can be held anywhere in the world as there is no such provision regarding the place of holding board meeting. Board meeting can be done by the way of video conferencing provided that the Notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode and director intending to participate through video conferencing shall give prior intimation to that effect in advance so that company is able to make suitable arrangements in this behalf.	An annual general meeting should be held: i) Either at the registered office of the company; or ii) At some other place within the city, town or village in which the registered office of the company is situate. *Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.*	An EGM shall be held: i) Either at the registered office of the company; or ii) At some other place within the city, town or village in which the registered office of the company is situate. *Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.*
Notice of Board Meeting	**Notice of AGM**	**Notice of EGM**
7 Clear Days before the date of meeting A Board Meeting can be called at a shorter notice provided at least one independent director shall be present at the meeting in which it was decided for shorter notice. If the Independent Director is not present, then decision of the meeting shall be circulated to all directors and it shall be final only after ratification of decision by at least one Independent Director.	An AGM be called by giving ***not less than 21 clear days' notice*** either in writing or through electronic mode. A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.	An EGM to be called by giving ***not less than 21 clear days' notice*** either in writing or through electronic mode. A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

EXEMPTIONS TO PRIVATE COMPANY

(Notification No. 464(E) dated 5th June 2015)

Scope of Related Party	Section 2(76)(viii) is not applicable to a private company with respect to Section 188 (i.e. related party transactions) Accordingly a holding/ subsidiary/ associate company of a private limited company or a subsidiary of holding company of a private limited company will not be considered as related party.
Ordinary Resolution for Right Issue	Section 62(1)(b) requires passing of Special Resolution for offering of further shares to employees subject to passing of special resolution and other conditions prescribed under the rules. Effect: For private limited companies, passing of ordinary resolution is sufficient.
Rules of Deposits not applicable to Private Company	Conditions for acceptance of deposits from members is not applicable to a Private Company if the monies accepted does not exceed one hundred per cent of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.
Directors to be voted Individually (Section 162)	Now, more than one director can be appointed through a single resolution by Private Company.
Restrictions on Power of Board (Section 180)	Special Resolution is not required to exercise such power of board as provided in Section 180.
Participation by Interested Director (Section 184)	Section 184 deals with disclosure of interest by director. Section 184(2) prohibits interested director from participating in meeting. Interested director of a private company can participate in the meeting after disclosing his interest.
Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares (Section 67)	In case of private companies - Section 67 shall not apply to a private company- (a) in whose share capital no other body corporate has invested any money; (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and (c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section. - Notification dated 5th June, 2015.
CARO, 2016	One person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees are excluded from applicability of CARO, 2016.
Requirement of Deposit of Rs. 1 Lac for directorship (Section 160)	Now, for private companies requirement of Deposit of Rupees one lakh is not required.
Appointment & Remuneration of Managerial Personnel [Section 196(4) (5)]	Section 196(4) deals with appointment of managing director, whole time director or manager Section 196(5) deals with validating actions of managing director; whole time Director/manager, if the appointment is not approved by a company in general meeting. **Effects:** Approval of central government on variation of terms of appointment from Schedule V is not required for private companies.
Voting by an Interested Director [Second	Second proviso to Section 188(1) states that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by

Proviso to Section 188(1)]	the company, if such member is a related party. **Effects**: in private company, related party to any contract or arrangement can vote on such resolution as a member of the company.
Time Limit for Letter of Offer in case of Right Issue	In case ninety per cent of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply. Accordingly time limit for acceptance of offer by existing shareholders may be less than 15 days if 90% of the members of a private limited company have given their consent either in writing or through electronic mode.

EXEMPTIONS TO SECTION 8 COMPANIES

(Notification No. 466(E) dated 5th June 2015)

Notice of General Meeting (Section 101)	Instead of 21 clear days, 14 clear days shall be sufficient for Section 8 Companies.
Min & Max Directors [Section 149(1)]	Limit of Minimum & Maximum Directors shall not apply to Section 8 Companies.
Provisions relating to independent directors contained in section 149 & 150	All the provisions relating to Independent Directors as contained in Section 149 & 150 does not apply to Section 8 Companies
Number of Directorships (Section 165)	Directorships in Section 8 company are not to be counted for the purpose of counting the maximum number of directorships.
Board Meetings (Section 173)	Shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.
Quorum of Board Meeting (Section 174)	In case of Section 8 companies the quorum for the board meetings shall be either eight members or twenty five per cent. of its total strength whichever is less. However, the quorum shall not be less than two members.
Audit Committee (Section 177)	Normally, in Audit Committee majority of members shall be independent directors. This provision shall not apply to Section 8 Companies.
Nomination & Remuneration Committee (Section 178)	This section shall not apply to Section 8 Company.
Matters to be decided at board meeting (Section 179)	Section 179(3) deals with resolutions to be passed at meetings of the Board. Section 179(3)(d), (e) and (f) pertains to resolution to borrow moneis, to invest funds of the company and to grant loans or give guarantee or provide security in respect of loans. These items may be decided by the Board by circulation in case of Section 8 companies.
Participation by Interested Directors (Section 184)	Section 184(2) prohibits participation of interested directors. In case of Section 8 Companies it shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.
Register of Related Parties (Section 189)	Section 189 is applicable to section 8 companies only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.

EXEMPTIONS TO GOVERNMENT COMPANY

(Notification No. 463(E) dated 5th June 2015)

Name	Name shall not contain words “Ltd” or “Private Limited” in the end.
Place of AGM	Government company may convene its Annual General Meeting at such other place as the Central Government may approve in this behalf.
Section 89 & 90 shall not apply to Govt. Company	Section 89 dealing with declaration of beneficial interest does not apply to a government company. Section 90 dealing with investigation of beneficial ownership of shares in certain cases shall not apply to a government company.
Restriction in case of Declaration of Dividend in case inadequacy of Profits shall not apply	Restriction which apply when company has inadequate profits in current year and it wants to declare dividend from past accumulated profits, shall not apply to Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments.
Requirement of depositing amount of dividend into separate bank account shall not apply	Section 123(4) states that the amount of dividend, including interim dividend, shall be deposited in a scheduled bank in a separate bank in a separate account within five days from the date of declaration of such dividend. It does not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company.
Section 129 relating to Accounts	Section 129 relates to provisions relating to financial statement. Section 129 Shall not apply to the extent of application of Accounting Standard 17 (Segment Reporting) to the companies engaged in defence production.
Disclosure in Board’s Report [Section 134(3)(e)]	Section 134(3)(e) mandates Board’s report to include in case of a company covered under sub-section (1) of section 178(Companies required to nomination and remuneration committee), company’s policy on directors’ appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178. It shall not apply to Government Companies.
Evaluation of Board u/s 134(3)(p)	Section 134(3)(p) requires the Board report to include in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors; It shall not apply in case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, as per its own evaluation methodology.
Min & Max Directors [Section 149(1)]	Limit of Minimum & Maximum Directors shall not apply to Section 8 Companies.
Appointment of Independent Director	Section 149(6)(a) relates to one of the conditions for being appointed as Independent director. It states that the independent director, who is in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience. In case of Government Companies, the independent director, who is in the opinion of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, is a person of integrity and possesses relevant expertise and experience, can be appointed as independent director subject to fulfilment of other conditions”

Pecuniary Interest by Independent Directors	Section 149(6)(c) states that independent directors not to have had 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. This provision shall not apply to a government company.
Filing of Consent by Director u/s 152(5)	Shall not apply if the appointment is done by Central Government or State Government.
Retire by Rotation & Filing of Casual Vacancy shall not apply	Shall not apply to – (a) a Government Company in which the entire paid up share capital is held by the Central Government, or by any Stale Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.
Right of person other than retiring director to stand for directorship shall not apply	Criteria's Same as above
Directors to be voted individually shall not apply	Criteria's Same as above. Section 162 does not apply to a government company if the aforesaid conditions are fulfilled. Accordingly more than one director may be appointed through a single resolution.
Principle of Proportionate Representation shall not apply (Section 163)	Criteria's Same as above
Section 164(2) shall not apply to Govt Co.	Section 164(2) relating to disqualification of director, for non-filing of financial statements for continuous period of three years in which he is a director or failure to repay deposits etc. Section 164(2) does not apply to a Government Company.
Preparation of Register of Directors & KMP (Section 170 & 171)	Shall not apply to a Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments. Section 170 relates to register of directors and key managerial personnel and their holdings. Section 171 deals with member's right to inspect.
Role of Audit Committee [Section 177(4)]	Audit committee of a government company can recommend only for remuneration of auditor & not for appointment & terms of appointment.
Role of Nomination & Remuneration Committee [Section 178(2)(3)(4)]	Shall not apply to Government company except with regard to appointment of 'senior management' and other employees.
Loan to Directors (Section 185)	Shall not apply to Government company in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section.
Loans & Investment by Government Company (Section 186)	Shall not apply to – (a) a Government company engaged in defence production; (b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State

	Government before making any loan or giving any guarantee or providing any security or making any investment under the section.
No approval required for certain related party transactions (1st & 2nd Proviso to Section 188)	Shall not apply to – a Government company in respect of contacts or arrangements entered into by it with any other Government company; a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, of, as the case may be, the State Government before entering into such contract or arrangement.
Section 196(2)(4)(5) shall not apply	Section 196(2) relates to term of managing director not to exceed five years. Section 196(4) relates to approval of the members/central government as the case may be for appointment of managing director and section 196(5) relates to validity of actions of Managing Director if his appointment is not approved at the General Meeting. These provisions are not applicable to a government company.
Section 197 shall not apply	The provisions relating to overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits as given in section 197 does not apply to a government company.
Appointment of KMP (Section 203)	After sub-section (4), the following sub-section shall be inserted, namely:- "(4A) The provisions of sub-sections (l), (2), (3) and (4) of this section shall not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole-time director of the Government Company."