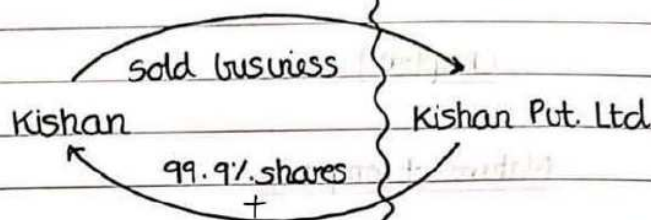


Illustration on Separate Legal Entity



Secured debentures of ₹100

CORPORATE VEIL

(There is a 47% Betwaan Kishan & Kishan Pvt. Co.)

The Co. went into liquidation and the Balance Sheet of the company is as follows:

Balance Sheet	
Secured debentures (Kishan)	100
Unsecured Creditors	50
Cash	80

The Unsecured Creditors claimed entire assets of the company on the ground that company was a mere (only) agent of Kishan.

Conclusion / Decision

It was held that Kishan Pvt. Ltd. was a real co. fulfilling all the legal conditions.

Hence, co. is a separate legal entity and cannot be regarded as an agent of Kishan.

Accordingly, the assets of the co. must be first applied in payment of secured debentures.

Imp. Case Laws [Refer Book]

- Salomon vs. Salomon & Co. Ltd.
- Lee vs. Lee Air Farming Ltd.



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COMPANIES ACT, 2013.

An Act to Consolidate & Amend Laws
Related to Companies.

↓
Applicable All over India.

classmate

Date _____
Page _____

1

Chapter 1

Nature of Company

characteristics of a company [PLASTIC\$]

P - Perpetual Succession → Existence of a Co. is not affected by existence of members/promoters [death, Insolvency, Tfr]

L - Limited liability of members/shareholders { Limited by shares
Limited by Guarantee

A - Artificial Person → Legal person → Not fictitious

S → Share Capital [Separate Chapter]

Separate legal entity/identity → Co's rights, liabilities & duties are different from its members]

Corporate Veil

Shares → Person can be Member, Director, Creditor etc.

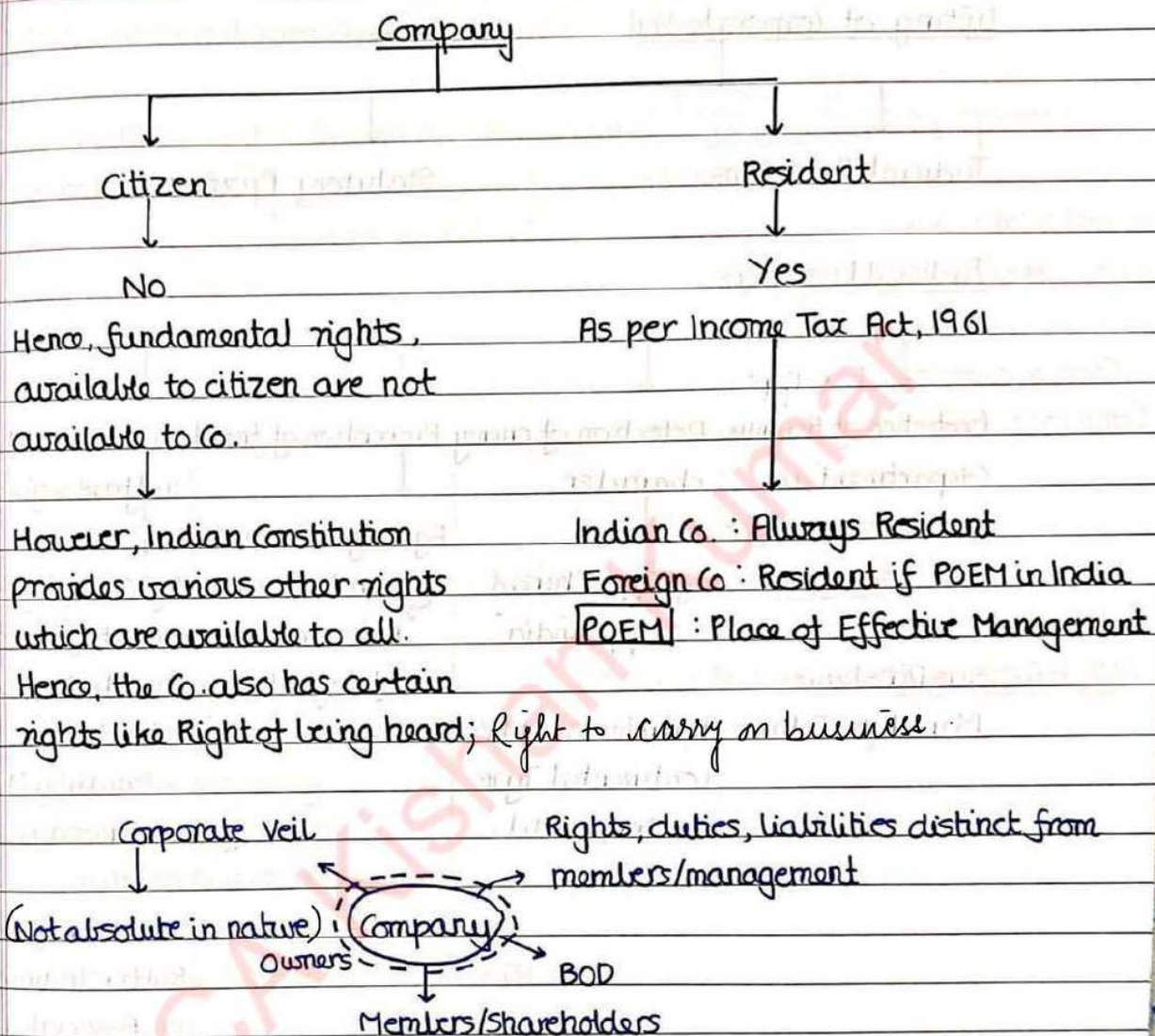
T - Transferable { Public → freely transferable } There cannot be prohibition.
Private → with some restrictions

I - Incorporated entity (to start the company) (Regd under Act)

C → Capacity to sue or be sued i.e. Co can proceed against / file suit
common Seal (Optional) against other party & vice versa

S - Separate ownership & management → Members of Co. do not have right to interfere in day to day operations of a Co.
members Boss

* To end the company → Winding Up



In certain cases, the corporate veil of Co. is lifted/pierced to identify the person actually controlling the affairs of a Co.

Corporate Veil is a fiction of Law due to which

- Rights, duties & Liabilities of a Co. is separate from that of members.
- A Co. can be held liable for the acts done by its directors, members, officers & Ee in its name.

Advantage of corporate veil is allowed only if used honestly

Lifting of Corporate Veil [ignoring the separate legal entity of Co.]
& identifying real persons who control Co.

Judicial Provisions

Statutory Provisions

↳ Judicial Provisions [Court has discretion]

↓ Tax Dept.

Protection of Revenue
(department) i.e.
where it is used for
tax evasion

Sir Dinshaw
Maneckjee Pettit

Detection of enemy
character

Eg: Oppo China
Oppo India

Daimler Co. Ltd Vs
Continental Tyre
Rubber Co. Ltd.

Prevention of fraud

Eg: Sagar Ratna
Shri Ratnam
Previous owner
of Sagar Ratna

Gifford Motor Co.
vs. Horne

Avoidance of
welfare legislation

Eg: Gratuity Act says
that if an org.
with 20 employees,
has to pay gratuity
to nullify this, it
makes a new Co.

Workmen of Associate
Rubber Industry Ltd.
Vs Associated Rubber
Industry Ltd.

↳ Statutory Provision Holding & Subsidiary Co. Liab under Other Statutes Ultra Vires Acts

Misdescription of
name

Reduction of
minimum no. of
members

Misrepresentation
in prospectus

Failure to refund
application money
within stipulated
time by SEBI

↳ NCLT = National Company Law Tribunal

Minimum no. of members $\left\{ \begin{array}{l} \text{Private Co.} = 2 \\ \text{Public Co.} = 7 \end{array} \right\}$ to $\begin{array}{l} \text{within 6 months} \\ \text{should be 2 or 7} \\ \text{otherwise} \end{array}$ $\rightarrow$ $\begin{array}{l} \text{Eg } 6 \\ \text{existing members} \\ \text{shall be personally} \\ \text{liable.} \\ \text{(should be 2 or 7} \\ \text{after given time)} \end{array}$

Section 2(1)

Body Corporate



- ↳ Association of person.
- (a) Incorporated under any law
- (b) Separate legal entity
- (c) Perpetual succession
- (d) Capacity to sue or be sued.

Eg: Public Co., Private Co., OPC, LLP,

Statutory Bodies like SEBI, IRDA,

ICAI.

↳ Scope is wider.

Section 2(20)

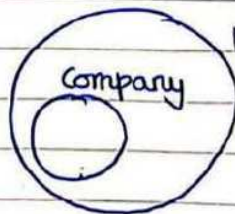
Company



Incorporated under Companies Act 2013 or any Previous Act

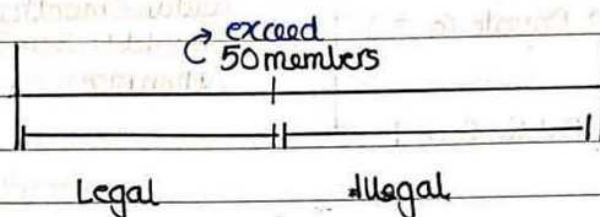
Scope is narrower.

Note: Every Co. is a body corporate but every body corporate is not a Co.



Body Corporate.

Illegal Association [Sec 464]



(This rule is applicable ^{when} ~~where~~ an association is into profit/gains)

Exceptions

Such limit of 50 persons is not applicable in case of

(i) Charitable trust i.e. association of person formed for purpose other than acquisition of gains.

(ii) Association of Professionals (Eg: CA can't form a Co., also can't sign on behalf of Co.)

Hence, all attestation must be done either in own capacity or as partner of firm/LLP.

(iii) HUF (Eg: Ram HUF → no limit on adult members [male + female])

Shyam HUF → no limit on adult members ["]

Ram HUF & Shyam HUF entered into partnership firm.

Now, total adult members in the partnership firm should be upto 50 members)

↳ Once illegal, always illegal i.e. subsequent reduction of no. of members to 50 or below 50 does not make AOP legal.

Effects

a) Such association is illegal & has no existence in eye of law.

b) Since Law does not recognise it, no legal relief or recourse is available to members.

Key managerial personnel :- In relation to company is

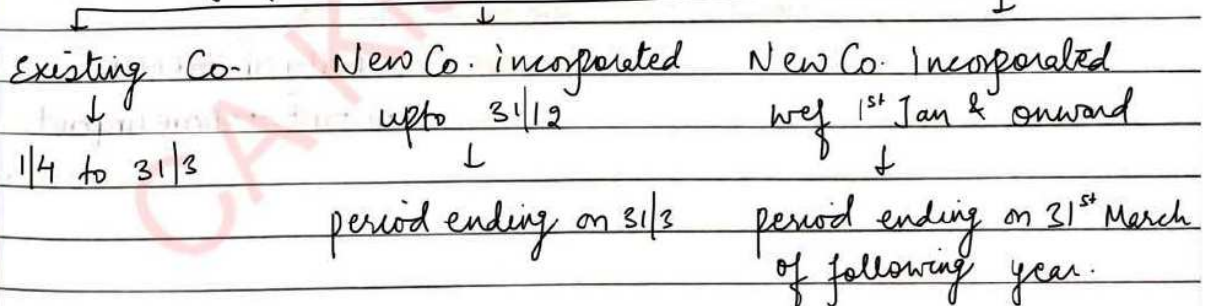
2(51)

- (i) the ^{Chief} executive officer or the Managing Director or the Manager
- (ii) the Company Secretary
- (iii) the whole time director
- (iv) Chief Financial Officer
- (v) Such officer as may be prescribed.
- (vi) 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.

Eg: Director

↓
Whole time Director → Key Managerial Personnel.

Financial year



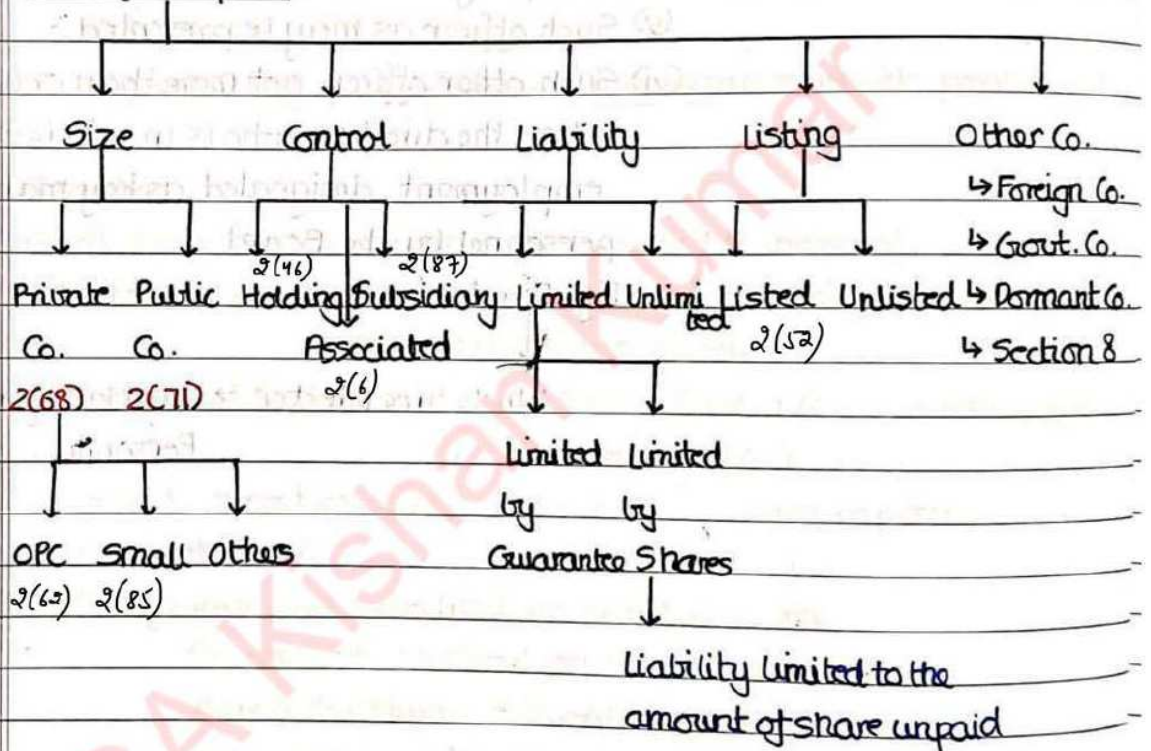
Exception

A Co. which is holding or subsi or Associate Co. of a Co. incorporated outside India

+

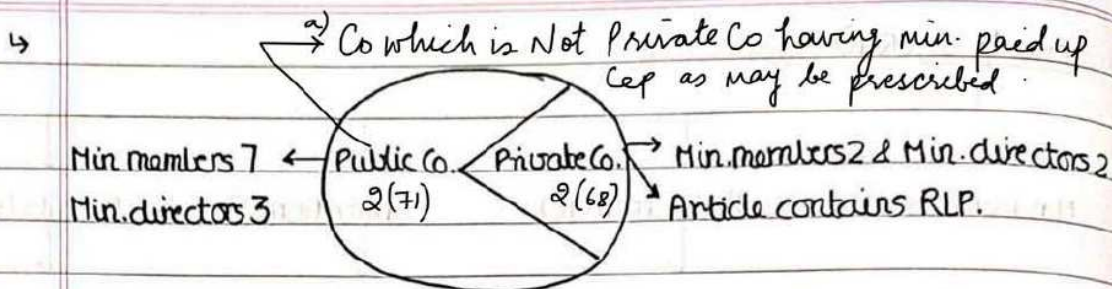
Required to follow different FY for consolidation of A/c of India

↓
Ct may allow any other period as FY; on app. made by Such Co.

Chapter 2Kinds of CompaniesKind of Companies

Private Co. (RIP) Section 2(68) - [+ Minimum Cap as may be prescribed
→ AOA must contain RLP]

Min. members = 2	Restriction (R)	Limitation (L)	Prohibitions (P)
Min. directors = 2	Restriction in transfer of shares by Articles (rules & regulations)	Max. no. of members = 200	(i) Can't invite application from public for subscription of its shares
	(i) Authorising Bob to refuse transfer of shares to any person they don't approve (Eg: competitor)	(i) Joint members are treated as single member.	(ii) Can't accept deposit from public.
	(ii) Compelling shareholders to offer their shares to existing shareholders	(ii) Current or past employees who became member by virtue of being employee are <u>(not)</u> considered.	↓ Can do from
	(iii) Specifying method for calculation of price.	(iii) (free of cost shares giving) ESOP or Sweat Equity	a) Members
	(iv) Providing that employees of a Co. offer their shares to prescribed persons at the time of leaving job.		b) Directors & relatives of directors



b) Public Co.

50%+

Privatized Co. treated as Public Co.

One Person Co. (OPC) Section 2(62)

Eligibility [OPC/Nominee]		
Natural person who is an Indian citizen & is resident in India. ↓ Should not be a minor (for member & nominee)	Member = 1; Min Dir = 1	Type of Private Co. ↓ All the provisions applicable to Private Co. are applicable to OPC ↓ "OPC" or "One Person Co." to be mentioned in bracket.
	Maximum Directors = 15	
	Hence, MOA is subscribed by 1 person.	
	+ State the name of the nominee, after prior consent, who shall become member in event of death of member.	

Note : One Person Co. → No person can incorporate more than one OPC or become nominee of more than one OPC.

Kishan → 1 OPC + 1 Nominee → OK.

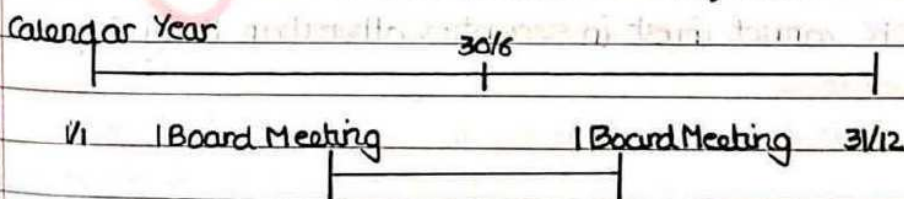
~~2 OPC~~ ~~2 Nominee~~

Change of Nominee

15 days के अंदर ही				
to ~~~~~ t ₁₅ 30 days के अंदर t ₃₀				
Written prior consent in form INC 3 (Incorporation)	File with ROC at the time of incorporation	Any change (Eg: Death, Incapacity to contract, etc.)	Nominate new nominee + Prior consent in INC 3	File Information with ROC in INC 4 & fee + INC 3
↓	INC 2 along with INC 3 & fee	↳ Death of the member.		
Includes the name of nominee in MOA in Nomination Clause.		↳ Death of the nominee		
		↳ Removal by the member		
		↳ Resignation by the nominee		

Benefits of OPC

- (i) No need of Annual General Meeting (AGM)
- (ii) Board Meeting
 - 1 director → Not required
 - More than 1 director → Required.



Min. 90 days gap b/w both.

- (iii) Disclosure of information in director's report has been significantly reduced. 1/3 134
- (iv) No Cash Flow Statement required in Financial Statement of OPC.

Conversion of OPC

Compulsory

Paid up Capital > 50 lakh

OR

* Avg. annual turnover in relevant period exceeds 2 crore.

Compulsory get converted within 6 M

Public Co. Min 7 members
Private Co. Min 2 members

+
Min 3 directors Min 2 directors

Voluntary

After 2 years of expiry from date of incorporation

Public Co. Min 7 members
Private Co. Min 2 members

+
Min 3 directors Min 2 directors

Prohibited

OPC ~~→~~ NBFC (Non Banking Financial Corporation)

OPC ~~→~~ Sec 8 (NGO, Trust, etc)

* Average of 3 preceding years

Note: OPC cannot invest in securities other than Body Corporate.

Small Co. → Type of Private Co.

2(85)

Paid up Capital upto 50 lakh

AND

Turnover as per last P&L Ac upto 2 crore.

Following Co. are (not) Small Co.

- ↳ Holding Co. } Part of Bigger Group.
- ↳ Subsidiary Co. }
- ↳ Public Co.
- ↳ Sec. 8 Co.
- ↳ Co. governed by any Act

Privilege (Benefit)

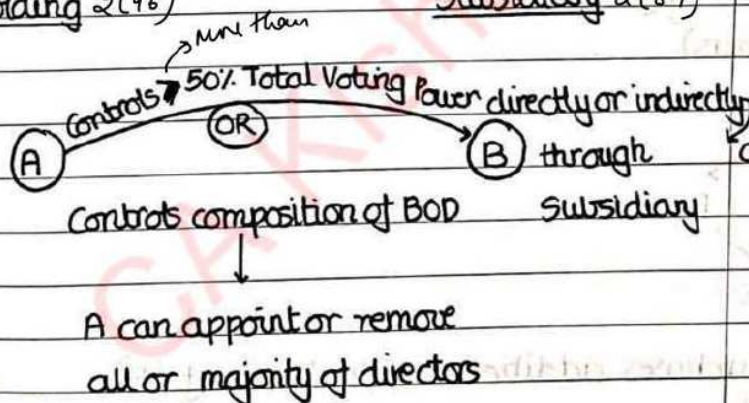
- (i) No cash flows in Small Co.
- (ii) Mergers & Acquisition b/w Small Co. is simpler.
- (iii) Board Meeting (Same as OPC)
- (iv) Abridged Board's Report

Co. Based on Control

Holding 2(46)

Subsidiary 2(87)

Associate 2(6)



20% or more but upto 50% Voting power through other Co. significant influence Co.

Right to participate in management

other than Holding Co. but includes joint Venture.

* Shares held in fiduciary capacity shall not be considered. Fiduciary relationship exists when a person holds shares as a Trustee of another person.

Membership of Holding Co. [19]

Q. Can a subsidiary Co. become member of Holding Co. i.e. can a subsidiary Co. hold shares of Holding Co.?

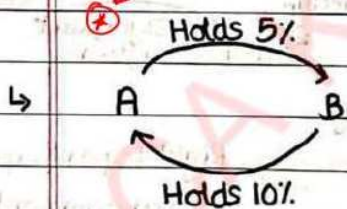
A. General law: A subsidiary Co. can't become member of Holding Co.
Exceptions (where Subsidiary Co. can become a member of Holding Co.)

Can become a member & vote.
If subsidiary Co. is holding shares as

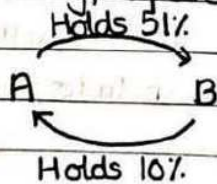
- (i) legal representative of deceased member of Holding Co. **
- (ii) Trustee (any body who holds property for the benefit of others)

Can become a member but cannot vote.

If subsidiary Co. was a member before becoming subsidiary



One day, 'A' purchases additional 46% shares of 'B'



'B', a subsidiary Co. can continue to hold shares in 'A' i.e. Holding Co. However, B cannot vote.

** ① holds 100% → A Holding Co. ← ③ can become member & can vote
Kishan
② Rep. → B Subsidiary Co. (legal representative of Kishan)

If Kishan dies, 'B' is eligible to become member of 'A' & 'B' can also vote.
Now, 'B' is holder of shares as legal representative of deceased member of Holding Co.

Section 8 Co. (Also Known as Non Profit Organisation) Co. Y Licensed Co. by (G)

Objects	No alteration in MoA & AOA unless prior approval by Central Govt.	Firms can become member. (Normally, firms can't be a member but in Sec 8 Co. it can be a member)	All privileges of Limited Co. are available.
(i) Promotion of Arts, Science, Research, Sports, Charity, etc.			Govt. can allow
(ii) No distribution of profit to members			Sec. 8 Co. to not use the words
(iii) Profit should be applied for promoting objects			'limited' or 'Pvt. limited'
			↓
			Eg: Reliance Foundation, Infosys Foundation, etc. GST Network.

Sec 8 Co. ↔ Other Co.

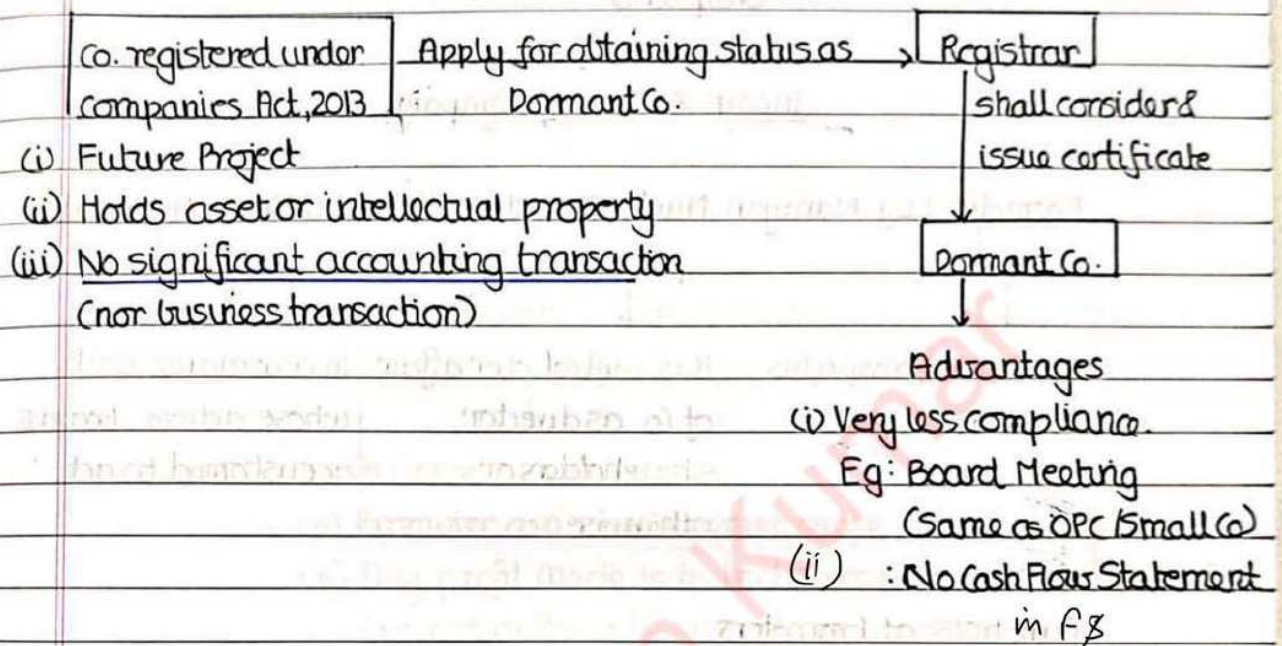
Conversion allowed by Central Govt. subject to certain conditions

However, they can amalgamate only with other Sec. 8 Co. having similar objective.

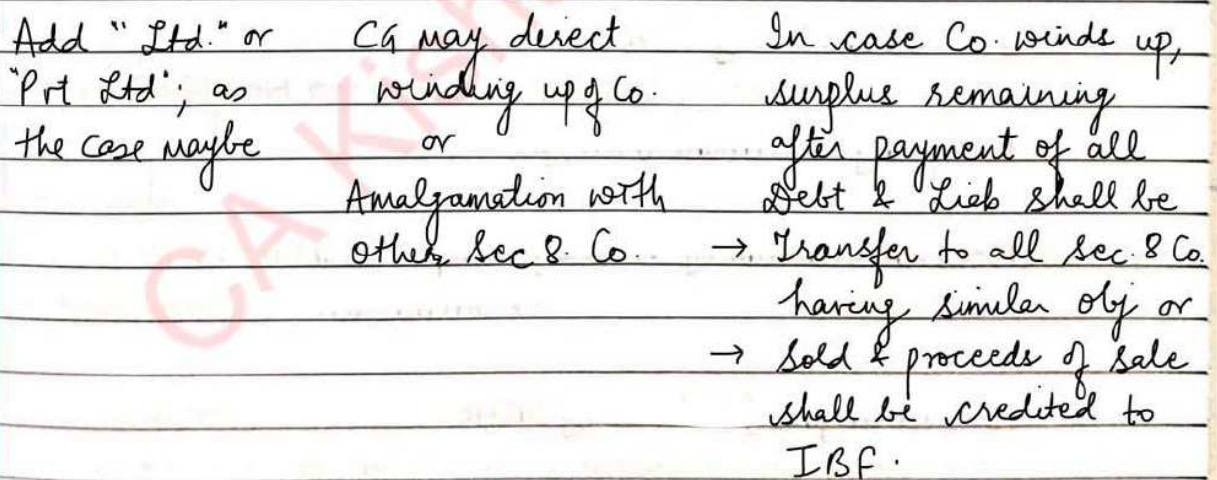
Note: If Sec 8 Co. contravenes any of the provisions of Sec 8 or terms & conditions of license, Central Govt can revoke the license, after giving opportunity of being heard

Central Govt. may also order winding up or amalgamation

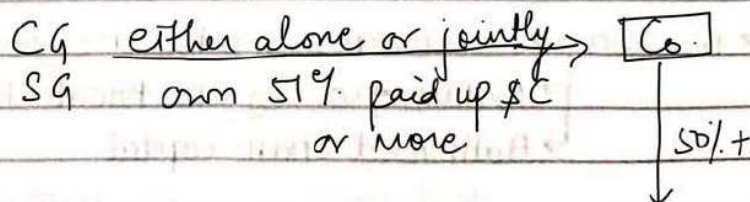
Dormant Co. → May be Public, Pvt or OPC [455]



Consequences of Revocation of License



⇒ Govt. Co.



[Co.] Subsidiary of Govt Co.

Chapter 3Incorporation of CompanyPromoter (Eg: Narayan Murti, Ramdas, Bhavesh & Ritesh Agarwal)

2(69)

Named in prospectus
as suchHas control over affairs
of Co. as director,
shareholders or
otherwise.In accordance with
whose advice, Board is
accustomed to act.↓
Professional capacity?Functions of Promoters [FIRM'S CA]

F → Feasibility Report (Can be implemented or not?)

I → Generation of Idea

R → Filing document with ROC

M → Memorandum of Article
→ Preparation
→ Submission

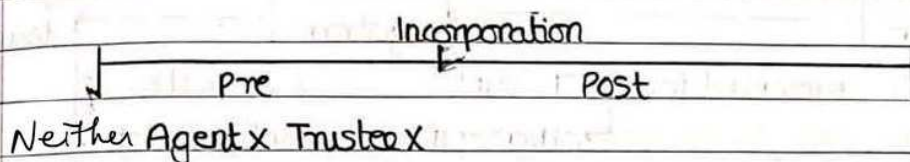
S → Arranging for Issue of Shares

C → Pre-incorporation contracts (Co. वन से पहले के Expense)

D → Decision
→ New business or takeover existing business
→ Nature of Co. (Eg: OPC, Private, Public, etc.)
→ Authorised Share Capital

* Cancel = Rescind = Revoke

The contracts entered by promoter on behalf of Co. before the incorporation of Co. is known as Pre-Incorporation Contracts



Position of promoter is similar to Agent/Trustee. They act on behalf of Proposed Co. in FIDUCIARY CAPACITY (Based on trust).

↓
It's impact

(a) Promoter can't make secret profit. ⊕

(b) Any profit made is to be disclosed to Independent BOD
⊕ i.e. not in the influence of promoters.

No monetary transaction b/w Co. & independent BOD.

(c) Promoter must disclose interest in a contract.

Secret Profit / did not disclose interest in a contract.

→ Revoke / Cancel

Rescind the contract within ⁱⁿ reasonable time.

Recover the secret profit.

File suit for breach of contract.

Right to Remuneration / Reimbursement

incurred for incorporation of Co.

No right to recover / receive any remuneration or recover expense unless, Co. after incorporation accepts it i.e. enter into fresh contract (in Co.'s name) in this regard.

Even specific provision in Article that Co. shall remunerate / reimburse promoter is (not) binding on Co.

Modes of Remuneration / → From Book

Reimbursement

→ must be disclosed in Prospectus

Under whose jurisdiction registered office is proposed

① Files application in
Promoter

③ Registrar

④ Examine & register documents

⑤ & issue the certificate of incorporation

+
② along with prescribed fee & documents*
[CA AS FD]

& issue CIN (Co. Incorporation No.)

⑧ C → Correspondence address till the registered office is set up.

Declaration

- All documents to be filed with ROC are true & correct to the best of his knowledge.
- Not guilty / convicted of any offense not Promotion fraud or breach of duty during preceding 5 yrs. or Mgt of Co.

F → First Director → Name, surname, address, nationality & identity proof, PIN (Director Identification No.), Consent Interest in other Co.

D → Declaration by Advocate / CA / CS / CMA & person named in Article as director / manager / secretary of Co. that all requirements of the Act have been complied with.

↳ The subscriber to the memorandum makes a person member of the Co. Such person are not necessarily promoter or first director.

↳ Liability of Promoter for any false information provided by them for incorporation of Co.

→ Promoter

→ Ability to influence decision

Suppression of material facts

Fraudulent Actions

Punishment u/s 447

Section 447

Fraud of an amt. involving lower of

(a) 10 lakh or more OR

(b) 1% of Turnover

Imprisonment +

Fine

6 months - 10 years

100% of amount of ~~fraud~~ ^{extent} fraud & cancelled upto 300%.

If public interest is involved, term of imprisonment shall be at least 3 years

Any other fraud not involving public interest.

Imprisonment (OR)

Fine

Upto 5 years

Upto 50 lakhs

(OR)

Both

NCLT may pass any other order as it may deem fit [7(7)] Refer Book

Pre Inc. Contract Binding if $\left\{ \begin{array}{l} \rightarrow \text{warranted for Inc. of Co.} \\ + \\ \text{Co. after Inc. adopts / ratifies it \& \text{ communicates to third party} \\ \text{or} \\ \text{Co. enters into fresh contract with third party on similar t \& c.} \end{array} \right.$

Certificate of Incorporation

Absolute in nature

Can't be challenged.

Conclusive proof of a) Incorporation of Co. as a legal entity

b) All requirements of Act for incorporation of Co. has been complied with.

c) Date mentioned in Certificate shall be date of Regⁿ of Co.

Corporate status of Co. cannot be questioned.

Any past default or irregularity in the process of registration has (no) impact on the fact that Co. has been incorporated.

Pre-Incorporation Contract / Preliminary Contract $\rightarrow$ Should be warranted

Contract entered by promoter on behalf of proposed Co.

Co. Incorporated

or required for formation of Co.

Co.

General Law $\rightarrow$ Not binding

& Communicated

Adopted by Co. but refused by third party

Not adopted by Co. & refused by third party

(i) Binding on Co. as well as third party.

(ii) Promoter is (not) personally liable.

(iii) Co. can enforce the contract

against third party & vice versa.

(Sec. 15 & 19 of Specific Relief Act)

(i) (Not) binding on either Co. or third party.

(ii) Promoter is personally liable.

(iii) Co. (can't) enforce the contract against third party or vice versa.

Note: Even if contract mentions that after incorporation, the Co. shall adopt the contract, still such pre-incorporation contract shall (not) be binding.

Note: Even if Co. derives some benefit from pre-incorporation contract still it's (not) binding.

Decided Case Laws from Book

classmate

Date

Page

* Enforceable in the court of law = Binding = File suit against the party.

Section 10A

Co. limited by shares

+

Incorporated after 2/11/18*

Before commencement of business or exercising borrowing rights

Director shall file a declaration in form 20A with ROC along with fee that

File verification of registered office in Form INC22UB12

a) Subscribers to MOA has paid value of shares agreed to be taken on date of declaration. + Declaration to be verified by CA/CS/CMA in Practice.

b) Approval from sectoral regulator.

Eg: RBI, SEBI, TRAI

Within 180 days of incorporation

Contents to be verified by CA/CS/CMA in Practice.

If declaration is not filed within 180 days and ROC has reasons to believe that Co. is not carrying on business, it can remove the name of Co. from Registrar of Co. without prejudice of penalty.

Penalty for Contravention

Co.

Every officer in default
1000 ru. but max 10000

Chapter 4Memorandum and Articles of AssociationMemorandum of Association (Section 2(56))

- Key document containing vital information about Co.
- Fundamental document for registration/incorporation of Co.
- Defines & confines, powers of Co. & scope of its operations

↓
restrict

- Also known as "Charter of Co."

Purpose of MoA

↓
Third Party

To determine whether contract intending to be entered are within the object clause of the Co. or not i.e. whether the Co. is authorised to enter into such agreement.

↓
Shareholders

To determine the purpose for which the Co. is going to use the money and risk he is taking by investing in the Co.

Requirements of MoA

- Printed
- Divided into paragraph
- Numbered consecutively
- Signed by Sub. to MoA & attested by witness.

→ Can a Co. invest in another Co.?

→ Can a Co. enter into partnership with other Co.?

} Yes, provided it is authorised by MOA.

Entering into partnership or investing in other body corporates are not the activities incidental to attainment of main objects. Hence, specific provisions are required in object clause to enter into these 2 transactions.

Clauses of MOA [CLONN55]

Capital Clause	Liability Clause	Object Clause	Name Clause	Nomination Clause	Situation Clause	Subscription Clause
Only for Co. having share capital	Whether Co. is limited or unlimited	Object for which Co. is proposed to be incorporated.	Name of Co. approved by ROC	Name of the person who will become nominee in	Name of the state in which registered	Name of subscribers to MOA
Authorised share capital + No. of shares	If limited, nature & extent of liability shall be mentioned	+ Any matter considered necessary/ incidental to its furtherance	last word → Put Co. → Pvt Ltd Public Co. → Ltd OPC → OPC	case of death or incapacity of members	office of Co. is situated	Statement that they are willing to
Alteration	Alteration not allowed	Should not be illegal or against public policy	It shouldn't be undesirable or fancy.	Only in case of OPC	Must be setup within 30 days from date of incorporation (See 12)	Min → Public → 7 → Put → 2 OPC → 1
Power in articles + Pass OR in G + Notice to ROC within 30 days of alteration	However limited → Unlimited allowed. Subject to prescribed conditions	Companies Act	Should not be identical or resemble too closely to an existing Co. Should not infringe upon any registered trademark in process of registration. Prohibited under Name & Emblem Act, 1950.		a) Deemed members as soon as Co. is incorporated. Name is entered into Registrar of members	b) Can't repudiate their liability of buying shares even on ground of misrepresentation

- ↳ Business conducted/decision taken by Co. in a meeting by passing resolution (proposal to do or not to do)

Board Meeting → Board Resolution is passed.

General Meeting → Meeting of members/shareholders

Ordinary Resolution

Special Resolution

Vote in favour > Vote in against

Vote in favour > 75% of total votes

(OR)

Votes in favour > 3 times vote against

- ↳ Procedure for alteration of Object Clause

Co. → Pass SR → File notice of change → ROC

+
Copy of SR

↓
Certify change within 30 days & issue fresh certificate of registration

+
MGT 14
within 30 days

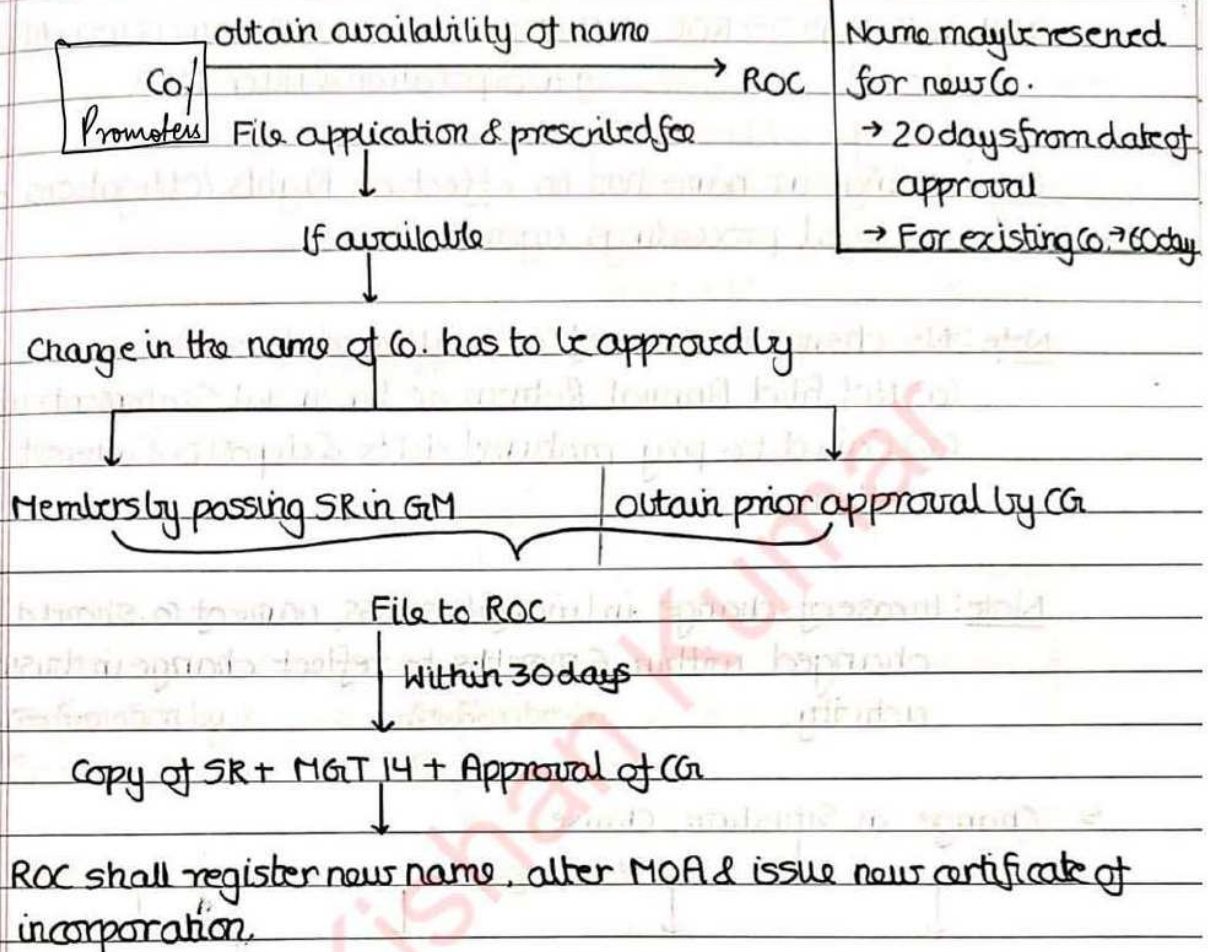
↓
change is effectively only when certificate is issued.

→ Variation in terms of Contract or obj in Prospectus (27)

- ↳ Procedure for alteration in Name Clause

1. Voluntary:

Reliance Textile Limited → Reliance Ind. Ltd.
UTI Bank → Axis Bank



Name may be reserved for new Co.
→ 20 days from date of approval
→ For existing Co. → 60 days

Note: Change in name is effective only when fresh certificate of incorporation is issued.

2. Rectification on direction of CG (Mandatory)

Name is identical or too closely/nearly resembles the name of existing Co.

Pass OR

Comply within 3 months of date of direction by CG.

Name infringes upon a trademark; registered or in process of registration

Pass OR

Comply within 6 months from date of direction by CG.

file a) Copy of CG order & b) Notice of Rectification of Name

Within 15 days → ROC → Register new name & issue new certificate of incorporation & Alter MOA.

Note: change in name has no effect on Rights / obligations of Co. or legal proceedings against Co.

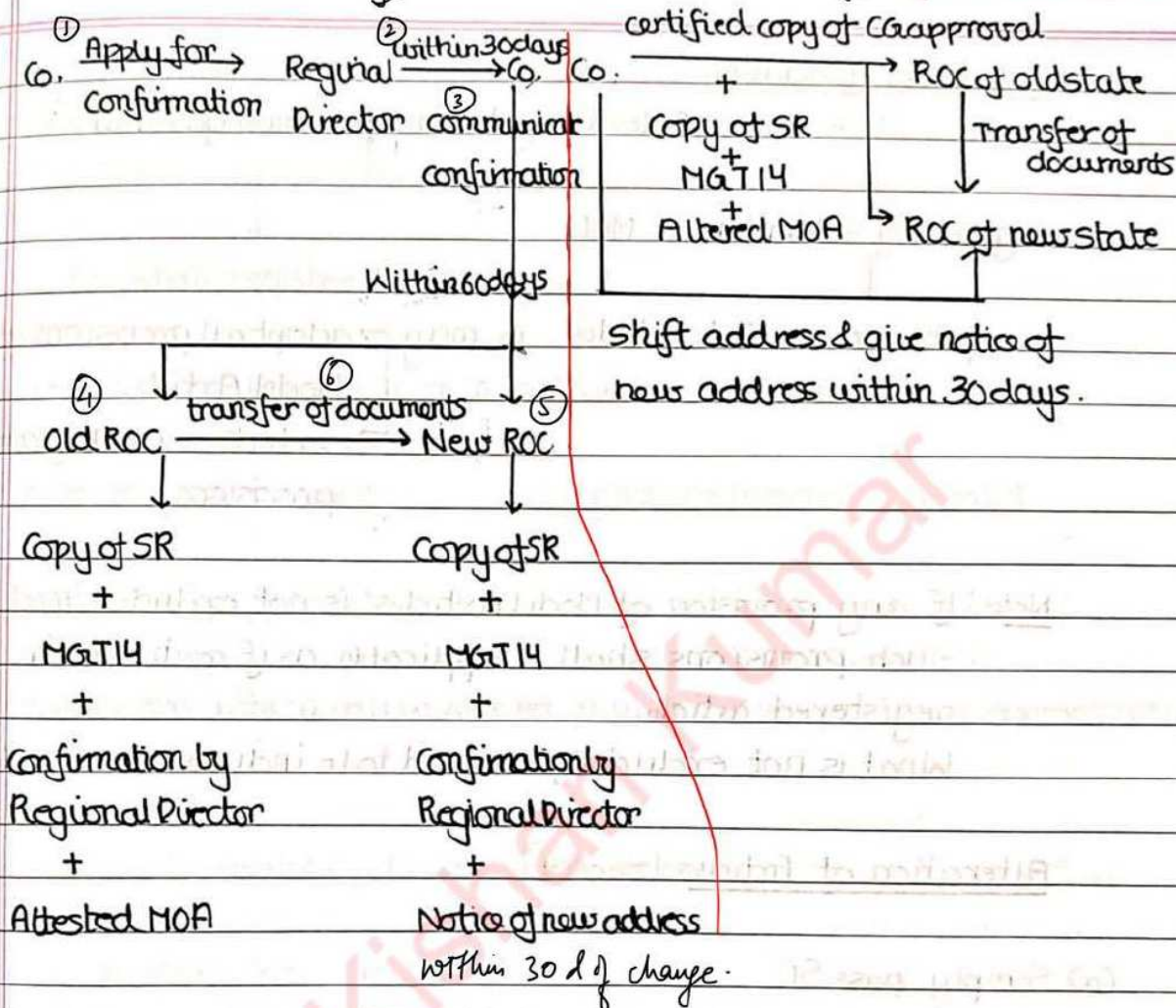
Note: No change in name of Co. is allowed if Co. has
(a) Not filed Annual Return or Financial Statements with ROC.
(b) Failed to pay matured debts & deposits & interest thereon.

Significance of Situation clause

Communication by ROC to Co. Docs & Books of Co. to be kept at Regd office Helps in deciding jurisdiction of Court.

→ Change in Situation clause / Domicile clause

Within the city - LN to CP	Outside the city but within same jurisdiction of ROC	Outside the jurisdiction of ROC (within same state)	Outside the state
Board Resolution	ROC	Board Resolution (within same state)	Board Resolution
No alteration in MOA, since MOA contains only the name of state.	Board Resolution + SR	Board Resolution + SR	SR
Notice to ROC within 30 days.	No alteration in MOA	+ obtain confirmation from Regional director	Application to CG for approval. CG shall approve or reject within 60 days
	Notice to ROC within 30 days of change		Regional director shall ensure
	File copy of SR + MGT 14 within 30 days of passing SR.		(a) Notice of change of address is given to all affected parties
			(b) Consent of creditors is obtained or claim is settled as per reserved.



New ROC will certify change within 30 d of submission of Doc.

Articles of Association [Sec 2(5)]

Rules & Regulations for own governance.

Signed by subscribers to MOA + Requirements same as MOA

Law prescribes model Articles. Co. may

- adopt all provisions of Model Article.
- exclude or modify certain provisions

Note: If any provision of Model Articles is not excluded/modified, such provisions shall be applicable as if contained in registered article.

What is not excluded; deemed to be included.

Alteration of Articles [Sec 14]

(a) Simply pass SR.

(b) File with ROC, MGT 14, copy of SR & Notice of change; Altered MOA within 15 d.

Pvt Co. (less control) → Public Co. (more control) → Alter AOA by passing SR. Remove provisions related to RLP which were applicable to Pvt Co.

Public Co. (more control) → Pvt. Co. (less control) → Alter AOA by passing SR. Include provisions of RLPs applicable to Pvt. Co.

+

Obtain approval from Co.

In all the above cases;

- Notice to ROC within 15 days of alteration of AOA.
- File MGT 14 within 30 days of passing SR.

ROC shall register the change.

Limitation on Alteration —

- must be bonafide & in Intt of Co.
- must not be inconsistent with MoA/CA/Cont
- must not be illegal or ↑ in liab of members.

Note: Any clause prohibiting alteration of Articles is invalid.

Provision for Entrenchment [Sec 5(3)]

Provisions which can be altered only through provisions more restrictive than SR.

To protect interest of minority shareholders

How to make such provision?

At the time of incorporation of Co.

Notice to ROC within 30 days of incorporation.

+

Prescribed fee.

After incorporation of Co.

Public Co.

Amend article by passing SR

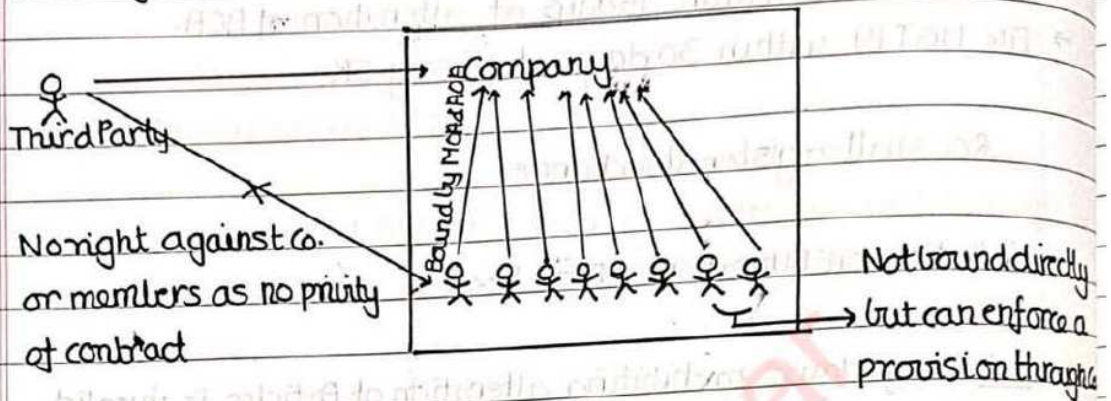
Private Co.

Amend article by resolution agreed by all members.

Notice to ROC & MGT 14 within 30 days of passing SR & prescribed fee.

→ can be enforced / suit can be filed in Court of law.

Binding force of MOA & AOA [Sec 10]



(i) Members & Co. :-

On registration of MOA & AOA, it shall be deemed to be signed by both Co. as well as members. Hence, both are bound by terms & conditions of AOA & MOA.

In case of breach (contravention) by one party, the other party can

~~file~~ file suit in court of law.

In case breach is going to happen, obtain injunction order (stay order) restraining the other party from committing such an act.

(ii) Right of members among themselves :-

Members are not bound with each other directly by terms of MOA & AOA as there is no privity of contract b/w them.

However, a member can enforce his rights against another member through Co.

(iii) Co. & Third Party :-

There is no privity of contract b/w Co. & Third Party. Hence, an outsider / third party cannot enforce or claim any right on basis of MOA or AOA.

(iv) Directors

Terms of MOA & AOA are binding on directors as it defines powers & limitations on power of directors.

Contravention of MOA/AOA by Directors

In relation to Co.

In relation to third party

(a) Members can take legal action. But such contravention can be ratified by members.

Both directors & Co. are liable

(b) If any loss is incurred to Co., director shall be liable to reimburse / indemnify the Co.

3 Doctrines & Their Relationship

① Doctrine of Ultra Vires

An Act shall be considered as ultra vires if

- (i) Not authorised by Companies Act, 2013.
- (ii) Outside the object clause of MOA & (not) incidental and ancillary / supportive / necessary to attainment of main object.

Effect.

- (a) Void ab initio
- (b) No legal impact. Neither Co. nor third party can enforce such contracts
- (c) Cannot be ratified by members
(Members draw their powers from Co. So if an act beyond the powers of Co., it is also beyond the powers of members)
- (d) Directors are personally liable towards Co. & third parties.
- (e) If any property is acquired by Co. through ultra vires contract, Co. shall hold & protect it from damages.

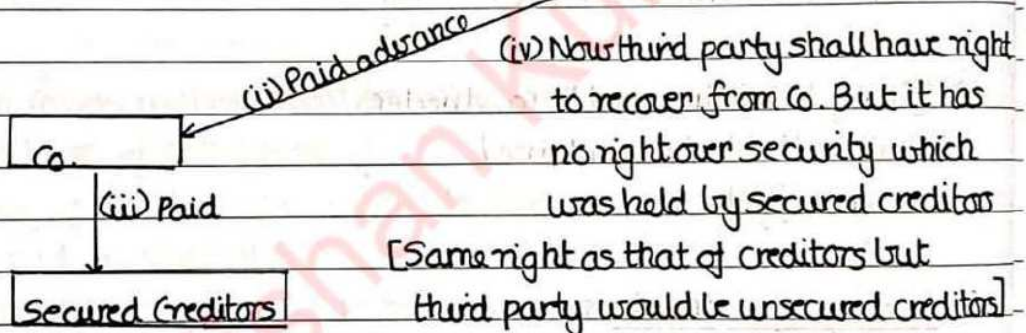
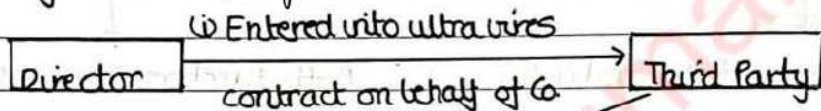
(f) Co. is not liable for any ultra vires contract.

Members can obtain injunction order restraining the Co. from proceeding with ultra vires contract.

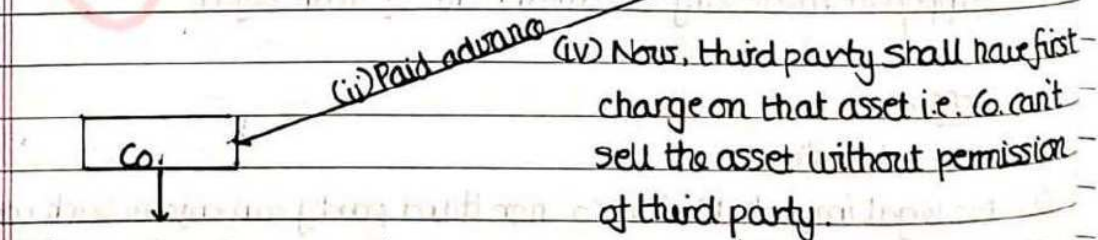
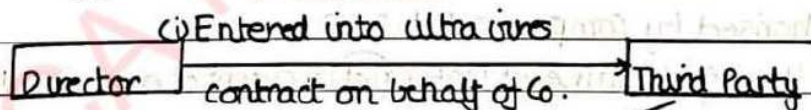
↳ Right of Third Parties

(a) File suit in court against the directors i.e. personal liability of directors

(b) Subrogation [Stepping into shoes of other]



(c) First charge on Asset purchased out of money obtained by ultra vires contract.



Right to hold

+

Right to protect from damages

It will be deemed that Co. has mortgaged Asset with third party & whenever asset is sold, the proceeds will be used to pay third party.

② Doctrine of Constructive / Presumptive Notice

↓
Creates certain presumptions in favour of Co.

↓
MOA & AOA are public documents

↓
It is presumed that contractor / third party has

(a) Read &

(b) Correctly understood

the provisions of MOA/AOA.

↓
If a person enters into a contract with Co. in contravention of MOA/AOA, he cannot enforce such contract against Co.

③ Doctrine of Indoor Management

Creates certain presumption in favour of third party with respect to internal matters.

↓
Internal matters / Rules / Procedures

↓
Outsiders / Third Party need not enquire.

↓
Entitled to presume that internal regulation have been complied with.

Effects

Any irregularity w.r.t. internal matters shall not affect the right of innocent outsider.

↓
If any third party enters into any contract with Co., which is authorised by MOA/AOA, such contract is binding on Co., even if there is some internal irregularity

2 Essentials (Both are to be satisfied to claim relief.)



- (a) No knowledge of internal irregularity
- (b) Have knowledge of MOA/AOA.

Exceptions

- 1. Knowledge of irregularity
- 2. No knowledge of MOA/AOA
- 3. Negligence
- 4. Ultra Vires
- 5. Forgery = Nullity = No legal impact = Void ab initio = Absence of title.



Think Tax, Think Kishan

Mission December 21

Taxation (FT) @2199/-

I.TAX @ 1199/-

GST @999/-



9540365625

Chapter 5

Prospectus [2(70)]

Modes of Issue of Security [23(1)]

- ↳ Private Placement (maximum upto 200 person) } Put. Co. 23(2)
- ↳ Right Issue / Bonus Issue } Public Co. 23(1)
- ↳ Prospectus (Public Offer)

- ↳ Initial Public Offer (IPO) → First time shares of Public Co. are offered to Public
→ Co. gets listed on Recognised Stock Exchange.
Eg: BSE & NSE

- ↳ Follow on Public Offer (FPO) → Issue of shares to public by a Co. which is already listed on Recognised Stock Exchange.

- ↳ Offer to Public → It is an invitation to public to subscribe for securities ^{through issue of Prospectus}
→ Doesn't include invitation to friends or relatives, etc.
provided invitation is made upto 200 persons.
→ Inc. IPO & FPO.

Upto 200 → private placement, no public offer

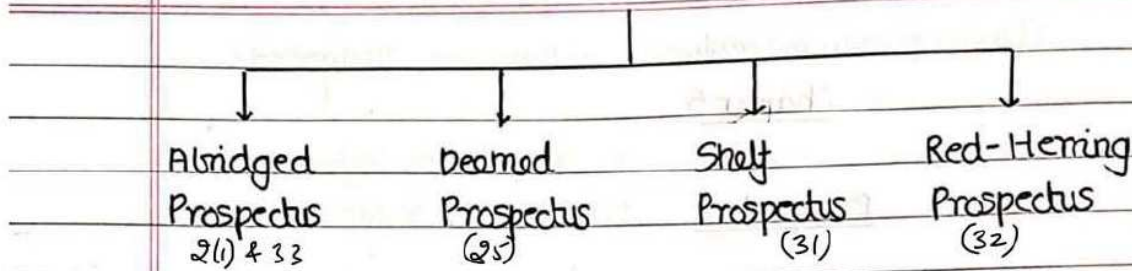
Above 200 → Public offer through prospectus

Prospectus 2(70)

A legal document issued by a public Co. inviting the public to subscribe for shares or securities of Co.

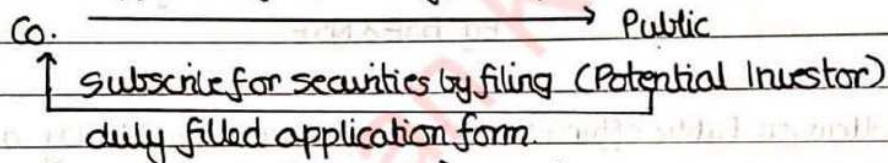
Regulated by Securities Exchange Board of India.

Before issuing prospectus to public; filed with SEBI, ROC & RSE.



1. Abridged Prospectus → Short version without losing quality.
- ↳ Actual Prospectus comprises of hundreds of pages
- ↳ Abridged Prospectus is a shorter version i.e. summary of prospectus containing salient features as prescribed by SEBI.

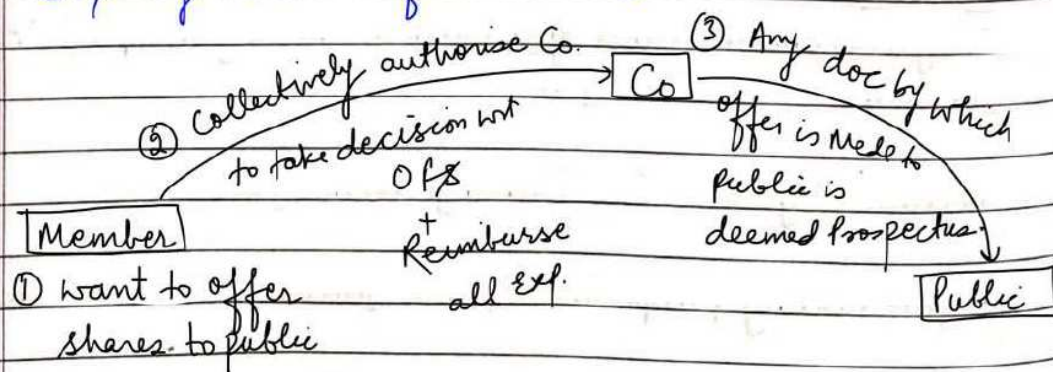
Application form + Abridged Prospectus

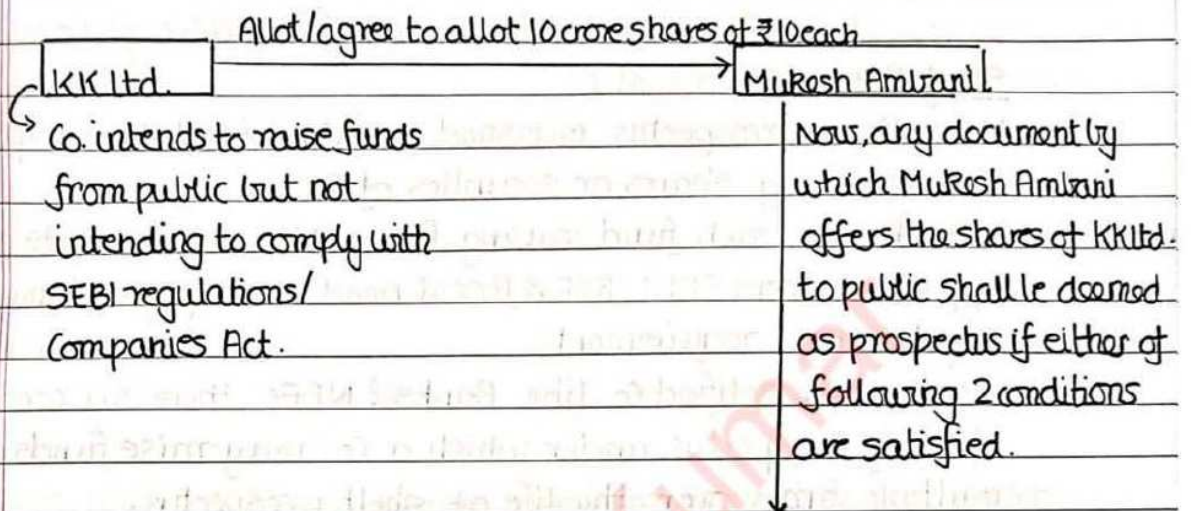


If a person (potential investor) asks for a copy of prospectus before close of offer, Co. shall furnish the prospectus to him

- ↳ Not required.
 - (a) While inviting a person to enter into underwriting contract.
 - (b) Where application form is issued to other than Public.
 - Private Placement
 - Right Issue / Bonus Issue

OFs by Members of Co. [Sec 28]



2. Deemed Prospectus [Sec 25]

Ist Condition → Mukesh Ambani sells/offers shares to public within 6 months from date of allotment.

IInd Condition → Mukesh Ambani has not made full payment to KK Ltd till date of offer to public

- ↳ Clutches of Deemed Prospectus
- To escape → Hold shares for more than 6 months +
 - Before further offer, pay full amount
 - To be trapped → Sell within 6 months
 - OR
 - sell without making full payment
 - OR
 - Both.

Effect: All rules/regulations regarding

- a) Content of prospectus shall apply to deemed prospectus.

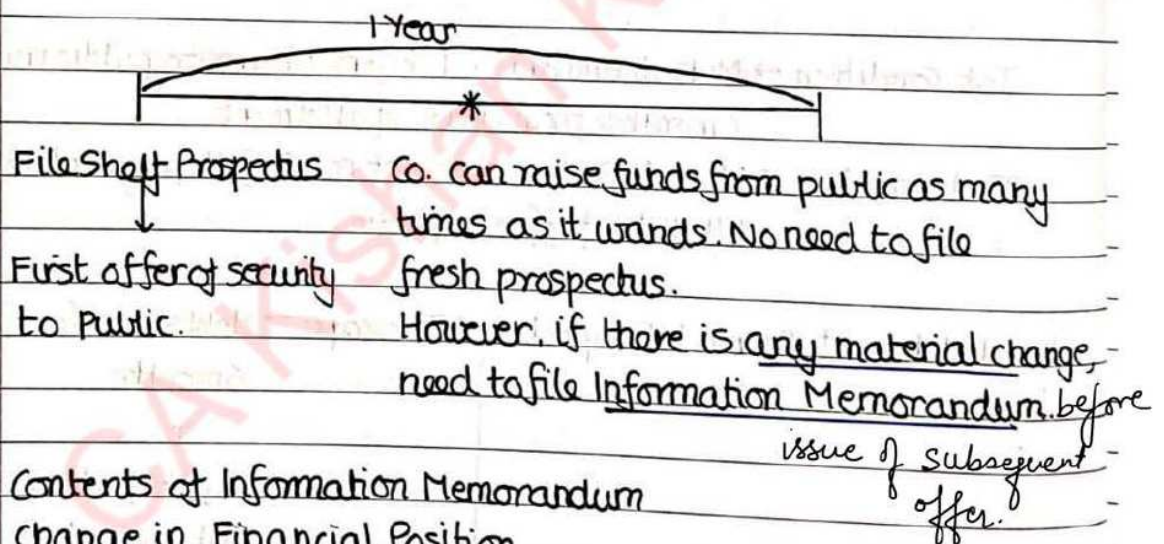
b) liability in respect of misstatement & omission in prospectus shall be applicable.

3. Shelf Prospectus [Sec 31]

Normally, a prospectus is issued for 1 time invitation to public for subscribing shares or securities of Co.

In such case, each fund raising from public, a Co. needs to seek approval from SEBI, RSE & ROC & need to comply with multiple regulations & requirements.

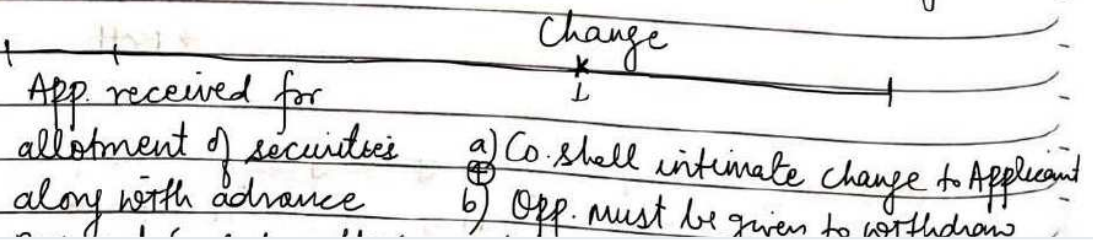
In case SEBI notified Co. like Banks & NBFC, there is a concept of Shelf Prospectus under which a Co. may raise funds multiple times over the life of shelf prospectus.



Contents of Information Memorandum

- change in Financial Position
- New Charge created.
- Other changes as may be prescribed.

Shelf Prospectus + Updated Info Memorandum = Prospectus



4. Red Herring Prospectus [32]

used to attract potential investors during offer to Public.

kind of prospectus where following details may be missing

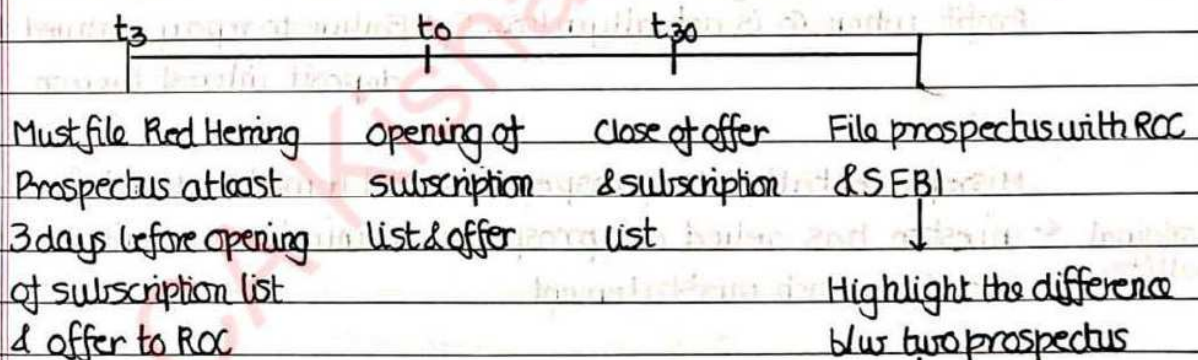
Quantum i.e. how many shares are being offered.

Price

Issue Price [FV + Premium]

It is used to Book building process/price discovery mechanism.

↳ Procedure for Red Herring Prospectus



$$\text{Issue Price} \times \text{Qty} = \text{Cap. Raised}$$

State

- Closing Price of security
- Total capital raised
- Other Prescribed details

Note: Issue of Securities must be in dematerialised form in case of

- Co. making Public offer
- Such class of Co. as may be prescribed. [See 29]

Public → Pvt.

Legal Rules of Issuing Prospectus (26)

to	*	to
Co. shall deliver prospectus to ROC for registration ↓ Must be signed by every director/proposed director or duly authorized agents	ROC shall register prospectus if ↳ All requirements of Companies Act, 2013 & SEBI rules are complied with. ↳ It is accompanied by consent of all persons named in prospectus in writing. So that later, they cannot deny their liability.	Last date upto which prospectus must be issued.

Advertisement must contain:

- Capital Structure of Co.
- Name of subscribers to MOA &
- Shares subscribed by them
- Contents of MOA
- Objects of Co.
- Liability of members
- Amount of share capital.

Date of Prospectus → Date mentioned in prospectus shall be deemed to be the date of its publication.

Golden rules of Framing Prospectus

- (i) Must present complete picture
- (ii) All material facts relating to Co. must be disclosed.
- (iii) Should not
 - Contain misstatement (fake order/contract)
 - Omit disclosure of material facts (promoter in jail for economic fraud)
 - Suppress fact (paying dividend out of capital)

Misstatement in Prospectus

A prospectus is considered to include an untrue statement if

Contains a statement which is misleading. Eg: Co. is distributing dividend out of Profit, when Co. is actually in loss.	Intentional omission of any matter from prospectus/suppression of facts to mislead investor. Eg: Failure to repay matured debt/deposit interest thereon.
--	---

Misrepresentation in prospectus should be ^{a)} material and if ^{b)} investor has relied on prospectus i.e. investor subscribed shares based on such misstatement

original allottee ←

If a person purchases shares from secondary market i.e. Stock Exchange or other shareholder, no relief on account of misstatement in prospectus.

Remedies / Relief / Right

Option to rescind contract

Such contract is voidable at option

claim damage by way of interest or any other loss incurred by

such original allottee.

of investor.

However, rescission of contract is not allowed if

- ↳ Not rescinded within reasonable time
- ↳ Co. goes into liquidation.
- ↳ Investor affirms the contract, either

expressly or implied

- | | |
|---------------------------------------|---|
| (i) Attempt to sell | } Implied
actions
affirming
contract/
allotment |
| (ii) Pays Call Money | |
| (iii) Receive Dividend | |
| (iv) Attend & Vote in General Meeting | |

Liability of Co., Promoter, Director, Officer in charge, Expert, etc in case of issue of untrue/misleading prospectus

Civil Liability (Sec 35)

Essential condition → Loss or damage

- ↳ Offence against counter party
- ↳ Code of civil procedure

Legal responsibility of paying money for damage/loss to investor/original allottee.

Defense

1. Withdrawal of consent before issue of prospectus
2. Prospectus issued without consent &

Criminal Liability (Sec 34)

Mens Rea (Guilty Mind)

- ↳ Offence against state
- ↳ Code of criminal procedure

Punishment u/s 447

give reasonable public notice that
re: prospectus was issued without
consent.

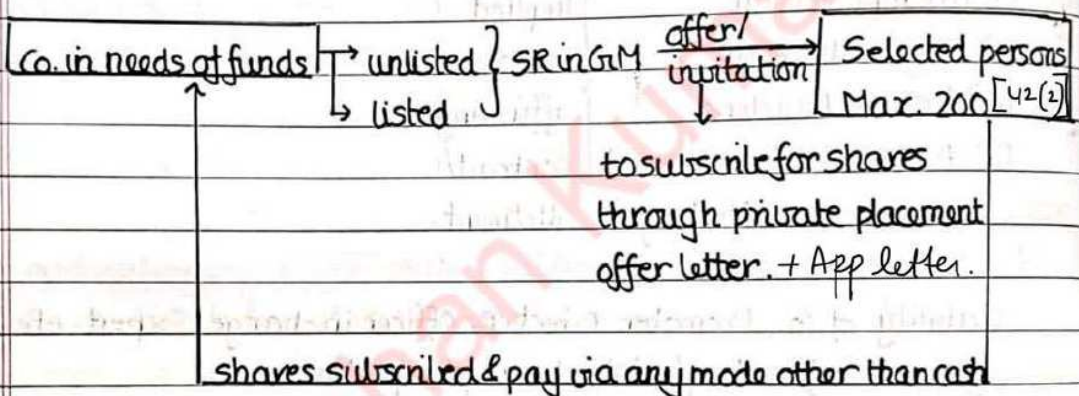
3. Belief in misstatement was given
by expert.

Defense

1. Immaterial misstatement
2. Belief in misstatement i.e. the
person had ground/reasons to
believe in misstatement.

Liability for fraud wrt prospectus → 447
4/5/36

* Private Placement [Section 42]

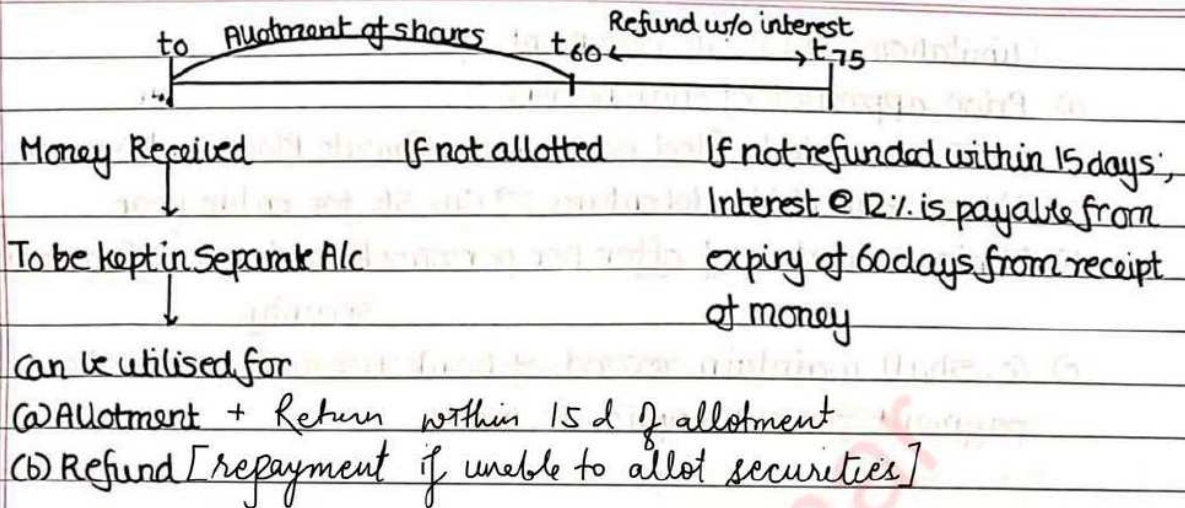


~~Limit~~ Limit on No. of Persons = 200 in one F.Y. per security

Following are not included.

Qualified Institutional Investor
Eg: LIC, Mutual Fund, etc.

Employee share under ESOP



In private placement →

- (i) Advertisement is not allowed.
- (ii) Before making private placement, Co. shall record the name of the person to whom offer is made under private placement i.e. private placement offer letter is given to known person.
- (iii) Return to ROC shall be filed after closure of all formalities within 15 days.

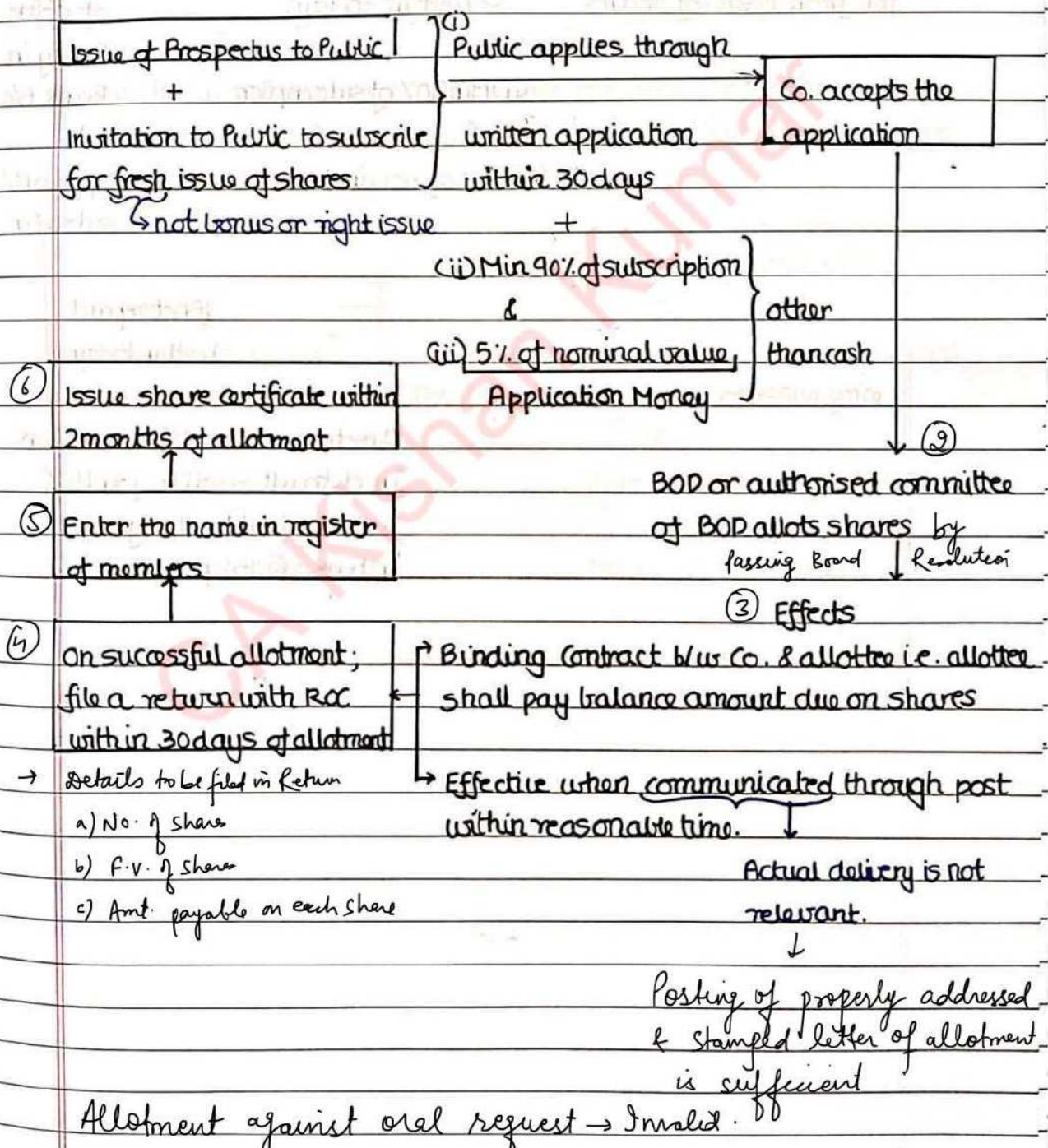
Note: Before making any private placement, ensure that earlier invitation has been completed or withdrawn.

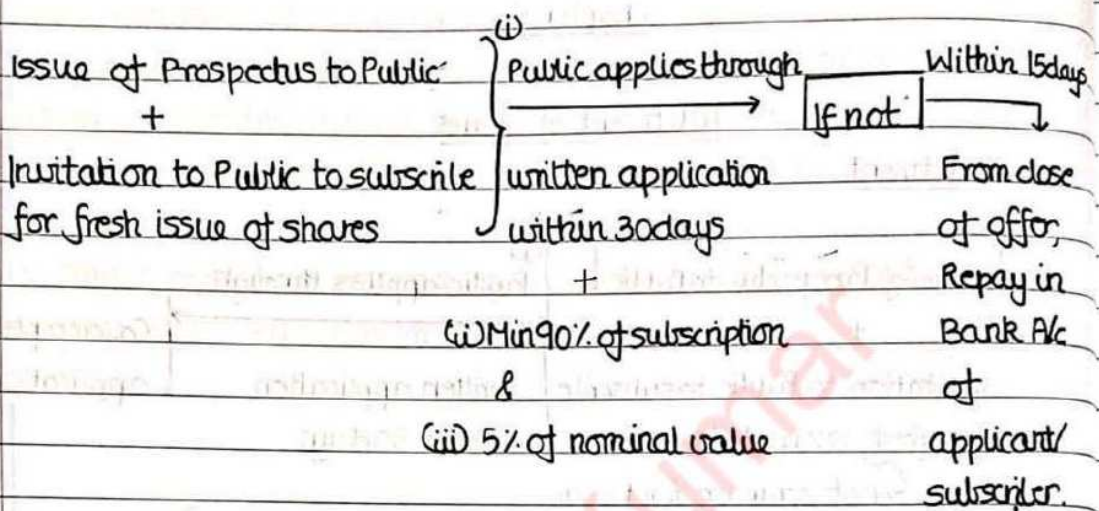
Limitations of Private Placement

- a) Prior approval of shareholders
 - (i) SR needs to be filed each time a Private Placement is made.
 - (ii) Non convertible debentures → One SR for entire year.
- b) ~~Minimum value of offer per person → At least 20,000 face value of security.~~
- b) Co. shall maintain record of Bank Account from where payment for subscription is made.

Consequence of Contravention

Default in filing Return within 15d of allotment	Any other Contravention U/s 42	Prt placement > 200 to persons
↓	↓ (A)	↓
Co., Promoter, Director	Co., Promoter, Director	(A)
↓	↓	+
1000 for each day during which default continues but max 25L	Penalty [Amt. Received → 200 + Refund Amt Received + Intt within 30d of imposing penalty	Deemed public Issue i.e. liable for action U/s 34, 35, 36

Chapter 6Allotment of SharesAllotment - LEGAL RULES

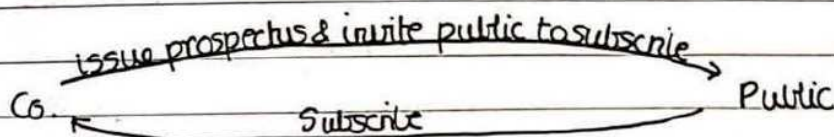
Allotment (If requisite % is not received)

If not repaid within 15 days

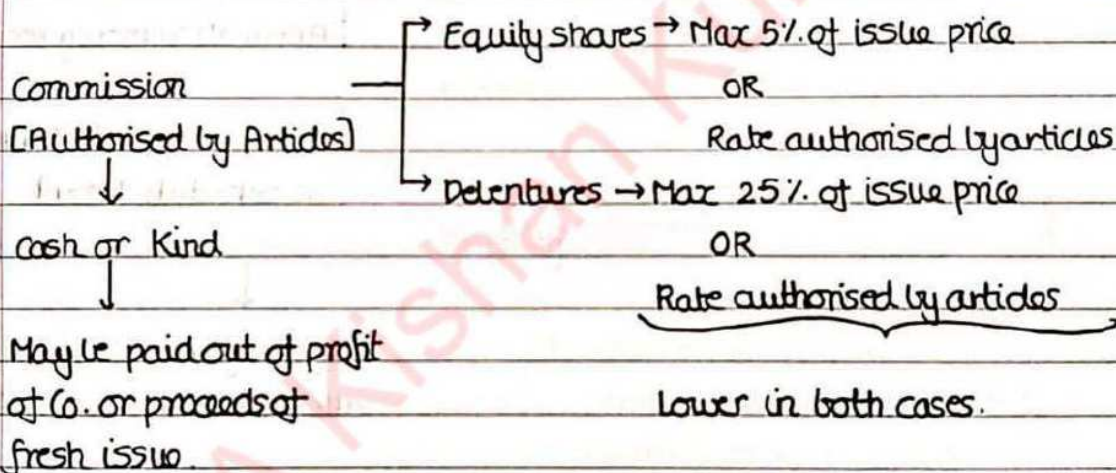
Directors of Co. who are officers in default shall be jointly & severally liable along with interest @ 15% p.a.

Underwriting Commission [Sec 40]

A bank or other financial institutions that undertake to buy unsold shares shortfall in case of issue / offer of new shares to public



Q. What if public does not subscribe the required % of offer i.e. 90%.
Underwriter undertakes to subscribe the shortfall in return for commission.

Notes

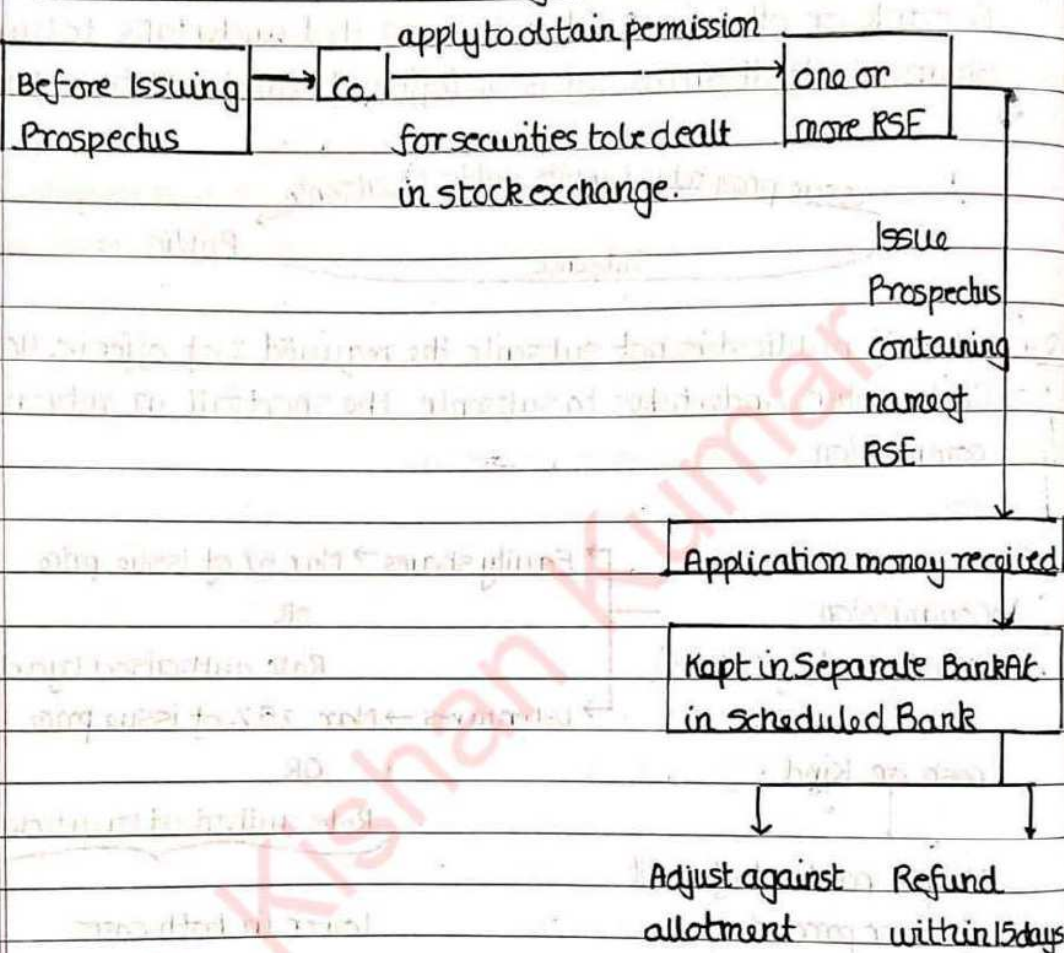
- No underwriting commission if securities not offered to public.
- Copy of underwriting agreement shall be delivered to RoC along with [prospectus]

→ shall disclose

→ Name of underwriters

→ Rate & Amt.

→ No. of securities to be underwritten.

Securities Regt in Stock Exchange

Stock Exchange → It is the market ⁱⁿ which securities are bought and sold. It is managed and regulated by SEBI.

Note: If a Co. applies to more than 1 RSE & does not receive permission from all of them, it can't offer shares & allot it.

Legal Rules of Issuing Prospectus (26)

to	*	to
Co. shall deliver prospectus to ROC for registration ↓ Must be signed by every director/proposed director or duly authorized agents	ROC shall register prospectus if ↳ All requirements of Companies Act, 2013 & SEBI rules are complied with. ↳ It is accompanied by consent of all persons named in prospectus in writing. So that later, they cannot deny their liability.	Last date upto which prospectus must be issued.

Advertisement must contain:

- Capital Structure of Co.
- Name of subscribers to MOA &
- Shares subscribed by them
- Contents of MOA
- Objects of Co.
- Liability of members
- Amount of share capital.

Date of Prospectus → Date mentioned in prospectus shall be deemed to be the date of its publication.

chapter 7Membership of Company

- (a) Subscribers to MOA (first member of Co.) } Agree in writing to become members
 (b) Person whose name is entered in Register of members }
 (c) Beneficial owner of shares whose name is entered into records of depository.

Before dematerialization: (Physical Share Certificate / offline)

Co. _____	→ Register of members
	1. _____
	2. _____
	3. _____
	⋮

After dematerialization → Mandatory for listed Co. / Going to be listed i.e. making public offer.
 → Optional for others.

Register maintained by Co.

Co. _____	→ Register of members
	ESDT CDSL
	(Central Depository Security Ltd)
	NDSL NSDL
	(National Security Depository Ltd)
	Other Regd Members

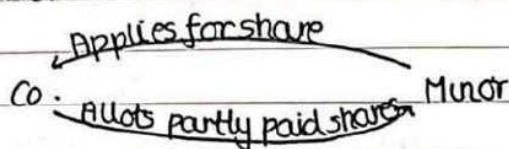
Record Book of Depository

1. _____	→ Automatic updation
2. _____	
3. _____	
⋮	
→ Deemed members / Beneficial owners	

Voting rights, dividend rights & other privileges of members lies with deemed member and not registered member.

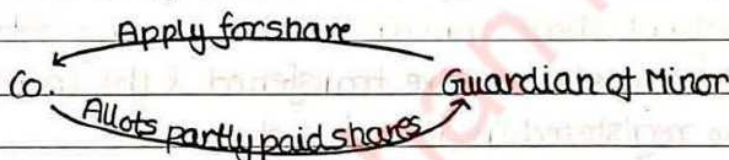
Who can become a member? → Person having separate legal entity can become members.

(1) MINOR

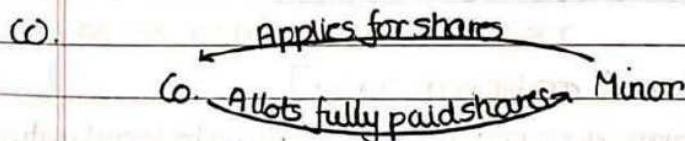


- (i) Contract is void
- (ii) Minor is not liable to pay any call money.
- (iii) Minor as well as Co. can repudiate the contract.
- (iv) Co. shall repay the money received from minor.

(b) Guardian of Minor



- (i) Contract is void as privity of contract is between Co. & minor.
- (ii) Minor is not liable to pay calls money.
- (iii) Minor as well as Co. can repudiate the contract.
- (iv) Co. shall repay the money received from minor.
- * (v) Co. cannot compel Guardian to pay for any calls as he is not party to contract & there is no contractual relationship between Co. & guardian.



In such a case, minor can become a member if name is entered into Register of members.

Co. cannot remove the name of minor from the Register of members if shares are fully paid as there is no question of any future liability on such shares.

Note: If Co. is aware that member is minor; must ask for Guardian's

Q. What about Minor attaining Majority?

He does not automatically become member on attaining majority. However, if after becoming major, he does any act which indicates that he has accepted membership, he shall be deemed to be the member.

② Insolvent

An insolvent cannot become member of a Co. since he does not have contractual capacity.

Q. What about the Co. in which he is already a member?

An official receiver is appointed by NCLT who has the power to sell/transfer/dispose off the shares of insolvent.

However, insolvent shall remain member having voting rights, etc. till the shares are transferred & the transferee gets his name registered in Register of members.

In other words, mere/only appointment of receiver does not deprive insolvent from exercising his right of membership.

③ Non Resident / foreigner

Foreign citizen can hold shares of Indian Co. subject to compliance of FEMA, 1999.

Only Alien enemy cannot become member of Co.

④ Partnership Firm [Registered or Unregistered]

Since, a partnership firm does not have a separate legal entity hence it cannot become a member of Co.

Exception → Firms can become members in Sec. 8 Co.

Note! Partners can become members in their individual capacity & partners in their individual capacity can become joint members.

⑤

LLP

It is included in the definition of Body Corporate. Hence, LLP can become a member of a Co.

It is regulated by LLP Act, 2008.

⑥

HUF/BOI/AOP

Can't become member.

⑦

Government

No restriction i.e. can become member.

⑧

Company

Co. has separate legal entity. Hence, it can acquire shares of other Co. & become a member provided it authorized by MoA to invest in shares of other Co.

Note: OPC cannot invest in other body corporate.

Note: Subsidiary Co. cannot become member of Holding Co.

(For exception, Refer kinds of Co.)

Q.

Can Co. become partner in a partnership firm?

Yes, liability of members is limited. liability of Co. is unlimited.

And as liability of partners in a partnership firm is also unlimited so Co. can become a partner.

Q. How to become member?

- Subscribe to MoA (at the time of incorporation of Co.)
- Allotment of shares by Co. (IPO/FPO/Private Placement)
- Transfer
- Transmission
- By estoppel / holding out or Acquiescence

Joint Membership



Maximum 3 persons



Joint & Several liability



1 share certificate



For all practical purposes like

- | | |
|---------------------------------|--|
| (a) Right to vote | } Person named first in the application form |
| (b) Name in register of members | |
| (c) Service of document | |

Q. When will a person cease to be a member?

Transfer

Transmission

Surrender

Death & Insolvency

Winding up of Co.

Member vs Shareholder → Refer Book.

chapter 8

Transfer and Transmission of Shares → Movable property which is transferable.
↓
Regulated by Article

Transferability of shares [Sec 44]

Public Co.

Freely transferable

Private Co.

Reasonable Restriction in the interest of Co. may be imposed by Articles of Association 2(68)

RLP → Refer 'Kinds of Co.'

There cannot be prohibition on transfer of shares.

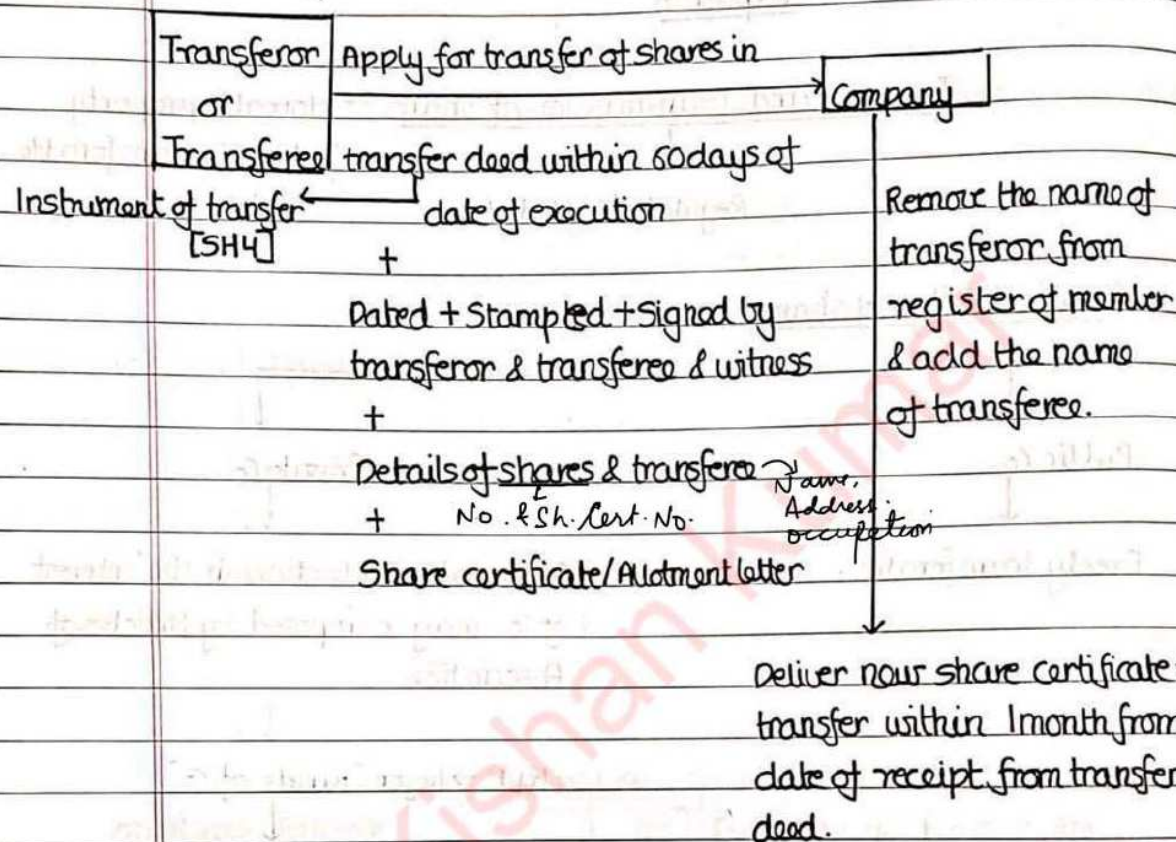
Mode of Transfer of OwnershipTransfer
↓

Voluntary transfer of shares from one person to another

Transmission
↓

Person becomes entitled to shares by operation of law.

Method / Procedure of transfer of shares [56]



Q.1. What if Transfer Deed is lost or submitted after 60 days with Co.?
Co. may register the transfer deed after obtaining indemnity bond from applicant.

2. If transfer deed is submitted by Transferor & shares are partly paid;

↳ Co. shall give notice to Transferee.

↳ Transferee can object to proposed transfer within 2 weeks.

↳ If Transferee does not object within 2 weeks, he shall be deemed to have accepted the transfer.

Transmission of Shares (56)

↓
Transfer of shares & passing of title to another person by operation of law.

↓
Death or insolvency

↓
Legal Heir acquires the right to shares by operation of law.

Transmission of shares

→ No consideration required

→ No Stamp Duty

→ No Transfer Deed

↓
Regd as
He chooses to be a member

↓
Intimate / Inform the Co. regarding transmission through letter of intimation / request

+
Proof of death / insolvency

↓
Co. shall register transmission & enter the name of legal heir in their Register of Members.

↓
Legal heir is entitled to vote & enjoy other rights of membership

Original Owner

Legal Heir

Gets himself registered as member.

Transmission

↓
He chooses to transfer it to third party without registering the shares in his name without getting himself Regd as member.

↓
Legal heir is deemed shareholder having right to transfer.

↓
Co. shall register the shares in the name of transferee. All provisions of transfer shall be applicable.

Original Owner

Legal Heir

Transfer to third party. All provisions of transfer shall be applicable.

Transmission

Refusal of Transfer

BOD can refuse transfer in accordance with provisions of AOA.

Such refusal should be reasonable, bonafide & in the interest of Co.

↓
Possible reasons of refusal

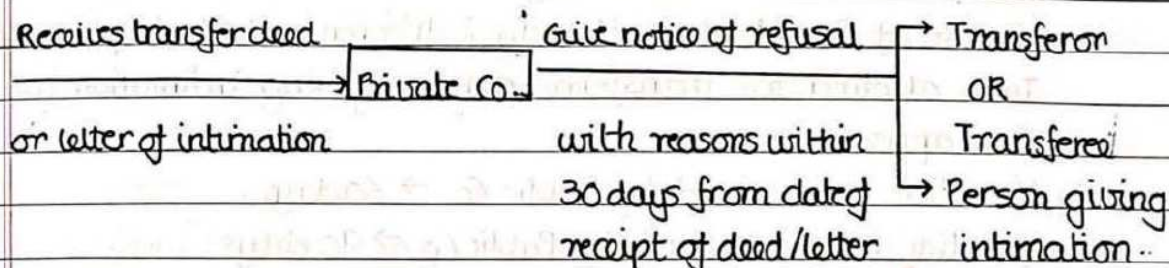
↓
Common Grounds / Reasons (Private & Public Co.)

- (a) Transferor is indebted to Co.
- (b) Transferee is financially incapable to pay the calls.
- (c) Transfer of partly paid shares to minor.
- (d) Transfer deed is incomplete.
- (e) Any other just & sufficient reasons.

Additional Grounds for Private Ltd.

- (a) Transferee is rival concern/entity.
- (b) Article may provide that before transferring shares to outsiders the transferor must offer the shares to existing shareholders.
- (c) Article may provide that employee who are shareholders must offer their shares to existing members when they leave Co.

Refusal to transfer shares by a Private Co. - Procedure [58]



Transferee or person giving intimation shall file appeal within 30 days of receipt of Notice.

↓
NCLT

60 days in case of Public Co.

Hear the matter/parties

↓
Dismiss the appeal

↓
Direct Co. to register transfer or transmission within 10 days of receipt of order.

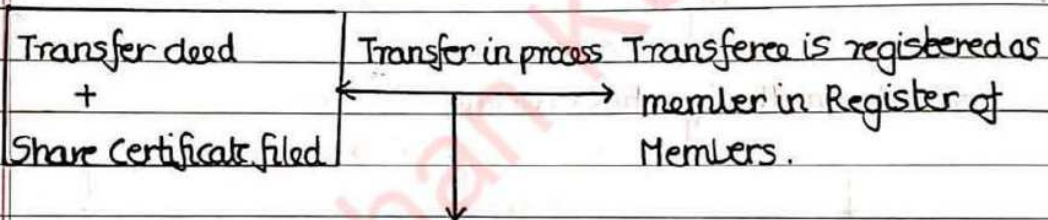
↓
May direct the Co. to pay damages.

Note: If a Co. does not give notice of refusal of transfer, appeal may be filed within 60 days from date of delivery of deed/letter to Co.

Refusal to Transfer of shares by Public Co.

The procedure remains same just as in case of same just as in case of Private Co. with only 2 differences to be kept in mind -
Time allowed for transferee/person giving intimation to file appeal.

- (a) If notice is received by Public Co. → 60 days.
(b) If notice is not received by Public Co. → 90 days
(30 + 60)

Right & Liabilities of Transferor and Transferee in case of pending registration.

1. Bonus / Right Issue
 Transferor → No right
 Transferee → To be kept on hold / abeyance till transferee becomes member.
2. Dividend
 Transferor → No right
 Transferee → To be kept on hold / abeyance. However, if transferor authorises Co. in writing, Co. can pay it to transferee.
3. Voting Right
 Transferor → Has right to vote.
 a) If Transferee has made full payment -
 Transferor shall vote as per directions of transferee.

6) If Transferee has not made full payment -
Transferor can vote as per his choice.

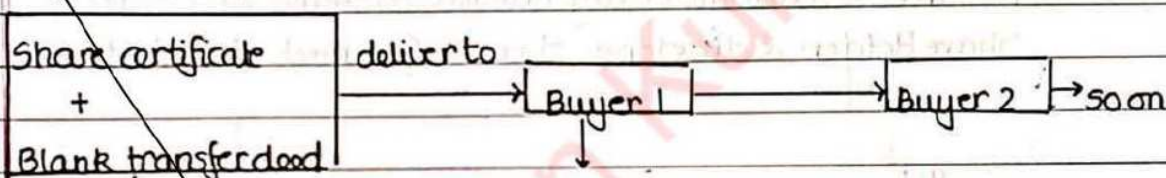
Transferee → Can compel transferor to vote as per his directions provided he has made full payment.

4. Call Money

Transferor → Has to pay to Co. but can recover from transferee.

Transferee → Has to reimburse transferor for call money paid by him.

Blank Transfer



Duly signed by transferor
& duly filed but name
& sign of transferee is
missing.

Can get registered as
member or transfer
the shares without
becoming member.

Listed Co.	→ 12 months
Others	→ 2 months

Any buyer can become member by filing his own name along with details & submitting duly filled Transfer deed + Share Certificate to Co.

Until the buyer gets his name registered as member in Register of Members of Co. original member/ transferor shall continue to be a member.

Tax implication → No stamp duty
→ Identity of buyer is concealed.

Nomination of Shares / Debentures by Sh/Deb Holders.

↓
Applicable to all types of companies

↓
Optional

↓
Can be made, varied, cancelled any time.

↓
Only individual including minor.

→ Sh/Deb holder may appoint an adult to act as Guardian of minor during minority

↓
Nominee is automatically entitled to shares on death of Shareholder & dividend thereon (deemed shareholder)

↓
May ^{get} registered as member.

↓
May transfer the shares to third party.

Q. What about their other rights of membership like voting etc?
When nominee gets himself registered as member.

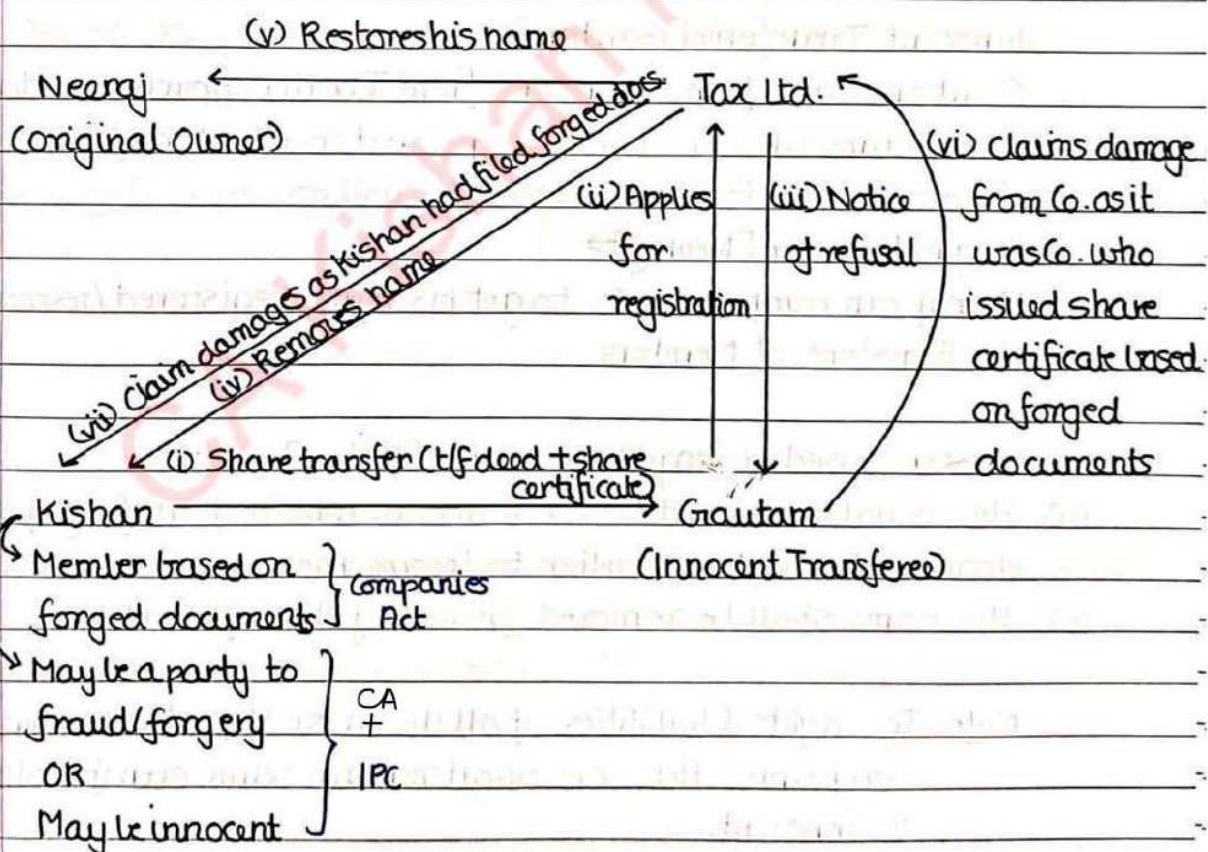
Note: In case of Joint Holders, Nominee is entitled to shares only on death of all Joint Holders.

Forgery [Forged Transfer]

↓
Sign of transfer is forged.

Forgery = Nullity = Void ab initio = Confers no legal title = Absence of Title
= No legal Impact

- Q. Tax Ltd. registered Kishan as its member based on forged documents. Neeraj was original owner. Kishan transferred the shares to Gautam who is an innocent transferee? Discuss the rights & liabilities of different parties. Will it make any difference, if Kishan is also innocent?



RIGHTS & LIAB. of Different Parties

① Co. →

- (a) Co. shall refuse transfer of shares to new/proposed transferee. (Gautam)
- (b) Co. shall remove name of Kishan from Register of Members.
- (c) Co. shall restore name of Original owner i.e. Neeraj in Register of Members.
- (d) Co. can claim damages from Kishan since he is the person who lodged/filed forged documents with Co.
- (e) Co. shall be liable towards innocent transferee i.e. Gautam. Since it was Co. which erroneously/by mistake registered Kishan as member based on forged documents & listed share certificate.

② Innocent Transferee [Gautam] →

Gautam can claim damages from Tax Ltd. However, under no circumstances he can be registered as member of Tax Ltd.

③ Original Owner [Neeraj] →

Neeraj can compel the Co. to get his name registered/restored in Register of Members.

④ Member based on forged documents [Kishan] →

- (a) He is liable towards Co. as it was he who filed the forged documents with Co. earlier to become member.
- (b) His name shall be removed from Register of Members.

Note: The rights & liabilities of all the above 4 parties under Companies Act, 2013 shall remain same even if Kishan is innocent.

Person committing forgery incurs a criminal liability under Indian Penal Code, punishable both by imprisonment & penalty. He is liable to compensate both the Co. and transferee for the loss suffered by them.



Think Tax, Think Kishan

Mission December 21

Taxation (FT) @2199/-

I.TAX @ 1199/-

GST @999/-



9540365625

Chapter 9Share Capital and DebenturesShare Capital

Amount invested in Co. by members for it to carry out operations.
Also known as Owner's Fund.

Shares → Smallest unit in which share capital of a Co. is divided.

2(84) → Movable property which is transferable as per AOA of Co.

→ Bundle of Rights

Equity Shares

Normal

With voting rights

Differential voting rights w.r.t. dividend, voting rights, etc.

Preference Shares

Preferential rights w.r.t.

(i) Dividend Payment → Fixed amt.

OR

→ Fixed rate

FV (OR) Paid up Value

(ii) Repayment of Capital on Winding Up.

Irredeemable Preference Shares

Not allowed.

Redeemable Preference Shares

Note: Dividend is normally paid on Nominal value of shares.

↓

If AOA authorises, Co. can pay dividend on paid up sh. cap. (51)

Conditions for Issue

- (i) Authorisation in AOA
- (ii) SR in General Meeting
- (iii) No Subsisting/Existing default w.r.t. redemption of preference shares or payment of dividend.
- (iv) In case of listed preference shares, Co. also needs to follow regulations of SEBI.
- (v) Max period of redemption $\rightarrow$ 20 years
- (vi) In case of preference shares issued for infrastructural projects, can exceed 20 years but max. 30 years. In such cases, 10% preference shares shall be redeemed every year from 21st year onwards.

Redemption of Preference Shares [Section 55]

(a) Fully paid preference shares



(b) No authorisation in articles is required



(c) To be redeemed on terms on which Preference shares were issued or on terms varied u/s 48.

↳ Source of Redemption of FV.

Out of Profit available for distribution as dividend.

Creation of CRR is mandatory (to protect the interest of creditors/denatureholders)

To make sure that equity is maintained.

Amt. of CRR = Nominal Value / FV of Shares being redeemed.

CRR must be used for issue of fully paid bonus shares.

Out of fresh issue of shares made for purpose of such redemption.

Old PSC ↓ New PSC
Net change = 0

Note: Use of CRR for any other purpose shall be treated as reduction of share capital.

↳ What about Securities Premium?

If Financial Statement comply with AS prescribed u/s 133.

PSC issued before commencement of Act
out of profit or Securities premium

PSC issued after commencement of Act
out of profit of co.

Other Cases

Out of profit or Security Premium

↳ Special Case

Due date of redemption of PSC or Payment of Dividend

↓
Co. not in a position to pay dividend or redeem PSC.

↓
Co. can

(a) obtain consent of holders of $\frac{3}{4}$ th value of such PSC.

+

(b) Approval of Tribunal

↓
Issue further redeemable Preference Shares equal to amount due including dividend w.r.t. redeemed PSC.

↓
Due to this, it shall be deemed that unredeemed PSC have been redeemed.

Issue of Shares with Differential Rights

↓
Ordinary shares with no/little voting rights in lieu of higher dividends or other rights.

↓
Eg: Allowed in 2008 to Tata Motors who first issued 10% Differential Voting Right shares in 2008.

Advantages

a) For Co.

Helps Co. to raise funds without diluting shareholding of promoters.

b) For investors

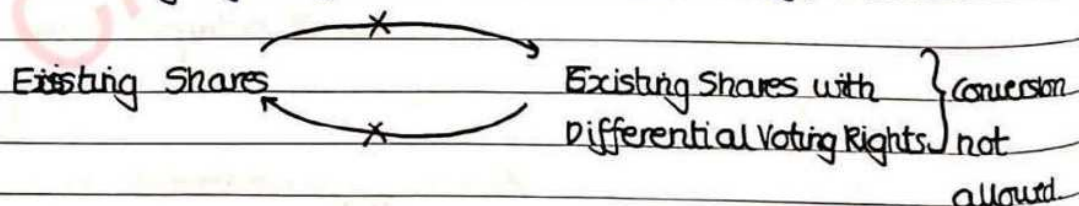
↳ Higher dividend

↳ shares with Differential Voting Right trade at lower rate.

According to provisions of Companies Act, 2013

↳ Issue of shares with Differential Rights must be authorised by passing OR through Postal Ballot.

↳ only fresh issue of shares with differential rights allowed because voting rights of shares cannot be altered after issue.



↳ Max value of shares with Differential Rights $\leq$ 74% of Total Voting Power

Conditions for Issue

- (i) No default in filing of Financial Statement & Annual Return
- (ii) No default in repayment of loan.

- (iii) No default in statutory payment to employee.
- (iv) Not penalised by Court or Tribunal during preceding 3 FYs.
for any economic offence under SEBI Act, 1992

FEMA ~~Act~~, 1999

SCRA, 1956

RBI Act, 1934.

- (v) No subsisting default in

- ↳ Repayment of dividend i.e. declared dividend.
- ↳ Redemption of Preference Shares
- ↳ Repayment of matured deposit & interest thereon.
- ↳ Repayment of matured debentures & interest thereon.

- (vi) Relevant details of issue of Differential Voting Rights shall be disclosed in Register of Members as well as Board's Report.
of FY in which it is issued.

Variation in Right of Shares (Section 48)

Co. want to vary rights of a particular class
Co. → Different class of Shares

↓
Provision for variation shall be contained in MOA/AOA.

↓
If MOA/AOA is silent, variation can still be done if such variation is not prohibited by terms of issue of shares of that class

PROCEDURE

↓
Such variation may not affect rights of any other class of shareholder.

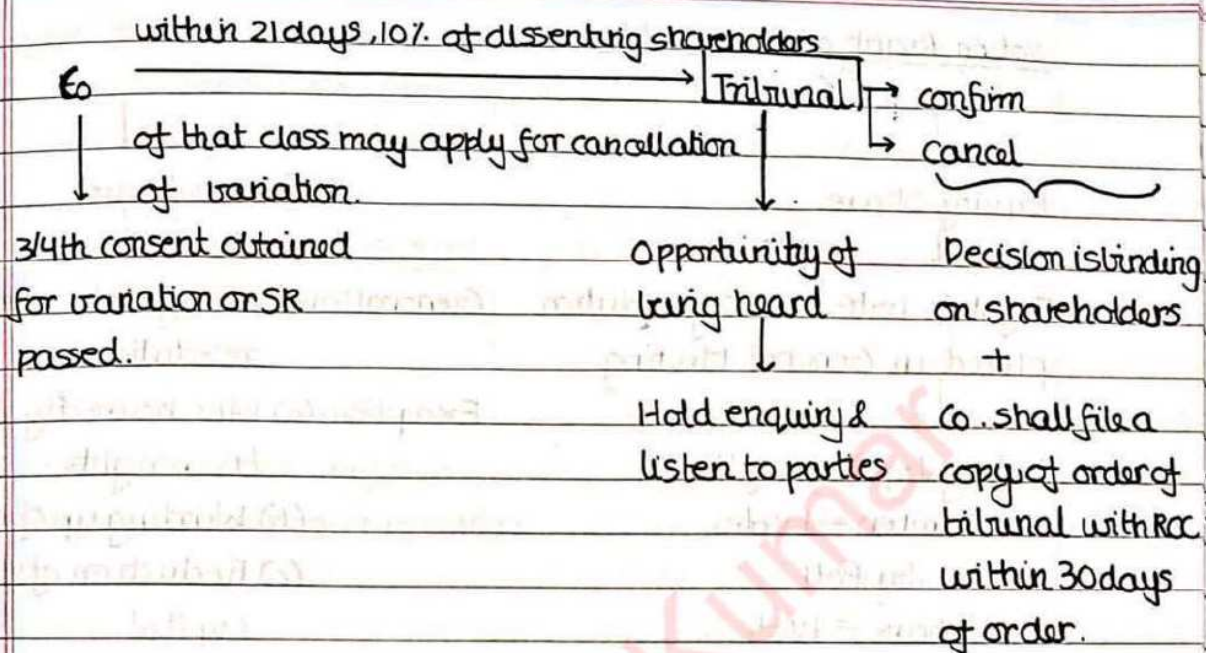
↓
Obtain written consent of at least 3/4th members of that class of shares

OR

Pass SR in meeting of shareholders of that class of shares.

↓
Such variation may affect rights of shareholders of other class of shares.

↓
+
Obtain written consent of 3/4th members of other class of shares as well.



Q. Suppose MOA/AOA allows variation in rights of shareholders of any class of shares. Terms of Issue of particular class of shares does not allow variation.

MOA/AOA → Public documents → Doctrine of Constructive Notice.

Any agreement inconsistent with AOA/MOA shall be void.

Hence, complying with the conditions prescribed u/s 48, rights can be varied.

Voting Right of Shareholders [47]

Equity Shares

Right to vote on every resolution placed in General Meeting.

Voting by Show of Hand (107)

1 Member = 1 Vote

by Poll (109)

1 Share = 1 Vote

In case of voting on poll

→ Right shall be proportion to his share in paid up & c.

Preference Shares

General law: No right to vote on resolution.

Exception: (a) Which directly affects their rights

(b) Winding up of Co.

(c) Reduction of Share Capital

(d) If dividend is not paid for 2 consecutive years or more, they can vote on any resolution.

Proportional voting Rights

Issue of Shares at Premium (Section 52)

Aggregate amount of premium shall be transferred to Securities Premium Account.

No condition for issue

Usage

⑥ Others [BBPPE]

B → Buy back of fully paid shares.

B → Issue of fully paid bonus shares.

P → Paying premium on redemption of PS

P → Writing off preliminary expenses

E → Writing off expense/omission/discount on issue of shares/debentures.

④ When Financial Statement comply with AS prescribed u/s 133 [BBE].

Note: If Securities Premium is used for any other purpose, it will be considered as part of paid up share capital and such utilisation amounts to reduction of share capital.

Issue of Shares at Discount (Section 53)

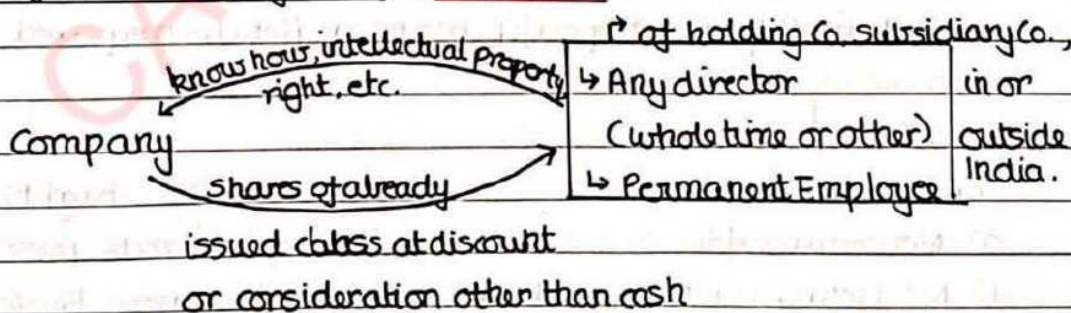
General law

- ↳ Prohibited for all companies
- ↳ Any issue on discount is void.

Exception i.e. can be issued at Discount

- a) Sweat Equity Shares can be issued at discount as per provisions of Section 54 of Companies Act, 2013.
- b) Shares can be issued at discount to creditors when its debts are converted into shares as per debt restructuring scheme in accordance with Guidelines & regulation of RBI under RBI Act & Bank Regulation Act.

Issue of Sweat Equity Shares (Section 54)



Conditions

1. Special Resolution
 - Specifics
 - No. of shares
 - Current Market Price
 - Consideration
 - Class of director or employee.

2. Allotment of sweat equity should be made within max period of 12 months from the date of passing SR.
3. Lock in period i.e. shares are non transferable for a period of 3 years from the date of allotment. The share certificate shall contain the fact of lock in period on share certificate.
4. Compliance of Rules & Regulations
 - Listed → SEBI
 - Unlisted → CG.
5. Limit on Sweat Equity Shares
 - Overall Limit → 25% of Paid Up Share Capital
 - Limit in 1FY → Higher of 15% of Paid Up Share Capital
 - OR
 - 5 Crore.

Calls on Shares

Made upon members to pay called up amount in case of partly paid up shares.



Uniform calls to be made by passing Board Resolution.

↳ No discrimination

Calls in Advance → Specific power in Articles required

Limitations

- a) Non refundable
- b) No voting right w.r.t. calls in advance till it is called up

Rights

- a) Interest at rate prescribed in AOR/ or rate agreed b/w Co. & members
[Max rate = 12%]
[Can be paid out of profits. If no profits can be paid out of capital as well]
- b) Liabilities of members to pay future call extinguished to the extent of call paid.

○ Preferential payment of call in advance along with interest to members in event of winding up but after paying all creditors.

Purchase of own Shares by Co. [Sec. 67] → Not app. on Redemption of Pref. Sh.

Why prohibited/restricted → to stop stock market manipulation

Public Co.

Prohibited i.e. public Co. cannot buy its own shares [Absolute; No exception]

Restriction } cannot give financial assistance, direct or indirect, through loan, guarantee or security, etc.

Exception i.e. when Public Co. can give financial assistance for buying its share

Banking Co.

SBI → Kishan

ordinary

course of business to buy shares of SBI

Valid

Trustee

(For Benefit of

Employee)

Used it Co. → Trust for loan = Max 6m

length of employee

Use this money to invest in

Co's share or Holding Co

Employee

other than

Director/KMP

Salary

For purpose of

Purchasing fully paid

Shares of Co.

Co's share or Holding Co

Private Co.

Restricted i.e. cannot buy own shares. However, exemption is given to certain private Co.

Allowed to give financial assistance direct or indirect, through loan, guarantee or security.

Exception to Private Co i.e. can buy its own shares provided all of the following are satisfied.

1. No other body corporate has invested in its share capital.
2. Borrowing from Bank/Financial Institutions < lower of (a) 50 Cr (b) 2x share capital
3. No subsisting default in repayment of such loan.

Buy Back of Shares (Section 68)

↓
Purchasing own shares from market. Such purchased shares are absorbed by co. & no. of outstanding shares decreases in the manner.

↓
cancellation/destruction of physical share certificate

This results in relative increase in ownership of each shareholder.

Motive/Objective

- To return wealth to shareholder.
- To reduce dilution which is caused by generous ESOP.
- To improve certain key financial ratios like EPS, MPS, etc.
- When management feels that shares are undervalued in market.

Procedure

- Buy back of fully paid shares/securities

↳ ESOP ^{or other} notified by Co.

- Sources
 - Free Reserves
 - Securities Premium
 - Proceeds of Fresh Issue

→ Mandatory creation of CRR equal to nominal value of shares bought back

↓
Fully paid & should not be of same class
CRR to be issued in issue of Bonus shares

- Authorisation in AOA.

- Debt Equity after Buy back should be 2:1

(v) Resolution

Upto 10% of aggregate paid up
Equity shares & Free Reserves

Board Resolution

Above 10%.

SRL [Postal Ballot]

(vi) Maximum limit

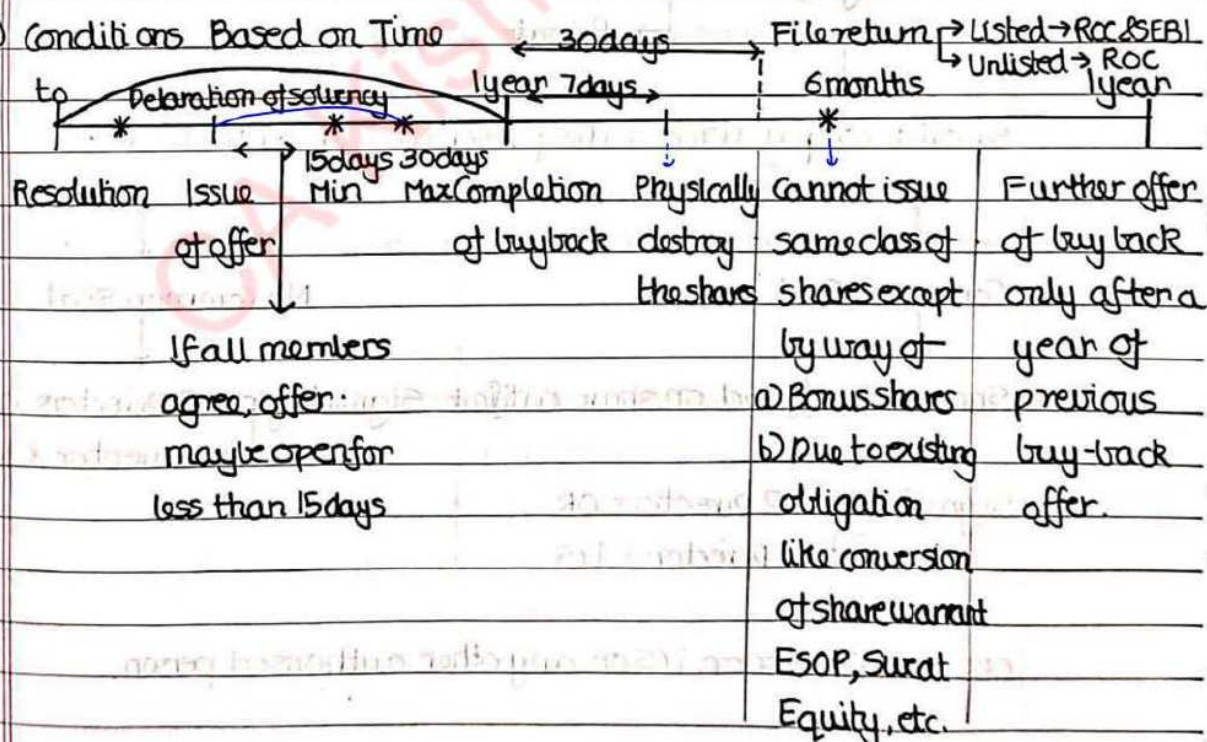
During life time of Co.

25% of aggregate of paid up share
capital & free reserves

During IFX

25% of paid up Equity Shares.

(vii) Conditions Based on Time



- (ix) Prohibition $\rightarrow$ Refer Book.

Filing of Annual Return [Section 92]

- ↳ Every Co. shall file with ROC a copy of Annual Return, within 60 days of holding AGM.
- ↳ If AGM has not been held, ^{it should be filed} within 60 days from due date of AGM.

Share Certificate

Prima facie evidence of ownership of no. of shares mentioned in share certificate.

Mandatory to issue $\rightarrow$ Public
 $\rightarrow$ Private

Should comply with rules prescribed by Central Govt.

Common Seal

No Common Seal

Should be affixed on share certificate signed by $\left\{ \begin{array}{l} \rightarrow 2 \text{ Directors OR} \\ \rightarrow 1 \text{ Director \& ICS} \end{array} \right.$

Signed by $\rightarrow$ 2 directors OR
 $\rightarrow$ 1 Director & 1 CS

OPC → Director or CS or any other authorised person.

Q. What about shares in dematerialised form?

The records of depository [NSDL, CDSL] i.e. register of beneficial owner shall be prima facie evidence of ownership of shares.

→ The above section is not applicable in this case.

→ Duplicate Share Certificate

Pre-condition

- If proved that share certificate is
- (i) Lost/destroyed OR
 - (ii) Defaced OR } and is surrendered
mutilated OR torn } to Co.
+ Indemnity Bond

Time limit

listed

Unlisted

Within 45 days of
submission of
documents

Within 3 months of
submission of
documents

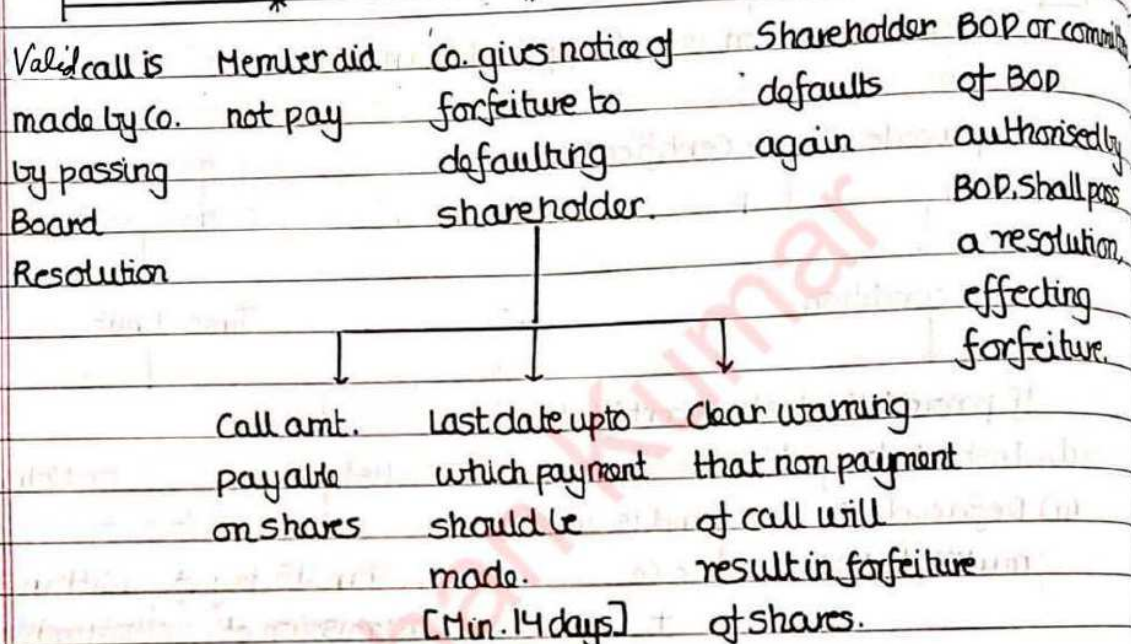
Lien on Shares → Right to retain possession of goods

Right of lien on Shares is not inherent but must be clearly provided in Articles.

The Article may give right of lien over shares either for unpaid calls or for any other debt due by members of Co.

In such case, shareholder can't transfer shares w/o consent of Co.

However, if shareholder applies for transfer & Co. registers that transfer, new shareholder's share is free from lien i.e. loss of lien.

Forfeiture of SharesEffects of Forfeiture

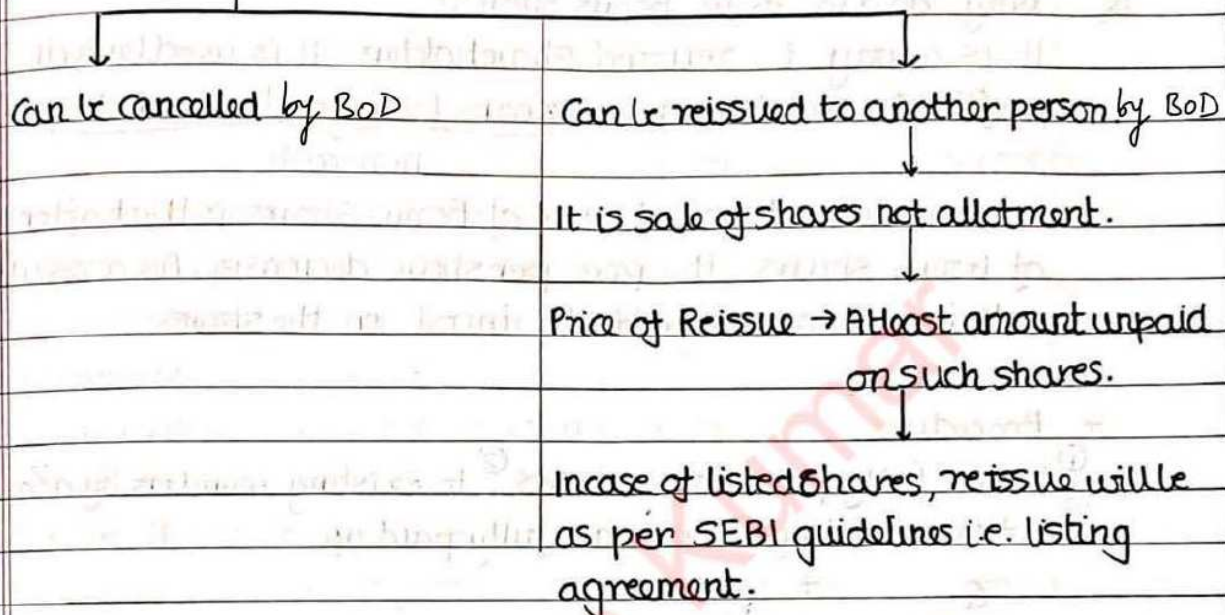
- ↳ No longer a member.
- ↳ Amt. already paid is forfeited.
- ↳ Not a reduction of Share capital.

Other conditions

1. Specific provision in Articles is required and such provision must be strictly complied with.
2. Must be bona fide and in the interest of the Co. ⊕
3. Even after forfeiture, such person continue to be liable for unpaid calls till the Co. receives full payment with respect to forfeited calls.

⊕ If forfeiture was made to escape liab. of a member as a favour → Its invalid & treated as fraud.

Q. What about forfeited share?



Surrender of Shares

Under forfeiture of shares, Co. forfeits shares when member fails to pay calls.

If member himself feels that he will not be able to pay the balance calls, he may voluntarily surrender his shares.

Stock. [61]

1. Aggregate of fully paid up shares merged into one fund.
Stock → For administrative convenience.
2. Authorized by Articles + OR
3. Notice of conversion of shares into stock shall be given to ROC within 30 days of conversion along with copy of altered 'MoA'.

Note: Such conversion does not affect right of shareholders.

Note: Stock can be sold in fractions.

Note: Fully paid up shares ↔ Stock

Partly paid up shares cannot be converted into stock.

No fresh issue of stock needs to be converted.

Issue of Bonus Shares [63]

Q. Why do a Co. issue Bonus Shares?

It is a way to reward shareholders. It is used by well profitable members as a means to reward shareholders non-cash

Another advantage of issue of Bonus Shares is that after issue of bonus shares, the price per share decreases. As a result, retail investors are able to invest in the shares

↳ Procedure.

① Issue fully paid bonus shares ② to existing members by a Co.

③ whose existing shares are fully paid up, proportionately.

④ +
Powers in AOAeg. 1:3 Bonus issue
↓⑤ +
Recommended by BOD

1 share for each 3 shares held.

⑥ +
OR in General Meeting

↳ Once recommended by BOD, issue of bonus shares cannot be withdrawn.

↳ Sources → Capital Redemption Reserve (CRR)

→ Securities Premium

→ Free Reserves.

Note: Revaluation Reserve cannot be used for issue of bonus shares.

↳ Conditions

1. No default in payment of interest or repayment of loan.

2. No default in payment of statutory dues/obligations towards

3. Co. shall ~~apply~~ comply with Rules ^{prescribed} issued by Central Govt. ^{employees}Note: Bonus Shares shall not be issued in lieu of Dividend.

Further Issue of Shares [Section 62]

A Right Issue [Non dilutive Pro rate way of raising capital]

* offer of further shares to existing shareholders [Right Issue]

It is an offer by Co. to existing shareholders in proportion to existing shareholding, offering a right to buy additional shares of the Co. generally at a discount.

It is a source of raising fund through owned capital rather than borrowing.

Every existing shareholder shall have the right to

- Accept the offer of shares
- Decline / Reject the offer of shares
- Renounce the shares offered in favour of another person unless the Article restricts such right.

to If 90% of members of Pvt Co. Min 15 days Max 30 days
give their consent in writing or e-mode
↓
it can be reduced.

Letter of offer

- ↳ Registered Post
- ↳ Speed Post
- ↳ E-mode

Content

- No. of shares offered.
- Members have the right to renounce it [unless Articles restrict such right]
- Statement that if offer is not accepted with due date, it shall be deemed to be declined.

Note Unsubscribed right shares may be disposed off by BoD in such manner which is not disadvantageous to SH of Co.

B. Employee Stock Options [ESOP]

Option given to director, officer or employee of a Co. or its holding Co. which gives them right to purchase shares of the Co. at a future date at a pre-determined price.

Approved by

Public Co.

SR

Private Co.

OR

+

Comply with additional conditions as may be prescribed

Co. can specify the lock-in period for shares.

to Min. 1 Year

Grant of option to employee

Vesting option i.e.

when option can be exercised.

↓

Eg: 1. Prevailing Price 500
Offer Price 100

Exercise price is decided by Co.

2. Prevailing Price 400
Offer Price 100

ESOP exercised; Profit 300

3. Prevailing Price 70

→ Does not exercise.

Who is eligible for ESOP?

- a) Permanent employee of Co., subsidiary Co. or Holding Co. in India or outside India.

Such employee should not be a promoter or a person belonging to promoter group. [This restriction not applicable to start up Co. for 10 yrs from Inc.]

- b) A director, whether whole time director or not but excluding Independent director.

Such director should not hold, directly or indirectly more than 10% equity shares of Co. [This restriction not app. to start up Co. for 10 yrs from Inc.]

Imp

C. Offer of Further Shares to Any Share Person

- ↳ existing shareholders
- ↳ employee
- ↳ creditors

SR

+

comply with prescribed conditions

+

Price is to be determined by registered valuer.

Till the registered valuer is not appointed as per this act, price shall be determined by

- a) Merchant Banker registered with SEBI.
- b) CA having min 10 years of practice.

D. loan / Debenture can be converted → Shares (convertible)

If a) terms of issue of debenture / loan agreement should contain provisions in relation to such conversion.

- b) Such loan / was raised / debenture issued by passing SR.

E Co. (i) loan/Money through issue of debt Govt.

(ii) Order for conversion at terms & conditions it deems fit

↳ financial position

↳ Rate of interest

↳ current market price of shares

↳ terms of issue of debenture/

loan

It is not necessary that terms of issue of debenture or granting of loan has provision for conversion.

(iii) If Govt. is of opinion that it is necessary in the public interest to order for conversion.

order for conversion is final & conclusive. However Co. can prefer/file an appeal before NCLT if terms of condition is not acceptable to Co. within 60 days of order for conversion.



decision of tribunal is final.



Order of conversion → cannot be challenged.

Terms & Conditions for conversion → can be challenged.

Note.

Auth &C 100 Cr.

Paid up &C 90 Cr.

Loan to Govt. 20 Cr. → Govt. directed conversion of loan to Sh.



Paid up &C = 110 Cr.



Consequently Auth. &C of Co. shall stand increased.

Modes of Reduction of Share Capital [Section 66]

1. Reduction of Unpaid Capital

Reduction or extinguishment of liability in respect of share capital not paid up.

FV	10	→	8	9	} Red ⁿ
PV	8	→	8	8	
					Extinguishment

2. Paying off excess paid up capital

With reduction or extinguishment of liabilities i.e. Pay Back the amt. & reduce Face Value.

Eg: FV 10
PV 10

Pay 4 & FV is reduced to 6 → extinguishment

[FV 6
PV 6]

Pay 4 & FV is reduced to 7 → Reduction.

[FV 7
PV 6]

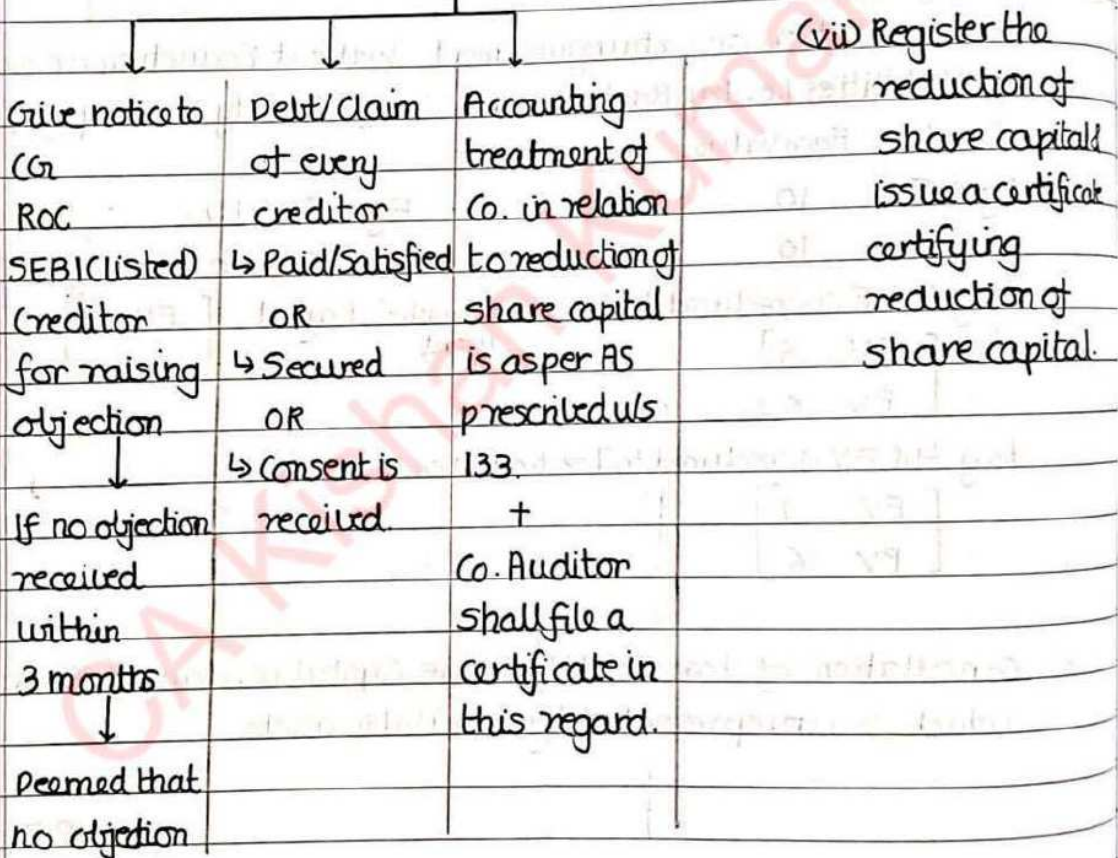
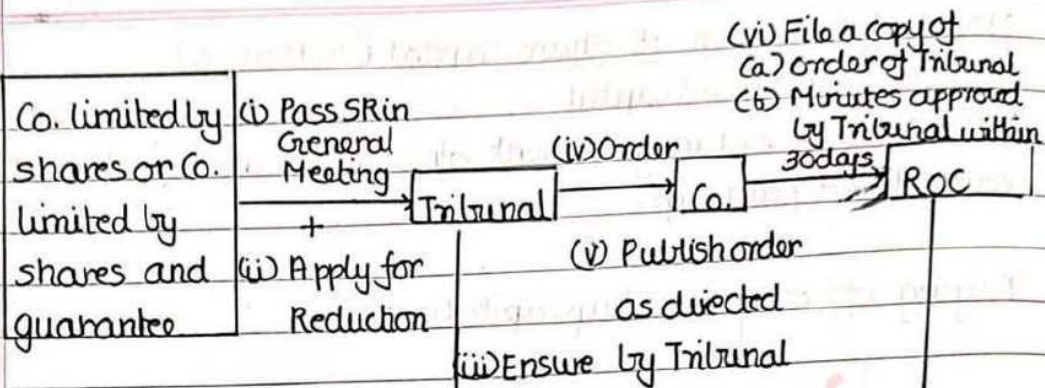
Without Reduction or extinguishment of liability i.e. Simply pay amt.

Eg: FV 10
PV 10

Pay 4 [FV 10
PV 6]

3. Cancellation of Lost Paid Up Share Capital i.e. Part of Share Capital which is unrepresented by available assets.

P.T.O.



Liability of Members after Reduction of Share Capital

General

liability is limited to amt. fixed by order of reduction.

(-) Amt. already paid on shares

Name of creditor is not entered in the list of creditors due to ignorance of Reduction of Share Capital

AND

Co. defaults in payment after reduction of share capital.

Every member at the time of registration of order of Reduction of Share Capital by ROC shall be liable to contribute for payment of debt by Co.

Debenture

↓
Public acknowledgement of debt i.e. debenture holders are creditors of Co.

↓
Comparatively cheaper source of finance [certain assumption]

↓
Generally secured

↓
No voting rights *

Kinds of DebenturesSecured Debentures

Debentures are secured by mortgage or hypothecation by creating (fixed) charge on asset of Co.

↓
Not by Pledge

↓
General → Period = 10 years
Exception → Period = 30 years
in case of Infrastructure Co.

Convertible Debentures

Debenture → Shares

Conditions

- SR must be passed at the time of issue of such debenture.
- The terms of issue of debenture must contain provision for conversion.

Debenture Trustee

Appoint debenture trustee after to tso

getting their consent.



Name of debenture trustee is stated in the prospectus/offer letter.

Issue of prospectus for subscription of debenture to more than 500 persons

Execute debenture trust deed.

Note: Restriction on appointment of Deb. Trustee & their Role
→ Refer Book.

Debenture Redemption Reserve

Listed Co, unlisted Banking Co,
NBFCs & HFCs



Not Required

Other cases
outstanding deb.
10% of

Chapter 10Acceptance of DepositDeposit

Not a movable property i.e. cannot be transferred.

Depositories

Movable property i.e. can be transferred.

Deposit [2(31)]

Includes receipt of money as

- ↳ Loan
- ↳ Deposit
- ↳ Any other manner

Exclude



As prescribed in consultation with RBI.



Bank

NBFC

Housing Finance Co. (DHFL)

India Bulls)

Acceptance of Deposit

From members (73)

Any Co. (Private or Public) by passing ordinary resolution.

From Public (76)

Only eligible Co. having
 a) Net Worth $\geq$ 100cr; OR
 b) Turnover $\geq$ 500cr
 by passing SR.

If deposit is within limit prescribed
 u/s 180; ordinary Resolution may be
 passed.

Paid Up Share Capital + Free Reserves

Maximum Amt. of deposit [35% of Paid Up Share Capital + Free Reserves +
 Security Premium]

Eligible Co.	Other Co. [Pvt Co. + Public Co. which are not eligible]	Govt. Co.
From members $\rightarrow$ Max 10% From public $\rightarrow$ Max 25%.	From members $\rightarrow$ 35% For Pvt Co. & International Financial Services Centres $\rightarrow$ 100% $\downarrow$ Limit of deposit of 100% of Paid Up Share Capital + Free Reserves + Security Premium shall not apply to following Pvt Cos*	Overall limit $\rightarrow$ 35% Can be accepted from members or public. No internal limit as in case of eligible Co.

* Two categories of Pvt. Co. can accept deposit from members without any limit.

a) Start Up Co. for 5 years from date of incorporation.

b) (i) Not an associate or subsidiary Co. of another Co.

(ii) Max borrowing $<$ Lower of 50 crore &

$2 \times$ Paid Up Share Capital

(iii) No subsisting default in repayment of borrowing.

Q. A private Co. wants to accept deposit in excess of 100% from its members. What is the max. borrowing it should have to be eligible for this.

Paid Up Share Capital	Max borrowing to be eligible for accepting deposit from member in excess of 100% of
	Paid Up Share Capital + Free Reserves + Securities Premium

(i) 20Cr

Max borrowing $\leq$ Lower of 50Cr & 40Cr (2×20)

$\rightarrow$ less than 40Cr.

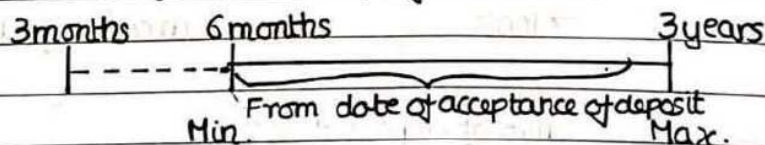
(ii) 30Cr

Max borrowing $\leq$ Lower of 50Cr &

60Cr (2×30)

$\rightarrow$ less than 50Cr.

Duration of Deposit / Repayment Period



In order to meet short term requirement of funds, a Co. can accept deposit for a shorter term provided.

(i) period of repayment is not less than 3 months

(ii) Such deposit is Max 10% of Paid Up Share Capital + Free Reserves + Security Premium.

Procedure for Acceptance of Deposit from member as well as public.

1. Issue circular
2. Certification of No default
3. Deposit repayment reserve
4. Creation of Security
5. Filing of return

(4) Circular

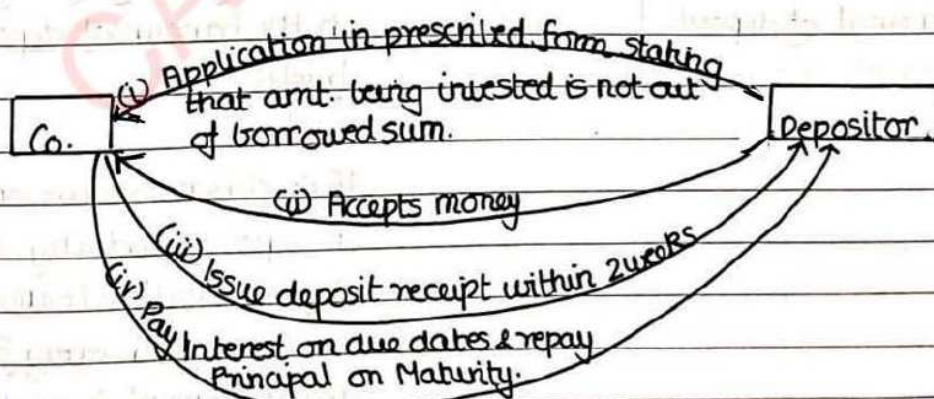
any Co. → Eligible Co.

To be issued by Co. inviting deposit from member/public through Registered Post Acknowledgement Due, speed post or e-mode.

Before issue of circular to member/public, file it with ROC at least 30 days before such issue.

Circular shall contain details

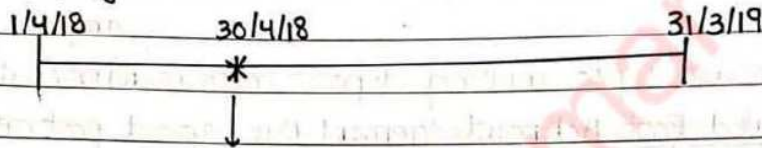
- Financial position
- Credit rating
- Total no. of depositors
- Amt. due w.r.t. previous deposits accepted by Co.



(2) Certification of Non Default

Co. needs to certify that it is not committed any default in repayment of deposits accepted anytime & if any default is committed, the Co. made good the default & a period of 5 years has elapsed since the date of making good the default.

(3.) Deposit Repayment Reserve.



20% of the deposit maturity during the FY shall
be reserve till 30/4 of the FY.

Money shall be used only for repayment of deposit.

(4) Creation of Security $\rightarrow$ Only for Secured deposits



Issue of circular for
withdrawing deposit or
renewal of deposit.

Create a charge/security on its asset by mortgage/hypothecation in the favour of deposit trustee

If Co. does not secure or secure a deposit partially, such deposit shall be termed as unsecured in every future advertisement /circular.

(5) Filing of return $\rightarrow$ 30th June of every FY.

(6) Disclosure in f8 by way of Notes about Money Received from

Additional Conditions for acceptance of deposit from Public (Section 76)

- a) All legal requirements for acceptance of deposits from members apply in this case as well.
- b) 2 Additional Conditions
 - (i) obtain rating w.r.t. deposit from recognised credit rating agency (CRISIL, ICRA, Moody's, S&P, Fitch) every year during tenure of deposit.
 - (ii) Circular shall also be placed at website of Co.

Failure to Repay Deposit or Interest

1. Penal Interest @ 18% for overdue period.

(date following due date till date of payment)

2. Fine, Penalty & Imprisonment as per Sec. 76A

3. Depositor $\xrightarrow{\hspace{10em}}$ Tribunal

1. Hear the parties and order

(i) the Co. to pay the sum due

(ii) Pay loss or damage incurred by depositor due to non payment of interest & deposit by Co.

(iii) Such other order as Tribunal may deem fit.

Loan from Relative of Director $\rightarrow$ Pvt Co $\rightarrow$ Not deposit
 $\rightarrow$ Public Co $\rightarrow$ deposit

Date _____
 Page _____

Q. What is not deposit? $\rightarrow$ CG / SG / LA / Stat Auth.

1. Money received from Govt / Foreign Govt.

Co. / Foreign Co. / NR subject to FEMA

Banks / NBFC

Public Financial Institutions

LIC

Issue of shares & debt securities

Director / Promoter / Relatives of Promoter

2. Amt. received in course of business (should be adjusted within 365 days of receipt)

3. Non Interest bearing deposit from employee provided deposit does not exceed annual salary or from Trust

4. By issuing commercial paper by Co. as per Notification by RBI.

5. $\begin{array}{c} \text{to} \\ \text{---} \end{array}$ $\begin{array}{c} t_{60} \\ * \end{array} \xleftarrow{15 \text{ days}} \begin{array}{c} t_{75} \\ * \end{array}$

Receipt of Application
Money

Allotment

If not refunded

they pay Interest @ 15%.

If share is not
allotted.

6. ≥ 25 L or more Received by Startup Co. in Convertible Note in Single Tranche.

Punishment u/s 76A

Accepts or Invites deposit in Contravention
of Sec 73/76.

Co.

Every officer in default

Interest

+

Fine: 1 crore or $2 \times$ Deposit $\rightarrow$ lower

Fine: 25 L to 2 Cr

OR

Imprisonment: 0 to 7 years

OR

Both.

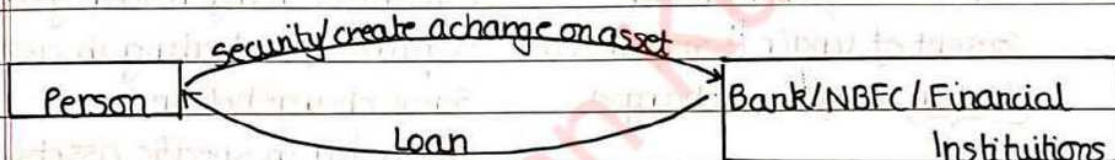
Can be extended to 10 Cr.

Note: If wilful suppression of material facts or misstatement
Sec 447 is applicable.

Chapter 11Charges

Whenever a person takes loan from NBFC/Banks/Financial Institutions, you need to give security in order to cover the risk from the lender. create charge on asset
chargeholder.

If a person defaults later in repayment of Interest/Principal, the lender has the right to take over the asset & use it to settle the debts.



Charge [Interest or lien created on assets of co. as security] 2 (16)

	Mortgage	Pledge	Hypothecation
	Immovable Property	Movable	Movable
Ownership	Not transferred	Not transferred	Not transferred
Possession	Not transferred	Transferred	Not transferred
Documents of Ownership	Custody is given		
	docs of immovable property	Gold	docs of car
	Person Bank	Person Bank	Person Bank
	Loan	Loan	Loan

Change

Fixed Charge

When charge is created on specific / identifiable / ascertained asset.

Fixed Asset (helps in manufacturing)

Consent of lender is required to deal in assets so charged.
Sale

chargeholder

Floating charge

charge is created on class of assets (not identifiable)

Equitable charge on asset which is not specific.

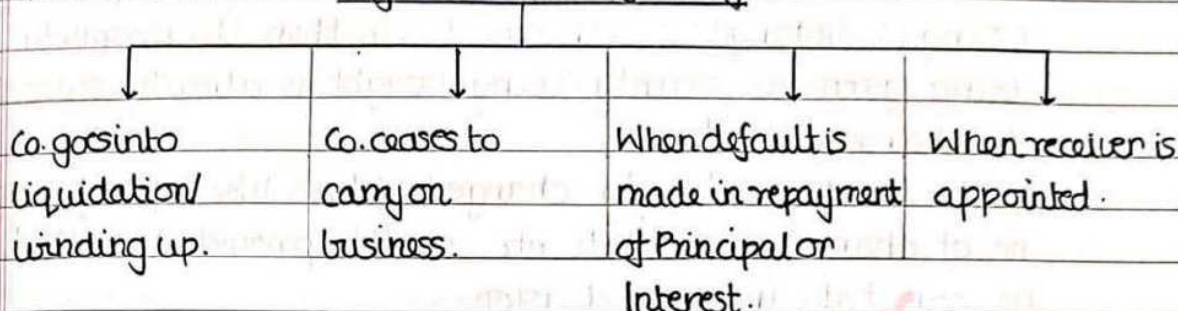
Consent of chargeholder ^{is not} gets required for dealing in assets. Since chargeholder is not interested in specific assets, neither he is interested in value of asset.

Whenever borrower defaults in repayment of loan or interest, the chargeholder gets the right to take over stock/debtor standing on that day.

A Co. may create fixed charge on asset already subject to floating charge.

In case of default the fixed chargeholder will have priority over floating charge.

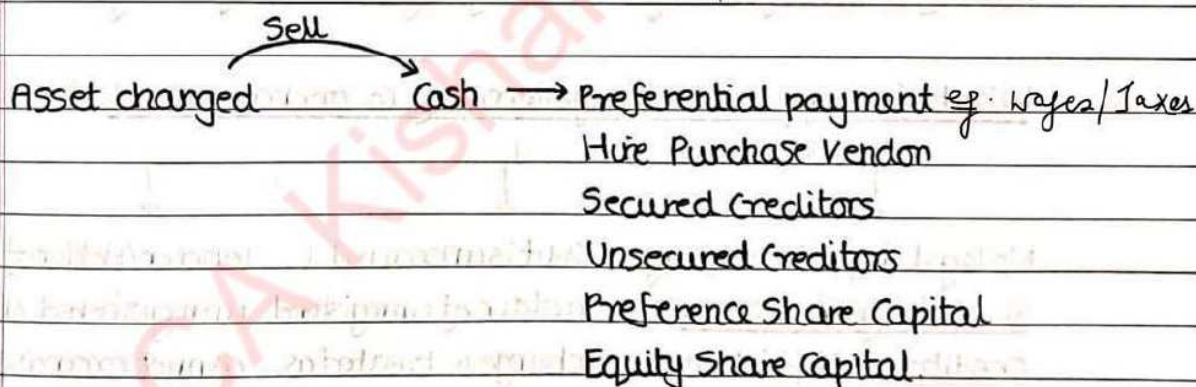
A floating charge may be converted into fixed charge.
This is known as Crystallisation of Charge.



Effect of creation of charge.

Creditor covered under charge is entitled to be paid out of assets covered under charge in priority to other liabilities except

- Preferential payment i.e. wages/taxes etc.
- Hire purchase vendor.



Q. Why is registration of charge required?

It is required so that prospective lender/buyer of property (Tangible/Intangible) is informed. Whether the property being given as security/being bought is already subject to charge or not.

If the Asset is already charged, details like type of charge, no. of charge, value, date, etc. shall be provided so that he can take informed decision.

1 Asset → Multiple charge → Multiple loan → Legal but every charge must be disclosed by way of registration with ROC.

On Regⁿ, it becomes info in public domain → How much borrowed, from whom
Date of notice of charge → Date of registration of charge.

Q. What if charge is not registered by Co. or chargeholder?

↓
No legal impact i.e. charge is void against secured creditor & liquidator under this Act, IBC.

↓
Other secured creditor & liquidator will not recognise unregistered charge.

↓
Debt is unsecured & holder of unregistered charge is treated as unsecured creditor.

↓
Lender/Holder of unregistered charge cannot exercise right of lien over document of title of goods.

Registration of Charge [Section 77]

Creation of charge	Co, within 30 days of creation of charge, shall apply for registration of charge	ROC	→ will register charge in Register of charge & issue certificate of registration (Chg 2)
In India or outside India	↓		→ Conclusive Proof
Tangible or Intangible	Chg 1 → other than debentures		Effect
Fixed or Floating	Chg 9 → Debentures + Fee		Any person acquiring any right on property or giving loan on the basis of such property shall be deemed to have knowledge of such change.

↓
Date of Notice = Date of Regⁿ of charge

If charge is not registered within 30 days of creation of charge.

Charge created upto 1/11/18
i.e. before commencement of
ordinance.

ROC may allow Registration
within 300 days from creation
of charge if sufficient reason
along with fee.

If registration within 300 days
→ OK.

If not registered within 300 days
from date of creation of charge,
one can register within 6 months
from date of commencement
of ordinance on payment of fee.

Charge created.

1/4/18

31/12/18 (i.e. 300 days from creation)

or

6 months from date of commencement of ordinance
i.e. 6 months from 2/11/18 → 1/10/19

Cruz: 300 days from date of creation

: 6 months from date of commencement of ordinance } later

Charge created on or after
commencement of ordinance i.e.
2/11/18 or later.

Within 60 days of creation of
charge (effective extension of
30 days)

If registration within 60 days
→ OK

If not registered within 60 days
of creation of charge →

Further extension of 60 days by
ROC on payment of ad valorem fee.

to extension 60 days
Std 30d 60days Extⁿ 120days
Charge created on payment of
Ad valorem fee

- Q. What if charge is not registered within 30 days by Co?
- ↳ Chargeholder may make application to ROC in prescribed form & fee.
 - ↳ ROC shall give notice to Co. & ^{may} register the charge within 14 days.

↓

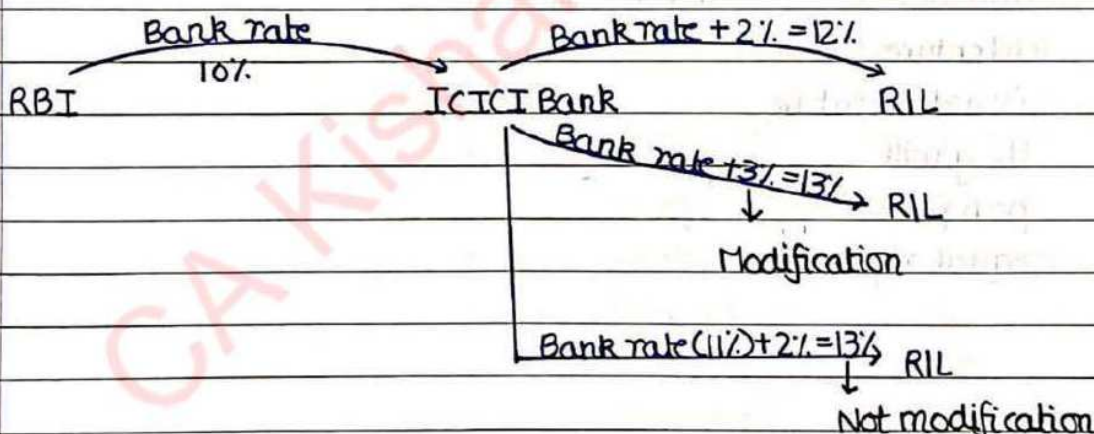
chargeholder may recover the fee from Co.

Charge not requiring registration

- a) Pledge → Physical Possession of asset can be transferred only once.
- b) Charge created by Court's order or operation of law.
Eg: Attachment of Property by Amrapali Group.

Modification of charge → Same as registration

In reference to Part (iv), Page 128



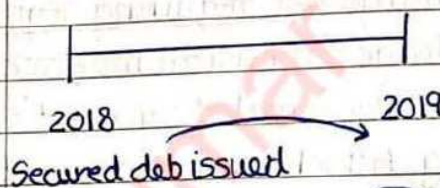
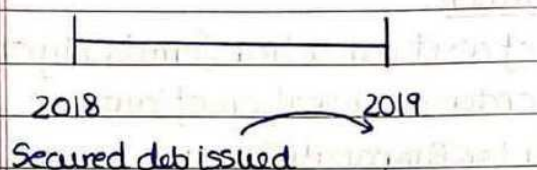
So if change in rate of int. is due to change in Bank rate
→ Its not a modification requiring Reg.

In reference to part (iii), Page 128.

→
Pari Passu (Equal Right)

With Pari Passu right

Without Pari Passu rights



Co. communicate the first debenture holder that if additional debentures are issued in future, they will pari passu/ equal rights

Pari Passu rights i.e. equal rights, just as rights of earlier issue.

(100) ↓ Priority settlement & right over asset.

(500)

Register of charge (81)

ROC's register of charge

Particulars of charge maintained on MCA portal (www.mca.gov.in) shall be deemed to be register of charge maintained by ROC.

Co's register of charge

Maintained at registered office.

Preserved permanently

Details: Short description of asset

: Amount of charge

: Name of person entitled to charge (chargeholder)

Authenticated by director or (or) person authorised by BoD.

to 8 years

charge created/modified	charge registered	charge satisfied	Needs to be preserved
↓		↓	
Instrument evidencing/creation/modification charge.		Date of satisfaction of charge	

Inspection of Co's Register of charge at Co's Registered Office

↓
2 Hrs every working day during business hrs → working hrs

↓
Member & Creditor

↓
No fee

↓
Other Person

↓
on payment of prescribed fee.

Satisfaction of charge (Repayment of loan) [82]

Registered charge
satisfied in full

Co. shall intimate facts
of satisfaction of
change within 30 days

ROC

send notice to
chargeholder
as to why
satisfaction of
charge should
not be
registered.

(OR)
Max 300 days increase
of specified IFSC Public/
Private Co. after
paying fee.

↓
chargeholder

↓
If he shows cause
for not Registering
Satisfaction
↓

ROC shall note this in
Register & Inform Co.

↓
If no reply within time specified
in notice (max 14 days)

ROC shall record satisfaction of
change in Register of charge &
inform Co.

Issue Certificate

Note: ROC need not give notice to chargeholder if intimation of satisfaction
of change is given by Co. in prescribed form which is signed
by chargeholder.

Inspection of Co's Register of charge at Co's Registered Office

2 Hrs every working day during business hrs

working hrs

Member & Creditor

Other Person

No fee

on payment of prescribed fee.

Satisfaction of charge (Repayment of loan) (82)

Registered change
satisfied in full

Co. shall intimate fact
of satisfaction of
change within 30 days

ROC

+
Max. 300 days increase
of specified IFSC Public/
Private Co. after
paying fee.

send notice to
chargeholder
as to why
satisfaction of
charge should
not be
registered.

chargeholder

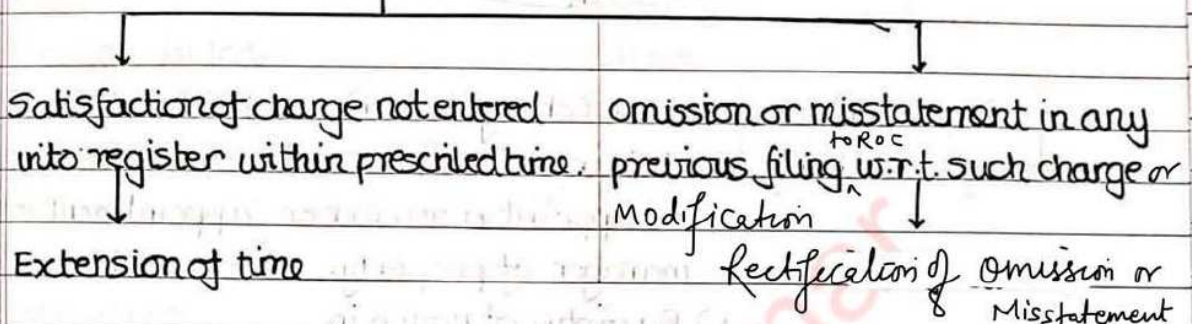
If no reply within time specified
in notice (max 14 days)

ROC shall record satisfaction of
charge in Register of charge &
inform Co.

Note: ROC need not give notice to chargeholder if intimation of satisfaction of charge is given by Co. in prescribed form which is signed by chargeholder.

Note: Part payment of loan does not require intimation to ROC

Rectification of Register of Charge by Central Govt., [Section 87]



Co. or any other interested person File application for rectification → Central Govt.

Before such order for rectification Central Govt. must be satisfied that the above default is

- accidental or due to inadvertence or sufficient cause which
- do not prejudice the interest of creditor or shareholder of Co.
→ chargeholder

Order can be made by Central Govt on such terms & conditions as it may deem just.

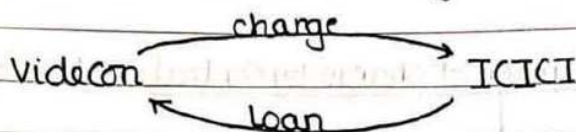
⇒ Power of ROC to Record Satisfaction of Charge in its Register (83)

If ROC is satisfied on the basis of evidence produced before him

→ that charge is satisfied

↓
ROC shall record such satisfaction of charge

+
Give Notice to affected parties within 30d of Recording

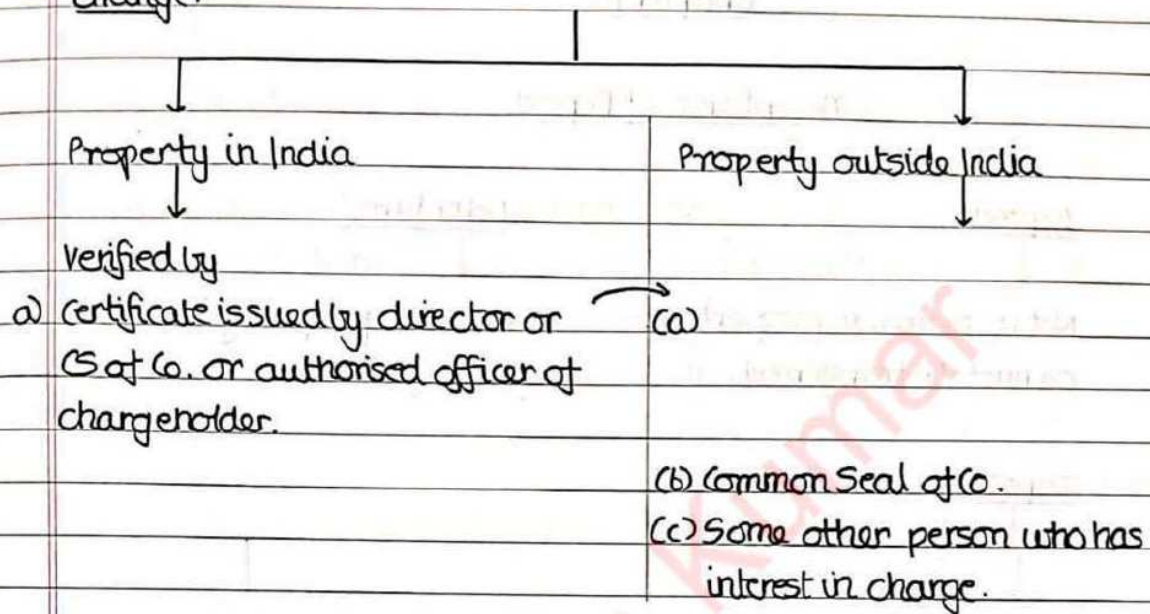
Appointment of receiver or manager (84)

Co's property Subject to change	Person (chargeholder) a) Obtain order from court to appoint a receiver or manager of property. b) By virtue of power in installment of charge. Appoint a receiver.	Within 30 days, he shall give Notice of appointment or removal to Co & RoC & RoC will register it.
------------------------------------	--	--

Punishment

Co.	Every Officer in Default
Fine	a) Imprisonment → (can extend upto 6 months)
Min. → 1L	OR
Max → 10L	b) Fine
	→
	25000
	OR
	Both
	100,000

If wilful false information is furnished or material fact is suppressed, Sec. 447 is applicable.

Verification of Instrument evidencing creation or modification of charge.

Chapter 12

Registers & Returns

Sec. 88 Every Co. shall keep & maintain the following registers

- | | | |
|---|---|--|
| (i) Register of members | } In such a } manner as } may be } prescribed | } Entry shall be made in } registers within 7 days } from date of approval by } BOD or Committee of BOD } for ALLOTMENT of shares/ } debentures / other securities |
| (ii) Register of debentureholders | | |
| (iii) Register of other securityholders | | |

↓
Kept at Registered Office.

↓
If Special Resolution is passed, it may be kept in any other place in India where 10% or more of total no. of members live.

Register of members

- Maintained from date of incorporation of Co. in M&T-1.
- Separately indicating each class of equity & preference shares held by each member.

In case of Co. having no share capital → From Book.

Beneficial Intt → Right of a person to exercise any or all rights attached to shares.

→ through Contract, arrangement etc; directly or indirectly.

Index of Registers 88(2)

To be included in all registers maintained u/s 58.

↓
If no. of members > 50 ; every Co. shall keep index of name of members of Co.

↓
Entry in index shall be made simultaneously with entry for allotment for any such change.

Transfer or Transmission

Note: In case of shares in dematerialised form, Register & Index of Beneficial Owner maintained by a Depository shall be deemed to be Register maintained by Co.

SHARE → Bundle of Rights

↓
Holder of share can transfer any right associated with the share.

→ Person registered as member in Register of Members = Regd owner
Declaration in Respect of Beneficial Interest in Share [Section 89]

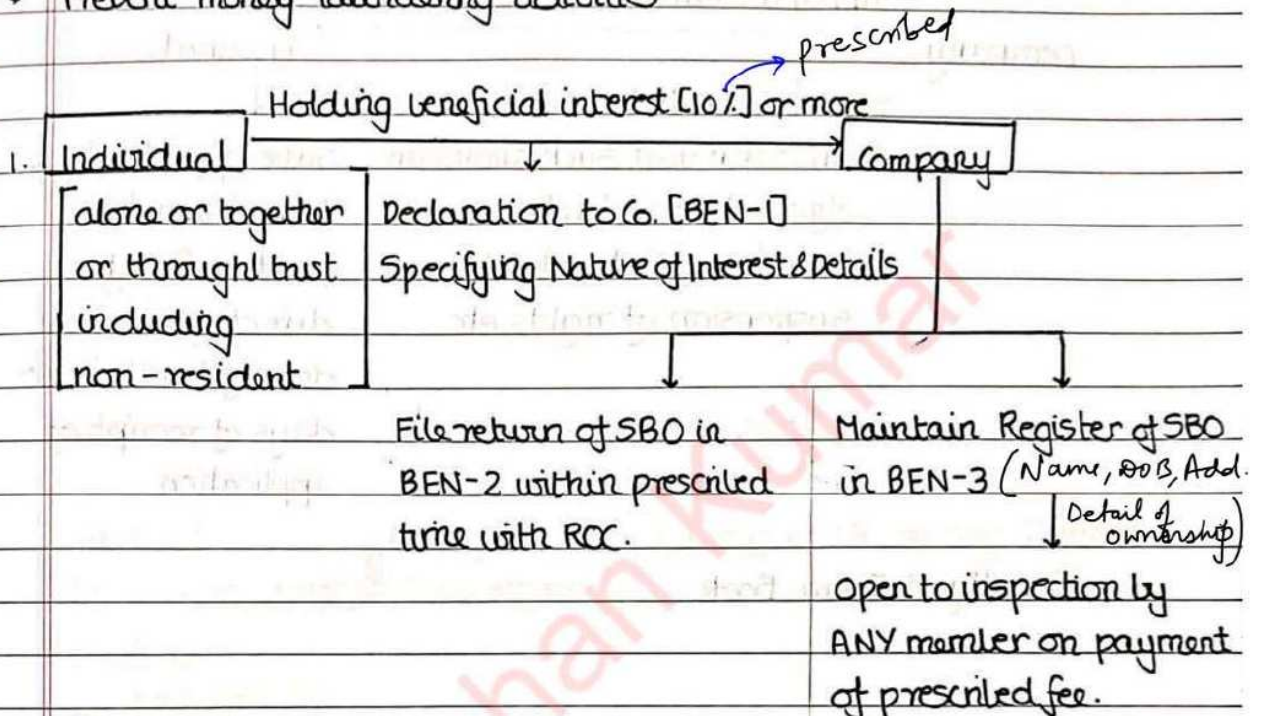
Any person not holding beneficial interest in Co. but name is registered as member in Register of Members	Any person holding beneficial interest but name is not registered as member in Register of Members	Change in beneficial interest
30d	50d	30d

↓
Shall file a declaration with Co. within days mentioned above.

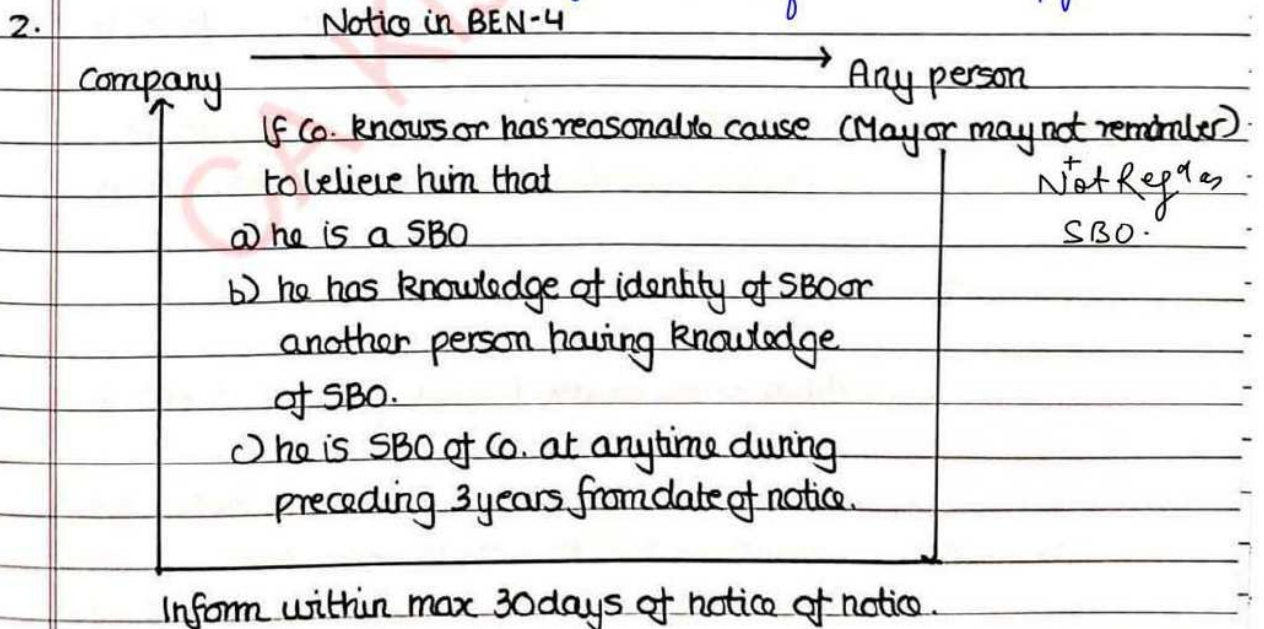
↓
Co. shall file a return with ROC within next 30 days & make a Note as Declaration

Significant Beneficial Owner [Section 90]

- ↳ Identify Benami Transactions
- ↳ Prevent money laundering activities



Co. shall also take steps to identify SBO & require him to comply with conditions



3. If the person fails to provide required information to Co. within prescribed time or information is not satisfactory.

company Apply within 15 days of expiry of period → Tribunal

Specified in Notice for

→ an order that such shares are objected to restriction w.r.t. transfer of interest or suspension of rights, etc.

Give opportunity of being heard to parties & make directions as may deem fit within 60 days of receipt of application.

4.

Co. or any person aggrieved by order of Tribunal

within 1 year from the date of order, Apply for lifting Restrictions → Tribunal

↓
If no such app. made within 1 year; such shares shall be transferred to IEF 0/s 125; w/o any restrictions.

Annual Return [Section 92]

Annual compliance which contains all important events that have taken place during the relevant FY. It contains particulars as [Form MGT-7] they stood on close of FY.

↓
Contents (Book)

↓
Signed by

↓
others

↓
OPC & Small Co.

Director & CS

employee

CS or if no CS; by any director

If Co. doesn't have CS; then signed by

CS in practice

independent

In case of

a) a listed Co. or

b) Co. having paid up share capital (10 cr) or Turnover (50 cr) or more is required to get the annual return certified by a [CS in practice]

→ AR discloses fact correctly & adequately

↓
MGT-8.

→ Co. has complied with all provisions of Act

Note: The CS signing annual return can't certify it.

Points to Note.

1. Every Co. shall place a copy of Annual Return on website of Co. & web link shall be disclosed in Board's Report.
2. It needs to be preserved for 8 years from due date of filing with ROC.
3. For OPC & Small Co., an abridged form is used.
4. Time Limit → In GM chapter

Power to close Register of Members maintained u/s 88. [Section 90]

Prior notice of atleast 7 days to ROC & members.

↓
Max 45 days aggregate in 1 year.

↓
But any one time → Max 30 days.

In case of Listed Co, Notice should be given 7 days in advance by publication in newspaper.

→ 1 in English

→ 1 in Vernacular language.

+

Publish this notice on the website notified by Co & Co's website.

Inspection of Register & Annual Return [Section 94]

↓
By member or debentureholder or
security holder or beneficial
owner

↓
Without any fee

Others

↓
On payment of prescribed fee
by AOA but max 50 for such
inspection

↓
On every working day during business hours

↓
Reasonable restriction may be imposed by BOD
at least 2 hours every working day shall be allowed.

Extract of Registers & Copies thereof

Any member, debentureholder or security holder or beneficial owner

↓
can take extract without payment of any fee.

↓
Can also get copies with payment of fees prescribed by AOA.

↓
Max 10 per page or part of the page.

↓
Within 7 days of deposit of fees.

Register 1/s 88 & Annual Return 1/s 92.

↓
Prima facie evidence of any matter inserted therein
(95)

Chapter 13

General Meeting [Meeting of Co's members]

General Meeting

Annual General Meeting (AGM) (96)

Mandatory Annual Meeting /
Gathering of Co's interested
members/shareholders.

- Enables members to
- ↳ Exercise control over Co.
 - ↳ Review management of Co.
 - ↳ Discuss activities of Co.

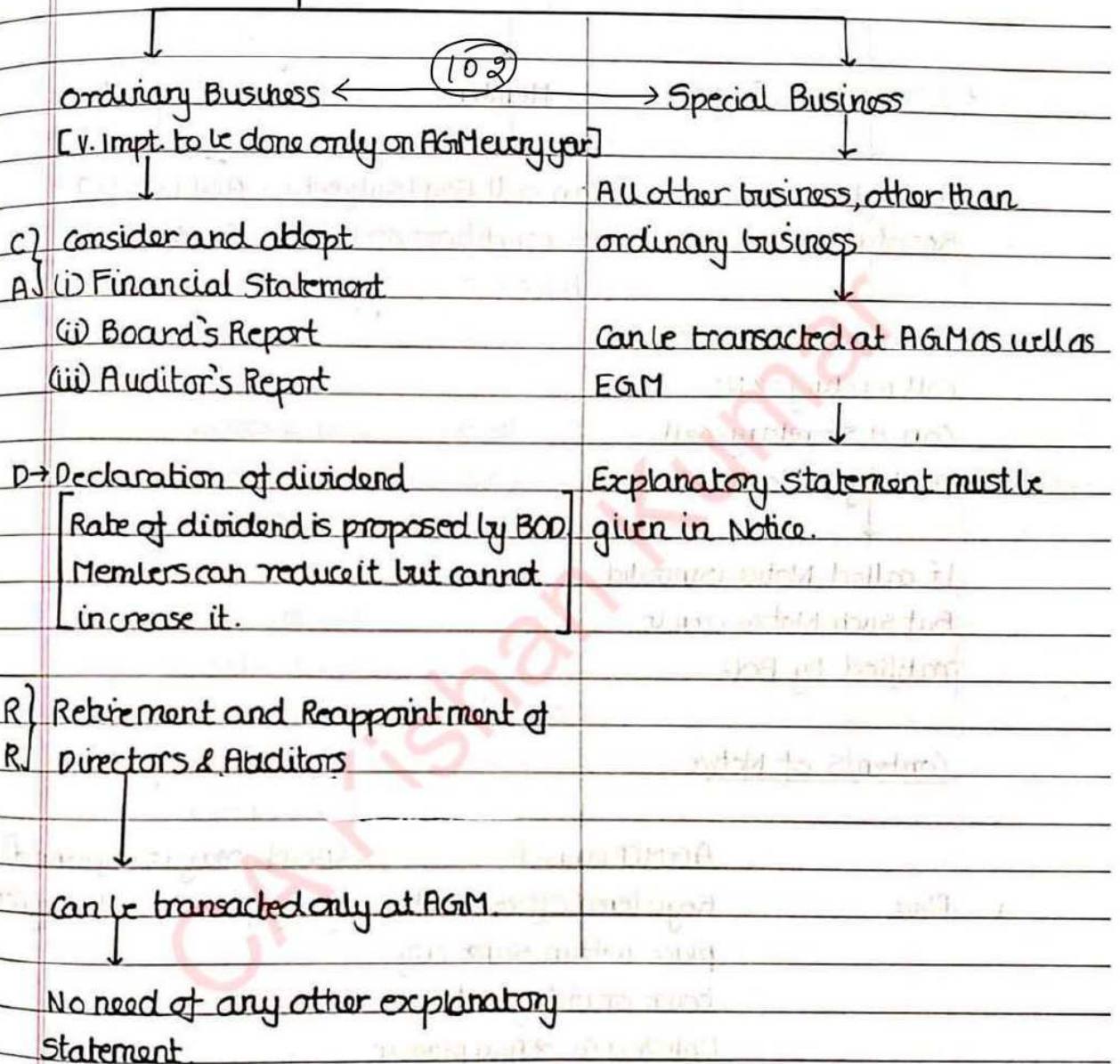
Business may be ordinary or special.

ExtraOrdinary General Meeting (EGM) (100)

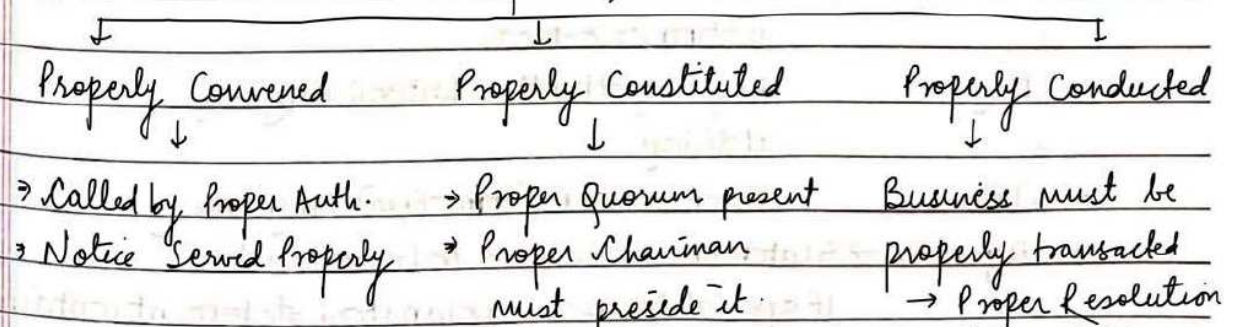
called for transacting some
urgent /special business which
may arise b/w two AGMs
and can't be postponed.

Business can only be special.

Passing Ordinary Resolution / Special Resolution
Purpose of General Meeting → To transact business



In order to be valid; GM must be



Power to call General Meetings

BOD	Members	Tribunal
Through Board Resolution	Can call EGM subject to conditions contained in AOs	AGM u/s 97 EGM u/s 98.
Can a single director call meeting → No		
Can a Secretary call meeting → No		
If called, Notice is invalid But such Notice can be ratified by BOD.		

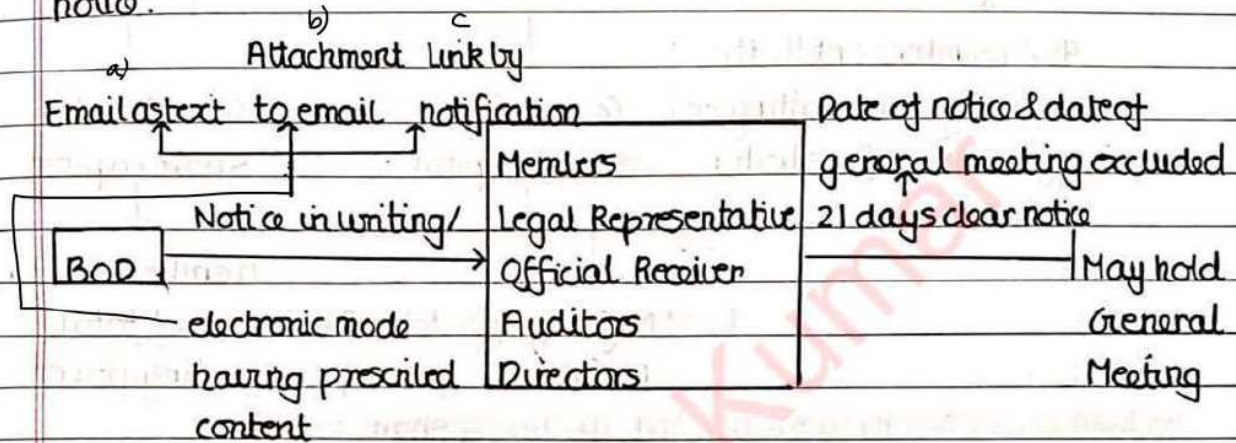
Contents of Notice (101)

	AGM (Planned)	EGM (May be Unplanned)
1. Place	Registered Office or other place within same city, town or village, etc. <u>Unlisted Co.</u> → Any place in India if consent of all members is received in writing or e-mode.	Any place decided by BOD in India. ↓ Wholly owned Subsidiary of Co. Inc. o/s India → may be held o/s India.
2. Day	Any day other than National Holiday.	Any day
3. Time	Business Hours [9am-6pm]	Any time
4. Agenda	→ Statement of business to be conducted. If special business, explanatory statement containing all material facts shall be given.	

5. Right of a member to appoint proxy who need not be a member.

Length of Notice (101)

BOD may call General Meeting by giving atleast 21 days clear notice.



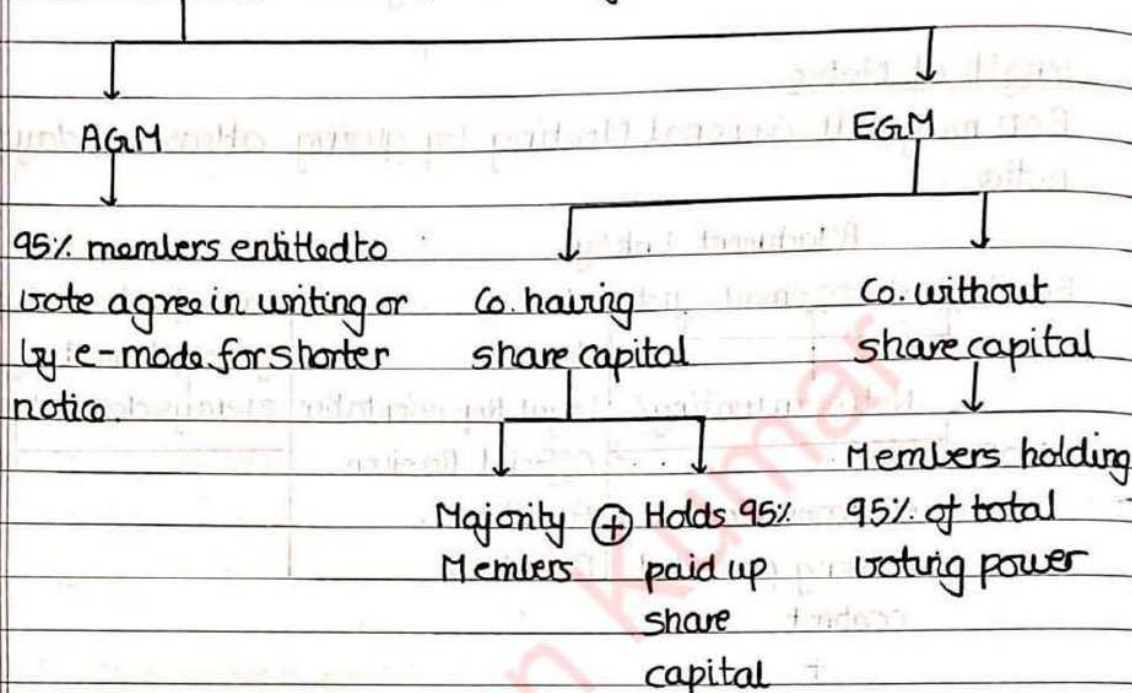
Place the notice on

(i) Website of Co. &

(ii) Such website as notified by Co.

Newspaper Notice

[Clear 21 days Notice]

Shorter Notice [after before meeting]Notes:

1. If notice is sent through post, it shall be deemed to be served 48 hours after posting.
Date of Posting + 2 days / 48 hours + 21 days → General Meeting should be held on 24th day or later.
2. Sec 8 Co. → 14 days clear notice.
3. Accidental omission of sending notice to a member does not invalidate the meeting.
4. Similarly, loss of notice in transit does not invalidate the meeting.
5. Joint Holding → Notice deemed to be duly served if it is served on the person named first in Register of Members.
6. Notice of General Meeting should be sent to Registered Address in India. If the member does not have any registered address, notice may be sent at any other address in India, as supplied by member.

Quorum [Section 103] → Min. no. of members to be personally present at START of General Meeting so that business can be validly transacted.

Public Co.

upto
1000

upto
5000

Private Co.

Min: 2 members

5 15 30 → Min. members

personally present

Members personally present

If Quorum is not present within half an hour of commencement of General Meeting

EGM called by members u/s 100

Stands cancelled

Others

General Meeting shall be adjourned to such day/time as BOD decides

No specific decision, automatic adjournment to same day/time/place to next week.

If no Quorum even at adjourned General Meeting within half an hour; members present shall be deemed to be quorum.

A resolution passed at General Meeting shall be treated as passed on same date on which it was actually passed & not on earlier date.

Q. Tax Pvt. Ltd. has 12 members. Article provides quorum of 8 members. After few days, 5 members left the Co. by transferring their shares to 1 third party. What would be the quorum now?

Quorum = 8 members personally present.

If Quorum as per AOA was 10; still Quorum will be 8.

Notes:

1. If no. of members $\leq$ Quorum specified by AOA
Quorum = All members personally present.
2. Proxy is not counted for purpose of Quorum.
3. Representative of Co. / President / Governor $\rightarrow$ Same powers as that of members. Hence, counted for Quorum.
4. 1 Person $\rightarrow$ Representative of 2 companies $\rightarrow$ Counted as 2 members.
5. Joint members treated as 1.
6. Preference shareholders are not counted except when the business to be transacted at the meeting directly affects them.
7. For General Meeting to be valid $\rightarrow$ Quorum must be present at start of meeting within $\frac{1}{2}$ hour of meeting.

For resolution to be valid $\rightarrow$ Quorum must be present at time of passing the resolution.

Chairman of General Meeting [Section 104]

↓
Regulated by Articles

↓
If designated chairman is not present, members personally present shall elect one of them by show of hand as chairman.

↓
Poll may be demanded which shall be conducted immediately.

↓
Till the result of the poll is announced, chairman elected by show of hands shall remain chairman

↓
If subsequently designated chairman arrives, elected chairman shall vacate the post.

Power of Chairman

- To maintain order & decorum of G.M
- To decide on priority of speakers.
- To adjourn meeting
- To exercise casting vote [only for passing OR if Article permits] → to break tie
- To direct exclusion of certain matters from Minutes

Manner / Method of Voting in General Meeting

Show of Hand [Section 107]

1st Preference

Declaration of result of chairman & entering of the result in minutes of meeting is conclusive evidence.

Nothing further is required

Voting by Poll [Section 109]

When to } Before or on declaration of
demand } result of voting by show of hand.

Discretion to order

Suo moto power of chairman may order poll even if no poll is demanded

Duty to order poll

Co. having share capital

Members having (i) $\frac{1}{10}^{\text{th}}$

Voting power OR

(ii) 500000 PSC

Co. without share capital

Members having $\frac{1}{10}^{\text{th}}$ Voting power.Time to taking Poll.

If matters relates to

- (a) Adjournment of General Meeting
- (b) Appointment of Chairman

Immediately

Others

As decided by chairman but max. within 48 hours.

Notes:

1. During show of hand $\rightarrow$ 1 member = 1 vote
During poll $\rightarrow$ 1 share = 1 poll

2. Every member has a right to vote. A Co. cannot prohibit or put restriction on the voting rights of a member exempt $\rightarrow$ Sec. 106.

(i) Member has not paid poll on shares or any other sum payable by him to Co.

(ii) Co. has right of lien which it can exercise.

However, Articles must specify the above grounds as Co. can't restrict voting right of members even in above cases.

3. A member need not use all his votes in same way.

POSTAL BALLOT [Section 110]

A vote made on official form which is sent through post.

1. Notice explaining draft resolution.
2. Reason for passing resolution through postal ballot & requesting to send their assent or dissent within 30 days of posting.

Registered Post

Acknowledgement Due

Certificate of Posting

Courier

+

Mention on Website

+

Advertisement in Newspaper

English

Vernacular

language

Circulation in district where registered office is situated.

+

Prepaid envelope to facilitate the shareholder/member in communicating their votes within time.

Mandatory

P → Alteration in articles including provisions of RLP relating to Pvt. Co.

R → Change in registered office outside local limits of city.

O → Alteration of Object Clause.

V → Variation in rights of shareholders/ debentureholders.

E → Election of small shareholder's director.

R → Differential voting rights.

Restriction

(i) Ordinary Business [AGM]

(ii) Any other business where director or auditor have right to be heard.

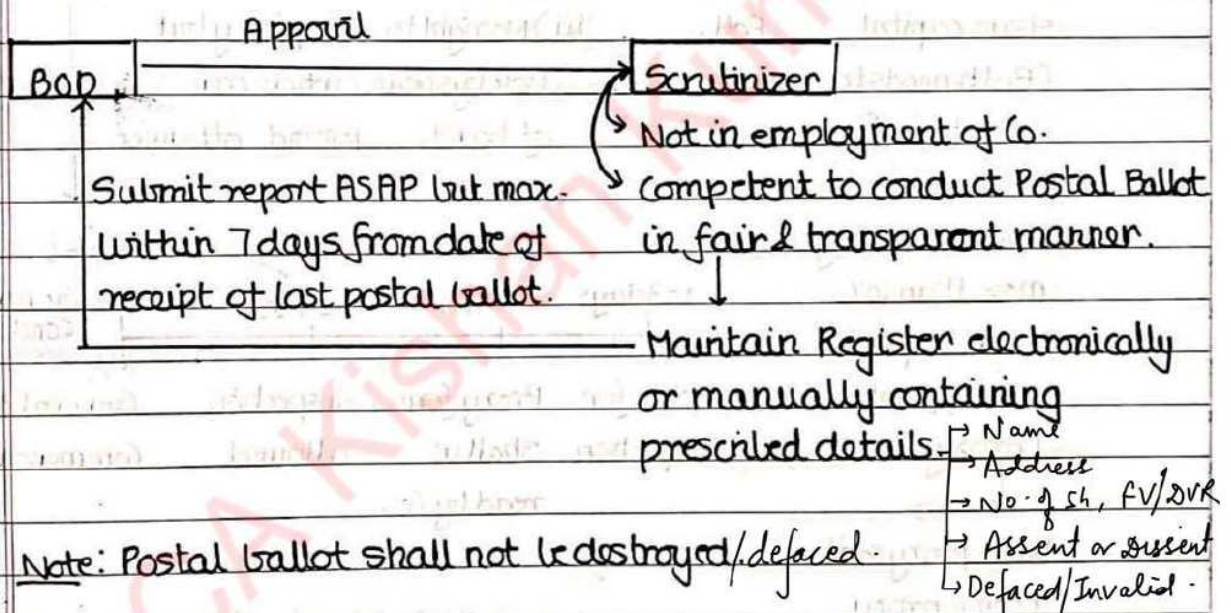
B → Buy Back of Shares

L → Loan / Guarantee / Security in excess of the limit.

U → Sale of whole / Substantially whole undertaking.

Note: Not Mandatory i.e. Optional for OPC or Co. having members upto 200.

Note: The above business may be conducted through e-mode u/s 108.



Note: Postal ballot shall not be destroyed/defaced.

Note: Identity of shareholder who has given assent or dissent not to be disclosed.

Note: Co. shall place $\left\{ \begin{array}{l} \text{Result of Postal Ballot} \\ \text{Scrutinizer's Report} \end{array} \right\}$ on website

4 types of Ballots → $\left\{ \begin{array}{l} \text{Ballots containing Assent} \\ \text{" " " Dissent} \\ \text{Ballots where members have voted partially assenting & partially dissenting} \end{array} \right.$

Proxy [Section 105] Representative of Member appointed by him to attend & vote on Poll at GM on his behalf.

Eligibility

Any person can be proxy for max. 50 members holding not more than 10% share capital [Both needs to be satisfied]

Member holding more than 10% share capital, can appoint 1 proxy

Such proxy can't become proxy for any other member.

Rights

(i) Attend General Meetings.
(ii) Can demand Poll.
(iii) Can vote on Poll.

Disability

(i) Not to be counted in quorum.
(ii) No right to speak.
(iii) No right to vote by show of hands

Restriction

(i) Sec 8 Co. can't appoint proxy.
(ii) Co. w/o share capital
↓
No proxy but article can provide otherwise.

Inspection

t-3 days

t-48 hrs

24 hrs

to General Meeting Concluded.

Notice for inspection shall be

Proxy form shall be read by Co.

Inspection allowed

General Meeting Commencement

Common Points

1. Notice of General Meeting must mention right of members to appoint proxy who need not be a member.
2. Proxy form must be submitted atleast 48 hours before start of General Meeting [Written & signed by Member or his duly Auth. Agent]
3. If member is also present, there shall be automatic revocation of proxy.

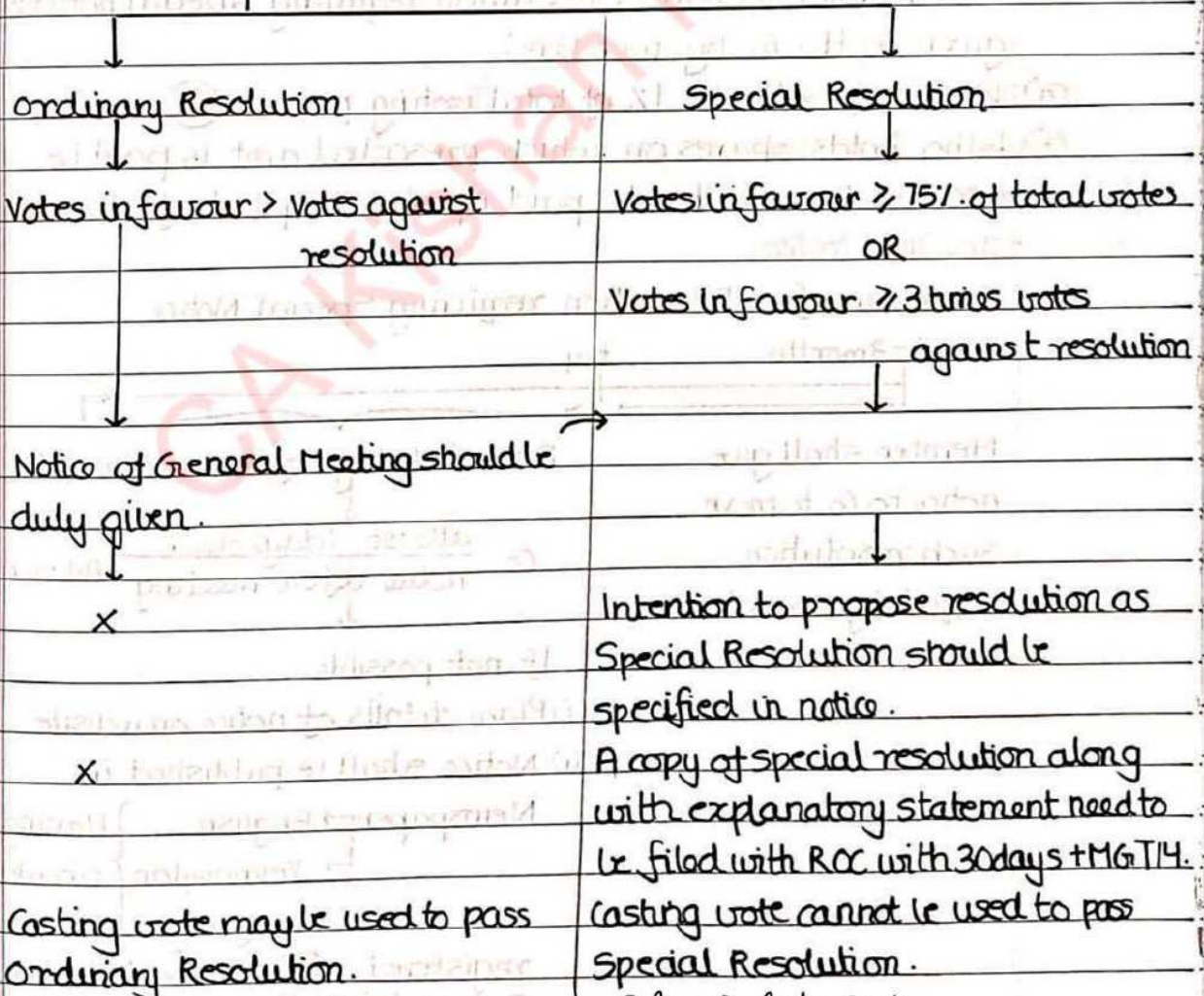
4. If member dies, proxy is revoked. However, article may provide otherwise.
5. Proxy is valid for adjourned meeting as well.
6. Representative of Corporate, President & Governor → Same Power as of member including Right to Vote & be counted in Quorum.

[CARR] ordinary Business → ordinary Resolution

Special Business $\left\{ \begin{array}{l} \rightarrow \text{Ordinary Resolution} \\ \rightarrow \text{Special Resolution} \end{array} \right\}$ As the case may be.

Any business other than CARR, can be transacted at AGM or EGM by passing SR or OR as the case may be.

Types of Resolution → Formal decision while transacting business.



Resolution requiring Special Notice (115)

May be required by Act or by Article.

Resolutions where special notice is required by Act.

→ RR of CADRR

- (i) Appointment of auditor other than retiring Auditor.
- (ii) Providing expressly that retiring auditor shall not be reappointed.
- (iii) Removal of director before expiry of his term.
- (iv) Appointment of director in place of director removed before expiry of his term.

The intention to have a resolution requiring special notice is given to the Co by members:

- (a) Who hold atleast 1% of total voting power. (OR)
- (b) Who holds shares on which prescribed amt. is paid i.e. 500,000 i.e. who holds paid up share capital of 500,000.

↳ Procedure for Resolution requiring Special Notice

t-3 months

t-14

Member shall give notice to Co. to move such resolution requiring special notice.

Atleast 14 days of clear notice to Co.

Co. atleast 7 days clear notice before meeting → All members

↓
Not earlier than 3M

If not possible

(i) Place details of notice on website.

(ii) Notice shall be published in

Newspaper → English

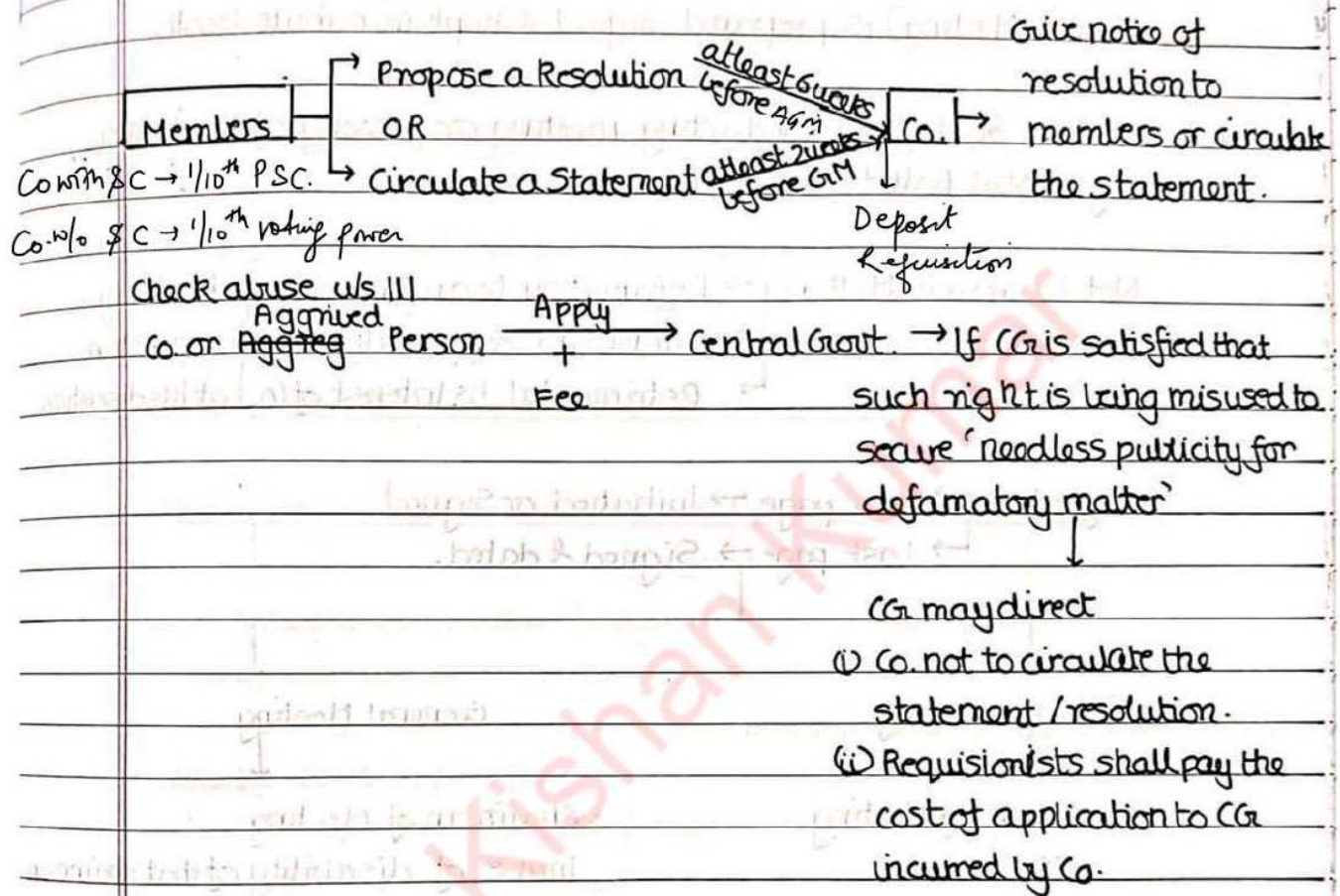
→ Vernacular

language

} Having wide circulation in state where

registered office is located atleast 7 days before the meeting

Circulation of Member's Resolution & Statement (III)



Minutes [11.8]

Written records of proceeding of any meeting [General Meeting/ Board Meeting] is prepared, signed & kept in minute book.

Within 30 days of conducting meeting or passing of Resolution by Postal Ballot.

Not to include Matters → Defamatory to any person } decided by
→ Irrelevant or immaterial } chairman
→ Detrimental to Interest of Co. } at his discretion

Signature → Each page → Initialed or Signed
→ Last page → Signed & dated.

Board Meeting

Chairman of Meeting

OR

Chairman of Next Meeting

General Meeting

Chairman of Meeting

In case of disability of that chairman a director authorised by BOD shall sign within 30 days of conclusion of meeting.

→ Preservation of Minute Book → Permanently
→ At Registered office or any other place authorised by BOD.
→ In custody of Co. or any director.

Note

Minute Book shall be bound & pages shall be consecutively numbered.

Loose leaf allowed but it should be bound at Regular Interval.

↳ Inspection of Minutes of General Meeting (119)

Allowed only to members & not by director, creditor or any other person (MCQ)

Atleast 2 hours every working day during business hours.

No charge but AOA may impose reasonable restriction.

↳ Copy of Minute

Hand Copy

Co. shall provide within 7 days of request.

Members need to pay fee →
Max ₹10 per page or part of page.

Soft Copy

Free of Cost

Immediately of 3 preceding FYs.

Presumptions drawn from Minute ; unless proven otherwise

- Meeting was duly called & held.
- All resolutions passed by Postal Ballot duly passed.
- All appointments of Director, KMP, Auditor or CS in practice validly made.

AGM (96) Every Co. other than OPC is mandatorily Required to hold AGM.

First AGM

Subsequent AGM

Subsequent 9 months from end of 1st FY i.e. year of incorporation

Co. incorporated

1/4/18

31/3/19

31/12/19

Last date for
conducting
AGM

1. Atleast 1 AGM every calendar year.

1/1

31/12

2. Within 6 months from end of FY.

6 months Due Date

1/4/18

31/3/19

30/9/19

* There is no need to hold AGM in the year of incorporation

3. Max gap b/w two AGMs = 15 months

For all three above points

* can be extended by 3 months in case of sufficient reasons.

Note: All three conditions needs to be satisfied together/ cumulatively.

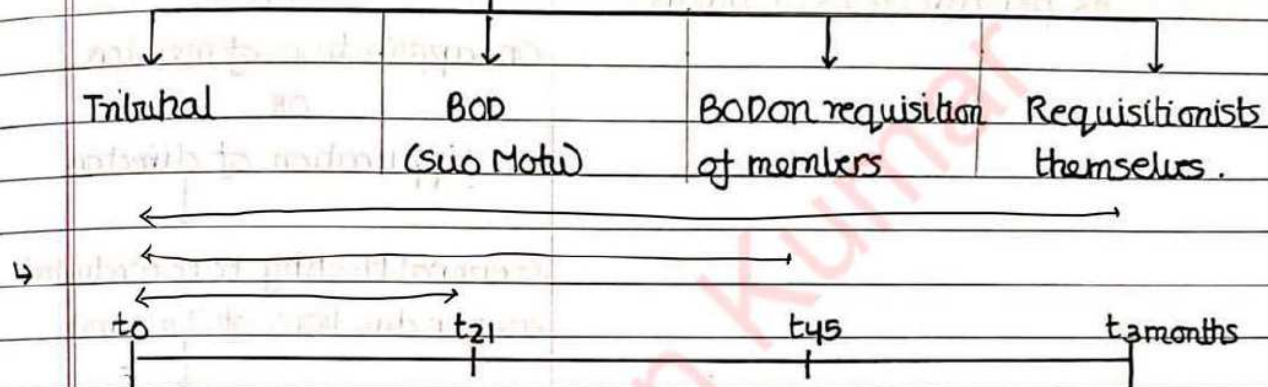
Note: Members cannot call AGM under any circumstance.

Note: If AGM is not ^{called} ~~calculated~~ as per above provisions, any member, can make application to NCLT who shall call or direct BOD to call a General Meeting which shall be deemed to be AGM.

Note: Tribunal can direct that one member personally present or present through proxy shall continue quorum.

Note: A report on each AGM, in addition to minutes shall be prepared. This report shall be filed with ROC within 30 days of conclusion of AGM. (Only Listed Co.) (Sec 121)
Fair & correct summary of proceedings of AGM.

EGM [Section 100]



- a) Deposit of signed requisition with Co. at registered office by member holding not less than 10% PSC/Voting Power
- b(i) BOD must proceed to call EGM
- b(ii) EGM to be held by BOD.
- EGM to be held when called by member.
- If BOD does not proceed to call EGM, members can

Note: Co. shall repay/reimburse all reasonable expenses incurred by requisitionists to call the meeting.

Note: In EGM, all the business to be conducted are special business for which mandatory explanatory statement containing all material facts needs to be given.

No need to give explanatory statement by members. BOD shall give it.

Note: If Quorum is not present at such EGM with $\frac{1}{2}$ hour of commencement of EGM, EGM stands cancelled.

↳ Power of Tribunal to call EGM

↓
AGM (97)

↓
General Meeting to be conducted
as per directions of Tribunal.

↓
EGM (98)

↓
Suo Motu

OR

on application of members

OR

on application of director

↓
General Meeting to be conducted
as per directions of Tribunal

↓
Date, time, place, quorum, etc.

Maintenance & Inspection of Documents in Electronic Form (120)

Listed Co. (OR)

Co. with 1000

shareholder/

debentureholders

Need to maintain & provide for

inspection in electronic form

Documents

Records

Registers

Minutes

Person responsible

→ Managing Director

→ Company Secretary

→ Any other person (director/officer) authorised
by BOD.

Inspection in Electronic Form

Hard Copy → Fee → As per AOA but max ₹10 per page or
part of page.

Q. When should Annual Return be filed?

Case 1: AGM held on 31/8/19

Within 60 days from date of conclusion of AGM i.e. 31/8/19

Case 2: AGM held on 1/10/19

With 60 days from due date of holding AGM i.e. 30/9/19.

Within 60 days from date of meeting or due date of meeting i.e. 30/9/19, whichever is earlier.

GM in case of OPC [122]

↓

For any Resolution (OR or SR) for purpose of transacting any business (OB or SB) at any meeting (AGM or EGM)

↓

It shall be sufficient if

a) Resolution is communicated to member

+

b) Resolution is entered in Minutes

+

c) Minute book is signed & dated by member.

Date of signing the minute book by member shall be deemed to be

→ date of meeting for all purposes of Act.



Think Tax, Think Kishan

Mission December 21

Taxation (FT) @2199/-

I.TAX @ 1199/-

GST @999/-



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Chapter 14Declaration and Payment of Dividend [123-127]Dividend → Distribution of profit in CASH

- Registered shareholder
- Order of registered shareholder.
- Banker of registered shareholder.

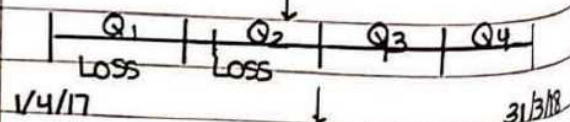
(123)

Final DividendRecommended by BOD.
&Declared / Approved by members in
AGM by passing OR.Member may reduce the rate of
dividend but cannot increase it.Source of dividend

- (i) Profit of current FY after
adjusting depreciation & previous
FY's losses.
- (ii) Previous FY's profit after
depreciation.
- (iii) Money provided by CG/SG.

Interim Dividend

Declared b/w two AGMs.

Recommended & declared / approved
by BOD.Source of Dividend
Out of surplus in P/L (OR)
Out of profits of FYPayable within 30 days & cannot be
revoked.Max. Avg of dividend of
3 Preceding FYs

Note: Profit excludes Revaluation Reserve. Thus, revaluation reserve cannot be used to declare dividend.

Transfer to Reserves

- ↳ Not mandatory.
- ↳ It is on discretion of Co. to transfer a certain % of profit to Reserve or not.
- ↳ Declaration of dividend out of Accumulated profit which was transferred to Free Reserves [in case of loss in Cy or inadequate Profit]
 ↓
 Can be done if there is inadequate or absence of profits.
 ↓

Rate: Can be max. of avg. rate of dividend declared by Co. in its immediately preceding 3FYs.

- ↳ Condition

Reserve

Withdrawal

(i) Max amt. withdrawn can be 10% of paid up share capital + free reserves.
 ↓
 (ii) Such amt. will be first used to set off losses.

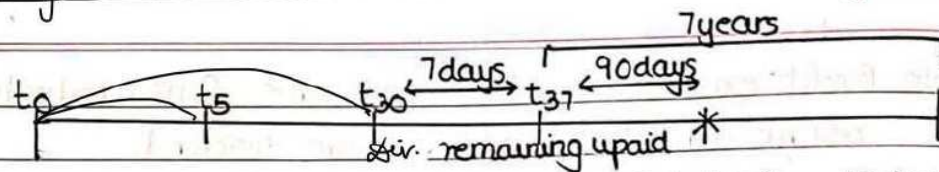
(ii) Remaining Reserve should not be less than 15% of paid up share capital.

★

↳ Restrictions

- (i) Any default u/s 73 or 74 i.e. provisions related to acceptance of deposits; No dividend can be declared unless the default is rectified.
- (ii) No dividend can be declared from reserves other than free reserves.

Ⓢ Modus Operandi → BoD will recommend desired dividend & put up the same for approval of members in ensuing AGM.

Unpaid Dividend Account (124)

Declaration of dividend in schedule Bank in a separate Account.	Depositant of dividend should be made.	Payment Transfer to unpaid dividend account.	Put details of Co. on website approved by Cr.	If dividend remains unclaimed after 7 years, the amt. shall be transferred to 'Investor Protection & Education Fund' along with any accrued interest.
↓		↓	↓	
cannot use it for any other purpose.		If Co. fails to transfer interest @ 12% p.a.		

A person entitled to receive but who has not received dividend during the stated 30 days may apply to:

↓
Within 7 years from date of transfer to Unpaid Dividend Account

↓
Co.

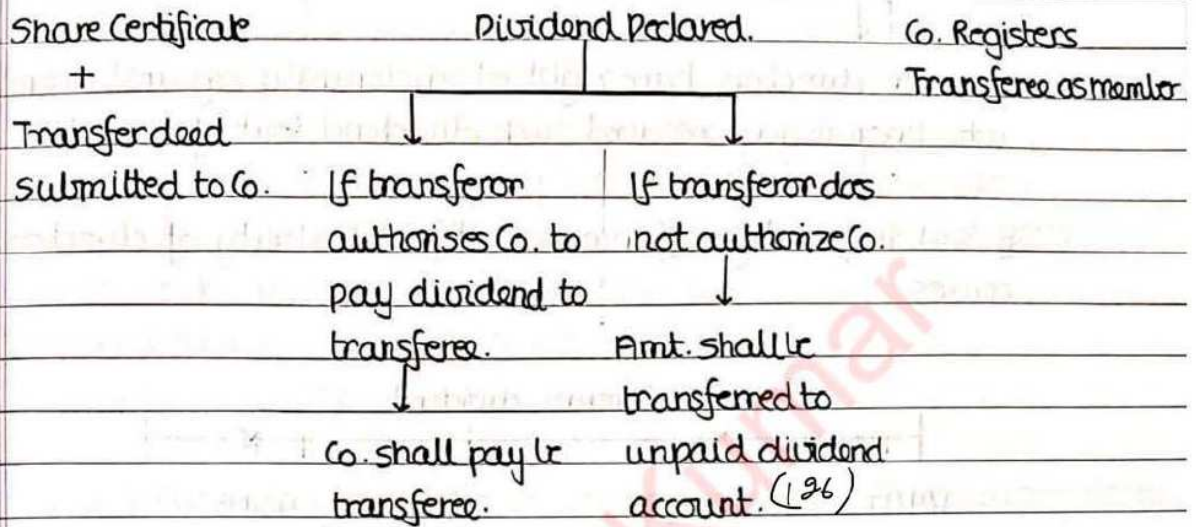
↓
After 7 years

Co. i.e. 'Investor Protection & Education Fund'

If dividend has not been paid or claimed for 7 consecutive years, the entire shares shall be transferred to 'Investor Education & Protection Fund'.

However, a person who claims these shares shall be entitled to claim the transfer of shares from the fund.

Right to Dividend, Right Sh. & Bonus Sh. to be held in Abeyance pending Registration of Tfr of share.
(126)



Failure to pay dividend within 30 days → Punishment u/s 127
Simple Interest @ 18% to members

Fine: 1000 per day for each day of default.

Imprisonment: Max 2 years

Exceptions → Refer Book.

Revocation of Dividend → Not a ground for Non payment of Dividend.
Ordinarily, dividend once declared must be paid. It can't be revoked.

Exception.

Declaration of dividend is ultra-vires i.e. dividend is declared without adequate profit.

Where Co. ceases to be a going concern

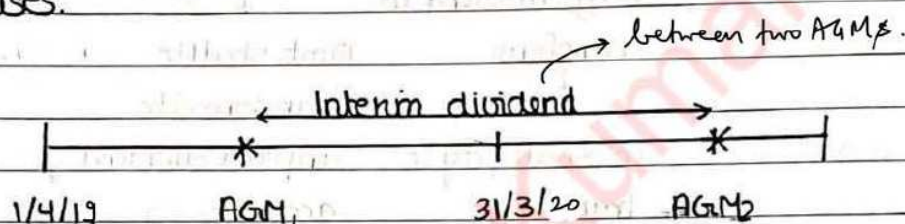
↓
If such dividend is paid, directors are personally liable to indemnify the Co.

Q. What if dividend is distributed out of capital?

Directors are personally liable.

↓
However, directors have right of indemnity against members who knowingly received such dividend out of capital.

↓
If subsequently offence is rectified, liability of directors ceases.



Chapter 15

Accounts of Companies

[Section 128]

Books of Accounts & (13)

Prepared every FY

In paper or e-mode

- Sum of money received or expended
- Sale or purchase of goods/services/both
- Assets & liabilities
- Financial Statements [Section 129]

1. Why → Gives true & fair view of transactions effected at registered office or branches.
2. How → Only Accrual system allowed & Double Entry system allowed
[Cash Basis & Single Entry system not allowed]
3. Where → To be kept at registered office or any other place as decided by BOD,
 - Details of such address needs to be filed with RoC within 7 days in AOC 5
 - In case of branch office in India or outside India, Books of Accounts shall be kept at branch office but summarised return must be periodically sent at Branch office to Registered office or other place where Books of Accounts are maintained.

Electronic form of Books of Accounts

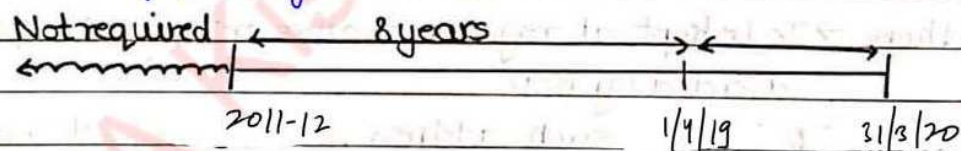
Option available to Co. to keep Books of Accounts in electronic form but it should be

- Accessible in India for reference
- Records must be complete and unaltered in original format.
- Proper system for storage, display unit, print out of such records.
- Back up must be kept in server physically located in India.
- Details of service provider i.e. Name, IP Address, etc. must be informed to ROC on annual basis.
- Electronic records shall not be disposed off unless permitted by law.

with relevant vouchers

- ↳ Min period for which Books of Accounts should be maintained
 ⇒ 8 years* unless Central Govt orders Co. to maintain it for longer period.

* Immediately preceding relevant FY.



If Co. is in existence for less than 8 FYs, then Books of Accounts must be maintained for all such FYs.

Person responsible for maintenance of Books of Accounts

Managing Director

Whole time Director [Finance]

CFO or

Any other person authorised

If contravene, they shall be held liable.

Fine → 50,000

500,000

Min

Max

OR

Imprisonment → 1 year

OR

Both

Inspection of Books of Accounts

Director

ROC

CG Office

SEBI Office

↳ Inspection of Books of Accounts by Directors

Books of Accounts of Co. in India at registered office or any other place where books are kept
↓
During Business Hrs

Books of Accounts of Subsidiary Co.
↓
By a person duly authorised by Board's Resolution

Books of Accounts kept at a foreign place.
↓

Information outside India is also open for inspection by any director.

Procedure

(i) Summarised detail of such Books of Accounts must be sent to Registered Office at quarterly interval (must be open for director for inspection)

(ii) If director needs any further information, he can request foreign Co. to furnish the details.

This request can be made only by director & not his agent or representative.

(iii) On such request, Co. shall provide details within 15 days of receipt of such written request.

Financial Statements [Section 129] r/w 2 (40)

- ↳ Balance Sheet
- ↳ Statement of Profit & loss
- ↳ Cash Flow Statement (Not required in OPC, Small Co. Pvt. Co. or Specified Start Up Co.)
- ↳ Statement of change in Equity
- ↳ Any other explanatory statement,

Notes:

1. Must give true & fair view of affairs of Co.
2. Comply with AS, Ind AS as notified u/s 133 of Companies Act, 2013
3. It shall be maintained in Schedule III
4. If Financial Statements do not comply with AS, Co. shall disclose
 - a) Deviation from AS
 - b) Reason for deviation
 - c) Financial effect arising out of such deviation.

The above provisions shall not apply to the following companies

- a) Banking Co.
- b) Insurance Co.
- c) Electricity Co.
- d) Such other Co. to which some specific act applies

⇒ Person responsible for ensuring compliance w/ f& & CF&

- M.D
- WTD in charge of finance
- CFO
- Any other person authorised by BOD
- All directors in absence of any officer mentioned above.

Consolidated Financial Statements

Co. + 1 or more subsidiary co. / associate co. / joint venture.



Such Co. needs to prepare Standalone Financial Statements with Consolidated Financial Statements of Co. & all its subsidiary Co., Associate Co. and Joint Venture in the same manner

+

Co. shall attach a statement containing salient features of its subsidiary and associate companies.

+

At AGM → BOD shall lay down its Financial Statements and Consolidated Financial Statements.

↳ Consolidated Financial Statements are not required to be made by a Co., if all three conditions are satisfied.

1. Co. is listed or not in the process of getting listed on any Stock Exchange in India or outside India.
2. Its ultimate or intermediary Holding Co. has prepared Consolidated Financial Statements in prescribed manner.
3. Co. wholly or partly subsidiary of other Co. →

All its other members do not object to Co. not preparing Consolidated Financial Statements + Proof of delivery of intimation to members wrt Non preparation of CFs.

F& + CF& + Statement containing salient features of F& of Subsidiaries & Associates

Cg may grant exemption on its own or on application made to it if it considers it necessary to grant such Exⁿ in public Intt

Conditional

Financial Statements Approval & Signing

Authentication / Approval of Financial Statements by BOD.

- a) Financial Statements including Consolidated Financial Statements shall be approved by BOD & signed by

↓ ↓ ↓ ↓

Chairman if auth + CEO + CFO + Company Secretary
OR by BOD if appointed if appointed

2 directors one of whom is MD.

Signing authority
for BOD's report

- b) Signed copy of every Financial Statements including Consolidated Financial Statements shall be issued, circulated & published along with a copy of
- ↳ Notes to Account
 - ↳ Auditor's Report
 - ↳ Board's Report.

- c) Auditor's Report must be attached to each Financial Statement.

Thus, unaudited F& etc. can't be circulated or filed with RoC.

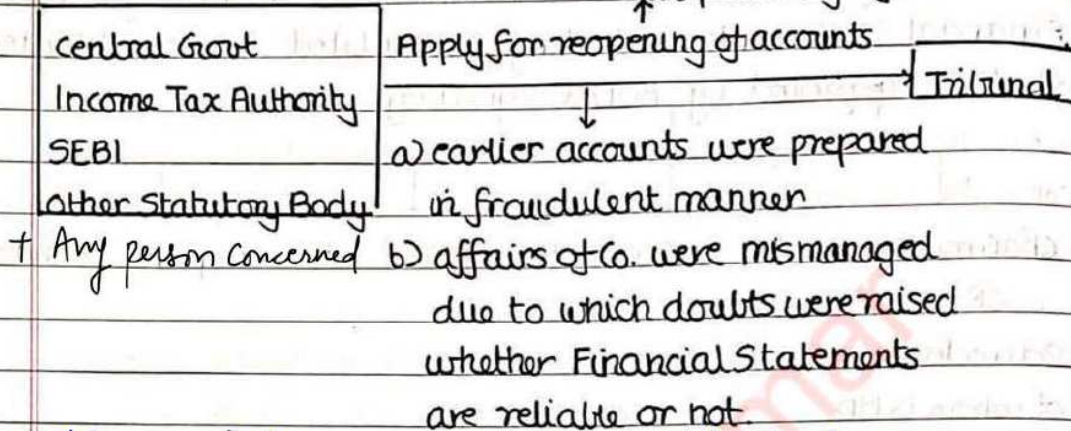
Q. A Co. has not prepared F& for last 5 FYs. Can current directors sign F& of all past 5 FYs?

⇒ Yes
+

Co. should approach NCLT for compounding of offense for not holding AGM for last 5 yrs & Non filing of F&.

Reopening of Accounts Due to Tribunal's order [Section 130]

Max preceding 8 years



A/c revised or re-cast u/s 130 shall be final.

Voluntary Revision of Financial Statements & BOD's Report

[Section 131]

If directors believe that Financial Statements / Board's Report do not comply with

(i) Sec 129 → Provisions related to Financial Statements

(ii) Sec 134 → Provisions related to Board's Report

then they may revise Financial Statement / Board's Report for any 3 preceding years after taking permission from Tribunal.

Note: Such revision is allowed once in a FY.Note: Copy of Tribunal's order is filed with ROC.Consequences

- Tribunal shall send notice to Central Govt. and Income Tax Authorities & take their representation into consideration.
- detailed reason for revision must be disclosed in BOD's Report of the FY in which revision is done.

Board's Report [134]

1. Based on Standalone Financial Statements of Co.
2. Attached to Financial Statement laid down before members in General Meeting.
3. For subsidiary, Associate & Joint Venture, Co. shall report on highlights of their performance and their contribution in Co's performance.

↓
OPC and Small Co.

↓
Other companies

B → No. of Board Meetings

BOARD EF (†)

O → Material order of Regular Court/
Tribunal impacting going concern

12. Details of KMP appointed or
resigned.

A → Annual Report (web address where
it is placed)

13. Secretarial Audit Report

→ Statement of Co's Affairs

14. Dividend recommended amt.
transferred to Reserves.

→ Explanation w.r.t. every qualification
reservation or adverse remark
made in Auditor's Report.

15. Policy development & implementation
(i) Dividend Distribution Policy.

(ii) CSR

R → Related Party transactions

(iii) Policy on director's appointment
& remuneration

D → details of directors appointed &
resigned.

(iv) Risk management policy.

→ Director's Responsibility Statement

16. Loan, Guarantee, Investment

[AAP LIG] → Refer Book

17. Deposit related details.

E → Events occurring after Balance Sheet
date.

18. No. of Co. who became or ceased
to be subsidiary, associate or
joint venture.

F → Financial Summary

Refer
Book

→ Fraud & Cr.

19. Conservation of Energy Technology,
Absorption, Forex earning & outgo

20. Whether Cost Record required u/s
148 is made & maintained.

21. Whether internal complaint
committee is established.

Rights to Copies of Audited Financial Statements (136)

Financial Statements + Consolidated Financial Statements + Auditor's Report + Other documents must be sent to

Every member of Co. Debenture Trustee Other person so entitled.

Must be sent atleast 21 clear days before General Meeting
[14 days in case of Sec. 8 Co.]

If a Co. holds General Meeting by giving shorter notices as per Section 101 of the Companies Act, 2013; it may also circulate Financial Statements & other documents to be laid down at General Meeting at such shorter notice.

In case of Listed Co

Sufficient compliance if copies of FS & other docs are made available

- for inspection at Regd office
- during office hours
- for a period of 21 days before AGM

Statement containing salient features is sent.

If any member demands full FS & other docs → must be given

Circulation of Financial Statement & Other Documents

In case of every listed Co. & other public ^{Co.} ~~document~~ having net worth > 1Cr
 + (a) (b)

Turnover > 10Cr

Financial Statement can be sent by

Electronic Mode

If shares are in demat form & email id is registered with the depository

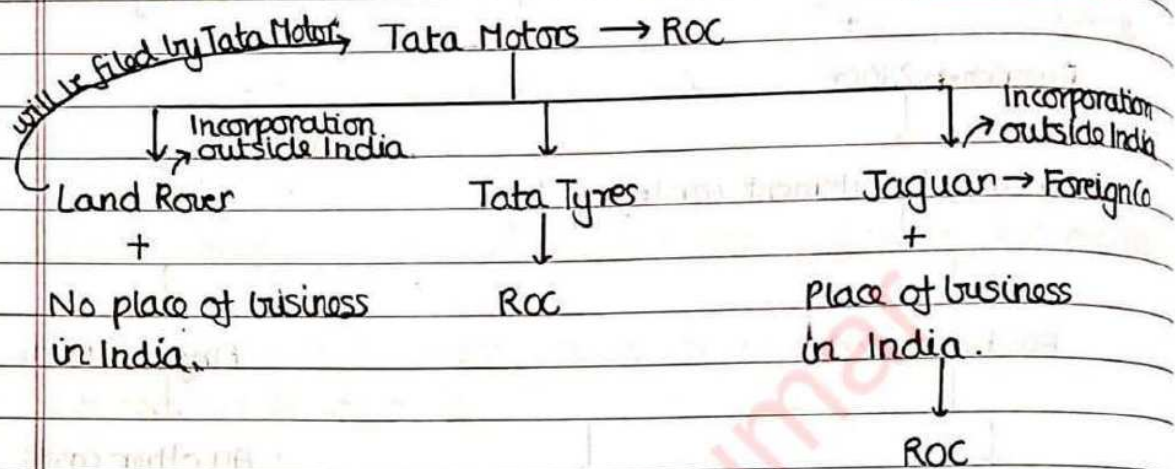
If shares are not in demat form & members agree to receive Financial Statements by e-mode.

Physical Mode through
 Recog. mode of delivery
 All other cases
 1/5/20.

Listed Co. shall also place Financial Statement on website.

Every Co. having subsidiary Co. shall

- (i) Place separate audited Accounts of each of its subsidiary on its website and
- (ii) Provide a copy of such Financial Statements to any shareholder who asks for it.

Filing of Financial Statements & other Documents with ROC[Section 137]

In the above case,

Jaguar will file its own Financial Statements & other documents with ROC.

Tata Tyres »

Tata Motors »

along with Financial Statements & other documents of Land Rover i.e. subsidiary ^{Co. incorporated outside India} having no place of business in India.

Financial Statements

Consolidated Financial Statements of
Other Documents

Co. & its subsidiary

incorporated

outside India &

having no place of

business in India.

within 30 days

of date of AGM

along with

prescribed fee.

ROC

If FS of such Subsidiary is in Language other than English, translated copy of FS in English filed

Format of FS of foreign Subsidiary will be as per CA 2013 to the extent possible.

If Not possible, Statement indicating reason for deviation is placed.

	AGM Date	30 days	→ File with ROC
FY 2017-18			
Case I	1/8/18	Puly incorporated Financial Statements	31/8/18
		& other documents to be filed with ROC	
Case II	10/10/18	If AGM not held upto due date, reference point for calculating 30 days will be due date of AGM i.e. 30/9/18	

Two Special Cases

- AGM is not held upto due date i.e. [6 months from end of FY]
Then Financial Statements + Other Documents + Statement of fact/ reason for not holding AGM within due date must be filed with ROC within 30 days of last date upto which AGM should be held.
- If Financial Statements are not adopted at AGM/adjourned AGM

Unadopted Financial Statements	Such Financial Statements will be treated as Provisional	If Financial Statements are adopted later in adjourned AGM then Co. shall file Financial Statements within 30 days of date of adjourned AGM with ROC.
Other documents must be filed with ROC within 30 days of AGM.	→ Financial Statements → till they are adopted in adjourned AGM.	

Note: If foreign Co. having no place of business in India (and ROC in our eg.) is not required to get its accounts audited as per laws of that country, then Holding Co./ Indian Parent Co. shall file unaudited Financial Statements with ROC.

Note: OPC must file Financial Statements & other documents within 180 days from the end of FY.

Internal Audit of Functions and Activities of Co. [Section 138]

1. It can be done by $\rightarrow$ CA

$\rightarrow$ CMA

$\rightarrow$ other prescribed person.

* Can be individual/firm/LLP (Practising or Non Practising)

* Can be employee of Co. as well.

2. The audit committee of Co. or BOD in consultation with Internal Auditor shall formulate the scope, functions & methodology for conducting internal audit.

3. Mandatory to appoint Internal Auditor

Listed Co.

Unlisted Public Co.

Private Co.

Paid Up

Turnover

O/S loan

O/S deposit

Turnover

O/S loan

≥ 50 cr

≥ 200 cr

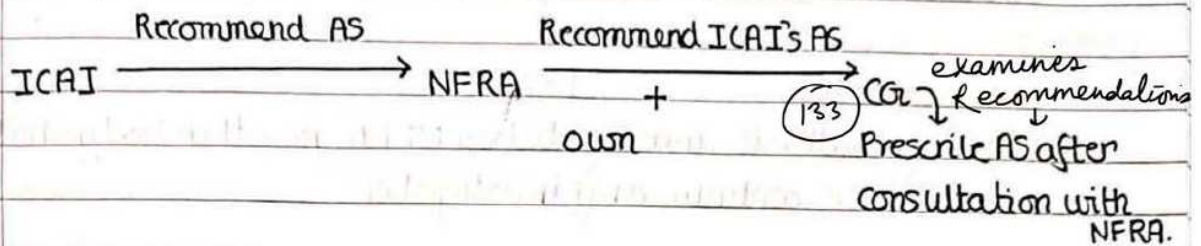
≥ 100 cr

≥ 25 cr

≥ 200 cr

≥ 100 cr

Any time during
the year

NFRA [132]

constituted w.e.f. October 2018.

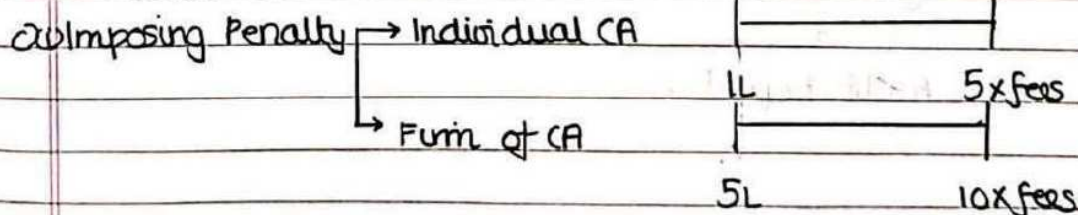
→ for matters relating to Accounting Standards & Auditing Standards under this Act.

↳ Functions

- Make recommendation to CG for formulation of Accounting Standards and Standards on Auditing.
- Monitor & enforce compliance with Accounting Standard & Standards of Auditing.
- Oversee the quality of professionals associated with ensuring compliance of such standards.
- Any other functions w.r.t. (a), (b) & (c)

↳ Powers

- Investigate, suo motu or on reference by CG, into professional misconduct or other misconduct committed by CAs.
- Powers of Civil Court
 - ↳ Production of Books of Accounts and other documents
 - ↳ Summoning & enforcing attendance of person & examining on oath
 - ↳ Inspection of any Book, etc.
 - ↳ Issuing Commission for examination of witness or documents



(ii) Debar the members of firm from being appointed as Auditor, Internal Auditor or any Auditor in Co./body corporate or performing Valuation

6 months 10 years

If any matter is investigated by NFRA, no other body shall initiate or continue any investigation.

↳ Constitution

1 Chairman → Person of eminence having expertise in Accounting, Auditing, Finance or law to be appointed by Co.

+

Other members [Part time or Full Time] → Max. 15

↓

Make a declaration to Co. regarding any conflict of interest or lack of independence w.r.t. their appointment.

Chairman + Full time member shall not be associated with any audit or consultancy firm

→ During the course of appointment &

→ 2 years after ceasing to hold such appointment

↳ Miscellaneous

1. Head Quarters → New Delhi

2. Where to appeal against NFRA → Before NCIAT

3. Accounts of NFRA shall be audited by CAG.

4. Annual Report Annual Report

NFRA + CAG + Houses of Parliament

 CAG certified copy Audit Report

 of Accounts

 +

 Audit Report

Note: NFRA shall perform its activities through divisions which are provided for in the constitution of NFRA.

Corporate Social Responsibility [Section 135]

Specified companies are mandatorily required to spend 2% of Avg Net Profit of Co. for last 3 FYs.

Q: Who are specified companies?

Every Co. in India having

Net worth ≥ 500 cr OR Profit ≥ 5 cr OR Turnover ≥ 1000 cr during immediately preceding FY.

Net profit shall not include

- (a) Profit from Overseas branch
- (b) Dividend from other companies

☒ Co. with T/O of 1000 cr & Net loss in C.Y.

↓
See 135 applies.

↳ Specified companies shall constitute CSR Committee.

Composition of CSR Committee.

Listed Co. or Unlisted Co.
required to appoint
independent
director

Atleast 3; one of whom
shall be independent
director.

Unlisted Co. not
required to appoint
independent
director

Atleast 2 or more

Foreign Co.

1 person nominated
by Foreign Co.

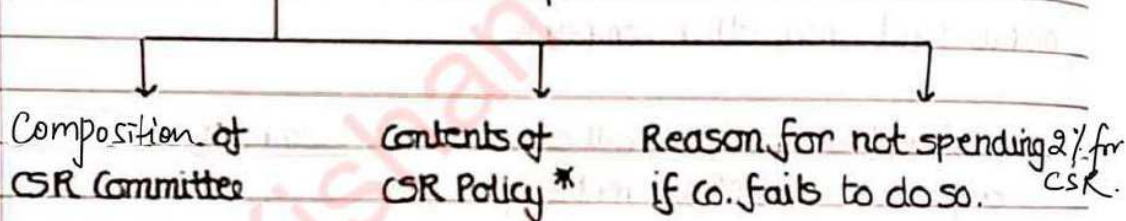
1 Person who is
Resident in India
& authorised to
accept services
of documents
on behalf of Co.

Note: While calculating Net worth, Revaluation Reserve shall not be considered.

Duties of CSR Committee

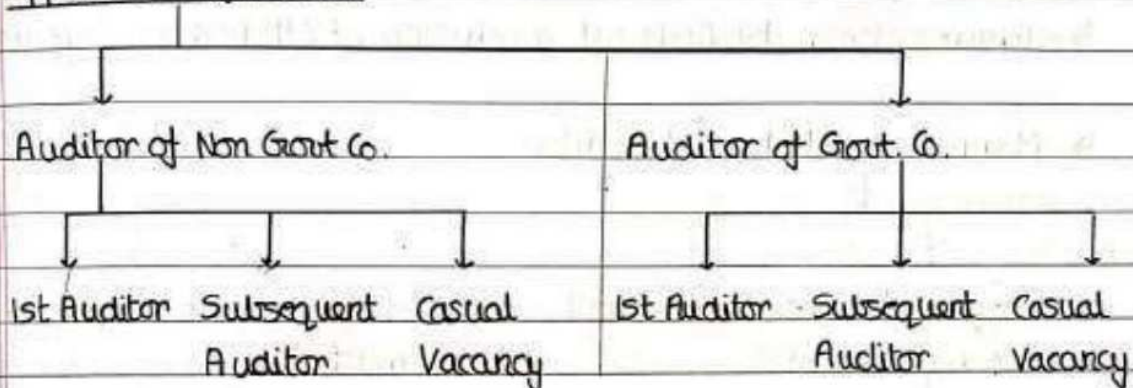
Formulate & Recommend CSR Policy to BOD	→	Recommend an amt. of expense to BOD i.e. expenses to be incurred.	→	Monitor CSR Policy of Co. through establishing a transparent monitoring for implementation of CSR Policy.
---	---	---	---	---

Note: If a Co. spends more than 2% of 3 years Avg Net Profit, then such excess spending shall not be carried forward to next year.
It will be treated as voluntary spending.

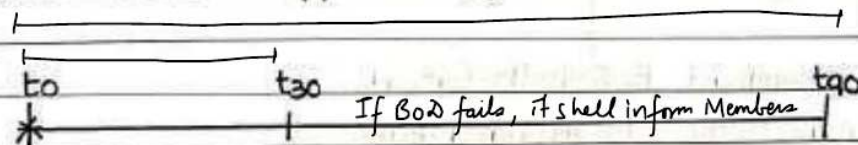
Note: Disclosure in Board's Report.

* one can give the contents of CSR Policy on the website and give the web address and a brief about it in Board's Report.

- Q. What is not considered as CSR?
- Q. What[†] is covered under CSR Activity?
- Sch VII
- } → Refer Book.

Chapter 16Audit and AuditorsAppointment of Auditor [139]Auditor of Non Govt Co.⇒ First Auditor

- (i) shall be appointed by BOD within 30 days of Registration of Co.
 (ii) If BOD fails to appoint the first auditor within 30 days of Registration of Co., members shall appoint the first auditor within 90 days.



Co. Registration

BOD should appoint
first auditorMembers shall appoint
first auditor at EGM
within 90d of Regⁿ of Co.

Case I: Date of registration / incorporation of Co. = 1/4/18

Last date upto which BOD can appoint First Auditor $(30-D) + 1/5/18$
29Case II: If BOD fails to appoint first auditor upto 1/5/18. Members should
appoint first auditor upto 29 + 31 + 30/6/18

April May June

Can MD/Chairman appoint first Auditor → No

Tenure → From the date of appointment till conclusion of 1st AGM

⇒ Subsequent Auditor

↳ Shall be appointed at the 1st AGM of Co. (Individual CA in practice or a firm where majority partners are CAs)

↳ Tenure → From 1st AGM till conclusion of 6th AGM i.e. 5 years.

↳ Manner of Selection of Auditor

Co. Required to constitute Audit Committee u/s 177.

Not required to constitute Audit Committee.

Audit Committee shall recommend the name of Indi/Firm as Auditor to BOD.

BOD shall recommend an Indi/firm to members in AGM for appointment as Auditor

If BOD agrees

If BOD disagrees

Then recommend the name to the members in AGM for appointment as Auditor.

BOD shall refer back the recommendation to Audit Committee citing reason for disagreement

If Audit Committee decides to reconsider
Audit Committee shall recommend a new name.

If Audit Committee decides not to reconsider
BOD shall give its own recommendation to members in AGM & record reasons of disagreement.

While considering appointment, BOD / A.C. shall consider

- a) Any order of Professional misconduct passed against proposed auditor
- b) Any proceeding of " " pending " "

Date _____
Page _____

↳ Ratification of Auditor

~~After~~ After 1st AGM & Before 6th AGM, the appointment of auditor shall be ratified at each AGM by passing OR.

If ratification is not done at any AGM, the auditor shall have to vacate his office and such vacancy shall be treated as Casual Vacancy.

↳ Before appointment of any auditor, his written consent shall be obtained.

↳ The Co. shall obtain a certificate from Auditor so appointed.

(i) that the individual/firm is eligible for appointment and is not disqualified under Chartered Accountants Act, 1949.

(ii) that the appointment is as per the terms provided under Companies Act, 2013

(iii) appointment is within the limits laid down under this Act.

(iv) the list of proceeding against the auditor or its firm in relation of professional matters.

(v) that the auditor satisfies the criteria as given w/s 141 (Eligibility, qualifications & disqualifications).

Note: once the auditor is appointed in AGM, Co. shall inform the

a) auditor of its appointment and also to ^{b)} ROC by filing a notice within 15 days of meeting in which auditor is appointed.

↳ Note: Appointment includes reappointment.
Firm includes LLP.

OPC, small Co.
Not applicable

Applicable on

- All listed Co.
- Unlisted Public Co with PSC ≥ 10 cr.
- Pvt Co with PSC ≥ 50 cr.
- Any Co having PSC $<$ above prescribed limit but public borrowing of 50 cr or more.

classmate

Date

Page

Term of Auditor & Rotation of Auditor

An individual Auditor

Cannot be appointed or reappointed for more than 1 term of 5 consecutive years

Firm

Cannot be appointed or reappointed for more than 2 terms of 5 consecutive years.

Cooling Period

In Both cases, shall not be eligible for re-appointment for next 5 years.

Note: On date of appointment of new auditor, any audit firm which has a common partner to old / retiring firm (whose tenure has expired) in the year immediately preceding the FY, shall not be appointed as an Auditor.

Members may resolve that.

If audit firm is appointed then auditing partner & his team be rotated at such interval.

Audit shall be done by more than one auditor.

(OR)

Incoming Auditor } associated with same network of Audit firm
Outgoing Auditor } $\rightarrow$ Same Brand Name, T.M or Control

Ineligible

⇒ Casual Vacancy [Auditor ceasing to act as such after accepting valid App. due to death, Disqualification, Resignation etc.]

Resignation by Auditor

Casual Vacancy
Resignation to
within 30 days

+

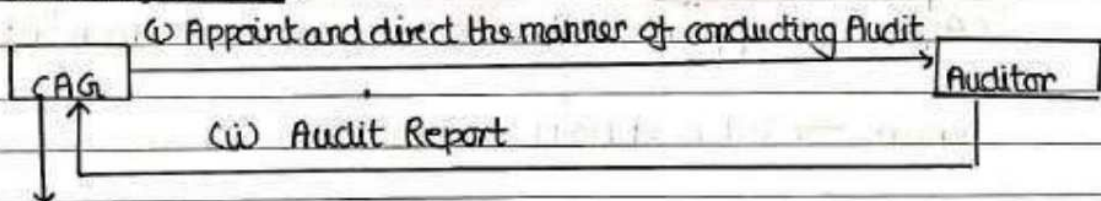
Such appointment shall be approved by members within 3 months of recommendation by BOD at G.M.

Other Cases

Casual Vacancy shall be filled by BOD within 30 days.

Note: New auditor's tenure will be till the conclusion of next AGM.

Auditor of Govt. Co.



Comptroller & Auditor General of India

After receipt of report, CAG may ^{order} conduct ^{of} Supplementary audit within 60 days of receipt of audit report.

Such Supplementary audit shall be done by a person authorised by CAG. CAG may ^{supplement or} comment upon ^{first} audit report.

Such ^{supplement or} comments by CAG shall be sent by Companies to every person who is entitled to receive Financial Statements and it must be placed before members in AGM.

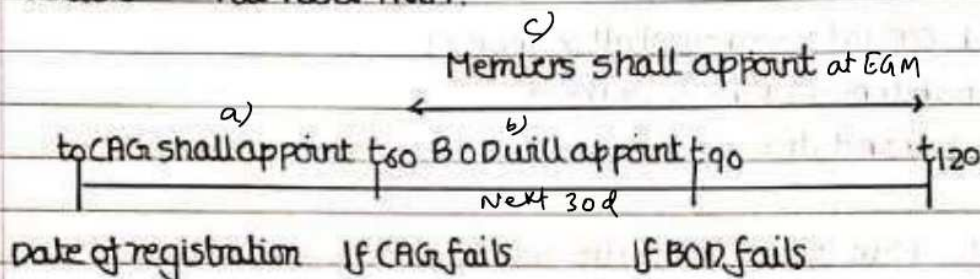
CAG may also ^{cause} conduct ^{of} test audit for certain matters as it may consider necessary.

⇒ First Auditor

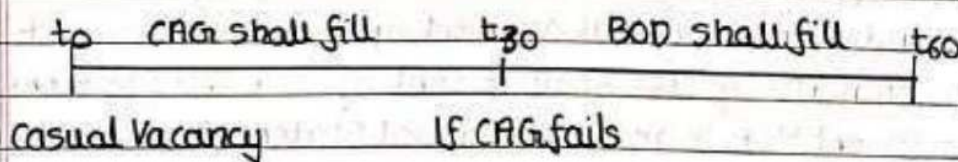
Appointed by CAG within 60 days from date of registration

↓
If CAG fails, BOD shall appoint within next 30 days↓
If BOD fails, ^{it shall inform who} members shall appoint within 60 days at EGM.

↳ Tenure → Till next AGM.

⇒ Subsequent AuditorCAG shall appoint within 180 days from commencement^{me} of FYconclusion of
Tenure → Till next AGM.⇒ Casual Vacancy

Must be filled by CAG within 30 days

↓
If CAG fails, then BOD shall fill within next 30 days.

Reappointment of Retiring Auditor

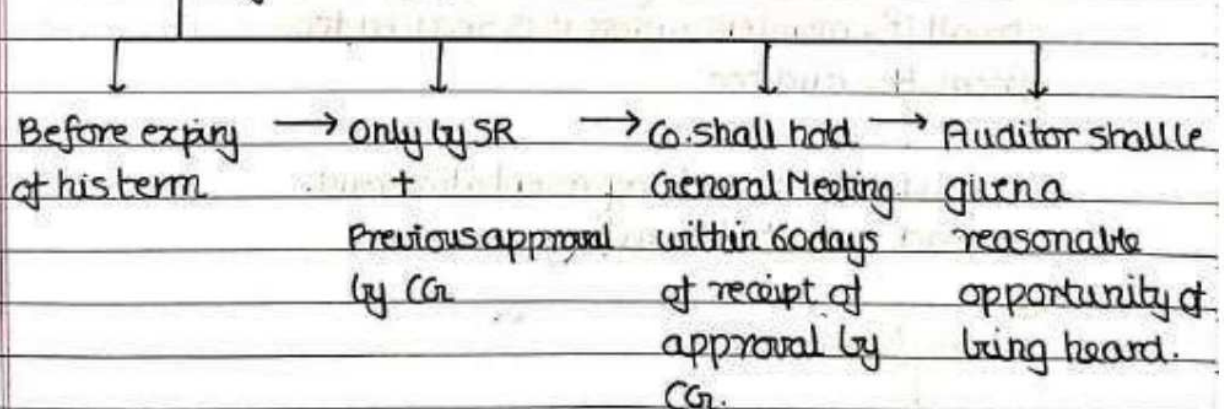
A retiring auditor may be reappointed at AGM if

↓	↓	↓
He is not disqualified to be re-appointed.	He has not given a notice to Co. about his unwillingness to be re-appointed.	SR has not been passed to appoint some other auditor or expressly provide that retiring auditor shall not be re-appointed.
		at AGM

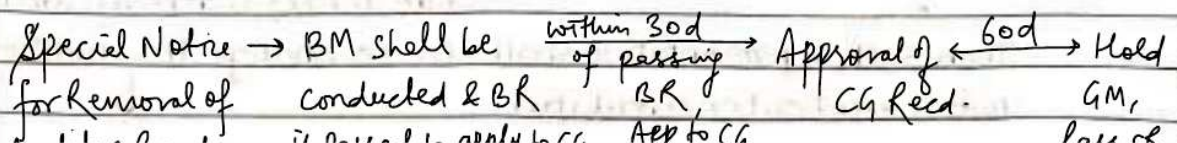
Note: If no auditor is appointed or re-appointed, then existing auditor shall continue to be auditor of Co.

Removal, Resignation of Auditor [Section 140]1. Removal before expiry of Term

Auditor may be removed

2. Before removal of auditor during the expiry of his term

BOD shall obtain approval of members in General Meeting by passing SR.



2. Resignation

If auditor has resigned from Co., he shall file a statement which shall indicate reasons & facts for such resignation.

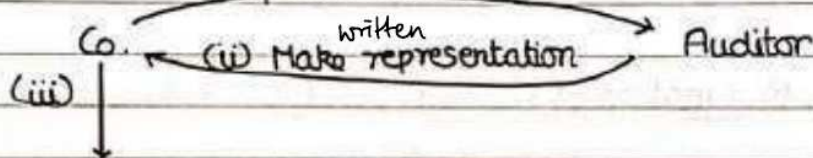
This is filed with → Co.
→ ROC
→ CAG (In case of Govt. Co.) } within 30 days of Resignation

3. Appointment of Auditor other than retiring auditor.

If auditor / firm of auditors has not completed 1/2 term of consecutive 5 yrs, as the case may be, Co. needs to pass SR if it wants to appoint an auditor other than retiring auditor.

For this purpose, it needs to send special notice to Members for AGM.

(i) Special Notice



Co. shall circulate a copy of such representation to all its members unless it is received too late from the auditor.

If received late, such representation may be read out at the meeting if Auditor wants + copy of Rep. is filed with ROC.
Auditor has Right of Oral Representation at AGM

If it is found that

Rights given to auditor ~~will not~~ regarding circulation of representation is being abused

Tribunal may direct that

Then such representation shall not be read out or circulated,

Auditor acted in fraudulent manner

Director / officer may direct the Co. to change the auditor.

↓
Such defaulting auditor will not be eligible to be appointed as auditor for 5 years from date of passing such order by Tribunal.

If Co. applies to Tribunal to change the auditor, then Co. shall appoint new auditor.

↓
In case firm is in default, then firm & all its partners shall be deemed to have acted in fraudulent manner.

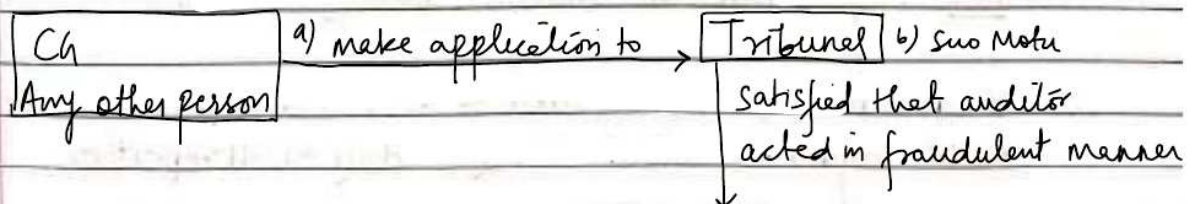
Eligibility, Qualifications & Disqualifications → PTO

Remuneration of Auditor [142]

- Shall be fixed by Co. in General Meeting or in manner decided in G.M.
- In case of first auditor, it shall be fixed by Board of Directors.
- Remuneration shall include fees, expense incurred by auditor which is reimbursed by Co. Out of Pocket expenses

Remuneration → Include value of facility extended to Auditor not Auditor
↳ Not include any remuneration paid to auditor for other Sr.

→ Power of Tribunal to Order Change of Auditor [140(5)]



↓
Direct Co. to change its auditor within 15d of Receipt of such app.

↓
Such auditor will not be eligible for app. as Auditor

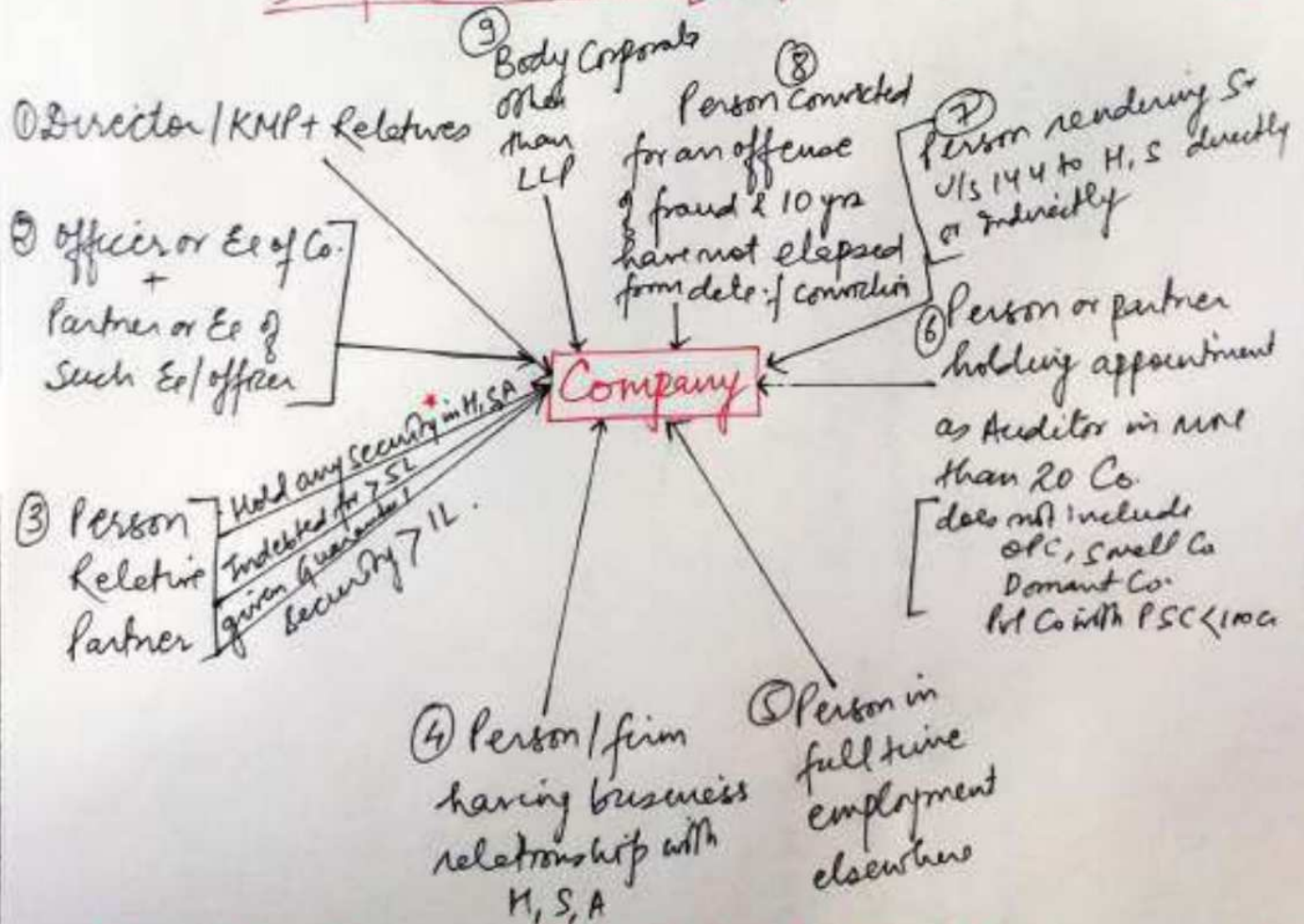
ELIGIBILITY for Appointment as Auditor (141) (1)

For Individual
↓
CA in practice

for Firm
↓
If majority of its partners practicing in India are qualified for appointment as Auditor

Where firm is appointed as partner, only partner who are CAs shall be authorised to act & sign on behalf of firm.

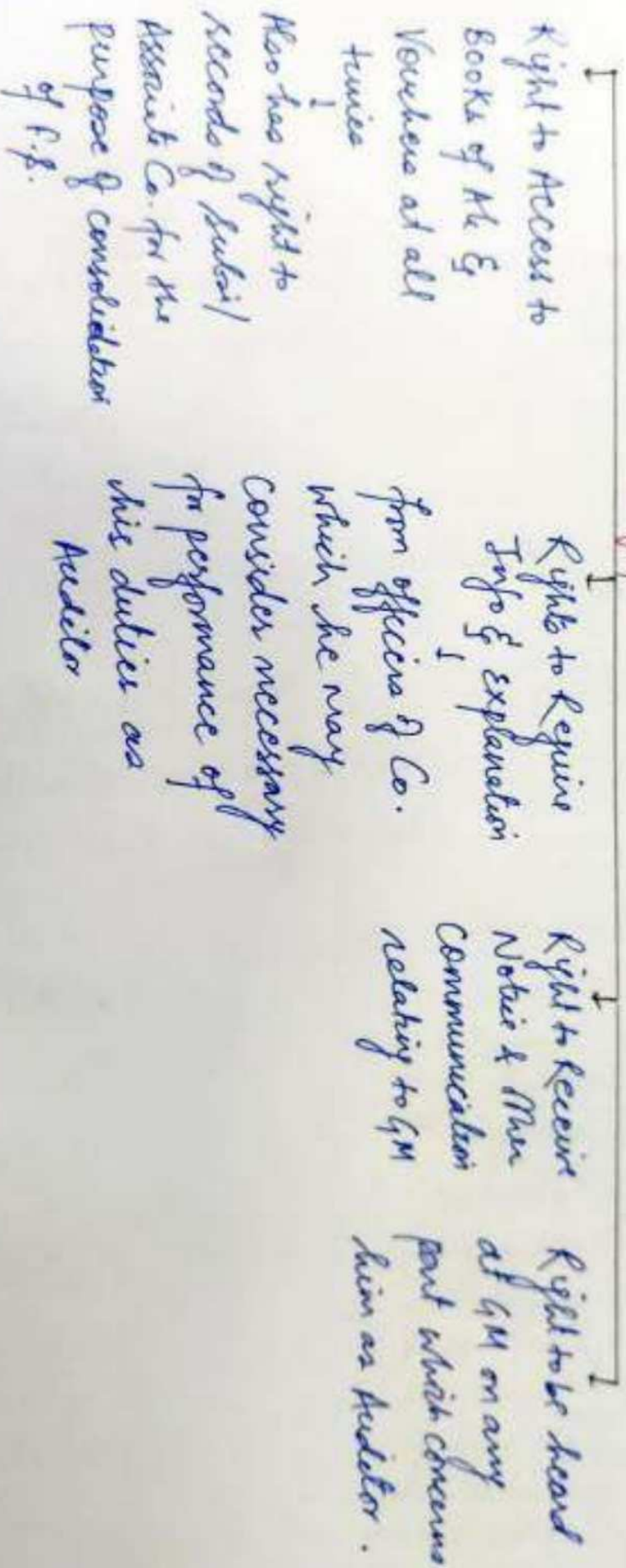
DISQUALIFICATION [Independent + should have time] (141(3))



* Relative if Auditor can hold security upto 1L. If relative acquires security exceeding 1L; corrective action within 60L to maintain limit of 60L.

Powers & Duties of Auditors (143)

Rights



Auditors

Duty to Make Enquiries

- Whether L & A made by Co. is shown as Receipts
- Whether L & A made on basis of Security is
 - properly secured &
 - whether terms are prejudicial to Intt of Co.
- Whether Co. [More than 50000] has sold assets Co. or bank has sold assets
- Co. at price less than purchase price
- When Shares have been alloted for cash, whether cash has been recd.
- Whether personal expenses have been charged to Revenue A/c
- Whether Transaction of Co. which are represented by new Bank Entry are prejudicial to Intt of Co.

Duty to Make Report to Members

- A.R. shall be prepared as per AS, SAs & CA 2012
- A.R. shall contain Report on → A/c examined & → F.B. to be laid down in G.M.
- Auditor shall state in A.R. whether He & F.S. → give t & f view of
 - State of Co. affairs at end of FY
 - Profit or loss for FY
 - Cd for the FY.
- A.R. also contains other matters as may be prescribed.

To Comply with AS notified v/s 122.

- | | |
|---|---|
| <u>To Sign Auditors Report or sign & certify any other Doc of Co.</u> | <u>Auditor shall attend G.M</u> |
| → Indt → CA | → himself |
| → Firm → Partner who is CA | → through his representative |
| | Co. may exempt Auditor from attending G.M |

Report on Principal Assertions

↓ (in his opinion, Knowledge & belief)

- ① Whether proper Books of A/c have been kept by Co. & proper returns from Branch not visited by him is received.
- ② Whether he has sought & received all info & explanation necessary for Audit. If not, details & its effect on F&.
- ③ Whether report on A/c of any Branch audited by a person other than Co. Auditor has been sent to him & → manner in which he dealt with it in preparing A.R.
- ④ Whether Co's BS & P/L are in agreement with Books & returns.
- ⑤ Whether F& comply with A/R.
- ⑥ Observation & comments of Auditor on financial Transaction or matters having any adverse effect on functioning of Co.
- ⑦ Any Qualification, reservation or adverse remark wrt maintenance of A/c & other ^{related} matters.
- ⑧ Whether Co. has adequate Internal financial Control System wrt F& & → whether it is operating effectively or not
[Not required in case of
→ Old, Small Co
→ Pvt Co with T/O < 50 cr
& borrowing < 25 cr]
- ⑨ Whether any director is disqualified u/s 164(2)
- ⑩ Such other matter as may be prescribed

Note:

Other Matters to be Included in Auditor's Report



- Whether Co. has disclosed the impact of any pending Litigation on financial position in its F.L.
- Whether Co. has made provision for material foreseeable loss on long term contracts as required under any law or Act.
- Whether there has been delay in Transferring amt to T.E.F.

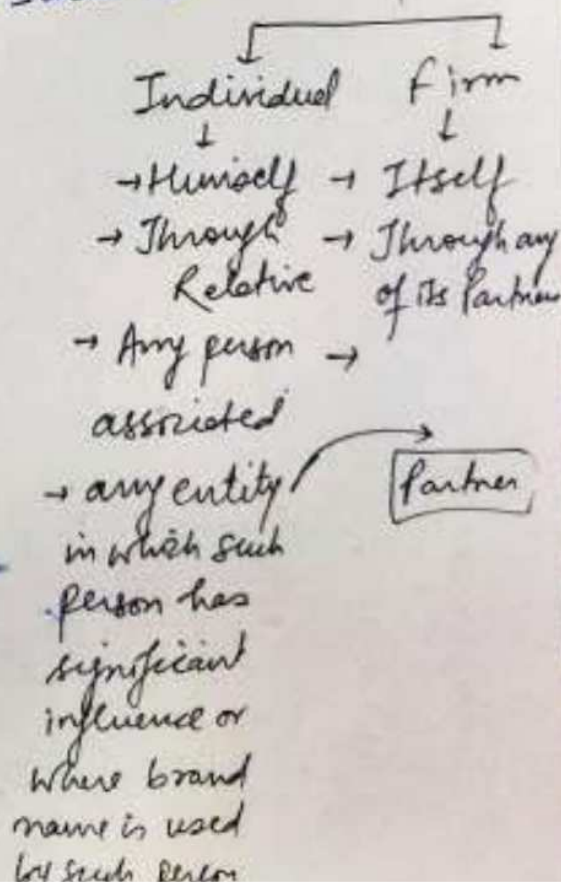


If any of the above is answered in negative or with a qualification, report shall state the reason thereof.

Auditor Not to Render Certain Sr [144]

Prohibited Sr → Auditor can't provide following Sr [directly or Indirectly] to Co. or its Holding or Subsidiary Co.

- Actuarial Services
- Accounting & Book Keeping Sr
- Design & Implementation of financial info. Sr
- Outsourced financial Sr
- Management Sr
- Internal Audit
- ^{Investment} Internal Advisory Sr
- Investment Banking Sr
- Other Prescribed Sr



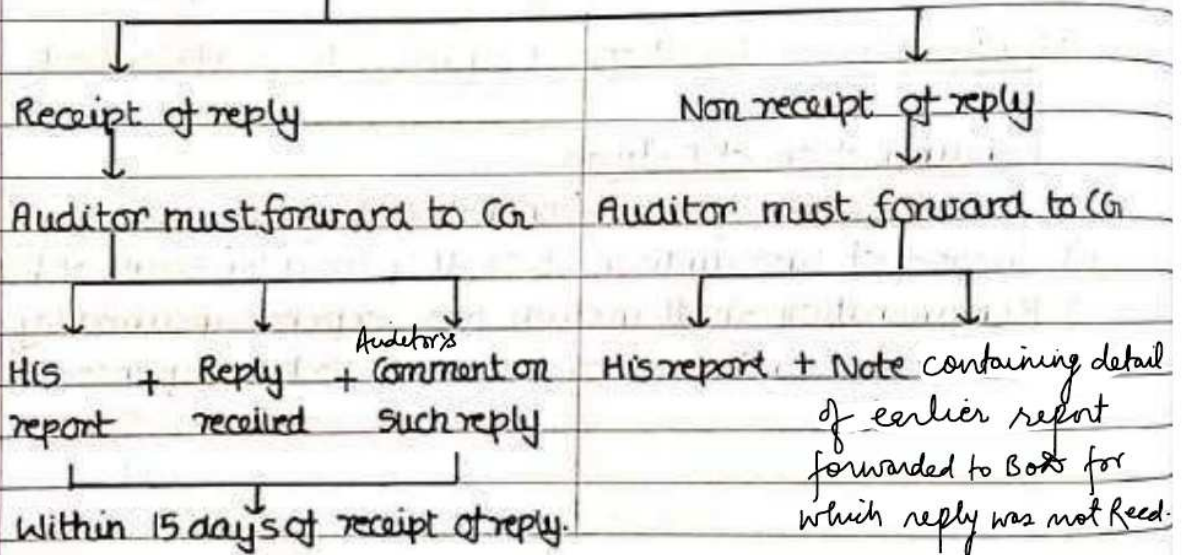
Reporting of frauds by Auditor [143 (12) to (15)]

1. If auditor has reason to believe that an offence of fraud expected to involve 1 cr or more has been done against Co. by its employee/officers, the auditor shall report the matter to CG.

Steps

Auditor shall report to Audit Committee or BoD (if no A.C.)
→ immediately but max within 2 days of his knowledge.

Purpose: To seek reply/observation within 45 days



Note: Report must be sent to Secretary of MCA in sealed cover

Note: Report must be on letterhead of Auditor.

Address E-mail Mob/Telephone No.

Speed Post
Regd Post
A/c due

2. If amount of fraud involved is ≤ 1 cr, then report to BoD or Audit Committee within 2 days & they shall report on

Nature of fraud + Approx amt involved + Parties involved

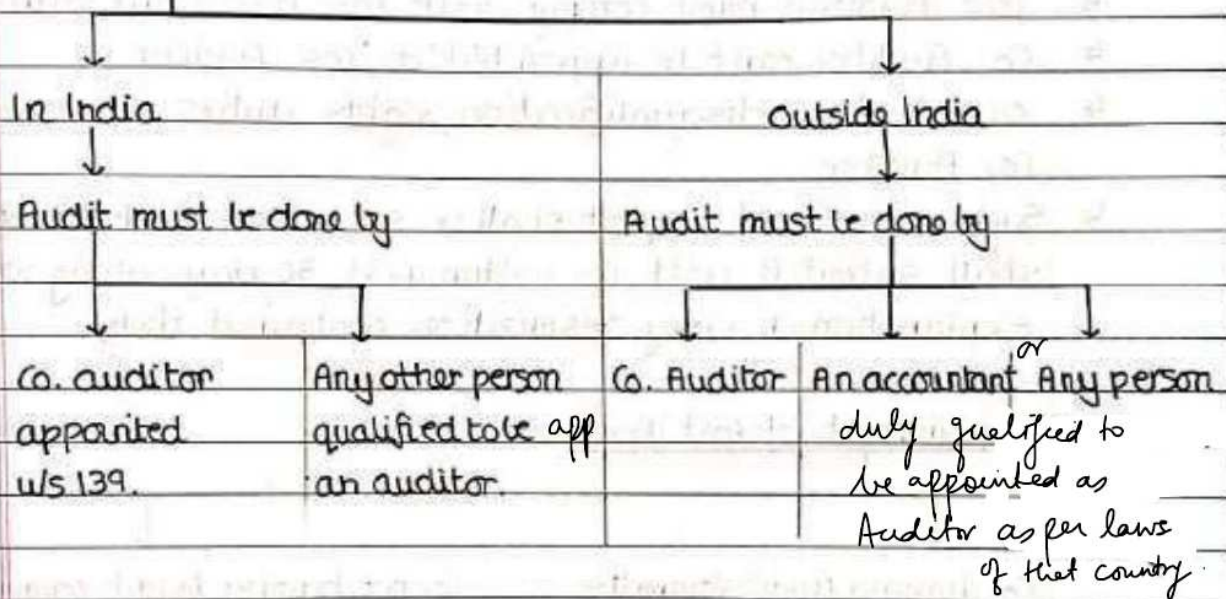
No need to report to CG.

3. Common Points

- Above details of fraud must also be specified in BO's Report along with remedial actions taken.
- All the above provisions are applicable to Cost & Secretarial Auditor also. (148) (204)

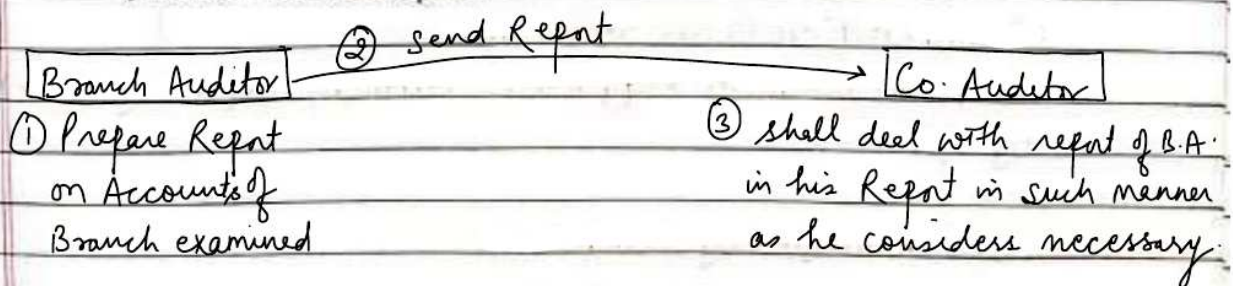
Audit of Accounts of Branch Office of Co. 143(8)

If branch office is



Note: In case branch audit is conducted by a person other than Co.'s Auditor, it shall be right of Co.'s auditor to access such audit report.

Further, it is the duty of the Co.'s Auditor to consider the Branch Audit report.



Duties, Powers of Co. Auditor & Provisions Regarding Reporting of fraud is applicable to B.A. as well to the extent of concerned Branch.

Cost Audit [148]

- Maintenance of Cost Records $\downarrow$ utilisation of M.L $\downarrow$ other items of Cost
- Applicable to Co.'s engaged in production of goods i.e. manufacturing concern or such service, as may be prescribed.
- CG after consultation with regulatory body Institute of Cost Accountant of India may direct the Co. to get Cost Audit done. $\rightarrow$ Indi or firm of Cost Accountants
- $\hookrightarrow$ Cost audit shall be done by a Cost Accountant in practice.
 - $\hookrightarrow$ Cost Auditor must comply with Cost Accounting Standards.
 - $\hookrightarrow$ Co. Auditor can't be appointed as Cost Auditor.
 - $\hookrightarrow$ Qualification, disqualification, rights, duties are same as Co. Auditor.
 - $\hookrightarrow$ Such Cost Audit report shall be submitted to BOD who shall submit it with CG within next 30 days along with explanation in every reservation contained there.

Appointment of Cost Auditor

Co. having Audit Committee

BOD shall appoint such auditor on recommendation of Audit Committee.

Remuneration is also recommended by Audit Committee & approved by BOD.

 $\downarrow$ $\rightarrow$ approved
Further, ratified by shareholders.

Co. not having Audit Committee

BOD shall appoint Cost Auditor.

Remuneration is also approved by BOD.

 $\downarrow$ $\rightarrow$ approved
Further, ratified by shareholders.



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-Swami Vivekanand

About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in Taxation [76]** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.

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