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**INTER CA
MAY '19**

**REVISION NOTES
LAW**

**AMENDMENTS
NOTES**

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List of Amendments of May 2019 RTP:

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THE COMPANIES ACT, 2013

- **SECTION 90 INVESTIGATION OF BENEFICIAL OWNERSHIP OF SHARES IN CERTAIN CASES (JKSC Text book Pg. No. 101)**

As per **Section 90**, where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares and the provisions of section 216 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.

⇒ **Substituted by: Enforcement Date: 13th June, 2018**

REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY

1. Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial

interests, of **not less than twenty-five per cent.** or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control, over the company (herein referred to as "significant beneficial owner"), **shall make a declaration to the company**, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

2. Every company shall **maintain a register of the interest declared by individuals and changes** therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.
3. The **register maintained shall be open to inspection** by any member of the company on payment of such fees as may be prescribed.
4. Every company shall **file a return of significant beneficial owners of the company and changes** therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.
5. A **company shall give notice**, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—
 - (a) to be a significant beneficial owner of the company;
 - (b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
 - (c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,and who is not registered as a significant beneficial owner with the company as required under this section.
6. The information required by the notice shall be given by the concerned person **within a period of 30 days** of the date of the notice.
7. **The company shall,—**
 - a) where that person fails to give the company the information required by the notice within the time specified therein; or
 - b) where the information given is not satisfactory,**apply to the Tribunal within a period of 15 days** of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.
8. On any application made, **the Tribunal may, after giving an opportunity of being heard to the parties** concerned, make such order restricting the rights attached with the shares **within a period of 60 days** of receipt of application or such other period as may be prescribed.
9. The company or the person aggrieved by the order of the Tribunal may make an

application to the Tribunal for relaxation or lifting of the restrictions placed.

10. If any person fails to make a declaration as required, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.
11. If a company, required to maintain register and file the information, fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.
12. If any person willfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.

- **CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY**
[SECTION 132] (JKSC Text book Pg. No. 142)

1. The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.
2. The National Financial Reporting Authority shall—
 - a) **make recommendations to the Central Government** on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
 - b) **monitor and enforce the compliance** with accounting standards and auditing standards in such manner as may be prescribed;
 - c) **oversee the quality of service** of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
 - d) **perform such other functions** relating to clauses (a), (b) and (c) as may be prescribed.
3. The National Financial Reporting Authority shall consist of:
 - (i) **Chairperson**, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and
 - (ii) Such other members **not exceeding fifteen** consisting of part-time and full-time members as may be prescribed:
 - ❖ Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed:
 - ❖ Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their

appointment.

- ❖ Provided also that the chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

4. The National Financial Reporting Authority shall—

- (i) **have the power to investigate**, either suo moto or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

- (ii) **have the same powers as are vested in a civil court** under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

- a) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;
- b) summoning and enforcing the attendance of persons and examining them on oath;
- c) inspection of any books, registers and other documents of any person referred to at any place;
- d) issuing commissions for examination of witnesses or documents;

- (iii) **where professional or other misconduct is proved, have the power to make order for—**

- a) imposing penalty of—not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms;
- b) debaring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

5. Any person aggrieved by any order of the National Financial Reporting Authority, **may prefer an appeal before the Appellate Tribunal** in such manner and on payment of such fee as may be prescribed.

6. The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.

7. The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and

conditions of service of the secretary and employees shall be such as may be prescribed.

8. The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.
9. The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor- General of India prescribe.
10. The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.
11. The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

THE NEGOTIABLE INSTRUMENTS ACT, 2013

• **SECTION 143A: POWER TO DIRECT INTERIM COMPENSATION.**

1. The Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—
 - a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
 - b) in any other case, upon framing of charge.
2. **The interim compensation shall not exceed twenty per cent. of the amount of the cheque**
3. **The interim compensation shall be paid within 60 days** from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
4. If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the Court on sufficient cause being shown by the complainant.
5. The interim compensation payable under this section may be recovered as if it were a fine under the Code of Criminal Procedure, 1973.

The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.

• **SECTION 148: POWER OF APPELLATE COURT TO ORDER PAYMENT PENDING APPEAL AGAINST CONVICTION.**

1. In an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to **deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation** awarded by the trial Court.

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

2. The amount shall be deposited within **60 days** from the date of the order, or within such further period not exceeding **30 days** as may be directed by the Court on sufficient cause being shown by the appellant.

3. The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

- m) Any **amount brought in by the promoters** of the company by way of unsecured loan subject to fulfilment of the following conditions, namely:-
- the loan is brought in pursuance of the stipulation imposed by the lending financial institution or bank on the promoters to contribute such finance;
 - the loan is provided by the promoters themselves or by their relatives or by both and not by their friends and business associates; and
 - the exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.
- n) Any amount accepted by a Nidhi company in accordance with the section 406 of the Act.
- o) Any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982
- p) Any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India
- q) **An amount of \geq ₹25,00,000 received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period of not exceeding 5 years from the date of issue) in a single tranche, from a person will be exempted from deposit.**

“Convertible note” means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument.

- r) **Any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, Infrastructure Investment Trusts and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it will be exempted from deposit.**

- ☉ Department of Company Affairs has clarified that while granting the extension, ROC can ignore the requirement of holding an AGM in every calendar year. However in such a case, AGM held in the next year shall be deemed to the AGM of the previous year and for the next year, one more AGM will be required to be held.
- ☉ The Department of Company Affairs has also clarified that the delay in the completion of the audit of the annual accounts of a company cannot ordinarily constitute a "special reason" justifying the grant of extension of time for holding its AGM.
- **Business transacted at an Annual General Meeting:**
 - ♦ Both Ordinary Business and Special Business can be transacted at an Annual General Meeting.
 - ♦ Following matters are related with the Ordinary Business :-
 - (a) The consideration of the accounts, balance sheet and the reports of the Board of Directors and Auditors;
 - (b) The declaration of dividend;
 - (c) The appointment of directors in the places of those retiring; and
 - (d) The appointment of and the fixing of remuneration of, the auditors.
 - ♦ Any business other than the above mentioned business, which can be transacted at an Annual General Meeting, shall be deemed to be Special Business. It may be noted that in the case of Extra-ordinary General Meeting (EGM), all businesses are special businesses. [Section 102]
- **Day for holding an Annual General Meeting:**
 - ♦ Every Annual General Meeting shall be called on a day, which is not a National Holiday. 'National Holiday' means and includes a day declared as National Holiday by the Central Government.
 - ♦ Where the Central Government declares a day to be a National Holiday, after the company has issued the notice convening the meeting, it shall not be deemed to be a national holiday in relation to that meeting.
 - ♦ It may be noted that the Central Government may exempt any company from the aforesaid provisions subject to such conditions as it may impose.
- **Time for holding an Annual General Meeting:**
 - ♦ Every Annual General Meeting shall be called at a time during the business hours i.e., between 9 a.m. and 6 p.m. It may be noted that Annual General Meeting convened during business hours may continue even after business hours.
 - ♦ It may be noted that the Central Government may exempt any company from the aforesaid provisions subject to such conditions as it may impose.
- **Place for holding all Annual General Meeting :**
 - ♦ Every Annual General Meeting shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.
 - ♦ Annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. **(Amended as per notification dated 3rd Jan,2018)**
 - ♦ It may be noted that the Central Government may exempt any company from the aforesaid provisions subject to such conditions as it may impose.

- ♦ Central Government may specify such other place within the city, town or village in which the registered office of the company is situate or such other place as the Central Government may approve in this behalf

- **Default in holding Annual General Meeting:**
If a company default in holding an Annual General Meeting, the following **two consequences** will follow-
 - ♦ If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient: Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting. A general meeting held in pursuance of this section shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act **[Section 97]**
 - ♦ The failure to call this meeting is an offence punishable with fine, which may extend to ₹1, 00,000/-, on the company and every officer of the company, who is in default. In case of continuing default, there can be a further fine, which may extend to ₹5,000/- for every day of default. **[Section 99]**

- **Report on Annual General Meeting [Section 121]:**
 - ♦ Section 121 mandates every **listed public company** to prepare in the prescribed manner, a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provision of the Act and the Rules made there under. A copy of this report is to be filed with the Registrar, in Form MGT.15, **within 30 days of the conclusion of the AGM.**
 - ♦ The rules provided on the Report on Annual General Meeting given under the Companies (Management and administration) rules, 2014 says that-
 - (a) the report under this section shall be prepared in addition to the minutes of the general meeting;
 - (b) the report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company;
 - (c) the report shall contain the details in respect of the following, namely:-
 - (i) the day, date, hour and venue of the annual general meeting;
 - (ii) confirmation with respect to appointment of Chairman of the meeting;
 - (iii) number of members attending the meeting;
 - (iv) confirmation of quorum;
 - (v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;
 - (vi) business transacted at the meeting and result thereof;
 - (vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and
 - (viii) Any other points relevant for inclusion in the report.

- (d) The Report shall contain fair and correct summary of the proceedings of the meeting.

Persons responsible to maintain books	The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be : (i) Managing Director, (ii) Whole-Time Director, in charge of finance (iii) Chief Financial Officer (iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.
Penalty provisions	Imprisonment for a term which may extend to one year or with fine which shall not be less than 50,000 rupees but which may extend to 500,000 rupees or both.

• **FINANCIAL STATEMENT [SECTION 129]**

Definition	As per section 2(40) , financial statement in relation to a company, includes— (i) a balance sheet as at the end of the financial year; (ii) a profit and loss account , or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year; (iii) cash flow statement for the financial year; (iv) a statement of changes in equity , if applicable; and (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv): Provided that the financial statement, with respect to One Person Company, small company and dormant company and private company (if such private company is a start-up) , may not include the cash flow statement; Note: Students may note that ‘Profit and Loss Account’ may also be referred as ‘Statement of Profit and Loss’ under the Act at some places.
True and Fair view	The financial statements shall give a true and fair view of the state of affairs of the company or companies. It shall comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III.

<p>Non Applicability</p>	<p>Nothing shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company</p>
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between the company and its members, subject to the fulfilment of the following conditions, namely—

- a) issuance of a **circular to its members** including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- b) filing a copy of the circular along with such statement with the Registrar within **30 days** before the date of issue of the circular;
- c) depositing such sum which shall not be less than **20%** of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;
- d) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;"; and
- e) ~~providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company :~~

Where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

Exception: Points (a) to (e) above shall not apply to private Companies:

- A. Which accepts from its members monies not exceeding 100%, of aggregate of the paid up share capital and free reserves and securities premium, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified or
- B. Which is a start-up, for five years from the date of its incorporation; or
- C. Which fulfils all of the following conditions, namely
 - a. which is not an associate or a subsidiary company of any other company

- b. if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
- c. such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section

<p>Investigation of beneficial ownership of shares in certain cases [Section 90]</p>	<ul style="list-style-type: none"> ✓ Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than 25 %, in shares of a company or the right to exercise, or the actual exercising of significant influence or control over the company, shall make a declaration to the company, specifying the nature of his interest and other particulars (Amended as per notification dated 3rd Jan,2018) ✓ As per Section 90, where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares and the provisions of section 216 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section. (Amendment in the list of amendments of May'19 RTP)
<p>Power to close register of members or debenture-holders or other security holders [Section 91]</p>	<p>Company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate 45 days in each year, but not exceeding 30 days at any one time, subject to giving of previous notice of at least 7 days.</p>
<p>Annual return [Section 92]</p>	<ul style="list-style-type: none"> ✓ Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding— <ul style="list-style-type: none"> a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies; b) its shares, debentures and other securities and shareholding pattern; c) its indebtedness; d) its members and debenture-holders along with changes therein since the close of the previous financial year; e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous

	<p>financial year;</p> <p>f) meetings of members or a class thereof, Board and its various committees along with attendance details;</p> <p>g) remuneration of directors and key managerial personnel; If it is a small company then amount of remuneration drawn by directors</p> <p>h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;</p> <p>i) matters relating to certification of compliances, disclosures as may be prescribed; such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.</p>
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1. **Repayment of deposit:** Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement.
2. **Failure on the repayment of deposit:** Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may **apply to the Tribunal** for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.
3. **Application of the amount of deposit repayment reserve account :** The deposit repayment reserve account shall not be used by the company for any purpose other than repayment of deposits

• **TERMS AND CONDITIONS OF ACCEPTANCE OF DEPOSITS BY COMPANIES [RULES]**

Periods of Acceptance of Deposits [Rule 3(1)(a)]	<ul style="list-style-type: none"> ➤ No company shall accept or renew any deposit, which is repayable on demand; or on notice; or after a period of less than 6 months or more than 36 months from the date of acceptance or renewal of such deposits, as the case may be. ➤ However a company may, for meeting short-term requirements of funds, accept or renew short-term deposits for repayment earlier than 6 months from the date of deposit or renewal; provided that such deposits do not exceed 10% of the aggregate of the paid-up share capital and free reserves of the company and such deposits are not repayable earlier than 3 months from the date of acceptance or renewal, as the case may be.
Joint Depositors [Rule 3(2)] :	Where depositors so desire, deposits may be accepted in joint names, but not exceeding three, with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor".
Ceiling limits for acceptance of Deposits	➤ For a Company other than an Eligible Company: It may accept or renew any deposit from its <i>members</i> , if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such

<p>[Rule 3(3), (4)&(5)]</p>	<p>deposits does not exceed 35% of the aggregate of the paid-up share capital and free reserves of the company.</p> <ul style="list-style-type: none"> ➤ For an Eligible Company : other than a Government Eligible Company, can accept or renew deposits, together with existing deposits, subject to the following ceiling :- <ul style="list-style-type: none"> ○ Deposits from Members: 10% of the aggregate of paid-up share capital and free reserves. ○ Any other Deposits: 25% of the aggregate of paid-up share capital and free reserves. ➤ A Government Eligible Company can accept or renew deposits, together with existing deposits, up to 35% of aggregate of its paid-up capital and free reserves. ➤ Any specified IFSC company and private company may accept deposits from its members up to 100% of its (Paid up share capital and Free reserves and securities premium)
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and

- (ii) turnover of which as per as per profit and loss account for the immediately preceding financial year **does not exceed two crore rupees** or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

➤ **Provided that nothing in this clause shall apply to--**

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

It is basically a private company meeting prescribed threshold.

➤ **Logic and Advantages of New Concept Small Company:**The 2013 Act provides for a new entity in the form of Small Company, empowering the Central Government to provide for a simpler compliance regime for small companies.

Because of their size, they cannot be burdened with the same level of compliance requirements. The small companies have to be enabled to take quick decisions, be adaptable in the changing economic environment, yet be encouraged to comply with the essential requirements of the law through low cost of compliance cost.

➤ Following are some of the **important relaxations** provided to a small company:

- (i) Financial statements of small company may not include the cash flow statement.
- (ii) Small company shall be deemed to have complied with the provisions relating to Board meeting if at least one meeting of the Board of directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.

- (iii) Merger or amalgamation between two or more small companies have been simplified without the requirement of court process.

C. BASED ON CONTROL**1. Holding & Subsidiary Company**

- As per Section 2(87) provides that **a company shall be a subsidiary of another**, if any of the following conditions are satisfied :-

- (a) that other controls the composition of its Board of Directors;
- (b) that other exercises or-controls more than one-half of the **total voting power** either at its own or together with one or more of its subsidiary companies; or
- (c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

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

For the purpose of clause (a) above, the control of the composition of the Board of directors of a company means that the holding company has power

PART C: DEBENTURES

➤ **Definition and meaning of debenture**

Section 2 (30) of the Companies Act, 2013 defines a debenture as :

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

Provided that-

- (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and
- (b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture

In simple terms, a debenture may be defined as an instrument acknowledging a debt by a company to some person or persons.

➤ **Features/ Characteristics of debenture**

The usual features of a debenture are as follows:

1. A debenture is usually in the form of a certificate (like a share certificate) issued under the common seal of the company.
2. The certificate is an acknowledgement by the company of indebtedness to a holder.
3. A debenture usually provides for the payment of a specified sum at a specified date.
4. A debenture usually provides for payment of interest until the principal sum is paid back..
5. A company shall not issue any debentures carrying voting rights. [Sec. 71(2)]

6. A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance. [Sec. 71(12)]

➤ **Kinds of debenture**

1. **Issue of debentures with an option to convert:** A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a **special resolution** passed at a general meeting.
2. **Unsecured/Naked Debentures:** Where they are not secured by any mortgage or charge on any property of the company, they are said to be naked or unsecured.
3. **Secured Debentures:** Where debentures are secured by a mortgage or a charge on the property of the company. They are called secured debentures. A company shall issue secured debentures, after unless it complies with the following conditions, namely:-
An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue.

- at its discretion, to appoint or remove all or majority of the directors of the subsidiary company without the consent of the other persons.
- It should be noted that holding and subsidiary companies are incorporated companies and each is a separate legal entity.
- For the purpose of this clause, the term 'company' includes any body corporate. Thus, holding and subsidiary relationship can be established between an Indian Company and a Foreign Company.
- As per Section 2(46), '**Holding Company**', in relation to one or more other companies, means a company of which such companies are subsidiary companies.

'Explanation.—For the purposes of this clause, the expression "company" includes any body corporate;'

- **Subsidiary company not to hold shares in its holding company:** Section 19 deals with the restrictions on the subsidiary company with respect to holding of shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiaries companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the **exceptions** -

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

The subsidiary company referred to in the above exceptions shall have

a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b) of the said exceptions.

2. Associate company

- As per Section 2(6), In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
- The expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;
- The expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;
- This is a new definition inserted in the 2013 Act.

D. BASED ON CAPITAL

1. Listed company:

As per the definition given in the section 2(52), it is a company which has any of its securities listed on any recognised stock exchange.

2. Unlisted company: Means a company other than listed company.

E. OTHER COMPANIES

1. Government Company

- As per Section 2(45), government company means any company in which not less than fifty- one per cent. of the paid-up share capital is held by-
 - (i) the Central Government, or

1. Unlimited Company:

- As per Section 2(92), unlimited company is a company not having any limit on the liability of its members. In such a company the liability of a member ceases when he ceases to be a member.
- Thus, the maximum liability of the members of such a company could extend to their entire personal property to meet the debts and obligations of the company.
- The members of an unlimited company are not liable directly to the creditors of the company, unlike in the case of partners of a firm. The liability of the members is only towards the company, so long it is a going concern; and in the event of its being wound up, only the Liquidator can ask the members to contribute to the assets of the company.

B. BASED ON MEMBERS

1. Private Company:

- As per Section 2(68), private company is a company which by its articles,—
 - (i) restricts the right to transfer its shares;
 - (ii) limits the number of its members to two hundred (except in case of One Person

Company):

The clause provides that where two or more persons hold one or more shares in a company jointly, they shall be treated as a single member:

However following shall not be included in the number of members:

- ◆ persons who are in the employment of the company; and
 - ◆ persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.
- (iii) prohibits any invitation to the public to subscribe for any securities of the company.
- There should be at least two persons to form a private company i.e., the minimum no. of members in a private company is two. A private company should have at least two directors. The name of a private limited company must end with the words "Private Limited".

2. Public Company:

- As per Section 2(71), public company is a company which-
- ◆ is not a private company **and**
 - ◆ Seven or more members are required to form the company.
 - ◆ a private company which is a subsidiary of a public company shall also be deemed to be a public company for the purposes of this Act, even where such subsidiary company continues to be a private company in its articles (three restrictions).
- There should be at least seven persons to form a public company i.e., the minimum no. of members in a public company is seven. A public company should have at least three directors. The name of a public limited company must end with the word "Limited".

2. Dormant company:

- Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- "Significant accounting transaction" means any transaction other than—
- (i) payment of fees by a company to the Registrar;
 - (ii) payments made by it to fulfil the requirements of this Act or any other law;
 - (iii) allotment of shares to fulfil the requirements of this Act; and
 - (iv) payments for maintenance of its office and records.

3. Nidhi company:

As per Section 406, a company which has been incorporated as a nidhi with the object of cultivating the habit of thrift (cost cutting) and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefits and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

6. Public financial institutions

As per Section 2(72), following institutions are to be regarded as public financial institutions.

- (i) The Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
- (ii) The Infrastructure Development Finance Company Limited,
- (iii) Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
- (iv) Institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
- (v) Such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

- (A) it has been established or constituted by or under any Central or State Act **other than this Act or the previous company law;** or
- (B) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments

- **INCORPORATION OF COMPANIES**
[SECTION 7 READ WITH COMPANIES (INCORPORATION) RULES, 2014]

Following is the procedure, in brief, for the incorporation of a company:-

I. **Selection of the type of company:** The promoters of a company may however select the type of a company as they wish to form themselves into viz, One person company, private company, public company, non-profit company, etc.

II. **Preliminary Requirements:**

All the directors of the proposed company must ensure that they are having Director's Identification Number (DIN). Out of all the directors of the proposed company, atleast one director should have digital signature to digitally sign the incorporation and other related documents.

III. **Reservation of Name:**

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

1. He should apply in **e-Form No. INC.1** along with the **fees of ` 1,000/-**, as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.
2. **Maximum of six proposed names** can be given in order of preference. Upon receipt of an application, the Registrar may, on the basis of information and documents furnished along with the application, **reserve the name for a period of 20 days** from the date of approval or such other period as may be prescribed. Provided that **in case of an application for reservation of name or for change of its name by an existing company**, the Registrar may reserve the name for a **period of 60 days** from the date of approval. After 20/60 days, if documents for incorporation are not filed with the Registrar, the reservation made by the Registrar shall lapse automatically.

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

Drafting of the MOA and AOA is generally a step subsequent to the reservation of name made by the Registrar. MOA and AOA shall be in the respective forms as specified in Schedule -1. It should be noted that the main objects must be matched with the objects shown in e-Form INC.1. These two documents are basically the charter and internal rules and regulations of the company. Therefore, it must be drafted with utmost care and with the advice of the experts and the ancillary clause for attainment of the main object clause should be drafted in a very broader sense.

V. Filing of the documents with the Registrar of Companies:

An application shall be filed, with the Registrar of Companies within whose jurisdiction the registered office of the company is proposed to be situated, in **Form No. INC.2 (for One Person Company) and Form no. INC.7 (other than One Person Company)** along with the following documents, along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** for registration of a company, within 60 days from the date of intimation regarding the reservation of name :-

- (a) **The memorandum and articles** of the company duly signed by all the subscribers to the memorandum in such manner as prescribed under the Companies (Incorporation) Rules, 2014;
- (b) **a declaration in the prescribed Form INC.8** by an advocate or chartered accountant or cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with;
- (c) **a declaration in Form INC-9** by each of the subscribers to the memorandum and by all the persons named as the first directors, if any, in the articles that they are not convicted of any offence in connection with the promotion, formation or management of any company, or that they has not been found guilty of any fraud or misfeasance or of any breach of duty

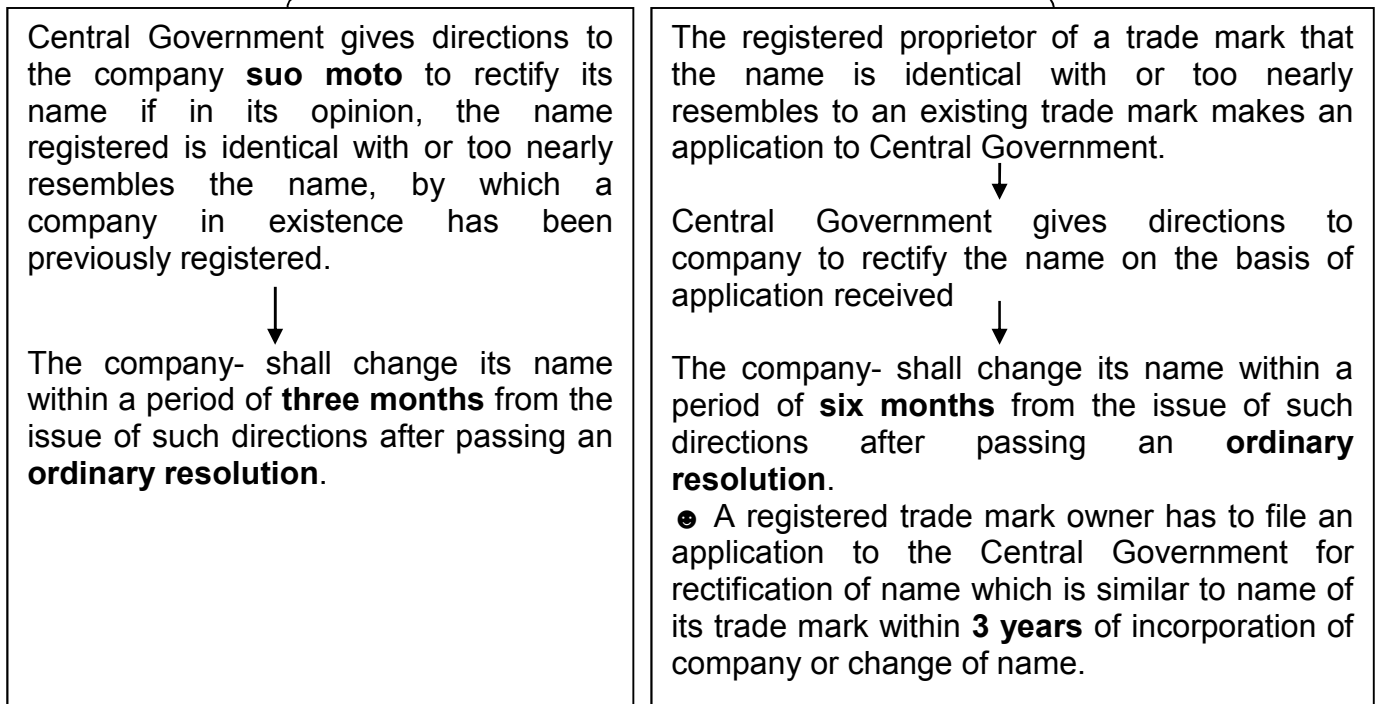
to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of their knowledge and belief;

- (d) **The address for correspondence** till its registered office is established;
- (e) Certain **prescribed particulars of every subscriber** to the memorandum along with proof of identity; (0 the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity in the prescribed **Form DIR-12**;
- (g) The **particulars of the interests** of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in the Form DIR-12 along with the fee as per Companies (Registration Offices and Fees) Rules, 2014;
- (h) **E-Form INC-22** for verification of the location of the registered office, along with the following documents:
 - (i) Registered document of the title of the premises of the registered office in the name of the company; or
 - (ii) Notarized copy of lease/rent agreement in the name of the company along with a copy of rent paid receipt not older than one month; or
 - (iii) Authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
 - (iv) the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner/document as the case may be which is not older than 2 months.

There shall be attached to Form INC-22 the list of all other companies with their CIN, if any, having the same unit/tenement/premises as their registered office address.

It may be noted that as per Section 12, a company must have its registered office within 30 days of its incorporation and hence Form

➤ **Rectification of Name (Sec. 16) :**



Where a company changes its name or obtains a new name, it shall within a period of **15 days** from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

- **Effect of change of name:** The change of name will not affect any rights and obligations of the company, or legal proceedings commenced under the old name. However, where a company changes its name and the new name has been registered by the Registrar, the commencing of legal proceedings in the former name is not competent. In spite of a change in name, the entity of the company continues. The company is neither dissolved nor does any new company come into existence. It may be noted that whenever there is a change in the name of accompany because of any reason whatsoever, the new name becomes effective, only after the issue of revised or fresh certificate of incorporation by the ROC.

2. SITUATION OR REGISTERED OFFICE CLAUSE

- The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein.
- As per **Section 12**, a company shall, on and from the **30th day** of its incorporation, shall have a registered office.
- The company shall furnish to the Registrar verification of its registered office within a period of 30 days of its incorporation.

➤ Methods of shifting of Registered Office within same state:

Change within the local limits of same 'town' [Sec. 12]:
A company can change its registered office from one place to another within the local limits of the city, town or village, where it is situated by passing a **Board Resolution**.

↓

A notice of the change is to be given to the Registrar of Companies in Form INC.22 within **30 days** of such change.

- **This change of registered office does not involve alteration of memorandum.**

Change from one city to another within the same State and which does not involve the change of jurisdiction of Registrar of Companies, [Sec. 12]:

↓

A **special resolution** has to be passed in the general meeting of the company. The special Resolution shall be passed by Postal Ballot in case of public company.

↓

Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution.

Also within **30 days** of the change of the registered office, a notice to the Registrar should be given of the new location of the office in Form No. **INC.22**.

- **This change of registered office also does not involve alteration of memorandum.**

Change from one city to another within the same State involving change of jurisdiction of Registrar of Companies [Sec. 12]:

A **special resolution** has to be passed in the general meeting of the company.

↓

Apply to Regional Director for approval

↓

Regional Director shall communicate within a period of 30 days from the date of receipt of application

↓

The company shall file the confirmation with the Registrar within a period of 60 days of the date of confirmation

↓

ROC shall register the same and certify the registration within a period of 30 days from the date of filing of such confirmation.

↓

Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution.

↓

Also within **30 days** of the change of the registered office, a notice to the Registrar should be given of the new location of the office in Form No. **INC.22**.

- **This change of registered office also does not involve alteration of memorandum.**
- **This provision is applicable only in those states where there are more than one offices of Registrar of Companies. At present there are two states, where there are more than one offices of ROCs. They are Maharashtra and Tamil Nadu. In Maharashtra, the two offices of ROCs are located at Mumbai and Pune; whereas in Tamil Nadu, the two offices of ROCs are located at Chennai and Coimbatore.**

➤ **Change from one State to another State [Sec.13]**

A **special resolution** has to be passed in the general meeting of the company.

↓
Apply to Central Government for approval

↓
Central Government shall communicate within a period of 60 days from the date of receipt of application

The Central Government, before passing its order, may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debt and obligations or that adequate security has been provided for such discharge.

↓
File following documents with Registrar of both states:

- a) A certified copy of the order of the Central Government approving the alteration for change.
- b) Altered copy of MOA

↓
The ROC of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

↓
Also **Form No. MGT.14** shall be filed to the Registrar of Companies within 30 days of passing the special resolution. Also within **30 days** of the change of the registered office, a notice to the Registrar should be given of the new location of the office in **Form No. INC.22**.

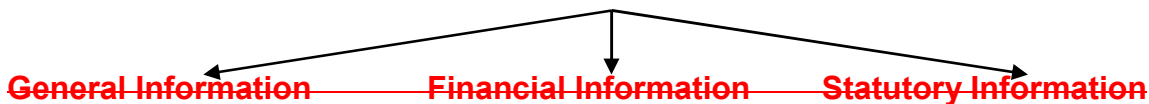
- ⊙ A State Government cannot oppose shifting of the registered office of a company from one state to another on the ground that by this change the State would be deprived of its revenue. The question of loss of revenue to one state would have to be considered in the context of total revenue of the Republic of India and in the interest of the country as a whole.
- ⊙ It was held that employees' union, which is a registered body and which represents quite a number of the employees employed at a registered office of the company, has the right to appear and to oppose the application made to the Central Government u/s 13 on the ground that their interests would be likely to be prejudicially affected if such special resolution would be confirmed by the Central Government
- ⊙ **This change of registered office INVOLVES alteration of memorandum.**

- **Alteration noted in every copy:** Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration. **[Section 15]**

➤ **Matters to be stated in prospectus[Section 26]**

- (1) **Dated:** Every prospectus must be dated. The date appearing on the prospectus is deemed to be date of publishing prospectus
- (2) **Registered:** The prospectus must be registered with ROC on or before issue of prospectus to public
- (3) **Issued:** The prospectus must be issued to public within 90 days of registration with ROC. Any issue of securities under the prospectus which is issued beyond 90 days shall be deemed to be an issue without a prospectus.
- (4) **Contents of the prospectus:** Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply



~~a) Firstly, under the general information, the prospectus shall contained the following information, namely —~~

- ~~(i) Name and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;~~
- ~~(ii) Date of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;~~
- ~~(iii) A statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;~~
- ~~(iv) Details about underwriting of the issue;~~
- ~~(v) Consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;~~
- ~~(vi) The authority for the issue and the details of the resolution passed there for;~~
- ~~(vii) Procedure and time schedule for allotment and issue of securities;~~
- ~~(viii) Capital structure of the company in the prescribed manner;~~
- ~~(ix) Main objects of public offer, terms of the present issue and such other particulars as may be prescribed;~~
- ~~(x) Main objects and present business of the company and its location;~~

schedule of implementation of the project;

~~(xi) Particulars relating to—~~

~~(A) management perception of risk factors specific to the project;~~

~~(B) gestation period of the project;~~

~~(C) extent of progress made in the project;~~

~~(D) deadlines for completion of the project; and~~

~~(E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company~~

~~(i) Minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;~~

~~(ii) Details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and~~

~~(iii) disclosures in such manner as may be prescribed about sources of promoter's contribution;~~

~~b) Secondly, under the Financial information, Prospectus set out the following reports for the purposes of the financial information, namely:~~

~~(i) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;~~

~~(ii) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed:~~

~~— Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;~~

~~(iii) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus:~~

~~— Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; and~~

~~(iv) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;~~

a) **Thirdly, under the statutory information**, prospectus shall make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder; and

~~b) State such other matters and set out such other reports, as may be prescribed.~~

➤ **Exceptions: The above provisions are not applicable to:**

1. To the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company.
2. To the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.

➤ **When Registrar must refuse registration of Prospectus :** Section 26 provides that the Registrar shall not register a prospectus, if

- (a) It is not dated;
- (b) It does not have the prescribed contents, reports and declarations;
- (c) It contains statements or reports of experts engaged or interested in the formation or promotion or management of the company;
- (d) It includes a statement purported to be made by an expert without a statement that he has given/ has not withdrawn his consent to the manner of its inclusion therein;
- (e) It does not contain consent in writing of directors;
- (f) It is not accompanied by the consent in writing of the auditor, legal advisor, attorney, etc. to the issue or broker, if named in the prospectus to act in that capacity.

➤ **Punishment in case of contravention:** If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

➤ **Variation in terms of contract or objects in prospectus (Section 27)**

The provision with respect to variation in terms of contract or objects in prospectus is as follows:

- (1) **Vary by special resolution:** A company shall vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, only by way of special resolution by postal ballot.

Notice of resolution to shareholders: The details of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in

➤ **Conditions:**

1. The shares must be of class already issued;
2. ~~At least one year must have elapsed since the Company had commenced business;~~
3. The issue must be authorized by a **special resolution** passed by the Company in general meeting;
4. The resolution must specify number of shares; their current market price; consideration (if any); and the class or classes of directors or employees to whom they are to be issued;
5. The shares must be issued in accordance with SEBI Regulations, in the case of listed companies; and in accordance with Central Govt. Rules, in the case of unlisted companies.

It may be noted that the rights, limitations, restrictions and provisions applicable to equity shares shall be applicable to sweat equity share and holders of such shares shall rank pari passu with other equity shareholders.

• **BONUS SHARES/ CAPITALISATION OF RESERVES [SECTION 63]**

- A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of its:
1. Free reserves
 2. Securities premium account
 3. Capital redemption reserve account.

However, no issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets. Further, the bonus shares shall not be issued in lieu of dividend.

- A company may issue fully paid bonus shares, subject to the following conditions:
- (a) it is authorized by its articles;
 - (b) it has, on recommendation of Board, been authorized in general meeting of the company;
 - (c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
 - (d) it has not defaulted in respect of the payment of statutory dues of the employees;
 - (e) the existing shares are fully paid-up.
 - (f) it complies with such conditions as may be prescribed.

It may be noted that the company, which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

• **SHARE CERTIFICATE**

- **Meaning:** A share certificate is a document showing title issued by the company declaring that the person named therein is the owner of a specified number of shares in the capital of the company.

A share certificate is a certificate issued to a member in his name by a company under its common seal specifying the number of shares held by him and the amount paid on each share.

It may be noted that a share certificate is issued to a member of the company only for the physical shares and not for the electronic (demat) shares.

➤ **REGISTRAR'S REGISTER OF CHARGES [SECTION 81]**

Section 81 requires ROC to keep a register of charges in respect of each company and register therein the full particulars relating to charges created by the Company. This register is open to inspection to any person on payment of prescribed fess.

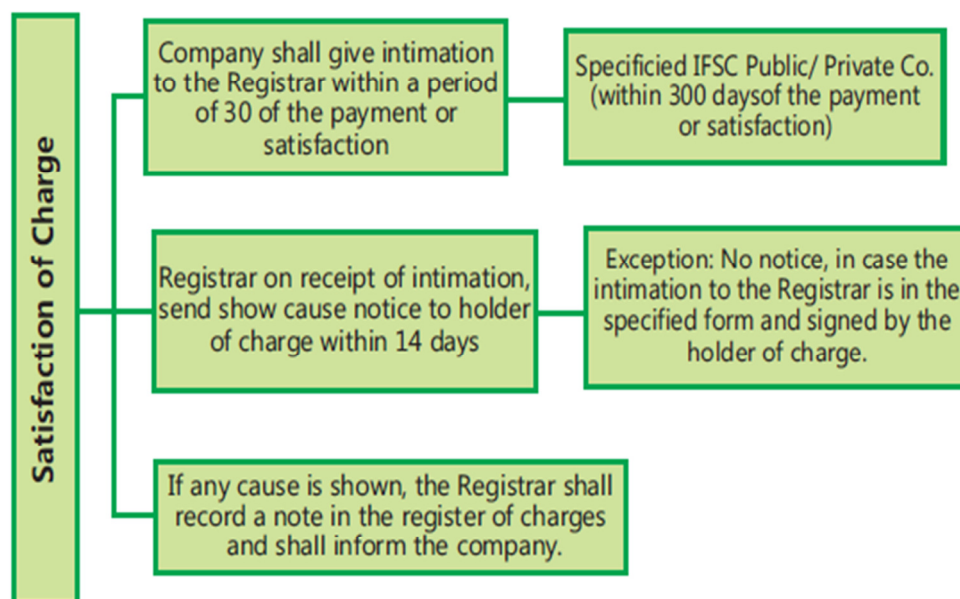
It may be noted that the particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges for the purposes of section 81 of the Act.

• **SATISFACTION OF CHARGES [SECTION 82]**

➤ Section 82 requires that on payment or satisfaction of charge, in full, relating to a Company, the Company shall give intimation to ROC, **within a period of 30 days** from the date of such payment or satisfaction. The 'particulars of satisfaction of charge shall be filed in Form No. CHG.4, **together with 'no dues letter'** issued by the creditor.

➤ ~~It may be noted that in the case of satisfaction of charges, no extension of time can be allowed by the ROC. The power to extend the time for filing the particulars of satisfaction of charges lies with the Central Government only.~~

➤ Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of **300 days** of such payment or satisfaction on payment of such additional fees as may be prescribed. **(Amended as per notification dated 3rd Jan, 2018).**



• **POWER OF REGISTRAR TO MAKE ENTRIES OF SATISFACTION AND RELEASE IN ABSENCE OF INTIMATION FROM COMPANY [SECTION 83]**

Section 83 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where no intimation has been received by him from the company.

(1) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

Rule 7	<p>Foreign Register: A company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register, called foreign register containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India The company shall –</p> <ol style="list-style-type: none"> 1. Transmit to its registered office in India, a copy of every entry in any foreign register within 15 days after the entry is made; and 2. Keep at such office a duplicate register for all the purposes of this Act, be deemed to part of the principal register.
Penalty	<p>Section 88 deals with the penalty for contravention of the provisions of section 88, i.e. failure to maintain registers in accordance with the provisions of the Act. It states that the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ` 50,000 but which may extend to 3,00,000 and where the failure is a continuing one, with a further fine which may extend to 1,000 per day.</p>

➤ **Other Sections**

<p>Declaration in respect of beneficial interest in any share [Section 89]</p>	<ul style="list-style-type: none"> ✓ Rule 9 prescribes the procedure to be followed in case of declaration in respect of beneficial interest in any shares – Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company. ✓ Where any change occurs in the beneficial interest in such shares, the person and the beneficial owner shall, within a period of 30 days from the date of such change, make a declaration to the company. ✓ Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within 30 days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar ✓ Beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to— <ul style="list-style-type: none"> (i) exercise or cause to be exercised any or all of the rights attached to such share; or (ii) receive or participate in any dividend or other distribution in respect of such share
<p>Investigation of beneficial ownership of shares in certain cases [Section 90]</p>	<ul style="list-style-type: none"> ✓ Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than 25 %, in shares of a company or the right to exercise, or the actual exercising of significant influence or control over the company, shall make a declaration to the company, specifying the nature of his interest and other particulars

	<p>(Amended as per notification dated 3rd Jan,2018)</p> <p>✓ As per Section 90, where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares and the provisions of section 216 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section. (Amendment in the list of amendments of May'19 RTP)</p>
<p>Power to close register of members or debenture-holders or other security holders [Section 91]</p>	<p>Company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate 45 days in each year, but not exceeding 30 days at any one time, subject to giving of previous notice of at least 7 days.</p>
<p>Annual return [Section 92]</p>	<p>✓ Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—</p> <ul style="list-style-type: none"> j) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies; k) its shares, debentures and other securities and shareholding pattern; l) its indebtedness; m) its members and debenture-holders along with changes therein since the close of the previous financial year; n) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year; o) meetings of members or a class thereof, Board and its various committees along with attendance details; p) remuneration of directors and key managerial personnel; If it is a small company then amount of remuneration drawn by directors q) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment; r) matters relating to certification of compliances, disclosures as may be prescribed; such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice. <p>✓ Every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held</p>

	<p>together with the statement specifying the reasons for not holding the annual general meeting, with such fees</p> <p>✓ Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company</p>
<p>Return to be filed with Registrar in case promoters' stake changes [section 93]</p>	<p>Omitted as per Notification dated 3rd Jan,2018</p>
<p>Place of keeping and inspection of registers, returns, etc [Section 94]</p>	<p>✓ The registers required be keeping and maintaining by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company.</p> <p>Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.</p> <p>✓ The copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees.</p> <p>✓ Any such member, debenture-holder, other security holder or beneficial owner or any other person may—</p> <p>(a) Take extracts from any register, or index or return without payment of any fee; or</p> <p>(b) Require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.</p> <p>✓ Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection or for taking extracts or copies under this sub-section</p>
<p>Preservation of register of members etc. and annual return– (Rule 15)</p>	<p>✓ Preservation of register of members: Rule 15 states that the register of members along with the index shall be preserved permanently.</p> <p>✓ Preservation of register of debenture holders/ other security holders: The register of debenture-holder or any other security holder along with the index shall be preserved for a period of 8 years.</p> <p>✓ Copies of documents filled with ROC to be preserved: for a period of 8 years from the date of filing with the RoC.</p> <p>✓ Preservation of foreign register: Shall be preserved permanently</p>
<p>Registers, etc., to be evidence [Section 95]</p>	<p>The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act</p>

Subject to the provisions in the articles, any general meeting of the company can be called only on the authority of a Board resolution. If the managing director, manager, secretary or other officer calls a meeting without the authority of the Board of Directors, it will not be effectual unless the Board ratifies the convening of the general meeting before it is held.

- **Calling of E.G.M. on requisition [Section 100]:** The demand of members to convene a meeting is called requisition. The requisition must be in plenty. It shall set out the matters for the consideration of which the meeting is to be called. It shall be signed by the requisitionists. It must be deposited at the registered office of the company.

The number of members entitled to requisition a meeting in regard to any matter shall be:

- (a) In the case of a company having a share capital, members **holding at least one-tenth of such paid - up capital** of the company which carries a right of voting in regard to that matter;
- (b) In the case of a company not having a share capital, members holding at least one-tenth of total voting power of all the members who have a right to vote in regard to that matter.

The Board of Directors shall, on receipt of requisition, immediately **proceed to call E.G.M. within 21 days from the date of the deposit of requisition, on a date, which shall not be later than 45 days of the date of deposit of requisition.** The BOD shall be said to have failed in calling the meeting if:

- (i) it does not call the meeting within 21 days of the deposit of requisition;
 - (ii) it calls the meeting on a day which is later than 45 days from the date of deposit of requisition; or
 - (iii) it convenes a meeting to transact only a part of the business specified in the requisition.
- (c) Where the Board fails to call a meeting, the meeting may be called by the **requisitionists themselves within a period of three months from the date of the deposit of requisition.** A meeting under called by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

Here, requisitionists shall convene the meeting at the Registered Office of the Company or at some other place within the city, town or village in which the registered office of the company is situated. **Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.** Further, the **EGM shall be held on a working day.**

Any reasonable expenses incurred by the requisitionists in calling a meeting shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration payable to such of the directors who were in default in calling the meeting.

- **Calling of E.G.M. by National Company Law Tribunal [Section 98] :**
- (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the

- ✓ Provided that any item of business required to be transacted by means of postal ballot may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

➤ **Procedure:**

The Companies (Management and Administration) Rules, 2014 lay the procedure to be followed for conducting business through postal ballot.-

- (1) **Notice to all shareholders:** Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons there for and requesting them to send their assent or dissent in writing on a postal ballot because postal ballot means voting by post or through electronic means within a period of thirty days from the date of dispatch of the notice.

The notice shall be sent either (a) by Registered Post or speed post, or (b) through electronic means like registered e-mail id or (c) through courier service for **facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of 30 days.**

- (2) **Publishing of an advertisement:** An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying the details.
- (3) **Notice also be placed on the website:** The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.
- (4) **Appointment of scrutinizer:** The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.
- (5) **Assent by the requisite majority to the resolution:** If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf.
- (6) **Postal ballot received to be kept under safe custody:** Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.
- (7) **Submission of report of the scrutinizer:** The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof.

moved, exclusive of the day on which the notice is served and the day of the meeting.

On receipt of such a notice, **the company must give to its members, minimum 7 clear days' notice** of the resolution in the manner in which it gives notice of the meeting. In case it is not practicable, the company must give a minimum of seven clear days' notice to members through an advertisement in an English and Vernacular Language Newspapers having a wide circulation in the state of the registered office of the company.

♦ **The Companies Act, 2013 requires a special notice to be given in respect of the following resolutions :-**

- (a) For a resolution at an A.G.M. to provide that a retiring auditor shall not be re-appointed. [Sec. 140]
- (b) For a resolution at an A.G.M. appointing an auditor, a person other than a retiring auditor. [Sec. 140]
- (c) For a resolution to remove a director before the expiry of his period of office. [Sec. 169]
- (d) For a resolution to appoint another director in place of the removed director. [Sec. 169]
- (e) Where the articles of a company provided for the giving of a special notice for a resolution in respect of any specified matter or matters.

➤ **Resolution passed at Adjourned Meeting [Section 116]:**

A resolution passed at an adjourned meeting either of a company or the holders of any class of shares in a company or Board of directors of a company shall be treated as having been passed on the date on which it was in fact passed and not on an earlier date.

➤ **Registration of certain resolutions and agreements [Section 117]:**

♦ Following resolutions and agreements are required to be filed with Registrar of Companies:

- (a) special resolutions;
- (b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- (c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;
- (d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;
- (e) ~~resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of subsection (1) of section 180;~~
- (f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;

(g) resolutions passed in pursuance of sub-section (3) of section 179(Powers of Board); ~~and~~

Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under section 179 in the ordinary course of its business; and

(h) any other resolution or agreement as may be prescribed and placed in the public domain

- ♦ A copy of every resolution/agreement mentioned above together with a copy of explanatory statement, if any, printed or typewritten and duly certified under the signatures of the officer of the company shall be filed with the Registrar within 30 days of date of passing the resolution or executing the agreement, as the case may be, in Form No. MGT.14.
- ♦ If a company fails to file the resolution or the agreement before the expiry of **300 days (30 days + 270 days)** from the date of passing the resolution or executing the agreement, as the case may be, the company shall be punishable with fine *which* shall not be less than ~~4 lakh~~ **5 lakhs** rupees but which may extend to 25 lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than ~~50,000 rupees~~ **1 lakh** but which may extend to 5 lakh rupees.

➤ **Ordinary & Special Business and their relation with Ordinary & Special Resolution:**

- ♦ Ordinary business always requires an ordinary resolution.
- ♦ Special Business has no relation with Special Resolution. It may require ordinary resolution in some cases and special resolution in some cases. For instance :-
 - (i) Increase in authorised capital by way of alteration in the MOA, although special business requires only ordinary resolution.
 - (ii) Change in object clause by way of alteration in the MOA is a special business and it also requires special resolution.

• **MINUTES OF PROCEEDINGS OF MEETINGS [SECTIONS 118 & 119]**

➤ **Important Provisions [Section 118]:**

- ♦ The minutes are a record of business transacted at meetings. Every company must keep minutes containing a fair and correct summary of all proceedings of general meetings (including the resolutions passed by postal ballot) and those of Board meetings or those of meetings of Committee of the Board or meeting of the Creditors, in books kept for that purpose.
- ♦ The minutes books must have their pages consecutively numbered, and the minutes must be recorded therein **within 30 days of the meeting**, along with the date of such recording. They have to be written directly on the numbered pages. Pasting or attaching of papers is not allowed.
- ♦ It may be noted that a company may maintain the minutes in the loose-leaf form provided all other procedural requirements are complied with and all possible safeguards against manipulation or interpolation of the minutes are ensured. The loose leaves can be got bound at some reasonable intervals.
- ♦ A distinct minute book shall be maintained for each type of meeting namely:-
 - a) General meetings of the members;
 - b) Meetings of the creditors

<p>Non Applicability</p>	<p>Nothing shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company</p> <p>Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—</p> <table border="1" data-bbox="454 667 1412 1079"> <thead> <tr> <th data-bbox="454 667 880 719">Type of Company</th> <th data-bbox="888 667 1412 719">Matters</th> </tr> </thead> <tbody> <tr> <td data-bbox="454 719 880 846">Insurance Company</td> <td data-bbox="888 719 1412 846">Matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999</td> </tr> <tr> <td data-bbox="454 846 880 938">Banking company</td> <td data-bbox="888 846 1412 938">Matters which are not required to be disclosed by the Banking Regulation Act, 1949</td> </tr> <tr> <td data-bbox="454 938 880 1005">Company engaged in the generation or supply of electricity</td> <td data-bbox="888 938 1412 1005">Matters which are not required to be disclosed by the Electricity Act, 2003</td> </tr> <tr> <td data-bbox="454 1005 880 1079">Company governed by any other law</td> <td data-bbox="888 1005 1412 1079">Matters which are not required to be disclosed by that law</td> </tr> </tbody> </table>	Type of Company	Matters	Insurance Company	Matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999	Banking company	Matters which are not required to be disclosed by the Banking Regulation Act, 1949	Company engaged in the generation or supply of electricity	Matters which are not required to be disclosed by the Electricity Act, 2003	Company governed by any other law	Matters which are not required to be disclosed by that law
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Company governed by any other law	Matters which are not required to be disclosed by that law										
<p>Consolidation of financial statements</p>	<ul style="list-style-type: none"> ✓ The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards. ✓ Prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own. ✓ Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed: Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed 										
<p>Laying of financial Statements</p>	<p>At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.</p>										
<p>Exemptions from preparation of CFS :</p>	<p>(i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, having been intimated in writing do not object to the company not presenting consolidated financial statements</p> <p>(ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and</p>										

	(iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.
Penal provisions	Imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.
Non-Applicability of Sec 129	Section 129- Shall not apply to the companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting

• **CENTRAL GOVERNMENT TO PRESCRIBE ACCOUNTING STANDARDS [SECTION 133]**

Section 133 provides that Central Government shall prescribe the Standards of Accounting as recommended by ICAI in consultation with and after examination of the recommendations made by NFRA constituted under section of the Act. Till date section 132 is not notified.

So the following transitional Provisions with respect to Accounting Standards has been made.

- (1) The **standards of accounting as specified under the Companies Act, 1956** (1 of 1956) **shall be deemed to be the accounting standards** until accounting standards are specified by the Central Government under section 133.
- (2) **Till the National Financial Reporting Authority is constituted under section 132** of the Act, the **Central Government may prescribe the standards** of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards constituted under section 210A of the Companies Act, 1956.

Relevant Accounting Standards

- The Companies (Accounting Standards) Rules, 2006
- The Companies (Accounting Standards) Rules, 2006 amended vide Notification No. G.S.R 364(E) dated 30th March, 2016
- The Companies (Indian Accounting Standards) Rules, 2015
- The Companies (Indian Accounting Standards) (Amendment) Rules, 2016

• **CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY [SECTION 132]**

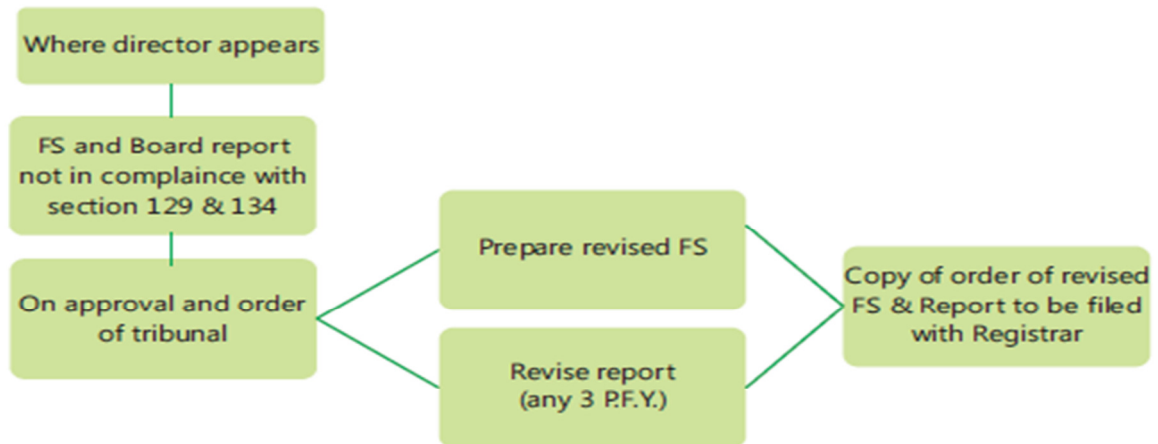
Not yet notified

Now it is notified from 1st October,2018.

(Amendment in the list of amendments of May'19 RTP)

(As amended by notification dated 3rd Jan, 2018)

- **VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT [SECTION 131]**



- **FINANCIAL STATEMENT, BOARD'S REPORT, ETC [SECTION 134]**

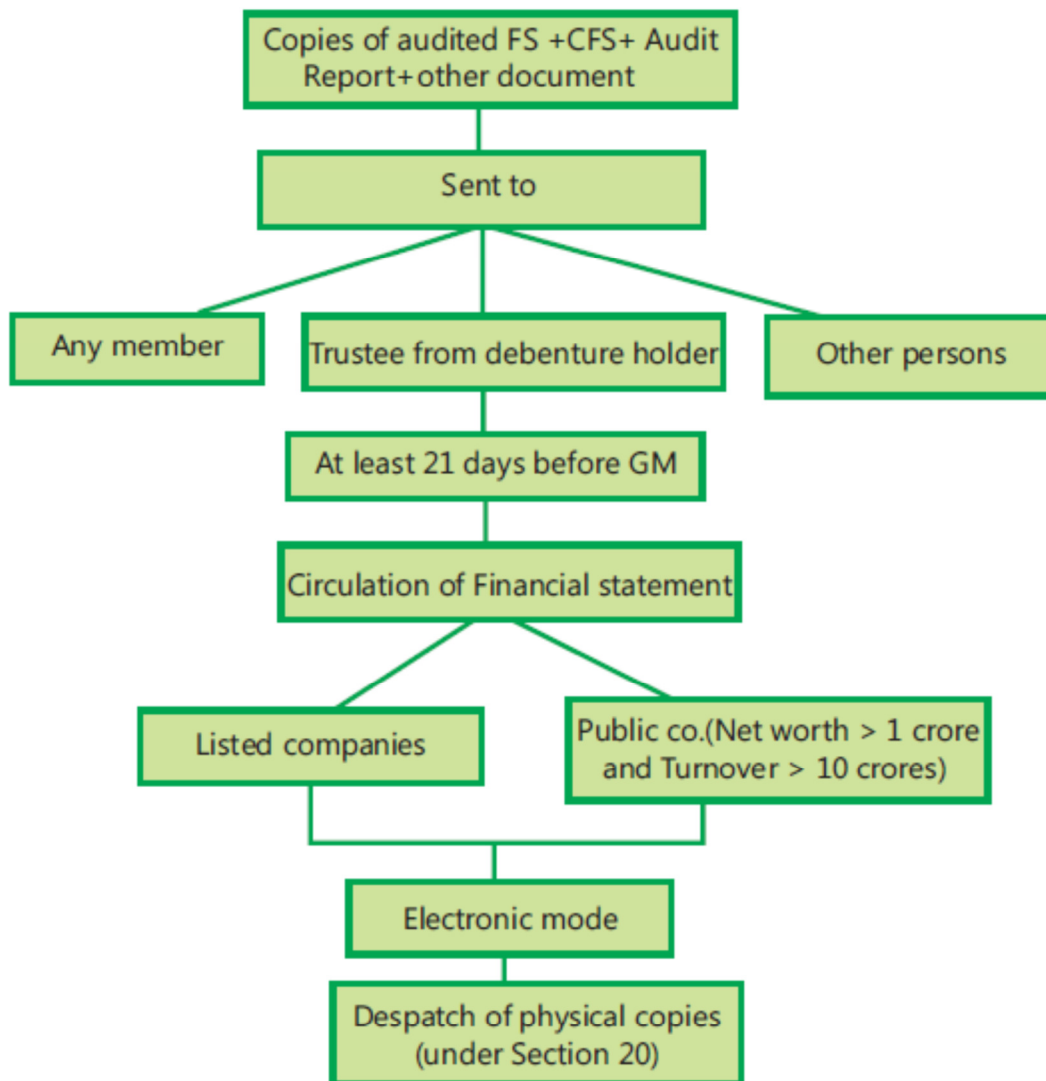
- (i) **Authentication of Financial statements:**

- (a) The financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are **signed on behalf of the Board at least by the following:**
 - (1) The **chairperson** of the company where he is authorised by the Board; or
 - (2) By **two directors** out of which one shall be managing director and other the Chief Executive Officer, if he is a director in the company,
 - (4) The **Chief Executive Officer**, wherever he is appointed;
 - (3) The **Chief Financial Officer**, wherever he is appointed; and
 - (4) The **company secretary** of the company, wherever he is appointed.
- (b) In the case of a **One Person Company**, the financial statement shall be signed by only **one director**, for submission to the auditor for his report thereon.
- (c) The **auditors' report shall be attached** to every financial statement.
- (d) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of— (1) Any notes annexed to or forming part of such financial statement; (2) The auditor's report; and (3) The Board's report.

- (ii) **Board's report:** According to Rule 8 of the *Companies (Accounts) Rules, 2014*, the **Board's Report shall be prepared based on the stand alone financial statements of the company** and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.

The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.

- **RIGHT TO MEMBERS TO COPIES OF AUDITED FINANCIAL STATEMENT [SECTION 136]**



Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members

- (a) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
- (b) having, if the company has no share capital, not less than ninety five per cent. of the total voting power exercisable at the meeting

Manner of circulation of financial statements in certain cases :

- (a) In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent-

- However, certain class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies, can utilize the share premium account only for the purposes stated below :
 - (a) issuing fully — paid bonus shares to members;
 - (b) writing off commission paid or discount allowed, or the expenses incurred on issue of equity shares of the company;
 - (c) for the purchase of its own shares or other specified securities u/s 68.
- It may be noted that if a company proposes to apply share premium for any purpose other than those mentioned above, it must then comply with the requirements of the Act with respect to reduction of share capital.

- **ISSUE OF SHARES AT A DISCOUNT [SECTION 53]**

- Section 53 **prohibits** a company to issue shares at discount except in the case of issue of sweat equity shares. Any share issued by a company at a discount shall be void.
- However, a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949 (**Notification dated 3rd Jan, 2018**)
- In case of default, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

- **SWEAT EQUITY SHARES [SECTION 54]**

- The concept of 'sweat equity shares' is defined in **Section 2(88)** of the Companies Act, 2013. As per this, 'Sweat Equity Shares' means such equity shares as are issued by a company to its directors or employees at a discount or for consideration other than cash, for providing their know — how or making available rights in the nature of intellectual property rights, or value addition, by whatever name called.
- Here the term "**Employee**" means:
 - (a) ~~a permanent employee of the company who has been working in India or outside India, for at least last one year;~~ or
 - (b) a director of the company, whether a whole time director or not; or
 - (c) an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company;
- The expression '**Value additions**' means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing knowhow or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.

<p>Register of Deposits [Rule 14] :</p>	<ul style="list-style-type: none"> ➤ Every company accepting deposits shall keep, at its registered office, one or more registers in which there shall be entered, separately in case of each depositor, the following particulars, namely:- <ul style="list-style-type: none"> (i) Name, address and PAN of the depositor/s; (ii) Particulars of guardian, in case of a minor; (iii) Particulars of the nominee; (iv) Deposit receipt number; (v) Date and the amount of each deposit; (vi) Duration of the deposit and the date on which each deposit is repayable; (vii) Rate of interest or such deposits to be payable to the depositor; (viii) Due date for payment of interest; (ix) Mandate and instructions for payment of interest and for non-deduction of tax at source, if any; (x) Date or dates on which the payment of interest shall be made; (xi) Details of deposit insurance including extent of deposit insurance; (xii) Particulars of security or charge created for repayment of deposits; (xiii) Any other relevant particulars; ➤ The entries specified above shall be made within 7 days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose. ➤ The register or registers must be preserved in good order for a period of not less than 8 calendar years from the financial year in which the latest entry is made in the register.
<p>Return of Deposits [Rule 16] :</p>	<p>Every company shall file a return of deposits, in Form DPT-3, with the Registrar of Companies on or before 30th June of every year. This return shall contain information as on 31st March and shall be duly certified by the Auditors of the Company.</p>
<p>Disclosures in the financial statement [Rule 16A]:</p>	<ul style="list-style-type: none"> ➤ Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received from the director. ➤ Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.

- **Law with respect to formation of OPC provides that—**
- ✓ The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
 - ✓ The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
 - ✓ Such other person may be given the right to withdraw his consent.
 - ✓ The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
 - ✓ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
 - ✓ Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 182 days during the immediately preceding one ~~calendar~~ **financial** year)-
 - a) Shall be eligible to incorporate a OPC;
 - b) Shall be a nominee for the sole member of a OPC.
 - ✓ A natural person shall not be a member of more than a OPC at any point of time and the said person shall not be a nominee of more than a OPC.
 - ✓ Where a natural person being member in OPC becomes member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria (as given in point above) within a period of 182 days.
 - ✓ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
 - ✓ Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases. The procedure of conversion is given in the rules 6 & 7 of the Chapter II.
 - ✓ Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
 - ✓ OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

4. Small Company:

- **Definition:** As per Section 2(85), small company means a company, **other than a public company,-**
- (i) paid-up share capital of which **does not exceed fifty lakh rupees** or such higher amount as may be prescribed which shall not be more than ten crore rupees;

useful concerns in their business operations for the betterment of its stakeholders and society in general in a voluntary way.

(i) Which Company is required to constitute CSR committee:

- (a) Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India, having
- (1) Net worth of rupees 500 crore or more, or
 - (2) Turnover of rupees 1000 crore or more or
 - (3) a net profit of rupees 5 crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

(ii) Amount of contribution towards CSR:

- (a) The Board of every company shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.
- (b) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

(iii) Composition of CSR Committee:

- a) The CSR Committee shall be consisting of three or more directors, out of which at least one director shall be an independent director.
- b) An unlisted ~~public company or a private company~~ company which is not required to appoint an independent director shall have its CSR Committee without such director.
- c) A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.
- d) With respect to a foreign company covered as above, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under section 380(1)(d) of the Act and another person shall be nominated by the foreign company.
- e) The Board's report under section 134 shall disclose the composition of the CSR Committee.

(iv) Duties of CSR Committee :

The CSR Committee shall,—

- a) formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- b) recommend the amount of expenditure to be incurred on the activities referred to in the CSR Policy of the company from time to time.

(v) Activities which may be included by companies in their CSR Policies

Activities as specified under Schedule VII are as follows:

- (1) eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the

Penal provisions	Imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.
Non-Applicability of Sec 129	Section 129- Shall not apply to the companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting

• **CENTRAL GOVERNMENT TO PRESCRIBE ACCOUNTING STANDARDS [SECTION 133]**

Section 133 provides that Central Government shall prescribe the Standards of Accounting as recommended by ICAI in consultation with and after examination of the recommendations made by NFRA constituted under section of the Act. Till date section 132 is not notified.

So the following transitional Provisions with respect to Accounting Standards has been made.

- (1) The **standards of accounting as specified under the Companies Act, 1956** (1 of 1956) **shall be deemed to be the accounting standards** until accounting standards are specified by the Central Government under section 133.
- (2) **Till the National Financial Reporting Authority is constituted under section 132** of the Act, the **Central Government may prescribe the standards** of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards constituted under section 210A of the Companies Act, 1956.

Relevant Accounting Standards

- The Companies (Accounting Standards) Rules, 2006
- The Companies (Accounting Standards) Rules, 2006 amended vide Notification No. G.S.R 364(E) dated 30th March, 2016
- The Companies (Indian Accounting Standards) Rules, 2015
- The Companies (Indian Accounting Standards) (Amendment) Rules, 2016

• **CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY [SECTION 132]**

Not yet notified

Now it is notified from 1st October,2018.

(Amendment in the list of amendments of May'19 RTP)