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CA - INTER

LAW SUMMARIZED

THE ULTIMATE SOLUTION

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CA SHUBHAM SINGHAL

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Chapter 1
Preliminary

Objective of this Act

Act to consolidate and amend the law relating to companies.

Enactment

- Received the assent of the Hon'ble President of India on 29th August 2013
- Notified in Official Gazette on 30th Aug 2013 (different dates may be appointed for enforcement)

Flow

29 Chapters → 470 Sections → 7 Schedules

Company: An incorporated association which is an artificial person, having a separate legal entity, with a perpetual succession, a common seal (optional).

Section 1: Short Title, Extent, Commencement and Application:

Short Title	Companies Act, 2013
Extent	Whole of India (by default includes J&K)
Commencement	From date as appointed by CG by notification in OG
Applicability	The provision of this Act shall apply to: a. companies incorporated under this Act or under any previous company law. b. insurance cos., except where provisions are inconsistent with that of Insurance Act, 1938 or IRDA Act, 1999; c. banking companies, except where provisions are inconsistent with that of Banking Regulation Act, 1949 d. cos. engaged in generation/supply of electricity, except where provisions are inconsistent with that of Electricity Act, 2003 e. other company governed by any Special Act, except where provisions are inconsistent with that of Special Act (Ex: LIC, RBI) f. such body corporate, incorporated by any Act for the time being in force, as may be notified by CG [Example - Food Corporation of India (FCI), National Highway Authority of India (NHAI)]

Section 2: Definitions: ('Internal aids to construction')

In this Act, unless the context otherwise requires:

1 Abridged Prospectus

Means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf

2 Accounting Standards (AS)

Means AS or any addendum thereto for companies or class of companies referred u/s 133;

Section 133: Central Government to Prescribe Accounting Standards

As per Sec 133, CG may prescribe the AS or any addendum thereto, as recommended by ICAI, constituted u/s 3 of the CA Act, 1949, in consultation with and after examination of recommendations made by National Financial Reporting Authority (NFRA)

Rule 7 of Companies (Accounts) Rules, 2014: Accordingly,

i. The standards of accounting as specified under Companies Act, 1956 shall be deemed to be AS until AS are specified by CG u/s 133.
ii. Till the NFRA is constituted u/s 132 of the Act, the CG may prescribe AS or any addendum thereto, as recommended by ICAI in consultation with and after examination of recommendations made by National Advisory Committee(NAC) on AS constituted u/s 210A of Companies Act, 1956.

Further, in exercise of powers conferred u/s 133, the CG in consultation with the NAC on AS prescribed that Companies (AS) Rules, 2006 and Companies (Ind AS) Rules, 2015 may be followed.

3 Alter or Alteration

Includes the making of additions, omissions and substitutions;

5 Articles

Means the articles of association of a company:

- as originally framed, or
- as altered from time to time, or
- applied in pursuance of any previous company law or this Act;

6 Associate Company

In relation to another co., means a company in which that other co. has a significant influence, but which is not a subsidiary co. of the co. having such influence and includes a joint venture.

Explanation: For the purpose of this clause:

(a) "Significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement;
(b) "Joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement

Clarification: Shares held by a company in another company in a fiduciary capacity shall not be counted for the purpose of determining the relationship of associate company

A fiduciary is a person who holds a legal or ethical relationship of trust with one of more parties (persons or group of persons). Typically, a fiduciary prudently takes care of money or other assets for another person.

7 Auditing standards
means the standards of auditing or any addendum thereto for companies or class of companies referred to u/s 143(10)

Section 143(10) - CG may prescribe the standards of auditing or any addendum thereto, as recommended by ICAI, constituted u/s 3 of the CA Act, 1949, in consultation with and after examination of recommendations made by NFRA.

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.

8 Authorised Capital or Nominal Capital
means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;

10 Board of Directors or Board
means the collective body of the directors of the company

11 Body corporate or Corporation
Includes a company incorporated outside India, but does not include:
i. a co-operative society registered under any law relating to co-operative societies; and
ii. any other body corporate (not being a company as defined in this Act), notified by CG;

12 "Book and Paper" and "Book or Paper": Includes: [WARM DVD]

- Books of Accounts
- Deeds
- Voucher
- Writings
- Documents
- Minutes
- Registers

maintained on paper or in electronic form;

13 "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 u/s 148 in the case of a company which belongs to any class of companies specified under that section;

14 Branch office, in relation to a company, means any establishment described as such by the co.;

15 Called-up capital means such part of the capital, which has been called for payment;

16 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;

17 Chartered Accountant means a CA as defined in section 2(1)(b) of the Chartered Accountants Act, 1949 who holds a valid certificate of practice u/ss 6(1) of that Act;

18 Chief Executive Officer means an officer of a company, who has been designated as such by it;

19 Chief Financial Officer means a person appointed as the Chief Financial Officer of a company;

20 Company means a company incorporated under this Act or under any previous company law;
Example: RIL (1973), Tata Steel (1907), Infosys (1981).

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

22 Company limited by shares means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;
Example: A shareholder who has paid Rs. 75 on a share of face value Rs. 100 can be called upon to pay the balance of Rs. 25 only.

26 Contributory means a person liable to contribute towards the assets of the company in the event of its being wound up.
Explanation: For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;

27 Control shall include:
- the right to appoint majority of the directors or
- to control the management or policy decisions exercisable by a person(s) 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

30 Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.
Provided that, following instrument shall not be shall not be treated as debenture:
a. instruments referred to in Chapter III-D of the RBI Act, 1934; and
b. such other instrument, as may be prescribed by CG in consultation with RBI, issued by Co.

34 Director means a director appointed to the Board of a company;

35 Dividend includes any interim dividend;

36 Document includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;

37 Employees stock option 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, officers 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 price;

38 "Expert" includes an engineer, a valuer, a CA, a CS, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

2 40 Financial statement in relation to a company, includes:

i. 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 (CFS) 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 doc. referred in above sub-clause:

*Provided that the FS, with respect to OPC, small co. and dormant co. and Private company (startup), may not include CFS;

4 41 Financial Year, in relation to any company or BC, means period ending on 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof FS of the company or BC is made up.

Provided that where a company or BC, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different FY for consolidation of its accounts outside India, the CG may, on an application made by that company or BC in such form and manner as may be prescribed, allow any period as its FY, whether or not that period is a year.

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, following shall not be treated as free reserve:

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;

44 Global Depository Receipt (GDR): means any instrument in the form of a depository receipt, by whatever name called:

- created by a foreign depository outside India and
- authorised by a company making an issue of such depository receipts.

45 Government company means:

- any co. in which not less than 51% of paid-up share capital is held by CG, or by any SG, or partly by CG and partly by one or more SG, and
- includes a company which is a subsidiary co. of such Government co.;

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

50 Issued Capital means such capital as the company issues from time to time for subscription;

51 Key Managerial Personnel, in relation to a company, means:

- the CEO or the managing director or the manager;
- the company secretary;
- the whole-time director;
- the Chief Financial Officer here
- such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- such other officer as may be prescribed;

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52 Listed company means a company which has any of its securities listed on any recognised stock exchange ("RSE");

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the SEBI, shall not be considered as listed companies.

According to Rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:

a. Public companies which have not listed their equity shares on a RSE but have listed their:
   i. non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
   ii. non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013;
   iii. both categories of (i) and (ii) above.

b. Private companies which have listed their non-convertible debt securities on private placement basis on a RSE in terms of SEBI Regulation, 2008;

c. Public companies which have not listed their equity shares on a RSE but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sec 23(3) of the Act.

53 Manager means an individual who:

- subject to the superintendence, control and direction of the Board of Directors,
- has the management of whole, or substantially the whole, of the affairs of a company, and
- includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

54 Managing Director means a director who

- By virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors,
- is entrusted with substantial powers of management of the affairs of the company and
- includes a director occupying the position of managing director, by whatever name called.

Explanation: For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board shall not be deemed to be included within the substantial powers of management;

Power to do administrative act:

- power to affix the common seal to any document
- draw and endorse any cheque in any bank
- draw and endorse any negotiable instrument
- sign any certificate of share
- direct registration of transfer of any share

55 Member in relation to a company, means:

i. the subscriber to the memorandum of co. who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
ii. every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
iii. every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

56 Memorandum means the MoA of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;

3 57 Net worth means the:

Aggregate value of:	After deducting aggregate value of:	Does NOT include:
1. paid-up share capital, 2. All reserves created out of the profits, 3. Securities premium account & 4. debit or credit balance of P&L	1. the accumulated losses, 2. deferred expenditure & 3. miscellaneous expense not written off	1. Reserve created out of revaluatn of assets 2. Write-back of depreciation and amalgamation

58 Notification means a notification published in OG and expression "notify" to be construed accordingly;

59 Officer includes any director, manager or KMP or any person in accordance with whose directions or instructions the BoD or any one or more of the directors is or are accustomed to act;

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60 Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:

(i) Whole-time director;

(ii) KMP;

(iii) where there is no KMP, such director(s) as specified by the Board in this behalf and who has or have given his consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of Board/KMP, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the BoD of co. is accustomed to act, other than a person who gives advice to BoD in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

62 One Person Company (OPC) means a company which has only one person as a member;

63 Ordinary or Special Resolution means an OR/SR as referred to in section 114;

64 Paid-up share capital or share capital paid-up means:
such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

65 Postal ballot means voting by post or through any e-mode;

66 Prescribed means prescribed by rules made under this Act;

68 Private Company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

i. restricts the right to transfer its shares;

ii. except in case of OPC, limits the number of its members to 200:

Provided that in case joint holding – Treat them as single member.

Provided further, following shall not be included in number of members:

a. persons who are in the employment of the company; and

b. persons who, having been formerly in employment of co., were members of co. while in that employment and have continued to be members after employment ceased.

iii. prohibits any invitation to the public to subscribe for any securities of the company;

The requirement of having a minimum PUSC shall not apply to a Section 8 provided it has not committed a default in filing its financial statements u/s 137 or annual return u/s 92 with RoC.

69 Promoter means a person:

a) who has been named as such in a prospectus or is identified by co. in annual return u/s 92,

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 the company is accustomed to act (except where such person is acting merely in professional capacity)

70 Prospectus means any document described or issued as a prospectus and includes a red herring prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

71 Public company means a company which:

i. is not a private company; and

ii. has a minimum paid-up share capital as may be prescribed (N.A. to Sec 8 companies)

Provided that subsidiary of a public co. shall be deemed to be public co. for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;

74 Register of companies means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

75 Registrar means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act

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76 Related Party:

- **Person**
  - Director and Relatives
  - KMP and Relatives
- **Firm**
  - Director, Manager or relative is a partner
- **Private Company**
  - Director, Manager or Relative is - Member or Director
- **Public Company**
  - Such director or manager ~~or Relative~~ is - a director AND holds along with relatives >2% of PUSC
- **Body Corporate (N.A to Private Company)**
  - BOD / MD / Manager is accustomed to act as per advice or instruction of director or manager ~~and relative~~
  - holding, subsidiary, co-subsidiary or associate of such company
  - Investing company or venturer of the company (such investment leads to the company becoming associate)
- **Any person**
  - on whose advice or instruction of director or manager and ~~relative~~ is accustomed to act
- **Other person**
  - As may be prescribed

    Director (other than I.D), KMP of the holding co. or relatives of such directors or KMP

77 Relative:

Anyone who is related to another and covers the following:

a) they are members of a HUF (Hindu Undivided Family);
b) they are husband and wife; or
c) one person is related to the other in the prescribed manner as under:

Father (including step-father);	Mother (including step-mother);	Son (including step-son);	Son's wife;
Daughter ~~(including step-daughter)~~;	Daughter's husband;	Brother (including the step-brother);	Sister (including the step-sister).

78 Remuneration means any money, or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961

84 Share means a share in the share capital of a company and includes stock;

85 Small company means a company, other than a public company: 5 7 11

i. PUSC of which does not exceed Rs. 50 lakh or such higher amount as may be prescribed which shall not be > Rs. 10 crores; and
ii. turnover of which as per P&L account for the immediately preceding FY does not exceed Rs. 2 cr. or such higher amount as may be prescribed which shall not be > Rs. 100 cr.

Provided that nothing in this clause shall apply to:

i. a holding company or a subsidiary company;
ii. a company registered under section 8; or
iii. a company or body corporate governed by any special Act.

As per the Companies (Specification of Definitions Details) Rules, 2014, for section 2(85), PUSC and T/O of small company shall not exceed Rs. 4 crores and Rs. 40 crores respectively.
[Amendment]

86 Subscribed capital means such part of the capital which is for the time being subscribed by the members of a company;

87 Subsidiary company or Subsidiary, in relation to any other co., means a company in which the holding company:
i. controls the composition of the Board of Directors; or
ii. exercises or controls more than $\frac{1}{2}$ of the total voting power either at its own or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation: For the purposes of this clause:
a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or (ii) is of another subsidiary co. of holding co.;
b) the composition of a company's BoD shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
c) the expression "company" includes any body corporate;
d) layer in relation to a holding company means its subsidiary or subsidiaries;

Note - Shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for purpose of determining the holding – subsidiary relationship.

88 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.

89 Total voting power, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote are present at the meeting and cast their votes;

90 Tribunal means the NCLT constituted u/s 408;

91 Turnover means the gross amount of revenue recognised in the P&L account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a FY;

92 Unlimited company means a company not having any limit on the liability of its members;

93 Voting Right means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;

The End

Chapter 2
Incorporation of Company and Matters incidental thereto.

Summary of Forms:

Form No.	Sec.	Use
INC-03	3	Consent of nominee while formation of OPC
INC-04	3	OPC to inform ROC within 30 days of replacement of nominee or withdrawal
INC-08	7	Declaration of compliance of Act or Rules during incorporation of co.
INC-09	7	Declaration by subscribers to MoA and First Directors
INC-11	7	CoI issued on registration of company
INC-13	8	MoA of Section 8 company
INC-14	8	Declaration by CA/CS/Cost account w.r.t compliance at incorporation
INC-15	8	Declaration by person making application for incorporation of sec 8 co.
INC-18	8	Application to RD for conversion of Section 8 Co. to any other kind
INC-19	8	Notice to be published within a week of application in INC-18
INC-20A	10A	Declaration by director that every subscriber has paid the due amount
INC-22	12	Notice of change in situation of RO to be verified
INC-23	13	Application for change of RO from one state to another
INC-24	13	Application for change in name to ROC u/s 13
INC-25	13	Fresh COI issued after change in name on application in INC-25
INC-26	13	Form for advertisement regarding application to CG for change of RO
INC-27	14	Altered AoA to be filed with RoC for registration
INC-28	13	File with RoC a copy of order of CG approving change of RO
INC-31	8	AoA for Section 8 company.
INC-32	7	SPICe+ Form to incorporate a company
INC-33	7	E-MoA to be furnished to RoC at the time of incorporation
INC-34	7	E-AoA to be furnished to RoC at the time of incorporation

Introduction to the Chapter:

- A person who initiates promotion of a company is called as Promoter [as defined u/s 2(69)]
- In this chapter we are going to read about – Incorporation of company, constitutional documents (MoA and AoA) and various other key provisions.
- Types of company on the basis of Liability:

Limited by Shares	Limited by Guarantee with Share Capital	Limited by Guarantee without Share Capital	Unlimited company with Share Capital	Unlimited company without Share Capital

Note – Specified IFSC company shall be formed only as company limited by shares.

Understanding the concept of Promotor:

- A promoter is one who undertakes to form a company w.r.t. a given project, and to set it going, and who takes the necessary steps to accomplish that purpose.
- To be a promoter, one need not necessarily be associated with the initial formation of the company; one who subsequently helps to arrange floating of its capital will equally be regarded as a promoter.
- Hence, "promoter" denotes any individual, association, partnership or a company that takes all the necessary steps to incorporate (create and mould) a company and set it going, in a fiduciary position.

Section 3 – Formation of Company:

A company may be formed for any lawful purpose by:

(a) > = 7 persons in case of a public company;

(b) > = 2 persons in case of a private company; or

(c) 1 person, where the company to be formed is to be OPC that is to say, a private company, by subscribing to a memorandum and complying with the requirements of this Act.

In case of OPC, MoA to specify nominee:

1. Nominate a person: In case of OPC, the MoA shall indicate:
   - the name of the other person,
   - with his prior written consent in the prescribed form,
   - who shall, in the event of the subscriber's death or his incapacity to contract
   - become the member of the company

   The written consent so obtained shall also be filed with the Registrar at the time of incorporation of the OPC along with its MoA and AoA

2. Withdrawal:
   - Nominee may withdraw consent by giving a notice in writing to the sole member and to OPC.
   - Sole member shall nominate another person within 15 days of such withdrawal.
   - Send intimation of such nomination + written consent (Form INC 3)
   - OPC to inform RoC in Form INC-4 within 30 days of withdrawal of nomination.

3. Replacement of Nominee - Member of OPC may, at any time, change the name of Nominee by:
   - Member to obtain written consent of new nominee (INC-3)
   - Intimate the company about such change.
   - OPC to inform RoC in Form INC-4 within 30 days of intimate of change of nominee from member.
   - Change of such name shall NOT be deemed as Alteration of MoA

Section 3A – Members severally liable in certain cases:

If at any time, the no. of members is reduced below prescribed limit i.e., 7 (public) or 2 (private)

+

Company carries on business for > 6 months while no. of members is so reduced

Every person who is a member during the time that it so carries on business after those 6m and is cognizant of the fact that business is carried on by reduced member, such members shall be severally liable for payment of whole debts contracted during that time, and may be severally sued therefor.

Section 4 – Memorandum of Association: [As defined u/s 2(56)]

Basics of MoA:

- Base document for the formation of the company (MoA + AoA = Constitutional Document)
- Content of MoA need to be in compliance with Companies Act, 2013
- MoA contains object for formation of co. beyond which its actions cannot go.
- A memorandum is a public document u/s 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have knowledge of conditions contained therein.
- Shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.
- Co. cannot depart from provisions contained in MoA – Otherwise, ultra vires Act.

Legal provision:

1. The MoA of a company shall state: [*NR SOLO*]

the Name of co. with last word "Limited" (public) or "Private Limited" (Pvt co.); (Not applicable to Sec 8 Co.)	the state in which the Registered office of the company is to be situated	Objects for which the company is proposed to be incorporated and any matter incidental thereto
the Liability of members of company, whether limited or unlimited**	In case of company having SC: a. Amount of registered SC (divided into amt and no. of shares) b. the no. of shares each subscriber intends to take opposite to his name	in case of OPC → Name of person who, in event of death of subscriber, shall become the member of OPC (nominee).

** Liability clause: State that liability is limited to unpaid amt of shares (in case of co. limited by shares) or amt upto which member undertake to contribute in event of winding up (in case of ltd. by Guarantee). List A and List B is to be prepared (to be discussed in accounts).

2. Name Clause: The name stated in the memorandum shall:
   (a) NOT be identical with or resemble too nearly to name of an existing co. under this/previous Act;
   (b) NOT be such that its use by the company:
      (i) will constitute an offence under any law for the time being in force; or
      (ii) is undesirable in the opinion of the CG (power delegated to RoC).

A name is said to "resemble" when difference is only of:

- Plural or Singular
- Spacing between letter or punctuation marks
- Use of different tenses
- Slight variation of spelling (Disc Ltd vs Disk Ltd.)
- Different phonetic spellings (Jay Kay Ltd. and JK Ltd)
- Complete translation in Hindi or English (National Service Ltd vs. Rashtriya Seva Ltd)
- Use of www. or ".net" etc. (SS Ltd vs SS.com Ltd)
- Order of words is similar (Ravi Builders and Teacher Ltd. vs Ravi Teacher and Builder Ltd)
- Addition of name of place
- Addition or deletion of numerals (unless numerals represent brand)

3. Without prejudice to provision u/ss (2), a co. shall not be registered with a name which contains:
   a. any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the CG, any SG, or any local authority, corporation or body constituted by the CG/SG under any law for the time being in force; or
   b. such word or expression, as may be prescribed,

unless the previous approval of CG has been obtained for the use of any such word or expression.

Rule 8B of Companies (Incorporation) Rules, 2014:

Following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the CG has been obtained:

➢ Board; ➢ Union; ➢ Nation; ➢ Central; ➢ Federal; ➢ Bureau	➢ National; ➢ Republic; ➢ President ➢ Minister; ➢ Governor; ➢ Rashtrapati; ➢ PM or CM;	➢ Authority; ➢ Municipal; ➢ Panchayat; ➢ Commission; ➢ Undertaking;	➢ Forest corporation; ➢ Development Scheme; ➢ Court or Judiciary; ➢ Statute or Statutory;	➢ Development Authority; ➢ Small Scale Industries; ➢ Financial Corporation and the like; ➢ Khadi and Village Industries Corporation;
➢ The use of word of Scheme with the name of Government (s), State, India, Bharat or any Government authority or in any manner resembling with the schemes launched by CG/SG or local Governments/auth				

Approval of Regulator:

If the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

Bonus Points:

a. In case of Govt co., the suffix – "Pvt Ltd" or "Ltd" is not required provided 92 + 137
b. In case of OPC, add the suffix – (OPC) Private Limited

4. A person may make an application (SPICe+/RUN form) to Registrar for reservation of a name as:
(a) the name of the proposed company; or
(b) the name to which the company proposes to change its name.
Resubmission may be allowed within 15 days, in case of any defect.

5. Reservation of Name:
   a. Upon receipt of appln u/ss (4), the Registrar may, on the basis of info. and docs furnished with application, reserve the name:

For 20 days	From approval or such other prescribed period in case of New Company
For 60 days	From approval in case of Existing Company.

Rule 9A: Application for extension of time can be made before expiry of 20 days as follows:

Another 20 days (Total 40 days)	Fees Rs. 1,000
Further 20 days (Total 60 days)	Fees Rs. 2,000
40 days in one go (Total 60 days)	Fees Rs. 3,000

   b. Where after reservation, it is found that name was applied by furnishing wrong or incorrect info, then:

If co. is not yet incorporated	Cancel reserved name + Applicant liable for penalty upto Rs. 1L
If company is incorporated	Registrar may, after giving the company an OOBH,: a. direct co. to change name within 3m, after passing an OR; b. take action for striking off name of co. from register; or c. make a petition for winding up of the company.

General Circular No. 29/2014 dated 11th of July, 2014:

CG directed Registrar that while allotting names to Cos./LLPs, the RoC concerned should exercise due care to ensure that the names are not in contravention of the provisions of the "Emblems and Names (Prevention of Improper Use) Act, 1950. It is necessary that Registrars are fully familiar with the provisions of the said Act.

6. MoA shall be in respective forms specified in Tables A, B, C, D and E in Sch I as may be applicable.

7. In case of co. limited by guarantee and not having a share capital - Any provision in MoA/AoA purporting to give any person a right to participate in divisible profits of co. otherwise than as a member, shall be void.

Doctrine of Ultra Vires

- Whatever is not stated in MoA as objects of co. is prohibited by doctrine of ultra vires.
- An act which is ultra vires is void and does not bind the company.
- Neither the company nor the contracting party can sue on it.
- The co. cannot make it valid, even if every member assents to it (i.e., such act cannot be ratified)

Important Case Laws:

Rajendra Nath Dutta v. Shailendra Nath Mukherjee, 1982

An act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form.

House of Lords in - Ashbury Railway Carriage and Iron Co. Ltd. v. Riche

Facts of the case:

- MoA defined its objects as - "The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers and general contractors…….".
- 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 finance contract and, therefore, it was within the powers of the company.
- More so because the contract was ratified by a majority of shareholders, it is a valid contract.

Decision by 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.
- The Court held that if every shareholder of the company had been in the room and had said, "That is a contract which we desire to make, which we authorise the directors to make", still it would be ultra vires.
- The shareholders cannot ratify such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

Author's Note - The purpose of doctrine of ultra vires has been defeated as now the object clause can be easily altered, by passing just a special resolution by the shareholders.

Section 5 – Article of Association: [Defined u/s 2(5)]

[Nothing in this sec shall apply to articles of a company registered under previous act]

1. AoA shall contain the regulations for management of the company (internal rules and regulations)

2. AoA to include such matters, as may be prescribed.
   Provided that co. may include additional matters in AoA as considered necessary for management.

   Entrenchment Provision:

3. AoA may contain provisions for entrenchment
   Effect of such provision - AoA may be altered only if conditions or procedures as that are more restrictive than those applicable in case of special resolution, are met or complied with.

4. Provisions for entrenchment shall only be made:
   - either on formation of a company, or
   - by an amendment in AoA agreed to by:
     i) all members (in case of private company) or
     ii) by a special resolution (in case of public company)

5. Where AoA contain prov. for entrenchment → Co. shall give notice to Registrar of such provision in SPICe+ (new companies) or MGT-14 (within 30 days of entrenchment provision)

6. AoA shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as applicable to such co.

7. A co. may adopt all or any of the regulations contained in model articles applicable to such co.

8. Where registered AoA do not exclude or modify regulation contained in model AoA applicable to such co., the regulations (in model AoA) shall be deemed to be regulation of such co. as if they were contained in duly registered AoA of the co.

Doctrine of Indoor Management:

- Persons dealing with the co. cannot be assumed to have knowledge of internal problems of co.
- Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that it is all done.
- The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the RoC.

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

The DIM evolved around 150 years ago in the context of the DCN. The role of DIM is opposed to the role of DCN. Whereas the DCN protects a company against outsiders, the DIM protects outsiders against the actions of a company. This doctrine also is a possible safeguard against the possibility of abusing the DCN.

Basis for Doctrine of Indoor Management

- What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
- If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Exceptions to DIM (i.e., Applicability of DCN):

a. Knowledge of irregularity: In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under DIM would no longer be available. In fact, he/she may well be considered part of the irregularity.

b. Negligence: If with a minimum of effort, the irregularities within a company could be discovered, the benefit of the DIM would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.

c. Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

d. Where the question is in regard to the very existence of an agency.

e. Where the act is ultra vires to the company itself.

Section 6 – Act to Override Memorandum, Articles, etc.

Save as otherwise expressly provided in this Act-

a. the provisions of this Act shall have effect notwithstanding anything to the contrary contained in:

MoA/AoA | any agreement executed by co. | BoD resolution or SH resolution

b. any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

Section 7 – Incorporation of Company:

1. File the following documents and information with the Registrar within whose jurisdiction the Registered Office (RO) of a company is proposed to be situated:

MoA (eMOA in INC-33) & AoA (eAOA in INC-34) - duly signed by Subscribers*	Declaration (Form INC-8), that requirement of act w.r.t., incorporation is complied with, by: 1. Advocate, CA, Cost Accountant, CS in practice engaged in formation of co., AND 2. Person named in AoA (director, manager or secretary of co.)	Address for correspondence till RO is estb.
Particulars (name, residential address, nationality and others) of every subscriber + Proof of identity	Particulars of first directors - Names, DIN, residential address, nationality and other particulars + Proof of identity	Related to first directors - Interest in other firms/ BC + Consent to act as directors (DIR -2) filed with ROC in DIR-12

Declaration from each Subscribers and First Directors (in Form INC 9) that:
(a) he is not convicted of offence w.r.t., promotion, formation or mgt. of any co., or
(b) that he has not been found guilty of any fraud/misfeasance or breach of duty to any co. during preceding 5 years AND
(c) all docs filed with RoC for registration contain correct, complete and true information to best of his knowledge and belief

Such documents shall be filed along with application for incorporation in SPICE+ Form INC 32

Rule 13: Steps of Incorporation

Generally -	Each subscriber to add – Name, address, description, occupation (himself and at least 1 witness)
Illiterate Subscriber	Affix thumb impression
Body corporate Subscriber	Director, officer/employee authorized (not himself a subscriber)
LLP Subscriber	Duly authorized partner (not himself a subscriber)
Foreign national Subscriber	Signature to be notarized by Notary
Foreign national visiting India to incorporate a co.	Valid Business Visa required. However, Business visa N.A. for Person of Indian Origin or Overseas Citizen of India

Add on – In case of OPC, file the written consent of nominee in addition to above documents!

2. Issue of Certificate of incorporation ("COI") - RoC shall, on basis of above doc and info, register and issue a COI in Form INC -11.

3. Allotment of Corporate Identity Number (CIN) - RoC shall allot to the co. a CIN, which shall be a distinct identity for the company and which shall also be included in the COI

Decoding CIN of Infosys Limited is L85110KA1981PLC013115:

L	Status – Listed or Unlisted	1981	Year of Inc.
85110	Serial No.	PLC	Public/Private etc. (NPL – Not for profit)
KA	State of inc.	013115	Registration no. with ROC

4. Company shall maintain & preserve at its RO copies of all docs & info. as originally filed u/ss (1) till dissolution.

5. If person furnishes any false/incorrect particulars of info. or suppresses any material info., of which he is aware in any of docs filed with RoC above → Such person shall be liable u/s 447

6. If after incorporation, it is proved that co. is incorporated by furnishing false/incorrect info. or representation or by suppressing any material info. for incorporating such co., or by any fraudulent action:
   a. promoters, first directors & persons making declaration u/s 7(1)(b) shall each be liable u/s 447
   b. Tribunal may, on an application made to it [*MR. LOW*]:
      i. pass orders for regulation of Management of the co. including changes, if any, in its MoA/AoA, in public interest or in the interest of company and its members and creditors; or
      ii. direct that Liability of the members shall be unlimited; or
      iii. direct Removal of the name of the company from the register of companies; or
      iv. pass an order for the Winding up of the company; or
      v. pass such Other orders as it may deem fit

      Prior to such orders – Reasonable OOBH to Co. + take into consideration transaction entered into by co.

Simplified Proforma for Incorporating Company Electronically (SPICe) – For ease of doing business, MCA has now simplified the process of filing forms for incorporation of company though SPICe.

Summary of Incorporation of a Company

Additional points related to incorporation:

- If objects of co. require prior approval of sectorial regulators such as RBI/SEBI, obtain such approval prior to pursuing the objects & declaration in this behalf to be submitted at incorporation.

- In case of Nidhi co., declaration by CG u/s 406 is to be obtained prior to commencement of business + Declaration to the ROC

Formation of One Person Company (OPC):

- MoA of OPC to indicate name of other person (nominee) who becomes member of the OPC in case of death/ incapacity of subscriber.

- When such nominee becomes a member, he shall appoint a new nominee within 15 days of becoming member. OPC to inform RoC in Form INC-4 within 30 days of becoming member.

- Nominee to give his prior written consent in Form INC-3.

- Such written consent to be filed with RoC along with MoA/AoA

- Nominee may withdraw consent any time in prescribed form

- Member of OPC may, at any time, change the name of Nominee by:
  a. Giving notice in prescribed form
  b. Intimating the company about such change
  c. On receipt of such intimation, company to inform Registrar.
  d. Change of such name shall NOT be deemed as Alteration of MoA

- Only a natural person who is an Indian citizen whether resident in India or otherwise:
  - shall be eligible to incorporate OPC; 20
  - shall be a nominee for the sole member of OPC. 31

  "Resident in India" means a person who has stayed in India for > = 120 days during immediately preceding FY.

- A natural person shall not be member of > 1 OPC at any point of time and the said person shall not be a nominee of > 1 OPC.

- Where a natural person being member in OPC becomes member in another such company by virtue of his being a nominee in that OPC, such person shall meet eligibility criteria (as given in point above) within 180 days.

- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

- Such Company cannot be incorporated or converted into a section 8 company. OPC may be converted to private/public companies in certain cases. The procedure of conversion is given in the Rules 6 & 7 of Chapter II of the Companies Act, 2013.

- OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of any BC.

Section 8 - Formation of companies with charitable objects, etc:

1. Where CG (power delegated to RoC) is satisfied that a person/AOP proposed to be registered as Limited co.:
   a. Has its objects to promote –

      Commerce | Art | Science | Sports | Education | Research | Social Welfare | Religion | Charity | Protection of envirnoment | Other Object

   b. intends to apply its profits, if any, or other income in promoting its objects; and
   c. intends to prohibit the payment of any dividend to its members,

   CG may issue a license and thereupon the RoC shall register such company as Limited Company. [Without addition of the word "Limited" or "Pvt. Ltd" as the case may be]

2. Sec 8 co = Privileges and obligation of Limited company.

3. Can a Firm become member of Section 8 company – Yes!

4. Additional points relating to Section 8 co.:
   a. Not alter provision of MoA or AoA w/o prior approval of CG (RoC)
   b. May be converted to any other kind of company – Subject to passing SR at GM approving such conversion and approval of CG (RD)

5. CG (ROC) may suo motu also issue license u/s 8 to an existing public or private co.

6. Revocation of License and conversion to normal company: Where the company:
   a. contravenes any requirements of this section or
   b. contravenes any conditions subject to which a license is issued or
   c. the affairs of co. are conducted fraudulently or in manner violative of objects of co. to public interest,

   CG (RD) may, by order (after reasonable OOBH):
   - revoke license
   - direct the company to Convert its status and
   - change its name to add the word" Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall register the company accordingly:

7. Where license is revoked, CG may, in public interest, order (reasonable OOBH),:
   - winding up under this Act, or
   - amalgamate such co. with other company registered under this section and having similar objects, constitution, powers, rights, etc. to be defined by CG

8. If on winding up/dissolution, there remains, after satisfaction of its liabilities, any asset, it may be:
   a. transfer to another sec 8 co. having similar objects subject to T&C imposed by Tribunal, or
   b. sold & proceeds thereof credited to Insolvency and Bankruptcy Fund formed u/s 224 of IBC

9. Section 8 co. shall amalgamate only with another Sec 8 co. having similar objectives

10. Punishment for default in complying with this section:
    If a co. makes any default in complying with requirements of this section, the co. shall be punishable with fine which shall not be less than Rs. 10 lakhs but which may extend to Rs. 1 crores AND the directors and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 25 lakhs [Amendment]

    Provided that when it is proved that affairs of co. were conducted fraudulently, every OID liable u/s 447.

	Company	Directors and OID
Minimum fine	Rs. 10 lakhs	Rs. 25,000
Maximum fine	Rs. 1 crore	Rs. 25 lakhs
Affairs of co. – fraudulent	-	Sec 447

Steps to incorporate a section 8 company:
1. Application to ROC in SPICe + (INC 32)
2. Documents to be attached to such application:
   a. MoA (INC -13) and AoA (INC – 31)
   b. Estimated income and expense – Future 3 years
   c. Declaration by advocate, CA, CS, Cost Acc. in practice (in INC-14) and by each person making application (in INC-15) that:
      i. MoA/AoA is in conformity with provision of section 8
      ii. All requirements of act w.r.t. registration of section 8 co. is complied with.

Conversion of Section 8 company into other kind [Rule 21 and 22]:

- Pass SR at GM. Explanatory statement of such notice to set out details of conversion.
- The company should have filed FS and AR upto last FY.
  Additional FS – Where application is made after 3m from end of last FY, attach a FS made upto date not > 30 days of filing such application duly signed by CA.
- Serve a notice of such conversion to the following for representation, if any:

Income Tax Auth.	Charity Commissioner	Cheif Secretary of State where RO is situated	CG/SG department having jurisdiction

  Above authorities may make representations to RD within 60 days after OOBH to company.
- Apply to RD (INC-18) with fee + certified copy of resolution + proof of delivery of above notice.
- Forward a copy of the above application to ROC.
- Within a week of such application to RD, publish a notice (Form INC-19) at its own expense in 2 newspaper (vernacular + english) and its website.
- If RD is satisfied, approve conversion subject to terms and conditions imposed.

- Before rejecting application or imposing conditions – RD to give OOBH to such co.
- On receipt of such approval – Pass SR at GM for alteration of AoA/MoA.
- Copy of altered AoA/MoA to be filed with RoC. RoC to issue fresh CoI.

Examples of exceptions to Sec 8 companies:

a. Call for GM by giving clear 14 days' notice (instead of 21)
b. Requirement of min. no. of director, ID, does not apply.
c. Need not constitute NRC or SRC

Concept clarity check:

1. Can a Sec 8 co. be incorporated with unlimited liability? – No. Sec 8 co. only be a limited co.
2. Can an existing co. seek license u/s 8? – Yes. In such case, it will drop the suffix Ltd or pvt ltd.
3. Can a Firm become member in a normal public co.– No. Partnership firm is not separate legal entity.

Section 9 – Effect of Registration: 30

From the date of incorporation mentioned in COI, such subscribers to MoA and all other persons, as may, from time to time, become members of the company, shall be:

- a body corporate by the name contained in the memorandum,
- capable of exercising all the functions of an incorporated company under this Act and
- having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

Section 10 – Effect of Memorandum and Articles 30

1. Subject to the provisions of this Act, the MoA and AoA shall, when registered bind the company and the members thereof to the same extent as respectively signed by them and contained covenants on its and his part to observe all the provisions of the MoA/AoA.

2. All monies payable by any member to the co. under MoA/AoA shall be a debt due from him to co. (i.e., co. can recover calls in arrears from members as if it a loan recovery)

   Note – Company is liable to members and vice-versa. But members are not liable to each other.

Section 10A: Commencement of business etc. 13

1. A company having a share capital shall not commence any business or exercise any borrowing powers unless:

declaration by a director, within 180 days of incorp. is filed with RoC that - As on date of declaration, every subscriber has paid the value of shares agreed to be taken	The co. has filed with RoC a verification of RO provided u/s 12(2)

2. If any default under this section → Co. – Rs. 50,000 and every OID – Rs. 1,000/day upto Rs. 1 L

3. If no declaration within 180 days + RoC has RGTB that co. is not carrying on any business or operations → RoC may initiate action for the removal of the name of the company from register of companies

As per the Companies (Incorporation) Rules, 2014:

- Declaration u/s 10A by a director shall be in Form INC-20A and contents of the said form shall be verified by a CS/CA or a Cost Accountant, in practice.
- In case of a co. pursuing objects requiring registration/approval from any sectoral regulators such as RBI, SEBI, etc., the regt./approval from such regulator shall also be obtained and attached with the declaration.

Section 12: Registered Office of Company

1. Co. shall, within 30 days of incorporation and at all times, thereafter, have a RO, capable of receiving communications.
2. Co. to furnish to RoC verification of RO within 30 days of incorporation.
3. Every company shall:
   a. paint or affix its name, address of its RO on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters in languages in general use in that locality.
   b. have its name engraved in legible characters on its seal; if any
   c. get its name, address of its RO and the CIN along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
   d. have its name printed on hundies, promissory notes, bills of exchange and such other docs as prescribed.

   Provided that, in case name change during the last 2 years, print or affix former name as well. In case of OPC – The words "One Person Company" to be mentioned in bracket below such name.

   Change in RO:

4. Notice of change in situation of RO, verified in Form INC22, shall be sent to RoC within 30 days of change.

5. Except by passing a SR, the RO shall NOT be changed:
   a. in the case of an existing company, outside the local limits of any city, town or village where such office is situated at commencement of this Act or where it may be situated later by virtue of SR passed by co.;

   b. in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a SR passed by the company:

Provided that no company shall change RO from jurisdiction of one RoC to another RoC within the same State unless confirmed by Regional Director (RD) on appln made in this behalf by co. in prescribed manner.

6. On application u/ss 5, RD to communicate confirmation within 30 days from date of receipt of application.
   On such confirmation, co. to file the same with RoC within 60 days of date of confirmation
   RoC shall register the same and certify the registration within 30 days from filing such confirmation.

7. The certificate referred u/ss (6) shall be conclusive evidence that all the requirements of this Act w.r.t, change of RO have been complied with and the change shall take effect from the date of the certificate.

8. If any default is made in complying with this section → Company and every OID shall be liable to penalty of Rs. 1,000/day during which the default continues but not > Rs. 1 lakhs.

9. If RoC has RGTB that co. is not carrying on any business or operations, he may cause a physical verification of the RO in prescribed manner and if any default is found to be made in complying with requirements of sub-section (1) → Initiate action for the removal of the name of the company from register of companies.

Can RO be different from Head Office or Corporate office? – Yes!

Concept clarity check:
A Ltd. has current Registered office at Dadar, Mumbai, Maharashtra under Mumbai RoC. It is considering changing the location of RO. Help A Ltd. with the approvals required.

Proposed RO	RoC	Sec	Board Resolution	SR	CG (RD) approval
Bandra, Mumbai (within local limits)	Mumbai	12	Yes	No	No (Notice to RoC – 30 days)
Thane District	Mumbai	12	Yes	Yes	No (Notice to RoC – 30 days)
Pune, MH	Pune	12	Yes	Yes	Yes (RD to approve in 30 days of application. Co. to submit RD's approval to ROC in 60 days. Post that, RoC to register & certify in 30 days)
Ahmedabad, Gujarat	Gujarat	13	Yes	Yes	Yes (RD to approval within 60 days and then ROC to register within 30 days of application)

Section 13 – Alteration of Memorandum 14 16 17

1. Co. may alter provisions of MoA by a SR + by complying with procedure of this section

   Filing with RoC: A company shall, in relation to any alteration of its memorandum, file with the Registrar:
   (a) the SR passed by the company u/ss (1);
   (b) the approval of CG u/ss (2), if alteration involves any change in the name of the company.

2. Change in Name – Effective only with approval of CG in writing (power delegated to RoC) in Form INC-24 + Fee.
   Note – No approval if the only change is addition/deletion of word "Private" on conversion.

3. On change of name – RoC shall enter the new name in register of cos. and issue new COI. Name change effective from issue of CoI in Form INC -25.

4. Alteration of registered office from one state to another – Effective only on approval of CG (delegated to RD) on application in Form INC-23:
   - Certified copy of the order of CG approving such change - File with RoC of each of the States.
   - Such RoCs shall register the same, and
   - Registrar of the State where the RO is being shifted to, shall issue a fresh CoI

   Such application to CG (RD) shall be accompanied with:
   - Copy of MoA with proposed alteration
   - Copy of minutes of GM at which resolution authorizing such alteration was passed
   - Copy of board resolution
   - List of creditor and debenture holder
   - Acknowledgement of service of copy of application to – RoC, Chief secretary of RO state.

   Advertisement – Within 30 days before such application, advertise in Form INC-26 in 2 newspapers.

5. On application to CG u/s 13(4) for approval of change in state where RO is situated:
   a. CG to dispose application within 60 days.
   b. Before passing order, may satisfy itself that:
      i. Alteration has the consent of creditors, DH and other persons concerned with company, or
      ii. sufficient provision has been made by co. for due discharge of all its debts & obligations or
      iii. adequate security has been provided for such discharge.

   Note – Where RO is shifted from one state to another, file CG's approval with ROC of each state in Form INC -28 within 30 days of receipt of order of CG.

6. Change in object for which money raised from Public:
   Co., which has raised money from public through prospectus + still has any unutilised amount, shall not change its objects for which it raised such money unless a special resolution is passed and:
   a. prescribed details (discussed in sec 27) f such resolution shall be:
      - published in newspapers (English + vernacular which is in circulation at place where RO is situated) and
      - placed on website of the company, if any,

      indicating the justification for such change;

   b. the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the SEBI.

7. Alteration of Object clause of MoA:
   The RoC shall register any alteration of MoA w.r.t, the objects of the company and certify the registration within 30 days from the date of filing of the SR u/ss (6)(a) of this section.

8. No alteration made under this section shall have any effect until it has been registered as per this section.

9. Any alteration of the MoA of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in divisible profits of the company otherwise than as a member, shall be void.

Summary of provision related to Amendment of MoA:

MOA clause	SH Resolution	External approvals	Outcome
Name	SR	Approval of CG (ROC) + Sec 4 & 16	Change effective from date of issue of Fresh CoI by ROC N.A. where only word "Pvt" is added/deleted on conversion
Domicile (State)	SR	Approval of CG (RD) (only when RO is changed from one state to another)	CG shall dispose appln within 60 days and before approving, may satisfy itself that consent of crs, DH, etc. or that sufficient provision is made for due discharge or that adequate security is provided for discharge of debts.
Objects	SR	-	Co., which has raised money from public through prospectus + still has any unutilised amount, shall not change its objects for which it raised such money unless a SR is passed and:

			i. the details of SR - published in newspapers + Placed on website of co. indicating justification for such change; ii. the dissenting SH shall be given an opportunity to exit by the promoters and SH having control as per SEBI regulatn

Section 14 – Alteration of articles

1. Company may, by SR, alter its AoA.
   Alteration of AoA includes conversion of:
   a. Pvt co. to public co.
   b. Public co. to Private co. (subject to approval of CG as given below)

   An alteration having effect of converting public co. to private shall not have effect unless approved by CG on application within 60 days from passing SR to RD in Form RD-1 with following docs:

Draft MoA and AoA with proposed alteration	Copy of minutes of GM in which such SR was passed	Copy of Board resolution	Declaration by KMP regarding compliances.

   Provided that – Where a private co. alters its article such that it does not include restriction/ limitation which a Pvt. co. is required to include in AoA as per Act, such Pvt. co. shall cease to be private from date of alteration.

2. Following shall be filed in Form INC 27 with RoC, within 15 days of alteration of AoA, for registration:
   - Every Alteration of AoA
   - Approval of CG for such alteration
   - Printed copy of the altered articles,

3. Any alteration of AoA registered u/ss (2) shall be valid as if it were originally in the articles.

   Andrews vs Gas Meter Co. – The power to alter articles vests with the Company by virtue of Companies Act, 2013. A company cannot divest itself of these power.

Section 15: Alteration of MoA/AoA to be noted in every copy.

(1) Every alteration in MoA/AoA shall be noted in every copy of the MoA/AoA, as the case may be.
(2) Default → Co. + OID - Liable to penalty of Rs. 1,000 for every copy issued without alteration.

Section 16: Rectification of Name of Company:

1. If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which:
   a. in opinion of CG, is identical with or too nearly resembles the name by which a company in existence had been previously registered, it may:
      - direct the co. to change its name and
      - the co. shall change its name within 3m from such direction, after adopting an OR;
   b. on an application:
      - by a registered proprietor of a trade mark
      - made to CG within 3 years of incorporation or registration or change of name of the co.
      - that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999,
      - in the opinion of CG, is identical with or too nearly resembles to an existing trade mark,
      - CG may:
        i) direct the co. to change its name and
        ii) the co. shall change its name within 3m from such direction, after adopting an OR;

2. Where a co. changes its name or obtains a new name u/ss (1), it shall, within 15 days from date of such change, give notice of the change to Registrar along with the order of CG, who shall carry out necessary changes in the CoI and memorandum.

3. If a co. is in default in complying with any direction given u/ss (1), the CG shall allot a new name to the co. in prescribed manner and Registrar shall enter the new name in register of companies in place of the old name and issue a fresh CoI with the new name, which the company shall use thereafter [Amendment]

   Provided that nothing here shall prevent a company from subsequently changing its name as per Sec 13

Section 17: Copies of memorandum, articles, etc., to be given to members.

1. Co. shall, on being so requested by a member, send to him within 7 days of the request and subject to the payment of such fees as may be prescribed, a copy of each of the following documents, namely:
   Memorandum | Articles | agreement and resolutions u/s 117(1) not so included in MoA/AoA

2. If default u/s 17 → Co. + Every OID - Liable for each default - Rs. 1,000/day or Rs. 1 lakh WEL

Section 18: Conversion of Companies Already Registered:

Alter MoA/AoA → Application to RoC → RoC to issue fresh CoI → No affect on debts/ liabilities

1. A co. of any class registered under this Act may convert itself as a company of other class under this Act by alteration of MoA and AoA of the co. as per the provisions of this Chapter.

2. Application to RoC for fresh CoI:
   - Where conversion is required to be done under this section,
   - the RoC shall, on an application made by co, after satisfying himself that provisions of this Chapter is complied with,
   - close the former registration of the co. and
   - after registering docs referred u/ss (1), issue a CoI in same manner as its first registration.

3. The registration of a co. under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

Section 19: Subsidiary company not to hold shares in its holding company

21 22 23 24 25

1. Restriction:
   - No co. shall (itself/nominees) hold any shares in its holding co., and
   - No holding co. shall allot/trf its shares to any of its subsy co. and
   - any such allot/trf of shares of a co. to its subsy. shall be void

   Provided that nothing in this sub-section shall apply to a case:
   a. where subsy co. holds such shares as legal representative of a deceased member of holding co.;
   b. where the subsy co. holds such shares as a trustee; or
   c. where subsy company is a SH even before it became a subsidiary co. of the holding co.

   Provided further that subsy co. referred to in the above proviso shall have a right to vote at a meeting of holding co. only w.r.t., the shares held by it as a LR/trustee.

2. The reference in this section to shares of a holding co. which is a co. not having share cap (ltd. by guarantee or unlimited), shall be construed as reference to interest of its members, whatever be the form of interest.

   Note – A subsidiary can buy shares of holding where it is a part of scheme of amalgamation sanctioned by court/Tribunal.

> Concept clarity check:
> As on April'22 - A Ltd holds 5% shares in B Ltd.
> As on June'22 - Due to some transactions, A Ltd. becomes subsidiary of B Ltd.
> As on July'22 – B Ltd calls for AGM.
>
> Question 1 – Can A Ltd. vote in such AGM as A Ltd. is a subsidiary of B Ltd?
> Answer – No! The exception of right to vote at a meeting is only in case shares as held as a LR/Trustee. It is not applicable in the third exception that is " where subsy co. is SH even before it became a subsy of holding company"

Question 2 – Can B Ltd. issue bonus shares to A Ltd (say, in the ratio 1:1)
Answer – Yes, as this transaction is under purview of exemption, such bonus shares can be issued.

Section 20: Service of Documents

27 28 32

1. A document may be served on a co. or an officer thereof by sending it at the RO of the co. by:

registered post	speed post	courier service	leaving it at its RO	means of such electronic or other mode as may be prescribed

However, where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

2. A document may be served on Registrar or any member by sending it to him by:

Post	registered post	speed post	courier service	delivering at his office or address	means of such e-mode or other prescribed mode

Provided that member may request delivery through a particular mode by paying fees as determined in AGM.

Author's Note – Law only provides for an option to pay extra fees and decide an alternate mode for receiving notice. However, the notice will still be sent at the registered address of the member only. Company is not responsible for sending the notice to any other address (even if extra fees is paid)

Exception to Nidhi Co.
In case of Nidhi Company, u/s 20 (2), docs may be served only on members who hold shares more than:

Rs. 1,000 in face value or
1% of the total PUSC

whichever is less.

For other SHs, docs may be served by a public notice in newspaper circulated in the district where the RO of Nidhi is situated; and publication of the same on the notice board of the Nidhi.

Rule 35 of Companies (Incorporation) Rules,2014

- Electronic transmission means a communication that creates a record that is capable of retention, retrieval and review (RRR), and which may thereafter be rendered into clearly legible tangible form. It includes:

fax	email	posting of electronic message board or network	other mode capable of verifying the sender

- In case of delivery by post, such service shall be deemed to have been effected:
  (i) in case of notice of a meeting, at expiration of 48 hours after letter containing the same is posted; and
  (ii) in any other case, at time at which the letter would be delivered in the ordinary course of post

Section 21: Authentication of documents, proceedings and contracts

Save as otherwise provided in this Act,
(a) a document or proceeding requiring authentication by a company; or
(b) contracts made by or on behalf of a company,
may be signed by any KMP or an officer or employee of the company duly authorised by the Board in this behalf.

Section 22: Execution of bills of exchange (BOE), etc.

1. A BOE, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of co. if it is made or drawn by any person acting under its authority, express or implied.

2. Company having seal: A company may, by writing under its common seal, if any, authorise any person as its attorney to execute other deeds on its behalf in any place (India/outside India)

   Company not having seal: Provided that in case if no common seal, the authorisation under this subsection shall be made by 2 directors or by director + CS, wherever the company has appointed a CS.

3. A deed signed by such an attorney on behalf of the company and under his seal shall bind the co.

The End

Chapter 3
Prospectus and Allotment of Securities

Form	Section No	Purpose
PAS - 1	27	Advt. providing details of notice of SR for varying terms of contracts referred to in Prospectus or Objects for which Prospectus was issued
PAS - 2	31	Information Memorandum
PAS - 3	39 & 42	Return of allotment of securities
PAS - 4	42	Private placements offer cum application letter
PAS - 5	42	Record of Private placement offers
PAS - 6	29	Unlisted Public company to file with RoC within 60 days of each half year

Sec No.	Section Name
23	Public Offer and Private Placement
24	Power of Securities and Exchange Board to Regulate Issue and Transfer of Securities, etc.
25	Document Containing Offer of Securities for Sale to be Deemed Prospectus
26	Matters to be Stated in Prospectus
27	Variation in Terms of Contract or Objects in Prospectus
28	Offer of Sale of Shares by Certain Members of Company
29	Public Offer of Securities to be in Dematerialised Form
30	Advertisement of Prospectus
31	Shelf Prospectus
32	Red Herring Prospectus
33	Issue of Application Forms for Securities
34	Criminal Liability for Misstatements in Prospectus
35	Civil Liability for Misstatements in Prospectus
36	Punishment for Fraudulently Inducing Persons to Invest Money
37	Action by Affected Persons
38	Punishment for Personation for Acquisition, etc., of Securities
39	Allotment of Securities by Company
40	Securities to be Dealt with in Stock Exchanges
41	Global Depository Receipt
42	Offer or Invitation for Subscription of Securities on Private Placement

Overview

This Chapter is divided in two parts:
Part I – Provisions relating to issue of securities through Public Offer (Sec 23 – 41)
Part II – Provisions relating to issue of securities through Private Placement (Sec 42)

Section 23 - Public Offer (PO) and Private Placement (PP)

1. Public co. may issue securities:

through prospectus to public (PO)	Private Placement	Right issue and Bonus issue as per this Act (and SEBI in case of listed co./co. intending to get listed)

2. Private co. may issue securities:

~~through prospectus to public~~	Private Placement	Right issue and Bonus issue as per this Act (and SEBI in case of listed co./co. intending to get listed)

Note – Public offer includes IPO, FPO and OFS

3. Notified class of public companies can issue securities for the purpose of listing on stock exchanges in permissible foreign jurisdiction. (Overseas direct listing)

Important Definitions:

- Securities [Sec 2(81)] - As defined in Section 2(h) of SCRA, 1956.
  Security is a wider term and includes – shares, bonds, debentures, derivatives, units of collective investment scheme, security receipts, units of mutual fund, government securities, etc.

  Note – Security shall not include units of Unit Linked Insurance Policy (ULIP)

- Prospectus [Sec 2(70)] – Any document described or issued as a prospectus and includes:
  i. Red Herring Prospectus (RHP) as per Sec 32 and
  ii. Shelf Prospectus (SP) as per sec 31
  iii. Notice, circular, advt. /other doc inviting offers from public for subscription or purchase of any securities of BC.

Section 24: Power of SEBI to regulate issue and transfer of securities:

SEBI is empowered to regulate issue and transfer of securities or non-payment of dividend by listed companies or companies intending to get listed on Recognised Stock Exchange (RSE) in India.

Section 25 – Document Containing Offer of Securities for Sale to be Deemed Prospectus

Company → Issue House —Document = Deemed Prospectus→ Public at large

Meaning - Where a company (A) allots or agrees to allot any securities of the co. (A) with a view that those securities shall be offered for sale to public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus.

Effect of deeming provision-

1. Law relating to content of prospectus and liabilities u/s 34,35 shall apply
2. Person making offer were person named as director in the co.

Presumptions: Unless the contrary is proved, it shall be evidence that an allotment of securities was made with a view to the securities being offered for sale to the public if it is shown:

a. that offer for sale to the public was made within 6m after the allotment or agreement to allot; or
b. that at the date when offer was made, whole consideration had not been received by the co.

In addition to matter stated u/s 26, following additional matter is to be included in the document:

a. Net amt. of consideration received/to be received by the co.
b. time and place at which contract for allotment of said securities may be inspected

Signature of document:

In case of co. – 2 directors; In case of Partners – At least $\frac{1}{2}$ of Partners

SEBI v Kunnamkulam Paper Mills Ltd:

Where a rights issue is made to existing members with a right to renounce in favour of others, if the number of such others exceeds 50, it also becomes a deemed prospectus.

Section 26 - Matters to be Stated in Prospectus

Dated and Signed	Copy to RoC for Registration	Signed by dir./ proposed dir.	RoC not to register unless consent in writing of all person named received

1. Every prospectus issued by/on behalf of public co. shall be dated and signed.

   Prospectus shall state information and set out such reports on financial information as specified by SEBI + CG. Unless specified by SEBI, the regulations already made by SEBI shall apply.

   Prospectus to include:
   a. declaration about compliance with this Act, and
   b. statement that nothing in prospectus is contrary to this Act, SEBI and SCRA.

2. Nothing u/ss (1) shall apply to the issue of prospectus/form of application for:
   a. Issue of shares or debentures to existing members or DH, whether or not there is right to renounce u/s 62(1)
   b. Issue of shares or debentures which are uniform with shares or debentures previously issued and are currently quoted on RSE.

3. Provision of 26(1) shall apply to prospectus or form of application issued on formation of co. or subsequently.
   Explanation – Date indicated in prospectus shall be deemed to be the date of publication.

4. File prospectus with RoC: No prospectus shall be issued unless, on or before its publication, a copy thereof has been delivered to RoC for filing, signed by:
   - every person who is named therein as a director or proposed director of the co. or
   - by his duly authorised attorney.

5. Prospectus shall not include a statement purporting to be made by expert, unless:
   - expert is a person who is not engaged/interested in formation/promotion/mgt. of co., and
   - has given his written consent to the issue of the prospectus and has not withdrawn such consent before filing of such prospectus with RoC and a statement to that effect shall be included in the prospectus.

   Read definition of Expert – Sec 2(38) [Chapter 1]

6. Every prospectus shall, on the face of it,:
   (a) state that a copy has been delivered to RoC u/ss (4); and
   (b) specify docs attached to the copy so delivered

8. Prospectus not valid if issued more than 90 days after date of delivery of copy thereof to RoC

9. Issue of prospectus in contravention of this section – Co. and every person who is knowingly a party - Rs. 50,000 to Rs. 3 lakhs

Section 27 – Variation in Terms of Contract or Objects in Prospectus

Co. shall not vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except with:

a. Prior approval by way of special resolution in GM and:
b. prescribed details of such resolution shall be:
   - published in newspapers (English + vernacular which is in circulation at place where RO is situated) and
   - placed on the website of the company, if any,

   indicating the justification for such change;
c. Amt so raised cannot be used for buying, trading or otherwise dealing in Eq. shares of listed cos.
d. the dissenting shareholders shall be given an exit offer by the promoters and controlling shareholders in accordance with regulations to be specified by the SEBI.

Rule 7 of The Companies (Prospectus and Allotment of Securities) Rules, 2014:

1. SR u/s 27 shall be passed through Postal Ballot. Notice of proposed SR to contain following info:

Original purpose/ object	total money raised	money utilised for stated objects	extent (%) of achievement of proposed obj.
unutilised amount	particulars of the proposed variation	reason and justification for variation	risk factors pertaining to the new objects
proposed time limit within which the proposed varied objects would be achieved		other relevant info	

2. Advertisement of the notice – Form PAS-1 (published simultaneously with dispatch of notice)
3. Place notice on website of co.
4. The dissenting shareholders shall be given an exit offer by the promoters and controlling shareholders in accordance with regulations to be specified by the SEBI. (repeated in rule)

Section 28 – Offer of Sale of Shares by Certain Members of Company

1. Authorise the co.
   - Where certain members (indv./BC) of a co. propose in consultation with BoD
   - To offer whole/part of their holding to public
   - the members shall then collectively authorize the co. to take necessary action for OFS and
   - then they shall reimburse the company of all expense incurred.

2. Document by which such OFS is made to public shall be deemed to be a prospectus issued by the company and all provisions related to content and mis-statement shall apply.

Rule 8: Exception to certain matters

The following provision of this chapter shall not be applicable in case of OFS:

a. the provisions relating to minimum subscription;
b. the provisions for minimum application value;
c. the provisions requiring any statement to be made by BoD in respect of utilization of money; and
d. any other provision/information which cannot be compiled or gathered by the offeror, with detailed justifications for not being able to comply with such provisions.

Note: Prospectus to disclose name of the person(s)/entity bearing cost of making the OFS + reasons.

Section 29 - Public Offer of Securities to be in Dematerialized Form (Demat Form)

1. Notwithstanding anything contained in any other provisions of this Act:
   a. every company making public offer; and
   b. such other class or classes of public companies as may be prescribed,

   shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

Rule 9 of Companies (Prospectus and Allotment of Securities) Rules, 2014:

The promoters of every public company making a public offer of any convertible securities may hold such securities only in demat form.

Provided that the entire holding of convertible securities of the co. by promoters held in physical form (up to the date of IPO) shall be converted into demat form before such offer is made.

Example - Vijay Shekhar sharma OFS in Paytm – Has to be in demat form first

2. In case of prescribed class of unlisted companies, the securities shall be held or transferred only in Demat form in the manner laid down in the Depositories Act, 1996 and regulations made thereunder.

Rule 9A of Companies (Prospectus and Allotment of Securities) Rules, 2014:

Issue of securities in demat form by UNLISTED Public Company (UPC):

1. Every UPC shall:
   a. Issue securities in demat form, and
   b. Facilitate dematerialisation of all existing sec.

   as per the Depository Act, 1996 and regulations made thereunder.

2. For UPC intending to make offer for:

   issue of securities | buyback | issue of bonus shares | right shares

   shall ensure that, before making such offer, entire holding of securities of:

   promoter | directors | KMPs

   has been dematerialized as per the Depository Act, 1996 and regulations made thereunder

3. On or after 2nd October 2018, every holder of securities of UPC:
   a. who intends to transfer such securities, shall get such sec. dematerialised before transfer
   b. who subscribe to any sec. of UPC – Ensure existing securities are held in demat form.

4. Every UPC shall:
   a. Facilitate dematerialisation of existing securities by making necessary application to Depository (as defined u/s 2(1)(e) of the Depository Act), and
   b. Secure International security Identification Number (ISIN) for each type of securities,
   c. Inform existing security holder about such facility.

5. Every UPC shall ensure:
   a. Timely payment of fees to Depository, Registrar to Issue & Share Transfer Agent (DRS) as per the respective agreement
   b. It maintains security deposit of >=2 years of fees with DRS as per agreement
   c. Complies with regulations of SEBI or Depository w.r.t, dematerialisation of shares

6. No UPC which has defaulted in above payment, shall make offer of issue of any securities or buyback or bonus/right issue till payment to DRS has been made.

7. Provision of Depositories Act, SEBI (Depositories and Participants) Regulations, 2018 and SEBI (RTI and STA) Regulations, 1993 – Apply Mutatis Mutandis

8. Every UPC shall submit Form PAS-6 + Fees with ROC within 60 days of conclusion of each half year (FY). Such form shall be certified by a CA/CS/~~CMA~~ in practice

8A. Any diff. b/w issued capital and capital in demat form – Co to bring to notice of Depository

9. Grievances of securities holders of UPC – File with IEPF Authority. IEPF authority shall initiate action against DRS after consultation with SEBI

10. This rule shall N.A. to an UPC which is – Nidhi company, Government company or a Wholly owned subsidiary of a Government company.

3. Any company, other than above, may convert its securities into demat form or issue its securities in physical form as per provisions of this Act or Depositories Act, 1996 and regulations.

Section 30 - Advertisement of Prospectus

Where an advertisement of prospectus of a co. is published in any manner, it is necessary to specify therein the contents of MoA as regards to:

Objects	Liability	Amount of SC of Co. (ASC)	names of the signatories	No. of shares subscribed by them	Capital Structure

Section 31 - Shelf Prospectus (SP)

Meaning

- SP 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.

Provision:

- Any class(es) of cos., as the SEBI may provide by regulations in this behalf, may file SP with RoC
- at the stage of the first offer of securities included therein
- which shall indicate the period of validity of such prospectus, not exceeding 1 year
- validity shall commence from date of opening of first offer of securities under that prospectus,
- w.r.t., second/subsequent offer of such securities issued, no further prospectus is required.

Information Memorandum (IM): (Form PAS-2)

- Within 1 month prior to second/subsequent offer., co. to file IM with RoC
- IM to contain material facts relating to:

New charges created	Changes in financial position of co. between previous offer and subsequent offer	Other changes as prescribed

Intimation of Changes:

- Where a co. has received applications for the allotment of securities along with advance payments of subscription before making of any such change,
- Co. to intimate such changes to applicant.
- If they desire to withdraw application – Refund payment within 15 days of subscription

Note: IM together with shelf prospectus shall be deemed to be prospectus.

Section 32 – Red Herring Prospectus (RHP) 20

Meaning - Prospectus which does not include complete particulars of quantum/price of securities included therein.

1. Co. proposing to make an offer of securities may issue a RHP prior to prospectus
2. RHP to be filed with RoC at least 3 days prior to opening of subscription list and the offer
3. RHP to have same obligation as prospectus.
   Variation b/w RHP and prospectus to be highlighted as variation in prospectus
4. Upon closing of offer – Prospectus (not RHP) stating therein the total capital raised and closing price and any other details as are not included in RHP shall be filed with the RoC and the SEBI.

Read section 2(1) – Abridged prospectus.

Section 33 – Issue of Application Forms for Securities 6

1. Every form of application for purchase of any securities of a co. shall be accompanied by an abridged prospectus.

   This sub-section shall N.A. if it is shown that the form of application was issued in connection with:
   a. a bona fide invitation to a person to enter into an underwriting agreement w.r.t. such sec.; or
   b. in relation to securities which were not offered to the public (Example – Private placement)
   c. where offer is made to existing members of the company

2. Copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.

3. Default in this section – Co. liable for Rs. 50,000 for each default

Self-Notes!

Section 34 and Section 35 – Liability for Misstatement 7 9 10

Note: A contract of shares in a co. is a contract of *Uberrimae fides (Latin)*, which means '*utmost good faith*'. The legal doctrine of Uberrimae fides provides that all parties to contract must deal in good faith, making a full declaration of all material facts. The intending purchasers of shares are entitled to true and correct disclosures of all the facts in the prospectus.

Section 34 – Criminal Liability	Section 35 – Civil Liability
If prospectus includes any statement - untrue or misleading, every person who authorizes the issue of such prospectus shall be liable under section 447. Section N.A. if a person proves that: a. such statement/omission was immaterial or b. that he had RGTB that statement was true or the inclusion or omission was necessary.	Applicability: ➢ Where a person has subscribed for securities of a co + ➢ Acting on any statement included/omitted in prospectus which is misleading, and ➢ has sustained loss or damage as a consequence thereof Person Liable: Company and every person who is: 1. Director at the time of issue of prospectus or authorized himself to be named as director 2. Agreed to become director in future 3. Promotor of co. 4. Authorized the issue of prospectus 5. Expert u/s 26(5) Above person shall be liable to pay compensation to every person who has sustained such loss or damage. No person shall be liable if he proves that: a. Having consent to become director, withdrew the consent and prospectus was issued w/o consent. b. Prospectus issued w/o knowledge or consent + on becoming aware gave reasonable public notice c. Such statement was made on basis of expert's report + such statement was true and fair representation of expert's statement + such person had RGTB that expert is competent + expert has given consent + not withdrawn consent. If proven that prospectus issued with intent to defraud - every person u/ss (1) shall be personally responsible – without any limitation of liability

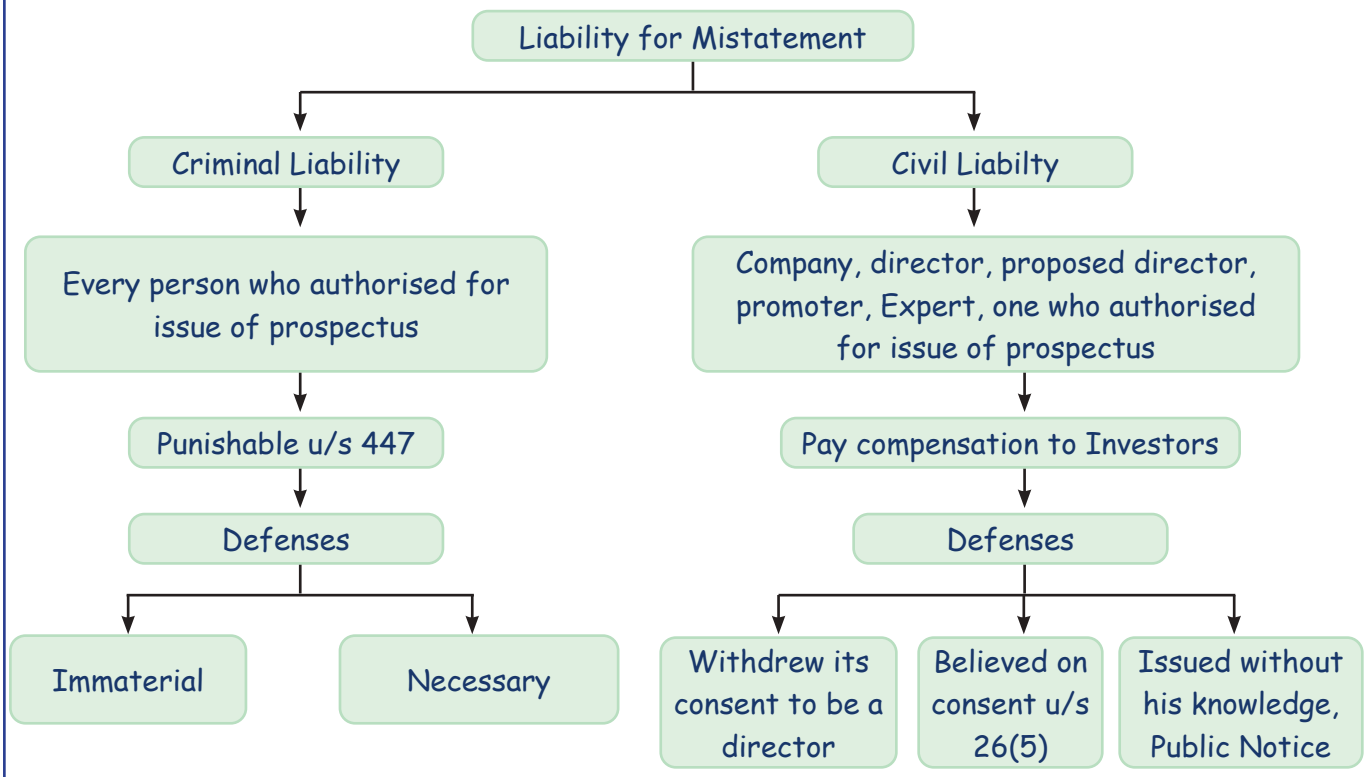
8 Peek Vs. Gurney (not covered in ICAI material but was included in past paper question)

The remedy u/s 35 by way of damage will not be available to a person if he has not purchased the shares on the basis of prospectus. (for example, a person bought shares from open market, in such case, it can't be said that he relied on the information of prospectus and hence, no remedy available)

Remedies for misrepresentation in Prospectus under Indian Contract Act:

Rights	Rescission of contract	Damages
When to seek?	Where a person has subscribed to shares on basis of prospectus containing misleading statement	Person acted on a statement which is fraudulent and sustained damages
Effect	Contract to purchase shares becomes voidable at option of purchaser	
Exception	➢ Right not available to subsequent purchaser from market ➢ Subscriber to MoA cannot seek relief.	

Summary of Liability



Sec 447: Punishment for Fraud

Without prejudice to any liability including repayment of any debt under this Act or any other law in force, any person guilty of fraud shall be liable as follows:

Amount involved in the fraud	At least Lower of: a. Rs. 10 lakhs b. 1% of T/O		Less than Lower of: a. Rs. 10 lakhs b. 1% of T/O
Whether public interest involved?	No	Yes	No
Jail	6m – 10 years	3 years – 10 years	Upto 5 years
And/or	AND	AND	OR
Fine	Up to 3x amt involved	Up to 3x amt involved	Upto Rs. 50 lakhs or both

Fraud bole toh?:

Act	Ommission	Concealment of Fact	Abuse of position

Committed with:

Intent to decieve	Gain undue advantage	Injure interest. of co/SH/crs/others

whether or not there is a wrongful gain/loss.

Sec 36: Punishment for Fraudulently Inducing Persons to Invest Money

Any person who:

- either knowingly/recklessly makes any statement, promise or forecast
- which is false, deceptive/misleading or
- deliberately conceals any material fact,
- to induce another person to enter into any agreement:

for Subscribing, Acquiring, Disposing or Underwriting securities	the purpose of which is to secure a profit to any of the parties from such securities	for obtaining credit facilities from any bank or financial institution

shall be liable for action u/s 447.

Section 37: Action by Affected Persons

A suit may be filed, or any other action may be taken u/s 34,35 or 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

Note – If Mr. M had purchased the shares based on statement in the prospectus, only Mr. M can initiate a suit against the co. and not Mr. X (to whom shares are transferred post allotment)

Allotment means appropriation of previously un-appropriated capital of the company.
[Issue of Prospectus – Invitation to offer; Receiving Application – Offer; Allotment – Acceptance]

Section 39: Allotment of Securities by Company

1. Co. can allot share to public only when:
   a. amount stated in prospectus as min. amount has been subscribed and
   b. sums payable on application have been paid to and received by co. by cheque/other instrument.

2. Application money shall not be <5% of nominal amt. of securities (or other amt. specified by SEBI)

3. If stated min. amount has not been subscribed and application money is not received within 30 days /other period by SEBI from date of issue of prospectus – Return amount in pres. time & manner

Rule 11 of Cos (Prospectus and Allotment of Securities) Rules, 2014 – Refund of Appln Money:

a. If min. amt not subscribed + Application money not received within prescribed time – Application money to be repaid within 15 days from close of issue.

If not repaid – Directors who are OID – Jointly & severally liable to repay with intt. @15% p.a.

b. Refund shall be credited only to the bank account from which the subscription was remitted.

4. When a co. having SC makes any allotment of sec.- File with RoC - Return of allotment (Form PAS-3)

Rule 12 – Return of Allotment:

a. Return of allotment to be filed in Form PAS – 3 within 30 days of allotment of securities.
b. Along with the Return of allotment, attach - List of allottees stating name, address, occupation and no. of securities allotted.

In case of issue of:	Attach to Form PAS-3:
Securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash	➢ A copy of contract duly stamped together with any contract of sale if relating to a property or an asset, or a contract for services or other consideration. ➢ If such above contract is not reduced to writing, complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing ➢ A report of registered valuer w.r.t. valuation of the consideration to be attached
Bonus securities	Copy of resolution passed in GM authorizing such issue
Shares u/s 62(1)(c) by co. other than listed co.	Valuation report of registered valuer

5. Default u/ss (3) and (4) - Co. and its OID - Liable – Rs. 1,000/day or Rs. 1 lakh WEL for each default

Section 40: Securities to be Dealt with in Stock Exchanges

1. Before Public Offer – Co. to make an application to one or more RSE(s) and obtain permission for securities to be dealt with in such RSE.

2. Where prospectus states application u/ss (1) has been made – Also state the name(s) of RSE in which the securities shall be dealt with.

3. Application money shall be kept in a separate bank account in a scheduled bank + Not to be utilised for any purpose other than:
   a. Adjustment against allotment – If sec. have been permitted to be dealt with on RSE
   b. Repayment within the time specified by SEBI – If co. is unable to allot securities

4. Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

5. Default in complying with this section:

	Company	OID
Minimum	Rs. 5 lakhs	Rs. 50,000
Maximum	Rs. 50 lakhs	Rs. 3 lakhs

6. Co. may pay commission to any person w.r.t, subscription to its sec. subject to conditions prescribed.

16 **Rule 13 of Companies (Prospectus and Allotment of Sec) Rules, 2014 – Payment of Commission:**

Commission can be paid subject to following conditions:

a. Such payments to be authorized by AOA
b. Comm. may be paid out of (a) Proceeds of issue, or (b) Profit of co., or both
c. Rate of comm.

In case of sec. issue being:	Commission shall NOT exceed
Shares	Lower of: a. 5% of price of share issue or b. Rate auth by AOA
Debentures	Lower of: a. 2.5% of price at which debenture issued or b. Rate auth. by AoA

d. Prospectus to disclose:
   - name of underwriters
   - rate and amount of commission payable to u/w
   - no. of sec. underwritten or subsc. by u/w

e. No commission to be paid if securities are not issued to public.
f. Copy of contract for payment of comm. – File with RoC along with prospectus for registration

Concept clarity check:

1. A Ltd. applies in BSE and NSE for obtaining permission prior to IPO. Of them, NSE rejected the application and BSE approved such application. Can A Ltd. issue IPO? – No. All the RSE where application has been made has to approve such application
2. Can underwriting commission be paid in kind (say, in forms of flats) – Yes, there is no such restriction in law that commission has to be paid only in cash.

Section 41: Global Depository Receipt (DR):

A co. may, after passing a SR in its GM, issue depository receipts in any foreign country in prescribed manner.

Steps to issue DR (as per Rule 4):

1. BoD intending to issue DR shall pass a resolutions authorizing company to do so. (Board resolution)

2. Co. shall take prior approval of SH by a SR at GM.
   Note – SR passed u/s 62 for issue of shares underlying DR shall be deemed SR for section 41.
3. DR shall be issued by an overseas depository bank (ODB) appointed by the company and underlying shares shall be kept in custody of domestic custodian bank.
4. Comply with scheme and guidelines of RBI in this regard.
5. Co. shall appoint merchant banker or practicing CA, CS or cost accountant to oversee all compliances w.r.t. DR. Such a compliance report shall be placed in BoD meeting held immediately after closure of all formalities.

Additional Points:

1. DRs can be issued by public offering or private placement in line with jurisdiction rules, and traded on local platforms.
2. DRs can be based on new or existing shares, as per CG or RBI conditions.
3. Underlying shares allocated to overseas depository & against such shares, DRs issued by such Overseas Depository Bank.
4. DR holders can be company members, vote after DR-to-share conversion, per Scheme and Act.
5. Overseas depository votes for DR holders until conversion.

Section 42: Private Placement (PP)

17 18 19 21

Definition:

- "Private placement" means any offer or invitation to subscribe
- to a select group of persons by a company (other than by way of public offer)
- through private placement offer-cum-application ("PPOCA"), which
- satisfies the conditions specified in this section.

Provision:

1. Subject to this section, a company may make private placement (PP) of securities

2. Private placement:
   - PP to be made only to select group of person identified by BoD ("Identified Persons" (IPs)).
   - No. of IPs shall not exceed 50 or higher no. prescribed (200 members in aggregate in FY)
   - Above limit of 200 not to include – QIBs and employees being offered securities under ESOP u/s 62 [N.A. – NBFC and HFC if Regulation by RBI/NHB complied with)

   Explanation- It is hereby clarified that restrictions of 200 members would be reckoned individually for each kind of security that is equity share, preference share or debenture.

Rule 14: Private Placement:

The proposal to make PP has to be previously approved by SH of co. by a SR for each such PP.

ES annexed to notice for SH approval shall made following disclosure:

a. particulars of the offer including date of passing of Board resolution;
b. kinds of securities offered and the price at which security is being offered:

c. basis or justification for the price (incl. premium, if any) at which offer/invitation is made;
d. name and address of valuer who performed valuation;
e. amount which the company intends to raise by way of such securities;
f. material terms of raising such securities

Provided that this sub-rule shall not apply (i.e., SR not required) in case of offer for NCD if amount raised <= Limit u/s 180(1)(C) and in such case, BoD resoln is adequate.

Provided also that, if amount raised exceed limit u/s 180(1)(c) – It shall be sufficient if co. passes a previous SR only once in a year for all such offers during the year.

Provided also that: In case of offer to QIBs, if co. passes previous SR only in a year for all such allotments during the year

Provided also that no offer or invitation of any securities under this rule shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate have obtained Government approval under FEM (Non-debt Instruments) Rules, 2019 & such approval is attached with PPOCA.". [Amendment]

3. Co. making PP shall issue PPOCA in Form PAS-4 to IPs whose names and addresses are recorded by co. in prescribed manner.
Note - PPOs shall NOT carry right of renunciation.

Note: Deemed Public Offer:
- If a co. makes an offer to allot securities to > prescribed no. of IPs,
- the same shall be deemed to be an offer to public and
- shall accordingly be governed by the provisions of Part I of this Chapter
- irrespective of whether or not the payment for securities has been received or
- whether the company intends to list its securities or not on any RSE in or outside India

4. Mode of payment of subscription money:
IPs willing to subscribe to PP issue shall apply in the PP and application issued to such person along with subscription money paid either by cheque/DD or other banking channel & not by cash.

Application money not to be utilized unless allotment made and return of allotment filed with RoC.

5. Prohibition on Fresh offer:
No fresh offer unless:
a. allotments w.r.t, any offer or invitation made earlier have been completed or
b. that offer or invitation has been withdrawn or abandoned by the co.

Concept clarity check:
The prohibition applies for different kind of securities also i.e., if PP of Equity is yet to finish, you cannot start PP of debentures also unless PP of equity is completed or withdrawn.

6. Allotment:
   - Co. shall allot its securities within 60 days from receipt of application money
   - If co. fails to allot securities in 60 days - Repay same within 15 days from expiry of 60 days
   - If co. fails to repay – It shall be liable to repay that money + Intt. @ 12% p.a. from expiry of 60th day (read again, from which day?)

   Application money shall be kept in a separate bank account in a scheduled bank + Not to be utilized for any purpose other than:
   a. Adjustment against allotment
   b. Repayment – If co. unable to allot sec.

7. Co. making PP shall NOT release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

8. Return of Allotment to be filed with RoC within 15 days from allotment date
   Co. making PP to file with RoC a "Return of Allotment" in Form PAS-3 within 15 days from the date of the allotment. (Incl. a complete list of all allottees, with their full names, addresses, no. of sec. allotted , etc.)

Rule 14: Private Placement (Continued)

Return of allotment in Form PAS – 3 shall include the following details:
- the full name, address, permanent Account Number and E-mail ID of such security holder;
- the class of security held;
- the date of allotment of security ;
- no. of securities held, nominal value and amount paid on such securities; and particulars of consideration received if entire securities were issued for consideration other than cash.

9. Default in filing Return of allotment u/ss (8) – Co., its promoters and directors – Fine Rs. 1,000/ day for each default upto Rs. 25 lakhs

10. If co. makes PP in contravention of this section - Company, its promoters and directors – Fine which may extend to amount raised through the PP or Rs. 2 crores, whichever is lower, and the company shall also refund all monies with interest (12%) within 30 days of order imposing the penalty.

    "Qualified Institutional Buyer" means the QIB as defined in SEBI (ICDR) Regulations, 2009.

Rule 14: Private Placement (Continued)

- PP offer cum application letter shall be in Form PAS-4 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 e-mode, within 30 days of recording the name of such person u/s 42(3).
- Co. to maintain complete record of PP offers in Form PAS-5
- Co. shall issue PP offer only after relevant SR/BR filed with RoC

Note – Any offer or invitation which is not in compliance with the provision of Sec 42 shall be treated as public offer and relevant provisions shall apply accordingly.

The End

Chapter 4
Share Capital and Debentures

Form	Sec	Purpose
SH-1	46	Form of share certificate
SH-2	46	Maintenance of records of renewed and duplicate share certificates
SH-3	54	Issue of Sweat Equity Shares
SH-4	56	Form for transfer of security held in physical form
SH-5	56	Notice by the co. to the transferor and transferee in case of partly paid-up shares
SH-7	64	Notice to Registrar for the alteration of share capital
SH-8	68	Letter of offer for buy back of shares from Co. to ROC
SH-9	68	Solvency declaration – File with RoC (+ SEBI in case of listed cos) in case of Buyback
SH-10	68	Register of shares or other securities bought back
SH-11	68	Return on completion of the buyback of shares or other securities
SH-12	71	Debenture Trust Deed
SH-15	68	Buy back in compliance with Act – Certificate signed by 2 directors (1MD)

Sec No.	Section Name	Sec No.	Section Name
43	Kinds of Share Capital	58	Refusal of Registration and Appeal against Refusal
46	Certificate of Shares	59	Rectification of Register of Members
47	Voting Rights	61	Power of Limited Company to Alter its Share Capital
48	Variation of Shareholders' Rights	62	Further Issue of Share Capital
49	Calls on Shares of Same Class to be Made on Uniform Basis	63	Issue of Bonus Shares
50	Company to Accept Unpaid Share Capital, Although not Called Up	64	Notice to be Given to Registrar for Alteration of Share Capital
51	Payment of Dividend in Proportion to Amount Paid-Up	66	Reduction of Share Capital
52	Application of Premiums Received on Issue of Shares	67	Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares
53	Prohibition on Issue of Shares at Discount	68	Power of Company to Purchase its Own Securities
54	Issue of Sweat Equity Shares	69	Transfer of Certain Sums to Capital Redemption Reserve Account
55	Issue and Redemption of Preference Shares	70	Prohibition for Buy-Back in Certain Circumstances
56	Transfer and Transmission of Securities	71	Debentures
57	Punishment for Personation of Shareholder		

* Sec 44, 45, 60, 65 and 72 are not applicable for exams!

Key Definitions:

Section 2(84): "Share" means a share in the share capital of a company and includes stock.

Case Laws Defining Shares:

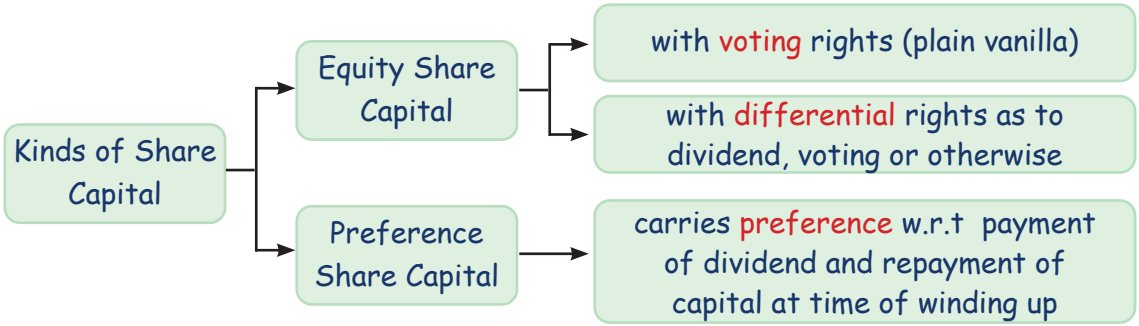
Name	Definition of Shares
New London & Brazilian Bank v. Brockle Bank:	A share is not a sum of money, but is an interest measured in a sum of money, and made up of various rights contained in the contract, including right to a sum of money of a more or less amount.
Borland's Trustee v Steel Brothers & Co Ltd	Share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place and of interest in the second, and also consists of a series of mutual covenants entered into by all the shareholders inter se as per the provisions of Companies Act and the AoA.

Stock: Stock is a collection of fully paid up shares.

Difference between stock and shares:

Stock is stated in lump sum whereas a 'share' being the smallest unit. Originally shares are issued to shareholders while in case of stock, the fully paid-up shares of members are converted into 'stock' afterwards. Thus, 'stock' is not issued originally but is obtained by conversion of fully paid-up shares.

Section 43 – Kinds of Share Capital



Explanations:

1. "Equity share capital" - w.r.t., any co. limited by shares, means all share capital which is not preference share capital;

2. "Preference share capital", w.r.t, any co. limited by shares, means that part of the issued share capital of company which carries or would carry a preferential right w.r.t,:
   (a) payment of dividend (fixed amt or amt calculated at fixed rate)- free or subject to tax
   (b) repayment, in the case of a winding up, of amount of PUSC.

3. Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both the rights w.r.t payment of dividend and repayment of capital at time of winding up.

Note:

1. Preference SHs may also participate in equity pool post preferential entitlements.

   But to find out their rights of participation we must look at the terms of AOA and the issue.

   If the right to participate in the surplus is not specified in the terms of the issue, pref. shares are presumed to be not participating. This was affirmed by the House of Lords in Scottish Insurance Corpn Ltd vs. Wilsons & Clyde Coal Co Ltd.

2. Preference shares are always presumed to be cumulative (unless AOA specifies otherwise)

3. Can a company have only PSC and no ESC? – No. Only ESC is possible. But only PSC not possible.

1

Rule 4 of Cos (Share Capital & Debenture) Rules, 2014 - Equity Shares with Differential Right

Conditions to issue equity shares with Differential Rights (DR): [*A2 VP FD2*]

1. AoA authorizes the issue of such shares;
2. Such issue is authorized by an ordinary resolution passed at GM.
   If eq. shares are listed on RSE – Seek approval through postal ballot (still OR).
3. Voting Power (VP) of shares with DR shall not be > 74% of total VP (incl. VP on shares with DR)
4. Co. has not defaulted in filing FS and AR for 3 immediately preceding FY
5. Co. has no subsisting default in:

payment of declared dividend	repayment of matured deposit + Intt.	Redemption of pref. shares	Redemption of debenture + Intt

6. Co. has not defaulted in:

payment of dividend on pref. shares	repayment of term loan + Intt. - PFI/ State FI / Sch. Bank.	Stat. dues w.r.t., Employee	Default in crediting amt. in IEPF to CG

   Provided that co. may issue DVR on expiry of 5 years from end of FY in which default made good.

7. The co. has not been penalized by Court/Tribunal during last 3 years of offence under the RBI Act, 1934 , the SEBI Act, 1992, the SCRA , 1956, the FEMA, 1999 or any other special Act

Additional Points:

1. ES to notice for GM or Postal Ballot to contain prescribed details about the issue (size of issue)
2. Co. shall NOT convert existing ESC with Voting Rights into ESC carrying DVR and vice versa
3. Details of such issue to be disclosed in BOD Report
4. Holders of Eq. shares with DR shall enjoy all other rights such as bonus shares, rights shares etc., which holders of eq. shares are entitled to, subj to DR with which such shares are issued.

5. Register of Members u/s 88 to contain relevant particulars of such shares with details of SHs.

Non-applicability of section 43:
- Specified IFSC co. where MOA or AOA provides for it.
- Private co. where MOA or AOA so provides for it (subject to filing FS u/s 137 o AR u/s 92)

Section 46 – Certificate of Shares (SC)

1. Certificate to be Prima Facie Evidence of title of such shares: - If such certificate is issued under:

common seal, if any or	signed by 2 directors, or	where the company has appointed a CS - a director + CS

Note: If composition of BoD permits, at least 1 of the 2 directors shall be other than MD or WTD.

2. Duplicate certificate may be issued if:
   a. It is proved to have been lost or destroyed; or
   b. has been defaced, mutilated or torn + Surrendered to company.

3. Details regarding manner of issue of certificate/duplicate – As may be prescribed

Rules :

a. Time period for issue of duplicate share certificate:

Unlisted co.	Within 3 months from submission of complete docs.
Listed co.	Within 15 days from submission of complete docs.

b. Maintain register of every renewed or duplicate share certificate:

Form	SH-2
Location	RO or any place where Register of members is kept
Custody and Authentication	CS or authorised person

c. Upon sub-division or consolidation, co. may replace all share certificates without requiring old ones to be surrendered. In the new certificate, mention the fact that it has been replaced.

d. Co. may charge fees as Board may decide (<= 50). No fees where scheme sanctioned by HC/CG

4. Where share is held in depository form - Record of depository is prima facie evidence of interest of beneficial owner.

5. If Co. issues a duplicate certificate of shares with intent to defraud:

	Minimum	Maximum
Company	5x of FV of shares involved	Higher of 10x or Rs. 10 crores
OID	Liable for action u/s 447	

Relevant points from Rule 5 and Rule 7 of Companies (Shares and Debentures) Rules 2014:

- Share certificate shall be in Form SH-1
- Books related to records of certificate – Preserve for 30 years. In case of dispute – permanently.
- Surrender share certificate – Immediately deface by stamping the word "Cancelled' and destroy after 3 years subject to board resolution and presence of authorised person.
- In case of joint ownership – only 1 share certificate.

Section 47 – Voting Rights

[N.A. to Private Co. if mentioned so in MoA/AoA, subject to 92 + 137]

1. Subject to certain provisions of this Act:
   a. every member holding ESC, shall have right to vote on every resolution placed before co.; &
   b. his voting right on a poll shall be in proportion to his share in the paid-up ESC of the co.

   Note – In case of Nidhi, no member shall exercise voting rights on poll > 5% of total VR of ESH.

2. Every member holding PSC shall, in respect of such capital, have a right to vote only:
   a. on resolutions which directly affect the rights attached to his preference shares and,
   b. any resolution for the winding up of the company or
   c. for the repayment or reduction of its EQUITY or PSC and

   his voting right on a poll shall be in proportion to his share in the paid-up PSC of the co.

   Provided that proportion of voting rights of ESH to voting rights of PSH shall be in the same proportion as the ESC bears to PSC.

   Provided further that where dividend in respect of a class of pref. shares has not been paid for 2 years or more, such class of PSH shall have a right to vote on ALL resolutions placed before the co.

Section 48 – Variation of Shareholder's Rights

1. How to vary the rights?

   Rights attached to shares of any class may be varied with:
   - Consent in writing of not less than 3/4th of issued shares of that class, or
   - SR (at a separate meeting of such class)

   if provision for such variation is contained in AoA/MoA or in absence of such provision, it is not prohibited by terms of issue of such shares

   If variation by one class of SH affects rights of any other class, consent of 3/4th of such other class of SH shall also be obtained and the provisions of this section shall apply to such variation.

2. Resistance to such variation

   - Where holders of not less than 10% of issued shares of a class
   - did not consent to such variation or vote in favor of SR
   - they may apply to Tribunal to have variation cancelled.
   - Where such appln is made - Variation shall not have effect until it is confirmed by Tribunal:

   Provided that – Such application to be made within 21 days after date of consent/resolution

3. The decision of the Tribunal on any application u/ss (2) shall be binding on the shareholders.

4. Co. shall, within 30 days of the date of order of Tribunal - File a copy thereof with the Registrar.

Summary of Section 49 to 51

Sec	Provision
49	Where any calls for further share capital are made on shares of a class, such calls shall be made on uniform basis on all shares falling under that class Note - Shares of same nominal value with different PUSC are not said to be in same class.
50	1. Co. may, if authorized by AOA, accept from any member, the whole or a part of amount remaining unpaid on any shares held by him, even if such amount has not been called up. 2. Such advance payment shall not entitle the member to any voting rights. Can co. pay dividend on the advance payment received u/s 50 – No!. Interest can be paid.
51	Co. may, if authorised by AOA, pay dividends in proportion to amount paid- up on each share

Section 52 – Application of Premiums Received on Issue of Shares

1. Where co. issues shares at premium (cash/otherwise) – Transfer such aggregate amount of premium to Securities Premium Account (SPA)

   Except as provided in this section, provisions relating to reduction of share capital shall apply as if the SPA were the PUSC of the company.

2. Application/Utilisation of amount in SPA account:
   a. towards issue of unissued shares of co. to members as fully paid bonus shares
   b. write off Preliminary expenses of the co.
   c. write off – Expenses/Commission paid or discount allowed on issue of shares/debentures of co.
   d. providing for premium payable on Redemption of any redeemable pref. shares/ any debentures
   e. purchase of its own shares u/s 68 (Buyback)

3. Notwithstanding above (1) and (2), in case of such class of cos. as may be prescribed + whose FS comply with prescribed AS u/s 133, the SPA shall be utilised for:
   a. towards issue of unissued shares of co. to members as fully paid bonus shares
   ~~b. write off Preliminary expenses of the co.~~
   c. write off – Expenses/Commission paid/Discount allowed on issue of shares/debentures of co.
   ~~d. providing for premium payable on Redemption of any redeemable pref. shares/ any debentures~~
   e. purchase of its own shares u/s 68 (Buyback)

   Note – SPA is not a Free Reserve. It's in the nature of capital reserve.

Section 53 – Prohibition on Issue of Shares at Discount

1. Except as u/s 54, a company shall NOT issue shares at discount.
2. Any share issued by a company at a discount price shall be void.
   Exception - Notwithstanding anything contained above, a co. may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme as per RBI guidelines.

3. Default under this section:
   - Co. and OID – Fine up to amt. raised through such issue or Rs. 5 lakhs, whichever is less, and
   - Co. shall also be liable to refund such money + Intt. @12% p.a. from date of issue of such shares

Section 54 - Issue of Sweat Equity Shares (SES) to Directors/Employees

Sweat Equity Shares [Sec 2(88)]

- Such equity shares as are issued by a co.
- 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 (IPRs) or value additions, by whatever name called;

Provisions:

1. Notwithstanding anything contained in sec 53, co. may issue sweat equity shares (SES) (of class of shares already issued), provided that:
   a. the issue is authorized by a SR
   b. Resolution specifies:

No. of shares	Current Mkt. Price	Consideration, if any	Issued to whom

   c. If eq. shares are listed, such issue is as per SEBI Regulations. If not listed, as per Rules.

2. Rights, limitations and provisions of equity shares shall be applicable to sweat equity shares too and it shall rank pari passu with other Equity shares.

Rule 8 - Issue of Sweat Equity Shares:

"Employee" means:

(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; or
(c) Dir/Employee as per (a) or (b) above of subsidiary (India or o/s India) or of holding co. of the co.;

"Value additions" means actual or anticipated economic benefits derived/to be derived by co. from an expert or a professional for providing know-how or making available rights in the nature of IPRs, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.

Additional Points:

Validity of SR	Allotment of sweat eq. shares to be made within 12 months of passing SR
Maximum issue size per year:	In a FY, a co. shall NOT issue SES > 15% of existing PUESC or issue value of Rs. 5 crores, WEH Provided that, issuance shall not > 25% of PUESC at any time. Prov. further that – In case of Startup – Issue not > 50% (instead of 25%) of its Paid up ~~equity~~ share capital upto 10 years from incorp.
Lock in	3 years from date of allotment [Mention lock-in in share certificate]
Issue price	To be determined by Registered Valuer with proper justification
Valuation	Valuation of IPR/Know how/Value Add – By RV with a proper report to BoD.
Treatment of non-cash consideration in books:	a. Where non-cash consideration is a depreciable/amortizable asset – Carry to BS as per AS b. Where clause (a) N.A. – Expense as per AS
BoD report	Co. to disclose specific details of such issue in BoD report
Register	Co. to maintain register of SES in Form SH-3 at RO or such other place decided by Board

Section 55 - Issue and Redemption of Preference Shares (PS)

1. No company limited by shares shall issue preference shares that are irredeemable
2. Conditions for issue of PS:
   a. The issue has to be authorized by AoA
   b. The issue has been authorised by passing SR in the GM
   c. At the time of such issue – there is no subsisting default in:
      - Redemption of any pref. share or
      - Payment of dividend due on preference shares.
   d. Such PS is redeemable within period not exceeding 20 years

      Provided that – Co. engaged in setting up and dealing with infrastructural projects may issue pref. shares of period exceeding 20 years but not exceeding 30 years provided that – Min. 10% of such pref. share is redeemed each year from 21st year at the option of PSH

3. Redemption of preference share:
   - Redemption of PS shall be only on terms on which it was issued or varied u/s 48.
   - PS may be redeemed:

At a fixed time or happening of certain event	Any time at company's option	Any time at PSH option

   - Source of redemption:
     Such shares shall be redeemed only out of –
     (i) profits of the co. available for dividend or
     (ii) proceeds of fresh issue made for purpose of such redemption

   - Only fully paid up preference shares can be redeemed

- Creation of CRR:
  - Where such shares are proposed to be redeemed out of profits, transfer a sum = Nominal value of shares to "Capital Redemption Reserve" A/C
  - Provision relating to reduction of SC shall apply as if CRR were PUSC of the company.
  - CRR may be applied for – paying up unissued shares to be issued as fully paid bonus shares.

- Premium on redemption of PS:
  - Such premiums shall be provided for out of profits or SPA.
    However, in case of prescribed class of co. whose FS comply with AS u/s 133, such premium shall be provided for out of profits (and not SPA as u/s 52)
  - Such premium shall be provided for before such redemption

4. Other relevant points:
   - Register of members u/s 88 shall contain particulars w.r.t, such pref. SHs
   - If co. intends to list such pref. shares – Issue preference shares as per SEBI regulations

5. Where a company is not in position to redeem/pay divided on any pref. shares, it may:
   - with consent of 3/4th in value of PSH and
   - approval of Tribunal on petition made by it

   issue further redeemable preference shares = amount of unredeemed pref. shares + dividend.
   On such issue – Unredeemed pref. shares shall be deemed to have been redeemed.

   Provided that Tribunal shall, while giving approval, order redemption forthwith of pref. shares held by such persons who have not consented to issue of further redeemable preference shares.

   Note – Issue or redemption of pref. share is not = Reduction in SC of co.

Concept clarity check:
A co. proposes to redeem a pref. share of nominal value Rs. 100 with a premium of Rs. 20 per share. Such redemption was to be made by further issue of pref. shares. Decide the amount to be transferred to CRR? – Zero! CRR is only needed when amt. is paid out of profit (as you are utilizing dividend money)

Section 56 - Transfer and Transmission of Securities

1. Company to register transfer of securities.
   - Co. shall not register transfer of securities (or interest of member in case of company not having SC) unless:
     a. proper instrument of transfer (Form SH-4) duly stamped and dated has been executed by transferor (TOR) and transferee (TEE)
     b. Such instrument specifies the name, address and occupation of transferee
     c. Such instrument has been delivered to co. by TOR or TEE within 60 days of execution along with share certificate or letter of allotment (if no certificate is in existence)

     Above provision shall not apply in case of transfer between persons both of whose names are entered as beneficial owners in records of depository.

   - If instrument of transfer is lost/has not been delivered to co. within prescribed time, co. may register on such terms as to indemnity as Board may think fit.

   - In case of Govt co., instrument of transfer shall not be required w.r.t. transfer of bonds issued by a Govt. co provided that an intimation by TEE specifying name, address and occupation + Bond certificate or Letter of Allotment is delivered to the co.

2. A co. can register TRANSMISSION of any right to securities by operation of law on receipt of intimation for the same from any person to whom such right is transmitted (transferee) (i.e., transfer instrument not required in case of transmission. Instead, it requires intimation of transmission)

   Cases of Transmission:

Death (to Legal Rep)	Insolvency (to resolution professional)	Lunacy (to administrator appointed by Court)

3. Notice to transferee in case of partly paid shares:
   Where an application for registration of trf. of partly paid shares is made by TOR alone, a co. shall not register such trf. unless:
   - Co. has given notice (in Form SH -5) of such application to TEE and
   - TEE to give no objection to the transfer within 2 weeks from receipt of notice.

4. Unless prohibited otherwise, co. to deliver certificates of all securities allotted, trfd/ transmitted:

In case of:	Within a period of:
Subscribers to MoA	within 2m of incorporation
Any Allotment of its shares	within 2m of allotment
Transfer or transmission	within 1m from date of receipt of transfer instrument or Intimation of Transmission (IOT)
Allotment of debentures	within 6m from date of allotment

Note - where sec are dealt with in a depository, co. to intimate details of allotment to depository immediately on allotment.

5. Transfer of any security of a deceased person made by his LR shall, even if the LR is not a holder thereof, be valid as if he had been holder at the time of execution of instrument of transfer.

6. Default in compliance of above provisions – Fine – Co. and OID – Rs. 50,000 [*Amendment*]

7. Without prejudice to any liability under the Depositories Act, 1996, where any depository or DP, with an intention to defraud a person, has transferred shares, it shall be liable u/s 447.

Difference between Transfer and transmission (just for knowledge)

	Transfer	Transmission
Voluntary?	Yes	No. Operation of Law
Transfer Instrument?	Yes	No. Intimation of Transfer
Consideration	Likely, Yes.	No.

Note – Forged Transfer is a Nullity and is not legally binding. A company can be forced to delete name of TEE in case of Forgery.

Case:
Mr. A is shareholder of RIL. Mr. Chor forged signature of Mr. A and transferred his shares to Mr. B. Mr. B then further transferred the shares to Mr. C & RIL registered such trf. Discuss consequences.

Answer:
- Co. to restore ownership to Mr. A. Co. shall not be liable to Mr. B or Mr. C
- Genuine buyer (Mr. C) shall be indemnified by Mr. B.
- Mr. B, who indemnified Mr. C, shall, in turn, chase Mr. Chor.

Exam question:
What if a share certificate is transferred via forgery (Q2 of QB):
- A forged transfer is a nullity.
- It does not give the transferee any title to the shares. Similarly any transfer made via such forgery will also not give a good title to shares as the title of buyer is only as good as that of seller.
- If a co. acts on a forged transfer & removes name of real owner, then co. is bound to restore such name and pay him any dividends which he ought to have received
  (Barton v. North Staffordshire Railway Co.)

Section 57 - Punishment for Personation of Shareholder

- If any person deceitfully personates as owner of any security/interest/share warrant/coupon, and
- thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner,
- he shall be punishable with imprisonment – 1 year to 3 years AND with fine Rs. 1 lakh to Rs. 5 lakhs.

Section 58 - Refusal of registration and appeal against refusal.

Refusal by Private company:
Where a private co limited by shares refuses to register transfer or transmission, it shall:
- within 30 days of delivery of trf. inst. or intimation of transmission (IOT).
- send notice of refusal to TOR and TEE or to person giving IOT
- stating the reason for refusal to register

Appeal in case of refusal:
TEE or IOT person may appeal to Tribunal:
- within 30 days of receipt of notice of refusal
- where no notice of refusal is received, within 60 days of delivery of instrument of trf or IOT to co.

In case of Public Co:
- Securities of public companies are freely transferrable.
- Any contract w.r.t., trf of securities shall be a valid contract and enforceable.

Refusal by a Public co. without sufficient cause:
If a public co., without sufficient cause refuses to register the transfer of sec. within 30 days from date on which instrument of transfer or IOT, is delivered to the co., transferee may appeal to tribunal:
- within 60 days of receipt of notice of refusal
- where no notice of refusal is received, within 90 days of delivery of instrument

Order by Tribunal:
After hearing the parties, Tribunal may either dismiss the appeal or by order:
a. Direct co. to register trf/transmission & co. shall comply within 10 days of receipt of such order, or
b. Direct rectification of the register and also direct the co. to pay damages to party aggrieved.

Contravention of order of Tribunal - Imprisonment – 1 year to 3 years AND Fine Rs. 1 L to Rs. 5 L

Section 59 - Rectification of Register of Members

1. Application for Rectification of Register of Member (RoM):
   If without sufficient cause, the name of any person is:

entered into RoM	ommitted from RoM	unnecessary delay in entering/removing name

   Aggrieved person or Any Member may make an application for rectification of RoM to:
   a. Tribunal, or
   b. Competent court o/s India specified by CG – In case of foreign members or DHs o/s India

2. Tribunal may either dismiss the appeal or by order:
   a. Direct co. to register trf/transmission and co. to comply within 10 days of receipt of order, or
   b. Direct rectification of the register and also direct the co. to pay damages to party aggrieved.

3. The sections shall not restrict the holder of the sec. from transferring such sec. and any person acquiring such sec. shall be entitled to Voting Rights.

4. Where a trf. is made in contravention of any Law, Tribunal may, on application to it, direct the company or depository to set right the contravention and rectify registers.

Section 61 - Power of Limited Company to Alter its Share Capital

12 19 31 34

1. A limited co. having a SC may, if so authorised by its AoA, alter its MoA in its GM to:
   a. increase its ASC by such amount as it thinks expedient;
   b. consolidate & divide its SC into shares of a larger amount than its existing shares.
      Provided that no consolidation and division which results in changes in voting % of SHs shall take effect unless approved by Tribunal on an application in prescribed manner;
   c. convert its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
   d. sub-divide its shares into shares of smaller amount than is fixed by the memorandum, However, in such sub-division, the proportion between the amount paid and the amount unpaid on each reduced share shall be same as it was earlier;
   e. cancel shares which have not been taken by any person and diminish amount of its share capital by amt. of the shares so cancelled.

2. The cancellation of shares u/ss (1) shall not be deemed to be a reduction of share capital.

Note - The capital clause of memorandum, if authorised by the articles, shall be altered by passing a special resolution as per Section 61 (1) of the Companies Act, 2013.

Section 62 - Further Issue of Share Capital

13 14 15 16

(Right issue/preferential allotment/Right of Pre-emption)

1. Where a co. proposes to increase it subscribed capital, by issue of further shares, such shares shall be offered to –
   a. Persons who, on the date of such offer, are ESH of the company:
      Such offer shall be made in proportion to PUSC by sending a letter of offer subject to:
      i. Offer to be made by notice specifying no. of shares offered & limiting time to accept offer.

         Time limit shall be not < 15 days or days as may be prescribed and shall not > 30 days.
         If not accepted within time limit – Deemed declined.

         Note – In Pvt. co (92 + 137) – If 90% of member give consent, then less than 15 days allowed

      ii. Right to Renounce – Unless AOA provides otherwise, above offer shall be deemed to include right to renounce shares offered. A statement to this effect is to be included in the offer .

iii. After expiry of time limit/receipt of intimation declining offer – BoD to dispose such shares in manner not dis-advantageous to SH and the company

b. Offer to employees – Under ESOPs subject to SR and prescribed T&C
(In case of Pvt co (92+137) – Pass OR instead of SR)

c. Offer to any person:

if it is authorised by SR	either for cash or consideration other than cash.	if the prices to be determined by a valuation report by RV

2. Dispatch of notice referred above: to existing SH
   - Via – Registered post or speed post or e mode or courier or other mode having proof of delivery
   - at least 3 days before opening of issue.

3. Provision of this section – N.A. in case of conversion of debenture/loan by way of exercise of option as per terms attached to such debt issued/loan raised. Provided that such an option in the issue of debenture/loan raised was approved by SR.

4. Conversion of Debenture issues to Government on T&C as per Govt.:
   - Notwithstanding provision u/ss(3),
   - where any debentures/loan has been obtained from any Government, and
   - if that Govt. considers it necessary in public interest so to do,
   - it may, by order, direct that debentures/loans or part thereof shall be converted into shares
   - on terms as may appear reasonable to Govt.
   - even if terms of debentures/loan do not include option for such conversion.

   Provided that where terms of such conversion are not acceptable to co., it may, within 60 days from date of communication of such order, appeal to Tribunal for order as NCLT may deem fit.

5. In determining the terms, Govt. shall have due regard to:

Financial Position	terms of issue of such debt	rate of intt. on such debt/loan	Others

6. Effect of Govt passing such order + No appeal or where appeal is made has been dismissed, if the order has effect of increasing the ASC:
   a. the MoA stands altered
   b. ASC stands increased by amt equal to value of shares to which such debt/loan is converted into.

Rule 12 – Issue of Employee Stock Options (ESOP)

"Employee" means-

(a) a permanent employee of the company who has been working in India or outside India; or
(b) a director of the co., whether whole time or not *but excluding an independent director*; or
(c) an employee referred in (a) or (b) of a subsidiary (India or outside) or of a holding co.

but does not include:

(a) an employee who is a promoter or a person belonging to the promoter group; or
(b) director who (himself or via relative/any BC) holds more than 10% of o/s equity shares of the co.

In case of Startups – Above 2 exceptions N.A. for first 10 years.

To issue ESOP:
Listed company – Comply with SEBI Regulations.
Other than listed co, comply with following conditions:

Such issue is approved by way of SR	Co. to make specified disclosure in ES annexed to notice	Co. has freedom to determine "Exercise Price" as per applicable policies
Min. period of 1 year between grant and vesting of options*	Co. has freedom to specify lock in period.	No right to vote/receive dividend unless shares issues on exercise of option.
Options are non-transferrable	Options granted shall not be pledged, hypothecated, etc	No person other than employee entitled to ESOPs.
In case of death – options granted to him shall vest with legal heirs or nominees	In case of permanent incapacity – Option granted to vest on such employees on that day	In case of resignation/ termination – option to expire.

* In case of amalgamation – Adjust the period for which options were held in prior co. with min. vesting period. *(If you didn't understand this, read the detailed text below or else, skip.)*

Provided that in a case where options are granted by ABC Ltd. under its ESOP in lieu of options held by the same person under an ESOP in XYZ Ltd, which has merged or amalgamated with ABC Ltd., the period during which the options granted by ABC Ltd. were held by him shall be adjusted against the minimum vesting period required under this clause;

Section 63 - Issue of Bonus Shares

17 18 32 35

A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of:

- Free Reserve
- Sec. premium Account
- CRR Account

Provided that no issue of bonus to be made by capitalizing reserves created by revaluation of assets.

Conditions for issuing bonus shares:

No company shall capitalise its profits or reserves for issuing fully paid-up bonus shares, unless:

- Auth. by AOA
- On recommendation of BoD - Auth in GM
- Not defaulted in payment of intt/principal w.r.t., fixed deposit or debt sec. issued by it
- Not defaulted - Stat due of employee
- Partly paid up shares are made fully paid up
- Condition prescribed - Bonus once announced by BoD, cannot be withdrawn

Concept clarity check:

1. Can a company issue bonus out of revaluation reserve after complying with above 6 conditions? – No!
2. Bonus shares shall not be issued in lieu of dividend.

Section 64: Notice to be Given to Registrar for Alteration of Share Capital

1. In the following cases:
   - Alteration of SC u/s 61(1)
   - Increase in ASC u/s 62(6)
   - Redemption of pref. shares

   Co. shall file a notice (Form SH – 7) along with Altered MoA to RoC within 30 days of such action.

2. Contravention – Co. & OID – Fine of Rs. 500 / day subject to max. Rs. 5 lakhs (Co) or Rs.1 lakh (OID)

Section 66: Reduction in Share Capital

19

1. A company may reduce its share capital subject to:
   a. Confirmation by Tribunal on application by company, and
   b. By a Special Resolution, and
   c. Alter MoA by reducing the amt. of SC and no. of shares.

   Manner of Reduction in SC:

   i. Extinguish or reduce the liability on any shares not paid up
   ii. With or without extinguishing or reducing liability on its shares:
      1. Cancel any PUSC which is LOST or is unrepresented by available asset.
      2. Pay off any PUSC which is in excess of the wants of the co.

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, or the interest payable thereon

2. On receipt of application u/ss (1), the Tribunal shall give a notice thereof to:

CG	RoC	Creditors of co.	SEBI (in case of Listed Co.)

and shall take into consideration the representation, if any, made within 3 months of such notice.
If no representation – Presume no objection.

3. Tribunal to order confirming reduction of SC on T&C as it may deem fit – Only when it is satisfied that debt/claim of every creditors has been discharged or his consent is obtained.

   Provided that Tribunal shall not sanction unless: A/C treatment, proposed by co. for such reduction is in conformity with AS u/s 133 + Certificate by company's auditor has been filed with Tribunal.

4. Order of Tribunal shall be published in manner as directed by Tribunal.

5. Co. to deliver copy of order of Tribunal and of a minute approved by Tribunal showing the following with ROC within 30 days of receipt. RoC shall register and issue a certificate thereof.

   The minute approved by Tribunal shall include the following info:

Amount of SC	No. of shares into which it is to be divided	Amt. of each share	Amt. at the date of registration deemed to be paid up

6. Nothing in this section shall apply to buy-back of its own securities by a company u/s 68.

7. A member, past or present, shall not be liable to any call/contribution w.r.t, any share held by him exceeding [Amount paid up on the share - Amount of share as fixed by the order of reduction].

8. Where the name of a creditor is not entered in the list of creditors by reason of his own ignorance of proceeding for reduction or otherwise AND after such reduction, the co. commits a default (Sec 6 of IBC) of his debt,:
   a. Every member of co. on the date of registration by RoC of order for reduction shall be liable to contribute to payment of that debt an amt not > amt he would be liable in case of WUP, AND
   b. If co. is wound up, the Tribunal may, on application of such cr. + proof of his ignorance – Settle a list of person so liable to contribute and enforce such calls on contributories as if they were ordinary contributories.

9. If any officer of the company:
   a. knowingly conceals the name of any creditor entitled to object to the reduction;
   b. knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
   c. abets or is privy to any such concealment or misrepresentation as aforesaid

   he shall be liable under section 447.

Alteration (sec 61) vs Reduction (sec 66) – Refer QB Q19

Section 67: Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares

1. No company having SC shall have power to buy its own shares without consequent reduction in SC.

2. No public company shall give any loans, guarantee or provide security or any financial assistance for purchase/ subscription of shares of the company or its holding co.

3. Nothing u/ss (2) shall apply to:
   a. lending of money by a banking company in the ordinary course of its business;
   b. the provision by a co. of money as per any scheme approved by co. through SR for the purchase/ subscription, fully paid-up shares in co. or its holding co., if the purchase/ subscription of the shares is held by trustees for benefit of employees or such shares are held by employees.

   Rule 16:
   1. In the case of listed co., purchase such shares only through RSE.
   2. In case of unlisted co., - valuation of purchased shares shall be made by Registered Valuer.
   3. Value of shares purchased <= 5% of (PUSC + FR)
   4. Various disclosures w.r.t. voting rights not directly exercised by employees shall be made in Board report.

   c. Loan to employee for purchase of shares of company: 20 21 22
      - Giving of loans by a company to employees (other than directors or KMP),
      - for an amount not exceeding 6m salary or wages
      - with a view to enabling them to subscribe for fully paid-up shares in co. or its holding co.

      Provided that disclosures in respect of voting rights not exercised directly by employees in respect of shares to which scheme relates shall be made in BOD report in prescribed manner.

4. Nothing in this section shall affect the right of a co. to redeem any preference shares issued by it.

5. Contravention:
   Co. - Rs. 1 lakh to Rs. 25 lakh and OID – Jail upto 3 years and fine Rs. 1 lakh to 25 lakhs.

Non applicability of Section 67:

1. Pvt co. (92+137) and IFSC Public Co. where all the condition is fulfilled:
   - In whose share capital, no other BC has invested
   - Borrowings from banks/FI or BC is < Lower of - 2x PUSC or Rs. 50 crores, AND
   - Co. has no subsisting default in repayment of borrowing.

2. 67(1) shall not apply to Nidhi co. when shares are purchased from members on ceasing to be a depositor.

Section 68: Power of Company to Purchase its Own Securities ("Buy-back/BB")

23 24 25 26 27 28 29

This section talks about purchase of own shares or other specified securities (Buy-back). Specified Securities include ESOPs or securities notified by CG.

1. Notwithstanding other provision of the Act, co. may BB out of:

Free Reserve	Sec. premium Account	proceeds of issue of any share/other sec.

   Proviso– No buy-back of a kind of share/sec. shall be made out of proceeds of an earlier issue of the same kind.

2. Conditions to be fulfilled prior to BB:
   i. Auth. by AoA
   ii. Auth. by SR in the GM
      Note - SR not needed where:
      a. Limit – buy-back is <=10% of total PUESC + FR, and
      b. Auth. by Board by means of resolution passed at BM

   iii. BB is <=25% of total PUC + FR
      [In case of BB of equity share in any FY, reference to 25% shall be construed w.r.t., PUESC ~~+ FR~~ in that FY]

   iv. Ratio → $\frac{\text{Debts (secured + unsecured) owed after BB}}{\text{Paid up } \cancel{\text{Equity}} \text{ Capital + FR}}$ = Not > 2 (or higher ratio by CG)

   v. All the shares/sec. for buy-back is fully paid up.

   vi. If securities are listed on RSE – BB as per SEBI Regulations. If not listed, then as per this Act

   Proviso – BB shall NOT be made within 1 year reckoned from date of closure of preceding BB

3. The ES of the notice of meeting at which SR is proposed to be passed shall state: [*Necessity FACT*]

full disclosure of material Facts;	Necessity for the buy-back;	securities intended to be purchased;	Amount to be invested; and	Time-limit for completion

4. Time limit for completion – Within 1 year from date of passing SR/BR as the case may be

5. Source of BB: buy-back may be from:

Existing SH on prop. basis	Open Market	Sec. issued to employee (ESOP or sweat shares)

6. Declaration of Solvency:
   - Before making buy-back, co. to file with RoC and SEBI (only if listed),
   - a "Declaration of solvency" in Form SH-9
   - signed by at least 2 directors (1 MD compulsory).
   - verified by an affidavit stating BoD has made full inquiry into affairs of co. and are of opinion that it is capable of meeting liabilities + will not be rendered insolvent within 1 year from date of declaration adopted by BoD.

7. Post buy-back – Co. to extinguish and physically destroy the share so bought back within 7 days of last date of completion of BB

8. Where a company complete a buy-back – Co. shall NOT make further issue of shares/sec. of SAME kind including allotment u/s 62(1)(a) within 6m (except for bonus shares or shares to discharge subsisting obligations such as conversion of warrants, ESOPs, sweat equity or conversion of pref. shares/debentures into equity)

9. Co. to maintain register (in Form SH-10) showing:

shares/sec. so bought back	consideration paid	Date of cancellation of sec. so bought back	date of extinguishing/ physically destroying shares	Other part.

Additional Points:
- Before BB, co. to file with ROC a letter of offer in Form SH 8
- After completion of buy-back – File return with RoC + SEBI (if listed) within 30 days in Form SH-11
- Along with such return, file a certificate in Form SH 15 signed by 2 directors (1 MD) stating that BB is in compliance with this Act.
- Default under this section → Company and OID – Rs. 1 lakh to Rs. 3 lakhs

Section 69: Transfer of Certain Sums to Capital Redemption Reserve Account

1. Where a co. purchases its own shares out of free reserves or SPA, a sum equal to the nominal value of shares so purchased shall be transferred to CRR A/C
2. Details of such transfer shall be disclosed in the balance sheet.
3. CRR A/C may be applied by the company, in issue of bonus shares.

Concept clarity check
A co. does BB from proceeds from issue of any other shares. How much amt is to be trf to CRR?
None! Trf. to CRR is to be done only in case of purchase out of FR or SPA

Section 70: Prohibition for Buy-Back in Certain Circumstances:

1. No company shall directly or indirectly purchase its own shares or other specified securities:
   a. through any subsidiary co. including its own subsidiary companies; (Section 19)
   b. through any investment company or group of investment companies; or
   c. if a default, is made by the co., in the repayment of deposits + interest payment thereon, redemption of debentures or pref. shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any banking company or FI:

   Provided that the buy-back is not prohibited, if the default is remedied and 3 years has lapsed after such default ceased to subsist.

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

Section 2(30) - Debenture:

Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

Provided that, following instrument shall not be treated as debenture:
a. instruments referred to in Chapter III-D of the RBI Act, 1934; and
b. such other instrument, as may be prescribed by CG in consultation with RBI, issued by a company.

Section 71: Debentures

30 33

1. A co. may issue debentures with an option to convert such debentures into shares, either wholly or partly at time of redemption.
   Provided that the issue of such convertible debentures shall be approved by a SR passed at a GM.

2. No company shall issue any debentures carrying any voting rights.

3. Secured debentures may be issued by a company subject to such T&C as may be prescribed.

Rule 18 - Issue of Secured Debenture:

i. Redemption period
   In case of secured debenture, the date of redemption shall not > 10 years from date of issue.
   Provided that, in following class of cos, it may exceed 10 years but not exceeding 30 years:

Companies engaged in setting up infra projects	Infra finance companies	Infra debt fund NBFCs	Co. as may be permitted by CG/RBI/NHB for > 10 years

ii. How will it be secured – Creation of charge:
- Such an issue of debentures shall be secured
- by the creation of a charge on properties or assets (in favor of debenture trustee)
- of company or its subsidiaries or its holding co. or its associates companies,
- having value which is sufficient for due repayment of the debentures and interest thereon

iii. Appointment of debenture trustee:
- Company shall appoint debenture trustee ("DT")
- before issue of prospectus or letter of offer for subscription of its debentures and
- execute a debenture trust deed ("deed") to protect the interest thereon not later than 60 days after allotment of debentures.

Note – Deed shall be executed in Form SH-12 within 3 months of closure of issue or offer.

4. Creation of DRR and Deposit of sums:
- Co. shall create a Debenture Redemption Reserve (DRR) account
- out of the profits available for distribution as dividend, and
- Amt. credited to DRR account shall be utilised only for redemption of debentures.

Rule 18: Creation of DRR and investment of sums for redemption of Debentures:

Creation of DRR :

All India Financial Institutions and Banking companies are generally not required to create DRR.
For unlisted co. other than NBFCs – Adequate DRR is 10% of outstanding debentures in that FY.

Deposit/Investment:

Co. which has raised debentures shall:
- on or before 30th April in each year,
- in respect of debentures issued by such co., invest or deposit,
- a sum not less than 15% of amount of debentures maturing on 31st March of next year
- in any one or more methods of investments or deposits as follows:

deposit with scheduled bank	unencumbered securities of CG/SG	unencumbered securities as per Indian Trust Act	unencumbered bonds of any other cos. notified under Indian Trust Act

Provided that amount invested or deposited shall not:
- at any time fall below 15% of amount of debentures maturing during the year ending on 31st day of March of that year.
- be used for any purpose other than redemption of debentures maturing during the year

5. No co. shall issue a prospectus to the public or to its members (> 500) for subscription of its debentures, unless the co. has, appointed one or more debenture trustees.
(i.e., if offers to public or members (> 500), appoint debenture trustee)

Rule 18: Eligibility of Debenture Trustee

The co. shall appoint DT after complying with following conditions:

i. Name of DT to be stated in prospectus or letter of offer and in subsequent communications
ii. Before appointment, written consent of DT obtained and statement to that effect included in the letter of offer.
iii. A person shall not be appointed as DT if he:
   a. Beneficially holds shares in co.
   b. is promoter, director or KMP or other officer or employee of CASH
   c. beneficially entitled to moneys to be paid by the co. (other than remuneration as DT)
   d. indebted to CASH or subsidiary of such holding co.
   e. furnished guarantee in respect of principal debts secured by debentures
   f. has pecuniary relationship with co. >= Lower of [2% of Gross T/O or total income or 50 lakhs or higher amount as may be prescribed] in preceding 2 FY or CY
   g. Relative of [promoter or director or KMP] of the company
iv. Board to fill casual vacancy in office of trustee (in case of resignation, obtain written consent of majority of DH prior to filling such vacancy)
v. DT may be removed if approved by not less than 3/4th in value of DHs

6. 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.

Rule 18: Meeting of DHs:

Meeting of all the DHs shall be convened by the DT on:

(a) requisition in writing signed by DHs holding >= 1/10th in value of outstanding debentures;
(b) happening of any event, which constitutes breach, default or which in the opinion of DT affects interest of DHs.

7. Any provision in trust deed which has the effect of exempting DT from liability for breach of trust or indemnifying him where he fails to due care and diligence – Shall be void.

   Provided that – Liability of DT shall be subject to exemption as agreed by - Majority of DHs holding > 3/4th in value of total debentures.

8. Co. shall pay interest and redeem debentures as per the terms and conditions of their issue.

9. Where at any time, DT comes to conclusion that assets of co. are insufficient/likely to become insufficient to discharge principal amount when it become due, DT may file petition before Tribunal.

   Tribunal may, after hearing, impose restriction on further liability of co. (in interest of DH)

10. If co. fails to redeem debentures on date of maturity or fails to pay interest when due, Tribunal may, on application of DHs or DT, order co. to redeem it forthwith with payment of principal and interest thereon.

11. A contract with co. to take up and pay for any debentures of co. may be enforced by a decree for specific performance.

Additional points:

1. As per sec 180(1)(C) – Co. to obtain SR if borrowings exceed 100% of PUSC + FR +SPA
2. Co. to file return of allotment in Form PAS -3 within 30 days of allotment of such debentures

Addition concept relevant for CA Inter:

Section 180(1)(c) – Restriction on power of Board w.r.t. Borrowing Money

Board can exercise the following power only with the consent of co. by way of SR:

c. Borrow money if money to be borrowed + Already borrowed > PUSC + FR + SP

Important Note:

- If BoD borrow in excess of limits specified, SH may ratify.
- PUSC to include both – Equity as well as preference.
- SR not applicable in case of temporary loans (payable on demand/within 6m) obtained from co. bankers in OCOB.
- Temporary loan does not include loan raised to finance capital expenditure.

The End

Chapter 5
Acceptance of Deposits

Form	Section	Purpose
DPT 1	73 & 76	Circular or advertisement in a newspaper inviting deposits
DPT 2	76	Deposit trust deed
DPT 3	73 & 76	Return of deposits
DPT 4	74	Statement on existing deposits as on date of commencement of Co. Act

Overview of the chapter

Acceptance of Deposits	Prohibition on Acceptance of Deposits	Repayment of Deposits	Acceptance of deposits from public	Punishment for Non-Compliance / Contravention
➢ Definition ➢ Related terms	➢ Section 73	➢ Section 74	➢ Section 76	➢ Section 76A

Let's understand what Deposit is:

Deposits [Sec 2(31)] - "Deposit":

- ➢ includes any receipt of money by way of deposit or loan or in any other form by a co.,
- ➢ but does not include such categories of amt. as may be prescribed in consultation with the RBI

Note:

1. Repayment of 'deposit' is time-bound.
2. It can be secured (by creating charge on tangible asset) or unsecured (no security).
3. Private co. can accept deposits from its members only.
4. Public co. can accept deposits from members and public subject to certain parameters

Rule 2 of the Companies (Acceptance of Deposit by Company) Rules, 2014:

Deposits shall not include the following:

SN	From	Amount received from:
1	Government	➢ CG/SG/Local Authority ➢ Stat. Auth. constituted under any Act of Parliament or State Leg. ➢ Any other source where repayment is guaranteed by CG/SG
2	Foreign Source (subject to FEMA)	➢ Foreign Govt., ➢ Foreign or international banks, ➢ Multilateral financial institutions (such as international bank)
3	Banks and PFIs	Amt. received as a loan or facility from ➢ any banking company or SBI or subsidiary or co-operative bank ➢ public financial institutions
4	Issue of CPs	Amt. received against issue of Commercial Papers (CPs) or other Instruments as per RBI Guidelines

5	Inter-corporate	Any amount received by a company from any other company;
13 6	Application Money	Any amount received pursuant to an offer made towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment. Explanation – If securities for which appln. money was received is not allotted within 60 days from receipt thereof or is not refunded within 15 days from completion of 60 days, such amount to be treated as a deposit as per these rules. Any adjustment, other than what is allowed of such application money, will NOT be considered as refund.
8 10 7	Director	Amount received from person – who at the time of such receipt, was: a. Director of the co. (public or private), or b. Relative of the director of the co. (only in case of private co.) Following conditions are to be met: ➢ At the time of giving such money, director or relative to furnish a declaration to co. that such amt. is not being given out of loans/ borrowings from others ➢ Co. to disclose money so accepted – In Board's Report.
3 10 8	Bonds or Debentures [Secured or Convertible or Listed]	Amount raised by issue of: ➢ Bonds/Debentures secured by a first charge or Pari Passu with first charge on any assets referred to in Sch III, excluding intangible asset (provided, amount of such bond/debt <= Market value of such asset as assessed by RV) ➢ Bonds/Debentures compulsorily convertible into shares of co. within 10 years ➢ Non-convertible ~~bond/~~debenture unsecured and listed on RSE as per SEBI
10 9	Sec. Deposit from Employee	Amt. received from Employee of co. <= Annual Salary in nature of non-interest-bearing security deposit.
10	Trust	Any non-interest-bearing amount received and held in trust
4 11	In course of business	Any amount received in course of business of co: i. As an advance for supply of goods/services provided that such advance is appropriated against supply of goods/services within 365 days of acceptance of such advance (except where advance is subject matter of any legal proceeding) ii. as advance received towards consideration for an immovable property as per an agreement provided that such advance is adjusted against such property as per the terms of agreement iii. as security deposit for performance of contract for supply of goods/services

			iv. as advance received under long term projects for supply of capital goods except those covered under item (b) above v. as an advance towards consideration for providing future services in form of a warranty/maintenance contract as per written agreement, provided that period for providing such services is not > 5 years or period as per common business practice whichever is less; vi. as advance received and as allowed by sectoral regulator or as per CG/SG vii. as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications; Provided that if amount received under (a), (b) and (d) above becomes refundable (with or w/o interest) due to reasons that the co. does not have necessary permission to deal in goods or properties or services for which advance is received On expiry of 15 days from date they become due for refund, it shall be deemed to be a deposit.
11	12	Promoters	Any amount brought in by promoters of Co. by way of unsecured loan subject to following conditions that the: a. loan is brought in pursuance of stipulation imposed by lending institutions/banks on promoters to contribute such finance b. loan is provided by promoters themselves or their relatives or both; & c. exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter
	13	Nidhi Co. or subs. to Chit	Amt. accepted by a Nidhi co. u/s 406 and Rules made thereunder or amt received by way of subscription of a chit under the Chit Fund Act, 1982.
	14	CIS	any amount received under any collective investment scheme as per SEBI
8	15	Start-Up Convertible Note	An amount of >= Rs. 25 lakhs received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within period not > 10 years from date of issue in a single tranche) from a person. <u>Explanation:</u> For this sub-clause: a. Start-up co. means a Pvt. co. and recognized as per notification issued by Department for Promotion of Industry and Internal Trade (DPIIT); b. <u>Convertible Note</u> means an instrument: ➢ evidencing receipt of money initially as a debt, ➢ which is repayable at the option of holder, or ➢ which is convertible into such number of Eq. shares of start-up company upon occurrence of specified events and as per the other T&C agreed to and indicated in the instrument.
	16	Amt. received from AIF	Any amount received by a company from: ➢ Alternate Investment Funds, ➢ Domestic Venture Capital Funds, ➢ Infrastructure Investment Trusts ➢ Real Estate Investment Trusts and ➢ Mutual Funds registered with SEBI

"Depositor" means:

i. any member of company (public or private) who has made a deposit as per Sec 73(2), or
ii. any person who has made a deposit with a public company as per Sec 76;

Section 73: Prohibition on Acceptance of Deposits from Public

1. On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter:
   Provided that nothing in this sub-section shall apply to:
   - Banking company and NBFC as per RBI Act and
   - Housing Finance Company
   - Such other company as CG + RBI may specify in this behalf.

2. A company may, subject to passing a resolution (ordinary) in GM, accept deposit from its members after complying with the following conditions:
   a. Issuance of circular to members (DPT -1) authorized by BoD including statement showing:
      - Fin. position
      - Credit Rating Obtained
      - Total no. of depositors
      - Amt. due towards previously accepted deposit
      - Other particulars

Rules relating to Circulars:

Manner of issuance	➢ Issue to all members by RPAD or Speed post or e-mode ➢ Publish in newspaper – English + Vernacular. ➢ Place on website of the co.
Attachments to Form DPT-1	Certificate from Stat. Auditor stating that: ➢ Co. has not defaulted in repayment of deposit + interest or ➢ Default, if any, has been made good and 5 years have lapsed from the date such default was made good.
Register with RoC	Co. to send to RoC – Copy of circular signed by majority of the directors - At least 30 days prior to issue for registration
Validity of Circular in form of Advt.-	Earliest of: ➢ Until 6m from date of closure of FY in which it is issued, or ➢ Date on which Fin. Statement is laid in AGM ➢ If AGM not held – Last date for holding AGM
Fresh Circulars	To be issued, in each succeeding FY for inviting deposits during that FY.

   b. Filing copy of circular + Such Statement with RoC within 30 days before issue of the circular;

   c. Deposit Repayment Reserve – Refer common points after Sec 76
   d. Co. to certify that no default in repayment of deposits + Interest and where default had occurred, it was made good, and 5 years have lapsed since date of making the default good.

   e. Providing security, if any, for due repayment of amount of deposit or interest.
      Provided that in case where a co. does not secure the deposits or secures partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any doc. related to invitation or acceptance of deposits.

Note:

1. Partly secured deposits are termed as unsecured.
2. Where a co. issues secured deposit, it shall appoint a trustee for depositors.

Exemption to Private Companies:

The above provision of Sec 73(2) clause (a) to (d) shall not apply to a Pvt. co. which:

a. accepts from its member's monies not > 100% of PUSC + FR + SPA; or
b. is a start-up For 5 years from the date of its incorporation; or
c. Fulfils ALL the following conditions:
   - Not an associate or subsidiary of any other co.
   - Borrowings from banks/FI or BC is < Lower of - 2x PUSC or Rs. 50 crores, AND
   - Co. has no subsisting default in repayment of borrowing at time of accepting deposit.

However, the above cos. will have to file details of deposit accepted with RoC (Form DPT-3).

3. Every deposit accepted u/ss (2) shall be repaid with interest as per the T&C of agreement.

4. Where co. fails to repay the deposit or part thereof or any interest thereon - Depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Other provisions relating to Deposits (from Rules):

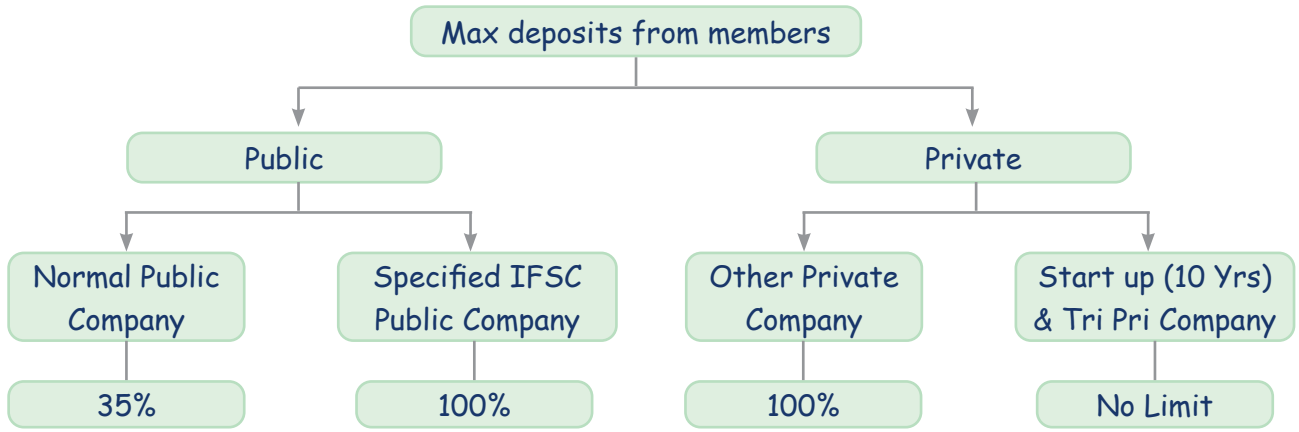
2 Max. amount of deposit from Members (existing + new): 35% of (PUSC + FR + SPA)

Exception – Specified IFSC Public Co. or Private Companies – 100% of (PUSC + FR + SPA)

The above maximum limit will not apply to a Private co. which is:

a. is a Start-up For 10 years from the date of its incorporation; or
b. Fulfils ALL the following conditions:
   - Not an associate or subsidiary of any other co.
   - Borrowings from banks/FI or BC is < Lower of - 2x PUSC or Rs. 50 crores, AND
   - Co. has no subsisting default in repayment of borrowing at time of accepting deposit

However, the above cos. will have to file details of deposit accepted with RoC (Form DPT-3).



Section 76: Acceptance of Deposits from Public by Certain Companies

"Eligible Company" means a public co. as referred u/s 76 (1), having

i. a net worth of not less than Rs. 100 crores or
ii. a turnover of not less than Rs. 500 crores and
iii. which has obtained the prior consent in general meeting by means of a SR* and
iv. filed the said resolution with RoC before any invitation to public for acceptance of deposits

*Eligible co. accepting deposits within limits u/s 180 (1) (c), may accept it by means of an OR (not SR)

Eligible companies may accept deposits from persons other than its members subject to:

- Passing SR (or ordinary resolution) and filing the same with RoC
- Compliance with requirements u/s 73(2) and
- Rules as CG + RBI may prescribe.

Provided that such eligible companies shall obtain credit rating from recognised credit rating agency (as approved for NBFCs) and inform such rating to public.

Rule 3:

- Rating shall be obtained every year during the tenure of deposits.
- Copy of credit rating
- RoC along with Return of Deposits in Form DPT-3.
- Rating shall not be below min. investment grade rating or other specified rating for FDs.

Other relevant points:

a. Maximum amount of Deposit:
   - Eligible companies other than Eligible Govt co.:
     From Members – 10% of PUSC + FR + SPA
     From person other than Members – 25% of PUSC + FR + SPA
   - Eligible Govt. co. – 35% of PUSC + FR + SPA

b. Issuance of a circular (in Form DPT -1) in the name of BoD of co. to the members including:

- Statement showing Fin. position
- Credit Rating Obtained
- Total no. of depositors
- Amt. due towards previously accepted deposits
- Other particulars

As per Rules relating to Circulars:

Manner of issuance	➢ ~~Issue to all members by RPAD or Speed post or e-mode~~ ➢ Publish in newspaper – English + Vernacular. ➢ Place on website of the co.
Circular to be signed and Registered	Co. to send to RoC – Copy of circular signed by majority of the directors - At least 30 days prior to issue for registration

Validity of Circular in form of Advt.-	Earliest of: ➢ Until 6m from date of closure of FY in which it is issued, or ➢ Date on which Fin. Statement is laid in AGM ➢ If AGM not held – Last date for holding AGM
Fresh Circulars	To be issued, in each succeeding FY for inviting deposits during that FY.
Effective Date	Date of issue of advertisement =Date on which advt. appeared in newspaper Date of issue of circular = Date on which the circular was dispatched.

Common Points of Deposits u/s 73 and 76 [Companies (Acceptance of Deposit) Rules 2014]:

1. Deposit Repayment Reserve A/C:

   Co. to deposit, on or before 30th April each year, sum >= 20% of amt. of deposit maturing during following FY & keep in a scheduled bank in separated bank a/c called – DRR A/C

   Purpose - The amt. so deposited shall not be utilised for purpose other than repayment of deposit.

   Minimum Balance – 20% of amount maturing in CURRENT FY

2. Tenure of deposit – A company cannot accept deposit which is:
   - ➢ Repayable on demand
   - ➢ Repayable within 6m* (see exception below)
   - ➢ Max. period > 36 months (3 years)

8 *Exception: Co. may accept deposit repayable within 6m for short term fund requirement if:
   - ➢ Deposit <= 10% of PUSC + FR + SPA, AND
   - ➢ Deposit repayable on or after 3m from date of such deposit.

15 3. Creating of Charge in case of Secured Deposits:
   - ➢ Within 30 days of acceptance.
   - ➢ In favor of deposit holders or trustee for the depositor as per prescribed rules
   - ➢ Amt. of charge (value of security) shall >= Amt. of deposits accepted (& intt. payable thereon)
   - ➢ Market value of such asset to be determined by RV.
   - ➢ Charge to be created only on its tangible assets. (Rule 6)

6 4. Appointment of Trustee for Depositors:
   - ➢ 1/more trustees for depositors to be appointed by the co. for creating security for deposits.
   - ➢ Obtain written consent of trustee prior to appointment.
   - ➢ Statement that the trustees have given their written consent shall appear in the circular.
   - ➢ Co. to execute a deposit trust deed (DTD) at least 7 days before issuing circular (DPT-2).

   Qualification of Trustee [DR. DGP]:

   Person (incl. a company) shall NOT be appointed as a trustee if such person :

   a. is a Director, KMP or any other officer/employee of CASH or a depositor in the company;
   b. is inDebted to CASH or a subsidiary of such holding company;

c. has any material Pecuniary relationship with the company;
d. has entered into any Guarantee arrangement w.r.t, principal debts secured by the deposits or interest thereon;
e. is Related to any person specified in clause (a) above.

Removal of Trustee: Procedure to remove:
- Consent of all the directors present at a meeting of the board.
- In case Co. is required to have Independent Dir. - At least 1 ID present in such meeting

Rule 9: Meeting of deposit holders:

Meeting of all the deposit holders shall be convened by the trustee on:
(a) requisition in writing signed by deposit holders having >= 1/10th in value of outstanding deposits;
(b) happening of any event, which constitutes default or which in the opinion of the trustee affects interest of depositors.

Concept clarity check:
1. Can a company be appointed as Trustee? – Yes. Law says "Person".
2. Is it necessary to have depositor trustee even when the deposits are unsecured? – No!

5. Register of Deposits: Co. accepting deposits shall maintain one/more separate registers for deposits accepted or renewed at its RO. Following particulars shall be entered in the case of each depositor:

- name, address & PAN
- particulars of the guardian (In case of minor)
- particulars of the nominee;
- deposit receipt number;
- date & amt of each deposit;
- duration & Repayment date
- rate of interest
- due date for payt. of interest;
- mandate & instructions for payment of interest and for non- deduction of tax at source
- date on which the payment of interest shall be made;
- charge created for repayment of deposits
- any other relevant particulars

Entries in Register to be made within 7 days from issuance of receipt + Authenticated by dir./CS.

Preserve in good order for >= 8 years from FY in which the latest entry is made in the register.

6. Premature Repayment of Deposits:
- After 6m but before expiry of actual date of maturity,
- if depositor requests for premature repayment
- RoI shall be 1% less than what would be payable for period for which deposit has actually run

Note – Where deposit had run contains any part of a year, then, if such part is <6m – Exclude. If such part is >=6m, it shall be reckoned as 1 year.

Reduction of rate of interest (i.e., 1%) is not applicable in the following cases:
Where the deposit is prematurely repaid in order to:

- Comply with Rule 3 i.e., tenure of deposit under this new act; or
- provide for war risk or other related benefits to the personnel of naval, military or air forces or to their families during emergency declared under Article 352 of the constitution.

7. Premature Closure of Deposit by Holder to Earn Higher Rate of Interest:
In case a depositor desires to avail higher rate of interest by renewing the deposit before its actual maturity date, the company shall pay him the higher rate of interest only if the deposit is renewed for a period longer than the unexpired period of deposit.

8. Ceiling on Rate of Interest and Brokerage Payable on Deposits – Maximum – As prescribed by RBI in case of NBFC for acceptance of deposit.

   Brokerage payable only to those who are auth. by co. to solicit deposit. Otherwise deemed violation of brokerage rules.

9. Depositor to file application form and declaration:
Co. can accept deposit only when application is submitted by intending depositor
Along with application – Declaration that money is not borrowed from any other person.

10. Deposit in Joint Names – Not > 3.
A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.

11. Depositor may nominate a person at any time.

12. Deposit Receipt: Within 21 days from date of receipt of money/realization of cheque/date of renewal Co. to furnish receipt to depositor/agent – Deposit Receipt - Signed by duly authorized officer and state date, name & address, amount, rate of interest & maturity date.

13. Filing of Return of Deposit with RoC – A duly audited return in Form DPT-3 containing info upto 31st March of that year to be filed on or before 30th June and declaration to that effect shall be submitted by the auditor in DPT-3.
Note - DPT-3 shall include particulars of deposits or transactions not considered as deposits or both

14. No right to alter T&C - After circular is issued and deposits are accepted, Co. has no right to alter any T&C of deposit, deposit trust deed & deposit insurance which may prove detrimental to interest of depositors

15. Disclosure in FS by way of a note –
    - Public co. shall disclose about money received from its directors~~/relatives~~
    - Pvt. company shall disclose about the money received from directors/relatives thereof

16. Penal Rate of Interest: In case co. fails to repay deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal rate of interest of 18% per annum for the overdue period.

17. Punishment for Contravention: If co. inviting deposits or any other person contravenes any of the 'deposit rules' for which no punishment is provided in Act, the co. and OID shall be liable as under:
    - With fine extendable to Rs. 5,000; and
    - Continuing one - Further fine up to Rs. 500 /day after first during which the contravention continues.

Section 76A - Punishment for Contravention of Section 73 or Section 76

- Where company, accepts or invites or causes any other person to accept any deposit in contravention of provision,
- if co. fails to repay deposit or any interest due thereon within the time specified u/s 73 or 76:

Penalty:

a. Co. shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine – From (Rs. 1 crore or 2x Amt. of deposit whichever is lower) to Rs. 10 crores; and
b. OID – Jail upto 7 years AND with fine – Rs. 25 lakhs to Rs. 2 crores.

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 u/s 447.

Section 74: Repayment of Deposits, etc., Accepted Before Commencement of this Act

1. Filing of Statement of Deposits with RoC and Repayment thereafter:
   Where deposit was accepted before commencement of this Act (i.e., before 1.4.2014), and remains unpaid as on 1.4.2014 or becomes due at any time thereafter, the company shall take the following steps:
   a. file, within 3 months from such commencement, with RoC - Statement of all deposits accepted by co. & sums remaining unpaid on such amt. with interest
   b. Repay within 3 years from such commencement or maturity date, whichever is earlier.

   Note – If co. has been repaying such deposits and interest thereon without any default on due dates for the remaining period of such deposit as per the T&C, point (b) above shall be deemed to have been complied with.

2. Extension of time for repayment by Tribunal:
   Tribunal may, on an application made by the company, after considering the financial condition of the co., amt. of deposit and interest payable thereon & such other matters, allow further time as considered reasonable to the company to repay the deposit.

3. Punishment for Non-Repayment of Deposits:
   Company - Fine Min. of Rs. 1 crores and Max. of Rs. 10 crore; and
   OID - Jail upto 7 years or with fine Rs. 25 lakhs to Rs. 2 crores or with both.

The End

Chapter 6
Registration of Charge

Form	Sec	Purpose
CHG-1	77	Application to register the creation or modification of charge (other than debentures)
CHG-2	77	Certificate of registration of charge
CHG-3	77 & 79	Certificate of modification of charge
CHG-4	82	Intimation to the Registrar regarding particulars for the satisfaction of charge
CHG-5	82 & 83	Certificate of registration of satisfaction of the charge
CHG-6	84	notice of appointment or cessation of a receiver or a manager
CHG-7		Register of charges created, modified and satisfaction by the company
CHG-8	87	Application to CG requesting an extension of time to file details of registration of creation or modification or satisfaction of charge as well as rectification any omission or misstatement of any details
CHG-9	77	Application for registering creation/modification of charge for debentures including rectification

Section 2(16) - Charge means:

- an interest or lien
- created on the property or assets of a company or any of its undertakings or both
- as security (for repayment of loan) and
- includes a mortgage;

Fixed Charge vs Floating Charge

Fixed Charge	Floating Charge
Charge on specific asset of borrowing company	Charge on assets which are of fluctuating nature or changing in nature
Examples – Land and Building, office premises, machinery, etc.	Examples - Raw material, stock-in-trade, debtor, etc.
Usually, mortgage or deposit of title deeds	--
Not allowed to sell (except with permission of charge holder). But can use.	Permitted to use for trading or producing final goods for sale.
Vacated when money repaid in full	Crystallization of floating charge – Enforce security or company goes into liquidation

Conceptual check – Is charge passed on to the buyer in case of sale of goods which is under floating charge? – No!

Section 77: Duty to Register Charges, etc.

1. Charge to be registered:
   - Duty of every company creating a charge (in or o/s India)
   - To register the particulars of the charge signed by co. and charge holder together with instrument creating such charge in prescribed manner.
     [Form CHG-1 (for other than debentures) or Form CHG- 9 (for debentures)]
   - within 30 days of creation such charge

Note: All the following charges need to be registered:

a. Charge created within India or outside India
b. Charge created on property or asset which is situated within India or outside India
c. Charge on tangible asset, intangible asset, or financial asset

Rule 3 of Company (Registration of Charges) Rule, 2014:

Verification of instruments of charge filed with RoC:

a. Where underlying property is situated outside India – Verify by a certificate issued under:

- seal of the co., if any
- hand of any dir/CS or auth. officer of charge holder
- hand of some person other than the co. who is interest in such charge

b. Where underlying property is situated in India – Verify by a certificate issued under:

- ~~seal of the co., if any~~
- hand of any dir/CS or auth. officer of charge holder
- ~~hand of some person other than the co. who is interest in such charge~~

Nothing contained in this rule shall apply to charge required to be created/modified by banking co. u/s 77 in favour of RBI when any loan/advance has been made to it under RBI Act, 1934. [Amendment]

Extension of Time Limit: (Effective From 2nd November 2018)

- On application by the Company (showing sufficient cause),
- RoC may allow such registration of charge to be made
- Within 60 days of such creation (i.e., extension of 30 days only) – Pay Additional Fee

Further Extension:

- Where co. fails to register charge within 60 days,
- ROC is empowered to allow such registration within further 60 days – Pay ad valorem fees

Application for extension - Make in Form CHG -1 or 9 as the case may be + Declaration by company CS or director that belated filings shall not affect right of any creditors.

2. Issuance of Certificate of Registration (CoR):
On registration u/ss (1), RoC to issue a CoR of such charge in Form CHG-2 (fresh registration) or CHG-3 (modification of charge) to charge holder and the company.

CoR = Conclusive evidence that requirements of this Act w.r.t, charge have been complied with.

3. Consequence of non-registration (Charge becomes void):
- Notwithstanding anything contained in any other law for the time being in force,
- Such charge shall NOT be taken into account by:
  - Liquidator (appointed under this Act or IBC, 2016) or
  - any other creditor
- unless it is duly registered u/ss (1) and CoR is issued u/ss (2).

However, nothing u/ss (3) to prejudice any contract/obligation for repayment of money secured by a charge.

Important consequence of non-registration or delayed registration - Charge-holder loses priority.

Section 78: Application for Registration of Charge (by Charge holder)

Charge-holder may apply for Registration:
- Where a company fails to register the charge within 30 days u/s 77,
- without prejudice to its liability w.r.t., any offence under this Chapter,
- person in whose favor charge is created may apply to Registrar for registration (along with instruments),
- within such time and in such form and manner as may be prescribed and
- the Registrar may, on such application, within 14 days after giving notice to the company, allow such registration on payment of such fees, as may be prescribed, unless
  - the company itself registers the charge or
  - shows sufficient cause why such charge should not be registered,

Recovery of Fees - Entitled to recover from company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.

Section 79: Section 77 to Apply in Certain Matters.

Section 79: Section 77 to Apply in Certain Matters.
The provisions of section 77 relating to registration of charges shall, so far as may be, apply to:
a. a company acquiring any property subject to a charge; or
b. any modification in T&C or the extent or operation of any charge registered under that section.

Modification includes change in T&C of the underlying borrowing (including change in rate of interest)

Rule 6 Where the particulars of modification of charge is registered under Section 79, the Registrar shall issue Certificate of Modification in Form CHG 3

Section 80: Registration to act as Constructive Notice (deemed knowledge)

Where any charge is registered u/s 77,
(a) any person acquiring such property, assets, undertakings or part thereof
(b) shall be deemed to have notice of the charge from the date of such registration.

Section 81: Register of Charges by Registrar

1. ROC shall, in respect of every company, maintain register of charges registered with ROC in prescribed manner.

Rule 7 Particulars of charges maintained on MCA Portal – Deemed register u/s 81

2. The register shall be open to inspection by any person on payment of fee as may be prescribed.

Read sec 85 along with this.

Section 82: Company to Report Satisfaction of Charge

On payment or satisfaction of any charge registered under this chapter:

a. Co. to intimate RoC in Form CHG-4 within 30 days of such payment/satisfaction.
Provided that – On application by the company or charge holder, RoC may allow such intimation within 300 days of payment/satisfaction with additional fees.

b. Notice to Charge Holder:
On receipt of intimation u/ss (1), Registrar shall cause a notice to be sent to charge holder calling upon him to show cause within time specified in notice (not > 14 days), as to why payment or satisfaction in full should NOT be recorded.
Notice to CH not required – If intimation u/ss (1) is signed by CH.

If no cause is shown – RoC shall order that a memorandum of satisfaction shall be entered in register maintained u/s 81 and shall inform the co. (in Form CHG -5)	If cause is shown – RoC shall record a note to that effect in the register of charges and shall inform the co.

c. Preserve instrument creating charge/modification – 8 years from satisfaction of charge.

Section 83: Power of Registrar to Make Entries of Satisfaction & Release in Absence of Intimation from Co.:

Suo moto change in Register of Charges by RoC:
RoC may, on evidence being given to his satisfaction w.r.t. any registered charge that:
a. the debt for which the charge was given has been paid or satisfied; or
b. part of property or undertaking charged has been released or ceased to form part thereof,
it may enter in register of charges:
- memorandum of satisfaction in whole or in part, or
- fact that part of the prop/undertaking has been released or ceased to form part,

notwithstanding the fact that no intimation has been received by him from the company.
The Registrar shall inform the affected parties within 30 days of making such entry. (and issue Certificate of Registration of satisfaction of charge in Form CHG-5)

Section 84: Intimation of Appointment of Receiver or Manager

If any person appoints a receiver or manager, to manage the property subject to charge, by virtue of:

- order of court or
- any power contained in any instrument creating charge.

he shall, within 30 days from date of the passing of order or of the making of the appointment, give notice of such appointment to company and Registrar along with a copy of the order or instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

Any person appointed above shall, on ceasing to hold such appointment, give to the company and the Registrar a notice to that effect and the Registrar shall register such notice. (Form CHG – 6)

Section 85: Company's Register of Charges

1. Every co. shall keep at its RO, a register of charges in Form CHG-7 in prescribed manner including therein all charges affecting assets of the co. or any of its undertaking.

   Provided that copy of instrument creating charge shall also be kept at RO along with such register.

2. Above register and instrument shall be open for inspection during business hours:
   (a) by any member or creditor w/o fees
   (b) other person – on payment of prescribed fees
   subject to restrictions as co. may impose by its articles.

Rule 10: Company's Register of Charges

1. Every co. shall maintain such register in Form CHG-7 and enter therein the following particulars:
   - all charges registered with ROC
   - property acquired which is subject to charge
   - any modification of charge and satisfaction of charge

2. Entries above shall be made forthwith.
3. Entries to be authenticated by - Directors, CS or any other person authorised by Board
4. Preserve such Register – Permanently and Instrument – 8 years from satisfaction.

Section 86: Punishment for Contravention: 3

If co. is in default under this Chapter, penalty:
Co. – Rs. 5 lakhs and OID – Rs. 50,000

If willfully furnishes any false or incorrect info. - Liable for action u/s 447

Section 87: Rectification by CG in Register of Charge (or Extension of Time Limit)

The CG on being satisfied that:

- Omission to give intimation to RoC of satisfaction of charge within required time
- Omission or misstatement of any particular in any filing made with RoC w.r.t. creation, modification of satisfaction of charge

  - Was accidental or due to inadvertence, or
  - It is not of a nature to prejudice creditors/SH of co.

it may, on the application of the company (in Form CHG – 8) or any person interested and on such T&C as it deems just, direct that the time for the giving of intimation of payment/satisfaction shall be extended or, as the case may require, that omission or misst. shall be rectified.

Note: Signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation:

The Form No.CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar

[Amendment]

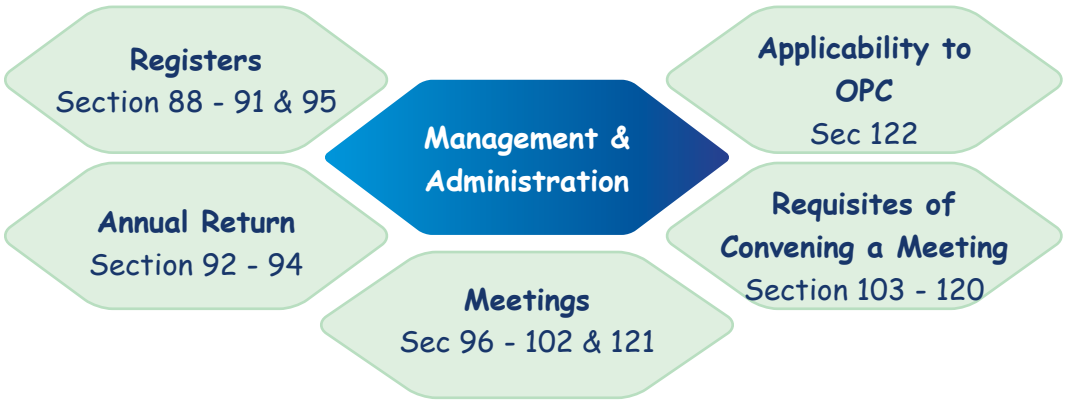
The End

Chapter 7
Management and Administration

Sec	Name	Sec	Name
88	Register of Members, etc.	106	Restriction on Voting Rights
89	Declaration of Beneficial Interest	107	Voting by Show of Hands
90	Register of significant beneficial owners	108	Voting through Electronic Means
91	Power to Close Register of Members or DH or Other Security Holders	109	Demand for Poll
92	Annual Return	110	Postal Ballot
93	Omitted	111	Circulation of Members' Resolution
94	Place of Registers, Returns, etc.	112	Representations of President
95	Registers, etc., to be Evidence.	113	Representations of BCs
96	Annual General Meeting	114	Ordinary and Special Resolutions
97	Power of Tribunal to Call AGM	115	Resolutions Requiring Special Notice
98	Power of Tribunal to call Meetings, etc.	116	Resolutions Passed at Adjourned Meeting
99	Punishment for default u/s 96 to 98	117	Resolutions and Agreements to be Filed
100	Calling of EOGM	118	Minutes of meeting
101	Notice of Meeting	119	Inspection of Minute-Books of GM
102	Statement to be Annexed to Notice	120	Maintenance and Inspection in e-form
103	Quorum for Meetings	121	Report on Annual General Meeting
104	Chairman of Meetings	122	Applicability to OPC
105	Proxies		

Form	Sec	Purpose
MGT-1	88	Register of members of the company
MGT-2	88	Register of Debenture Holders or Any Other Security Holders
MGT-3	88	Notice or change in situation or discontinuation of a location where a foreign register is kept
MGT-4	89	Declaration by Registered owner of shares who does not hold beneficial interest in shares
MGT-5	89	Declaration by beneficial owner of shares but whose name is not entered in RoM
MGT-6	89	Return to RoC in respect of declaration u/s 89 received by co.
MGT-7	92	Annual Return (for companies other than OPC and small companies)
MGT -7A	92	Annual Return (for OPC and small companies)
MGT-8	92	Certificate by a Company Secretary in practice (in case of Annual Return)
MGT-11	105	Appointment of proxy for a meeting (proxy form)
MGT-12	109	Polling paper in the meeting
MGT-13	109	Scrutinizer's report to the Chairman pertaining to the poll of the meeting
MGT-14	117	Filing of company resolutions and agreements with the Registrar
MGT-15	121	Form for filing report on the AGM

Introduction:



Section 88: Register of Members, etc.

1. Every co. shall keep and maintain following registered in prescribed manner:

Register of Members (RoM) for ESH and PSH (MGT 1)	Register of Debenture Holders (DH) (MGT 2)	Register of Other Security Holders (MGT 2)

2. Every register maintained u/ss (1) shall include an index of the names included therein.
   Note - Maintenance of index is not necessary in case the number of members < 50.

3. Register + Index of beneficial owners (BO) maintained by depository = Deemed compliance of Act

Rules relating to Register of Members:

- Entry to be made within 7 days of date of BoD approval for allotment or transfer of shares.
- RoM shall be maintained at RO. However, SR in GM is passed to keep register at:
  - Any other place within city, town, or village of RO, or
  - Any place within India in which > 1/10th of total members (as in RoM) reside.
- Every co. limited by shares shall – maintain RoM in Form MGT-1
- In case of co. not having SC, RoM shall contain following particulars w.r.t. each member:

• Basic details of members (name, address, e-mail, PAN or CIN) In case member is a minor, name of the guardian and DOB of member; Name and Address of Nominee;	• date of becoming member or date of cessation; • any other interest if any; and • instructions, if any, given by the member w.r.t. sending of notices.
• amount of guarantee, if any;	

- If any securities are attached by SEBI or any competent authority giving directions for remittance of dividend or interest thereon, mention the same in the Registers.
- In case of listed shares, mention the details of pledge, charge, lien w.r.t. the securities of co. held by promotor along with the name of pledgee – Within 15 days of event.
- Changes, if any, in the status of members or DH or OSH on account of death, insolvency or transfer of shares to IEPF or any other reason – Record such change in register

4. Foreign Register:
   - If so authorized by AoA, co. may keep outside India (in prescribed manner)
   - a part of the register u/ss (1) called Foreign register,
   - containing names and other particulars of members, DH, OSH or BO residing o/s India.

38 Rule 7: Foreign Register (FR):

Particulars	Details
File with RoC	Co. shall, within 30 days from date of opening of FR - File with RoC - Notice of situation of the office in Form MGT-3 + Fees
Change in situation	In event of change in situation of office or discontinuance –Intimate within 30 days (MGT 3)
FR = PR	FR = Deemed part of principal register
Inspection and advertisement for closing FR	FR shall be open to inspection and may be closed, and extracts /copies may be taken, in same manner, as is applicable to principal register. Except that advertisement before closing FR shall be inserted in at least 2 newspapers circulating in the place wherein FR is kept.
Entry in FR	After BoD approves allotment
Transmit data to RO	Company shall: a. transmit to RO in India a copy of every entry within 15 days of such entry; b. keep at such office a duplicate register of every FR duly entered up.
Discontinue FR	Thereupon, all entries in that register shall be transferred to: ➢ some other FR kept by the company outside India or ➢ to the principal register.

5. Failure to maintain register u/s 88: Company – Penalty of Rs. 3 lakhs ; OID – Rs. 50,000

Note:
1. Can a minor's name be entered in RoM? – No. Only legal guardian's name can be entered
2. Joint SHs may request co. to enter their names in RoM in a certain order. Seniority shall be determined by the order in which the names stand in the ROM.

Concept clarity:
Location of RO – Mumbai
Total Shareholders – 1,000 shares

Location	No. of shares	OR or SR?	Can RoM be kept?
Mumbai	50 members	None	Yes. Irrespective of members, it's RO
Delhi	101 members	SR	Yes.
Goa	98 members	SR	No.

Section 89: Declaration in Respect of Beneficial Interest in any Share

1. Where name of person is entered in RoM as holder of shares but who does not hold beneficial interest (BI) on it - Such person shall:
   - within 30 days of entry of name in RoM, in Form MGT 4
   - make a declaration to the company specifying name and other particulars of beneficial owner.

2. Every person who acquires a BI in share shall:
   - within 30 days of acquiring such BI,
   - in Form MGT-5
   - make a declaration to co. specifying nature of his interest, particulars of person in whose name shares are registered and other prescribed details

3. Where any change occurs in BI such shares, such person and BO shall – within 30 days from date of such change, make a declaration to the company in prescribed form.

4. Where declaration under this section is made to a company, the company shall:
   - make a note of such declaration in concerned register and shall
   - within 30 days of receipt of declaration – File a return in Form MGT – 6 with Registrar + Fees

5. Where declaration required under this section is not made by BO - No rights in respect of such shares shall be enforceable by him or by any person claiming through him.

6. Notwithstanding this section, company to pay dividend to members (not BO)

7. Penalty:
   Failure to make declaration to company – Rs. 50,000 + 200/day – Max 5 lakhs
   Failure of company to file MGT 6 – Co. + OID – Rs, 1,000/day – Max 5 lakhs (co) and 2 lakhs (OID)

Exemption:

Section 89 – Not applicable to Government companies (92 + 137)
Trust created to set up Mutual fund, venture capital fund or other SEBI approved fund – Need not file such declarations.

Designation of responsibility to furnish information to RoC:

- Every co. shall designate a person responsible for furnishing info. to RoC w.r.t. beneficial interest.
- Following person may be designated:

CS	KMP, other than CS	Every director, if there is no CS or KMP

- Until a person is so designated, following shall be deemed to be the designated person:

CS, if any	Every MD or Manager, in case CS is not appointed, or	Every director, if co. has no CS, MD or Manager

- Co. shall inform details of designated person in Annual Return.
- Change in designated person – Intimate to RoC in e-form GNL-2.

Section 90: Register of significant beneficial owners in a company

Who is a significant beneficial owner (SBO)? [2(1)(h)]

"SBO" in relation to a reporting company means:

- an individual,
- who acting alone or together, or through one/more persons or trust,
- possesses one or more of the following rights or entitlements in such reporting co., namely:
  - (i) holds indirectly, or together with any direct holdings, not less than 10% of the shares;
  - (ii) holds indirectly, or together with any direct holdings, not less than 10% of voting rights;
  - (iii) has right to receive or participate in not less than 10%, of the total distributable dividend in a FY through indirect holdings alone, or together with any direct holdings;
  - (iv) has right to exercise, or actually exercises, significant influence* or control, in any manner other than through direct-holdings alone:

Note - If an individual does not hold any right indirectly under (i), (ii) or (iii) above - he shall not be considered to be SBO. (i.e., Indirect holdings are mandatory for becoming SBO)

*Significant influence means power to participate, directly or indirectly, in financial and operating policy decisions of the reporting company but is not control or joint control of those policies

Legal provision

1. Every SBO shall make a declaration to the co., specifying the nature of his interest and other particulars, in Form BEN – 1 within 30 days of becoming SBO.

2. Every co. shall maintain a register of SBO and changes therein in Form BEN-3 which shall include the name of individual, his date of birth, address, details of ownership and other prescribed details

3. The register maintained u/ss (2) shall be open to inspection during business hours, at such reasonable time of not < 2 hours, on every working day, by any member on payment of fee specified by company (not > Rs. 50 for each inspection)

4. Return of SBO:
   Every company shall file a return of SBO of the company and changes therein in Form BEN-2 with the Registrar containing names, addresses and other prescribed details within 30 days of receipt of declaration from SBO in Form BEN -1

   Note - Every co. shall take necessary steps to identify an individual who is a SBO in relation to the company and require him to comply with the provisions of this section.

5. A company shall give notice in Form BEN-4 to any person (whether or not a member) whom the company knows or has RGTB:
   (a) to be a SBO of the co.;
   (b) to be having knowledge of identity of a SBO or another person likely to have such knowledge;
   (c) to have been a SBO of the company at any time during 3 years immediately preceding the date on which the notice is issued,
   and who is not registered as a SBO with the company as required under this section.

6. Info. required by notice u/ss (5) - Concerned person to give within 30 days of date of the notice.

7. Apply to Tribunal

The company shall:
(a) where that person fails to give info. within time specified therein; or
(b) where info. given is not satisfactory,

→

Apply to Tribunal within 15 days of expiry of notice period, for an order directing that shares in question be subject to
- restrictions w.r.t. transfer of interest,
- suspension of rights attached thereto
- other matters as may be prescribed

8. On application u/ss (7), Tribunal may, after giving OOBH to parties concerned, make such order restricting the rights attached with the shares within 60 days of receipt of application.

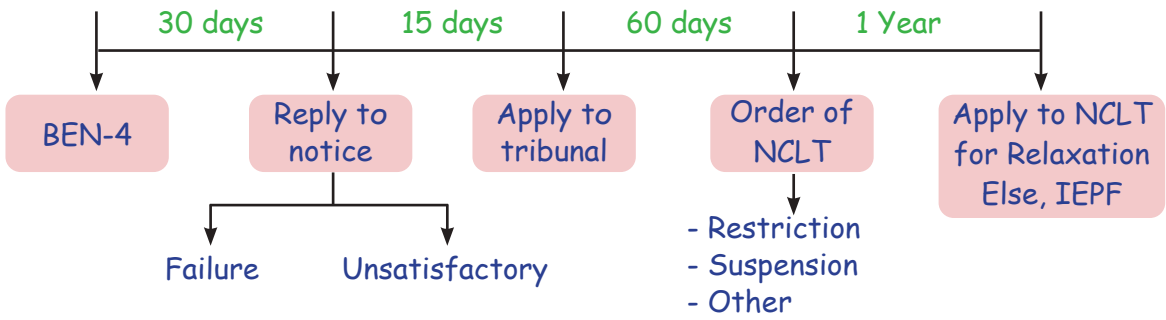
9. Co. or the person aggrieved by order of Tribunal may apply to Tribunal for relaxation or lifting of the restrictions placed u/ss (8), within 1 year from the date of such order.

Provided that – If no appln. made within 1 year - such shares shall be transferred to IEPF Authority

Penalty u/s 90:

Sub -section	(10)	(11)		(12)
Failure	Person fails to make declaration u/ss (1)	Co. fails to maintain register or allow inspection thereof		Person willfully furnishes false or incorrect info. or suppresses material info.
Liable	Person	Company	OID	Such person shall be liable for action u/s 447
Penalty	Rs. 50,000	Rs. 1 lakh	Rs. 25,000	
Continuing Failure	Rs. 1,000/day	Rs. 500/day	Rs. 200/day	
Maximum	Rs. 2 lakhs	Rs. 5 lakhs	Rs. 1 lakh	

Summary of BEN -4 timeline:



Section 91: Power to Close Register of Members or Debenture-Holders or Other Security Holders.

1. A company may close the RoM or register of DH or OSH for any period, subject to:
   - not exceeding in aggregate 45 days in each year and not exceed 30 days at any one time.
   - previous notice has to be given in prescribed manner of at least 7 days (or such lesser period as specified by SEBI for listed cos. or cos. which intend to get their securities listed)

   Prescribed manner for notice – 1 vernacular newspaper + 1 english newspaper + website.

2. In case of contravention u/ss (1), penalty shall be:
   Co. and OID – Rs. 5,000 for every day during which register was closed subject to max. Rs. 1 L.

Section 92: Annual Return

1 3 31

Every company shall prepare a return containing the following details as on close of FY: *[BGR SH KMP CFO]*

RO, princial Biz. activities	Particulars of holding, associate or subsy (Group cos)	shares, debentures or other sec. and SH pattern	Members, DH, OSH and change since Previous FY (Holders)
Promoter/Dir/ KMP and changes since PFY	Meetings - GM, BOD, Committee and attendance details	Remuneration of director/KMP	Penalty on co., director or officers + Compounding + Appeals
Certification of compliance	Details of shares held by Foreign Institutional Investors		Other matters

Annual Return:

Sign on Annual Return	➢ OPC & small co – AR to be signed by CS. Where there is no CS, by director ➢ Other companies - By a director + CS (where no CS, by CS in practice)
Form for AR	➢ Other companies - MGT – 7 ➢ OPC & Small Co – MGT - 7A
AR to be certified by CS in Practice	AR filed by: ➢ Listed company ➢ Co. having PUSC not less than 10 crore or turnover not less than 50 crore shall be certified by CS in practice in Form MGT – 8 stating that: ➢ AR discloses the facts correctly and adequately and ➢ company has complied with all the provisions of this Act.
Place on website	AR on website of company and web-link thereof – Disclose in BoD's report
File with RoC [Section 96(4)]	Every co. shall file with the Registrar a copy of AR + Fees: ➢ within 60 days from date on which AGM is held or ➢ where no AGM is held in any year, within 60 days from date on which AGM should have been held + statement specifying reasons for not holding AGM

Penalty	Co. fails to file AR within prescribed time, penalty of: Co. – Rs. 10,000 + Rs. 100/day upto max Rs. 2 lakhs OID – Rs. 10,000 + Rs. 100/day upto max Rs. 50,000
Penalty on CS in practice	If CS in practice certifies the AR otherwise than in conformity with the requirements of this section, he shall be liable to a penalty of Rs. 2 lakhs

Section 94: Place of keeping and Inspection of Registers, Returns, etc.

1. Registers u/s 88 and copy of AR filed u/s 92 shall be kept at the RO of the company.

   Provided that such registers or AR may also be kept at any other place in India in which > 1/10th of the total no. of members (as per RoM) reside, if approved by SR passed at GM
   (3 conditions – Such place is within India, more than 1/10th member reside and SR is passed)

   The period for which such registers or AR shall be preserved is as shown below:

Registers/Annual Return	Preserve for?	Custody
RoM u/s 88 + Index	Permanently	CS of co. or any other person auth. by Board
Register of DH or other security holders + Index	8 years from date of redemption	CS of co. or any other person auth. by Board
Foreign Register	Permanently, unless it is discontinued and all the entries are trfd. to any other FR or to the principal register	CS of co. or any other person auth. by Board
Foreign register of DH or any other security holders	8 years from date of redemption	CS of co. or any other person auth. by Board
Annual returns prepared under section 92	8 years from date of filing with Registrar.	

2. Inspection of Registers, Indices and AR:
   The registers, indices and AR shall be open for inspection during business hours (at such reasonable time on every working day):
   - By members, DH or OSH – without any fees
   - By any other person – on payment of such fees as may be prescribed.

   Note - Reasonable time of not less than 2 hours on every workday shall be considered by the co.

3. Extract or copies by ANY person:
   Any member, DH, OSH or BO or any other person may—
   - take extracts from any register, or index or return without payment of any fee; or
   - require a copy thereof on payment of fees as per AoA (not > Rs. 10/page). Co. to provide copies within 7 days.

4. On refusal of any inspection or making extract or copy:
   - company and every OID – Liable for each such default, to a penalty of Rs. 1,000/day subject to a max of Rs. 1 lakh during which the refusal or default continues.
   - CG may also, by order, direct:
     - an immediate inspection of the document, or
     - that extract required shall forthwith be allowed to be taken by person requiring it.

Note - The following particulars of register or index or return in respect of members shall not be made available for any inspection u/ss (2) or for extracts or copies u/ss (3), namely:

address or registered address (in case of a body corporate);	e-mail ID	Unique Identification Number	PAN Number

Section 95 - Registers, etc., to be Evidence:

The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act

General Meetings (Section 96 to 105)

Section 96: Annual General Meeting

4 5 6 31 32

1. Every company (other than OPC) shall, in each year, in addition to other meetings, hold AGM, and shall specify as such in the notices, and not more than 15m shall elapse between two AGMs

   Provided that – First AGM to be held within 9m of closing of first FY. Thereafter, within 6m from closing of each FY.

   Provided further – If first AGM is held as aforesaid – No AGM necessary in year of incorporation.

   RoC may, for any special reasons, extend the time within which AGM (other than first AGM) shall be held by not > 3m.

2. AGM shall be called during business hours (9AM to 6PM) on any day other than national holiday (as declared by CG).

   Place of holding AGM:

AGM:	AGM of unlisted co. -	AGM of Govt co. (92+137) -
Held at registered office or some other place within city, town/village where RO is situated	Held at any place in India if consent in writing/emode by ALL members in advance	RO or within city/town/village where RO is situated or other place approved by CG

Section 97: Power of Tribunal to call AGM:

1. Notwithstanding anything contained in Act or AOA, in case of default in holding AGM u/s 96, Tribunal may, on appln by any member of co – call or direct calling of AGM & give such consequential directions.
   Provided that – Such directions may include that 1 member present in person or proxy shall be deemed to constitute a meeting.
2. GM held u/ss (1) – Deemed AGM of company.

Section 98: Power of Tribunal to call meeting of members, etc

(applicable only for EGM. Not AGM)

1. Other than AGM, if for any reason, it is impracticable to call a meeting or hold or conduct a meeting in manner prescribed by Act or AOA, Tribunal may, either:
   i. either suomotu, or
   ii. on application of director or member entitled to vote at the meeting
   order a meeting of co. to be called, held and conducted in manner as Tribunal thinks fit, and give such ancillary directions as may be expedient.
   Provided that – Such directions may include that 1 member present in person or proxy shall be deemed to constitute a meeting.

2. Any meeting held u/ss (1) – Deemed to be a meeting of company duly called, held and conducted

Section 99: Punishment for default u/s 96 to 98.

If default is made in holding meeting u/s 96, 97 or 98 or in complying Tribunal's directions:
Company and OID – Fine which may extend to Rs. 1 lakh + Continuing default – Further Rs. 5,000/day

Section 100: Calling of Extraordinary General Meeting (EGM)

7 13 36

1. Board may, whenever it deems fit, call an EGM of the company.
   Place - EGM shall be held at a place in India (except in case of WOS of co. incorporated o/s India)
2. Board shall, at the requisition made by following, call an EGM of the company:

Co. having share capital – Members holding not less than 1/10th of total PUSC that carries voting rights.	Co. not having SC – Members having not less than 1/10th of total voting power.

3. The requisition made u/ss (2) shall:
   a. Set out matters for consideration at the meeting
   b. Signed by requisitionists, and
   c. Sent to RO of the co.

4. The Board shall:
   a. Call for such meeting within 21 days from receipt of valid requisition
   b. Meeting to be called on a day not later than 45 days from date of receipt of valid requisition

5. On failure of board to call such meeting – Requistonists may themselves call and hold such meeting within 3m of date of requisition.

6. Meeting by requisitionists to be called, held & conducted in same manner as it is called, held by BoD

7. Reasonable expenses of such meeting shall be reimbursed to requistonists by co. and such sum shall be deducted from remuneration u/s 197 of directors who were in default in calling the meeting.

Rule 17: Calling of EGM by Requistonists:

1. Requisition has to be in writing or e-mode at least 21 clear days prior to EGM proposed date.
2. Notice to specify place, date, day, and hour of meeting & contain business to be transacted. The meeting shall be convened at RO or in the same city or town where RO is situated on any day except national holiday.
3. If proposed resolution is SR – Give notice as required u/s 114(2)
4. Notice shall be signed by all requisitionists or by a requisitionists duly authorized in writing.
5. No ES needs to be annexed to notice for such EGM. They may disclose reasons for proposed resolutions at the meeting.
6. Notice shall be given to those members whose names appear in RoM within 3 days of receipt of a valid requisition by the co.
7. Where meeting is not convened, the requisitionists shall have a right to receive:
   - list of members
   - their registered address and
   - number of shares held and

   the co. is bound to give such info as on 21st day from date of receipt of valid requisition form together with such changes, if any, before expiry of 45 days from such receipt.
8. Mode of sending notice - Speed post or registered post or through e-mode.
9. Accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting.

> Concept clarity check
> Are the requistonists required to specify reasons for the matters proposed to be considered?
> – No. Just stating the matters is enough. Reasons not required. [LIC vs Escorts]

Section 101: Notice of meeting: 8 35

1. GM may be called by giving not less than clear 21 days' notice in writing or e-mode - Manner prescribed.
   Provided that GM may be called after giving shorter notice if consent is accorded:

In case of AGM:	In case of any other GM:
By not less than 95% of members entitled to vote thereat	a. In case of co. having SC - Majority in numbers + representing not less than 95% of PUSC b. In case of co. not having SC - members having not less than 95% of total voting power

   To calculate 21 clear days: - Exclude – Date on which notice is served AND date of meeting

2. Notice to specify place, date, day and hour of meeting & contain business to be transacted thereon.
3. Notice to be given to [MAD]:

Every member of the co. (LR of deceased member or assignee of insolvent member)	Auditors of the company, and	Every director of the company

4. Accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting

10 Rule 18: Modes of Sending the Notice

1. Sending of notices through electronic mode (e-mode) has been statutorily recognized
2. "Electronic mode" means:
   - any communication sent by co. through authorized & secured computer programme
   - capable of producing confirmation and
   - keeping record of such communication addressed to the person entitled to receive
   - at the last e mail address provided by the member.
3. Notice may be sent through e-mail as a text, attachment or URL.
4. E-mail to be addressed to entitled person (as per records of depository)
5. Co. to allow changing or adding email IDs at least once in a FY
6. Subject line of email – State the name of co., notice of type of meeting, place and date.
7. Place notice on website of co. and other website notified by CG
   Note – Where notice is sent by post, it shall be deemed to be served at expiration of 48 hours after the letter containing the same is posted. (Refer Sec 20 of chapter 2)

Concept clarity check:

1. Can an individual director call for GM? – No. Individual director is not authorized. Only BoD can. However, if individual director ends up calling, BoD can later, ratify the same.
2. Cos obligation to send notice shall be satisfied when it transmits the email. Co. cannot be held responsible for transmission of email beyond control.

3. If an entitled members fails to provide email address to co., co. shall not be in default for not delivering notice via email.
4. Companies Act does not provide anything specific regarding condonation of delay in giving notice.
5. In case of section 8 company (92 + 137), notice shall be sent within ~~21 days~~ 14 days.

Example:
AGM to be held on 7th Nov. Notice was posted on 16th October. Is the notice valid or short?
Answer – Notice is invalid as it is of only 19 clear days. (because when posted on 16th Oct, it is deemed to be served on 18th October i.e., 48 hours later)

Section 102: Statement to be annexed to notice (Explanatory statement)

1. A statement setting out following material facts concerning each item of special business shall be annexed to notice calling such meeting:

the nature of interest (finance/ otherwise) in respect of each items of: - every director & manager - every other KMP - relatives of above	other info & facts that may enable to understand meaning, scope and implication of items of business and take decisions

Where, as a result of non-disclosure or insufficient disclosure of interest (as required above), if any benefit accrues to promoter, director, manager, KMP or their relatives – They shall hold such benefit in the trust of the company + Liable to compensate the co. to extent of such benefit.

2. Special business in AGM - In case of AGM, all business shall be deemed special, other than:

consideration of FS and reports of BoD and auditors	declaration of dividend	appointing of director in place of those retiring	appointment of and fixing remuneration of auditors

Special business in EGM – All business shall be deemed to be special.

Provided that:
- Where any item of special business relates to or affects any other company (say, A Ltd),
- the extent of shareholding interest in that other company (A Ltd) of:
  - every promoter, director, manager, if any, and
  - of every other KMP of the first mentioned company
- shall be set out in the ES, if not less than 2% of PUSC of that company (A Ltd)

3. Where any item of business refers to any doc, which is to be considered at the meeting, the time and place where such doc can be inspected shall be specified in ES.

Contravention – If default is made in complying with this section – Every promoter, director, manager, KMP ~~or their relatives~~ who is in default – Liable to penalty which is higher of:

- Rs. 50,000 or
- 5x the amount of benefits accrued to such promoter, director, manager, KMP or their relative

Summary of Ordinary vs Special Business:

	AGM	EGM
Ordinary Business	FS, Dividend, Director, Auditor	None
Special Business	All, other than above	All

Note: ES not required for transacting ordinary business

Section 103: Quorum for meetings

11 12 14 15

1. Unless articles provide for a larger number:
   a. In case of a public company:

No. of members as on date of meeting	Members personally present
Not more than 1,000	5
More than 1,000 but up to 5,000	15
> 5000	30

   b. In case of a private co. – 2 members personally present

2. If quorum is not present within half an hour from appointed time:
   a. Meeting called by requisitionists u/s 100 – stands cancelled
   b. Other meetings – Adjourned to same day, next week at same time and place or such other date as board may determine.

   In case of adjourned meeting or change of day, time or place of meeting – the company shall give not less than 3 days notice to members either individually or publish ad in newspaper (English + Vernacular)

3. If at adjourned meeting, quorum is not present within half an hour – Members present = Quorum [Example – Jet Airways]

Concept clarity check:
1. AOA can only provide for a larger number of quorum (i.e., not less than no. given in act)
2. Preference shareholder (PSH) shall not be counted for quorum where the matter is such that it does not affect rights of PSH or where PSH are not allowed to vote.
3. In case where a person representing a body corporate shareholder is present in meeting, he shall be considered as personally present (i.e., Say, X ltd is a SH in A Ltd. X Ltd. sent his representative Mr. X in the GM of A Ltd. It shall be considered personal presence)
4. One member representing 2 companies is counted as 2 members.

5. Where a person is AR for 5 BCs. He is present at a meeting of co. having < 1000 members. Is the quorum present? – No. 1 more person is still required because min. 2 person constitute quorum.
6. Proxies will not be included for the purpose of quorum.
7. Presence of a single member can never be called as meeting (even if meeting is adjourned meeting)

Section 104: Chairman of meetings

(N.A. to Pvt. Co. (92+137) unless AoA of Pvt co. specifies otherwise)

1. Unless AOA provides otherwise, members personally present shall elect one of themselves to be chairman thereof on a show of hands.
2. If poll is demanded on election of chairman:
   - Chairman elected u/ss (1) by show of hands shall continue to be chairman until some other person is elected chairman by way of poll.
   - Such other person to be chairman for rest of the meeting.

Additional points:

- Chairman is a person who manages meetings and ensures decorum is maintained.
- Chairman has prima facie authority to decide all questions arising in the meeting.
- Chairman has casting vote or second vote in BM and GM (only if empowered by AoA)

Section 105: Proxies

1. Any member entitled to attend and vote at a meeting shall be entitled to appoint another person as a proxy to attend and vote on his behalf.

   Provided that proxy shall have no right to speak at such meeting + entitled to vote only on a poll

   Provided further that:
   - Unless AoA provides otherwise, this sub-section – N.A. to co. not having SC
   - CG may prescribe classes of cos. whose members shall not be entitled to appoint proxy
   - Limit - A person shall not act as a proxy on behalf of members exceeding 50 and having prescribed no. of shares.

Rule 19: Proxies

1. A member of sec 8 co. can only appoint another member ONLY of the co. as proxy
2. A person can act as proxy on behalf of members not exceeding 50 and holding (aggregate) not > 10% of total share capital of the company carrying voting rights
   Provided that a person holding > 10% of SC may appoint a single person as proxy and such person shall not act as proxy for any other SH
3. Appointment of proxy shall be in Form MGT 11

2. Every notice calling for meeting, there shall appear with reasonable prominence a statement that –
   - a member entitled to attend & vote is entitled to appoint a proxy, or one or more proxies (where allowed) and
   - that proxy need not be a member

3. Default u/ss (2) – OID liable to penalty of Rs. 5,000

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4. Deposit of proxy form:
   48 hours before meeting, proxy form or any other doc. necessary to show validity of such appt. shall be deposited with the company (even if articles provide for longer period)

   Such instrument appointing proxy shall be in writing and be signed by:
   - appointer or duly authorized attorney in writing or
   - if appointer is BC – under its seal or be signed by an officer or duly authorized attorney

5. If invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to notice of meeting and vote thereat - Every officer who issues or authorized such issue – Liable for penalty Rs. 50,000
   Provided that – Officer not liable if such issue is at the member's request in writing.

6. An instrument appointing proxy in Form MGT – 11 shall not be questioned on the grounds that it fails to comply with special requirements by the AOA

7. Inspecting proxy forms by member:
   Every member entitled to vote at the meeting – entitled to inspect proxies lodged. Provided that:
   - Inspect during period - 24 hours before time fixed for commencement of meeting and ending with conclusion of meeting during business hours
   - Not less than 3 days' notice in writing of intention given to co.

Concept clarity check:
1. In case where member and proxy both are present in a GM -
   The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority
2. AoA provides that the proxy form should be received at least 60 hours before the GM. Is such provision valid? – No! The limit of 48 hours cannot be increased in any case.

Voting [Sec 106 to 110]

Section 106: Restriction on voting rights:

1. Notwithstanding anything contain in act, AoA may provide that:
   A member shall not exercise voting right in respect of the shares registered in his name on which:
   - call or other sum is unpaid, or
   - co. has exercised any right of lien.

2. Except as specified above, a co. shall NOT prohibit member from voting right on any other ground

3. In case of poll – Member (or his proxy) entitled to more than one vote need not use all his votes or cast in the same way all the votes he uses. (i.e., he can split his votes for and against same resoln)

Voting in case of joint shareholders:
- Unless AOA provides otherwise, joint shareholders must concur in voting.
- In case of joint shareholder, voting is done in order of seniority (determined on basis of order of name appearing in RoM which is as per the joint shareholders instruction)

Note - A company can restrict voting right in case of unpaid calls or lien only if authorized by AoA.

Section 107: Voting by show of hands:

1. At any GM, resolution put to vote shall be decided by show of hands, unless poll is demanded u/s 109 or voting is carried out electronically.
2. Following shall be conclusive evidence of fact of passing of resolution or otherwise:
   a. Declaration by chairman of passing of such resolution, and
   b. Entry to that effect in the minutes of the meeting

> Concept clarity check:
> Can insolvent SH vote by show of hands? Yes (as long as his name appears in RoM, he is entitled)

Section 108: Voting through electronic means.

CG may prescribe class or classes of companies and manner in which member may exercise voting rights by electronics-means.

Rule 20: Voting through e-means:

1. Following cos. shall provide facility to vote by e-means:
   a. Every co. having listed its equity shares in a RSE and
   b. Every co. having >= 1000 members
   Provided that – Nidhi cos or institutional investors as per SEBI Regulations – Not required to provide such facilities.

2. Companies providing facility of voting by e-means shall comply with following procedures:

Particulars	Detail
Notice of meeting	To be sent to – All members, auditors, and directors. Mode – Registered post, speed post or e-means or by courier service
Place notice	On website of – Company and Agency (NSDL/CDSL)
Notice to state:	➢ Co. is providing facility for voting by e-means. ➢ That the facility – either EVS or ballot or polling paper shall also be made available at meeting and members attending the meeting who have not already cast vote via remote e-voting shall be able to exercise their right at meeting ➢ Members who have cast vote by remote voting prior to meeting may also attend meeting but not vote again.
Notice shall:	➢ indicate process and manner for voting by e-means; ➢ indicate time schedule including time period during which the votes may be cast by remote e-voting; ➢ provide login ID details. ➢ specify process for generating password and voting in secure manner
Publication in newspaper	Co. shall cause a public notice by way of advertisement – Immediately on dispatch of notices but at least 21 days before date of GM in the following newspaper: ➢ at least once in vernacular newspaper in the language of district where RO is situated and having wide circulation in that district, ➢ at least once in English newspaper having country wide circulation specifying the following: 1. statement that business may be transacted by e-voting. 2. date and time of commencement of remote e-voting 3. date and time of end of remote e-voting 4. cut-off date (a date not earlier than 7 days before date of GM for determining eligibility to vote) 5. manner in which person who became members after dispatch of notice may obtain login ID and password.
	6. the statement that: a. remote voting shall not be allowed beyond said date and time. b. manner in which co. shall provide for voting at the meeting. c. member may participate in GM even after remote voting but not allowed to vote again. d. person named in RoM as on cut off date only – entitled to vote e. website of the co. and agency f. name, designation, etc. of person responsible for grievances addressal
Remote voting	➢ Remain open for >= 3 days. Shall close at 5PM on date preceding date of GM. ➢ During such period – members holding shares in physical or demat form, as on cut-off date, may vote

	➢ Vote once cast – cannot be subsequently changed. ➢ At the end – facility to be forthwith blocked. Provided that – If a co. decides to use the same EVS as used in remote e-voting for voting during the GM, the said facility – The said facility shall be operational till all resolutions are voted upon in the meeting.
Scrutiny	➢ BoD to appoint one/more scrutinizers (CA, CS or Cost Accountant, in practice or advocate or any person not in employment + Person of repute) to scrutinize the voting process in fair and transparent manner. ➢ Scrutinizer may take assistance – Not an employee + well versed with EVS. ➢ Scrutiniser shall be willing to be appointed and be available for ascertaining requisite majority. ➢ Chairman to allow voting at the GM by use of ballot or polling paper or by EVS for those who didn't vote using remote e-voting.
Counting votes	Scrutiniser shall, immediately after conclusion of voting at GM: ➢ first count votes cast at GM, ➢ thereafter unblock votes cast through remote e-voting in presence of at least 2 witnesses not in employment of co. and ➢ make (within 3 days of conclusion of GM), a consolidated scrutiniser's report of total votes cast in favor or against, if any, to Chairman or a person authorised by him in writing who shall countersign the same. ➢ Thereafter, CM or authorised person to declare result of voting forthwith; ➢ Votes to remain secret till the votes are cast at GM.
Prevent dual votes	To ensure that members who voted via e-voting do not vote again in GM – Scrutinizer to have access to details of shareholders who voted but not the manner in which they have cast their votes.
Register of assent/ dissent received	➢ Scrutiniser to maintain a register (manually or electronically) to record assent or dissent received, mentioning particulars of name, address, folio number or client ID of members, number of shares held by them, nominal value and whether the shares have DVR; ➢ Such register to remain in safe custody of scrutinizer till approval of minutes by chairman. Thereafter, hand over to company ➢ Result of resolution – Place on website – Co + Agency + RSE (if listed)
Deemed date of resolution	Date of GM
Withdrawn	Resolution proposed to be considered through voting by e-means shall not be withdrawn

Section 109: Demand for poll

1. Before or on declaration of result of voting on any resolution on show of hands:
   - a poll may be ordered to be taken by the Chairman on his own motion, and
   - shall be ordered to be taken by him on a demand made in that behalf:

In case of co. having SC –	In case of other co. -
By members present in person or proxy having >= 1/10th of total VP or holding shares in aggregate having PUSC >= Rs. 5 lakhs or higher amount prescribed	By members present in person or proxy having >= 1/10th of total VP

2. The demand for a poll may be withdrawn at any time by the persons who made the demand.

3. Poll demanded for adjournment of meeting or appt. of Chairman of meeting to be taken forthwith.

4. A poll demanded on any question other than adjournment/ appt. of chairman shall be taken at such time (within 48 hours from time it was demanded), as Chairman of the meeting may direct.

5. Where poll is to be taken, Chairman shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on poll and to report to him in manner prescribed.

6. Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken

7. Result of poll shall be deemed to be decision of meeting on resolution on which poll was taken

Rule 21: Manner in which chairman shall get the poll process scrutinized:

Chairman of the meeting shall ensure the following:

a. Scrutizers are provided with:
   - Register of members, specimen signs of members, attendance and proxy register
   - All documents pursuant to sec 105, 112 and 113

b. Scrutinizers to arrange Polling papers (MGT-12) & distribute to members & proxies present
   In case of joint SH – Give polling paper to first named holder (in his absence – joint holder)

c. Scrutinizers to keep record of the polling papers received in response to poll, by initialing it.

d. Scrutinizers shall lock and seal an empty polling box in presence of members and proxies. Such box shall be opened in presence of at least 2 witness.

e. In case of ambiguity about validity of a proxy, Scrutinizers + Chairman to decide validity

f. Ensure that if member (who has appointed proxy) has voted in person, proxy's vote disregarded.

g. Scrutinizers shall count votes cast on poll and prepare a report addressed to the Chairman. The report shall be in Form MGT – 13. Such report shall be sign and submitted within 7 days from date of poll. Chairman to counter-sign the same.

h. Where voting is conducted by e-means u/s 108 and rules made thereunder, co. shall provide all the necessary support, technical and otherwise, to Scrutinizers in orderly conduct of voting and counting the result thereof.

i. Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.

j. Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.

Section 110: Postal Ballot

As per Sec 2(65) – Postal ballot means voting by post or through e-mode

1. Notwithstanding anything contained in this Act, a company:

shall, w.r.t., such items of business as CG may, by notification, declare to be transacted only by means of postal ballot; and	may, in respect of any item, other than ordinary business and any business in respect of which Directors or auditors have right to be heard at meeting, transact by means of postal ballot

in such manner as may be prescribed, instead of transacting such business at a GM.

Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a GM by a company which is required to provide the facility to members to vote by e-means u/s 108, in the manner provided in that section.

2. If a resolution is assented to by the requisite majority of SHs by means of postal ballot, it shall be deemed to have been duly passed at a GM convened in that behalf.

Rule 22: Postal Ballot:

Particulars	Detail
Introduction	Where a co. is required or decides to pass resolution by postal ballot, - send notice to all SHs + draft resolution explaining reasons therefor and requesting them to send their assent or dissent in writing on a postal ballot because postal ballot means voting by post or through e-means within 30 days from date of dispatch of notice
Notice of meeting	To be sent to – All members, ~~directors and auditors~~ Mode – Registered post, speed post or e-means or by courier service
Place notice	On website of company – Remain on website till last date of receipt of PB forms

Publication in newspaper	1. Co. shall publish an advertisement about having dispatched the ballot papers, in: ➢ at least once in vernacular newspaper in the language of district where RO is situated and having wide circulation in that district, ➢ at least once in English newspaper having country wide circulation specifying the following: ➢ statement that business may be transacted by postal ballot including e-voting ➢ date of completion of dispatch of notice ➢ date of commencement of voting ➢ date of end of voting ➢ the statement that: a. postal ballot received beyond date is invalid and voting shall not be allowed beyond said date and time b. members who have not received the postal ballot forms may apply to the co. and obtain a duplicate thereof. 2. name, designation, address, etc. of person responsible for grievances addressal
Scrutiny	➢ BoD to appoint one/~~more~~ scrutinizers who is not in employment to scrutinize the postal ballot process in fair and transparent manner ➢ Scrutiniser shall be willing to be appointed and be available for ascertaining requisite majority ➢ Postal ballot received back from SH shall be kept in safe custody of scrutinizer and after receipt of assent or dissent of the SH in writing on a postal ballot, no person shall deface or destroy ballot paper or declare the identity of the SH. ➢ scrutinizer shall submit his report as soon as possible after last date of receipt of postal ballots but not later than 7 days thereof
Register of assent/ dissent received	➢ Scrutiniser to maintain a register (manually or electronically) to record assent or dissent received, mentioning particulars of name, address, folio number or client ID of members, number of shares held by them, nominal value and whether the shares have DVR; details of postal ballot defaced, if any ➢ Such register and other papers to remain in safe custody of scrutinizer till approval of minutes by chairman. Thereafter, hand over to company to preserve ➢ Assent or dissent received after 30 days from the date of issue of notice shall be treated as if reply from the member has not been received. ➢ Result shall be declared by placing it on website of company
Rule 20 to apply	Provisions of rule 20 regarding voting by e-means shall apply, as far as applicable, mutatis mutandis to this rule in respect of voting by e-means.

Postal Ballot ONLY	Following items of business shall be transacted only by means of voting through a postal ballot:

Section	Business
13	Alteration of object clause of MoA
NA	Alteration of AoA to insert or remove provisions which, u/s 2(68) are required to be included in AoA of private co.
12	Change in place of RO outside local limits of city/town/village
13/27	Change in object for which money raised from public
43	Issue of shares with differential rights
48	Variation in rights attached to class of shares
68	Buy-back
151	Election of a director
180	Sale of undertaking of co.
186	Giving loans, guarantees in excess of limit

Non-applicability	Provided further – OPC and Cos. having members up to 200 are NOT required to transact any business through postal ballot

Summary of Limits in Chapter 7

101 Shorter notice
- AGM: 95% of men
- EGM:
  - 95% of PUSC + Majority
  - No: 95% of VP

100 Requisition
- EGM:
  - SC: 1/10th of PUSC
  - No: 1/10th of VP

109 Poll
- SC: 1/10th of VP or PUSC ≥ 5L
- No: 1/10th of VP

Section 111: Circulation of Member's Resolutions

1. On requisition in writing by such number of members as u/s 100, a company shall:
   a. give notice to members of any resolutions intended to be moved at the meeting, and
   b. circulate to members – any statement w.r.t. matters referred to in proposed resolution

2. A company shall not be bound u/ss (1) unless:
   a. Copy of signed requisition is deposited at the RO:
      i. In case of requisition requiring notice of resolution – Not less than 6 weeks before meeting
      ii. In case of any other requisition – Not less than 2 weeks before meeting
   b. Along with requisition, deposit a sum reasonably sufficient to meet company's expense

Note – If after the requisition requiring notice is deposited at the RO + AGM is called on a date within 6 weeks after deposit thereof – It shall be deemed to have been properly deposited.

3. Where, on an application by the co. or aggrieved person, and application is made to CG and CG declares that rights in this section are being abused to secure needless publicity for defamatory matter - The co. shall not be bound to circulate any statement u/ss (1)(b)
   Note – Cost of such application to CG – CG may order requisitionists to pay such cost

4. Default – Co and OID – Penalty of Rs. 25,000.

Section 112: Representation of President and Governors in Meetings

1. The President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting of the company.

2. A person appointed u/ss (1) shall, be deemed to be a member and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, as the President or, he Governor could exercise as a member of the company

Concept clarity check:
President of India appointed Mr. Lazy as his representative. However, Mr. Lazy, instead of going to the meeting himself, appointed Mr. Proxy to attend and vote on his behalf. Is Mr. Lazy allowed to appoint a proxy? – Yes. Mr. Lazy enjoys same rights as the president would and hence allowed to appoint proxy.

Section 113: Representation of Corporations at Meeting of Companies and of Creditors

1. A body corporate may:

If it is a member of a Co.	by BoD resolution, authorise such person as it thinks fit to act as its representative at any meeting of the company
If it is a creditor, including Debenture holder	By BoD resolution, authorise such person as it thinks fit to act as its representative at any meeting of any creditors

2. A person appointed u/ss (1) shall, be deemed to be a member and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, on behalf of BC which he represents as that body could exercise if it were an Indv member, creditor/DH.

Example: Evaluate whether quorum is satisfied:

A Ltd is a company having 1,200 members. Evaluate whether quorum is met on presence of following:

Type of person	Include in Quorum?
A,B and C – Shareholders of A Ltd	
D and E – Joint shareholders	
F, G and H – Preference shareholders	
X and Y – Proxies	
P – Representative of President	
G – Representative of Governor	
H – Representative of BC	
M – Representative of BC3 and BC4	
Total members counted in quorum →	

Section 114: Ordinary and Special Resolutions

1. A resolution shall be an OR if:
   - notice has been duly given and
   - it is required to be passed i.e., votes cast (show of hands or e-voting or poll) in favour, including casting vote, if any, of CM, by members (personally or via proxy where allowed),
   - exceed the votes, if any, cast against the resolution by members, so entitled and voting.

2. A resolution shall be a SR when—
   - the intention to propose the resolution as a SR has been duly specified in the notice calling the GM or other intimation given to the members of the resolution;
   - the notice required under this Act has been duly given; and
   - the votes cast in favor (show of hands, poll or e-voting), by entitled members (in person or proxy or postal ballot) is not less than 3x number of votes, if any, cast against such resolution.

Concept clarity check:

1. It is not necessarily true that ordinary business require OR and special business require SR. Example – Issue of equity share with differential rights is a special business but requires OR.

2. Whether 2 or more resolutions can be moved together at the same time in a GM? – Yes, there is nothing illegal with the same. Except in case of resolution to appoint directors (Sec 162 requires one resolution for each director. Resolution appointing multiple directors cannot be moved at once.)

3. At a GM, 40 members are present. 20 votes in favor, 5 voted against. 5 votes were invalid and 10 members abstained from voting. Is SR passed? – Yes. Abstentees or invalid votes, if any, are not to be taken into account.

Section 115: Resolutions Requiring Special Notice

- Where, by any provision contained in this Act or in the articles of a company,
- special notice is required of any resolution,
- notice of intention to move such resolution to be given to company by:
  a. members holding not < 1% of total VP or
  b. holding PUSC of prescribed sum (not > Rs. 5 lakhs)
- and company shall give its members notice of the resolution in such manner as may be prescribed

Rule 23 - Special Notice (SN)

1. SN shall be signed (individually/collectively) and given by such number of members holding:
   a. not < 1% of total VP or
   b. holding fully paid up shares of not less than Rs. 5 lakhs on the date of the notice.

2. Time period of sending notice – Notice to be sent to co. not earlier than 3 months but at least 14 days before date of meeting, exclusive of day on which the notice is given and day of meeting.

3. Immediately on receipt of notice – Co. to give notice to its members of the resolution – At least 7 days before meeting (exclusive of date of dispatch and day of meeting)

4. Where it is not practicable to give notice u/ss (3) in same manner as notice of GM – Publish notice in newspaper (english/vernacular) and post it on the website of company.

5. The 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.

As per Companies Act, special notice is required in following cases:

Section	Provision
140	Appointment of auditor other than retiring auditor
169	Removal of director

Section 116: Resolutions passed at adjourned meeting

Where a resolution is passed at an adjourned meeting of company, shareholders or BoD – It shall be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Example: EGM dated – 23rd Sept. Quorum absent. Adjourned - 1st October. Two resolutions passed in adjourned meeting. Effective date of resolution = 1st October (and not 23rd sept)

Section 117: Resolutions and Agreements to be Filed

1. The provision of this section shall apply to following resolutions and agreements: [*SAB CA WPO*]

- Special Resolution
- Resolution agreed to by all the members
- agreement executed by co. related to appointment, re-appointment or variation of terms of MD
- any resolutions of BoD
- resolutions or agreements which have been agreed to by any class of members
- resolution to be wound up voluntary (u/s 59 of IBC)
- resolutions passed u/s 179 (3)**
- any other resolution or agreement

**Provided that – Any person shall NOT be entitled u/s 399 to inspect copies of such resolution
Provided further that – This clause is N.A. to resolution passed to grant loans, etc. u/s 179(3)(f) in ordinary course of business (OCOB) by a banking company, NBFC or housing finance companies.

2. A copy of every resolution or agreement mentioned above along with ES u/s 102 (if any) – File with RoC in Form MGT 14 within 30 days of passing such resolution or making such agreement. Where such resolution or agreement has effect of altering AoA – Annex such resolution to every copy of AoA issued after passing such resolution/making agreement

3. In case of failure to make such filing with RoC, penalty:

Company	Rs. 10,000 + Rs. 100/day after first	Max – Rs. 2 lakhs
OID	Rs. 10,000 + Rs. 100/day after first	Max – Rs. 50,000

Section 118: Minutes of proceedings of GM, Board Meeting and Resolutions passed by Postal ballot

1. The co. shall cause minutes of the proceedings of the following to be prepared, signed and kept in the minute books (with pages consecutively numbered) within 30 days of conclusion thereof:
   - GM of any class of SH or creditors
   - board meetings or meetings of any committee thereof
   - resolutions passed by postal ballot.

2. Minutes shall contain fair and correct summary of the proceedings.

3. Appointments made at any meetings shall be included in minutes.

4. In case of meeting of BoD or committee thereof, the minutes shall also include:
   - Names of directors present
   - where a resolution is passed, the names of dissenting directors

5. The following matters shall not be included in the minutes which, in opinion of Chairman, is:
   - reasonably be regarded as defamatory of any person
   - irrelevant or immaterial to proceedings
   - detrimental to interest of co.

6. Chairman shall exercise absolution discretion w.r.t. inclusion or exclusion of any matter u/ss (5)

7. Minutes = Evidence of the proceedings recording therein.

8. Where minutes are kept as u/ss (1), until the contrary is proved, it shall be deemed that:
   - Meeting have been duly called and held.
   - Proceedings have duly taken place and resolutions duly passed.
   - All appointments of director, KMP, etc. is valid.

9. No document purporting to be a report of the proceedings of any GM shall be circulated or advertised at company's expense, unless it includes matters required by this section to be contained in the minutes of the proceedings of such meeting.

10. Every co. to observe secretarial standard specified by Institute of CS of India

11. Default under this section – Co. – Rs. 25,000 and OID – Rs. 5,000

12. Person found guilty of tampering with minutes – Jail upto 2 years AND Fine – Rs. 25k to Rs. 1 L

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Rule 25 – Minutes:

1. Distinct minute books shall be maintained for each type of meeting - GM of member, creditors, Board Meeting, etc.
   Note: Resolution by postal ballot - record in minute of GM in which deemed to be passed

2. Minute of proceeding to be entered into such book within 30 days of conclusion of meeting.

3. In case of resolution by postal ballot, include following in the minutes books within 30 days:
   - resolution proposed
   - result of voting
   - summary of scrutinizer's report

4. Each page of minute book – Initialed or signed.
   Last page of the record of proceeding shall be dated and signed:

Minutes of proceedings of	
BoD or committee meeting	By chairman of said meeting or chairman of next succeeding meeting
General Meeting	By chairman of same meeting within 30 days In event of death or inability of CM – a director duly authorized by the BoD
Resolution passed by postal ballot	By chairman of the BoD within 30 days In event of there being no CM or death or inability of CM – a director duly authorized by the BoD

5. Preserving minute books:

	of General Meeting	of BoD or committee
Kept at	RO ~~or such place as BoD may decide~~	RO or such place as BoD may decide
Preserve	Permanently	Permanently
Custody	CS or director duly authorized by BoD	CS or director duly authorized by BoD

Note - In case of section 8 co. - the section shall not apply as a whole except that minutes may be recorded within 30 days of conclusion of every meeting (in case of co. where AoA provide for confirmation of minutes by circulation)

Section 119: Inspection of minute-books of GM:

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1. Minute books of proceeding of any GM, ~~BoD meeting~~ or of resolution by postal ballot shall be:
   a. kept at RO of the co.
   b. open to inspection by any member, without any charge, during business hours, subject to imposing reasonable restriction by AoA or in GM. However, not < 2 hours in each business day are allowed for inspection.

2. On request to the co. + payment of fees as specified in AoA – Copy of minutes to be furnished to member within 7 working days.

As per Rules:

A member who has requested for soft copy of minutes of any previous GM held during immediately preceding 3 FY shall be entitled to be furnished, with the same free of cost.

3. If inspection is refused or copy of minutes is not furnished - Penalty:
   Company –Rs. 25,000 ; OID – Rs. 5,000

4. In case of such refusal or default, Tribunal may, without prejudice to action u/ss (3), by order:
   - direct an immediate inspection of the minute-books or
   - direct that the copy required shall forthwith be sent to person requiring it.

> Concept clarity check:
> Can a member authorize his friend to inspect minutes book on his behalf of him by signing a power of authority? – No, sec 119 does not provide for authorizing anyone else to inspect the minutes book.

Section 120: Maintenance and Inspection of Documents in Electronic Form:

Without prejudice to any other provisions of this Act, any doc., record, register, minutes, (DRRM):
(a) required to be kept by a company; or
(b) allowed to be inspected or copies to be given to any person by a company under this Act,
may be kept or inspected or copies given, as the case may be, in e-form in prescribed form & manner.

Rule 27: Every listed company or a company having >= 1000 SH, DH and other security holders, ~~shall~~ may maintain its records, as required to be maintained under the Act or rules, in electronic form.

Rule 28: MD, CS or any other director or officer as BoD may decide – shall be responsible for maintenance of e-records.

Rule 29: Records in e-form shall be available for inspection in e-form (on payment not > Rs. 10/page)

Rule 27, 28 and 29 as per ICAI Module has been intentionally skipped due to limited relevance of this section.

Section 121: Report on AGM:

1. Every listed public company shall prepare a report on each AGM including confirmation that the meeting was called, held and conducted as per provision of this Act and Rules
2. Report u/ss (1) shall be filed with RoC within 30 days of conclusion of AGM in Form MGT 15.
3. Default u/ss (2) – Penalty:
   Company – Rs. 1 lakhs + Rs. 500/day after the first subject to maximum Rs. 5 lakhs
   OID – Not less than Rs. 25,000 + Rs. 500/day after the first subject to maximum Rs. 1 lakh

Rule 31:

a. Report u/s 121 shall be in addition to minutes of GM
b. Report shall be signed & dated by CM and CS.
   In case of his inability of CM – Sign by 2 directors (1MD, if any) and CS
c. Report shall contain following details: [*A BOLD MCQ*]

- day, date, hour and venue of AGM (Details)
- confirmation w.r.t. appt. of Chairman of AGM
- no. of Members attending AGM;
- confirmation of Quorum;
- confirmation w.r.t compliance of the Act and Rules, secretarial std. made there under w.r.t. conducting AGM; (Law)
- Business transacted and result thereof;
- particulars w.r.t any Adjournment, postponement of meeting, change in venue;
- any Other relevant points

Section 122: Applicability of this chapter to OPC:

1. Provision of Sec 98 and 100 to 111 – N.A. to OPC
2. In case of OPC, ordinary business at AGM shall be transacted as mentioned below:

Business at AGM or EGM in case of OPC	Business at BoD meeting in case of OPC
For sec 114, any business which is required to be transacted at AGM or other GM by OR/SR - it shall be sufficient if, in case of such OPC: • resolution is communicated by member to co., • entered in minutes-book maintained u/s 118, • signed and dated by member and • such date shall be deemed to be the date of meeting for all the purposes under this Act	Where there is only 1 director in BoD of OPC – any business which is to be transacted at BoD meeting, it shall be sufficient if, in case of OPC: • the resolution by such director is entered in minutes book maintained u/s 118 and • signed and dated by such director and • such date = deemed to be the date of BoD meeting for all the purposes under this Act

Rule 30: Penalty fo contravention of Rules of this chapter:

Provision Violated	Penalty
Default in compliance with any provision	Fine up to Rs. 5,000
Continuing contravention	Additional fine up to Rs. 500 per day after first
Default by the company, officers, etc.	Fine up to Rs. 5,000

The End

Chapter 8
Declaration and Payment of Dividend

[Section 123 to 127]

Basics	Provisions	Funds related to Dividend	Punishment
• Definition u/s 2(35) • Types (Final/ Interim)	• Sec. 123: Declaration of Dividends • Sec 124: Unpaid or Unclaimed Dividend	• Sec. 125: IEPF o Establishment o Credits to the Fund o Utilization	• Sec. 127: Failure to distribute dividend

Definition:

Section 2(35) "dividend" includes any interim dividend.

Important points relating to dividend:

- It is a distribution of profits.
- Final dividend is declared & approved by shareholders (by OR at AGM) on recommendation of Board
  The rate of dividend declared by SH shall not exceed the amount recommended by BOD.
- Dividend % is a proportion of nominal value or face value.

Concept clarity check:

1. BoD recommended 10% div. Can SH, by passing unanimous resolution, declare 12% dividend?- No!
2. Calculate the amount of dividend in following case:
   No. of shares held = 50
   Face Value = Rs. 10; Market Value (in stock exchange) – Rs. 200; Purchase price – Rs. 190
   SH approved and declared dividend = 10%
   Amt. of dividend = No. of shares * Dividend * Face Value i.e., 50 shares * 10% * Rs. 10 = Rs. 50
   Note – Market value or purchase price is irrelevant for the calculation of amt. of dividend

Types of dividend:

Classification based on time		
Particulars	**Interim Dividend**	**Final Dividend**
Announcement	Announced and declared by ~~SH~~ BOD at any time between 2 AGMs.	Recommended by BoD and declared by shareholders at the AGM of the co.
Source	Out of profits before final adoption of accounts. Sources for interim dividend = Surplus in PL or CY profit or Prior Profits	--

Rate of Dividend	If the company has incurred loss during the CY upto preceding quarter, then dividend not to be declared at a rate higher than Avg rate of dividend declared by co. during immediately preceding 3 FYs.	The rate recommended by the Board cannot be increased by the members.
Revocation	Can be revoked with consent of ALL shareholders.	Once declared - cannot be revoked.

Dividend to be deposited in separate A/c of a scheduled bank within 5 days from date of declaration

Classification of Dividend based on Nature of Shares		
Preference Shares (Sec 43)		Equity Shares
Cumulative	Non-Cumulative (Default)	
Dividend gets accumulated	Dividend is payable only in a year of profit. No accumulation of profit	Equity shares holder do not enjoy any preferential rights for dividends or repayment of capital
Arrears in dividend due to insufficiency of profits - Payable from future profits. Unless this dividend is paid in full (incl. arrears), no dividend is payable to ESH	Holder not entitled to be paid arrears of dividend out of future years i.e., right to receive dividend expires if not declared in any year.	Rate of dividend depends upon the dividend policy and availability of profits after satisfying Pref. SH rights

Section 123: Declaration of Dividend

1. Source: Dividend shall be declared or paid by a company for any FY out of:

- (a) Profits* for that FY (current) arrived at after providing for depreciation (Sch II)
- (b) Undistributed profits* of any previous FYs arrived at after providing for depreciation as per Sch II (i.e., credit balance in P&L and free reserves)
- (c) Both (a) and (b) [Current + Past Profits]
- (d) Money provided by CG/SG for payment of div. in pursuance of guarantee given by the Govt

*Provided that – While calculating profits – exclude:

- unrealised gains, notional gains, or revaluation of assets, and
- any change in carrying amount of an asset/liability on measurement at fair value.

Transfer to Reserves – A company MAY, before declaration of dividend in any FY, transfer such % of its profits for that FY as it may consider appropriate to reserves of the company.

Conceptual Clarity Check:

1. Can capital reserve be used for payment of dividend? –No! Only free reserves can be used.
2. Carried over previous losses and depreciation not provided in PY has to be set off against CY profits before declaration of dividend.

3. Capital profits are not earned in normal course of biz. Hence, not available for distribution.
4. Is it okay if a company decides not to transfer any amount to reserves before dividend?
   – Yes! Whether or not to transfer and what % to be trf to reserve is left to discretion of the co.

2. For the purposes of Sec 123(1)(a), depreciation shall be provided in accordance with Sch II

3. Rate of Dividend –
   Board may declare interim dividend during any FY or at any time from closure of FY till holding of AGM out of:
   - Surplus in the P&L account or
   - Profits of the FY for which such interim dividend is sought to be declared (past FY), or
   - Profits generated in the FY till the quarter preceding date of declaration of interim dividend

   Interim Dividend in case of loss in recent quarter (not Final Dividend):
   In case the co. has incurred loss during the current FY up to the end of quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate > Average dividends declared by company during immediately preceding 3 FYs

   Concept clarity check:
   Is upper limit on rate of dividend (i.e., not > Avg of preceding 3 FY) applicable in case of profit in current FY till preceding quarter? – No. In case of profit, % of dividend can be higher.

Rule 3 Declaration of Dividend out of Reserves: [Very important]
In the event of inadequacy or absence of profits in any year, a co. may declare dividend out of free reserves subject to the fulfilment of the following 3 conditions, namely:

(a)	(b)	(c)
Rate shall not exceed Average of dividend of 3 immediately preceeding FY*	Total amount drawn from accumulated profits <= 1/10th of [PUSC + FR] as per latest audited FS AND Amount drawn shall first be utilised to set off losses of current FY	Balance in reserve after such drawal not < 15% of PUSC as per latest audited FS

* This sub-rule (1) shall not apply if a co. has not declared any dividend in each of 3 preceding FY.

4. Dividend (incl. interim) – Deposit in separate a/c with scheduled bank within 5 days from declaration

5. Dividend shall be paid by a co. only to the:

   Registered shareholder of such share or | to his order or | to his banker and

   shall not be payable except in cash.

Provided that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

Concept clarity check:

1. Mr. Singh has purchased shares of Burraaah Ltd. from Mr. Jai by making full payment. However, transfer of shares is not yet registered with the co. Meanwhile, the co. announces dividend. Is the company allowed to pay the dividend to Mr. Singh? – No. In such case, the company will keep the dividend till the registration is pending (Discussed in detail in sec 126)
2. Can a company issue bonus shares in lieu of dividend – No. Dividend can only be paid in cash.
3. Can a company pay dividend via bank? – Absolutely Yes. Cash doesn't mean hard cash. It means – Cash, cheque, dividend warrant or via any e-mode.

4

6. A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

10

Note: Section 8 companies are prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed. [Sec 8]

Bonus Point

What is record date? - Record date is the date announced by the company for determining members who are entitled to dividend. All person whose name is included in the register of members on the record date shall be entitled to dividend.

Section 124: Unpaid Dividend Account

5 6 14

1. Where a dividend is declared but not paid or claimed within 30 days from the date of declaration,
   - the company shall, within 7 days from the expiry of the said 30 days,
   - transfer the total unpaid/unclaimed amount of dividend to a special account (with scheduled bank) called the Unpaid Dividend Account (UDA)

2. Preparing of Statement of the Unpaid Dividend
   - Within 90 days of transferring any amount to the Unpaid Dividend Account
   - prepare a statement containing the following:

     Name | Last known address | Unpaid dividend amount

   - and place it on website and on any other website approved by CG for this purpose.

3. Payment of Interest on default

   If default is made in transferring the total amount u/ss (1) to UDA, company shall:
   - Pay interest @12% p.a. from the date of such default
   - Interest accruing on such amount shall ensure to benefit of members of the co. in proportion to amt. remaining unpaid to them.

4. Claimant shall apply to co. concerned for payment of unpaid amount (prior to trf. to IEPF)

5. Transfer of Unclaimed or unpaid amount to Investor Education and Protection Fund (IEPF)
   - If remains unpaid or unclaimed for 7 years from the date of such transfer
   - It shall be transferred by the company along with interest to the IEPF, and
   - A prescribed statement containing details of such transfer shall be sent to IEPF Authority &
   - Authority to issue receipt as an evidence of such transfer.

6. Transfer of Shares to IEPF
   All shares in respect of which dividend has not been paid/claimed for >= 7 consecutive years shall be transferred by the company in the name of IEPF along with a statement containing such details.

   Author's Note – Note that this section is talking about transfer of the "shares" itself and not the unpaid amount of dividend. The trf. of unpaid amount is already discussed u/ss (5)
   Provided that any claimant of shares trfd. above shall be entitled to claim the transfer of shares from IEPF with such procedure and on submission of such documents as may be prescribed.

   Explanation:
   In case any dividend is paid or claimed for any year during the said period of 7 consecutive years, the share shall not be transferred to Investor Education and Protection Fund.

7. Punishment for Contravention of this section:

	Company	Officer in default
Penalty	Rs. 1 lakh + Rs. 500/day	Rs. 25,000 + Rs. 100/day
Max penalty	Rs. 10 lakhs	Rs. 2 lakhs

Section 125: Investor Education and Protection Fund

(Read with IEPF Authority (Accounting, auditing, transfer and refund) Rules 2016)

1. The CG shall establish a Fund to be called the Investor Education and Protection Fund (IEPF)

2. There shall be credited to the Fund—
   a) the amount given by the CG by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
   b) donations given to the Fund by CG, SG, cos. or any other institution;
   c) the amount in Unpaid Dividend Account of companies transferred to Fund u/s 124(5)
   d) the amount in general revenue account of the CG which had been transferred to that account u/s 205A (5) of Companies Act, 1956 and remaining unpaid on commencement of this Act;
   e) the amount lying in IEPF u/s 205C of the Companies Act, 1956;
   f) the interest or other income received out of investments made from the Fund.
   (fa) all shares held by IEPFA u/s 90(9) of the Act and all resultant benefits out of such shares
   g) the amount received u/s 38(4) ie. disgorged fund;
   h) the application money received for allotment of any securities and due for refund;

i) matured deposits with companies other than banking companies;
j) matured debentures with companies;
k) interest accrued on the amounts referred to in clauses (h) to (j);
l) sale proceeds of fractional shares arising out of bonus shares, merger, etc. for >=7 yrs
m) redemption amount of preference shares remaining unpaid or unclaimed for >=7 yrs; and
n) such other amount as may be prescribed.

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for 7 years from date it became due for payment.

Summary da Summary

CG grants	Donation by CG/SG/Cos.	Amt. of UDA u/s 124	General Revenue A/C	IEPF in Co. Act 1956	Other income from investment
Amount disgorged u/s 38(4)	Application money (>= 7 years)	Matured deposit or debenture + Intt. (>7 yrs)	sale proceeds of fractional shares (>=7 yrs)	Redemption of pref. shares (>=7 yrs)	Shares held by IEPFA + Benefits thereon

3. The Fund shall be utilised for: [CD PRO]
   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 suffered losses due to wrong actions by any person, in accordance with orders made by the Court which had ordered disgorgement;
   d) reimbursement of legal expenses incurred in pursuing class action suits u/s 37 and 245 by members, debenture holders, or depositors as may be sanctioned by the Tribunal; and
   e) any other purpose incidental thereto, in accordance with such rules as may be prescribed:

   Provided that, where, as per provision of Sec 205C of Co. Act, 1956, amount is transferred to IEPF, after the expiry of 7 yrs, such person shall be entitled to get refund out of IEPF (constituted under Co. Act 2013)

4. Any person claiming to be entitled to amt referred u/ss (2) may apply to IEPFA for payment thereof.

5. CG to constitute, by notification, an authority for administration of Fund consisting of:

Chairperson [Ex-officio - Secretary, MCA]	a CEO (appt. by CG)	Members not > 7 (including CP)

6. Manner of administration, appt. of members, holding of IEPFA meetings– As per prescribed rules

7. Resources - CG may provide to IEPFA such offices, officers, employees, etc. - as prescribed.

8. The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with C&AG.

9. It shall be competent for IEPFA to spend money out of Fund for carrying out the objects of IEPF.

10. Accounts of the Fund shall be audited by the C&AG of India (at specified intervals). Audited accounts + audit report to be forwarded annually by IEPFA to the CG.

11. Annual Report:
    - IEPFA to prepare its annual report (prescribed form and time for each FY)
    - Giving full account of its activities during the FY and
    - Forward a copy thereof to the CG and
    - CG shall cause annual report + audit report to be laid before each House of Parliament

126. Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares

- Notwithstanding anything contained in any other provision of this Act,
- Where any instrument of transfer of shares has been delivered to any co. for registration and
- Such transfer has not been registered by the co.,
- Such company shall:

Transfer the dividend w.r.t. such shares to UDA account (unless the co. is authorised, in writing, by registered holder to pay such dividend to transferee specified in transfer instrument)

+

Keep in abeyance - Any offer of right shares u/s 62(1)(a) or issue of fully paid up bonus shares

127. Punishment for failure to distribute dividends

7 8 9 11 13 16 19

- Where a dividend has been declared
- But, within 30 days of such declaration, it has not been paid or warrant has not been posted, to entitled SH,
- The punishment shall be:

	Every Director who is knowing a party to default (not OID)	Company
Imprisonment	Extend to 2 years AND	NA
Fine – During the period where default continues	Not < Rs. 1k / day – Default continues	Simple Interest 18% p.a.

Provided that no offence u/s 127 shall be deemed to have been committed where [LADDO]:

(a) the dividend could not be paid by reason of the operation of any law.

(b) SH has given directions to co. regarding payment of dividend and those directions cannot be complied with and the same has been communicated to him
(3 conditions – Given directions + cannot comply + communicate)

(c) there is a dispute regarding right to receive the dividend;

(d) the dividend has been lawfully adjusted by the company against any sum due from shareholder; (for example – adjustment of calls in arrears), or

(e) 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 default on part of company.

Modification for Nidhi Company (w.r.t. Sec 127):

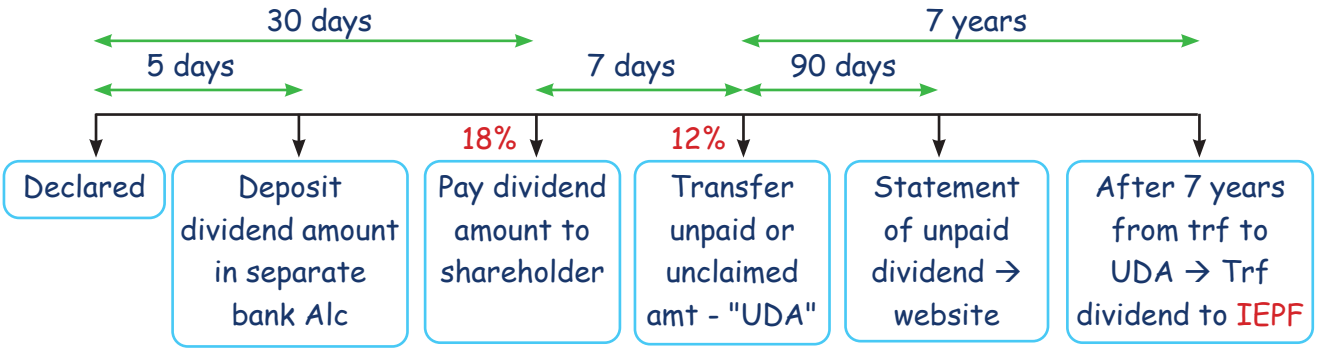
In case of Nidhi Co., where dividend payable is <= Rs 100, it shall be sufficient compliance of sec 127 if:

- declaration of dividend is announced in local language in one local newspaper of wide circulation.
- announcement is also displayed on the notice board of the Nidhi for at least 3 months.

Concept clarity check:

The company is responsible to post the dividend warrant within 30 days of declaration of dividend. However, if such post doesn't reach SH within 30 days, it's not the responsibility of the co. Hence, company cannot be penalised if warrant doesn't reach before 30 days.

Dividend Timeline:



The End

Chapter 9
Accounts of Companies

[Section 128 to Section 138]

Sec	Name	Sec	Name
128	Books of Accounts to be kept by co/	133	CG to Prescribe AS
129	Financial Statement	134	Financial Statement, Boards Report, etc
129A	Periodical financial results	135	Corporate Social Responsibility
130	Re-opening of accounts on Court's or Tribunal's Orders	136	Right of Member to Copies of Audited FS
131	Voluntary Revision of FS/Board's Report	137	Copy of FS to be Filed with Registrar
132	Constitution of NFRA	138	Internal Audit

Form	Purpose
AOC 1	Statement containing salient features of FS of subsidiaries/ associates/JVs
AOC 2	Details containing contracts or arrangements entered into with related parties
AOC 3	Statement containing salient features of the audited FS
AOC 3A	Detailed statement on FS to be filed by co. complying with Cos (Ind AS) Rules
AOC 4	Form to file a FS and other documents of the company with the Registrar
AOC 4 (XBRL)	XBRL doc. in respect of FS and other documents to be filed with the Registrar
AOC 4 (CFS)	Form to file CFS s and other documents with the Registrar
AOC 4 (NBFC)	Form for NBFCs to file financial statement and other documents with the Registrar
AOC 5	Notice to declare the address of the location in which the BoAs are maintained

Important Definitions

"Books of account" includes records maintained in respect of:

- sums of money received and expended
- sales and purchase
- assets and liabilities
- items of cost u/s 148

Financial statement in relation to a company, includes:

- BS as at end of FY
- P&L account (in case of NPO - Income & Exp a/c
- CFS for FY*
- Statement of change in equity
- Explanatory note annexed

*Provided that FS, w.r.t. OPC, small co. and dormant co. and Private co. (startup), may not include CFS;

"Book and Paper" and "Book or Paper": Includes: [WARM DVD]

- Books of Accounts
- Deeds
- Voucher
- Writings
- Documents
- Minutes
- Registers

maintained on paper or in electronic form;

Section 128: Books of account, etc., to be kept by company:

For the purpose of this section, books of accounts (BOA) means - Books of account and other relevant books and papers ~~and financial statement (FS)~~

1. Co. to prepare BoA:

   Every co. shall prepare and keep BOA and FS at its RO every FY
   - Giving a true and fair view of state of the affairs
   - of - the company, including that of its branch office(s), and
   - explaining all such transactions and

   Such books shall be kept on accrual basis and as per the double entry system of accounting

   Note – Such BOA may be kept at such other place in India as BoD may decide. Inform RoC within 7 days of such decision – by filing a notice in writing (Form AOC -5) giving full address of such place.

   Provided that – Companies may keep books in e-mode in prescribed manner.

Rule 3 – Manner of maintaining BoA & FS in e-form [A bold fs - roc) :

- Such BOA in e-mode shall remain accessible in India at all times so as to be usable for subsequent reference.
- Features of accounting software:
- For FY commencing after 1/4/2023 – Every co. using accounting software for maintaining BOA shall use only such software which has the following feature:

recording audit trail of every transaction and	ensuring that audit trail cannot be disabled, and	creating an edit log of each change made in BOA + date of such changes.

- BoA shall be retained completely in original format info. shall remain complete & unaltered.
- Info. received from branch office - not be altered + keep in manner depicting what was originally received from the branches.
- Info. of such e-record should be capable of being displayed in legible form.
- There shall be proper system for storage, retrieval, display or printout of the e-records
- Such e-records shall not be disposed of or rendered unusable, unless permitted by law.
- Backup of such e-records shall be kept in servers physically located in India on daily basis.
- Co. shall intimate the following to RoC on an annual basis at time of filing FS: (No LIC)

Name of the service provider	internet protocol (IP) address of service provider	location of the service provider*	where BOA are maintained on cloud, such address as provided by service provider

*Where service provider is located o/s India, name & add. of person in control of BoA in India

2. Where a co. has branch office (India or o/s India), it shall be deemed to have complied with provisions of BoA, if:
   - proper BOA relating to transactions effected at branch office are kept at that office and
   - proper summarized returns periodically are sent to co. at its RO or other place as u/ss (1)

   Note: Such BoA can be maintained at branch even if such branch is outside India

3. BOA open for inspection for directors only:

BOA maintained within India	➢ open for inspection at RO or other place in India ➢ by any ~~members~~ director ➢ during business hours
BOA maintained outside India	➢ Director shall furnish a request to co. setting out the full details of the financial info. sought and the period for which it is sought. ➢ Co. shall produce such info. to director within 15 days of date of receipt of the written request. ➢ Such info shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

   Note - Inspection of BoA of any subsy co. shall be done by person authorised by a Board resolution.

4. Where inspection is made u/ss (3), officers and other employees of co. to give all assistance to the person making such inspection.

5. BOA to be kept in good order:
   BOA (together with vouchers relevant for entries) pertaining to the period:
   - not less than 8 FY immediately preceding a FY, or
   - where company had been in existence for <8 yrs, w.r.t. all preceding years

   together with vouchers relevant to any entry in such books of account shall be kept in good order.

   Note – If investigation ordered – CG may direct that BoA may be kept for longer period.

6. In case of contravention of such provision, following shall be responsible:

MD	WTD in charge of finance	CFO	Any other person of co. charged by BoD with such duty

   for a fine which shall not < Rs. 50,000 which may extend up to Rs. 5 lakhs

   Note – This section majorly talks about books of accounts and books and paper. Although, FS is mentioned in the first subsection, but details of FS is discussed in Sec 129 below.

Section 129: Financial Statement (FS)

1. FS shall:

give a true and fair view of state of affairs of the co	comply with the AS notified u/s 133, and	shall be in form as prescribed in Schedule III

Provided that the items contained in such FS shall be in accordance with the AS:

Provided further that nothing contained in this sub-section shall apply to:

insurance or banking co.	electicity co.	other class of co. for which form of FS specified in other Act

Provided also that FS shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose:

In case of:	Matters which are not required to be disclosed by:
Insurance co.	Insurance Act, 1938, or IRDA Act, 1999
Banking co.	Banking Regulation Act, 1949
Electricity co.	Electricity Act, 2003
Governed by other law	by that law

2. At every AGM of co. – BoD shall lay before such meeting – FS for the FY

3. Consolidated FS (CFS):
Where a co. has one or more subsidiaries or associates – Prepare CFS of co. and all subsidiaries (in addition to FS) in manner prescribed. Such CFS – Lay before AGM along with FS u/ss (2)

Provided that co. shall also attach along with its FS - a separate statement containing the salient features of FS of its subsidiary, associates or JV in Form AOC - 1

Rule 6 Manner of Consolidation

CFS shall be made in accordance with provisions of Sch III + Applicable AS

Provided that - If a co. is not required to prepare CFS under the AS, it shall be sufficient if it complies with provisions of CFS in Schedule III of the Act.

Provided further that - nothing in this rule shall apply w.r.t. prep of CFS if it meets ALL the following:

i. it is wholly/partially owned subsidiary of another company and
   - all its other members, including those not otherwise entitled to vote,
   - having been intimated in writing and
   - do not object to the company not presenting CFS

ii. securities are not listed or are not in the process of listing (in or outside India), and

iii. ultimate or any intermediate holding co. files CFS with the RoC in compliance with Ind AS

.

4. Provisions applicable to preparation, adoption and audit of FS of holding company shall, mutatis mutandis, apply to the CFS referred u/ss (3).

5. Without prejudice to ss (1), where FS do not comply with AS, co. shall disclose in its FS:
   - deviation from AS
   - reasons for deviation
   - financial effects, if any, of such deviation

6. CG may, on its own or on application by companies, exempt any class of companies from complying with this section, if it is considered necessary in public interest.

7. If company contravention this section, following shall be responsible:
   - MD
   - WTD in charge of finance
   - CFO
   - Any other person of co. charged by BoD with such duty
   - or in absence of any officer mentioned above, all directors

   Punishable with - Jail up to 1 year or fine Rs. 50,000 to Rs. 5 lakhs or BOTH

Section 129A. Periodical financial results

CG may, require such class or classes of unlisted companies, as may be prescribed:

- (a) prepare financial results of the co. on such periodical basis and in prescribed form;
- (b) to obtain approval of BoD & complete audit/limited review of such results in manner as prescribed;
- (c) file copy with RoC within 30 days of completions of relevant period with prescribed fees.

Section 130 - Re-opening of Accounts on Court's or Tribunal's Orders:

1. A company shall not re-open it BOA and not recast its FS unless:
   - An application to Court/Tribunal in this regard is made by: [CISCO]
     - CG
     - Income Tax Auth.
     - SEBI
     - Other stat. body
     - any person concerned
   - And an order is made by court or Tribunal to this effect that:
     - the relevant earlier accounts were prepared in a fraudulent manner, or
     - the affairs of co. were mismanaged - casting doubt on reliability of FS

   Provided that the court or Tribunal shall give notice to – CG, ITA, SEBI, etc. and consider their representation, if any, before passing orders.

2. Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.

3. No order shall be made u/ss (1) for re-opening of BOA relating to a period earlier than 8 FY immediately preceding current FY.

   Provided that, on investigation, where CG has directed for keeping BOA for period > 8 years, the BOA may be ordered to be re-opened within such longer period.

Section 131 - Voluntary Revision of FS or Board's Report (after Tribunal's approval):

Notice Served → Representation Considered → Order Passed → Accounts Revised

1. If it appears to directors of a co. that:

   FS of co. do not comply with Sec 129 or | BoD report do not comply with Sec 134,

   they may prepare revised FS or BoD report:
   - in respect of any of 3 preceding FY
   - after obtaining approval of the Tribunal
   - on an application made by the company in Form NCLT 1 within 14 days of BoD decision and
   - a copy of order passed by Tribunal shall be filed with Registrar within 30 days:

   Provided that Tribunal shall give notice to CG and ITA and shall consider their representation, if any, made by that Government or the authorities before passing any order under this section.

   Provided further that such revised FS or report shall not be prepared/filed more than once in a FY

   Provided also that detailed reasons for revision of such FS or report shall also be disclosed in the Board's report in the relevant FY in which such revision is being made.

Rule 77 of NCLT Rules 2016:

- Application shall contain following particulars:
  - FY or period to which such accounts relates
  - Name and details–MD, CFO, CS, Directors and officers responsible for making BoA/FS
  - Where accounts are audited – Name and details of auditor
  - Copy of board resolution
  - Grounds for seeking such revision
  - Disclose facts if majority of dir./auditor has changed immediately before such appln.

- Co. to advertise application – At least 14 days before date of hearing.
- Tribunal to issue notice to auditor of original FS and give OOBH.
- Tribunal to pass appropriate orders as it may deem fit.
- On receipt of Tribunal's approval, call for GM and notice of such GM publish in 2 newspaper.
- In GM – Revised FS, statement of directors and auditors – Put up for consideration.
- On approval in GM – File such revised FS + statement – ROC within 30 days.

2. <u>How much can you alter FS or report of previous FYs?</u>
   Where copies of previous FS or report have been sent out to members or delivered to Registrar or laid before the Company in general meeting, the revisions must be confined to:

(a) correction w.r.t. which previous FS/report do not comply with provisions of sec 129 or 134; and
(b) the making of any necessary consequential alteration.

3. CG may make rules relating to or provisions as to:
   - How previous FS or report shall be supplemented by document indicating correction
   - Function of company's auditor in case of revised FS
   - require the directors to take prescribed steps.

Note – Here, application will be made to Tribunal only. Courts (e.g., district court) cannot be involved.

Concept clarity check:
A Ltd. applied to Tribunal for revising FS on Dec 2022. Such application was approved and revisions were made. A ltd again applied in March 2023 for revision board report. Is such application valid?
Yes! The limit of once in a year is for each of these – FS and BoD report. As in Dec 2022, application was made to revise FS, one application for revising Board report can be made.

Section 132 - Constitution of National Financial Reporting Authority

1. CG may constitute NFRA to provide for matters w.r.t. Accounting & Auditing Standards (ASS).

2. Functions of NFRA (subsection 1A and 2 read with Rule 4, 6,7,9)
   - NFRA to protect public interest and interest of investors, creditors and others by:
     - establishing high quality AAS, and
     - exercising effective oversight on accounting and auditing functions.

   - NFRA shall exercise the following function:
     - Maintain particulars of auditors appointed in Cos./BC
     - Recommend AAS for CG's approval (NFRA to seek and consider ICAI's recommendation)
     - Monitor and enforce compliance with AAS.

Rule 7: Accounting Standard

To ensure compliance with accounting standard by a co./BC, NFRA:
- may review FS and request additional info. from company/auditor, if necessary
- may require personal presence of officers &auditors for additional info. for FS review
- shall publish its findings on non-compliance on its website unless not in public interest
- where NFRA finds violations of AS – it may further investigate.

Rule 8: Auditing Standard

To ensure compliance with auditing standard by a co./BC, NFRA may:
- review working papers and communications related to the audit.
- evaluate the auditor's quality control system and documentation.

- perform other testing of audit and quality control procedures as necessary.
- require auditors to report on governance practices and risk reduction measures.
- seek additional information or the personal presence of the auditor for clarifications.
- shall monitor and enforce through experienced officers or experts in audit.
- shall publish findings on non-compliances, with exceptions for public interest and confidentiality.
- send a separate report with proprietary information to the CG.
- investigate or take enforcement action if laws or standards are violated by an auditor

➢ Oversee Quality of service of professions associated with ensuring compliance of AAS and suggest measures for improvement therein.

Rule 9: Overseeing quality of service:

- NFRA may instruct auditors to improve audit quality, specifying a detailed plan with time-limits. Auditors must implement the required improvements and report compliance to NFRA.
- NFRA monitors the auditor's progress and takes appropriate actions based on the improvements made.
- NFRA may refer cases related to auditors' quality of service to the Quality Review Board or request reports from the Board.
- NFRA may seek assistance from experts for oversight and monitoring activities.

➢ Promote awareness for compliance of AAS
➢ Co-operate with national and international organisation for adherence to AAS
➢ Other incidental functions

3. Constitution of NFRA:
   ➢ a chairperson–appointed by CG, having expertise in accountancy, auditing, finance or law, and
   ➢ such other members not > 15 consisting of part-time & full-time members as prescribed:

Each division of the NFRA shall be presided over by Chairperson or full-time Member authorised by Chairperson. [Section 3A]

Section 3B - There shall be an executive body of the NFRA consisting of Chairperson and full-time Members of such Authority for efficient discharge of its functions.

Such chairperson and members shall:

give declaration to CG regarding no conflict of interest or lack of indepedence	not associate with any audit firm (or related consultancy firm) during course of such appt + 2 years after ceasing

The following persons shall be appointed as part time members of NFRA, namely:

Position	Designation
MCA Representative	Joint Secretary (ex-officio)
CAG of India Representative	Accountant General or Principal Director (ex-officio)
RBI Representative	Executive Director (ex-officio)
SEBI Representative	Executive Director (ex-officio)
President, ICAI	Ex-officio
Chairperson, AS Board, ICAI	Ex-officio
Chairperson, AAS Board, ICAI	Ex-officio
Two experts	From the field of accountancy, auditing, finance, or law

4. Powers to investigate: The NFRA shall:
   - have power to investigate, either suo motu or on reference by CG into matters of professional or other misconducts under CA Act, 1949
     Provided that – where NFRA has initiated such investigation, no other institute shall initiate or continue any proceedings in such matter.
   - have same power as vested in civil court: [A IPC]
     - Discovery and production of BoA and other docs at specified place & time;
     - summoning and enforcing the attendance of persons and examining them on oath; and
     - inspection of any books, registers and other docs. of co. at any place.
     - issuing commissions for examination of witnesses or documents;
   - where professional or other misconduct is proved, have the power to make order for:
     a. Fine:

Person liable:	Minimum	Maximum
Individuals	Rs. 1,00,000	5 times of fees received
Firms	Rs. 5,00,000	10 times of fees received

     b. NFRA can debar a member/firm from audits and valuations for 6 months to 10 years based on their discretion.

5. Any person aggrieved by order of NFRA u/ss (4) – may prefer an appeal before Appellate Tribunal.

Additional points of NFRA:

Head office	New Delhi
Meeting	At any place in India as it may deem fit
Books of accounts	Maintain in manner as prescribed in CG in consultation with C&AG
Audit	C&AG
Annual Report	Each FY, giving full account of its activities during FY
Forward to CG (annually) CG to lay these reports before each House of Parliament	➢ Accounts as certified by C&AG ➢ Auditor's report thereon ➢ Annual Repot

Rule 3 of NFRA Rules: Classes of companies or BC governed by NFRA:

NFRA may undertake investigation of auditors of following classes of companies and BC:

- companies whose securities are listed on any stock exchange in India or outside India;
- unlisted public companies having:

PUSC not less than 500 crores, or	T/O not less than Rs. 1,000 crore	outstanding loans, debentures and deposits of not less than Rs. 500 crores

  as on the 31st of March of immediately preceding FY
- insurance cos., banking companies, electricity companies or companies governed by special Act.
- any BC or company or person, etc. – on a reference made to NFRA by CG in public interest
- BC incorporated outside India which is subsidiary or associate of any of the above mentioned companies if the income or net worth of such subsidiary or associate company > 20% of consolidated income or net worth of such above mentioned companies,

Every BC, (other than co. as defined in section 2(20)), formed in India, and governed under this rule shall, within 15 days of appointment of an auditor u/s 139, inform NFRA in Form NFRA-1, the particulars of the auditor so appointed.

Where PUSC or T/O or o/s loans fall below limit for 3 consecutive years – NFRA stops governing.

Section 133: CG to prescribe Accounting Standards (AS):

CG may prescribe AS or any addendum thereto, as recommended by ICAI, constituted u/s 3 of CA Act, 1949, in consultation with and after examination of recommendations made by NFRA.

Provided that:

- Until NFRA is constituted u/s 132,
- the CG may prescribe the AS or any addendum thereto,
- as recommended by ICAI, in consultation with and after examination of recommendations by National Advisory Committee on Accounting Standard (NACAS) constituted u/s 210A of Companies Act, 1956 (previous law)

Note - Since NFRA constituted in 2018, hence this proviso lost it operating effects.

Section 134: Financial Statement, Board's Report, etc.

3 5 6 7 8 23

1. The FS, including CFS, shall be approved by the BoD before it is signed on behalf of BoD by:
   - Chairperson of the co., if so authorized by BoD or else - 2 directors (1MD), AND
   - CEO, CFO and CS

   before it is submitted to auditor for his report thereon.

   In case of OPC – Sign by one director only.

2. Auditor's report shall be attached to every FS.

3. In the FS laid before company in GM, a BoD's report shall be attached, which includes [FC WARM Dividend Reserve 3 Policy]:

Web address where AR u/s 92 has been placed	No. of board meetings	Directors's responsibility statement (DRS)	Details of fraud reported by auditors u/s 143(12) other than those reportable to CG
Statement on declaration given by ID u/s 149(6)	Explanation & comments on every qualifn, reservatn & adverse remark - by auditor in his report or by CS in practice in his secretarial audit report		state of company's affairs
particulars of loan, guarantee investments u/s 186	material change and commitments – affecting fin. position of co. between end of FY and date of report	contracts and arrangements with related parties u/s 188 (Form AOC -2)	
amount proposed to be carried to any reserve	the conservation of energy, tech absorption, forex earnings and outgo as prescribed	recommended amount of dividend	
statement indicating development & implementation of risk mgt. policy and risks identified therein	Policies on director's appointment and rem. (if covered u/s 178)	details of policy developed and implemented on CSR initiatives taken during the year	
in case of listed company and every other public company having such PUSC >= Rs. 25 crores - statement indicating the manner in which formal annual evaluation of performance of Board, its Committees and of individual Directors has been made		Other matters as may be prescribed	

Provided that – where above disclosures are made in FS already, such disclosures shall be referred to instead of repeating it in BoD's report

Provided further that where policies are made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available

Note – In case of OPC or Small co, CG may prescribe an abridged Board's report.

4. BoD report shall, in case of a OPC, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by auditor in his report.

5. Director's responsibility statement shall state that: [*AS AP Care GC Control Law*]
   a. in preparation of the annual accounts, the applicable AS had been followed along with proper explanation relating to material departures;

   b. 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 FY and of the P&L for that period;

   c. Directors had taken proper and sufficient care for:
      - the maintenance of adequate accounting records as per this Act
      - safeguarding the assets of the co. 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 (IFC) to be followed by the company and that such IFC are adequate and were operating effectively.

      Explanation: For the purposes of this clause, the term "IFC" 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. Sign on BoD report – Chairman, if authorised. Or else, 2 directors (1 MD)
   Note – In case where in the co. there is only 1 director, FS shall be signed by such 1 dir. (e.g. OPC)

7. A signed copy of every FS, including CFS, if any, shall be issued, circulated or published along with:

   any notes annexed to or forming part of such FS | auditor's report | Board's report

8. If a company is in default in complying with this section:
   Co. liable to penalty of Rs. 3 lakhs; OID shall be liable to penalty of Rs. 50,000

Rule 8: Matters to be Included in Board's Report

1. BoD's report shall be prepared based on standalone FS of the co. and shall report on highlights of performance of subsy, associates and JVs and their contribution to overall performance of co.

2. Additionally, BoD report shall include following information:
   (i) the financial summary or highlights;
   (ii) the change in nature of business, if any;
   (iii) details of directors or KMP who were appointed or have resigned during the year;
   (iiia) statement regarding opinion of Board w.r.t. integrity, expertise and experience of independent director appointed during the year".
   (iv) names of cos. which have become or ceased to be its subsy, JV or assoc. during the year;
   (v) the details relating to deposits, covered under Chapter V of the Act:
      a. accepted
      b. remaining unpaid or unclaimed as at the end of the year;
      c. any default in repayment of deposits or interest thereon during the year and if so, number of such cases and the total amount involved:

      at the beginning of year | max during the year | at the end of year

   (vi) the details of deposits which are not in compliance with requirements of Chapter V;
   (vii) details of significant and material orders passed by regulators/courts/tribunals impacting the going concern status and company's operations in future;
   (viii) details in respect of adequacy of internal financial controls w.r.t. FS
   (ix) a disclosure, as to whether maintenance of cost records as specified by the CG u/s 148, is required and accordingly such accounts and records are made and maintained,
   (x) a statement that the co. has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment related Act
   (xi) details of application made or any proceeding pending under IBC during the year along with their status as at the end of the financial year.
   (xii) the details of difference between amount of valuation done at time of one time settlement and the valuation done while taking loan from the Banks or FI along with reasons thereof.

Section 135: Corporate Social Responsibility (CSR): 10 11 12 13 14 24 25

Read with Companies (Corporate Social Responsibility Policy) Rules, 2014

1. Every co. having:
   - net worth >= Rs. 500 crores, or
   - turnover >= Rs. 1,000 crore or
   - net profit >= Rs. 5 crores

   During immediately preceding FY

   shall constitute CSR Committee consisting of 3 or more Directors (at least 1 independent director)

Company Type	CSR Committee Composition
Co. which is not required to appoint ID	2 or more directors (without any ID)
Private co. with only 2 directors	2 directors
Foreign company covered under these rules	CSR Committee with at least 2 persons - one as per section 380(1)(d) & one nominated by the foreign co.

Note:
1. If any of the limits not met for 3 consecutive FYs – not required to comply with Sec 135.
2. Net profit to be considered as per Sec 198 i.e., Profit Before Tax.

Exemption – Where the amount to be spent by co. u/ss (5) <= Rs. 50 lakhs, CSR committee shall not be applicable. In such case, function of CSR committee to be discharged by BoD.

2. Board report u/s 134 to disclose the composition of CSR committee

3. Function of CSR committee:
   - Formulate and recommend to board CSR policy indicating activities to be undertaken
   - Recommend amount of expenditure to be incurred on such activity
   - Monitor CSR policy of company

4. The Board of such company shall:
   (a) after taking into account recommendations of CSR Committee, approve CSR Policy and disclose contents of thereof in its report and place it on website.
   (b) ensure that activities as are included in CSR Policy are undertaken by the company.

5. The Board shall ensure that the company spends, in every FY,
   - at least 2% of average net profits
   - made during the 3 immediately preceding FY

   in pursuance of its CSR Policy

   Note - Where co. has not completed 3 FY since incorp. – Take average of such immediately preceding FYs (i.e., Jitne saal tha, unka average lo)

   Provided that the co. shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities:

   Provided further that, if a co. fails to spend such amount:
   - Board shall specify reasons for not spending the amount in its report u/s 134, and
   - unless the unspent amt. relates to any ongoing project, transfer it to a Fund specified in Schedule VII, within 6 months of expiry of the FY

   Provided that if co. spends excess amounts, such company may set off such excess amount against the requirement to spend for such number of succeeding FY and in such manner as prescribed.

As per Rules

Where co. spends an amount in excess of requirement, such excess amount may be set off against requirement to spend u/ss (5) up to immediate succeeding 3 FY provided that:
(i) such excess amt. shall not include the surplus arising out of such CSR activities
(ii) the Board of the company shall pass a resolution to that effect.

6. Transfer ongoing project to special account:

Amt. remaining unspent u/ss (5), pursuant to any ongoing project, undertaken by a co. in pursuance of its CSR Policy, shall be:

- transferred within 30 days from end of FY to a special account to be opened in any scheduled bank to be called "Unspent Corporate Social Responsibility Account", and
- spent it in pursuance of obligation towards CSR Policy within 3 FY from date of such trf,
- failing which, the co. shall trf. the same to a Fund (as per sch VII) within 30 days from date of completion of the 3rd FY.

7. Default u/ss (5) or (6):

Co. shall be liable to penalty – Lower of:	OID shall be liable to penalty – Lower of:
➢ 2x of (amt. required to be transferred to the Fund or unspent CSR account) or ➢ Rs. 1 crore	➢ 1/10th of (amt required to be transferred to the Fund or unspent CSR account) or ➢ Rs. 2 lakhs

Companies (Corporate Social Responsibility Policy) Rules, 2014

Rule 2: Definitions

"CSR" means the activities undertaken by a Company in pursuance of its statutory obligation u/s 135 as per provisions contained in these rules, but shall not include the following, namely: (SPEL FB)

Sponsorship	Political	Employee	Law	Foreign	Business

(i) activities undertaken in normal course of business of the company.
Provided that any company engaged in research and development (R&D) activity of new vaccine, drugs and medical devices in their normal course of business may undertake R&D activity of new vaccine, drugs and medical devices related to COVID-19 for FY 2020-21 to 2022-23 subject to the conditions that:
(a) such R&D activities is carried out in collaboration with institutes mentioned in Sch VII;
(b) details of such activity to be disclosed separately in Annual report on CSR (in BoD report);

(ii) any activity undertaken by co. outside India except for training of Indian sports personnel representing any State or UT at national level or India at international level;

(iii) contribution of any amount directly or indirectly to any political party u/s 182 of the Act;

(iv) activities benefitting employees of the company;

(v) activities supported by cos. on sponsorship basis for marketing benefits for its products;

(vi) activities carried out for fulfilment of any other statutory obligations under any other law

"Administrative overheads" means:

- expenses incurred for 'general mgt. and admin' of CSR functions
- but shall not include expenses directly incurred for designing, implementation, monitoring, and evaluation of a particular CSR project or programme.

"Net profit" means net profit of a company as per its FS, but shall not include the following, namely:

(i) profit arising from overseas branch(es) of co., whether operated as separate co. or not; and
(ii) any dividend received from other companies in India, which are covered under and complying with prov. of sec 135 of the Act.

"Ongoing Project" means a multi-year project undertaken in fulfilment of its CSR obligation having timelines <= 3 years excluding FY in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification.

Rule 3: Applicability:

Every co. including its holding, or subsidiary and a foreign company u/s 2(42) having branch office or project office in India which fulfils criteria u/s 135(1) shall comply with section 135.

Provided that net worth, turnover and net profit of a foreign co. shall be computed as per Balance sheet and P&L prepared as per Section 381 and 198 of the Act

Provided further that a co. having any amount in its unspent CSR account u/s 135(6) shall constitute CSR committee and comply with CSR Provisions [Amendment]

Rule 4. CSR Implementation

1. Board shall ensure that CSR activities are undertaken by the company itself or through:
   (a) Sec 8 company, or a registered public trust or a registered society:
      - established by the co., under Income Tax Act, either singly or along with other co., or
      - established by CG or State Government; or
      - having an established track record of at least 3 years in undertaking similar activities
   (b) any entity established under an Act of Parliament or a State legislature; or

2. Every entity, covered above, who intends to undertake any CSR activity, shall register itself with the CG by filing form CSR-1 with Registrar.

   Form CSR-1 shall be signed and submitted electronically and shall be verified digitally by CA, CS or CMA in practice.

   On submission thereof, a unique CSR Registration Number shall be generated automatically.

3. A company may engage international organisations for designing, etc. of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

4. A company may also collaborate with other companies for undertaking projects in such a manner that CSR committees of respective cos. are in a position to report separately on such project.

5. Board shall satisfy itself that funds so disbursed have been utilised for purposes as approved and CFO (or person responsible for fin. mgt.) shall certify to the effect.

6. In case of ongoing project, Board shall monitor the implementation of the project w.r.t. the approved timelines and year wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

Note – International organisation can also be engaged for CSR implementation.

Rule 5: CSR committee:

CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR Policy, which shall include the following, namely:
(a) the list of CSR projects that are approved to be undertaken in areas specified in Sch VII;
(b) the manner of execution of such projects;
(c) the modalities of utilisation of funds and implementation schedules for the project;
(d) monitoring and reporting mechanism for the projects; and
(e) details of need and impact assessment, if any, for the projects undertaken by the company:
Provided that Board may alter such plan at any time during FY, on recommendation of its CSR Committee, based on the reasonable justification to that effect.

Rule 7: CSR Expenditure:

1. Board shall ensure that admin overheads shall not exceed 5% of total CSR expense for the FY.
2. Any surplus arising out of CSR activities shall:
   - not form part of business profit of a co. and
   - shall be ploughed back into same project or
   - trf. to Unspent CSR Account and spent as per CSR policy and annual action plan or
   - trf. to a Fund specified in Sch VII, within 6 months of expiry of the FY.
3. Covered above.
4. CSR amount may be spent for creation or acquisition of a capital asset, which shall be held by:
   (a) section 8 company, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number; or
   (b) beneficiaries of said CSR project, in the form of self-help groups, collectives, entities; or
   (c) a public authority:

   Provided that any capital asset created prior to commencement of this Rule, shall within 180 days (may seek further 90 days) comply with this provision.

Rule 8: CSR Reporting

1. Board Report pertaining to any FY shall include an "Annual report on CSR"

2. In case of a foreign co., the Balance Sheet u/s 381 of the Act, shall contain annual report on CSR

** Annual Report on CSR containing particulars specified in Annexure I or II, as applicable.

3. Impact assessment:
   (a) Every co. having avg CSR obligation >= Rs. 10 crores in 3 immediately preceding FYs, shall:
      - undertake impact assessment,
      - through an independent agency,
      - of their CSR projects having outlays >= Rs. 1 crore, and
      - which have been completed not less than 1 year before undertaking the impact study.
   (b) Impact assessment reports - Place before BoD & annexed to the annual report on CSR.
   (c) Co. undertaking impact assessment may book expense towards CSR for that FY, not exceeding higher of [Amendment]:
      - 2% of total CSR exp. for that FY or
      - Rs. 50 lakhs

Rule 12: [Amendment]

Every co. covered under Sec 135(1) shall furnish a CSR report in Form CSR-2 to Registrar for the preceding FY (2020-21) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

Provided that for the preceding FY (2020-21), Form CSR-2 shall be filed separately on or before 31st ~~March~~ June 2022, after filing Form AOC-4, etc.

Additional clarifications on CSR:

1. Read Sch VII from ICAI Module Pg. 9.44 (not imp. from exam point of view. Just read casually)
2. Entries in Sch VII is to be interpreted liberally.
3. CSR activity should be taken up as a project. One-off events such as marathon won't qualify
4. Expense incurred by foreign holding co. for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, it is routed through Indian subsy.

COVID related clarifications:

1. Following spendings are eligible CSR activity:
   - COVID-19 related activities
   - Creating health infrastructure for COVID Care
   - Establishment of medical oxygen generation and storage plants
   - Manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19
   - COVID- 19 vaccination for persons other than the employees and their families
   - Carrying out awareness campaigns or public outreach campaigns on COVID vaccination program.
   - Setting up makeshift hospitals and temporary COVID Care facilities
   - For the activities related to "Harr Ghar Tiranga" campaign, such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities
2. Companies including Government co. may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other cos.

Section 136: Right of member to copies of audited financial statement.

1. A copy of following documents laid before GM:

FS | CFS, if any | auditor's report | every other doc. required to be attached to FS

shall be sent to every:

member | trustee for DH | all other entitled person

not less than 21 days before the date of the meeting.

Provided that if copies of docs are sent less than 21 days before date of meeting, it shall be deemed to have been duly sent if it is so agreed by members:

If company has share capital:	If company has no SC:
Majority in numbers + 95% of PUSC	95% of total VP

Provided further that, in case of listed co., this sub-section shall be deemed to be complied with if:

- copies of documents are made available for inspection at RO during working hours for 21 days before date of meeting.
- statement containing salient features of such docs or copies thereof is sent to member, DT of DH in Form AOC-3 not less than 21 days before date of meeting unless SH ask for full FS.

Note – Cos. which are reqd to comply with Cos (Ind AS) Rules, 2015 shall send in Form AOC – 3A

Mode of sending FS: In case of all:

listed companies and	such public companies having: - NW of more than Rs. 1 crore and - Turnover of more than Rs. 10 crore

the financial statements may be sent:

Shareholding is in:	Mode
Demat form + Email IDs registered with depository	E-mode
Otherwise than demat form but members have positively consented in writing to e-mode	E-mode
In all other cases	Dispatch of physical copies through any recognised mode of delivery u/s 20

Provided - Listed co. shall also place its FS including CFS, and other docs on its website

Provided also that every listed company having subsidiary(ies) shall place separate audited accounts w.r.t. each of subsidiary on its website, if any.

Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary (F-sub)"):

where such F-sub is statutorily required to prepared CFS under law of the country of incorporation - this proviso is complied with if such CFS is placed on website of listed co.	where F-sub is not required to get FS audited and hence does not get FS audited - holding Indian listed co. may place unaudited FS on website**

**Where FS is in language other than English, place a translated copy in English on the website.

2. Co. shall allow members/DT to inspect the documents stated u/ss (1) at its RO during biz. hours.

   Provided that every co. having subsy shall provide a copy of separate audited or unaudited FS, as prepared in respect of each of its subsidiary to any member of the company who asks for it.

3. Default in complying with this section:
   Co. - Liable to penalty of Rs. 25,000 ; OID – Liable to penalty of Rs. 5,000

Section 137: Copy of FS to be filed with RoC:

FS + CFS + All documents to be attached to FS

- Duly adopted in AGM → File with RoC within 30 days
- Not adopted in AGM → File within 30 days of AGM. RoC to take them as provisional; When adopted in adjourned AGM - File within 30 days of said AGM
- AGM is not held → File with ROC within 30 days of last date for holding AGM along with reasons for not holding AGM
- OPC → Within 180 days from closure of FY

1. Filing FS with ROC:
   - A copy of FS, including CFS, along with all docs required to be attached to FS,
   - duly adopted at AGM shall be
   - filed with RoC within 30 days of date of AGM
   - in the following forms:

AOC 4	Financial Statement and other documents
AOC 4 CFS	Consolidated Financial Statement
AOC-4-NBFC (Ind AS)	NBFCs to file FS and other documents with the Registrar
AOC-4 CFS NBFC (Ind AS)	NBFCs to file CFS with the Registrar

Note – Along with such FS, co. shall attach accounts of its subsy which have been incorporated outside India and which have not established their place of business in India.

Where FS is not adopted in AGM or adjourned AGM:

- Such unadopted FS shall be filed with RoC within 30 days of date of AGM.
- RoC to take it in records as provisional till FS are filed after adoption in the adjourned AGM

Where FS gets adopted in adjourned AGM – File with RoC within 30 days of such adjourned AGM

In case of OPC:
File copy of FS duly adopted by its member within 180 days from closure of FY

In case of foreign subsidiary not having audited FS – Send unaudited FS to RoC
In case of a subsy incorporated o/s India (foreign subsidiary) which is not required to get FS audited under law of such country and does not get it audited – Holding Indian company to file unaudited FS + declaration to such effect to ROC

Where such FS is in language other than English – translated copy to be sent.

2. Where AGM is not held, FS + Documents duly signed shall be filed with RoC within 30 days of last date before which AGM should have been held.

3. Co. fails to file copy of FS:
   - Co. – Liable to penalty of Rs. 10,000 + Rs. 100/days – Max. Rs. 2 lakhs
   - Person responsible - Liable to penalty of Rs. 10,000 + Rs. 100/days – Max. Rs. 50,000

Person responsible –

- MD and CFO, or
- in absence of MD and CFO - any other director charged with such responsibility
- in absence of any such director – all directors.

Additional Points:

1. Following class of companies shall file FS and other documents in e-form AOC-4 XBRL:

co. listed in India and their Indian subsy	Co. having PUSC >= 5 cr.	Co. having turnover >= 100 cr.	Cos. required to prepare FS as per Ind AS

Note – Once you come in purview of above limit, continue to file AOC-4 XBRL.

15 2. NBFCs, housing finance cos. engaged in business of banking or insurance sector – exempted from complying with XBRL requirement.

Section 138: Internal Audit

17 18 19

Prescribed class of cos. shall appoint internal auditor (CA or cost accountant, or such other professional as may be decided by the Board) to conduct internal audit of co's functions and activities

Rule 13: Companies required to appoint Internal Auditor:

Following companies shall be required to appoint an internal auditor (who can be either individual or partnership firm or BC), namely:

(a) every listed company;

(b) every unlisted public company having:

- PUSC >= Rs. 50 crores
- T/O >= Rs. 200 crores

→ during preceding FY

- outstanding loans or borrowings from banks or PFIs exceeds Rs. 100 cr
- outstanding deposit >= Rs. 25 crores

→ At any point during preceding FY

(c) every private company having:

- T/O >= Rs. 200 crores
- outstanding loans or borrowings from banks or PFIs exceeds Rs. 100 cr

Who shall become an internal auditor – Either individual or partnership firm or body corporate - CA or cost accountant, ~~or CS~~ or such professional as may be decided by the Board to conduct internal audit

What is his role? - To conduct internal audit of the functions and activities of the company

Note – An internal auditor may or may not be an employee.

Concept clarity check:

If an unlisted co. has outstanding loan of Rs. 100 crores exactly, in such case, the provision of internal auditor shall not apply as the law says – outstanding loan and borrowings from banks or financial institution exceeding Rs. 100 crores. So exact 100 crore will not be covered here.

The End

Chapter 10
Audit and Auditors

[Section 139 to 148]

Sec	Name	Sec	Name
139	Appointment of Auditors	144	Auditor not to Render Certain Services
140	Removal, Resignation of Auditor and Giving of Special Notice	145	Auditor to Sign Audit Reports, etc
141	Eligibility, Qualifications and Disqualifications of Auditors	146	Auditors to Attend GM
142	Remuneration of Auditors	147	Punishment for Contravention
143	Powers and Duties of Auditors and Auditing Standards	148	CG to Specify Audit of Items of Cost in Respect of Certain Companies

Form	Section	Purpose
ADT-1	139	Form to inform the Registrar regarding the appointment of auditor by the co.
ADT-2	140	Application for removing the auditor before the expiry of their term by the co.
ADT-3	140	Notice of resignation of auditor
ADT-4	143(12)	Form to report any suspected fraud by the auditor to the Central Government

Section 177(1): Applicability of Audit Committee:

Following companies are required to constitute audit committee (AC):

- Listed Public Companies
- Unlisted public co having:
  - PUSC >= 10 crores
  - T/O >= 100 crores
  - Outstanding loan, debentures, and deposits (in aggregate) > 50 crores

Note:

1. Exemptions – JV/WOS/Dormant co
2. If ceases to fulfil conditions for 3 consecutive years – Provision not applicable
3. Limits to be checked as existing on last date of latest audited financial statement.

Section 139: Appointment of auditors

1. Appointment of subsequent auditors and tenure:
   - Every co. shall, at the first AGM appoint an individual or firm ~~or BC~~ as an auditor,
   - who shall hold office from conclusion of that meeting till conclusion of 6th AGM and,
   - thereafter, till conclusion of every 6th AGM, and
   - the manner of selection of auditor shall be as may be prescribed.

Rule 3: Manner of selection of Auditor:

1. Who will select the auditor?

In case where a company is:	Competent Authority:	Responsibility: [MCQ]
Required to constitute AC u/s 177	Such AC shall -	➢ take into consideration Qualification and experience (Q&E) of proposed indv/ firm ➢ whether such Q&E are Commensurate with size and requirements of the co. ➢ while considering appointment, have regard to any order or pending proceeding related to professional Misconduct before ICAI or court.
Not required to constitute such AC	the Board shall -	

2. AC/Board may call for such other info. form proposed auditor as it may deem fit.

3. Recommendation of name of auditor: Subject to sub-rule (1):
   - ➢ Where co. is required to constitute AC – Such AC shall recommend name of indv/firm as auditor to Board for consideration.
   - ➢ In other cases – Board shall consider and recommend an indv/firm as auditors to members in AGM for appointment.

4. If Board agrees with AC recommendation – further recommend to member in AGM for appt.

5. If Board disagrees – Refer back to AC for reconsideration citing reasons for disagreement

What if AC decides not to reconsider original recommendation?

If AC, after considering reasons by Board, decides not to reconsider its original recom.:

- Board shall record reasons for its disagreement with AC and send its own recom. for consideration of members in AGM; and
- if Board agrees with recommendations of AC, it shall place the matter for consideration by members in AGM.

Before such appointment, the following shall be obtained from the auditor:

- ➢ Written consent of such auditor to such appointment
- ➢ Certificate from the auditor stating that: [*LET the Proceedings begin!*]

indv/firm is Eligible for appt. and is not disqualified under this Act or CA Act	proposed appt. is as per the Terms provided in this Act	proposed appt. is within Limits laid down by or under authority of the Act

list of Proceedings against auditor/audit firm or any partner thereof pending w.r.t. professional matters of conduct, as disclosed in the certificate, is true and correct

Note – Certificate shall also indicate whether auditor satisfied criteria u/s 141

On appointment of auditor: The company shall:

- inform the auditor concerned of his or its appointment, and
- file notice (Form ADT-1) of appt. with RoC within 15 days of meeting in which auditor is appt.

Explanation: For this Chapter, "appointment" includes reappointment

NFRA Rules :
Every BC [other than co. u/s 2(20)] formed in India + governed by NFRA shall inform NFRA (Form NFRA-1) w.r.t., the particulars of auditor appt. u/s 139 (1) within 15 days of such appt.

2. Tenure, re-appointment and cooling period of an auditor:
(For other companies, there is no tenure/cooling period)
The following companies (except OPC and small cos):

Listed co.	UPC having PUSC >= 10 cr	Private Ltd. cos. having PUSC >= 50 cr	All companies having public borrowings from bank/PFI or public deposit >= 50 cr

shall not appoint or re-appoint:
(a) an individual as auditor for > 1 term of 5 consecutive years; and
(b) an audit firm as auditor for > 2 terms of 5 consecutive years:

Cooling period:

individual auditor who has completed his term under clause (a) | Audit firm which has completed it term under clause (b)

↓

shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of his term

Incoming auditors should not have common partner with retiring auditors:
As on date of appt., no audit firm having common partner(s) to other audit firm, whose tenure has expired immediately preceding the FY, shall be appt. as auditor of same company for 5 years:

Note - Nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

Rule 6: Manner of rotation of auditor:

1. AC shall recommend to Board - Name of indv/firm who may replace incumbent auditor on expiry of term.
2. Where co. is required to constitute AC - Board shall consider recommendation of AC
   In other cases - Board shall itself consider rotation of auditors and recommend for appt. of next auditors by members in AGM

3. For the purpose of the rotation of auditors-
   (i) in case of an auditor, period for which indv/firm has held office as auditor prior to commencement of the Act shall be taken into account for calculating 5 or 10 consecutive years.
   (ii) the incoming auditor shall not be eligible if it is associated with outgoing auditor under the same network of audit firms.

   Note - "Same network" includes firms operating under same Brand name or Trade name or common Control (BTC)

4. Where co. has appointed 2 or more indv/firms or a combination thereof as joint auditors, co. may follow rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

Explanation: For rotation of auditors:
(a) break in term for 5 continuous years shall be considered as fulfilling requirement of rotation;
(b) if a partner, who is in charge of an audit firm and also certifies the FS, retires from said firm and joins another firm of CAs, such other firm - ineligible to be appt. for 5 years.

Refer Illustration in ICAI Module Pg. 10.10 and 10.11 (not imp. as it was transition provision)

3. Rotation of partners internally in an audit firm:
   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.

4. CG may, by rules, prescribe manner in which cos. shall rotate their auditors - Mentioned above

5. Auditor in case of a Govt co. (Subsequent auditor)
   - Notwithstanding anything contained in sub-section (1),
   - in case of Govt. co. or any other co. owned/controlled (directly or indirectly) by CG or SG or partly by CG and partly by SG,
   - the C&AG shall, in respect of a FY, appoint an auditor duly qualified to be appt.,
   - within 180 days from commencement of FY,
   - who shall hold office till conclusion of AGM.

6. First auditor in case of Company (other than Govt co.)
   - Notwithstanding anything contained u/ss (1),
   - the first auditor of a co. (other than Govt. co) shall be appointed by BoD
   - within 30 days from the date of registration of co. and
   - in case of failure of BoD to appoint such auditor - Inform the members, who shall within 90 days at an EGM appoint such auditor and
   - such auditor shall hold office till conclusion of the first AGM.

7. Auditor in case of a Govt co. (First auditor)
   - Notwithstanding anything contained in sub-section (1) or (5),
   - in case of Govt. co. or any other co. owned/controlled (directly or indirectly) by CG or SG or partly by CG and partly by SG,
   - the first auditor shall be appointed by C&AG
   - within 60 days from the date of registration of the co. and
   - in case C&AG fails to appt. such auditor within 60 days - BoD shall appt. within next 30 days;
   - and in case of failure of BoD to appoint within next 30 days - Inform the members, who shall within 60 days at an EGM appoint such auditor and
   - such auditor shall hold office till conclusion of the first AGM

8. Any casual vacancy in the office of an auditor shall:

Other than Govt co: i.e., Co. whose accounts are NOT subject to audit by C&AG	Fill casual vacancy: ➢ By BoD - 30 days ➢ If vacancy due to resignation - Appt. to be approved at GM (Ordinary Resolution) within 3 months of BOD recommendation. ➢ Hold office till conclusion of next AGM
Co. whose accounts are subject to audit by C&AG	C&AG to fill vacancy within 30 days. Failure of C&AG - BoD to fill vacancy - Next 30 days

9. Re-appointment of retiring auditor:
   A retiring auditor may be re-appointed at an AGM, if:
   (a) he is not disqualified for re-appointment;
   (b) he has not given a notice unwillingness to be re-appointed in writing; and
   (c) SR has not been passed at that meeting:
   appt. some other auditor or providing expressly that he shall not be re-appointed.

10. Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

11. Where a co. is required to constitute AC u/s 177, all appointments, including the filling of a casual vacancy of auditor shall be made after taking into account recommendations of such committee.

Note: For this chapter:
1. "Appointment" includes reappointment
2. Word "firm" shall include a LLP incorporated under LLP Act, 2008
3. NFRA Rules related explanation has been intentionally skipped from notes. Students may consider reading NFRA Rules Pg. 10.16 to 10.18 of ICAI mat.

Concept clarity check:

1. Can an auditor be appointed for 4 years? No. He cannot be appointed for less than 5 years.
2. Can an audit firm be appointed as internal auditor during the cooling period?
   Yes! There is no such restriction. The only restriction is - such an audit firm cannot be apptd. as statutory auditor.
3. What if a company appoints

Section 140: Removal, resignation of auditor and giving of special notice

1. Removal of auditor:

Auditor appointed u/s 139 may be removed from his office before expiry of his term only by:

- SR of the company
- After obtaining previous approval of CG (Regional Director) in manner prescribed

Provided that - Before any such action, auditor shall be given ROBH.

Rule 7 - Manner of removal of auditor:

- Application to CG shall be made within 30 days of BoD resolution in Form ADT-2.
- Co. to hold GM for passing SR within 60 days of receipt of approval of CG.

BoD Resolution → 30 → CG Approval (ADT-2) → 60 → GM for SR

Specified IFSC company where no decision is communicated by CG within 60 days - Deemed approval of CG and then CG to appoint auditor at GM within 3m from expiry of such 60 days.

Before removal, auditor shall be given OOBH (Audi Alteram Partem i.e., principal of natural justice to give OOBH)

Summary of removal of Auditor

Special Notice is received for removal → Board meeting held → Application to CG (ADT 2) in 30 days of Board Resolution → CG approval received → Special Notice to be sent for AGM (in 60 days of CG approval) → Auditors to get OOBH → Pass SR → Auditor removed

2. Resignation of auditor:

- Auditor who has resigned shall,
- file within 30 days from date of resignation,
- a statement in Form ADT-3 with the company and Registrar and C&AG (only in case of Govt. co)
- indicating reasons and other facts as may be relevant with regard to his resignation.

3. Contravention: Auditor fails to comply with provision u/ss (2) - Liable to:
   Penalty of - Lower of Rs. 50,000 or an amount equal to remuneration of auditor
   In case of continuing failure - Further penalty of Rs. 500/day after the first - Max Rs. 2 lakhs

4. Special notice for removal of auditor and representation thereon by auditor
   (i) Special notice (u/s 115) shall be required for resolution at AGM for:
      a. appointing a person other than a retiring auditor, or
      b. providing expressly that retiring auditor shall not be re-appointed,
      except where retiring auditor has completed consecutive tenure of 5/10 years.

   (ii) On receipt thereof - Company shall forthwith send a copy thereof to the retiring auditor.

   (iii) Where notice is given + retiring auditor makes representation in writing (not exceeding a reasonable length) and requests its notification to members, the company shall, unless the representation is received by it too late for it to do so:
      a. in notice given to members, state the fact that representation is made; and
      b. send copy of representation to every member,
      c. if copy thereof couldn't be sent (cause it was received too late or due to cos. default):
         - auditor may require the representation to be read out at the meeting (without prejudice to his right to oral representation)*
         - a copy of such representation shall be filed with the Registrar:

   *Tribunal may order not to send representation:
   - On application (in Form NCLT-1) by co/aggrieved person, if Tribunal is satisfied that rights are being abused,
   - It may order that such copy may not be sent, and representation need not be read out

5. Tribunal may order to change auditor:
   - Tribunal may:

     suo motu | appln. by CG (in Form NCLT 9) | appln. by person concerned (in Form NCLT 9)

   - if it is satisfied that auditor has (directly or indirectly):
     - acted in a fraudulent manner or
     - abetted or colluded in any fraud by, or in relation to, Co., its Directors or officers,
   - it may, by order, direct the company to change its auditors.

   Instead of directing the company, Tribunal may itself change auditor:
   If application is made by CG and Tribunal is satisfied that any change of the auditor is required it shall, within 15 days of receipt of such appln, make an order that:
   - he shall not function as an auditor and
   - the CG may appoint another auditor in his place:

   Debarring the auditor: An auditor (indv/firm) against whom final order has been passed under this section shall:
   - not be eligible to be appt. as an auditor of any co. for 5 years from passing of such order and
   - the auditor shall also be liable for action u/s 447.

Note – In case of a firm, the liability shall be of the firm and that of every partner (s) who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the co., dir. or officers.

Section 141: Eligibility, qualifications and disqualifications of auditors

1. Eligibility:
   A person shall be eligible for appt. as auditor only if he is a CA.
   A firm where majority (not all) of partners are CAs practicing in India – Such firm may be appt.

2. Who will sign on behalf of firm: Where a firm including LLP is appointed as an auditor - only the partners who are CAs shall be authorised to act and sign on behalf of the firm.

3. Disqualification: Following persons shall not be eligible for appt. as auditor of a company, namely:
   (a) Body Corporate (other than LLP)
   (b) an officer or employee of the company;
   (c) a person who is a partner or employee of an officer or employee of the company;
   (d) a person who, or his relative or partner:
      (i) is holding any security of CASH OR SOH.
      Except - Relative may hold security in company or ASH of face value not > Rs. 1 lakh;
      Note
      1. If relative acquires security above Rs. 1 lakh, corrective action to maintain limits if Rs. 1 lakh shall be taken by the auditor within 60 days of such acquisition or interest.
      2. Holding of all the relatives shall be taken in aggregate to check threshold.
      (ii) is indebted to the CASH or SOH > Rs. 5 lakhs
      (iii) has given guarantee or provided security w.r.t., indebtedness of any third person to CASH or SOH > Rs. 1 lakh.

   (e) a person or a firm who, whether directly or indirectly, has business relationship with CASH or SOH or associate of such holding co.;
   Business Relationship: Any transaction entered into for a commercial purpose, except:
   (i) transactions which are in nature of prof. services permitted to be rendered by auditor;
   (ii) transactions in OCOB of company at arm's length price

   (f) person whose relative is a director or is in employment of company as a director or KMP;

   (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 persons or partner is at the date of such appointment or reappointment holding appointment as auditor of > 20 cos;
   While calculating the limit of 20 companies:
   1. Exclude OPC, small co., dormant company and private cos. having PUSC < Rs. 100 crores
   2. In case of firm, the limit of 20 shall be for each partner. i.e., limit of 20 is per person.

(h) a person who has been convicted by a court of an offence involving fraud and a 10 years has not elapsed from the date of such conviction;

(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 ~~or its associate~~.

4. Where person appt. as an auditor incurs any disqualifications mentioned u/ss (3) after appt., he shall vacate his office and it shall be deemed to be a casual vacancy in the office of the auditor.

Section 142: Remuneration of auditors

1. Remuneration to be fixed at GM or in such manner as may be determined in such GM.
   For first auditor – BoD to fix remuneration.
2. Remuneration shall, in addition to fee payable to an auditor, include:
   - expenses incurred in connection with such audit and
   - any facility extended to him

   but does not include any rem. paid to him for any other service rendered at request of co.

> Concept clarity check:
> Can engagement letter be signed without stating fees and merely stating that fees shall be decided mutually? – Yes! Such engagement letter is valid.

Section 143: Power and duties of auditors and auditing standards

1. Power of auditors: Every auditor of a company shall:
   - have right of access at all times to BoA of co., whether kept at RO or at any other place &
   - be entitled to require from officers such info & explanation (I&E) as may be necessary for performance of his duties, and
   - have right to access records of all its subsidiary or associate cos. in so far as it relates to the consolidation of its FS with that of its subsy and associate cos.

   Inquiry by auditor: Amongst other matters, auditor to inquire into following matters:
   (a) whether loans & advances on the basis of security have been properly secured and whether term thereof is prejudicial to interest of co/members.
   (b) whether transactions which are represented merely by book entries are prejudicial to interest of co.
   (c) whether asset of co. as consist of shares, debentures or other securities have been sold at price < purchase price (except in case of investment co. or banking co.)
   (d) whether loans & advances have been shown as deposits.
   (e) whether personal expenses have been charged to revenue account
   (f) where it is stated in books that shares have been allotted for cash:
      - whether cash is actually received, and
      - if no cash is received, whether BoA and Balance sheet is correct, regular and no misleading

2. Auditor Report: Auditor shall make a report to members of the co.:

Report on:	After taking into account:	Express opinion:
• Accounts examined. • Every FS laid before co. in GM	• Provision of this Act • AS and SAs • Matters to be included in Auditor's report.	• To the best of his info. and knowledge • Accounts and FS give true & fair view of state of co's affairs at end of FY.

3. Auditor's report shall also state:

(a) Info. and explanations (I&E):
- Whether sought and obtained all I&E which to best of his knowledge is necessary for audit
- If not, details thereof and effect of such info. on FS

(b) Books of accounts:
- whether, in his opinion, proper BoA as per law have been kept by co. (as per his examination)
- proper returns adequate for his audit have been received from branches not visited by him;

(c) Branch auditor's report
- whether report on BoA of any branch office audited u/ss (8) by person other than company's auditor has been sent to him and
- manner in which he has dealt with it in preparing his report;

(d) whether BS and P&L dealt with in report are in agreement with BOA and returns;

(e) whether FS comply with the AS;

(f) observations or comments of auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

(g) whether any director is disqualified u/s 164(2);

(h) any qualification, reservation or adverse remark relating to maintenance of accounts and other matters connected therewith;

(i) whether co. has adequate IFC w.r.t FS in place and operating effectiveness of such controls Reporting on IFC shall not apply to a private co (92+137):
- which is OPC or small co.
- which has T/O < Rs. 50 crores and aggregate borrowing from bank/PFI < Rs. 25 crores

(j) such other matters as may be prescribed

Rule 11: Other matters to be included in Auditor's report:

Include their views and comments on the following matters, namely:

(i) whether co. has disclosed impact of pending litigations on its financial position in its FS;

(ii) whether co. has made provision (as per law or AS) for material foreseeable losses, if any, on long term contracts including derivative contracts;

(iii) whether there is any delay in transferring amt. to IEPF by the company.

(iv) Omitted

(v) Ultimate Beneficiaries:

i. Whether mgt. has represented that – no funds has been advances or lent to any person (intermediary) with an understanding that such intermediary shall lend such funds on behalf of co. to ultimate beneficiary or provided any guarantee or security on behalf of such ultimate beneficiary.

ii. Whether mgt. has represented that – no funds has been received by the company from any person ("Funding parties") with an understanding that the co. shall lend such funds to ultimate beneficiary or provided any guarantee or security on behalf of such ultimate beneficiary.

iii. Nothing has come to the notice of auditor that caused him to believe that above representations contain any material misstatement.

(vi) whether the dividend declared or paid during the year is in compliance with sec 123.

(vii) W.r.t. FY commencing on or after 1/4/22, whether company has used accounting software for maintaining BoA which:

- has a feature of recording audit trail facility and
- same has been operated throughout the year for all transactions recorded therein &
- audit trail feature has not been tampered with and
- audit trail has been preserved as per statutory requirements for record retention.

4. Where any matter included in audit report is answered in negative or with a qualification, the report shall state the reasons therefor.

5. In case of Govt co. or Govt controlled companies:
   - C&AG to appoint auditor u/s 139(5) or 139(7)
   - Direct such auditor the manner in which accounts are to be audited, and
   - Auditor to submit a copy of audit report to C&AG which will include:

Directions issued by C&AG	Action taken thereon	Impact on accounts and FS

6. C&AG may order supplementary audit.

   C&AG shall, within 60 days of receipt of audit report, have right to:

   (a) conduct supplementary audit of FS by person as he may authorise in this behalf.
   For the purpose of such audit, authorized person may require info. as C&AG may direct.

   (b) comment upon or supplement such audit report.
   Provided that any such comments by C&AG shall be:

- sent by co. to every person entitled to copies of audited FS u/s 136 and
- also be placed before AGM along with audit report.

7. C&AG may, if he considers necessary, by an order cause test audit to be conducted of the BoA of such co. covered u/s 139 (5) or (7)

8. Branch office:

Branch is in India:	**Branch is outside India:**
Where co. has a branch office, BOA of branch office shall be audited either by: • Auditor appointed for co. (Co's auditor), or • By any other person qualified for appt. as auditor of co. & appointed as such for branch audit	Where co. has a branch office outside India, BoA shall be audited either by: • Company's auditor, or • accountant or any other person duly qualified to act as auditor as per law of that country.

Note:
- Duties and power of company's auditor w.r.t. branch audit shall be as per Sec 143(1) to (4)
- Branch auditor to prepare report on BoA of branch examined by him and send it to Co's auditor
- Co's auditor shall deal with such report in his report in manner as he considers necessary.

9. Every auditor shall comply with the auditing standards (SAs).

10. CG may prescribe SAs or any addendum thereto, as recommended by ICAI, constituted u/s 3 of CA Act, 1949, in consultation with and after examination of recommendations made by NFRA Provided that – Until such SAs are notified, SAs notified by ICAI shall be deemed SAs

11. CG may, in consultation with NFRA direct that auditor's report may include such other matters as may be specified.

12. Reporting of Fraud by Auditor:
    - If an auditor of a co.,
    - in course of performance of his duties as statutory auditor,
    - has reasons to believe that an offence of fraud, involving individually amount >= Rs. 1 crore,
    - is being committed against the co. by its officers or employees,
    - the auditor shall report the matter to CG.

Report to CG as under:

Inform AC/BoD	Auditor to report matter to AC or BoD immediately (not > 2 days) of his knowledge seeking reply within 45 days
Forward to CG	On receipt of reply - Auditor to forward his report + AC/BoD reply + his comments thereon to CG within 15 days of reply. In case of no reply – Forward his report + note that details were forwarded to AC/ BoD for which no reply received (within 15 days)
Mode	The report shall be sent to: ➢ Secretary, MCA in a sealed cover ➢ by Registered Post with acknowledgment due (RPAD), or speed post ➢ followed by an email in confirmation of the same The report shall be sent: ➢ in Form ADT - 4 ➢ on letter-head of auditor containing address, email and phone number ➢ and signed by auditor with his seal ,and indicate membership no.
Fraud < Rs. 1 cr.	Auditor shall report the matter to AC u/s 177 or BoD immediately (not > 2 days) of his knowledge and report the following matter [NAP]: Nature of fraud with description Approx. amount involved Parties involved Of each fraud reported above, following details shall be disclosed in BOD report: Nature of fraud with description Approx. amount involved Parties involved, if remedial action not taken remedial action taken
Above provision to apply mutatis mutandis to cost auditor & secretarial auditor.	

13. Report fraud can never lead to contravention of duty (E.g., - confidentiality):
No duty of an auditor shall be regarded as having been contravened by reason of his reporting the matter u/ss (12) if it is done in good faith.

Penalty:
If any auditor, cost accountant or CS in practice do not comply with provisions of fraud u/ss (12):
(a) in case of a listed company, be liable to a penalty of Rs. 5 lakh; and
(b) in case of any other company, be liable to a penalty of Rs. 1 lakh

Concept clarity check:
If some of the employee did fraud of Rs. 10 crores on the co. and such fraud was brought to the notice of the auditor by the management of the co., would auditor be required to report it to CG?
No. As per sec 143(12), only fraud that the auditor identified himself in course of audit is to be brought to attention of CG. Here, the auditor just need to report to AC/BoD. Not CG.

Section 144: Auditor not to render certain services.

An auditor appointed under this Act shall:

- provide to co. only such other services as are approved by AC/BoD but
- which shall not include following services (directly or indirectly) to CASH, namely [KIS A BF OM]:

accounting and book keeping services;	internal audit	design and implementation of any financial info. system	actuarial services
investment advisory and banking services	rendering of outsourced financial services	management services	others as prescribed

Explanation: For this section, "directly or indirectly" shall include rendering of services by auditor:

Individual	Himself, relative, other connected person or entity in which he has significant influence
Firm	Itself, partners, parent, subsidiary or associate entity or other entity in which firm/ partner has significant influence.

Concept clarity check:

- Can a statutory auditor be appointed as GST auditors or tax auditors? Absolutely, yes.
- Can a statutory auditor be appointed as cost auditors? No. Specifically restricted u/s 148

Section 145: Auditor to sign audit reports, etc.

Auditor shall sign Auditor's report or sign/ certify any other doc. as per sec 141(2), and

QOC on financial transactions having adverse effect on functioning of co. mentioned in auditor's report shall be:

- Read out before co. in GM.
- Open to inspection by any member

Section 146: Auditors to attend general meeting:

Notice related to GM to be sent to auditor → Auditor shall attend GM either himself or through Auth. Rep. → Auditor shall have right to be heard on business which concerns him as auditor

Section 147. Punishment for contravention

1. Contravention u/s 139 to 146:
   Co. - Fine - Rs. 25,000 to Rs. 5 lakhs
   OID - Fine - Rs. 10,000 to Rs. 1 lakh

2. Auditor contravenes u/s 139, 144, 145:
   Fine - Rs. 25,000 to Lower of - (Rs. 5 lakhs or 4x remuneration of auditor)

   If such contravention is knowingly or wilfully to deceive co./SHs or crs or tax authorities:
   Imprisonment - Up to 1 year AND
   Fine - Rs. 50,000 to Lower of - (Rs. 25 lakhs or 8x remuneration of auditor)

3. Where auditor is convicted u/ss (2), he is liable to:
   a. refund remuneration
   b. pay damages to co/stat bodies or members or creditors for loss arising out of incorrect or misleading statements made in his audit report

4. CG shall, by notification, specify any statutory body or officer for ensuring prompt payment of damages u/ss (3) and such person specified shall, on payment file report with CG

5. In case of an audit firm, it is proved that partner(s) of such firm:
   - acted in a fraudulent manner or
   - abetted/colluded in any fraud against co.

   the liability (civil or criminal) as per this Act or other law, for such act shall be of partners concerned of the audit firm <u>and</u> of firm - jointly and severally

   In case of criminal liability, punishable with only imprisonment – Only concerned partners liable

Section 148: CG to specify audit of items of cost in respect of certain companies.

<u>Read with Companies (Cost Records and Audit) Rules 2014</u>

1. <u>CG to order maintaining cost record:</u>
   - Notwithstanding anything contained in this Chapter,
   - the CG may, by order, cos. engaged in production of prescribed goods or providing prescribed services,
   - direct that particulars relating to utilisation of material or labour or other items of cost as may be prescribed shall also be included in BoA

   Provided that, prior to passing such order for companies regulated under special act, CG shall consult the concerned regulatory body.

Rule 3: Applicability of cost records:

- Companies [including foreign co. u/s 2(42)] engaged in production of goods or providing service as specified in Table A (6 Regulated sectors) and Table B (33 non-regulated sectors)
- having <u>overall</u> T/O of >= Rs. 35 crores in immediately preceding FY shall maintain such cost records.
- Non-Applicability : Micro Enterprise /Small Enterprise as defined u/s 9(7) of MSMED Act, 2006

Rule 5: Maintenance of records

- Cost records to be maintained in Form CRA-1
- Maintain such records on a regular basis to facilitate calculation of per unit cost for each product every FY.
- Cost records shall be maintained to enable co. to exercise control over various costs to achieve optimum economies in utilisation of resources.

2. CG may order audit of such cost records:
If CG is of opinion, that it is necessary to do so, it may, by order, direct audit of such cost records of such companies having net worth or turnover of such amount as may be prescribed.

Cost statements shall be signed by the BoD before they are submitted to auditor for reporting.

Rule 4: Applicability of cost audit

	Overall Annual Turnover	Turnover of Individual products for which records in maintained under Rule 3
Regulated Sector Companies	Rs. 50 crores	Rs. 25 crores
Non-Regulated Sector Companies	Rs. 100 crores	Rs. 35 crores

Non-Applicability of this Cost Audit (for companies maintaining Cost Records u/Rule 3)
1) Revenue from exports in Forex > 75% of total revenue OR
2) Operating from SEZ
3) Engaged in generation of electricity for captive consumption through Captive Generating Plant.

3. Manner of appointment and remuneration of cost auditor:

In case of cos. required to constitute AC:	In case of other companies:
(a) On recommendation of AC, BoD to appoint an individual/firm of cost accountant in practice. (b) Remuneration thereof shall be recommended by AC, considered and approved by BoD and ratified by SH	(a) BoD to appoint an individual/firm of cost accountant in practice (b) Remuneration thereof, considered and approved by BoD and ratified by SH subsequently.

Important note - Auditor u/s 139 of the company cannot be appointed as auditor of cost records.

- Appointment Cost Auditor shall be appointed within 180 days of commencement of every FY.

- Provided that before such appointment is made obtain
  1) Written consent of the cost auditor to such appointment, and
  2) A certificate that
     (a) the individual/firm is eligible for appointment and is not disqualified for appointment under Cost and Works Accountants Act, 1959) and rules thereunder
     (b) the individual or the firm satisfies the criteria provided u/s 141 of Companies Act, 2013
     (c) the proposed appointment is within the limits laid down by authority of the Act; and
     (d) the list of proceedings against the cost auditor/audit firm or any of the partner pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

- Cost Auditor/Firm shall be informed of his or its appointment as such and file a notice of such appointment with the CG in form CRA-2 (+ fees) within earlier of:
  1) within 30 days of Board meeting in which such appointment is made or
  2) within 180 days of the commencement of the financial year,

- Term: Till the expiry of 180 days from the closure of the FY or till he submits the cost audit report, for the FY for which he has been appointed.

- Removal before expiry of Term:
  1) Board resolution after giving ROBH to the Cost Auditor and recording the reasons for such removal in writing.
  2) Form CRA-2 with CG for intimating appointment of another cost auditor to be enclosed with the relevant Board Resolution for Removal of the Cost Auditor.

- Resignation: Nothing contained herein shall prejudice the right of cost auditor to resign.

- Casual Vacancy: In case of Casual Vacancy, whether due to resignation, death or removal, it shall be filled by the BoD in 30 days and inform CG of such appointment within 30 days in Form CRA-2
  Such cost audit shall comply with cost auditing standards as issued by ICAI (Cost) + CG

4. Audit u/s 148 is in addition to audit u/s 143

5. Qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor

   Report on the audit of cost records
   - To be submitted by Cost Accountant to BoD in 180 days from end of FY to which it pertains
   - along with reservations or qualifications or observations or suggestions, if any,
   - in form CRA-3

6. Forward cost auditor's report to CG along with explanation of reservations:
   Co. shall within 30 days from date of receipt of cost audit report - Furnish CG (Form CRA-4) with such Report + Full I&E on every reservation or qualification contained therein.

7. On receipt of report + info. u/ss (6), if CG is of opinion that further I&E is necessary - it may call for such further I&E and co. shall furnish the same within time specified by CG

8. Default under this section:
   Co. and OID - Punishable u/s 147 (1)
   Cost auditor - Punishable u/s 147 (2) to (4)

NFRA [NATIONAL FINANCIAL REPORTING AUTHORITY] AND AUDITOR

Read with NFRA Rules, 2018

Compliance with SAs	Filing of Return (Rule 5)	Quality and Improvement (Rule 9)

Monitoring and enforcing Compliance with SAs (Rule 8)

1. NFRA may:
   - Review working papers (including audit plan and other audit documents) and related communications
   - Evaluate the sufficiency and documentation of the quality control system of auditor and
   - Perform such other testing of the audit, supervisory, and quality control procedures of the auditor as considered necessary or appropriate.

2. NFRA may require:
   - Require an auditor to report on its governance practices and internal processes designed to promote quality, protect its reputation and reduce risks of the auditor
   - Seek additional Info/ Expln in connection with conduct of Audit/ require personal presence.
   - Send a separate report containing proprietary or confidential information to CG.
   - Where the NFRA finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division.

3. NFRA shall
   - Perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry.
   - Publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in public interest and it records reasons in writing.

4. NFRA shall not publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.

Filing of Return with NFRA (Rule 5)

- Every auditor of classes of companies and body corporate governed by NFRA
- File a return on or before 30th November every year in Form NFRA-2

Overseeing Quality and suggesting Improvement (Rule 9)

NFRA is empowered for overseeing the quality of services and suggesting measures for improvement

- On the basis of its review, direct auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.
- It shall be the duty of auditor to make required improvements and send a report explaining how it has complied with the directions made by the NFRA.

- NFRA shall monitor the improvements made by the auditor and take such action as it deems fit depending on progress made by the auditor.
- NFRA may refer such cases to the Quality Review Board constituted under the Chartered Accountants Act, 1949 or call for any report or information in respect of such auditors or companies or body corporates from such Board as it may deem appropriate.
- The NFRA may take the assistance of experts for its oversight and monitoring activities.

The End

Chapter 11
Companies Incorporated Outside India

AR	Authorised Representative	IDR	Indian Depository Receipts
BC	Body Corporate	POB	Place of Business
Biz	Business	PRI	Person Resident in India
Co.	Company	STO	Share Transfer Office
DH	Debenture Holders	SRO	Share Registration Office
FC	Foreign Company		

Foreign Company [Sec 2(42)]: 4 9 10 14 18

FC means a company/body corporate incorporated outside India which:

a. has a POB in India (itself/agent, physical/e-mode), AND
b. conducts any business activity in India in any manner.

Conceptual Clarity Check:

1. Would a company incorporated outside India conducting business in India without having POB in India be considered as a FC? – Yes. On literal interpretation of the definition, the word "and" shows that both POB and conduct of activity is needed. But this sec is to be interpreted under Exception Construction. i.e., the word "and" in definition is to be read as "or".
2. FC is not a co. u/s 2(20) but is a BC u/s 2(11) because FC is incorporated outside India.
3. Registrar has jurisdiction over FCs? - Registrar having jurisdiction over New Delhi (1)
4. A FC has POB in West Bengal. To which RoC will it file necessary docs to? – New Delhi RoC
5. If BoD of a co. incorporate outside India meets and executes business decision in India, would it make it a FC? – No.
6. If a co. incorporated o/s India authorizes Mr. X in India to find customers and enter into contract on behalf of co., Is such co. a FC?– Yes. Such arrangement establishes POB in India through agent.
7. Place of business includes Share Transfer Office and Share Registration Office
8. If a person not being an FC carries on business or trade as FC – Liable for investigation u/s 210.
9. Branch offices are considered as reflection of parent company's office.

Place of Business via electronic mode bole toh?

Carrying out following business electronically, whether or not the main server is in India or outside [TDS OC]:

- B2B or B2C Transactions (*E.g., Udaan, Amazon*), data interchange or other digital supply transaction (E.g., Netflix).
- Offering to accept, inviting or accepting Deposits or subscription to securities in India or from Citizen of India
- Following Services:

Fin. settlement (E.g. Paypal)	Web based mkt. [Eg. Google Ads]	Advisory and transactional service	Database services	Supply chain Mgt.

- Online services:

Telemarketing	Telecomuting	Telemedicine [Online doc consultation]	Education & info research

- All related data communication via email/social media/mobile, etc.

Note – E-offering of securities, subscription, and listing of securities in IFSCs shall not be construed as an electronic mode for Foreign Cos. [Amendment]

Section 379: Application of Act to foreign companies

8 12 19

1. Sec 380-386 and 392/393 shall apply to FCs (i.e., 387 to 391 – N.A.) [Amendment]

2. Where not less than 50% of PUSC (Equity/Preference) of Foreign co. is held (singly/aggregate) by:
   a. one or more citizen of India
   b. one or more companies or BC incorporated in India
   c. one or more citizens of India and one or more cos. or BC incorporated in India,

   such co. shall comply with provision of this Chapter, in respect of its Indian business, as if it were company incorporated in India.

Conceptual Clarity:

1. An Indian citizen incorporated a co. in Singapore for business in Singapore. Is it a FC? – No. The fact that founder/promotor/owner of a co./BC is Indian would not impact the decision whether it is a FC or not.
2. A co. is incorporated in India having 100% Foreign Shareholding. Is it a FC? – No. Co. incorporated in India is a company u/s 2(20) and not FC.

Section 380: Documents, etc., to be delivered to Registrar by foreign companies

1. Every FC shall within 30 days of establishment of POB in India deliver the following to RoC (New Delhi) for registration [CA_2R PDC]:

2 6 7 11

Certified Charter Docs – MoA/ AoA or any other instrument defining constitution [Certified translation in English language]	Full Address of principle office of co. (not in India)	Full Address of office of co. deemed to be principal POB in India	List of all Directors/ secretary of co. [Name, Father's Name, DOB, Address, nationality, passport, PAN, DIN, etc]
Name and Address of PRI auth. to accept notices/other docs served on co. [Auth. Representative]	Particulars of Opening/ Closing of POB in India in earlier occassions	Declaration that none of director/AR (not secretary) are Convicted/debarred from formatn of co./mgt. thereof - India/Abroad	Other prescribed info.

2. Alteration to docs already submitted to RoC – Inform RoC within 30 days of alteration Form FC-2

Companies (Registration of FC) Rules, 2014:

1. Above info. to be filed with RoC in Form FC – 1
2. Above application to be supported with an attested copy of:
   a. approval of RBI under FEMA and approval from other regulators if required or
   b. declaration from AR that no such approval is required
3. If a FC ceases to have POB in India, it shall forthwith give notice to RoC and from date of such notice, obligation to file docs with RoC ceases, provided no other POB.

Section 381: Accounts of foreign company

3

1. Every FC shall, in every CALENDAR YEAR,
   a. Make BS, P&L in prescribed forms, particulars and annexures
   b. Deliver a copy to RoC

   CG may exempt FC from applicability of this.
2. If not in English – Certified Translation thereof in English to be annexed
3. Along with above docs, FC to send to RoC – List of POB in India as on BS date (in Form FC-3)

Companies (Registration of FC) Rules, 2014:

1. FC to prepare FS for its Indian business operation as per Sch III for each Financial year
2. Docs to be annexed to FS – As per Chap IX – Accounts of Companies [Sec 128-138]
3. Docs relating to CFS of Parent FC also to be submitted (if not in English, certified translation)
4. Annex following additional docs/statements, along with FS:
   - Statement w.r.t, RPT
   - Statement of Repatriation of Profit
   - Statement of Transfer of Funds (incl. Dividend)
5. Time limit for delivery of above docs to RoC:
   - Within 6m from close of FY
   - RoC may on application, extend the time limit by 3m
6. Audit of books of Indian business ops – By practicing CA or Firm/LLP of CAs
7. Provision of Chap X (Sec 139-148) i.e., Audit and Auditors shall apply mutatis mutandis

Note regarding filing of annual return of the Indian operations of the foreign company:

As per Companies (Registration of FC) Rules, 2014, every FC shall prepare & file Annual Return in Form FC-4 + Fees within 60 days from last day of FY to RoC containing particulars as on close of FY.

Section 382: Display of name of Foreign Companies:

23

Every FC shall conspicuously exhibit:

Where?	Outside of every office or POB in India	Business letters, bill-heads, letter papers, & all notices and other publications,
What?	➢ Name of the co. ➢ Country of incorp. ➢ State whether liability of members of co. is limited	➢ Name of the co. ➢ Country of incorp. ➢ State whether liability of members of co. is limited
Language?	➢ Letters easily legible in English, and ➢ Local Language used in POB	➢ Letters easily legible in English, ➢ ~~Local Language~~

Section 383: Service on Foreign Company: 16 22

- Any notice/other docs required to be served on FC
- shall be deemed to be sufficiently served if:
  - Addressed to Auth. Representative of such FC (as per Sec 380), and
  - Left at or sent by post or e-mode at such address

Section 384: Applicability of other sections

Following provision of Companies Act shall apply to Foreign Co.:

Section	Provisions related to:	Applicable to Indian business of FCs
71	Debentures	Mutatis Mutandis
92 & 135	Annual Return and CSR	Subject to Exceptions, Modifications & Adaptations as per Rules
128	BoA to be kept by Co.	To the extent that BoA to be kept at POB in India
Chap VI	Registration of Charges	Mutatis Mutandis
Chap XIV	Insp., Inq. and Investigation	Mutatis Mutandis (Sec 228)

Section 386: Interpretation

1. "Certified" means certified to be a true copy or correct translation.

   Translation can be done in India or outside India. Who shall authenticate such translation?

   13 Where a translation is to made within India, it shall be authenticated by:
   a. an advocate, attorney or pleader entitled to appear before any High Court; or
   b. an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

   17 Where translation is done outside India, it shall be authenticated by signature and seal of:
   a. an official having custody of the original, or
   b. Notary of the country where company is incorporated
2. "Director" w.r.t., FC includes person on whose direction or instruction, BoD is accustomed to act.
3. "Place of Business" <u>includes</u> Share Transfer Office & Share Registration Office (STO and SRO)

Section 387: Dating of prospectus and particulars to be contained therein.

1. No prospectus offering to subscribe to any securities shall be issued or circulated by a Co. incorporated o/s India (not FC) unless such prospectus:
   a. is <u>dated</u> and <u>signed</u>.
   b. contains particulars w.r.t., following matters [*Instrument Incorp. karne ke liye ACP ko bulaya*]:
      i. Instruments defining constitution of the co.
      ii. Enactments/provisions under which co. was incorporated.
      iii. Address where (i) and (ii) above or English translation thereof can be inspected
      iv. Date and country of incorporation
      v. Whether co. has estb. POB in India. If so, address of principal POB
   c. states matter specified u/s 26 (Matters to be stated in Prospectus)

   Note: Points of b (i),(ii) and (iii) N.A. if prospectus is issued > 2 years after co. is entitled to commence business [Agar nayi taazi co. (<2 years) hai to declare karo, warna mat karo]

2. Compliance with conditions mentioned u/ss (1) cannot be waived off on any grounds.
3. Application forms for securities of a Co. incorp. o/s India shall be issued subject to following:
   a. Such appln is issued with prospectus which is in compliance with this Chap
   b. Such issue does not contravene provision of sec 388 (Expert's consultation)

   Exception: Where such form for appln. is issued to a person to enter into underwriting agreement.

4. Sec 387 N.A. (except for dating of prospectus) to issue of prospectus:
   a. relating to issue of sec. of co. to existing members or DH, or
   b. offering securities which is uniform with sec. previously issued and listed on RSE

Section 388: Provisions as to expert's consent and allotment: 20

1. Where the prospectus includes expert's statement, no such prospectus shall be issued or circulated by a Co. incorporated o/s India (not FC), unless such expert:
   - has given written consent to issue
   - has not withdrawn, before delivery of the prospectus for registration, such written consent
   - a statement appears in the prospectus that expert's written consent is given and not withdrawn

2. A statement shall be deemed included in prospectus, if it is contained in any report/memorandum appearing on the face thereof or by reference incorporated therein.

Section 389: Registration of prospectus: 5 21

No prospectus shall be issued/circulated unless all the following conditions are satisfied:

a. A certified copy has been delivered for registration to RoC
   Certification to be done by Chairperson and 2 dir. (as approved by resoln. of managing body)
b. Prospectus states on the face that a copy has been so delivered,
c. Consent (of expert) to issue the prospectus is attached.
d. Such other prescribed docs is attached

Companies (Registration of FC) Rules, 2014: [EC2UA]

Following docs to be annexed to prospectus:

a. Expert's consent u/s 388
b. Copy of contract or memorandum for appt. of MD/Manager
c. Copy of material contracts in last 2 years not in OCOB
d. Copy of underwriting agreement
e. Copy of power of attorney if prospectus is signed by auth. agent of directors

Section 390: Offer of IDRs

Indian Depository Receipts (IDR) means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts.

According to section 390, notwithstanding anything contained in any other law for the time being in force, the CG may make rules applicable for:

(i) the offer of IDR;
(ii) the requirement of disclosures in prospectus or letter of offer issued in connection with IDR;
(iii) the manner in which the IDR shall be dealt with in a depository mode and by custodian and underwriters; and
(iv) the manner of sale, transfer or transmission of IDR,

by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

As per Rule 13 of the Companies (Registration of Foreign Companies) Rules, 2014, foreign companies cannot issue Indian Depository Receipts (IDRs) without complying with the specified conditions, alongside adhering to regulations by SEBI and directions from RBI.

Chapter XV provisions apply to schemes of mergers and amalgamations between companies registered under the Act and those incorporated in notified foreign jurisdictions. The Central Government, in consultation with RBI, may create rules for such mergers and amalgamations.

Foreign companies can merge with companies registered under the Act, or vice versa, with prior approval from RBI. The scheme of merger may provide consideration to shareholders in cash or Depository Receipts, as per the scheme's terms.

Explanation: For the purposes of sub-section (2) above, the expression "foreign company" means any co. or BC incorporated outside India whether having a place of business in India or not.

Section 391: Application of Sec 34 to 36 and Chap XX (Winding up)

1. The provisions of sections 34 to 36 (both inclusive) shall apply to—
   (i) issue of a prospectus by a co. incorporated outside India u/s 389 as they apply to prospectus issued by an Indian co.;
   (ii) issue of Indian Depository Receipts by a foreign co.

2. Winding up provision shall also apply to FC.

Section 392: Punishment for Contravention [Very important penalty]:

If a FC contravenes prov. of this chapter:

	Foreign Co.	OID
Fine	Rs. 1 lakh to Rs. 3 lakhs	Rs. 25,000 to Rs. 5 lakhs
Additional Fine	Rs. 50,000/day	NA
Jail	NA	NA [Amendment]

Section 393:

Co's failure to comply with prov. of this Chapter not to affect validity or contracts, etc entered into by such co. or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

Section 393A: Exemption by CG

CG may, by notification, exempt from provision of this chap:

a. Foreign company

b. Co. incorp o/s India whether or not having POB

insofar as they related to offering of securities, relating to prospectus or incidental matters in the International Financial Service Centers set up u/s 18 of SEZ Act, 2005

Copy of such notification should be laid before HoP.

The End

Chapter 12
General Clause Act

Introduction:

- The General Clauses Act, 1897 (GCA) contains 'definitions' of certain terms and general principles of interpretation.
- The GCA also comes for a rescue in the absence of clear definition in the specific enactments
- Objects of the Act are:
  - to shorten the language of Central Acts;
  - to provide for uniformity of expression by giving definitions for common terms;
  - to state explicitly certain convenient rules for construction and interpretation of central acts;
  - to guard against slips and oversights by importing certain common clauses.

Application Of the General Clauses Act

Act does not define any "territorial extent" clause. It applies to the Central Acts.

The Central Acts to which this Act apply are:

(a) Acts of Indian Parliament (Central Act) along with rules and regulations made thereunder;

(b) Acts of Dominion Legislature passed between 15th August 1947 and the 26th of January 1950;

(c) Acts passed before commencement of the Constitution by the Governor-General in Council or the Governor-General acting in a legislative capacity.

Article 367 of the Constitution of India authorises use of General Clauses Act for the interpretation of constitution.

Some Basic Understand of Legislature:

"Preamble": Every Act has a preamble which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act. Whenever there is ambiguity in understanding any provision of Act, Preamble is accepted as an aid to construction of the Act.

Note - The Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Definitions - Words are defined in the respective Act. Sometimes, definitions are referred in other statutes. If words are not defined in the respective Acts, such words are to be taken from General Clauses Act.

Section 1: Preliminary – Short Title – General Clause Act, 1897

Section 2: Repealed.

Section 3: Definitions:

Word	
Act	'Act', used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions;
Affidavit	'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. Note: The terms "Affidavit", "Oath" & "Swear" have same definitions in the Act.
Central Govt	➢ In relation to anything done before the commencement of the Constitution, mean the Governor General in Council ➢ In relation to anything done or to be done after the commencement of the Constitution, mean the President
Commencement	The day on which the Act or Regulation comes into force; Coming into force or entry into force refers to the process by which legislation; regulations, etc. comes to have legal force and effect. State of Orissa Vs. Chandrasekhar Singh Bhoi A Law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has no validity.
Document	Document shall include ➢ any matter written, expressed or described upon any substance ➢ by means of letters, figures or marks or by more than one of those means ➢ which is intended to be used or which may be used, ➢ for the purpose or recording that matter. For example, book, file, painting, inscription and even computer files are all documents. However, it does not include Indian currency notes.
Enactment	Shall include a Regulation (as hereinafter defined) and any Regulation of Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid; It has been held that an "enactment" would include any Act (or a provision contained therein) made by the Union Parliament or the State Legislature.
Financial year	FY shall mean the year commencing on the first day of April.
Year	Means - A year reckoned according to the British calendar (Jan to Dec)

Good Faith	➢ A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not; ➢ The question of good faith under GCA is one of fact. It is to be determined w.r.t. the facts and circumstances of each case. ➢ The term "good faith" has been defined differently in different enactments. ➢ This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and the definition given in that particular enactment has to be followed. ➢ Definition may be applied only if there is nothing repugnant in context. In Maung Aung Pu Vs. Maung Si Maung, it was pointed out that: ➢ the expression "good faith" is not defined in the Indian Contract Act, 1872 and definition given here in GCA, 1897 does not expressly apply the term on ICA. ➢ The definition of good faith as is generally understood in the civil law, and which may be taken as a practical guide in understanding the expression in ICA ➢ The definition is that - Nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence. ➢ An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.
Government	shall include both the Central Government and State Government.
Immovable Property	shall include: ➢ Land, ➢ Benefits to arise out of land, and ➢ Things attached to the earth, or ➢ Permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in GCA will apply. Example: 1. In Shantabai v. State of Bombay, the Supreme Court pointed out that trees must be regarded as immovable property (IP) because they are attached to or rooted in the earth. 2. An agreement to convey forest produce like tendu leaves, bamboos etc., the soil for making bricks, the right to build on and occupy the land for business purposes and the right to grow new trees and to get leaves from trees that grow in further are all included in the term IP. 3. Tree is an IP. But timber is not an IP. 4. Right of way to access from one place to another, may be considered as IP 5. Right to drain of water is NOT IP.

	6. Any machinery fixed to the soil, standing crops can be held as IP 7. Insurance Policies covering immovable property – Not covered under IP Example: Ananda Behera v. State of Orissa. "Right to catch or carry fish" as an IP.
Imprisonment	shall mean imprisonment of either description as defined in the Indian Penal Code; i.e., Rigorous or Simple imprisonment
Movable Prop	mean property of every description, except immovable property.

Section 4 is transition provision and hence intentionally not covered here

Section 5: Coming into operation of enactment. 10 15

- Where, if any specific date of enforcement is prescribed in the Official Gazette, Act shall into enforcement from such date.
- Where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of:
  - Governor General (for Acts made before commencement of Indian Constitution)
  - the President in case of an Act of Parliament.

Example:
SEBI (ICDR) (5th Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August 2015 w.e.f. 1 January 2016. Here, this regulation shall come into force on 1st January 2016 rather than the date of its notification in the gazette.

Notes:
1. Where an Act empowers the government to bring any of the provisions into operation on any day which it deems fit, no Court can issue a mandamus with a view to compel the Government to bring the same into operation on particular day.
2. If a sufficient time has elapsed since an Act or any of its provisions has been passed and it has not been brought into force (operation) by the Government, the Court through a writ can direct the Government to consider the question as to when the same should begin to operate.
3. Effective date of Rules:
   Supreme Court held that effective date of Rules would be when the Rules are published vide Gazette notification and not from date when the Rules were under preparation.
4. Law takes no cognizance of fraction of day. It comes into force from midnight.
   Example – Law which comes into force on 1st Jan shall apply from midnight of 31st December.
5. All laws are applicable prospectively unless otherwise mentioned specifically.

Section 6: Effect of Repeal: 11 12

Where any Central legislation or regulation repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not: [Revive Right Penalty Litigation]
- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

- Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- Affect any inquiry, litigation or remedy w.r.t. such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

Important Case Laws:

Kolhapur Canesugar Works Ltd. V, Union of India	Supreme Court held that Sec 6 only applies to repeal and not to omissions and applies when repeal is of a Central Act or Regulation and not of a Rule.
Navrangpura Gam Dharmada Milkat Trust v. Ramtuji Ramaji	• 'Repeal' of provision is in distinction from 'deletion' of provision. • 'Repeal' ordinarily brings about complete obliteration of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision. • 'Deletion' ordinarily takes effect from date of legislature effecting the said deletion, never to effect total wiping out of the provision as if it never existed.

Example:

The 3 farm laws were repealed after 1 year of protest by the farmers.

Section 6A: Repeal of Act making textual amendment in Act or Regulation

- Where any Central Act or Regulation repeal any enactment
- then such repeal shall not affect continuance of any amendment or insertion made by the enactment so repealed.

Section 7: Revival of repealed enactments:

- In any Central Act or Regulation made after commencement of this Act,
- for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed,
- it shall be necessary to expressly state that purpose.

Section 8: Construction of references to repealed enactments

- Where this Act or Central Act or Regulation made after the commencement of this Act,
- repeals and re-enacts, with or without modification, any provision of a former enactment,
- then references in any other enactment or in any instrument to the provision so repealed shall,
- unless a different intention appears, be construed as references to the provision so re-enacted.

Example:

1. Companies Act 1956 was repealed and re-enacted as Companies Act, 2013. In such case, every other Act which had reference to Companies Act 1956 will be construed as reference to 2013 unless different intention appears.
2. In section 115 JB of the Income Tax Act, 1961, for calculation of book profits, the Co. Act, 1956 are required to be referred. With the advent of Co. Act, 2013, the corresponding change has not been made in section 115 JB of the Income Tax Act, 1961. On referring of Sec. 8 of the GCA, book profits to be calculated u/s 115 JB of the Income Tax Act will be as per the Co. Act, 2013.

Section 9: Commencement and termination of Time: 14

- In any legislation or regulation, it shall be sufficient,
- for purpose of excluding the first in a series of days to use the word "from" &
- for the purpose of including the last in a series of days to use the word "to".
- In simple words – Where the word "from" is used, exclude that particular date and where the word "to" is written, "include" that date.

Example:
A company declares dividend for its shareholder in its AGM held on 30/09/2016. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e., from 01/10/2016 to 30/10/2016. In this series of 30 days, 30/09/2016 will be excluded and last 30th day i.e., 30/10/2016 will be included.

Section 10: Computation of time: 18 30

- Whereby any legislation or regulation,
- any act is directed to be done in any court or office on a certain day or within prescribed period
- then, if the Court or office is closed on that day or last day of the prescribed period,
- the act shall be considered as done in due time if it is done on the next day afterwards on which the Court or office is open.

Note – Even if the offices or Court are closed because of some random holiday or Sunday or Saturday or any reason, this provision will still apply.

Section 11: Measurement of Distances 17

Unless a different intention appears – Measure in a straight line on a horizontal plane.

Example: Distance between two cities by roadways is 100 kms and by water ways 80 kms. For purpose of any Central Act under GCA, distance shall be measured in a straight line on a horizontal plane.

Section 12: Duty to be taken pro rata in enactments

- Whereby any enactment, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise,
- then a like duty is leviable according to the same rate on any greater or less quantity.

Section 13: Gender and number 13 32

In all legislations and regulations, unless there is anything repugnant in the subject or context-

- Words importing the masculine gender shall be taken to include females, (i.e., he includes she) and
- Words in singular shall include the plural and vice versa.

Exception: Where word used conveys a specific gender, there is a presumption that provisions of GCA do not apply. For example: 19

1. the word 'bullocks' could not be interpreted to include 'cows'.
2. The word 'male descendants' cannot be interpreted to include females

Section 14: Power and Functionaries:

Powers conferred by Central Acts may be exercised from time to time as occasion requires.

Section 15:

- Whereby any legislation or regulation,
- a power to appoint any person to fill any office is conferred, then unless otherwise provided,
- any such appointment, may be made either by name or by virtue of office.

Section 16: Power to appoint to include power to suspend or dismiss: 20

- The authority having for the time being power to make the appointment
- shall also have power to suspend or dismiss any person so appointed

Example - Wherever the law provides that court will have the power to appoint, suspend or remove a receiver, the legislature simply enacted that wherever convenient the court may appoint receiver and it was implied within that language that it may also remove or suspend him

Section 17: Substitution of Functionaries:

- For indicating the application of a law to every person executing the functions of an office,
- it shall be sufficient, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

Section 18: Successor

- For indicating the relation of a law to successors of any functionaries,
- it shall be sufficient to express its relation to the functionaries.

Section 19: Official Chiefs and subordinates

A law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior.

Section 20: Construction of orders, etc., issued under enactments

- Whereby any legislation or regulation,
- a power to issue any notification, order, scheme, rule, form, or by-law is conferred,
- then expression used in such notification, etc., shall, unless otherwise specified, have the same respective meaning as in the Act or regulation conferring power.

Section 21:

- Where any legislation or regular confers the power to issue notifications, etc.,
- it shall be deemed to include power to add, to amend, vary or rescind such notifications, etc.

Section 22: 21

- Where, by any Central Act or Regulation (which is not in force), on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders thereunder,
- then that power may be exercised at any time after passing of Act /Regulation (even before commencement thereof);
- but such rules, bye-laws or orders shall not take effect till commencement of Act or Regulation.

For example: If Companies Act, 2013 was passed on 29th Aug 2013. It authorised CG to make rules related to NCLT. CG made rules related to NCLT in 2014. However, NCLT provisions were not implemented till 2016. In such cases, the NCLT Rules will also apply only from 2016.

Section 23: Publication for public comments: 22 28

Where power to makes Rules, etc. is subject to the condition of rules or bye-laws being made after previous publication, then:

Publish draft → Specify date → Consider objection → Publish in OG

a. Publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby (in manner prescribed)
b. It shall be published with the draft notice specifying a date on or after which the draft will be taken into consideration.
c. Consider any objection or suggestion which may be received from any person w.r.t. draft before the date so specified;
d. Publication in the Official Gazette of such rule or bye-law after previous publication shall be conclusive proof that the rule or bye-laws has been duly made

Conclusive presumption - After the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules has been followed. Any irregularities in the publication of the draft cannot therefore be questioned.

Note - It is also open to the authority to make suitable changes in the draft before finally publishing them. It is not necessary for that authority to re-publish in the amended form before their final issue so long as the changes made are ancillary to the earlier draft and cannot be regarded as foreign to the subject matter thereof.

Section 24: Continuation of orders etc., issued under enactments repealed and re-enacted

- If a statute is repealed and re-enacted in the same or substantially the same terms, the re-enactment neutralizes the previous repeal and the provisions of the repealed Act which are re-enacted, continue in force without interruption.
- If, however, the statute is repealed and re-enacted in somewhat different terms, the amendments and modifications operate as a repeal of provisions of repealed Act which are changed by and are repugnant to the repealing Act.

Example - The Mines Act of 1923 was repealed and replaced by the Mines Act of 1952. Rules made under the repealed Act must be deemed to continue in force by virtue of this section until superseded.

Section 25: Recovery of fines (to be done as per IPC and CCrP):

- Sec 63 to 70 of the Indian Penal Code (IPC) and
- provisions of Code of Criminal Procedure w.r.t issue and execution of warrants for levy of fines
- shall apply to all fines imposed under any Act, Regulation, etc.,
- unless otherwise specified.

Section 26: Provision as to offence punishable under two or more enactments

- Where an act or omission constitutes an offence under 2 or more enactments,
- then offender shall be liable to be prosecuted & punished under either or any of those enactments,
- but shall not be punished twice for the same offence.

Note – As per Supreme Court, a plain reading of sec 26 shows that there is no bar to trial or conviction of an offender under 2 enactments, but there is only a bar to punishment twice for the same offence.

Additional Points:

1. When there are 2 alternative charges in same trial, e.g., sec 409 of IPC and sec 5(2) of Prevention of Corruption Act, the fact that accused is acquitted of one of the charges will not bar his conviction on the other. [M.P. v. V.R. Agnihotri]
2. This provision apply only when 2 offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

Section 27: Meaning of service by post:

Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

(i) Properly Addressing

(ii) Pre-paying, and

(iii) Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Important case laws:

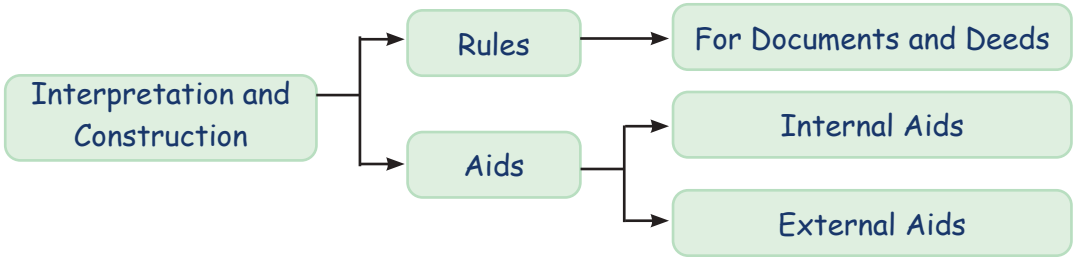
United Commercial Bank v. Bhim Sain Makhija	A notice when required by law to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act is neither tenable nor based upon sound exposition of law.
Jagdish Singh.v Natthu Singh	Held that - where notice is sent to landlord by registered post, and it is returned by tenant with an endorsement of refusal - presumed notice has been served.
Smt. Vandana Gulati v. Gurmeet Singh	Held that - where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved. Endorsement 'not claimed/not met' is sufficient to prove deemed service thereof.

Section 28, 29 and 30 – Intentionally not covered.

The End

Chapter 13
Interpretation Of Statutes

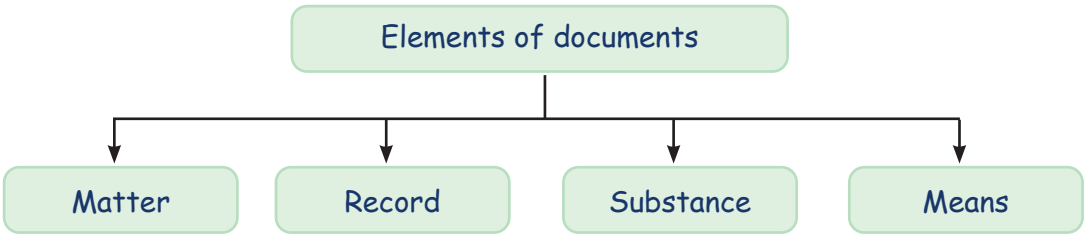
Chapter Map



Important Definitions

1. Statute
   - To the common man the term 'Statute' generally means laws and regulations of various kinds irrespective of the source from which they emanate.
   - In India the constitution provides for the passing of a bill in Lok Sabha and Rajya Sabha and finally after obtaining the assent of the President of India to it, it becomes an Act of Parliament or Statute.

2. Document
   - A document is a paper or other material thing giving information, proof or evidence of anything.
   - Section 3 of the Indian Evidence Act, 1872 states that 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.
   - Section 3(18) of the General Clauses Act, 1897 states that the term 'document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording this matter.



3. Elements
   - Matter: This is the first element. Its usage with the word "any" shows that the definition of document is comprehensive.
   - Record: This second element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description.

- Substance: This is the third element on which a mental or intellectual element comes to find a permanent form
- Means: This represents forth element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.

4. Instrument:
   - Formal legal document which creates or confirms a right or records a fact.
   - Formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form or a formal legal document having legal effect, either as creating a right or liability or as affording evidence of it.
   - Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

5. Deed:
   - An instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition.
   - All Deeds are instruments but all instruments may not be deeds.

Interpretation/Construction

Interpretation

- The process by which the Courts seeks to ascertain the meaning of the legislature through the medium of the words in which it is expressed.
- The process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it (or of the parties executing the document) is ascertained.
- Interpretation is resorted to in order to resolve any ambiguity in the statute.

Construction

- Is applied to a written statute or document
- It means to determine from its known elements its true meaning or the intention of its framers.
- Involves drawing conclusions beyond the actual expressions used in the text by referring to other parts of the enactment and the context in which the law was made.
- Thus, when you construe a statute you are attempting to ascertain the intention of the legislature.

Difference between Interpretation and Construction

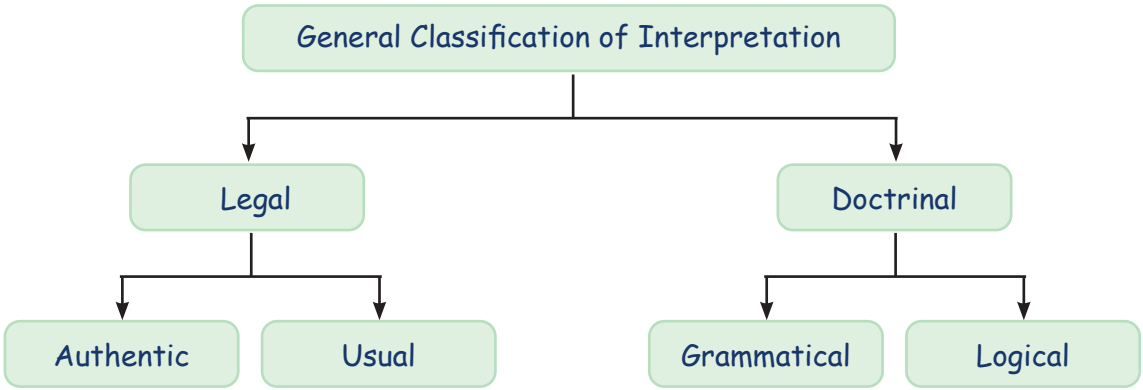
In practice construction includes interpretation and the terms are frequently used synonymously. However, these two terms have different connotations.

Interpretation	Construction
Ascertaining the meaning of words and the true sense in which the author intended that they should be understood	Drawing of conclusions from a statute that lie beyond the direct expression of the words used therein

Where the Court adheres to the plain meaning of the language used by the legislature	Where the court decides whether the wording was meant to cover the situation before the court

Importance of Interpretation

- Interpretation is resorted to in order to resolve any ambiguity in the statute.
- It is the art of finding out the true sense of words that is to say the sense in which their author intended to convey the subject matter.
- In relation to statute law, interpretation is of importance because of the inherent nature of legislation as a source of law.



Note

- Authentic is when rule of interpretation is derived from the legislator himself.
- Usual is when rule of interpretation is derived from some other source such as custom or case law.
- Grammatical is when the court applies only the ordinary rules of speech.
- Logical when the court goes beyond words and tries to discover intention of the statute in some other way.

Need of interpretation/ construction?

- The words of a statute can be vague, ambiguous or reasonably capable of more than one meaning.
- The fundamental rule of interpretation of a statute is that it should be expounded according to the intent of those that made it.
- The purpose of interpretation is to discern the intention which is conveyed either expressly or impliedly by the language used.
- Normally, grammatical interpretation is the only approach to be adopted. This is based on the principle of absoluta sententia expositore non indiget meaning "clear words need no explanation." Where the law is clear and unambiguous the court shall construe it based on the strict grammatical meaning. The emphasis in grammatical interpretation is on "what the law says."
- However, where the grammatical interpretation leads to a manifest absurdity or is logically flawed, the courts can adopt the logical interpretation which seeks to ascertain "what the law means".

Rules Of Interpretation/ Construction

Primary Rules

1. Rule of Literal Construction
   - It is a cardinal rule of construction and it is the primary duty of the court that a statute must be construed literally and grammatically giving the words their ordinary and natural meaning.
   - If the phraseology of a statute is clear and unambiguous and capable of one and only one interpretation, then it would not be correct to extrapolate these words out of their natural and ordinary sense. "Absoluta sententia expositore non indiget"
   - If there is an inconsistency with any express intention or declared purpose of the statute, or it involves any absurdity, repugnancy, inconsistency, the grammatical sense must then be modified, extended or abridged only to avoid such an inconvenience, but no further.
   - Technical words are to be understood in technical sense

2. Rule of Reasonable Construction (Interpretatio fienda est ut res magis valeat quam pereat)
   - the words of a statute must be construed 'ut res magis valeat quam pereat' meaning thereby that words of statute must be construed so as to lead to a sensible meaning.
   - When the words of an enactment are capable of two constructions that there is scope for interpretation or construction. Then, that interpretation, which furthers the object, can be preferred to that which is likely to defeat or impair the policy or object.
   - When the grammatical interpretation leads to a manifest absurdity then the courts shall interpret the statute so as to resolve the inconsistency and make the enactment a consistent whole, it is permissible to depart therefrom and to interpret the provision of statutes only to the extent it avoids such absurdity and no further. This is the Golden Rule of Interpretation

3. Rule of Harmonious Construction
   - The expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute.
   - This rule is applied when there is a conflict between two provisions of a statute.
   - Where an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the court would be justified in assuming that the legislature used the expression in the sense, which would carry out its objects and reject that which renders it invalid.
   - "Generalia specialibus non derogant". A specific rule will override a general rule.
   - This rule can be adopted only when there is a real and not merely apparent conflict between provisions, where the words of a statute, on a reasonable construction thereof, admit of one meaning only then such natural meaning will prevail.
   - In some cases, statute may give a clear indication as to which provision is subservient and which overrides. This is done by the use of the terms "subject to", "notwithstanding" and "without prejudice".
     a) Subject to : When the same subject matter is covered by that provision and by another provision or enactment subject to which it operates and there is a conflict between them, then the latter will prevail over the former.

b) Notwithstanding : Unlike the "subject to" clause, the notwithstanding clause has the effect of making the provision prevail over others.

c) Without prejudice : When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions the particular provisions would not restrict or circumscribe the operation and generality of the preceding general provisions.

4. Rule in Heydon's Case or Mischief Rule

- What was Heydon's Case? In Heydon's case (1584 3 Co Rep 79 P. 637), it was laid down by the Barons of the Exchequer that "for the true and sure interpretation of all Statutes in general, four things are to be discerned and considered.
  a. What was the law before the making of the act?
  b. What was the defect, mischief, hardship caused by the earlier law?
  c. How does the act of Parliament seek to resolve or cure the mischief or deficiency?
  d. What are the true reasons for the remedy?
- The intention of this rule is always to make such construction as shall suppress the mischief and advance the remedy according to the true intention of the legislation.
- Applying Heydon's case courts will be bound to look at the state of the law at the time of the passing of the enactment and not only as it then stood, but under previous Statutes too.
- The mischief rule can be applied only if there is any ambiguity in the present law.

5. Rule of Beneficial Construction

- This is strictly speaking not a rule but a method of interpreting a provision liberally so as to give effect to the declared intention of the legislation.
- Beneficial construction will be given to a statute, which brings into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past.
- In such cases it is permissible to give an extended meaning to words or clauses in enactments.
- But this can only be done when two constructions are reasonably possible and not when the words in a statute are quite unequivocal.

6. Rule of Exceptional Construction

- We have already seen that the words of a statute must be construed so as to give a sensible meaning to them if possible. They ought to be construed ut res magis valeat quam pereat.
- "And" and "Or"

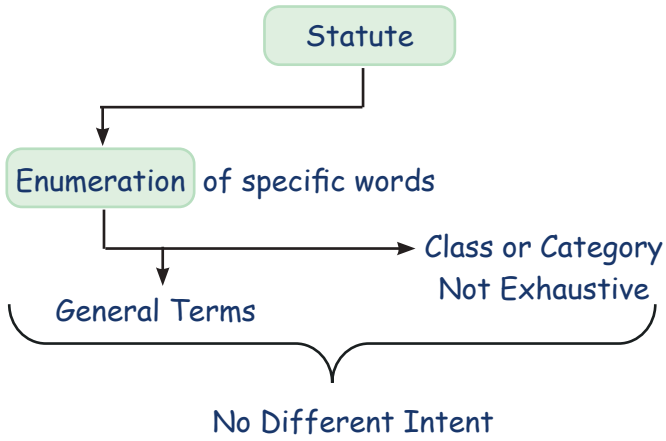
And	Or
A particle joining words and sentences and expressing the relation of connection or addition.	A disjunctive particle that marks an alternative, generally corresponding to "either", as "either this or that".
The word "and" is normally conjunctive that is used to conjoin words, clauses or sentences, signifying that something is to follow in addition to that, which precedes.	

But sometimes "and" is read as "or" and vice versa to give effect to the manifest intention of the legislature as disclosed from the context.That would depend on the context and meaning of other provisions in the same statute or document.

- "May", "Must" and "Shall"
  a) 'May' signifies permission and implies that the authority has been allowed discretion. "May" though permissive sometimes has compulsory force and is to be read as shall. Where the word 'may' has been used as implying a requisite condition to be fulfilled, the court will and ought to exercise the powers which it should and in such a case the word 'may' will have a compulsory force.
  b) 'Must' is doubtlessly a word of command.
  c) "Shall" though mandatory is to be read as may. It is well – settled that the use of the word 'shall' does not always mean that the enactment is obligatory or mandatory; it depends upon the context in which the word 'shall' occurs and on the purpose for which the requirement has been enacted, particularly in the context of the other provisions of the Act and the general scheme thereof.

7. Rule of Ejusdem Generis

- The term 'ejusdem generis' means 'of the same kind or species'.
- "Where specific words pertaining to a class or category or genus are followed by general words, the general words shall be construed as limited to the things of the same kind as those specified."



- Applicability:
  a) The statute contains an enumeration of specific words
  b) The subject of enumeration constitutes a class or category
  c) That class or category is not exhausted by the enumeration
  d) General terms follow the enumeration; and
  e) There is no indication of a different legislative intent.
- The rule of ejusdem generis is not an absolute rule of law but only a part of a wider principle of construction and therefore this rule has no application where the intention of the legislature is clear.
- Exceptions to the Rule:
  a) If the preceding term is general and that which follows, this rule cannot be applied.
  b) Where the particular words exhaust the whole genus.
  c) Where the specific objects enumerated are essentially diverse in character.
  d) Where there is an express intention of legislature that the general term shall not be read ejusdem generis the specific terms.
- This rule has to be applied judiciously. This rule may be understood as an attempt to settle a conflict between specific and general words.

Secondary Rules

1. Doctrine of Noscitur a Sociis
   - Noscitur a Sociis means that when two or more words that are susceptible of analogous meaning, are coupled together they are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is the meaning of the more general word being restricted to a sense analogous to that of the less general.
   - Examples of the principal of Noscitur a Sociis are as follows:
     a) Fresh orange juice is not a fruit juice. While dealing with a Purchase Tax Act, which used the expression "manufactured beverages including fruit-juices and bottled waters and syrups". It was held that the description 'fruit juices' as occurring therein should be construed in the context of the preceding words and that orange-juice unsweetened and freshly pressed was not within the description. (Commissioners. v. Savoy Hotel, (1966) 2 All. E.R. 299)
     b) Private Dispensary of a doctor is not a commercial establishment. In dealing with the definition of commercial establishment in Section 2 (4) of the Bombay Shops and Establishments Act, 1948, which reads, "commercial establishment means an establishment which carries on any business, trade or profession", the word 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary of a doctor was not within the definition. (Dr. Devendra M. Surti v. State of Gujrat, A.I.R. 1969 SC 63)

2. Doctrine of Contemporanea Expositio
   - This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority.
   - The maxim "Contemporanea Expositio est optima et fortissinia in lege" means "contemporaneous exposition is the best and strongest in the law."
   - A law should be understood in the sense in which it was understood at the time when it was passed.
   - The maxim "optima legum interpres est consuetude" simply means, "Custom is the best interpreter of law".
   - This maxim is to be applied for construing ancient statutes, but not to Acts that are comparatively modern.

INTERNAL AIDS TO INTERPRETATION/ CONSTRUCTION

Long Title	Preamble	Heading	Marginal Notes	Definitional Sections
Illustrations	Proviso	Explanation	Schedules	Read the Statute as a Whole

1. Long Title
   - An enactment would have what is known as a 'Short Title' and also a 'Long Title'.
   - The 'Short Title' merely identifies the enactment and is chosen merely for convenience
   - The 'Long Title' describes the enactment and does not merely identify it.

- The title may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment.

2. Preamble
   - The Preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title.
   - The Preamble may recite the ground and the cause of making a statute and the evil which is sought to be remedied by it.
   - Like the Long Tile, the Preamble of a Statute is a part of the enactment and can legitimately be used for construing it.
   - However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase have more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.
   - Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear.

3. Heading
   - In an Act, we would generally find that a number of its sections referring to a particular subject are grouped together, sometimes in the form of chapters, prefixed by headings and/or Titles.
   - These Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts.
   - The headings of different portions of a Statute can be referred to determine the sense of any doubtful expression in a section ranged under any particular heading.
   - They cannot control the plain meaning of the words of the enactment though, they may, in some cases be looked at in the light of preamble if there is any ambiguity in the meaning of the sections on which they can throw light.
   - It may be noted that headings may sometimes be referred to know the scope of a section in the same way as the preamble.
   - But a heading cannot control or override a section.

4. Marginal Notes
   - Marginal notes are summaries and side notes often found at the side of a section or group of sections in an Act, purporting to sum up the effect of that section or sections.
   - They are not a part of the enactment, for they were not present when the Act was passed in Parliament but inserted after the Act has been so passed.
   - Hence, they are generally not an aid to construction however reference to marginal notes may be permissible in exceptional cases for construing a section in a statute.
   - Marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been used in construing the Articles.

5. Definitional Sections

- The legislature has the power to embody in a statute itself the definitions of its language and it is quite common to find in the Statutes 'definitions' of certain words and expressions used in the body of the statute.
- When a word or phrase is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it in interpreting a Section of the Act unless there be anything repugnant in the context. This is called an exhaustive definition.
- The Court cannot ignore an exhaustive statutory definition and try and extract what it considers to be the true meaning of the expression independently of it.
- The purpose of a definition clause is two-fold:
  (i) to provide a key to the proper interpretation of the enactment, and
  (ii) to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part every time the legislature wants to refer to the expressions contained in the definition.
- Construction of definitions may be understood under the following headings:

Restrictive and extensive definitions → Ambiguous definitions → Definitions subject to a contrary context

(i) Restrictive and extensive definitions:

The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When word is defined as:	What it denotes:
'means'	Restrictive and Exhaustive We must restrict the meaning of the word to that given in the definition
'includes'	Extensive Here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.
'means and includes'	Exhaustive
'to apply to and include'	Extensive Where an expression is defined in an Act, it must be taken to have, throughout the Act, the meaning assigned to it by the definition, unless by doing so any repugnancy is created in the subject or context. Example: Section 2(m) of the Consumer Protection Act, 1986 contains an inclusive definition of 'person'. It has been held to include a 'company' although it is not specifically named therein.
'is deemed to include'	Inclusive or Extensive Words are used to bring in by a legal fiction something within the word defined which according to its ordinary meaning is not included within it.

(ii) Ambiguous definitions:

Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

(iii) Definitions subject to a contrary context:

When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

6. Illustrations
   - Many, though not all, sections have illustrations appended to them.
   - These illustrations follow the text of the Sections and, therefore, do not form a part of Sections.
   - However, illustrations do form a part of the statute and are considered to be of relevance and value in construing the text of the sections.
   - However, illustrations cannot have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.

7. Proviso
   - The function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there.
   - A proviso is embedded in the main body of the section and becomes an integral part of it.
   - Provisos that are so included begin with the words, "provided that".
   - The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.
   - Ordinarily a proviso is not interpreted as stating a general rule.
   - Exception clauses are intended to restrain the enacting clause to particular cases.
   - Savings clause is used to preserve from destruction certain rights, remedies, or privileges
   - It is a cardinal rule of interpretation that a proviso or exception to a particular provision of a statute only embraces the field which is covered by the main provision.
   - It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

8. Explanation
   - An Explanation is at times appended to a section to explain the meaning of certain words or phrases used in the section or of the purport of the section.
   - An Explanation may be added to include something within the section or to exclude something from it.
   - An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section.

- It should not be so construed as to widen the ambit of the section.
- Objects of an explanation to a statutory provision:
  (i) Explain the meaning and intendment of the Act itself
  (ii) Clarify any obscurity and vagueness (if any) in main enactment to make it consistent with the object
  (iii) Provide an additional support to the object of the Act to make it meaningful and purposeful
  (iv) Fill up the gap which is relevant for the purpose of the explanation to suppress the mischief and advance the object of the Act
  (v) Cannot take away a statutory right
- However, it would be wrong to always construe an explanation as limited to the aforesaid objects. The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose

9. Schedules
- The Schedules form part of an Act. Therefore, they must be read together with the Act for all purposes of construction.
- However, the expressions in the Schedule cannot control or prevail over the expression in the enactment.
- If there appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail.
- They often contain details and forms for working out the policy underlying the sections of the statute

10. Read the Statute as a Whole
- It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only.
- The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible.
- And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.
- One of the safest guides to the construction of sweeping general words is to examine other words of like import in same enactment or instrument to see what limitations must be imposed on them.
- If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.
  Example: If one section of an Act requires 'notice' should be given, then a verbal notice would generally be sufficient. But, if another section provides that 'notice' should be 'served' on the person or 'left' with him, or in a particular manner or place, then it would obviously indicate that a written notice was intended

EXTERNAL AIDS TO INTERPRETATION/CONSTRUCTION

Apart from the statute itself there are many matters which may be taken into account when the statute is ambiguous. These matters are called External aids to Interpretation.

Historical Setting	Consolidating Statutes & Previous Law	Usage	Earlier & Later Acts and Analogous Act	Dictionary Definitions	Use of Foreign Decisions

1. Historical Setting
   - The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment.
   - We have to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.
   - History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.
   - We have also to consider whether the statute in question was intended to alter the law or leave it where it stood before.

2. Consolidating Statutes & Previous Law
   - The Preambles to Statutes contain expressions such as "An Act to consolidate" the previous law, etc.
   - In such a case, the Courts may stick to the presumption that it is not intended to alter the law.
   - They may solve doubtful points in the statute with the aid of such presumption in intention, rejecting the literal construction.

3. Usage
   - Usage is also sometimes taken into consideration in construing an Act.
   - The acts done under a statute provide quite often the key to the statute itself.
   - It is well known that where the meaning of the language in a statute is doubtful, usage – how that language has been interpreted and acted upon over a long period – may determine its true meaning.
   - It has been emphasized that when a legislative measure of doubtful meaning has, for several years, received an interpretation which has generally been acted upon by the public, the Courts should be very unwilling to change that interpretation, unless they see cogent reasons for doing so.

4. Earlier & Later Acts and Analogous Acts
   - Exposition of One Act by Language of Another:
     a) The general principle is that where there are different Statutes in 'pari materia' (i.e. in an analogous case), though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.

b) If two Acts are to be read together then every part of each Act has to be construed as if contained in one composite Act.
c) But if there is some clear discrepancy then such a discrepancy may render it necessary to hold the later Act (in point of time) had modified the earlier one.
d) However, this does not mean that every word in the later Act is to be interpreted in the same way as in the earlier Act.

Where the later of the two Acts provides that the earlier Act should, so far as consistent, be construed as one with it	Then an enactment in the later statute was held to be excluded from the earlier statute as well.
Where a single section of one Act is incorporated into another statute	It must be read in the sense which it bore in the original Act from which it is taken consequently, it would be legitimate to refer to all the rest of the Original Act to ascertain what that Section means, though one Section alone is incorporated in the new Act

- Earlier Act Explained by the Later Act:
  Not only may the later Act be construed in the light of the earlier Act but it (the later Act) sometimes furnishes a legislative interpretation of the earlier one, if it is 'pari materia' and if, but only if, the provisions of the earlier Act are ambiguous.
  Where the earlier statute contained a negative provision but the later one merely omits that negative provision, this cannot by itself have the result of substantive affirmation.
  In such a situation, it would be necessary to see how the law would have stood without the original provision and the terms in which the repealed sections are re-enacted.
- Reference to Repealed Act:
  Where a part of an Act has been repealed, it loses its operative force. Nevertheless, such a repealed part of the Act may still be taken into account for construing the un-repealed part. This is so because it is part of the history of the new Act.

5. Dictionary Definitions
   - First we have to refer to the Act in question to find out if any particular word or expression is defined in it.
   - Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood.
   - However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act.
   - It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear.
   - Further, judicial decisions laying down the meaning of words in construing Statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries.
   - However, for technical terms reference may be made to technical dictionaries.

6. Use of Foreign Decisions
   - Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

Rules of Interpretation/ Construction of Deeds and Documents

- Find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.
- The principle of construction in case of a document and a deed, as of statute, does not differ so much except in some minor details.
- A deed must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be so interpreted as to bring them in harmony with other provisions if that interpretation does no violence to the meaning of which they are naturally susceptible.
- In all cases endeavor shall be made to find out how a reasonable and well-informed person would understand by the words used in the deed or document.

The golden rule of construction is to ascertain the intention of the parties to the instrument after considering all the words in their ordinary, natural sense.

- To ascertain this intention the Court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used.
- The intention deduced after the document is read as a whole should be the actual term the parties intended to agree.
- It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances.
- Where a particular word has a clear and definite significance and there is surety of the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of that word when used by someone who is not so equally skilled in the art of conveyancing.
- It is inexpedient to construe the terms of one deed by reference to the terms of another.
- It is an elementary rule of construction that the same word cannot have two different meanings in the same document, unless the context compels the adoption of such a course.
- It may also happen that there is a conflict between two or more clauses of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to.
  - If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one.
- Similarly, if one part of the document is in conflict with another part, an attempt should always be made to read the two parts of the document harmoniously, if possible.
  - If that is not possible, then the earlier part will prevail over the latter one which should, therefore, be disregarded.

The End

Chapter 14
Foreign Exchange Management Act, 1999

Short forms used:

AD	Authorized Dealer	Forex	Foreign Exchange
AP	Authorized Person	Forse	Foreign Securities
BOA	Branch, Offices and Agencies	IC	Indian Currency
CAT	Capital Account Transaction	LRS	Liberalised Remittance Scheme
CUAT	Current Account Transaction	PRI	Person Resident In India
FC	Foreign Currency	PROI	Person Resident Outside India
FEMA	Foreign Exchange Mgt. Act, 1999	TC	Travellers' cheque

Purpose of the Act:

An Act to consolidate and amend the law relating to foreign exchange with the objective of:

- facilitating external trade and payments and
- for promoting the orderly development and maintenance of forex market in India

With liberalization of Indian economy in 1991, the flow of Forex into India increased thus increasing the Foreign Exchange Reserve (FER) substantially. This act enables mgt. of FER for the country.

Enforcement of the Act – Directorate of Enforcement (ED)

Forex Regulation Act 1947, 1973 vs FEMA 1999:

	FERA	FEMA
Objective of Act	Conserve Forex	Promote and develop the forex
PRI	Based on citizenship	Based on stay in India
Strictness	Forex transaction is prohibited unless permitted	Forex transaction is permitted unless restricted
Mens-rea (guilty mind)	Presumption of existence of mens-rea	Mens-rea not presumed. Responsibility of prosecution to prove
Compounding of offence	Not allowed	All offences are compoundable

Broad Division of Act:

Preliminary [Sec 1-2]	Reg and Mgt. of Forex [Sec 3-9]	Authorised Person [Sec 10-12]	Contravention and Penalty [Sec 13-15]	Adjudication and Appeal [Sec 16-35]	Directorate of Enforcement [Sec 36-38]	Misc. [Sec 39-49]

Sec 1: Applicability

This Act extends to whole of India. Also applies to all BOA outside India owned or controlled by PRI

Sec 2: Definition

- Authorised Person [Sec 2(c)] means an:

Authorised Dealer (AD)	Money Changer	Off-shore banking unit	Other person auth. u/s 10 to deal in Forex or Forse

- Foreign Currency [Sec 2(m)] means any currency other than Indian Currency

- Foreign Exchange [Sec 2(n)] means Foreign Currency and includes:

Deposits, credits and bal. payable in any FC	Draft, TC, LoC, BoE drawn in IC but payable in FC	Drafts, TC, LoC, BoE drawn by Banks or Person outside India but payable in IC

- Foreign Security [Sec 2(o)] means:
  - Any security in the form of – Stock, shares, bond, debentures or other inst.
  - Denominated in FC,
  - And includes – Sec. denominated in FC but redemption or returns (int./div) payable in IC

- Capital Account Transaction [Sec 2(e)]: means a transaction which alters:
  a. Asset or Liabilities (incl. contingent liability) o/s India of PRI
  b. Asset/Liability in India of PROI

- Current Account Transaction [Sec 2(j)] means transaction other than CAT
  Without prejudice to the generality of the definition, CUAT includes:

Payments w.r.t., foreign trade, current business, services, & short-term banking & credit facility in OCOB	Payments w.r.t., interest on loans & as net income from investments	Remittances for living expenses of parents, spouse and children residing abroad	Expense w.r.t. foreign travel, education and medicare of parents, spouse and children

Section 2(u) – "Person" includes:

i. an individual,
ii. a HUF,
iii. a company,
iv. a firm
v. an association of persons or body of indv., (incorporated or not)
vi. every artificial juridical person, and
vii. any agency, office or branch owned or controlled by such person;

Section 2(v) – "Person Resident in India" means:

In case of Individual

A person residing in India for more than 182 days during the course of the preceding FY but does not include:

(A) a person who has gone out of India or who stays outside India, in either case:
   a. for or on taking up employment O/S India, or
   b. for carrying on O/S India a business or vocation outside India, or
   c. for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case.
However, if such person has come to or stays in India for any of the following purpose, he shall be considered as PRI (irrespective of no. of days of stay in India in preceding FY):
   a. for or on taking up employment in India, or
   b. for carrying on in India a business or vocation in India, or
   c. for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

Artificial Person

- any person or body corporate registered or incorporated in India
- any BOA in India owned or controlled by a person resident outside India
- a BOA outside India owned or controlled by a person resident in India

Section 2(w) – "Person Resident outside India" means a person who is not Resident in India

Concept Clarity Check:

1. Citizenship is not relevant for determining PRI or PROI
2. If in FY 2019-20, a person resides in India for 200 days. On 1st June 2020, the person leaves India for employment o/s India. Determine whether PRI or PROI? – For the period 1st April 2020 to 1st June 2020, such person shall be PRI and from 2nd June 2020 onwards, he will be a PROI (irrespective of the fact that he resides for more than 182 days in preceding FY)
3. Mr. S comes to India on 1st June 2019 for visiting his parents. However, his parents fall sick and he is certain that he will not be able to return for an year. He ends up staying with them till 31st July 2020. Is he a PRI in FY 20-21? – No, in FY 20-21, Mr. S will be considered as PROI. Even though he resided in India for more than 182 days in FY 19-20, he has not come for any of the 3 purpose (employment, business or uncertain period) and hence he is not a PRI in FY 20-21
4. Residential status is not for a year. It's on a particular date. (Unlike Income Tax Act, 1961)
5. Is it mandatory for a person to reside in India for more than 182 days in the previous FY to be considered as PRI? – Umm, No. If he resides for <=182 days in preceding FY, but comes to India in the current year for the 3 purpose, he will become PRI in current year.
6. Where a student is leaving India for higher studies, RBI has clarified that they shall be treated as PROI majorly because of their intention to stay outside India for an uncertain period and the fact that they start working there to take care of their expenses

Sec 3: Dealing in Foreign Exchange, etc.

No person (PRI & PROI) shall:

Deal in or transfer Forex or Forse to any person other than AP	make any payment to/for credit of PROI	Receive any payment from PROI otherwise through an AP*	Enter into Financial Transaction in India as consideration for acq. of asset o/s India

*Where any such payment is received without corresponding inward remittance, it shall be deemed to be received through person other than AP

However, the above restricted transactions may be carried on:

i. If otherwise provided in this Act, Rules or Regulation, or
ii. With permission of RBI (general or special)

Note –

1. For this section – Financial transaction means:

payment to/credit of any person or	receiving payment for or on behalf of any person or	to draw/issue/ negotiate any BoE or	trf. security or acknowledge debt

2. Purpose of this section is to regulate inflow and outflow of Forex in regulated manner and through APs only.

Sec 4: Holding of Forex

Except as provided in this Act, no PRI shall Acquire, Hold, Own, Possess or Transfer [HA! TOP] any Forex, Forse or Immovable Property situated o/s India.

Sec 5: Current Account Transactions:

Any person may sell or draw Forex to or from an authorised person if such sale or drawal is a CUAT.

CG may, in consultation with RBI, impose reasonable restrictions on CUAT.

Note: RBI cannot, on its own, impose any restriction on current account transaction. Restrictions can be imposed only by CG (in consultation with RBI)

Examples of CUAT:

1. Import in India of machinery for installation in factory from a UK vendor by payment in cash
2. Import in India of machinery for installation in factory from a UK vendor on credit for 3 months (this is CUAT because short term banking and credit facilities covered as CUAT)
3. Gift (say $1,000) by a PRI to PROI (note: Gift is given in FC)
4. Gift (say Rs. 1,000) by a PRI to PROI in India – This will be a CAT and not CUAT as this results in alteration of asset of the PROI in India. Although it is a CAT, such gifting is permitted as per Rules.

General Rule:

CUAT is freely permitted unless specifically restricted.

Schedules of FEM(CUAT) Rules, 2000

Schedule I - Drawal of forex by any person for following purpose is prohibited:

1. Remittance out of lottery winnings,
2. Remittance of income from Racing/riding etc. or any other hobby,
3. Remittance for purchase of lottery tickets, banned magazines, football pools, sweepstakes etc.,
4. Payment of commission on exports made towards equity investment in JV / WOS abroad of Indian cos.,
5. Remittance of dividend by any co. to which the requirement of dividend balancing is applicable,
6. Payment of commission on exports under Rupee State Credit Route, except commission upto 10% of invoice value of exports of tea and tobacco.
7. Payment related to "Call Back Services" of telephones,
8. Remittance of interest income on funds held in Non-Resident Special Rupee Account Scheme

[i.e., if any of the above remittance/payments is to be done by a PRI to a PROI, the PRI cannot go to AP and draw $s because these are prohibited]

Schedule II Schedule II – Transactions which require prior approval of GoI for drawal of forex

Purpose of Remittance	Ministry / Dept. of GoI who approval is required
Cultural Tours	Ministry of Human Resources Development, Dept. of Education and Culture (Now known as Ministry of Education)
Advt. in foreign print media by a SG & its PSUs > $ 10K Except where such advt. is for the purposes of promotn of tourism, foreign investments and international bidding Note: PSUs of CG not covered!	MoFinance, Dept. of Economic Affairs
Remittance of freight of vessel chartered by a PSU	MoSurface Transport, Chartering Wing
Payment of import (through ocean transport) by a Govt. Department or a PSU on C.I.F. basis (i.e., other than F.O.B and F.A.S. basis)	MoSurface Transport, Chartering Wing
Multi-modal transport Operators making remittance to their agents abroad	Registration Certificate from Director General of Shipping
Remittance of hiring charges of transponders: a. TV Channels b. Internet service providers	 Ministry of Info and Broadcasting Min. of Communication & Info. Tech

Remittance of container detention charges > the rate prescribed by Director General of Shipping	Ministry of Surface transport (Director General of Shipping)
Remittance of prize money / sponsorship of sports activity abroad by a person other than International/ National/State Level sports bodies, if the amt. involved > US$ 100,000	Ministry of HR Development, Dept of Youth Affairs & Sports (Now - Mo Youth Affairs and Sports)
Remittance for membership of P & I Club (protection and indemnity insurance)	Ministry of Finance (Insurance Division)

Schedule III Transactions which in excess of limits require prior approval of RBI for drawal of forex: [Liberalised Remittance Scheme]

1. Individuals – Avail forex facility for the following purpose within limit of USD 2,50,000 only. Additional remittance beyond limit shall require prior approval of RBI:
   a. Private visits to any country (except Nepal and Bhutan)
   b. Gift or donation
   c. Going abroad for employment
   d. Emigration (permanently settling in a country)
   e. Maintenance of close relatives abroad
   f. Travel for:

business	attending a conference	specialized training	for meeting expense of medical treatment/ check up abroad or accompanying a patient

   g. Expenses in connection with medical treatment abroad
   h. Studies abroad
   i. Any other current account transaction

   Provided, for (d), (g) and (h), individual may avail forex facility > $2,50,000 if it so required by country of emigration, medical institute offering treatment or the university, respectively

   Provided further that, where individual "Remits" any amount under this scheme in a FY, the applicable limit shall be reduced from $250K by such amount remitted (i.e., the limit of $250,000 is aggregate in FY)

   Provided also that for a PRI but not permanently resident in India and
   a. is a citizen of a foreign State other than Pakistan; or
   b. is a citizen of India, who is on deputation (to India) to the office or branch of a foreign co. or subsidiary or JV in India of such foreign co.,

   may make remittance up to his net salary (after deduction of taxes, PF, etc.)

   Explanation: For this schedule, a PRI on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which is not > 3 years, is a resident but not permanently resident.

2. Facilities for person other than individuals: Following shall require prior permission of RBI:

Particulars	Purpose	Limit
Donation	Donation for: a. creation of Chairs in reputed edu. Inst., b. contribution to funds (not being an invst. fund) promoted by educational Inst; and c. contribution to a technical inst./body in the field of activity of the donor co	> Lower of 1% of Forex Earnings during last 3 FY or $5Mn
Sale of flats/ plots in India	Commission (per transaction) to agent abroad for sale of residential flats or commercial plots in India	> Higher of $25,000 or 5% of Inward Remittance
Consultancy per project	Remittance for any consultancy w.r.t Infra projects and	> $10Mn per project
Consultancy per project	For other consultancy procured from o/s India	> $1 Mn per project
Pre-incorp expense	Remittance as reimbursement of pre-incorporation expense	> Higher of 5% of Investment brought into India or $100K

Note - Limit of $250,000 is irrelevant in case of person other than individuals

Additional Note:

1. Procedure for Drawal/remittance of Forex under Sch III shall be same as LRS
2. Approval for transaction under Sch II and III shall not be required where remittance is from:
   a) Resident Foreign Currency Account
   b) Exchange Earners' Foreign Currency A/C (except for remittance for membership of P&I club under Sch II and payment commission/pre-incorp under Sch III)
3. If a person is on visit abroad, he can incur expenditure stated in Sch III if he incurs it through International Credit Card (to the extent of limit on the card)

Note – If a transaction is not listed in any of the three schedule, it can be freely undertaken.

CAPITAL ACCOUNT TRANSACTION (SEC 6)

Capital Account Transaction [Sec 2(e)]: means a transaction which alters:

a. Asset or Liabilities (incl. contingent liability) o/s India of PRI
b. Asset/Liability in India of PROI
~~c. Includes transaction referred u/s 6(3)~~

1. Subject to (2), a person may sell or draw forex to/from AP for CAT

2. RBI (+CG) specify:
   - Class of CAT - involving Debt instruments, which is permissible
   - Limits for such permissible transactions
   - Conditions placed on such transactions

Provided that, RBI or CG shall not impose restriction on drawal of forex for:
- Payment due on account of amortization of loans or repayment of loans
- Depreciation of direct investment in OCOB

Subsection (2A):
CG (+RBI) specify:
Class of CAT - Not involving debt instruments, which is permissible
- Limits for such permissible transactions
- Conditions placed on such transactions

3. Omitted
4. PRI may hold, own, transfer or invest in:

Foreign Currency	Foreign Security	Immovable Property Outside India

Provided that it was
- acquired, held or owned by such person when he was PROI, or
- inherited from a PROI

As per RBI Clarification:
The following transaction are covered u/s 6(4):
1. FC accounts opened and maintained by PRI when he was PROI
2. Income from employment/business/vocation when o/s India taken up when he was PROI, or from investment when he was PROI or from gift/inheritance received when he was PROI
3. Forex held o/s India by a PRI acquired by way of inheritance from PROI
4. PRI may freely utilize eligible assets abroad or income/sales proceed therefrom after their return to India for making payment/fresh investments abroad without approval of RBI. Provided that, cost of investments is met completely out of eligible assets.

5. PROI may hold, own, transfer or invest in:

Indian Currency	Indian Security	Immovable Property in India

Provided that it was
- acquired, held or owned by such person when he was PRI, or
- inherited from a PRI (not PROI)

6. RBI may impose restrictions on BOA of PROI

7. Debt instrument means such instrument as determined by CG (+RBI) [Amendment]

CAT is broadly split into following categories as per FEM (Permissible CAT) Regulations 2000:

Permissible Transaction for PRI [Schedule I]	Permissible Transaction for PROI [Schedule II]	Transactions on which restriction cannot be imposed (amortisation and depreciation)	Prohibited CAT

Permissible Transaction for PRI [Schedule I]

[SL-AP CG in CID style that O2 kamm pad jaye]

Investment by PRI in ForSe	FC Loans raised in India and abroad by a PRI	~~Acq./~~Transfer of IP o/s India by a PRI	Guarantees issued by a PRI in favour of a PROI
Loans and Overdrafts (borrowings) by a PRI from a PROI	Export, import and holding of Currency/ currency notes	Maintenance of FC Accounts in India and o/s India by a PRI	Taking out of Insurance policy by a PRI from an insurance co. outside India
Loans and Overdrafts by a PRI to a PROI	Remittance outside India of Capital assets of a PRI	Undertake Derivative contracts	

Note - PRI may draw forex not > $250k per FY or such amt as decided by RBI for CAT in Sch I

Note – Drawal of forex as per Sch III (Facilities for individual) of FEM(CUAT) Rules, 2000 shall be subsumed within the above limit. (i.e., Sch I + Sch III = Max $250K)

Provided further that no part of the forex of $ 250,000 drawn above shall be used for remittance to non-co-operative countries and territories (notified by Financial Action Task Force (FATF)

Permissible Transaction for PROI [Schedule II]

[IPC ke baad GD doge to Achi Co. Degi offer]

Investment in India by a PROI, i.e., ➢ issue of security by a BC/entity in India and investment therein by PROI ➢ investment by a PROI to the capital of a firm/proprietorship concern/AOP in India.	Acquisition and transfer of IP in India by a PROI	EXIM of Currency/ currency notes into/from India by a PROI.	Guarantee by a PROI in favour of a PRI
Deposits between a PRI and a PROI.	FC Accounts in India of a PROI	Remittance o/s India of Capital assets in India of a PROI	Undertake Derivative contract

Prohibited CAT [Regulation 4]:

1. No PROI shall make investment in India in any co/partnership firm/proprietary or any entity which is engaged or proposes to engage [CARTN]:

in the business of Chit fund, or	Nidhi Company	agricultural or plantation activities	real estate business	construction of farm houses	trading in TDRs

Explanation:

For the purpose of this regulation, 'real estate business' shall not include:

development of townships,	construction of residential/commercial premises, roads or bridges and	registered REITs.

Note – PROIs are restricted from investment in business of Chit Funds but may be eligible to subscribe to such chits provided approval of Registrar of chits or officer of SG concerned is sought and in compliance with RBI T&Cs

2. No PRI shall undertake any CAT with a citizen/ resident/entity of Democratic People's Republic of Korea ("North Korea"), unless approval from CG

3. Any existing investment transactions with North Korea by a PRI shall be liquidated/settled within 180 days from the date of issue of this Notification, unless there is specific approval from the CG to continue beyond that period

The End

Chapter 15
Limited Liability Partnership Act, 2008

Introduction:

- LLP Act, 2008 received President's assent on 7th Jan 2009 and was enacted on Jan 9, 2009.
- It comprises 81 sections and 4 schedules.

Schedules:

First	Rights of partner and LLP in the absence of formal agreement
Second	Converting a firm into LLP
Third	Converting a private company into LLP
Fourth	Converting an unlisted company into LLP

Need and benefits:

- This act was introduced as an alternative corporate structure to meet evolving economic needs.
- It fills void between traditional unlimited liability partnerships & structured limited liability cos.
- It offers limited liability benefits while allowing flexible, partnership-like internal structuring based on mutual agreements.
- While the LLP itself will be liable to the full extent of its assets, the liability of the partners will be limited to the extent of their capital contribution.

Characteristics of an LLP

Body Corporate	Perpetual Succession	Separate Legal Entity	Mutual Agency
LLP Agreement	Common Seal	Limited Liability	Business for profit only
Compromise or Arrangement	Conversion into LLP	E-Efilling of documents	Foreign LLPs

Special characteristics worth understanding in detail:

Mutual Agency	All partners are agents of LLP alone. No one partner can bind other partner by his act
Limited Liability	The liability of partners will be limited to their agreed contribution in LLP. Such contribution may be of tangible or intangible nature or both

Definitions:

1. Address [(Sec 2(1)(a)]: "Address" in relation to a partner of LLP, means:
   (i) If he is an individual, his usual residential address; and
   (ii) If it is a body corporate, the address of its registered office.

2. Body Corporate [(Section 2(1)(d)]:

Means:	Includes:	Excludes:
A company	• LLP registered under this Act • LLP incorporated outside India and • Company incorporated outside India.	• Corporation Sole. • Co-operative Society • Any other body corporate notified by CG

3. Business [Sec 2(1)(e)] includes every trade, profession, service and occupation except any activity which CG may, by notification, exclude.

4. Financial Year [Sec 2(1)(l)]: means period from 1st April of a year to 31st March of following year. However, in the case of a LLP incorporated after 30th September of a year, FY may end on 31st March of next following year.
Example: LLP incorporated on 15/10/24 – FY will be 15/10/24 – 31/04/26

5. Foreign LLP [section 2(1)(m)]: It means an LLP formed, incorporated or registered outside India which establishes a place of business within India.

6. LLP Agreement [Section 2(1)(o)]: means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

7. Small LLP [Sec 2(1)(ta)]: means an LLP
(i) Having contribution <= 25 lakhs or higher amt. as may be prescribed not > Rs. 5 crores and
(ii) Turnover as per "Statement of Accounts and solvency" <= 40 lakhs or such higher amt. as may be prescribed not > Rs. 50 crores or
(iii) meets such other terms and conditions as may be prescribed.

Section 4: Non-Applicability of Indian Partnership Act, 1932

Save as otherwise provided, Indian Partnership Act, 1932 shall not apply to LLP's.

Section 5: Partners:

Individual or body corporate may become partners in LLP but exclude an individual if:
(i) He has been declared of having unsound mind by competent court.
(ii) He is an undischarged insolvent.
(iii) He has applied to be adjudicated as an insolvent and his application is pending.

Concept clarity check :
1. HUF is not a BC and hence cannot become partner in LLP.
2. Can one LLP become partner in another LLP? – Yes. Because LLPs are BC and BC can become partner. Similarly, foreign LLPs, foreign companies, etc. can also become partner in LLP.

Section 6: Minimum number of Partners:

Minimum- 2 Partners; Maximum- No Limit.

Provided that- If no. of partners is reduced below 2 and LLP carries on business for > 6 months, such partner shall be personally liable for obligations incurred by LLP after 6 months.

Section 7: Designated Partner (DP):

(1) At least 2 individuals ~~or BC~~ as DP and at least 1 DP shall be resident of India.
Resident in India means a person who has stayed in India for >= 120 days during the FY.

What if all partners are BC?
If all partners are BC or if one or more partners are individual and BC - 2 individual partners or nominees of BC shall act as DP.

Failure to appoint 2 DP: Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh for LLP and Rs. 50,000 for every partner.

(2) If incorporation document:
- specifies who are to be DP – such person shall be DP on incorporation, or
- state that each of the partner from time to time will be DP - Every partner shall be DP.

A person may become or cease to be DP in accordance with LLP Agreement.

(3) Every partner appointed as DP shall give prior consent to LLP. Thereafter, LLP shall file particulars of such DP with ROC within 30 days of his appointment in prescribed manner.

Failure to file with ROC: Liable for Rs. 5,000 + Rs.100/day max. up to Rs. 50,000 (LLP) & Rs.25,000 (DP).

(4) Every DP of LLP shall obtain Designated Partner Identification Number (DPIN) from CG.

Note – Director Identification Number (DIN) and DPIN can be used interchangeably.

Section 8: Liabilities of a DP:

Unless otherwise provided, DP shall be
(i) responsible for doing all acts of LLP including filing of documents, returns, statements etc.
(ii) liable to all penalties imposed on LLP.

Section 9: Changes in DP in case of vacancy

(1) LLP may appoint DP within 30 days of vacancy due to any reason.
(2) If at any time there is no DP or only 1 DP, each partner shall be deemed as DP.

Contravention: Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh for LLP and Rs. 50,000 for every partner.

INCORPORATION OF LLP

Section 11: Incorporation document

(1) Incorporation document shall
- (a) have 2 or more persons as subscribers to carry on lawful business with a view to earn profit
- (b) include a statement that all requirements of this Act and rules have been complied with:
  - made by advocate, CA, CS, Cost Accountant engaged in formation of LLP, AND
  - by any one of the subscribers,
- (c) be filed with ROC of State in which registered office of the LLP is proposed to be situated.

(2) Incorporation Document to include the following:

Name of LLP	Proposed Business	Address of RO	Name & Address of each Partner and DP	Other info.

(3) If a person makes a statement
- knowing it to be false, or
- does not believe it to be true.

shall be punishable for imprisonment up to 2 year AND fine of Rs. 10k - Rs. 5 lakhs.

Note: An LLP can be incorporated with profit motive. It cannot be an NPO.

Section-12: Incorporation by Registration

(1) On receipt of incorporation documents and statements u/s 11, Registrar shall retain such documents and within 14 days:
- Register the incorporation document, and
- Give the LLP a certificate of incorporation.

  Such certificate shall be signed by RoC and authenticated by official seal. It shall be conclusive evidence of incorporation of LLP with name specified therein.

(2) Statement delivered u/s 11 – Sufficient evidence of compliance with clause (a) of Sec 11.

Section 13: Registered Office of LLP and Change therein

(1) Every LLP shall have a RO to which all notices and communication may be addressed and received.

(2) A document may be served at RO on an LLP or its Partner or DP by

Sending it by post	Registered post	Any other manner prescribed.

(3) Change in RO- File notice to RO in prescribed manner.

Penalty- Rs. 500/day up to Rs.50,000 for LLP and its ~~Designated~~ Partners.

Section 14: Effect of Registration

On registration LLP shall be capable of

Suing or being sued	Doing and suffering all other acts BC may do and suffer	Acquiring, owning, holding or disposal of Property.	Having a common seal.

Section 15: Name

(1) Every LLP shall add suffix - LLP or Limited Liability Partnership to its name.
Example: ABC LLP or ABC Limited Liability Partnership.

(2) No LLP shall be registered with a name, which in opinion of CG is:
- Undesirable
- Identical or closely resemble to name of existing LLP or company or registered trademark.

Author's Note – Sec 15 of LLP prohibits from using a name identical to that of existing company. However, sec 4 of companies act, did not prohibit using name of existing LLP. This is merely a lacunae in law and may be rectified in future by amendment.

Section 16: Reservation of name

(i) A person may apply to RO in prescribed manner + fees for reservation of:
- Name of proposed LLP
- Name to which LLP proposes to change its name

(ii) ROC on satisfaction that the name is not identical or undesirable as per CG, reserves the name for 3 months from date of intimation.

Note – In Companies Act, as per Sec 4, name of company could only be reserved for 20/60 days.

Section 17: Rectification of name of LLP

(1) Notwithstanding anything contained in sec 15 & 16, during its first registration or upon registration with new name, if LLP is inadvertently registered with name identical or too similar to:
- Any other LLP, OR
- A registered trademark under Trade Marks Act, 1999

CG, upon application by affected LLP, trademark proprietor, or company, may direct LLP to change its name within 3 months from date of such direction.

Note: Application by proprietor is to be made within 3y of incorporation or change of name.

(2) On such change of name – notify ROC within 15 days. RoC to make changes in CoI within 30 days.

(3) If LLP is in default in complying with any direction, CG shall allot a new name to the LLP and the RoC shall enter the new name in register in place of the old name and issue a fresh certificate of incorporation with new name.

Provided that nothing shall prevent a LLP from subsequently changing its name.

Note – Unlike sec 16 of Companies Act, here CG cannot suo-motu order for rectification of name.

STEPS TO INCORPORATE LLP

Reservation of name : Applicant has to file e-Form RUNLLP for the same. → File e-Form FiLLiP for incorporating new LLP. → Execution of LLP agreement and and shall be filed within 30 days of incorporation

PARTNERS AND THEIR RELATIONS

Section 22: Eligibility to be partners

On incorporation of a LLP, the persons who subscribed names to incorporation document shall be its partners and any other person may become partner of LLP in accordance with the LLP agreement.

Section 23: Relationship of partners

(1) Save as otherwise provided, the mutual rights and duties of:
- Partners of a LLP, and
- LLP and its partners

shall be governed by the LLP agreement.

(2) LLP agreement & any changes made therein shall be filed with the RoC in prescribed manner + Fees.

(3) Any agreement in writing between LLP and subscribers before incorporation shall be valid only if ratified by ALL partners upon incorporation.

(4) In absence of agreement, the mutual rights and duties shall be determined by the First Schedule.

Section 24: Cessation of Partnership Interest

(1) A person may cease to be a partner:
- in accordance with LLP agreement with other partners or,
- in absence of agreement, by giving notice in writing > 30 days to other partners of his intention

(2) A person shall cease to be a partner of LLP in case of

Death of partner or Dissolution of LLP	Declared to be of unsound mind by competant court	applied to be adjudged as an insolvent or declared as an insolvent.

(3) Where a person has ceased to be a partner of a LLP, the former partner is to be regarded as still being a partner of the LLP unless-
- the person has notice that former partner has ceased to be a partner, or
- Notice that former partner has ceased to be a partner is delivered to RoC.

(4) Cessation of partner does not discharge a partner of obligation incurred while being a partner.

(5) Where a partner of a LLP ceases to be a partner, the former partner or a person entitled to his share case of the death or insolvency, shall be entitled to receive from the LLP-
- Actual partner contribution made by such former partner,
- Right to share in accumulated profit after deduction of accumulated losses.

(6) Former partner or entitled person (death/insolvency) shall not have any right to interfere in management of LLP.

Section 25: Registration of changes in partners

(1) Partner shall inform LLP of any change in name or address within 15 days of such change.

(2) A LLP shall file a notice with RoC within 30 days in case where-
- a person becomes or ceases to be a partner, file a notice with the Registrar
- there is any change in the name or address of a partner

(3) Such notice filed with RoC shall be-
- In prescribed manner + Fees
- Signed by DP
- If relates to incoming partner, shall contain a statement that he consents to becoming a partner, signed & authenticated in prescribed manner.

(4) Penalty: Rs. 10,000 for LLP & ~~Designated~~ Partners

(5) Former partner may file the above notice with RoC if he has reasonable cause to believe that LLP may not file such notice. RoC shall thereafter obtain confirmation from LLP w.r.t. such cessation.
If no confirmation is given by LLP in 15 days, RoC shall register such notice.

Section 26: Partner as agent

Partners are agent of the LLP but not of other partners.

Section 27: Extent of liability of LLP

(1) LLP is not bound by an act of a partner if-
- Such partner has no authority of doing such act.
- The person knows that he has no authority or does not know or believe him to be partner.

(2) LLP is liable to any person for wrongful act or omission by partner in course of business.

(3) The obligation of LLP shall be solely obligation of LLP.

(4) The liability of LLP shall be met out of property of LLP.

Section 28: Extent of liability of partner

(1) He is not personally liable, directly or indirectly for obligation solely by reason of being partner.

(2) A partner shall be personally liable for his own wrongful act or omission but not for wrongful act or omission of other partner.

Section 29: Holding out

(1) Where any person
- who by words spoken or written or by conduct,
- represents himself or knowingly represents himself as partner of LLP,
- such person is liable to any person who has on the faith such representation
- given credit to LLP (whether or not the person representing himself to be a partner know that such representation led to the person giving LLP the credit)

However, the LLP receiving such credit shall also be liable to extent of credit received.

(2) Where after a partner's death the business is continued in the same LLP name shall not by itself make his LR or his estate liable for any act of the LLP done after his death.

Section 30: Unlimited liability in case of fraud

(1) Unlimited liability in case of fraud:
- where act is carried out by LLP or any of its partner
- with an intent to defraud any creditor or any other person
- the liability of LLP & responsible partners shall be unlimited for all debts & other liabilities.

However, where such act is done by partner, Liability of LLP = Liability of partner, unless partner has acted without authority.

(2) Every person who was knowingly involved shall be punishable with
- Imprisonment up to 5 years and
- Fine of Rs.5,000 to Rs.5 Lakhs.

(3) Where an LLP or partners or employee has conducted business in fraudulent manner- Liable to compensate to any person who suffered losses or damages.
However, LLP shall not be liable if the above person acted without knowledge of LLP.

Section 31: Whistle blowing

(1) Court/Tribunal may reduce or waive penalty against any partner or employee if it is satisfied that
- he has provided useful information during investigation of such LLP; or
- when information given by him leads to LLP or any partner or employee being convicted.

(2) No partner or employee may be

Discharged	Suspended	Demoted	Threatened	Harrased

merely because he provided information to court or tribunal.

CONTRIBUTIONS

Section 32: Form of contribution

(1) Partner contribution may consist of tangible (movable/immovable) or intangible property or other benefits including money, promissory notes, and agreements to contribute cash or property, etc.

(2) The monetary value of partner's contribution shall be accounted and disclosed in the accounts.

Section 33: Obligation to contribute

(1) The obligation to contribute shall be as per LLP agreement.

(2) A creditor may enforce partners to contribute as per original obligation if he extends credit by relying on such original obligation as per the LLP agreement.

FINANCIAL DISCLOSURES

Section 34: Maintenance of books of account, other records and audit, etc.

(1) Proper Books of account (BOA) shall be maintained on cash or accrual basis as per double entry system at RO for prescribed period of time.

(2) Statement of Account and Solvency (SAS): Every LLP shall prepare such statement within 6 months from end of FY signed by all DP's and filed with RoC in prescribed manner.

(3) Accounts of LLP shall be audited as may be prescribed. CG may exempt certain LLP from audit.

(4) Penalty for contravention:

Nature of contravention	Penalty
Non-compliance of filing with RoC	LLP: Rs. 100/day up to 1 Lakh Every DP: Rs. 100/day up to 50,000
Non-compliance of • Maintenance of BOA • Maintenance of SAS • Audit of BOA	LLP- 25,000 to 5 Lakhs Every DP- Rs. 10,000 to Rs. 1 Lakh

Section 34(A): Accounting and auditing standards

CG in consultation with NFRA to prescribe accounting & auditing standards (as recommended by ICAI)

Section 35: Annual Return

(1) Every LLP shall file an annual return duly authenticated with RoC within 60d of closure of FY.
Example: Closure of FY- 31st March, then due date of filing – ~~31st~~ 30th May.

(2) Penalty: Rs.100/day max. up to Rs. 1 lakh for LLP and Rs. 50,000 for every DP.

Section 36: Inspection of document by registrar

Incorporation doc.	Name of partner & changes	SAS	Annual Return

shall be available for inspection to any person as per prescribed rules.

Section 37: Penalty for false statement

If in any return, statement or other document any person makes a statement

- which is false in any material particular, knowing it to be false; or
- which omits any material fact knowing it to be material

will be punishable with imprisonment up to 2 years AND fine 1 lakh to 5 lakhs.

Section 38: Power of registrar to obtain information

(1) RoC may require any person (including any present or former partner or DP or employee) of LLP to answer any question or supply any details or particulars in writing within a reasonable period.

(2) Failure to provide above info. - RoC shall have power to summon that person to appear in person.

(3) Contravention: Fine Rs. 2,000 to 25,000.

Section 39: Compounding of offences

For this section, RD means Regional Director or officer not below rank of RD authorised by CG

(1) RD may compound any offence which is punishable with fine only by collecting a sum which may extend up to max. fine for such offence but not less than min. fine for such offence.

(2) Compounding shall not apply to offence committed within 3 years from the date on which similar offence was compounded.
Note: Second or subsequent offence after 3 years shall be deemed to be first offence.

(3) Procedure for compounding:

- Application to be made to RoC who shall forward it, together with his comments thereon, to RD.
- Where any offence is compounded (whether before or after institution of prosecution), intimate RoC within 7 days from date on which offence is so compounded.

(4) Consequences of compounding:

- Where compounded before institution of prosecution - No prosecution shall be instituted
- Where compounding is made after institution of prosecution – RoC to intimate such compounding to court where prosecution is pending & thereafter offender shall be discharged.

(5) While dealing with proposal of compounding, RD may direct DP, partner or employees to file such return, account or other doc. as may be specified in the order.

Failure to comply with above order – Max amount of fine – Twice the amount provided in corresponding section in which punishment for such offence is provided.

ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHT

Section 42: Partners transferable interest

(1) Rights of a partner to:
- a share of profits & losses and
- receive distributions as per LLP agreement

are transferable either wholly or in part.

(2) Transfer of any such rights does not by itself:
- cause disassociation of partner or dissolution or winding up of LLP.
- entitle transferee to participate in management or access information w.r.t. LLP transactions

CONVERSION INTO LLP

Sec	Conversion	As per provision of:
55	Firm to LLP	Second Schedule
56	Private company to LLP	Third Schedule
57	Unlisted public co. to LLP	Fourth Schedule

Section 58: Registration and effect of conversion

(1) Registration:
- On satisfying that firm, private co. or unlisted public co. has complied with schedules,
- RoC shall register documents & issue certificate of registration.
- LLP shall be effectively incorporated from the date mention in the certificate of registration.

(2) LLP shall, within 15 days of date of registration, inform Registrar of Firms or RoC about such conversion & particulars of LLP in prescribed manner.

(3) Upon such conversion, LLP and partners of such LLP shall be bound as per respective schedule.

Effect of Registration:

Notwithstanding anything contained in any other law, from date of registration:
- There shall be LLP by name specified in certificate of registration registered under this Act;
- All tangible (movable/immovable) & intangible property, all assets, interests, rights, privileges, liabilities & whole undertaking of firm/co. shall be transferred to and shall vest in the LLP; and
- firm or co., shall be deemed to be dissolved & removed from records of Registrar.

Section 59: Foreign LLPs

CG may prescribe rules in this behalf (similar to Companies Act 2013).

Section 60: Compromise or arrangement (C/A) of LLP

(1) Where a C/A is proposed between

LLP and its creditors; or | LLP and its partners

- On application of LLP or of any creditor or partner or liquidator (in case of winding up),
- Tribunal may order meeting of creditors/partners to be called, held & conducted as prescribed.

(2) Sanction of C/A:

- If majority representing 3/4th in value of creditors/partners agree to any C/A, and
- Such C/A is sanctioned by the Tribunal by order
- Such C/A shall be binding on all creditors /partners / LLP / liquidator and contributories.

No order sanctioning any C/A shall be made by Tribunal unless it is satisfied that LLP has disclosed

- All material facts including latest financial position; and
- pendency of any investigation proceedings.

(3) File with RoC:

Tribunal's order shall be filed by LLP with RoC within 30 days after making such order and shall have effect only after it is filed.

Penalty for non-filing: Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh (for LLP) & Rs. 50,000 (for DP).

(4) The Tribunal may, at any time after an application has been made, stay the commencement or continuation of any suit or proceeding against LLP on such terms as the Tribunal thinks fit, until the application is finally disposed of.

Section 61: Power of Tribunal to enforce compromise or arrangement

(1) Where the Tribunal makes an order sanctioning a C/A in respect of a LLP, it:

- shall have power to supervise the carrying out of C/A, and
- may, give directions in regard to any matter or make such modifications in the C/A as it may consider necessary for the proper working of C/A.

(2) If the Tribunal is satisfied that a C/A sanctioned cannot be worked satisfactorily, it may,

- either on its own motion or
- on the application of any person interested in the affairs of LLP,

make an order for winding up the LLP.

Section 62: Provisions for facilitating reconstruction or amalgamation of limited liability partnerships

(1) Where an application is made to the Tribunal u/s 60 and it is shown that:

- C/A has been proposed for a scheme for reconstruction or amalgamation of 2 or more LLP; and

- Under the scheme, whole or any part of undertaking, property or liabilities (UPL) of any LLP concerned is transferred to another LLP

Tribunal may, either by order sanctioning the C/A or by a subsequent order, make provisions for all or any of the following matters, namely:

a. transfer to the transferee LLP of whole or any part of the UPL of any transferor LLP;
b. continuation by/against transferee LLP of any legal proceedings pending by/against transferor;
c. dissolution, without winding up, of any transferor LLP;
d. provision for person dissenting from C/A;
e. such incidental, consequential and supplemental matters as are necessary.

No such C/A proposed amalgamation shall be sanctioned by Tribunal unless the Tribunal has received a report from RoC and Official Liquidator that affairs of LLP have not been conducted in a manner prejudicial to interests of its partners or to public interest.

(2) Where an order provides for transfer of any property or liabilities, then, by virtue of the order, it shall be freed from any charge (only if the order so directs)

(3) File certified copy of NCLT order with ROC - Within 30 days

(4) Penalty: Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh (LLP) and Rs. 50,000 (DP)

Note: Compliance of Sec 62 is in addition to compliance with provision of section 60.

Section 63: Winding up and dissolution

The winding up of LLP may be either voluntary or by Tribunal and LLP, so wound up may be dissolved.

Section 64: Circumstances in which LLP may be wound up by Tribunal

LLP may be wound up by Tribunal where:

- LLP decides that LLP be wound up by Tribunal;
- For > 6 months, number of partners of LLP is reduced below two;
- LLP has acted against interests of sovereignty and integrity of India, security of the State or public order;
- LLP has made default in filing with the RoC, the SAS AND AR for any 5 consecutive FY or
- Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Section 66: Business Transactions of Partner with LLP

Partner may lend money & transact business with LLP & has same rights and obligation as non-partner.

Section 67: Application of the Provisions of the Companies Act

(1) CG may, by notification direct that provisions of Companies Act shall apply to LLP with such exception, modification & adaptation as may be specified.
(2) A copy of every notification proposed – Lay before Parliament and get it approved.

Section 69: Payment of Additional Fee

Any document or return to be registered or filed with RoC is not filed within prescribed time, it may be registered or filed after that time, on payment of such additional fee as may be prescribed.

Section 70: Enhanced Punishment

The LLP or any partner or DP shall, for second or subsequent offence, be punishable with

- imprisonment as provided, but
- with a fine which shall be twice the amount of fine for such offence.

DIFFERENCES WITH OTHER FORMS OF ORGANISATIONS

LLP vs Partnership Firm

Basis	LLP	Partnership Firm
Regulating Act	LLP Act, 2008.	Indian Partnership Act, 1932.
Body corporate	Yes	Not a body corporate
Separate legal entity	Yes	No
Registration	Mandatory	Voluntary
Perpetual succession	Members may join or leave but its existence continues forever.	It has no perpetual succession.
Suffix	Limited liability Partnership (LLP)	No guidelines
Liability	Limited to agreed contribution	Liability of partner - Unlimited.
Mutual agency	Partner can bind the LLP by his own acts but no other partners.	Each partner can bind firm as well as other partners by his own acts.
Designated partners	>= 2 DP & >= 1 resident in India.	No such provision
Common seal	It may have its common seal	no such concept in partnership
Legal compliances	DPs are responsible for all the compliances and penalties	All partners are responsible for all the compliances and penalties
Annual filing	File SAS and Annual Return.	No such requirement
Foreign partnership	Foreign nationals can be partner	Cannot be a partner.
Minor as partner	Not allowed (even for benefit)	Yes. Can be admitted to benefits.

LLP and Limited Liability company

Basis	LLP	Limited Company
Regulating Act	The LLP Act, 2008	The Companies Act, 2013.
Contributors are called	Partners	Members
Internal governance	Governed by LLP agreement	Regulated by statute i.e. Co. Act
Suffix	Limited Liab partnership or LLP	Private Limited or Limited
Numbers of partners/ members	Min. 2; Max – No limit	Pvt co.: Min. 2; Max. 200 Public co: Min. 7; Max. No limit
Liability	To extent of agreed contribution	Limited to unpaid amount of shares
Management	Managed by DPs	Managed by BoD
Min. no. of directors/DP	Minimum 2 DP	Pvt. Co.- 2 ; Public co. 3 directors

The End

YOUR CA BUDDY
CA SHUBHAM SINGHAL

Super 100 - For Jan'26 students

Must read before you get started

Important Note - This is not a shortlisting of questions important from exam point of view. These are the questions which meet any of the following conditions:

a. The concept covered in the question is unique and absolutely requires revision on the day before exam

b. The presentation of the answer is amazing and better to go through it before exam

c. The question covers a lot of concepts in one go.

Also note - These questions are relevant only once you are done with my Ultimate Solution summary notes. Cause concepts of a lot of questions are already covered as concept clarity check in my summary notes.

Repeat Questions may come. So QB is important

All the Best!!

Name	Questions from Question Bank edition 5	If time permits, solve further	Total Questions
Company Law			
Preliminary	6, 7, 12, 14		4
Incorporation	3, 11, 15, 18, 23, 33	19, 29	6
Prospectus	8, 12, 13, 15, 17, 20, 21, 22, 23, 27, Addendum sheet- Q1		11
Share Capital	1, 4, 8, 15, 19, 25, 29, 33, 38, 39, Addendum sheet- Q1		11
Deposits	8, 10, 11, 12, 15, 17	4	6
Registration	4, 9, 13, 15, 19		5
Mgmt & Administration	1, 12, 16, 21, 30, 33, 37, 39, 41, 43, Addendum sheet-Q1, 2	14	12
Dividend	7, 11, 14, 16, 18, 20	1	6
Accounts of Company	1, 4, 15, 17, 22, 25, Addendum sheet- Q1	1A, 2	7
Audit & Auditors	2, 4, 8, 10, 15, 23, Addendum sheet- Q1	14, 27	7
Foreign Company	3, 12, 17, 18, 20, 24		6

Name	Questions from Question Bank edition 5	If time permits, solve further	Total Questions
Other Law			
General Clause Act	14, 19, 22, 26, 31, 38		6
FEMA	FEMA Master Question- Link	Addendum Sheet Q1, 2	1
IOS	7, 11, 23, 26, 28, 39		6
LLP	2, 4, 9, 13,18, Addendum sheet-Q1	1	6
		TOTAL	**100**

Addendum Sheet- Link

Telegram link for more content

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CA SHUBHAM SINGHAL (AIR-4)

CA Shubham Singhal is a single digit rank holder **(AIR 4)** in CA Final. He qualified his CA in 2018. He cleared all levels of CA exams in **First Attempt**.

He had done his Articleship from **Deloitte Haskins** and Sells LLP in the Statutory Audit Department. His 3 years of experience at Deloitte makes his class even more **Practical Oriented.**

Post qualification, he has worked as an Executive Assistant to the CEO of Mumbai Airport and then with a US based venture capital firm and helped them **Invest** in various **Startups** in India.

As a teacher, he is very passionate and makes sure that he teaches **The Ranker's Way.**

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