CHAPTER-1: PRELIMINARY - DEFINITIONS

1. **Body Corporate or Corporation -** Includes a company incorporated outside India but does not include registered co-operative societies, anybody corporate notified by CG.
2. **Applicability of Companies Act, 2013. [Sec.1 (4)] -** CA, 2013 is applicable to Co's incorporated under CA, 2013 or under any previous company law (such as CA, 1956), Insurance, Banking, Electricity Companies and companies governed by any special act, to the extent that the provisions of the CA, 2013 is not inconsistent with the provisions of the respective Acts regulating such companies.
3. **Associate Company -** A company can be said to be an Associate of another company, if such another company has a Significant influence over first mentioned Company.
   - SI means Control of at least 20% of total VP or Control of or participation in Business decisions under an agreement.
   - Shares held in a fiduciary capacity shall not be counted.
   - AC Includes a joint venture Company but does not include subsidiary company.
   - **Joint Venture** means an agreement in which the parties have Joint control of the arrangement; and Joint rights to the net assets of the arrangement.
4. **Subsidiary Company -** A company can be treated as Subsidiary Company, if the HC:

a. Controls the Composition of Board of Directors of Subsidiary Company i.e., appointing or removing all or majority of the directors of the subsidiary company; or
b. Controls more than half of the total voting power of the subsidiary company.
   - A HC can control SC, either on its own (Direct control) or with one or more of its subsidiaries (Partly Direct & Partly Indirect) or through any of its subsidiary (IC)
   - A HC cannot have more than 2 layers of subsidiaries.
   - For this purpose, a "Co" includes Body Corporate".

5. **Foreign Company -** means a incorporated outside India and shall have a place of business in India and Conduct any business activity in India either by itself or through its agent and either in physical mode or through electronic mode.
   - Electronic mode means carrying the below mentioned activities, either by way of e-mail, mobiles, social media etc : *Data interchange - Accepting deposits - Activities relating to financial statements - Web based marketing - Data base services - Supply chain management - Online services such as telemedicine, education and information research.*
6. **Public Financial Institution** means LIC – IDFC - Institutions notified by the central government u/s 4A of the CA, 1956 - Such other institution as may be notified by CG. An institution can be notified as Public Financial Institution, if Such institution has been established under any central or state Act other than CA, 2013 or previous Company Law; or CG or SG holds or controls at least 51% of the paid-up share capital of such institution.
7. **Small Company –** other than public co having Paid-up share capital not exceeding 50 lakhs and Turnover as per the Profit & loss account of preceding financial year not exceeding 2 crores. The definition of small company shall not apply to holding company, subsidiary company, company registered u/s 8 or any company governed under any special Act.

8. **Contributory** means a person who is liable to contribute towards the assets of the company in the event of its being wound up. A person holding fully paid shares shall be considered as a contributory but he shall have only rights but not have any liability.
9. **Expert** includes an engineer, a valuer, a CA, a CS, a Cost Accountant and any other person. Such expert shall have a power to issue a certificate.
10. **Key Managerial Person** means a. CEO/MD/ Manager; b. CS c. Whole-time director; d. CFO; and an officer one level below the whole-time directors designated as KMP by the Board.
11. **Manager** means an individual who has the power to manage all or substantially all of the affairs of a Co, working under the superintendence, control and direction of the Board.
12. **Managing Director** has the power to manage substantially all the affairs of the company by virtue of AoA - Agreement with the Company - Resolution passed in the GM/BM
13. **Member** means who subscribed to the MoA or agreed in writing and entered in the register of members or entered as beneficial owner in the records maintained by depository.
14. **Officer** includes director, Manager, KMP, person giving instructions to BoD.
15. **Officer in Default –** WTD- KMP - Person having responsibility for maintaining the accounts or records- person advising, instructing or directing the Board other than in professional capacity - Director participated in the meetings of Board but does not objected to the contravention - Share transfer agents and merchant bankers.
16. **Promoter** name entered in the prospectus or annual return – controlling the affairs of the company – advising the Board other than in a professional capacity.
17. **Related Party** means director or his relative - KMP or his relative - A firm, in which a director, manager or his relative is a partner - A private co in which a director or manager or his relative is a member or director - A public co in which the director of our co is also a director and holds along with his relatives, more than 2% of its paid-up share capital - Any body corporate to which director or manager is advising or instructing - Holding, subsidiary or an associate company - An investing co or the venturer of the company
18. **Relative -** Members of HUF, Husband and wife are deemed to relative to another - Relative includes Father, Mother, Son, Daughter, and Son’s wife, Daughter’s Husband, Brother and Sister. The above mentioned relatives include their step positions.
19. **Security** includes Shares, bonds and debentures, Derivatives, Units issued by any collective investment scheme, Security receipts, Units issued under any mutual fund scheme, Any instrument issued by special purpose distinct entity, Government securities.
20. **Free Reserves -** Available for distribution of dividend - appearing on the latest audited balance sheet – does not include unrealized gains, revaluation reserves.
21. **Net Worth** **including** paid-up share capital, reserves created out of profits, securities premium account and credit/debit balance in P&L A/c and **excluding** Accumulated losses, deferred expenditure, and miscellaneous expenditure not written off, Revaluation reserves.
22. **Turnover -** gross amount of revenue recognized in the profit and loss account may be from Sale, supply and distribution of goods, Rendering of services; or both.

CHAPTER-2: FORMATION AND CONVERSION OF COMPANIES

1. Formation Of A Company [Sec.3]

- A Co may be formed for any lawful purpose as a Public co with 7 or more persons, Private Co with 2 or more persons; or OPC with 1 person as its member.
- The above mentioned Co's may be formed as limited by shares or by Guarantee or Unlimited.
- The person who intends to form the company shall subscribe (sign) on the memorandum.
- To form a Co, the provisions of the CA, 2013 relating to registration, shall be complied with.

2. Several Liabilities of Members [Sec.3A]

If at any time the number of members is reduced below 7 or 2 and the Co carries on business for more than 6 months with the reduced number of members, then every member aware of such reduction shall be severally liable for the whole debts of the Co.

3. Steps in Incorporation of a Company

- Digital Signature to be obtained from Certifying Authorities licensed under IT Act, 2000.
- Director Identification number to be obtained in accordance with Sec.153.
- Availability of proposed name to be obtained by using RUN facility
- MoA & AoA to be prepared in accordance with the requirements of Sec.4 & Sec.5
- An application for incorporation is required to be submitted in Form.INC-32 (SPICe) along with the documents specified u/s 7(1)
- On the basis of documents and information filed, the Registrar shall register the same and issue a Certificate of Incorporation in INC-11.

4. Procedure For Incorporation Of Company [Sec.7]

A. **Documents to be filed** such as Application for incorporation in Form No. INC-32 (SPICe), MoA & AoA signed by subscribers, Declaration, in Form.No.INC-8 by practicing professional, Declaration from subscribers and first directors, Address for correspondence, Particulars of subscribers and first directors, Interest of first directors in other firms or body Corporates and their consent, Declaration regarding the approval of sectoral regulators.

B. **Registration and Certification -** On the basis of documents filed, the registrar may register the company and issue a Certificate specifying CIN and PAN, if issued by IT Department.

C. All the Documents filed for the incorporation must be preserved till dissolution of the Co.

D. Furnishing false information/suppression of a material fact/fraudulent action will attract punishment u/s 447 on promoters, first directors & the professional making the declaration.

The Tribunal may Pass orders for winding up of the company or regulation of the management of the company and alteration of memorandum and articles;

5. Formation Of One Person Company

- Shall be formed with only 1 person – cannot be formed as Sec.8 Co
- Nominee shall be mentioned in MoA by taking written consent, which shall be filed with RoC.
- Only a Natural Person, who is a citizen of India and resident in India, is eligible to become a member or Nominee of OPC. A minor cannot become a member or Nominee in OPC.
- A person can incorporate only 1 OPC and such person can be a Nominee in only 1 OPC.
- If member of OPC becomes a member of another OPC due to nominee position, he shall elect one OPC within 180 days.

- OPC cannot carry out Non-Banking Financial Investment Activities.
- Nominee shall be given an option to withdraw his consent. The member of OPC may also change the Nominee by giving a notice to the Company. Change in the Nominee shall be intimated shall be intimated to RoC and not treated as alteration of MoA.
- A OPC can convert into other kind of companies only after 2 years from incorporation.
- OPC shall be required to convert, within 6 months of paid-up share capital exceeding Rs.50 Lakhs; or 6 months of 3 years average annual turnover exceeds 2 crores.

6. Formation Of Companies With Charitable Objects (Sec.8)

- Whoever intends to promote charity may apply to CG for license to register U/s 8.
- The license allows registration of a limited company without the words “Ltd” or “ Pvt Limited”.
- Upon receipt of license an application to be filed with ROC for registration as a limited Co.
- A firm may become member of a company registered u/s 8.
- A company registered u/s 8 shall take the prior approval of CG to alter its MoA or AoA.

Conversion of existing company into Sec.8 Company

- If a limited company already registered under the Act has the same objects as mentioned u/s 8(1)(a) i.e., promotion of charity, education etc and the same restrictions and prohibitions u/s 8(1)(b), then it may apply to CG for conversion into Sec.8 Co.
- Upon receipt of application, the CG may by grant a license and thereafter, such company may delete the word “private limited” or “limited” in its name.
- Thereafter, such company shall apply to the Registrar for fresh registration u/s 8.

7. Revocation of license granted u/s 8.

- The CG may revoke the license u/s 8, if the Company Contravenes Sec.8 or Contravenes conditions of or Conducts its activities in a fraudulent manner or prejudicial to public interest.
- Upon revocation of license, CG may direct the company to **convert** in to other kind of Co or add the words “Ltd”/ “Pvt Limited” to name or windup or amalgamate with another Sec.8 Co.
- Surplus in winding up shall be transferred to another Sec.8 Co or to Insolvency Fund.

8. Effect Of Registration [Sec.9]

- Members shall collectively construe as body corporate and act by name in MoA.
- Such body corporate shall have perpetual succession, power to acquire any property, capable of contracting and Can sue and be sued by others

9. Authentication of Documents, Proceedings and Contracts [Sec.21]

A document requiring authentication by a company or Contracts made by a Company may be signed by KMP or an officer or employee of the Company authorized by Board.

10. Execution of Bills of Exchange, etc [Sec.22]

- A bill of exchange, hundi or PN shall be deemed to have been made, accepted, drawn or endorsed on behalf of a Co, If it is done by any person acting under the authority of the Co.
- A Co may, under its common seal or by director and Company secretary or by 2 directors, authorize any person as the attorney of the Co, in general or in respect of specified matters.
- Based on authorization, such attorney may execute deeds on behalf of the Co, either in India or outside India. A deed signed by such attorney shall be binding on the company.

11. Subsidiary Company not to Hold Shares in its Holding Company [Sec.19]

a. A subsidiary company shall not hold any shares in its holding company.
b. A holding company shall not allot or transfer any of its shares to its subsidiary company.
c. If the holding company does not have share capital, then the reference to shares shall be construed as reference to any other interest of its members.
d. A subsidiary company can hold shares in its holding company as a legal representative of deceased member or as a trustee or before becoming its subsidiary.
e. S/Co shall have voting rights in respect of shares held as legal representative or as a trustee.

12. Service of Documents [Sec.20]

- A document may be served **on the Co/its officers**, by sending it through RP/SP/courier, electronic mode or delivering at its registered office.
- Records of beneficial ownership may be served by means of electronic mode.
- A document may be served **on the registrar or any member** by sending it through post, registered post, speed post, courier, electronic mode or delivering at its registered office

  The above provision shall not apply with respect to documents which are required to be filed with the Registrar in electronic mode.
- Member may request for delivery through a particular mode and shall pay requisite fees.
- Nidhi Co may serve the documents only on members holding more thanRs.1,000 face value; or 1% of total paid-up share capital, Whichever is less.

  To other shareholders, document may be served by notice in newspaper and Publication on the notice board of such Nidhi Company.

13. Effect of Memorandum and Articles [Sec.10]

- M&AoA when registered binds the Co and Members, as if they had been signed by them.
- Co and every member shall oblige the provisions contained in Memorandum or Articles.
- Monies payable by member under the M&AoA shall be a debt due from him to the company.

14. Registered Office [Sec.12]

- Every company shall establish a registered office within 30 days of incorporation.
- It must be capable of receiving and acknowledging all communications to the company
- Verification of registered office shall be filed with RoC within 30 days of incorporation.
- Change in the registered office shall be filed with RoC within 30 days of such change.
- Registered office is relevant for determining the court having jurisdiction over the Co.

15. Publication of Name [Sec.12 (3)].

- Name and address shall be published outside of every place of business in local language.
- Name of the Co shall be engraved on the Common Seal of the Co.
- Name, Address, CIN, contact details shall be printed on all official publications.
- Name of the Co shall be published on Negotiable Instruments.
- Names changed during the last 2 years shall be printed along below the present name.
- The words "One Person Company" shall be displayed wherever the name is displayed.

16. Shifting of registered office from one Registrar to another Registrar within same state.

- Special resolution to be passed and confirmation to be obtained from Regional Director.
- An application in Form.No.INC-23 shall be filed with RD along with the Board resolution, special resolution, and declaration regarding no dues to workmen and no request for change in the jurisdiction with respect to pending cases, acknowledged copy of intimation to SG.
- The RD shall communicate with the company within 30 days of receipt of application.
- Confirmation of RD shall be filed with the RoC, within 60 days of its receipt.
- Registrar shall certify the registration of shifting within 30 days of filing. Such certificate is conclusive evidence that applicable provisions of the CA, 2013 has been complied with.

17. Conversion of Registered companies [Sec.18].

- Any class of registered Co's may convert into another class by altering the M & AoA, applying with registrar and registration and certification by registrar.
- Liabilities incurred or contracts entered before conversion shall not be effected.

CHAPTER-3: MEMORANDUM OF ASSOCIATION

1. Explain the provisions of the CA, 2013 relating to the name clause of the MoA.

- The name of Sec.8 Co need not end with the words Ltd/Pvt Ltd. But shall contain Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral trust etc.
- The name of a Govt Co shall end with "Limited" whether it is a private Co or public Co.
- As per Rule-8(7), the name of Nidhi company shall end with the words "Nidhi Limited".
- MoA shall specify the State in which Co is situated. Complete Address not required.

A. <u>Restrictions on Name Clause</u>

- The name of a company shall not be identical with the name of an existing company.
- The name of a company shall not closely resemble with the name of an existing company.
- The use of company's name shall not constitute an offence under any law.
- The name of a company shall not be undesirable in the opinion of CG/RoC

B. <u>Names requiring Prior Approval</u>

- Names that indicate relationship with Govt requires prior approval of CG.
- The word 'Bank' or 'Exchange' requires no objection from RBI/SEBI.

2. Reservation Of Name

- For Incorporation of a new company or for changing the name of existing company, application shall be filed using RUN Facility.
- Defects in such application shall be rectified within 15 days.
- Applied name shall not contradict with Emblems and Names Act, 1950
- An approved name is valid for 20 days (new company) or 60 days (existing company)

a. Name obtained by furnishing wrong information shall be cancelled before incorporation and penalty up to Rs.1 Lakh may be imposed. If the company is already incorporated RoC may direct the company to change its name within 3 months or may Strike-off the name of the company or may make a petition for winding up of the company.

3. **Explain fully the doctrine of ultra-vires and state its implications.**

1. Ultra-vires contract (not permitted by MoA) is void and cannot be enforced or ratified.
2. Transaction intra-vires the Co but ultra-vires the AoA can be validated by altering AoA.
3. Transaction intra-vires the Co but beyond the powers of directors can be ratified by shd's.
4. It protects the shareholders and creditors of the Co and restrains the activities of directors.
5. It prevents the company from taking the benefits from profitable transactions
6. As Sec.13 permits for alteration of objects clause, the purpose of this Doctrine is defeated.

4. **Liability Clause of Co Limited by Guarantee.**

- Liability is limited up to the amount guaranteed by each member as stated in MoA.
- Such liability arises if co winds up while a person is member or within 1 year of transfer;
- Such liability arises only with respect to debts incurred by the Co before transfer of shares.
- Contribution may also be for adjustment of rights among members or costs of winding up

5. **Forms of MoA -** The MoA must be in the form specified in Schedule-I:

• Table-A	• Company Limited by Shares
• Table-B	• Company Limited by Guarantee not having share capital
• Table-C	• Company Limited by Guarantee having share capital
• Table-D	• Unlimited Company not having share capital
• Table-E	• Unlimited Company having share capital

6. **Articles Of Association**

- The articles of a company shall contain the regulations for management of the company.
- The articles shall also contain the matters provided in the model articles in Schedule-I.
- The entrenchment provisions in the articles of a company require stricter procedure than special resolution for altering certain specified provisions of the articles.
- To insert the entrenchment provisions by altering Articles, a private company shall pass a unanimous resolution and a public company shall pass a special resolution.
- In case of conflict between model articles and registered articles, the latter will prevail.

7. **Explain the Doctrine of Indoor Management (DIM) and state its exceptions.**

- Persons dealing with the Co shall ensure that a contract is in accordance with the M&AOA. But they can assume that internal procedures relating to contract have been complied with.
- Basis for this doctrine is that internal procedures are not a matter of public knowledge and in the absence of this doctrine; Co can deny its liability to creditors.

Exceptions to DIM (Applicability of Doctrine of Constructive Notice)

- When the persons dealing with the company has knowledge of irregularity
- Where the circumstances surrounding the contract are suspicious and therefore prompt inquiry and the person dealing with the company has not made an inquiry.
- The DIM does not operate in favor of a person who has relied on forged documents.

Doctrine of Constructive Notice (DCN) vs. Doctrine of Indoor Management

- DCN protects a Co against outsiders, whereas DIM protects outsiders against the Co.
- DIM is a safeguard against the possibility of abusing the DCN.

8. Overriding effect of the Act vis-à-vis company Memorandum, Articles Etc. [Sec.6].

- Provisions of the Companies Act, 2013 shall have overriding effect against the MoA, AoA, Agreement entered by the Co, and resolution passed in general meeting or board meeting.
- If any provision contained in the above documents contradicts with the provisions of the Act, then such provision shall be void.
- If the company has been incorporated by furnishing false or incorrect information or suppression of material information or fraudulent action, then promoters, directors and professional giving declaration shall be liable for action u/s 447.

9. Copies of Memorandum and Articles to be given to Members [Sec.17]

- The Co shall, within 7 days of request, send the MoA, AoA, Resolutions/Agreements referred in Sec.117 to the members.
- In case of default the Company and Every officer of the company who is in default shall be liable for each default, to a Penalty of Rs.1000 for each day during which such default continues or Rs. 1 lakh, whichever is less.

10. Alteration of name clause / change of name.

- Any change in the name of a company shall be subject to the provisions of Sec.4 (2) and (3)
- Change of name shall not be allowed, if FS are not filed or defaulted in deposits/debentures. Once the documents are filed and payments are made, change of name shall be allowed.
- Special Resolution to be passed
- An application shall be filed with RoC for approval except for conversion of companies.
- The change of name shall be complete and effective upon issue of fresh certificate.

11. Rectification of name of the company [Sec.16].

A. <u>Upon the directions of CG when a trade mark is infringed</u>

- Proprietor of TM may apply to the CG/RD, within 3 years of incorporation of company.
- Upon receipt of such application, the RD may direct the company to change its name.
- The Company shall change its name within 6 months, by passing an Ordinary resolution.

B. <u>Upon the directions of CG – Identical or closely resembling names.</u>

- The CG/RD may direct such company to change its name.
- The company shall change its name within 3 months, by passing an Ordinary Resolution.

<u>Filing with RoC</u> - The Co shall give a notice to RoC, within 15 days of change of name.

12. Shifting of registered office from one State to another state.

- Special resolution to be passed and application to be filed with the RD
- Not more than 30 days before the application, it shall be published in 2 Newspapers and send to RoC & SEBI, and notice shall be served to debenture holders, creditors.
- Consent of creditors to be obtained or provision to be made or security to be provided.
- Shifting not allowed if inquiry, inspection or investigation has been initiated against the Co.
- RD shall dispose of the application (i.e., confirm or reject) within 60 days.
- A certified copy of the order of RD shall be filed with the RoC of each state within 30 days.
- The Roc of the state in which the new office of is situated, shall issue a fresh Certificate.

CHAPTER-4: PROSPECTUS & ALLOTMENT

1. Modes Of Issuing Securities [Sec.23]

- **Public Co** may issue securities through public offer (through prospectus), private placement, rights issue or bonus issue.
- **Private Co** may issue securities through private placement, rights issue & bonus issue.
- **Prospectus** means any document described as prospectus and includes shelf prospectus, red herring prospectus and any document inviting offers from the public for subscription.
- **Public Offer** – includes Initial Public Offer, Further Public Offer and Offer for Sale.

2. Power of SEBI to Regulate Issue and Transfer of Securities, etc. [Sec.24]

- Provisions of Chapter-III, Chapter-IV and Sec.127 relating to issue and transmission of securities and non-payment of dividend by listed company shall be administered by SEBI.
- For other companies, such provisions shall be administered by CG.
- All powers relating to prospectus return of allotment, redemption of preference shares shall be exercised by the CG/Tribunal/RoC.

3. Document containing offer of Securities for Sale to be Deemed prospectus [Sec.25]

- Any **document** issued by Issue House, to the public, for sale of securities, shall be **deemed to be a prospectus** issued by the Company.

Evidence of Intention- In the following cases, it is evident that the Company has allotted securities to Issue House with an intention to sell the same to the public:

a. Offer for sale to the public was made within 6 months of Allotment; or
b. Whole consideration is not received by the Co, as on the date of offer to the public.

Applicable Provisions - All provisions applicable to prospectus, such as contents of prospectus and liability for mis-statement in prospectus, shall be applicable to such Deemed Prospectus.

Contents of Deemed Prospectus include matters specified u/s 26 and consideration between Co and Issue house and time and place for inspection of contract between Co and Issue House.

Signing of Deemed Prospectus – shall be by 2 directors or at least ½ of the partners.

4. What are the requirements as to the issue of the Prospectus? [Sec.26]

1. Every prospectus issued by or on behalf of the company, shall be dated and signed.
2. Prospectus shall contain the information and reports as may be specified by SEBI.
3. An expert shall not be engaged in the promotion, formation or management of the company.
4. Prospectus shall make a declaration about compliance with SEBI Act and SCRA.
5. Draft prospectus has to be approved by various agencies before it is filed with RoC.
6. Vetting of draft prospectus by SEBI does not amount to approval of prospectus.
7. A Copy of the prospectus shall be filed with RoC before issue to the public.
8. A prospectus is valid for only 90 days from the date of filing with the RoC.

5. Variation in Contracts Or Objects Referred To In Prospectus [Sec.27]

- To change Objects or terms of contract referred in prospectus, SR to be passed through PB.
- Details of such notice shall be published in 2 newspapers by way of advertisement in PAS-1.
- The notice shall also be placed on the web-site of the company, if any.
- Money raised shall not be utilized for buying equity shares of any other listed company.
- An exit offer shall be given to Dissenting shareholders

6. Offer of Sale of Shares by Certain Members of Company [Sec.28]

- Members who propose to sell their shares to public may consult the BoD, authorize the Co and shall reimburse the Co the expenses incurred in selling the shares to public.
- Any document by which the shares are offered to the public is treated as prospectus.
- All Provisions relating to Prospectus shall apply to such Deemed Prospectus.
- Provisions relating to minimum subscription, minimum application value, statement of utilization of money shall not apply to deemed prospectus.
- Deemed Prospectus shall mention the name of the person bearing the cost of offer.

7. Dematerialization of Securities [Sec.29]

- Companies making public offer and prescribed companies, **shall** issue securities only in Dematerialized Form by complying with the provisions of Depositories Act.
- As per Rule-9 of Companies (Prospectus and Allotment of Securities) Rules, 2014:
    a. The promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialized form:
    b. The entire holding of convertible securities of the company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialized form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.
- Other company may Convert their existing securities into dematerialized form or Issue new securities in Physical form or in Dematerialized form.

8. Advertisement of Prospectus - Contents [Sec.30]

- Objects as per MoA, Liability of the members, Share capital, Names of subscribers to MoA and the capital structure of the company.

9. Shelf Prospectus [Sec.31]

- Securities included in shelf prospectus are issued for subscription in one or more issues over a certain period (max-1 year) without the issue of a further prospectus.
- Companies prescribed by SEBI may file a shelf prospectus with ROC.
- Validity period of such prospectus starts from the date of opening of the first offer.
- Changes in the financial position or new charges created shall be filed with RoC by way of Information Memorandum, within 1 month prior to subsequent offer.
- Such changes shall be intimated to person from whom advance subscription has been received and if he desires to withdraw application, money to be refunded within 15 days.
- For subsequent offers Information Memorandum & shelf prospectus is a prospectus.

10. Red-Herring Prospectus [Sec.32]

- RHP may be issued before issue of prospectus by a process called Book-Building process.
- RHP does not include particulars of quantum or price of securities but contains price band.
- RHP shall be filed with RoC at least 3 days before the opening of the subscription list.
- All rules and regulations applicable to the prospectus also apply to RHP.
- Upon the closing of the offer, a complete prospectus, including total capital raised and closing price, shall be filed with RoC.
- Any variation between the RHP and the final prospectus shall be highlighted.

11. Abridged Prospectus (AP)/Application Form For Issue Of Securities [Sec.33]

- Every application inviting subscription for securities shall be attached with AP.
- AP contains such salient features of a prospectus as may be specified by SEBI.
- If application was issued to underwriters or not issued to public, AP need not be attached.
- Complete prospectus shall be given to requested person before closing of subscription.
- In case of default, Co shall be liable to a penalty of Rs.50, 000 for each default.

12. Mis-Statements In Prospectus And Associated Liabilities [Sec.34 & 35]

A. CRIMINAL LIABILITY FOR MIS-STATEMENT IN PROSPECTUS [Sec.34]

- If a prospectus contains an untrue or misleading statement, every person who authorized the issue of prospectus is liable for punishment U/s 447.
- No punishment if mis-statement was immaterial or there is a reasonable ground to believe.

B. CIVIL LIABILITY FOR MIS-STATEMENT IN PROSPECTUS [Sec.35]

- If a person has subscribed for securities on the faith of prospectus containing misleading statement and suffered losses due to such misleading statement, then Co, Directors, promoters, Expert shall be liable to compensate such losses.
- No liability if consent withdrawn or reasonable public notice is given or misleading statement was made by expert and other person believe that such statement was correct.
- If the prospectus is issued with a fraudulent intention then liability is personal and unlimited.

13. Punishment for Fraudulently Inducing Persons To Invest Money [Sec.36]

- If any person is fraudulently induced to subscribe, dispose or underwrite securities or to secure yield from fluctuations in the prices or to obtain credit facilities from banks, then punishment u/s 447 shall be attracted.

14. Action by Affected Persons [Sec.37]

- A suit may be filed or any other Action can be taken u/s 34, 35 or 36, by any person or group of persons or association effected by misleading statement in prospectus.

Class Action Suit:

- If a person has caused harm to many people, then such people who affected by such harm can form as a group or association and file a suit against such person (i.e., defendant). Such a suit is called as "Class Action Suit".
- The benefit of this type of suit is that each one of the affected people need not file a case separately. Instead all of them together can file a single suit against defendant.
- Each person of such group need not be present in the court. Instead such group can be represented by a single person in the court.
- Sec.37 and Sec.245 of the Companies Act, 2013 provides for Class Action Suits.
- To file a class action suit u/s 37, there is no minimum threshold limits.

15. Punishment For Personation For Acquisition, Of Securities [SEC-38]

- A person who applied for securities in fictitious name or filed multiple applications or applies for transfer in fictitious name shall be liable for action u/s 447.
- The above provisions shall be prominently disclosed in Prospectus and Application Form.
- The court may order Disgorgement of gain and Seizure and disposal of securities.
- Amount received through disposal of securities shall be credited to IEPF.

16. Allotment of Securities [Sec.39]

- Securities offered to the public shall be allotted only if minimum subscription has been received; and amount payable on application has been paid to and received by the Company.
- Minimum application amount per security shall not be less than 25% of the issue price.
- If the Co allots securities, return of allotment to be filed with the RoC, within 30 days.
- If the minimum subscription and minimum application amount has not been received, then the application amount received shall be refunded within 15 days of closure of the issue.
- Delay in refund attracts interest @ 15% p.a.
- In case of default in refund or filing of return of allotment, the Co and its officer who is in default shall pay penalty of ₹ 1,000/ day or ₹ 1 Lakh, whichever is less.

17. When is an allotment of shares treated as an irregular allotment? Briefly state the effects of an irregular allotment.

A. **Irregular Allotment** – Prospectus not issued or not contained matters of Sec.26(1), or not filed with RoC or Minimum subscription or Application amount not received or listing approval not obtained.

B. **Effects of Irregular Allotment**

- Violation of Sec.26 - Co fine 50K to 3L, Officers - Imprisonment up to 3 years or fine up to 3L
- Min subscription not received – Application money to be refunded.
- Listing approval not obtained – Co fine up to 50L, Officers Imprisonment 1 Year or fine up to 3L

18. Securities to be dealt with in Stock Exchanges [Sec.40]

- Companies making public offer shall apply for and obtain permission for listing.
- The Name(s) of exchange where securities shall be dealt with shall be disclosed in prospectus.
- Application Money shall be kept in a separate bank account and utilized for adjustment against allotment or repayment if not allotted.
- Condition which requires waiver with above requirements shall be void.
- Commission in connection with the subscription to securities may be paid subject to Rule-13.

19. Payment of Underwriting Commission

- Commission in connection with the subscription to securities may be paid subject to Rule-13.
- Authorized by AoA. Rate shall not exceed 5% for shares & 2.5% for debentures subject to AoA
- Commission shall not be on securities which are not offered to the public for subscription.
- Commission may be paid out of proceeds of the issue or the profit of the company or both.
- Prospectus shall disclose the name of the underwriters, rate and amount of commission etc;
- Contract for commission shall file with RoC at the time of filing prospectus for registration.

20. Depository Receipts [Sec.41]

- Boar resolution and Special Resolution to be passed.
- The DR's shall be issued by an Overseas Depository Bank (ODB) appointed by the company.
- Shares, based on which, DR's are issued shall be kept in custody of domestic custodian bank.
- GDR Rules, FCCB Scheme and RBI Regulations to be complied with.
- Merchant banker or a practicing CA or CS or CMA shall be appointed to oversee all the compliances relating to issue of depository receipts.
- Compliance report given by such banker shall be placed before the Board Meeting.

Manner and Form of DR's [Rule-5]

a. DR's can be issued by way of public offering or PP or any other manner prevalent abroad.
b. DR's may be listed or traded in an overseas stock exchange.
c. DR's may be issued against new shares or may be sponsored by existing shareholders.
d. The underlying shares shall be allotted in the name of *Overseas Depository Bank*.
e. DR's are issued by ODB abroad against such underlying shares.

Voting Rights [Rule-6] - Until the conversion of DR's into shares, the ODB shall be entitled to voting rights on behalf of the holders of DR's. After conversion of DR's into shares, the holders of DR's s become members of the company and shall be entitled to vote.

Proceeds of Issue [Rule-7]

- The proceeds of issue of DR's shall be Remitted to a bank account in India or deposited in an Indian Bank operating abroad or Deposited in any foreign bank having operations in India.
- If the issue of DR's is sponsored by existing shareholders, then the proceeds shall be credited to the bank accounts of respective bank account of the shareholders.

Non-Applicability of certain provisions [Rule-9]

a) The offer document prepared for issue of DR's shall not be treated as prospectus.
b) The provisions as applicable to a prospectus or an offer document shall not apply to a depository receipts offer document.
c) The provisions relating to issue of public offer shall not apply to issue of DR's.
d) Until the redemption of DR's the name of ODB shall be entered in the register of members.

21. Procedure And Conditions For Private Placement (PP) [Sec.42]

- PP means any offer or invitation to a select group of persons to subscribe securities, through PP offer-cum-application, which satisfies the conditions of Sec.42.
- No fresh offer shall be made unless earlier offer has been closed or withdrawn.
- Select group of persons to whom PP is proposed to be made, shall be identified by the Board and shall not exceed 200 in a FY (excluding the qualified institutional buyers and employees).
- An offer made to more than 200 persons shall be deemed to be public offer.
- Private placement offer and application shall be issued to identify persons, whose names and addresses recorded by the company. Such offer shall not carry any right of renunciation.
- Advertisements shall not be issued and marketing or distribution channels shall not be used.
- Subscription money shall be paid either by cheque or demand draft or other banking channel.
- Monies received on application shall be kept in a separate bank account in a scheduled bank
- Securities to be allotted within 60 days from the date of receipt of the application money.
- Subscription money shall be adjusted against allotment or repaid if securities are not allotted.
- Return of Allotment to be filed within 15 days of allotment.
- If securities are not allotted, application money to be refunded within 15 days of expiry of 60 days or else interest @ 12% p.a. shall be paid.

22. Restrictions on Private Placement [Rule-14]

- Private Placement offer letter: must be in Form. PAS-4 – accompanied by application – shall be sent, in writing or in electronic mode, within 30 days of recording names.
- No person other than the person addressed in the application shall be allowed to apply.
- Any application not conforming to this condition shall be treated as invalid.

- Special Resolution, to be obtained, prior to each offer or invitation. In case of non-convertible debentures, resolution only once in a year shall be sufficient.
- Offer shall not be made to more than 200 persons excluding QIB's and Employees.
- The value of offer made to each person shall not be less than Rs.20,000 face value.
- The above limits of Max.200 offeree's and Min. Investment Size of Rs.20,000 face value shall not apply to Non-banking Financial Company and Housing Finance Companies.
- Money shall be paid from the bank account of the person subscribing the securities.
- Co shall keep the record of the Bank account from where subscriptions are received
- The Co shall maintain a complete record of private placement offers and shall be filed wth RoC and SEBI within 30 days of circulation of offer letter.
- Return of Allotment Shall be filed with RoC in PAS-3 within 30 days of Allotment.

CHAPTER-5: SHARE CAPITAL AND DEBENTURES

1. Kinds Of Share Capital (Sec.43)

- The share capital of a Co limited by shares shall be of two kind's Equity and Preference.
- Equity share capital is the capital which is not preference share capital. It can be with same voting rights or with differential rights as to voting or dividend or otherwise.
- Preference share capital is the capital which has a preferential right to Payment of dividend and Repayment of capital in the event of winding up, whether with or without premium.
- A capital shall be deemed to be preference capital, even if it has a right to participate, along with the equity shareholders, in surplus profits or surplus capital in the event of winding up.

2. Issue Of Equity Shares With Differential Rights (ESWDR)[Rule-4]

- Authorized by AoA and Ordinary resolution at GM or through postal ballot (listed Co's)
- Existing shares cannot be converted into equity shares with differential rights or vice-versa.
- ESWDR shall not exceed 26% of the total post-issue equity share capital.
- Company should have consistent track record of divisible profits for the last 3 years.
- Co has not defaulted in filing FS and Annual Return's for **3 preceding financial years**.
- There is No **Subsisting default** in payment of dividend, deposits or debentures or pref shares.
- Co has not defaulted in payment of dividend, employee's statutory dues. However, a Co may issue ESWDR upon expiry of 5 years from the end of FY in which such default was made good.
- The Co has not been penalized during the last 3 years under RBI Act, /SEBI Act, /SCRA/FEMA.
- Holders of ESWDR rank pari-passu with other shareholders subject to differential rights.

3. Basic Requirement With Respect To Shares [Sec.45 & Sec.46]

- A distinctive number shall be assigned to every share other than those held in D-Mat form.
- A share certificate can be issued under the common seal, or signed by a director and Company secretary or by 2 directors.
- Share certificate shall be prima facie evidence of the title of the person for the shares.
- For D-Mat shares, records of the depository are the prima facie evidence.
- Duplicate share certificate can be issued, if share certificate is proved to have been lost or destroyed; or has been defaced, mutilated or torn and is surrendered to the Co.

4. **Voting Rights Of Share Holders [SEC.47]**

- Every member holding equity share capital shall have a right to vote on every resolution.
- Voting rights in a poll shall be in proportion to the paid-up equity share capital of the Co.
- Voting rights shall be subject to the provisions of Sec.43, Sec.50 (2) and Sec.188 (1).
- Holders of preference shares shall have a right to vote on resolutions affecting their rights, winding up, reduction of capital and other resolutions (if dividend is in arrears for 2 years).

5. **Variation of Shareholder's Rights [Sec.48]**

- The rights attached to the shares of any class (i.e., class rights) may be varied with the consent of 3/4th shareholders or by passing a special resolution in class meeting of such shareholders.
- Variation must be authorized by MoA or not prohibited by terms of issue.
- Dissenting shareholders holding 10% may apply to tribunal, within 21 days, for cancellation of variation. Decision of the Tribunal, shall be binding on all the shareholders.
- Order of the Tribunal shall be filed, by the Co, with Roc, within 30 days of the date of Order.

6. **Issue of Shares At Premium (SEC.52)**

- Premium on issue of shares shall be transferred to "Securities Premium Account".
- Co's prescribed u/s 133 can utilize the premium for issue of bonus shares, writing off issue expenses or buy back of shares. Other Co's can utilize for 2 additional purposes such as premium on redemption or writing of preliminary expenses.
- If premium is utilized for any purposes other than the prescribed purpose, then provisions relating to reduction of share capital shall apply.

7. **Issue of Shares At Discount (Sec.53)**

- A company shall not issue shares at a discount. If issued they shall be void.
- A Co can issue shares at a discount price u/s 54 i.e., issue of sweat equity shares.
- A Co may issue shares at a discount to its creditors when their debt is converted into shares in pursuance of debt restructuring scheme in accordance with RBI regulations.
- For Contravenes the Co shall pay fine ranging from ₹ 1 Lack to ₹ 5 Lacks;

8. **Issue of Sweat Equity Shares (Sec.54)**

- If the equity shares of the Co are listed then, the sweat equity shares shall be issued in accordance SEBI regulations or else in accordance with share capital and debentures rules.
- Sweat equity shares are issued to directors or employees for cash or for consideration other than cash for providing intellectual property rights or value additions to the company.
- Sweat equity shares must be of a class of shares already issued.
- The issue of SES must be authorized by Special Resolution passed by the Company.
- Persons holding sweat equity shares shall rank pari-passu with other equity shareholders

9. **Issue of Preference Shares (SEC.55)**

- Authorization in the AoA - Only redeemable preference shares can be issued.
- The **Term of the preference shares** shall not exceed 20 years. A company dealing with infrastructural projects may issue preference shares for up to 30 years.
- Only fully paid preference shares can be redeemed.
- Redemption may be out of distributable profits (CRR to be created) or fresh issue of shares.
- Co's prescribed u/s 133 can pay premium out of distributable profits and other Co's can pay premium out of distributable profits or out of securities premium account.

- If the Co is not in a position to redeem or to pay dividend, then new redeemable preference shares may be issued by taking consent from 3/4th shareholders and the approval of tribunal.
- Shares held by persons who have not consented shall be redeemed forthwith.

10. Further Issue of Shares [Sec.62]

Ways of Increasing the Subscribed Capital – Rights Issue – ESOP – Preferential Allotment – Conversion of loans or debentures.

Procedure & Conditions for rights Issue

1. Letter of offer shall be sent through RP/SP/E-Mode or Courier 3 days before issue opening.
2. The notice of such offer shall specify the number of shares offered, time limit for subscription (15 to 30 days), right of renunciation.

Employees Stock Option

a. Special resolution to be passed by the Company.
b. In case of Private Co and Specified IFSC Public Co, Ordinary Resolution shall be sufficient.
c. Rule-12 shall be complied by companies to whom SEBI guidelines are not applicable.
Preferential Offer – SR to be passed – For cash or other than cash – Price determined by valuer – Rule-13 and Sec.42 to be complied.

Conversion of Borrowings from Government - Conversion ordered by Government in public interest – conversion even if terms of issue do not permit – terms of conversion determined by Govt – appeal to tribunal, within 60 days, if Co not satisfied with the terms fixed by Govt - Authorized capital increased amount of conversion.

Other Borrowings – Conversion only if terms of issue approved by SR and permits conversion.

11. Issue of Bonus Shares (Sec.63)

1. Authorized by AoA, Recommended by BoD (cannot be withdrawn) and Approved by Mbrs.
2. Partly-paid shares to be made fully paid-up by capitalization of profits or reserves.
3. Issued out of free reserves, securities premium or CRR but not out of revaluation reserves.
4. Cannot be issued if defaulted in deposits, employee's statutory dues or in lieu of dividend.

12. Alteration of Share Capital [Sec.61]

- Authorized by its articles.
- **Modes of Alteration** – Increase of Authorized capital, cancellation of unsubscribed shares, Consolidation of shares, Sub-division of shares, Conversion of shares into stock or vice-versa.
- **Procedure** - Board Meeting to be held – Notice and Explanatory statement circulated – Memorandum to be altered – Notice of alteration to be filed with RoC within 30 days.

13. Notice to be given to Registrar for Alteration of Share Capital [Sec.64]

1. SH-7 along with the altered memorandum - to be filed with RoC within 30 days.
2. **Applicability** – Alteration of share capital u/s 61 – Conversion of borrowings from Govt u/s 62 – Redemption of preference shares

14. Unlimited Company to Provide for Reserve Share Capital on Conversion [Sec.65]

Reserve capital created by increasing the Authorized capital or reserving a portion of the existing uncalled capital.

15. Reduction Of Share Capital [Sec.66]

Ways of Reducing the Capital – reducing the unpaid capital – cancellation of paid-up capital not represented by available assets – paying off excess capital.

Procedure for reduction of capital

1. A Special Resolution to be passed and an Application shall be filed with tribunal.
2. The Tribunal shall give notice of application to CG/RD, RoC, SEBI and Creditors.
3. Representations to be made by above authorities within 3 months of notice from tribunal.
4. Security to be created for creditors not consented to reduction.
5. Accounting treatment is in conformity with the accounting standards and certified auditor.
6. There are no arrears with respect to repayment of Deposits or interest thereon.
7. The order confirming the reduction shall be published in the manner as directed by the Tribunal and shall also be filed with RoC.

16. Restrictions on Purchase by Co or Giving of Loans [Sec.67]

- A Co shall not purchase its shares unless capital is reduced or pref. shares are redeemed.
- Nidhi Co can purchase the shares of a member who ceases to be depositor or borrower.
- A Co shall not give any financial assistance in connection with the purchase of shares in such Co or in its Holding Company

Exceptions: - Lending by Banking Co – Lending scheme approved by SR and shares held by trustee for the benefit of employees – Loans to employees other than directors of KMP for up to 6 months salary for purchase of fully paid shares.

Exception to Private Company – No investment by body corporate – Borrowings less than twice its paid up share capital or ₹ 50 crore, whichever is lower; and No subsisting default in such borrowings.

17. Buy-Back Of Shares [Sec.68]

- Shares or other specified securities can be bought back.
- For listed shares SEBI Regulations and for unlisted shares Rule-17 to be complied with.
- Authorized by AoA – SR to be passed (Board resolution if BB up to 10% of PUEC+FR)
- Shares to be bought back must be fully paid-up.
- Fresh buy back can be made only after completion of 1 year from the previous buy-back.
- Declaration of solvency to be filed with SEBI and Registrar.
- There should be no default in payments or filings.
- Total Buy Back in a year shall not exceed 25% of Paid-up Capital and Free Reserves in that year.
- Equity Buy Back in a year shall not exceed 25% of Paid-up Equity Capital in that year.
- BB out of free reserves or out of securities premium (CRR to be created) or out of proceeds of fresh issue of other kind of shares.
- BB from open market or from existing shareholders on proportionate basis or from employees.
- Debt-Equity ratio after BB shall not exceed 2:1.
- The process of buy-back to be completed within 12 months from the date of passing SR/BR.
- Shares physical form must be destroyed within 7 days of completion of buy-back.
- No further issue of same kind of shares within 6 months, except issue of bonus shares or issues of shares in exercise of convertible options.
- Return of BB shall be filed with RoC and SEBI within 30 days of completion of Buy Back.

18. Prohibition for buy-back in certain circumstances [Section 70]

- A Co shall not purchase its own shares: through any Subsidiary Co or Investment Co - If a default is made with respect to deposits, debentures, term loan, preference shares or dividend to shareholders – If default made in Sec.92/123/127/129.

CHAPTER-5B: CALLS AND INCIDENTAL MATTERS [SEC.49-51]

1. Uniform Calls [Sec.49]

- Calls on shares of same class shall be made on uniform basis.
- Shares of same nominal but with different paid-up values shall not be treated as same class.

2. Calls-in-Advance [Sec.50]

- Accept if Authorized by AoA – No voting rights until called up – Liability extinguished – Interest as per AoA – Not refundable – In case of winding up, ranked after creditors.

3. Dividend on Paid-up Amount [Sec.51]

If authorized by Articles, a Co can pay dividend in proportion to the amount paid-up on each share.

CHAPTER-5C: DEBENTURES [SEC.71]

- Debenture includes debenture stock, bonds or any other instrument of a company evidencing Co's debt and may or may not be secured but does not include instruments prescribed by RBI.
- Debentures may be issued with an option to convert into shares but approved by SR.
- Debentures carrying voting rights shall not be issued.
- Debenture Redemption Reserve shall be created out of profits available for payment of dividend and shall be utilized only for redemption of debentures.
- Debenture trustee shall be appointed if the Co issues prospectus or makes an offer or invitation to the public or to members exceeding 500.
- Debenture trustee shall take steps to protect the interests of the debenture-holders.
- When the assets of the Co are insufficient to pay the principal amount of debentures, the Debenture trustee may file a petition to the tribunal. After hearing the parties, the Tribunal may impose restrict the Co from incurring further liabilities.
- Any provision in the Debenture Trust Deed which exempts the liability of trustee for breach of trust shall be void. The liability of trustee may be exempted upon the consent of majority of debenture-holders holding not less than 3/4^{ths} in value.
- Where a Co fails to redeem the debentures or fails to pay the interest, on the due date, then debenture-holders or trustee may file a petition before the tribunal.

CHAPTER-5D: TRANSFER AND TRANSMISSION [Sec.56-59]

1. Requirement for registering the transfer of securities [Sec.56]

- Instrument of transfer, in Form.SH-4, duly stamped/dated/executed shall be delivered to the Co by transferor or transferee within 60 days of execution.
- If Instrument is lost or not delivered within 60 days, an indemnity shall be provided.
- Share certificate or Letter of allotment shall be attached with instrument of transfer.
- Instrument of transfer not required: when both the transferor and transferee has D-Mat A/c - for transfer of bonds issued by a government company – for transmission of shares.
- When partly paid shares are transferred and the application for registration of transfer is made by transferor alone, then the Co shall give a notice to transferee to respond within 2 weeks.
- Co shall deliver the certificate of securities transferred or transmitted within 1 month.

2. Punishment for Personation of shareholder [Section 57]

- If a person, with an intention to deceive, falsely **represents** himself as the owner of security and attempts to obtain such security shall be punishable with imprisonment up to 3 years.

3. Refusal of registration and appeal against refusal [Section 58]

- If a Co refuses to register the transfer or transmission of securities, then it shall send a notice of refusal, specifying the reasons, within 30 days of submission of documents.
- For pvt Co, appeal may be filed to the tribunal within 30 days of receipt of notice of refusal or within 60 days of submission of transfer documents. For public Co it is 60 days and 90 days.
- The tribunal may Direct the Co to register the transfer or transmission or pay damages
- The company shall comply with the tribunal order within 10 days of receipt of the order.

4. Rectification of register of member [Section 59]

- If the name of any person is entered in the register or removed without sufficient cause or delay made in entering or removing, an appeal may be made to tribunal.
- The tribunal may direct the company to register the transfer or transmission within 10 days; or to rectify the register of members.
- If transfer of securities is in contravention of the provisions of SCRA, SEBI Act, CA, 2013, and then the tribunal may set right the contravention and rectify the concerned registers.

CHAPTER-6: DEPOSITS

1. What is Deposit? - 'Deposit' includes: any receipt of money by a Company, by way of deposit or loan or in any other form, but does not include such categories of amount as may be prescribed by CG in consultation with the RBI.

2. What are not Deposits?

1. Amount received from Foreign Governments, CG, SG or Local Authorities, and Statutory Authorities.
2. Amount received from foreign international banks, Multi-lateral Financial Institutions, banking Company and Public Financial Institutions.
3. Amount received by issue of Commercial Papers.
4. Advance towards subscription of securities not refunded within 15 days from expiry of 60 days.
5. Amount raised by issue of bonds or debentures: secured by first charge on the tangible assets, or compulsorily convertible into shares within 10 years or non-convertible debentures & not secured.
6. Amount of ₹ 25 Lakhs or more received by a start-up company by way of convertible note.
7. Amount received from director of a Company or from relative of a director of the private company.
8. Amount received from employees not exceeding their annual salary.
9. Amount received from promoters by way of unsecured loan as per the terms of bank loan.
10. Amount accepted by a Nidhi Company. 11. Amount received as subscription of a Chit.
13. Amount received as an advance for supply of goods or provision of services.
14. Advance received as a consideration for immoveable property.
15. Security deposit for performance of contract.
16. Advance received under long term projects for supply of capital goods.
17. Amount received from other Companies.

3. Acceptance of deposits from Members [Sec. 73(2)]

- Resolution to be passed in general meeting – Terms & conditions agreed between Co & Members.
- Circular shall be issued to members containing financial position, Credit rating obtained, Total number of existing depositors, outstanding amount of deposits accepted earlier.

- Circular shall be filed with Roc within 30 days before the date of issue of circular.
- Deposit Repayment Reserve to be created, on or before the 30th April of each year, to the extent of 20% of the deposits maturing during the following Financial Year.
- The Company has to certify that it has not defaulted in repayment of deposits accepted earlier or has to certify that 5 years had been completed from the date of rectifying such default.
- For **secured deposits**, a charge shall be created on the property or assets of the company. If the deposits are not wholly secured, documents related to deposits shall specifically mention that deposits are "unsecured deposits".
- If Co fails to repay the deposit, the depositor concerned may apply to the Tribunal

<u>Exemption to Private Companies</u> – Provisions of Sec.73(2)(a) to (e) shall not apply:

a. If deposits from members not exceeding 100% of PSC, FR & Securities Premium Account;
b. If Co is a start-up, for 5 years from the date of incorporation;
c. If it is not an associate or subsidiary another Co, the borrowings are less than twice of its paid up share capital or ₹ 50 crores, whichever is lower and no subsisting default in borrowings.

4. Acceptance of Deposits from Public.

- A public company, having a net worth of not less than ₹ 100 Crores or a turnover of not less than ₹ 500 Crores, may accept deposits from persons other than its members by complying with the conditions specified in Sec.73(2) the rules framed by Central Government
- Such Co shall obtain a Credit rating every year during the tenure of deposits. Such rating shall be informed to the public at the time of invitation of deposits.
- Co accepting secured deposits shall create a charge on the assets, within 30 days of acceptance.
- Provisions of Chapter-V shall apply to acceptance of deposits from public.

<u>Exception</u> - Prohibition u/s 73 (1) that a company shall not accept deposits from public except in a manner prescribed in Chapter-V, shall not apply to a banking company, NBFC and a Housing Finance Co.

5. Tenor of Deposits [Rule-3(1)].

- A Co shall not accept deposits repayable more than 36 months after acceptance.
- For the purpose of meeting short-term requirements of funds, A Co may accept or renew deposits for repayment earlier than 6 months, but only up to 10% of (PSC+FR+SP) and not earlier than 3 months.

6. Ceiling On Deposit Amount [Rule-3(3) To (5)]

A. <u>From Members – Following limits are as a % of PSC+FR+SP</u>

- Private Co's – 100%, Eligible Co's – 10% and Other Co's – 35%.

<u>Exception to Private Companies</u>

The maximum limit in respect of deposits to be accepted from members shall not apply to following private companies exempted from certain requirements of Sec.73 (2) – Exemptions in Q.No.3 above.

<u>From Others</u> – Eligible Co – 25%. Govt Co's – 35%.

7. Creation of Security for Deposits [Rule-6]

- Charge created on specific moveable or specific immoveable tangible assets referred in Sch-III shall not be less than the deposit amount and created in favor of trustee for depositors.

8. Appointment of Trustee for Depositors [Rule-7]

- Appointed for secured deposits after taking written consent and disclosed in circular
- T**rust deed** in Form DPT-2 at least 7 days before issuing the circular

<u>Dis-Qualifications</u> – Following persons shall not be appointed as trustee for Depositors:

a) Director, KMP or officer or an employee, or a person who is indebted to the Co or its holding, subsidiary or associate

b) Relative of above mentioned persons.
c) A person who has any material monetary relationship with the company;
d) Guarantor in respect of principal debts secured by the deposits or interest thereon;

Removal – Before the expiry of his term, a trustee for depositors can be removed with the consent of all the directors present at a meeting of the board. If the Company has an Independent Director, such director shall present at that meeting.

9. Register of Deposits [Rule-14]

Name, address and PAN of the depositor/s - Particulars of guardian, in case of a minor; Particulars of the nominee - Deposit receipt number - Date and the amount of each deposit Duration of the deposit and the date on which each deposit is repayable - Rate of interest payable; Due date for payment of interest - Instructions for payment of interest and for non-deduction of tax at source - Particulars of security or charge created for repayment of deposits;

10. Return of Deposits [Rule-16]

With RoC - in Form.DPT-3 - on or before 30th June – contains audited information, as on 31st march.

11. Disclosures in the financial statement [Rule-16A].

Money received from directors (All Co's). Money received from relatives of directors (only Pvt Co's).

12. Consequences for default in relation to deposits [Sec.76A].

Applicability – Contravention in acceptance of deposits from members or from public or Contravention in repayment of deposits to members or to public.

Consequences of Unintentional default

i. Company shall be punishable with fine ranging from (₹ 1 Crore or twice the amount of deposit accepted by the Co, whichever is lower); to ₹ 10 Crores
ii. Every officer of the Co, who is in default, shall be punishable with Imprisonment up to 7 years; and Fine ranging from ₹ 25 Lakhs to ₹ 2 Crores

Consequences of Intentional default - If the contravention is with a view to deceive the Co or its shareholders or depositors or creditors or tax authorities, then liability U/s 447 will be attracted.

CHAPTER-7: CHARGES

CHARGE – means an interest or lien Created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage

1. Registration of Charges by Company (Sec.77)

- Every Co creating a charge shall register, the particulars of such charge together with the instrument creating the charge, with the Registrar, within 30 days of creation of charge.
- Registrar may allow the registration within 300 days, if application is filed by the co along with a declaration regarding no effect on creditors and accompanied by additional fees.
- After 300 days, the company shall seek extension of time in accordance with section 87.
- Where a charge is registered, the Registrar shall issue a certificate of registration.
- Registration of a charge shall not affect the rights acquired prior to registration.
- Where charge is registered, person acquiring property deemed to have notice of such charge.
- If the Certificate of registration is not given, Liquidator/Creditors shall not consider the charge.
- Non-registration of charge shall not affect the obligation to repay the borrowed money.

2. Registration of Charge by Charge Holder (Sec.78)

- Where Co fails to register within 30 days, the charge holder may apply for registration.
- The registrar may register the charge after giving at least 14 days notice to the company.
- The charge holder is entitled to recover from the company, the fees paid to the registrar.

3. Modification of Charge [Sec.79]

- Modification includes variation of terms or rate of interest and assignment of rights.
- Examples- Enhancement or Decrease of Limits, Ceding a pari-passu charge, Change in the rate of interest (other than bank rate), Change in repayment schedule of Loan (not applicable to working capital loans repayable on demand) and Partial release of charge or asset.
- Provisions relating to registration of charge shall apply to any modification.
- Where modification is registered, RoC shall issue a certificate which is conclusive evidence.

4. Verification of Instrument evidencing creation of charge.

Property wholly situated outside India - Under the Common Seal; by any director; by company secretary; by an officer of the charge holder; or by a person interested in the mortgage or charge.
Property wholly or partly situated Inside - By Director, CS or officer of charge holder.

5. Reporting satisfaction of charge by the company (Sec.82)

- Co shall give intimation the payment of debt/Satisfaction of charge to RoC within 30 days.
- The registrar may, upon payment of addition fees, allow intimation within 300 days.
- RoC shall send a notice to charge holder unless the intimation is signed by the charge holder.
- If no cause is shown by the charge holder, RoC shall register memorandum of satisfaction .
- If a cause is shown by the charge holder, the registrar shall inform the company.

6. Registering the Satisfaction of charge without intimation from the Co(Sec.83)

- If the evidence is shown to RoC that debt has been paid or property released or ceased to be the property of the co, the RoC may register memorandum of satisfaction of charge.
- The register shall inform the affected parties within 30 days of Registering.
- Registrar shall issue a certificate of registration of satisfaction of charge in Form No.CHG-5.

7. Intimation of Appointment of Receiver or Manager (Sec.84)

- Appointment of receiver/manager for charged property shall be intimated to RoC in 30 days
- The registrar shall enter the particulars of such receiver, in the register of charges.
- If receiver or manager ceases to hold his office, the same shall be intimated to Co & RoC.

8. Rectification in the register of charges (Sec.87)

- If the company omits to file the particulars of creation, modification or satisfaction of charge within the required time or if there is a mis-statement and it was accidental and not prejudice to creditors, CG/RD may extend time for filing and direct rectification of register of charges.
- CG/RD order shall not prejudice any rights acquired, before the charge is actually registered.
- Application to CG shall be filed in CHG-8.
- Orders passed by the CG shall be required to be filed with the registrar in Form.INC-28.

9. Punishment for contravention of above provisions (Sec.86)

For contravention of Chapter VI, the Co shall pay fine ranging from ₹ 1,00,000 to ₹ 10,00,000 and every officer of the company who is in default shall be punishable with Imprisonment for up to 6 months; or Fine ranging from ₹ 25,000 to ₹ 1,00,000; or Both.