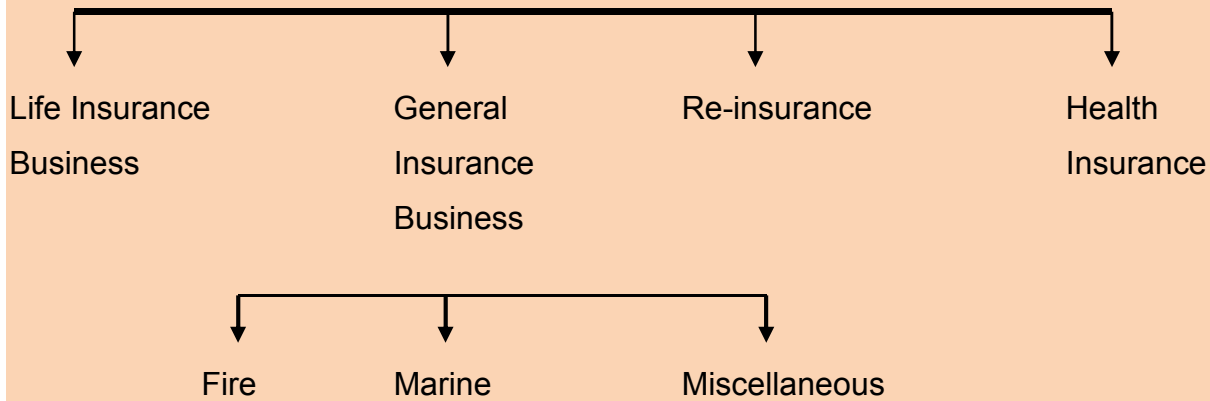


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CLASSES
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FINAL CA
MAY '19
REVISION NOTES
Corporate, Allied (Old)
& Economics (New) Laws

Part - II

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INSURANCE ACT

Health Insurance Business: Section 2(6C): "Health Insurance Business" means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover.

Indian insurance company: section 2(7a): "indian insurance company" means any insurer, being a company which is limited by shares, and,—

- (a) Which is formed and registered under the companies act, 2013 as a public company or is converted into such a company within one year of the commencement of the insurance laws (amendment) act, 2015;
- (b) In which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not exceed forty-nine per cent. Of the paid up equity capital of such indian insurance company, which is indian owned and controlled, in such manner as may be prescribed.

explanation.—for the purposes of this sub-clause, the expression "control" shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

- (c) Whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business.

insurer: section 2(9): "insurer" means (a) an indian insurance company, or (b) a statutory body established by an act of parliament to carry on insurance business, or (c) an insurance co-operative society, or (d) a foreign company engaged in re-insurance business through a branch established in india. The expression "foreign company" shall mean a company or body established or incorporated under a law of any country outside india and includes lloyd's established under the lloyd's act, 1871 (united kingdom) or any of its members.

SECTION 6

Business (Exclusively)	Minimum
Life Insurance	₹ 100 Crores
General Insurance Business	₹ 100 Crores
Health Insurance Business	₹ 100 Crores
Re-insurance	₹ 200 Crores

(Net owned fund > 5000
only for foreign insurer)

SECTION 6A : CHARACTER OF CAPITAL

<u>Share Capital</u>	<u>Voting</u>	<u>Paid-up Capital</u>
Same class ✓ and same value ✓	only Equity Shares	same (except for 1 year)

SECTION 13 : ACTUARIAL VALUATION REPORT

Every “Life Insurance Co.” Should make	Auctorial Report (Liabilities) (1 year to 3 years) ↓ Decided by IRDA (prepared by Actuary) Report to be filed every 2 nd year with IRDA.	→ IRDA
Actuarial valuation Report Can the basis of future liabilities)		

AUDIT OF ACCOUNTS OF INSURANCE COMPANIES (SECTION 12) & SUBMISSION OF RETURNS (SECTION 15)

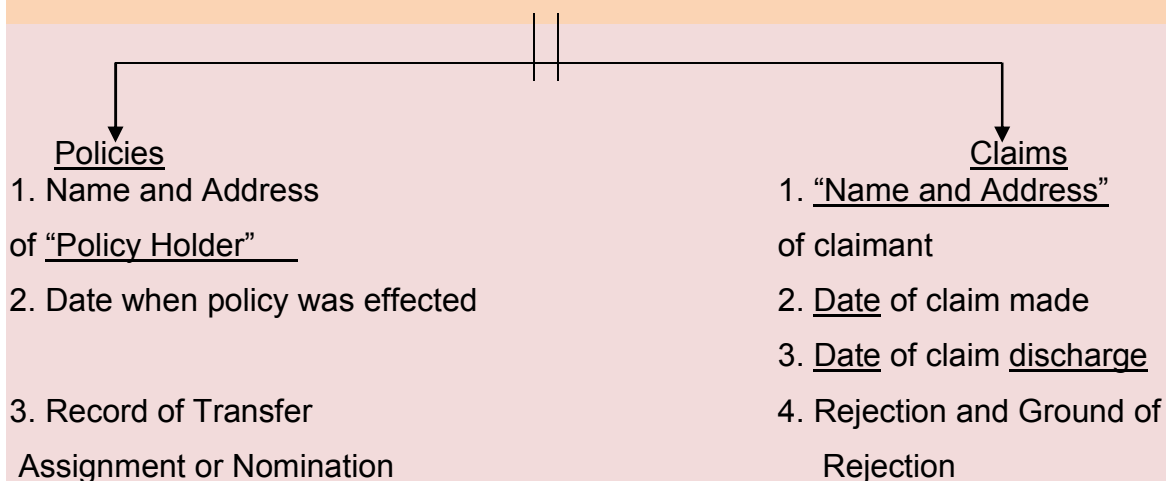
Unless subject to audit under the companies act, 2013, the balance sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in respect of all insurance business transacted by him, shall be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 147 of the companies act, 2013.

The audited accounts and statements and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the authority within six months from the end of the period to which they refer. of the four copies so furnished, one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director by that managing director and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

AUDIT OF INSURER

Appointment of Auditor _____ as per companies Act. 2013 (Sec. 139)	Function Auditor <u>Shall</u> annually audit _____ 1. B/s. 2. P/L 3. Receipt and payment A/c. 4. Appropriation A/c.	Auditor Sec. { 143 { (Power and Responsibility and Penalty) – Sec. 147 } } as per companies Act. 2013
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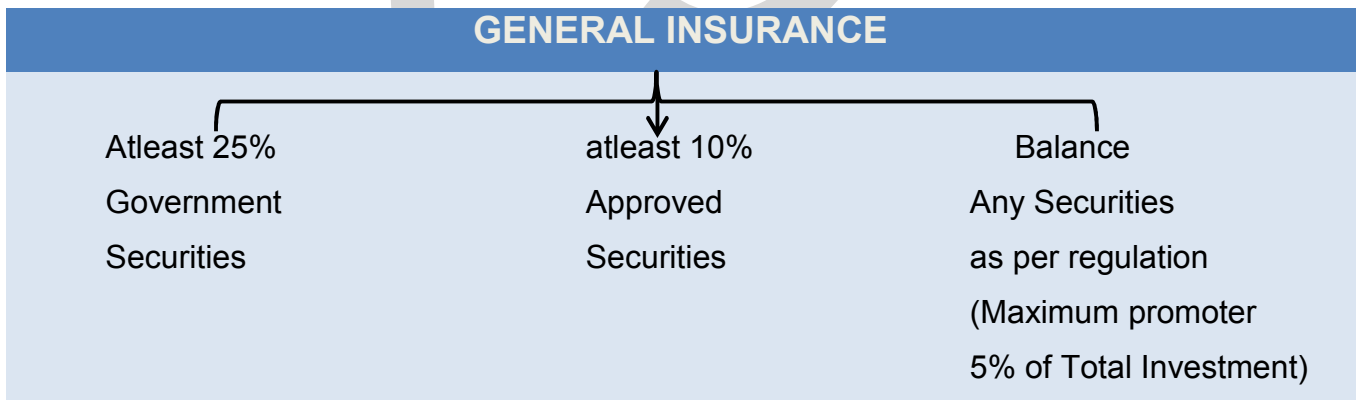
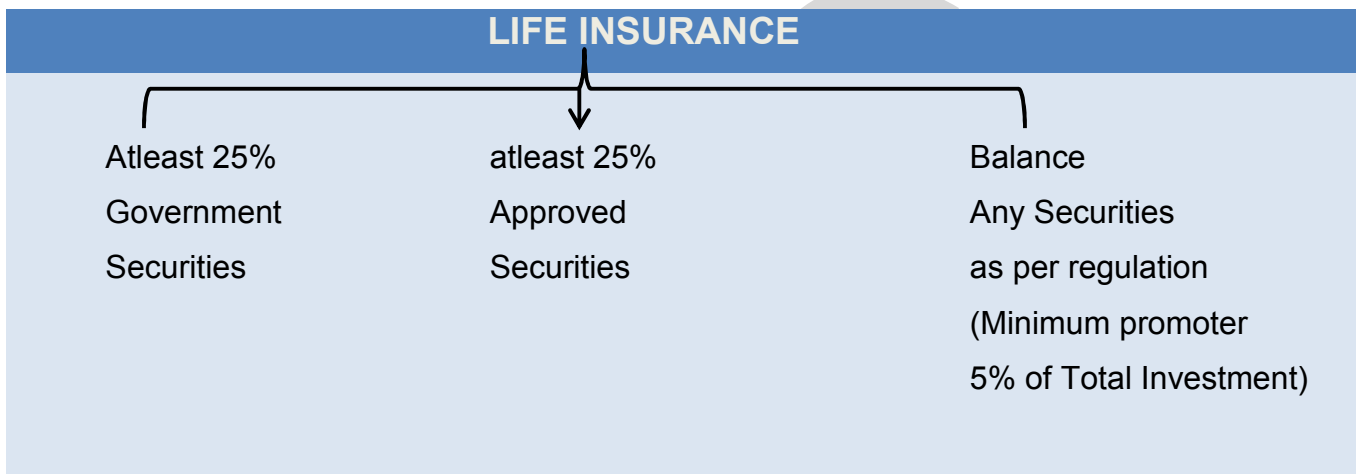
SECTION 14 : RECORD OF POLICIES AND CLAIMS



SECTION 27 : INVESTMENT BY INSURER

Amount due but not paid

(-) Future Liability payable in India	xx
(-) Premium not received	xx
(Grace of days not expired)	xx
(-) Amount due to insurer	xx
(-) Amount of Loan payable to insurer	xx
Investment Amount	xx



SECTION 29 : LOAN TO DIRECTOR | MANAGER | ACTUARY | AUDITOR

- Normally Loan cannot be paid to these people or their company or firm.
- However loan given against surrender value is permitted.
- Provided it does not exceed surrender value.
- It Shall not be treated as contravention of Section 185 of companies Act.

Exceptions:

1. Insurance co can give loan to Banking Co.
2. Holding co can give loan to subsidiary co.

SECTION 30 : LIABILITY OF DIRECTOR FOR CONTRAVENTION U/s. 27 AND U/s. 29

Along with other penalties they are liable to compensate the losses individually or severally.

SECTION 32D : OBLIGATION OF INSURER IN RESPECT OF 3RD PARTY RISK OF MOTOR VEHICLE

Such insurer should underwrite such percentage as may be proscribed otherwise it is liable for penalty upto Rs. 25 crores.

Exception :

1. Company involved in primarily re-insurance, health insurance, agriculture or export credit.

SECTION 45 : POLICY NOT TO BE CALLED IN QUESTION AFTER 3 YEARS

Any fraud or misstatements cannot be called in question after the expiry of 3 Years.

It can be called in question within 3 years only from the date of policy or revival or rider of the policy.

PROHIBITION OF PAYMENT BY WAY OF COMMISSION OR OTHERWISE FOR PROCURING BUSINESS

Any insurer can procure or solicit business and pay commission for such businesses only to Insurance Agent.

Intermediary or

Insurance Intermediary

APPOINTMENT OF INSURANCE AGENT

Insurance company can appoint Insurance Agent for soliciting the business only to person who is Not Disqualified

Any Insurance Agent can be appointed for

1. Life Insurer
1. General Insurer
1. Health Insurer and
1. Monoline Insurer (eg. fire Marine etc.)

Note : A person can be appointed in 2 different companies but not for the same businesses.

INSURANCE BUSINESS THROUGH MULTI LEVEL MARKETING

Insurance business cannot be carried out through Multi-level Marketing

In case of Insurer business can be done only through Insurance Agent and further it cannot appoint Special agent principal agents or any other multi-level marketing.

INTERMEDIARY NOT TO BE DIRECTOR

No insurance agents can be appointed as a director and insurance agent at the same point of time.

However after the commencement of this law, he can continue for 6 months and after 6 months his office will be vacated automatically.

PROHIBITION ON DIVIDING BUSINESS

No Insurer can provide policy whose benefits and premium is dependent on future event i.e. amount of claim and amount of premium is depended on future event

SUFFICIENCY OF ASSETS (SECTION 64VA)

Every insurer and re-insurer shall at all times maintain an excess of value of assets over the amount of liabilities of, not less than fifty per cent of the amount of minimum capital as stated under section 6 and arrived at in the manner specified by the regulations. An insurer or re-insurer, as the case may be, who does not comply with shall be deemed to be insolvent and may be wound-up by the court on an application made by the Authority. The Authority shall by way of regulation made for the purpose, specify a level of solvency margin known as control level of solvency on the breach of which the Authority shall act in accordance with without prejudice to taking of any other remedial measures as deemed fit.

Thus, the amendments Act incorporate enhancements in the Insurance Laws in keeping with the evolving insurance sector scenario and regulatory practices across the globe. The amendments will enable the Regulator to create an operational framework for greater innovation, competition and transparency, to meet the insurance needs of citizens in a more complete and subscriber friendly manner. The amendments are expected to enable the sector to achieve its full growth potential and contribute towards the overall growth of the economy and job creation.

ACCOUNTS OF COMPANY

- **Section 128**
Every company shall maintain books of accounts books and papers 2(12), financial statement for every financial year at its registered office.

- **Section 2(13) books of accounts**
 - Assets and liabilities
 - Purchase and sales
 - Income and expenditure A/c
 - Cost record u/s 148 → for manufacturing company and those prescribed by CG

- **Section 2(12) books and papers**
 - Document
 - Deeds
 - Writings
 - Vouchers
 - Agreements
 - Minutes
 - Register

- **Section 2(40) financial statement**
 - Balance sheet } Schedule III
 - P&L } }
 - Depreciation → Schedule II
 - Cash flow statement → as per AS3 (except one person Co., small co. and dormant co.)
[Small co. whose PUSC < 50lacs and (turnover) < 2 cr.]
 - Changes in equity (if any)
 - Notes to accounts

Section 2(41) financial year

- Normally April – Mar

- Exception
- 1. Transitional period – 2 years
- 2. Year of incorporation

- Started before 1 Jan
From date of incorporation till 31 Mar
- Started after 1 Jan
From date of incorporation to 31st March of next year

- 3. Foreign subsidiary (Prior approval of required) NCLT

Place of maintaining books of accounts

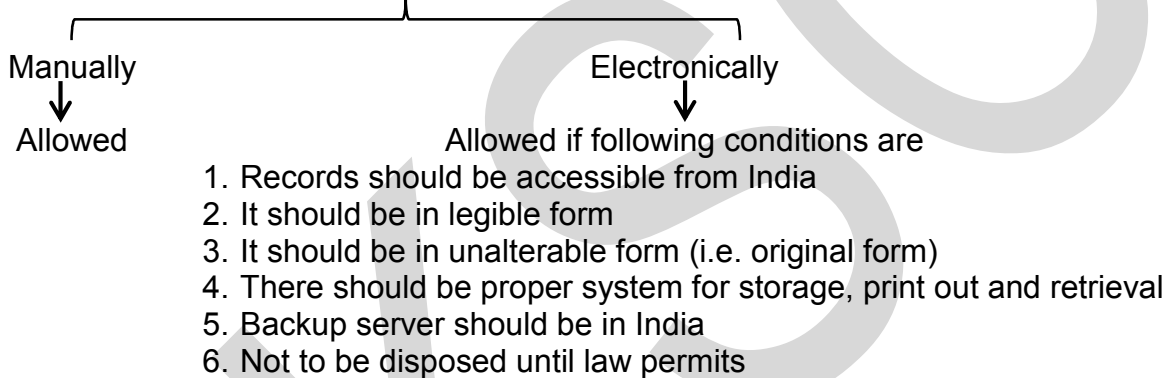
- | | |
|---|---|
| <p>Normally</p> <ul style="list-style-type: none"> - Registered office | <p>Other place</p> <ul style="list-style-type: none"> - Permitted (if following conditions are satisfied) - Such place should be "In India" - BM by Resolution (not circulation) - Intimate ROC within 7 days - Full address |
|---|---|

Branch office – books of accounts of branch can be maintained at branch office only. However, summarized returns shall be sent to registered office at a interval of not more than 3 months

Manner of maintaining books of account

- Give true and fair view
- Explain transaction
- As per double entry system
- On accrual basis

Mode of maintaining books of accounts



Period of maintaining books of account

It should be maintained for 8 years if company is in existence for less than 8 years, then it should be maintained for the period for which company is in existence. Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

Person responsible to maintain BOA

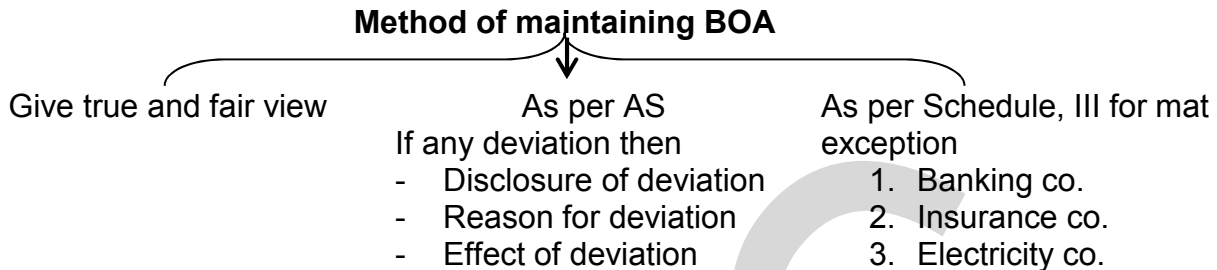
1. MD
2. WTD (in charge of finance)
3. CFO
4. Or any person charged with BOD

Inspection

<p>Normally</p> <p>↓</p> <p>Any director can inspect</p>	<p>Subsidiary</p> <p>Can be inspected by taking prior approval of BOD</p>	<p>Foreign subsidiary</p> <p>↓</p> <p>BOA of foreign subsidiary can be maintained outside India. However summarized return should be sent to India, such return can be inspected by Director. Director can demand further information (not by agent) to foreign subsidiary which shall be given within 15 days</p>
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Punishment
 Imprisonment upto 1 year
 or
 Fine min. 50,000 max 5,00,000
 or both

Section 129

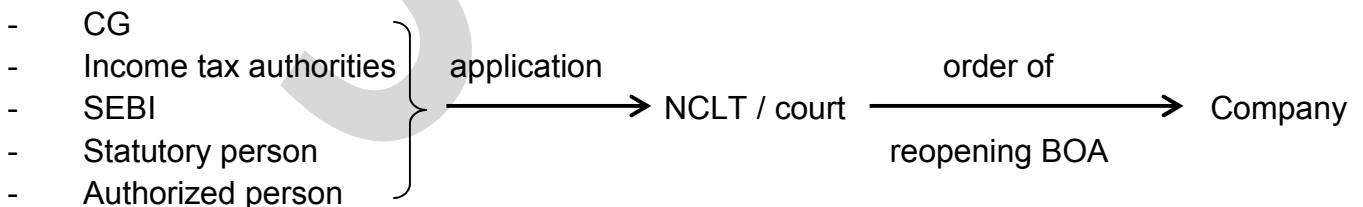


Notes

1. Notes to accounts shall form part of financial statement
2. If company is having joint venture / subsidiary / association then it is required to maintain consolidated financial statement in the same manner in which it has prepared its own standalone financial statement
3. Salient features of subsidiary shall be filled in AOC 1 along with financial statement
4. At AGM BOD shall lay financial statement
5. The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, also apply to the consolidated financial statements.
6. **Penal provisions** : If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Section 130

Reopening of BOA (compulsory)



Note :

Normally reopening order can be made for maximum preceding for financial year, however where direction has been issued by CG to maintain BOA for a longer period than reopening order can be made for such period.

Section 131 Revision of F.S., Board Report

In case of non-compliance of section 129 or section 134 F.S. can be revised any of the 3 preceding financial years voluntarily after taking prior approval of NCLT.

1. Revise financial statement or report can be filed only once in a financial year.
2. NCLT shall refer to CG / Income tax authority and consider representation made by them.

Section 132 : - National financial reporting authority (NFRA)

Power of NFRA

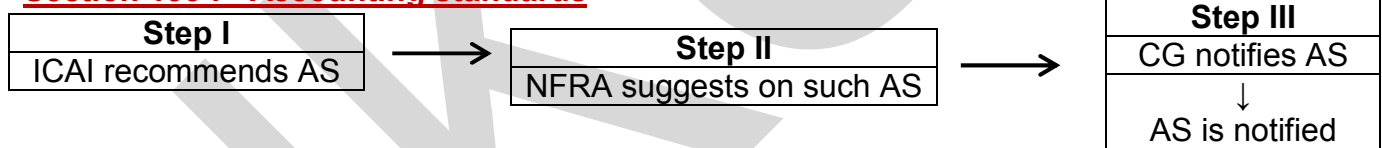
1. It has power to recommend, enforce and monitor the policies related to AS & SA
2. NFRA can initiate investigation against member of ICAI either : - Suo moto or
- On reference by CG.

In case of investigation it may be required to maintain BOA for a longer period of time if it is required by CG or SFIO (serious fraud investigation office)

In case of investigation by NFRA, then it has overriding power and no other body can initiate proceedings against member of the institute or firm of CA till the time NFRA is conducting investigation

It can debar member of institute / firm in practice for minimum 6 months and max 10 years. Authorities appointed for investigation under this section have civil court power

Individual	Firm
Min. 1,00,000 Rs. Max. 5 times of amount involved	Min Rs.5 Lac Max 10 times of amount involved

Section 133 : - Accounting standards**Section 134 : - Financial statements , Board reports**

Financial Statement → it shall be approved by BOD before signing on behalf of BOD

Signing on financial statement

1. Chairperson (if authorized) or atleast 2 directors (one shall be MD)
2. CEO
3. CFO
4. CS

OPC : If there is one Director then Such Director shall sign financial statement.

Note : Auditors Report shall be attached to financial Statement

Board Report :

- i) Signing : chairperson (if Authorised) OR atleast 2 Director [\geq 1 MD]

Section 135 : - Corporate social responsibility

It is applicable to every co. if.

NP \geq 5cr. or

Net worth \geq 500 cr. or

Turnover \geq 1000 cr.

- Constitute CSR Committee
Atleast 3 director out of which atleast one should be independent director. However, if there is no independent director in the company then appointment of independent director will not be applicable and CSR committee should have Atleast 2 directors

Amount of CSR

≥2% of Avg N. P.

Preceding 3 F. Y.

Net profit shall be calculated as per section 198, however it will not include amount as may be prescribed

- Purpose : Any Purpose specified in schedule VII.
- Preference should be given to local Areas for spending

CSR cannot be given for following purpose –

1. For any activity outside India
2. Benefit which is only given for the employee
3. For business purpose and political party

- Non contribution of CSR: - In this case, such non-contribution of CSR shall be disclosed in director responsibility statement

Section 136 : - Right to receive financial statement

1. Following person is eligible to receive F.S. including consolidated financial statement
 - Shareholder (equity + preference)
 - Debenture trustee
 - Debenture holder
 - Legal representative of any of the person mentioned above

Note:

For Nidhi Co. No need to send financial Statement (if intimation is made in new paper) if members holds

{ ₹ 1000 FV
1 % of PUSC } ↓

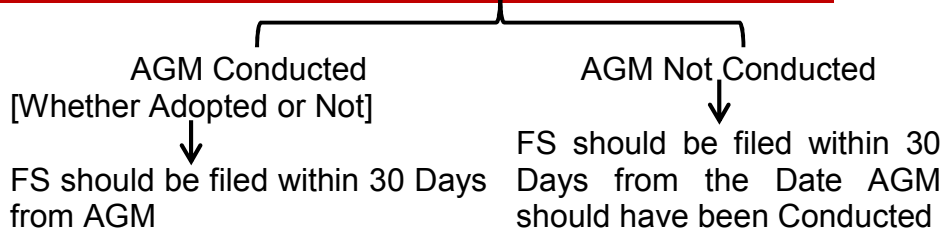
2. Financial statement shall be send at least 21 days (21 days clear notice) before GM
However short notice is allowed if agreed by members

Company has Share capital	Company has no Share capital
↓	↓
Majority in No. + ≥ 95% PUSC	≥ 95% Total Voting Power

3. Following companies are eligible to send financial statement through email to any shareholder who maintained securities in demat form and has supplied registered E-mail ID to company –
 - Listed company
 - Unlisted public company, net worth more than 1cr. and turnover more than 10 cr.
4. Listed company who is having subsidiary shall place separate audited accounts in respect of each of subsidiary on its website.

Note:

In case of foreign subsidiary if consolidated financial statement is prepared then it should be placed on website.

Section 137 :- Filing of financial Statement including CFS with ROC

- In case of foreign subsidiary attach accounts of such subsidiary
- OPC : It should be filed within 180 days from the end of FY.
- Punishment : The company shall be punishable with fine of `1,000 for every day during which the failure continues but which shall not be more than `10 Lacs, and The managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of one lakhs rupees and in case of continuing failure with further penalty of one hundred rupees for each day after the first during which such failure continues. Subject to maximum of five lakhs rupees.

Section 138 :- Internal Audit

Applicability for following companies –

1. Listed company
2. Unlisted public company whose
 - Deposits \geq 25 cr.
 - Or
 - Capital \geq 50 cr.
 - Or
 - Loan $>$ 100 cr.
 - Or
 - Turnover \geq 200 cr.
3. Private Company
 - Borrowing $>$ ₹ 100 crores OR
 - Turnover \geq 200 crore

Who can conduct Internal Audit?

- C.A. (Whether in Practice or Not)
- Cost Accountant
- Any person authorized

DECLARATION AND PAYMENT OF DIVIDEND

(Sec. 123 to 127)

★ **Introduction:** Dividend is the Surplus profit distributed among shareholders. In case of winding up surplus asset is also treated as Dividend.

★ **Proposed Dividend & Declared Divided:**

A. Dividend is proposed by BOD & it is declared by Shareholders. Shareholders can reduce the rate of dividend. However, they cannot increase the rate of dividend.

B. Interim Dividend is declared by BOD.

★ **Sec. 2 (39) :** Dividend includes Interim Dividend. It means that all the provisions which are applicable to Dividend shall be equally applicable to interim Dividend except if otherwise expressly given in the Act.

★ **SEC. 123**

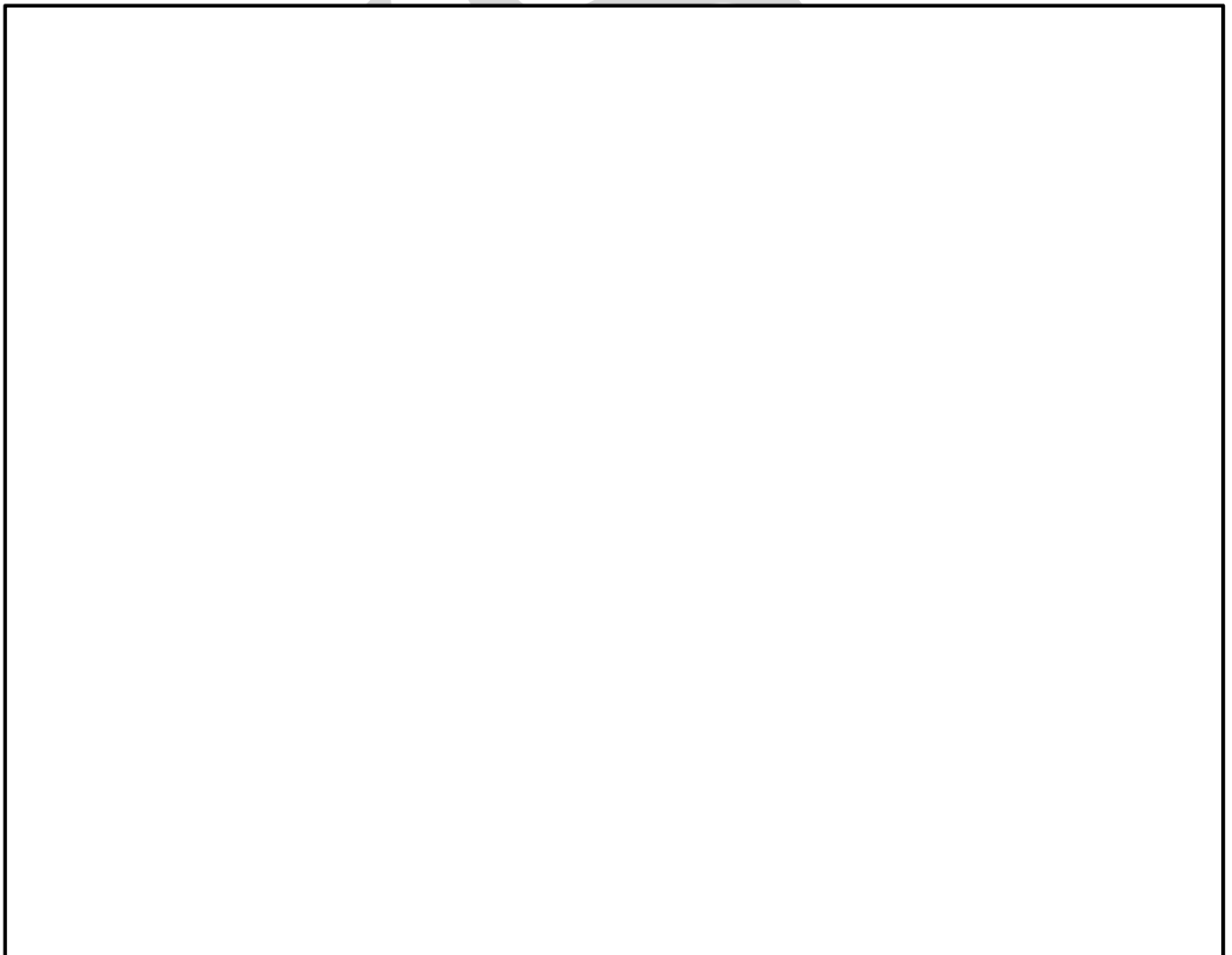
SOURCES OF DIVIDEND

<u>“Adequate Profit”</u>	<u>“Inadequate Profit”</u>
<ul style="list-style-type: none"> • “Current Year” Profit After charging Depreciation • Past year Profits remain Undistributed” after charging • Depreciation • “Guarantee Money” Given by SG / CG 	<p>(Accumulated Profit trf. to Free Reserve</p> <p>1) Avg. “Rate” of Div. in last 3 F.Y.</p> <p>(Not Paid Div. in Last 3 F.Y. → Ignore)</p> <p>2) Amt. withdrawn from Reserves $\leq 10\%$ } PUSC + Free Reserve</p> <p>3) Balance in Reserve (After withdrawal) $\geq 15\%$ of PUSC</p> <p>Note : Amt. so withdrawn shall be first utilise to set off Losses.</p>

- 1) Company shall transfer such amount to Reserves as may be prescribed.
- 2) Dividend can be paid to Registered Shareholders or to his order or to his Banker.
- 3) Dividend can be paid only if there is No existing Default for repayment of DEPOSITS.
- 4) Dividend can be paid by way of Cash, Cheque or Warrant.
- 5) Dividend shall be transferred to Separate Bank Account within 5 days from the date of Dividend Declaration.

- 6) Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair values shall be excluded;
- 7) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account and out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend :

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

SECTION 124 :

- ⇒ If Dividend is not Claimed on any shares for consecutive 7 Years, then such shares also will be transferred to IEPF.
- ⇒ However, It can be claimed by making a proper application to Central Govt.
- NOTE : Once amt. is transferred to IEPF A/c. Company ceases its liability on such amount.

★ **Sec. 125 : Investor Education and Protection Fund**

Constituents of IEPF

CODE : D₂ A D D I₂ G F PU₂O₂

D	:	Donation	
D	:	Disgorgement (Unjust Enrichment)	
A	:	Application Money	} Interest there on
D	:	Deposit	
D	:	Debenture	
I	:	Interest on A, D, D	
I	:	Interest on Investment	
G	:	Grant	
F	:	Fractional Shares	
P	:	Preference Shares	
U	:	Unpaid Dividend A/c	(Old fund)
U	:	Unpaid Dividend A/c	(New fund)
O	:	Old IEPF	
O	:	Other Amount	

* **Amt. in IEPF A/c. shall be utilized for :**

- 1) Refund of Unclaimed Dividend
 - Deposits (Matured)
 - Debentures (Matured)
 - Application Money due for refund
 - 2) Investor Education
 - 3) Disgorged Amt.
 - 4) Legal Expenses Incurred for Class Action
- (+) } Interest there on

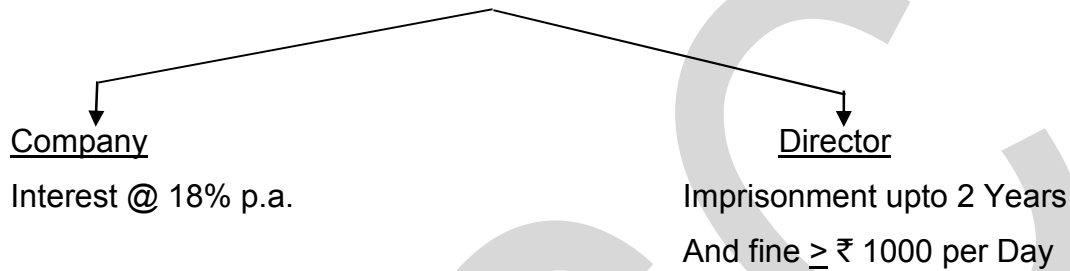
★ Sec. 126 : Dividend, Right, Bonus Shares to be Held in ABEYANCE :

If Registration on any share is pending, then any dividend, bonus or right offer on such shares will be held in Abeyance & it will be given only after Registration.

However, if the Transferor has given permission to the Co. in writing then it can be transferred to Transferee.

★ Sec. 127 : Punishment for Failure to Distribute Dividend.

If the Dividend is not paid within 30 Days, the Directors & the Company are liable for following punishment.

**Exceptions: No punishment in following cases**

- 1) Operation of Law (Eg → Restricted by Govt.)
- 2) Direction given by Shareholders which cannot be complied with and the same have be communicated to him.
- 3) Disputed Title (E.g. Right of ownership)
- 4) Legally Adjusted (E.g. Adjusted against Calls-in-Arrears)
- 5) Any reason beyond the control of the Company or delay due to Post.

DIRECTORS AND BOARD MEETING [BOTH]**Directors**

- Definition of Director : Sec. 2(34)
Director means a director appointed to BOD

➤ **Section 149(1) : Membership**

	Public Co.	Pvt. Co.	O.P.C.
Members			
Minimum	7	2	1 member + 1 nominee
Maximum	Unlimited	200	1 member + 1 nominee
Directors			
Minimum	3	2	1
Maximum	15*	15*	15*

- Company can appoint more than 15 directors by passing special resolution of the shareholders

Exception : Section 8 & Govt. Co. can have more than 15 Directors without SR

➤ **Section 149 (1) Proviso 2 : Women Director**

- Listed Co.
- Unlisted Public Company

↓

Paid-up share capital \geq 100 crore	}	to be checked on latest audited financial statement
OR Turnover \geq 300 crore		

Above company should have at least one woman director

Intermittent vacancy shall be filled in 3 months or next BM WIL

➤ **Section 149 (3) : Resident Director**

Every company should have at least 1 resident director

Director who stays in India in for atleast 182 days during financial year

- **Section 165** : maximum number of directorships a person can become director in maximum 20 companies out of which it can be maximum 10 public companies

Note :

- Company can reduce the limit of 20 companies by amending articles of association. However, co. cannot increase the limit by amending AOA
- Private Co. which is holding or subsidiary of public co. is a public co.

Exception : section 8

Dormant company

Fine : 5000 per day

➤ **Section 162 : appointment of two or more directors by passing single resolution**

- Normally appointment of each director requires separate resolution. However, in following situation two or more directors can be appointed by passing single resolution
- Unanimous resolution passed to appoint two or more directors by single resolution
- If two or more directors appointed without U.R. then such appointment is void-ab-initio even if no. shareholder object against to.
 - 1) Private company
 - 2) 100% holding government company or its subsidiary

➤ **Section 164(1) : disqualification of directors**

- I. Unsound mind declared by court
- II. Un-discharged insolvent
- III. Applied himself to be declared as insolvent
- IV. Convicted by court on moral turpitude ground or otherwise for a continuous period of 6 months or more and (5 years not elapsed from the date coming out of jail)
Convicted by court on moral turpitude ground or otherwise for continuous period of 7 years or more (disqualification is for life time).
- V. Disqualified by Court / NCLT
Eg : fraud / misfeasance etc.
- VI. Calls in arrears for continuous period of 6 months or more
- VII. Contravention under section 188 (Related party transaction) (5 years disq.)
- VIII. No DIN (director identification number) or UIN

Note 1 : IV, V, VII shall continue even if the appeal is filed

Note 2 : In all other cases, there will be immediate disqualification

➤ **Section 164(2) : disqualification of director**

Any person who is a director of a company which fails to.

- a) File financial statements or annual return for a continuous period of 3 years
- or**
- b) Not paid dividend or deposit or interest on deposit or debenture or interest on debenture for a continuous period of 1 year NOR

Note 1 : In that case person disqualified to get appointed as director of any company (public + pvt.) for a continuous period of 5 years from the date of disqualification

Note 2 : Director shall not incur disqualification for 6 months from the date of his appointment. Dividend will be treated as paid if it is transferred to separate account

- 1) Debenture / deposit interest on debenture, interest on deposit will be treated as not paid if holder claims the money and company refuses to make the payment
- 2) If any person ceases to hold the office before the date of disqualification he will not attract disqualification

➤ **ROC forms**

Director Director 8 Company
 Whether disqualified u/s 164(2) or not

Company _____ Director 9 → ROC
 Whether any director is qualified or not

Director/ _____ Director 10 → Central Govt.
 Co. on his behalf for removal of disqualification
 Applicability to all companies

Note: - private company can have any additional ground of disqualification

Exception : this section is not applicable to Govt. Co.

➤ **Selection 152 (6) : rotational director**

Applicability public company

Atleast $2/3^{rd}$ directors should be rotational directors (AOA can increase limit)

Rotational director $\geq 2/3^{rd}$ of total directors (not included independent director)

Fraction will be rounded off to next full figure

Eg : 5.1. ≈ 6

Retirement by Rotation :

Out of total rotational directors, at least $1/3^{rd}$ should retire by rotation who are eligible to get reappointed

(Retirement by rotation $\geq 1/3^{rd}$ of rotational directors)

Note : any fraction will be rounded off to nearest figure

- 1) Person who is holding office longest will retire first
- 2) If two or more persons are appointed at the same point of time than retirement will be by their mutual consent or lot basis

➤ **Section 160 : nomination for appointment of regular director**

1. This is not applicable when the appointment is made by BOD

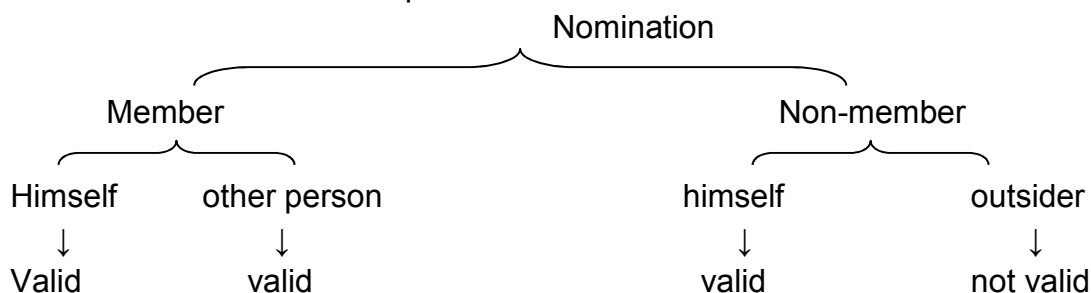
2. If any person other than retiring director wants to become regular director, shall file nomination under this section

Note : retiring director need not file nomination under this section as it is statutory obligation of BOD to file nomination for re-appointment of retiring directors.

3. in case co. appointing independent director or director recommended by NRC or board deposit not require

A person has to file nomination to the company along with:

- Consent letter to act as director if appointed
- Security deposit of Rs. 100,000
- Declaration that he is not disqualified u/s 164



If a person get appointed as director or secure at least 25% of total vote cast then security deposit will be refunded, otherwise it will be forfeited

This section does not apply to:

- Section 8 company (if election is by ballot)
- Private company
- 100% controlled govt. company or its subsidiary
- Nidhi Company → deposit amount shall be Rs.10,000

Section 161 (1) : additional director (Applicability to all companies)

Meaning : he is a director appointed by B.O.D. between two AGM

Condition :

- 1) after appointment of additional director, total number of directors in the company increases, therefore co. should ensure it does not exceed limit in AOA
- 2) additional director can be appointed only if it is authorized by the AOA if it is prohibited, then BOD cannot appoint additional director

Restriction: any person who is rejected by the shareholders in GM cannot be appointed as A.D

Tenure:

- 1) additional director will continue upto next AGM
- 2) if AGM is not held, then till the period, AGM should have been held
- 3) if AGM is legally extended, then term of additional director will be extended accordingly

Note: additional director is not at par with other directors except the tenure of office (term)

➤ **Section 161(4) : casual vacancy director (C.V.D)**

Casual vacancy: vacancy created by

- directors appointed by
- shareholders in GM
- cease to hold the office
- due to any reason (resign/death etc.)
- before / prior to completion
- of his terms

➤ condition : casual vacancy director (CVD) can be appointed only by board meeting resolution

(circulation not allowed)

- 1) filing of casual vacancy is power of BOD and not the obligation
- 2) casual vacancy created by one person can be filled by the same person
- 3) vacancy created by CVD cannot be filled by BOD as per strict reading of the Act however, as per the MCA's view, it can be filled up by BOD
- 4) CVD is at par with other directors in terms of power, duties and responsibilities except his tenure in office

Tenure: CVD will continue in the office upto the period original director would have continued if he would have not vacated the office