

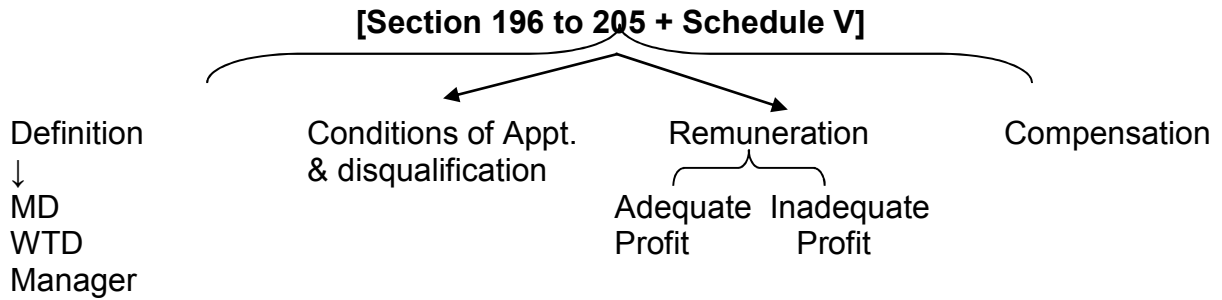
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CLASSES
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FINAL CA
MAY '19
REVISION NOTES
Corporate, Allied (Old)
& Economics (New) Laws

Part - V

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MANAGERIAL REMUNERATION



➤ **Section 2(54) : Managing Director (MD)**

MD is a director who is entrusted with substantial power of management which is entrusted by

- Article
- Agreement
- Resoslution by shareholders in GM
- BOD
 - 1) MD has to be a Director
 - 2) If MD ceases to be director, he ceases to be MD
 - 3) MD is subordinate to BOD

➤ **Section 2(53) : Manager**

Manager is an individual (which is includes director) who have control of whole or substantially whole affairs of the company.

Manager may be or may not be Director

➤ **Section 2 (94) : Whole Time Director**

Whole time director is a director in whole time employment of a company

WTD = director + employee



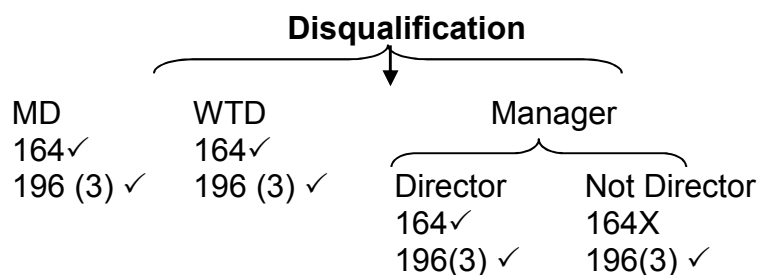
➤ **Section 196 :**

196 (1) MD and manager cannot be appointed simultaneously

196 (2) tenure

Managerial personnel can be appointed for a maximum period of 5 years. However, he is eligible for re-appointment of any number of times but only in last one year of tenure

196(3)



- Age should not be below 21 years and should not attain the age of 70 years or more
Exception → can be appointed if following conditions satisfied
 - a) Explanatory statement annexed with the notice
 AND
 - b) Special resolution passed by the shareholder
 Or CG + OR of shareholder
- Un-discharge insolvent at any time
- Compounded his creditors in personal capacity at any time
- Compounded means settlement at lower value due to financial adversity
- Convicted by Court for continuous period of imprisonment for more than 6 months at any time

	164	196(3)
- Moral turpitude or otherwise = 6 months > 6 months < 7 years ≥ 7 years - any other ground (> 6 months)	5 years 5 years Lifetime No disqualification	No disqualification Lifetime Lifetime Lifetime

- **Section 196 (4) : Managerial**
 Appointment of managerial personnel requires prior approval of BOD and subsequent approval of shareholders in next general meeting
 196(5) – If it does not approve by shareholders in GM, then appointment is CEASES to be valid
- **Non applicability of Sec. 196**
 - Section 196(4) and 196(5) not applicable to private company
 - Section 196(2), 196(4) and 196(5) not applicable to Government Company
- **Schedule V [Part – I] : conditions for appointment of managerial personnel**
 1. No imprisonment or fine exceeding Rs.1000 under economic offenses
 2. No detention under COFEPOSA (Conservation Of Foreign Exchange And Prevention Of Smuggling Activities) Act, 1974

Note : In case of above two conditions, if managerial personnel is appointed with the approval of CG then at the time of reappointment, approval is not required again provided he does not attract further defect after appointment

 3. Age : should not be below 21 years and it should not have attained 70 years of age
 ↓
Exception: can be appointed by special resolution of shareholder for which explanatory statement attached to notice is
 4. Managerial personnel should be Resident
 ↓
 Stay in India in last 12 months before the date of appointment for business / vocation / employment.
Exception: In case of SEZ, a non-resident can be appointed as managerial personnel, provided he enters with proper, employment visa.

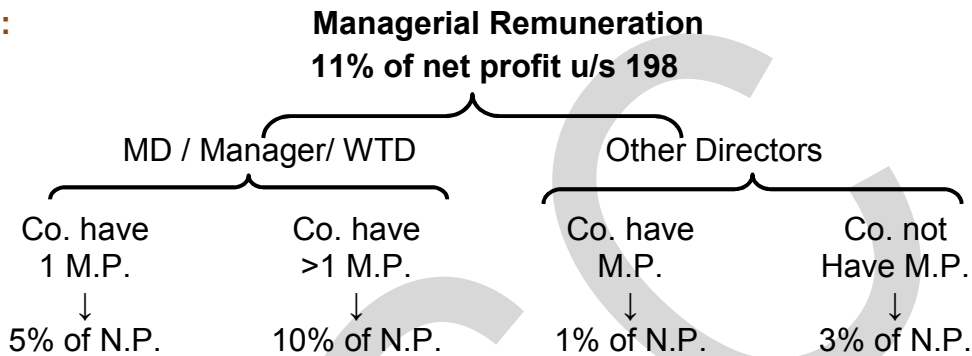
Managerial Remuneration

Adequate profit
Section 197(1)

Inadequate / No profit
Schedule V Part II Section 2

If profit is 7 crore then any remuneration upto 35 lakhs [7cr. x 5%] will be adequate profit and can be paid u/s 197(1) if co. proposes to pay more than 35 lakhs then it should be accommodated under limit given under Schedule V, part II and Section 2 if it exceeds both the limits 197(1) and Schedule, then CG approval is required.

➤ **Section 197 :**
197(1) :



➤ **197(5)(2) : Sitting fees**

- a) Sitting fees shall be excluded from managerial remuneration
- b) Sitting fees can be paid maximum upto Rs.100,000 per director per meeting
- c) Sitting fees paid to women / independent director should not be less than as paid to other directors

➤ **197(3) : inadequate / No profit**

MD / Manager / WTD	other Directors
Schedule V	↓

➤ **197 (4) : Determination of managerial remuneration (M.R.) subject to other provisions of the Act, M.R. shall be determined by :**

Article Or
O.R. by shareholder or
S.R. by shareholders (if required by AOA)

Note: Remuneration paid to Directors in other capacity
Shall be included in M.R.

Exception: If such remuneration is paid in **“Professional Nature”** then it will not be included provided certain conditions satisfied:

- 1) Approval of BOD / nomination and remuneration committed (if any) is required AND
- 2) Such director possess appropriate qualification or experience

➤ **197 (6) : Mode of M.R.**

Either Monthly
Or in % form
Or partly monthly and partly % form

- **197 (7) : Various benefits to independent director**
 - a) Company is not allowed to give stock option to independent director
 - b) Independent director is eligible for sitting fees
 - c) Independent director is eligible for reimbursement of expenses for attending board meeting
 - d) Independent director is eligible for profit related commission only if it is approved by shareholders

- **197 (8) : Net profit shall be calculated as per Section 198**

- **197 (9) : Excess remuneration**

Any excess remuneration paid to Director shall be refunded to company and until it is refunded it shall be held in separate trust until refund within maxi 24 years

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company [Companies Amendment Act, 2017]

- **197 (10) :**

The company shall not waive the recovery of any sum refundable to it unless approved by the company by special resolution within two years from the date the sum becomes refundable. [Companies Amendment Act, 2017] Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver. [Companies Amendment Act, 2017]

- **197 (11) : increase in M.R.**

M.R. can be increased within limit u/s 197(1) as per

 - Agreement
 - AOA
 - MOA
 - Shareholders
 - BOD

- **197 (12) :** ratio of remuneration of director shall be disclose in relation to median employee

- **197(13) :** Insurance premium paid for indemnification of loss due to Act of KMP shall be included in M.R. If such KMP is guilty excluded if such KMP is not guilty.

➤ **Key words to remember section 197**

197	(1)	Limit
197	(2)(5)	Sitting fees
197	(3)	Inadequate / no profit
197	(4)	Determination of MR
197	(6)	Mode of payment
197	(7)	Independent director
197	(8)	198
197	(9)	Excess remuneration
197	(10)	Waiver of excess remuneration
197	(11)	Increase in remuneration
197	(12)	Ratio to median employee
197	(13)	Insurance premium

➤ **Schedule V :**

- Part I : already discussed
- Part II :

Section 1 : if the co. is having adequate profit then remuneration shall be paid as per section 197

Section 2 : if co. is having inadequate / no profit then remuneration to managerial / personnel shall be paid in the following manner :

Limit A: effective capital

Effective capital	Per director p.a. O.R. of shareholder
Negative or < Rs.5 cr.	Rs. 60 lakhs
≥ Rs. 5 cr. < Rs.100 cr.	Rs. 84 lakhs
≥ Rs. 100 cr. < Rs. 250 cr.	Rs. 120 lakhs
Rs. 250 cr. or more	Rs. 120 lakhs + 0.01% [E.C. – 250 cr.]

Note: If company wants to pay exceeding the limit specified above then its requires special regulation of shareholders.

Effective Capital:

	Share capital [excluding share application money] & advance against shares	xxx
+	Reserves and surplus (excluding revaluation reserve)	xxx
+	Long term borrowings	xxx
+	Deposits (repayable after 1 year)	xxx
(-)	Investments (except for investment company)	xxx
(-)	Accumulated losses	xxx
(-)	Preliminary expenses	xxx
	Effective Capital	xxx

Limit B: Remuneration to managerial personnel can be paid without CG approval in professional capacity if following conditions are satisfied :

1. Managerial personnel should not have interest in capital of that company or its holding or subsidiary co.

Note : interest in capital means holding 0.5% or more paid up share capital

2. M.P. should not be related to director / promoters of that company or its holding or subsidiary company in last 2 years before the date of his appointment
3. Such MP should possess graduate level qualification and appropriate qualification or experience as may be required.

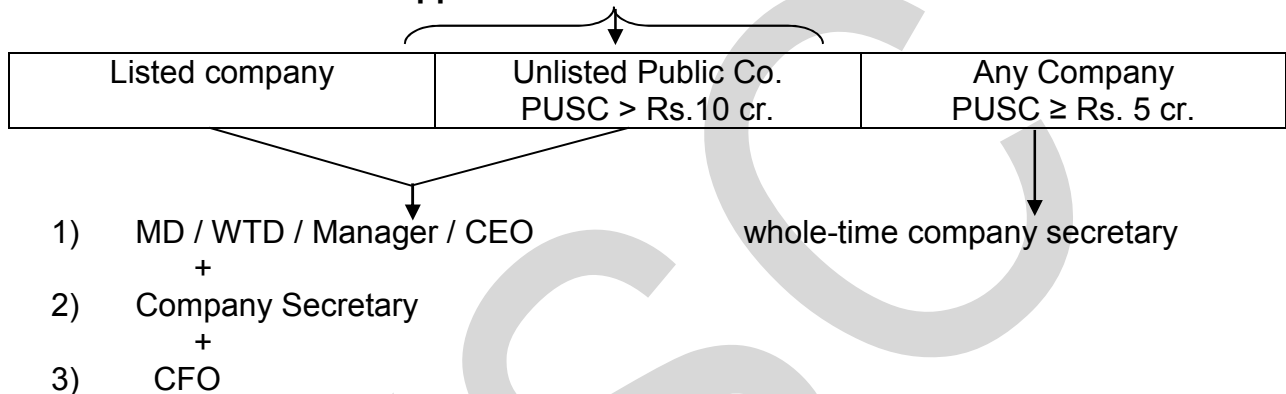
Common Conditions [Limit A and Limit B]

1. Approval of BOD / nomination and remuneration committee (if any) is required.
2. There should be no default in repayment of DEBT (including debentures, deposits, loans etc.)
3. Approval of secured creditors is required
4. OR / SR of shareholder is validated for 3 years

Section 3 : CG can exempt certain companies from complying with Section 1 and Section 2 without CG approval

➤ **Section 203 : Whole Time KMP**

Appointment of Whole Time KMP



A person can become whole time KMP in maximum 1 Co,

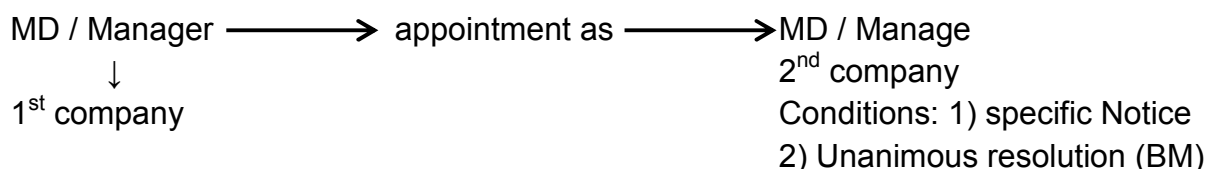
↓
Exception
↓

- Can become whole time KMP in subsidiary company
- Can become other director in other co. with permission of BOD

Casual vacancy in case of whole time KMP :

It is mandatory to fill casual vacancy within 6 months

Appointment of M.D. who is already MD / Manager :



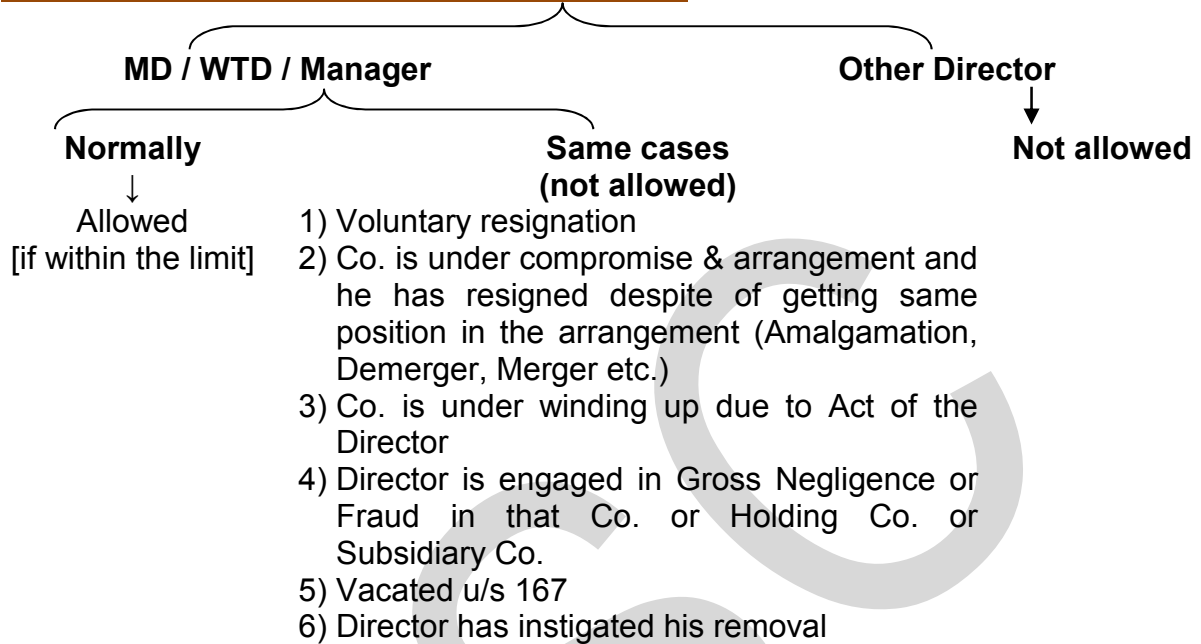
➤ **Same person ≠ chairperson + MD / CEO**

- 1) Approved by AOA
- 2) Co. carries single business
- 3) Co. carries multiple business

Conditions –

- 1) Separate CEO appointed for each business
- 2) Company's PUSC ≥ 100 crore
AND annual turnover ≥ 1000 crore

➤ **Section 202 : Compensation for loss of office**



➤ **Ceiling Limit**

- a) Period of unexpired term X Average remuneration
- b) Maximum 3 years X average remuneration

Avg. remuneration :

Remuneration earned in last 3 years
OR completed term whichever is less

➤ **Section 204 : Secretarial Audit**

Applicability

Every listed company	Unlisted public company a) PUSC ≥ 50 cr. OR b) Annual T/O ≥ 250 crore
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Secretarial audit by 'CS' in practice
To be annexed with board report

OPPRESSION AND MISMANAGEMENT

Section 241 to Section 246

➤ **Oppression** – when the act of company is conducted in such a manner which is oppressive / harsh or burdensome in such a nature which is affecting basic rights of the members, is termed as oppression. For e.g.

1. Converting majority SH into minority, vice versa
2. Refusing to register shares of SH, so as to keep control over the company

Following will not be treated as oppression

1. Non-payment declaration of dividend
2. Company is exercising legal rights, for e.g. Forfeiture of shares having calls in arrears

➤ **Mismanagement** – when affairs of company is conducted in such a way that it is harmful to an against the interest of company.

For e.g.

1. MD is continuing even after expiry of his tenure
2. Diversion of fund
3. No serious effort to recover embezzled amount
4. Not conducting GM can be mismanagement)

Following grounds will not be treated as mismanagement

1. Incurring loss
2. Non declaration of dividend

Section 244

Application by member to NCLT on Q&M

Company has share capital

1. ≥ 100 members
2. 1/10th of total no. of members
3. 1/10th of issued SC or whichever is lower

Company does not have share capital

↓
1/5th of total no. of members

Note :

1. CG can also file an application to NCLT for O&M
2. Any member who is having calls in arrears is not eligible to file an application
3. Once application made then they cannot withdraw
4. Tenability of application will be required at the time of filing the application

Section 241

Grounds of oppression or mismanagement

Members	Central government
↓ (1) Affairs of company conducted (whether present or past) in a manner which is prejudicial (i.e. harmful) to - Public interest (eg. Employee, creditor etc.) - Interest of member (i.e. oppression) - Interest of company (i.e. mismanagement)	↓ Affairs of company conducted in a manner prejudicial to interest of public

- (2) There is material charge (substantial)
- In management (e.g. alternation in BOD, manager)
- OR
- Control of the company (e.g. Change in ownership or membership) due to which it is likely (probable) that affairs of the company can be conducted in a manner prejudicial to interest of members.
- Change in class of debenture holder or shareholder / creditor should not be treated as oppression

Section 242

Powers of NCLT (Tribunal)

Grounds of which NCLT may pass an order – NCLT has opinion that –

1. Affairs of the company conducted (past + present) in manner “prejudicial” to public interest or interest of member or interest of company
- AND
2. Conduct is just and equitable ground for winding up but winding up is prejudicial to such members

Power of NCLT

General Power

NCLT may take such action by which oppression may come to end

Specific power (R₃T₃P) (M₄l)

R₁ Regulation of affairs of the company to be conducted in future (eg how to run company in future)

R₂ Reduction in share capital

(eg. Passing order to buy shares of minority which is ultimately reducing entire SC, it can be done without approval of court)

R₃ Restriction on transfer of shares

(eg : restricting allotment by which majority become minority)

T₁, T₂, T₃ Terminating, selling aside or modification

Cancelling

Changing

Contract with MD / Manager	↓	Contract with other person
Contract → MD / Manager (Eg salary of MD)	↓	It can be cancelled with prior approval of such person (e.g. Contract with consultant)
	↓	Contract of delivering goods etc. in last 3 months which results in fraudulent preferences in case of insolvency (e.g. Create preference for creditor over other creditors)

P - Purchase of shares of one shareholder by another shareholder
(eg. Majority shareholder may be ordered to buy shares of minority)

M₁ – Managing Director, Manager & Other Directors

Removal	Undue gain made by them then it may be ordered to return it to victim / IEPF ↓ (if victim not identifiable)	Manner in which (current) MD/ Manager/ Director can be appointed after removal of existing one	Appoint such director who will report to NCLT ↓ Proportionate representative / director
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I Imposition of cost

Power to pass interim order

NCLT is having power to pass any interim order during any proceedings.

Power to alter MOA or AOA – if MOA or AOA is amended by NCLT and company wants to make any variation in that changes (by NCLT), prior approval of NCLT is required. After such changes it should be filed to ROC within 30 days.

Section 243

Consequences of termination or modification of agreements (contract)

1. No company can provide compensation for loss which has occurred due to cancellation of contract
2. MD, Manager or director cannot be appointed in that company for 5 years provided approval of tribunal is taken

Section 246

Section 337 – 341 (i.e. winding up) shall be applicable mutatis mutandis from section 241 – Section 245

Section 245 : Class Action

Class action – when there is a common injury and lawsuit is a civil legal action in which one or more individual sue a person or entity or on behalf of a larger group or a class of people

Application by member

Company has share capital

1. ≥ 100 members
2. Such % of total no. of members
3. Such % of issued SC

No share capital 1/5th of total no. of members

Note :

1. Applicant should not have calls in arrears
2. Application cannot be withdrawn once filed
3. Applicant can be member as well as depositor

Merit of Application

NCLT will consider following factors before accepting application –

1. Application should be in good faith
2. Evidence of contravention should be provided
3. Act should be affecting the entire class and not to that particular member or depositor
4. Evidence of not having personal interest should be provided
5. NCLT will verify probability of ratification of act

Relief sought under Section 245

Restrained from following acts –

1. Ultra vires to memorandum.
2. Breach of provision of memorandum.
3. Acting on resolution obtained by suppression of fact and if already acted, then cancelation of such suppression.
4. Acting in contravention of resolution passed by member.
5. Acting on transaction ultra vires to act.
6. Claiming damage from director, auditor or expert, if damage occurred due to their statement or omission of Act.

Action / Order NCLT may provide after acceptance of application

1. Public notice will be served.
2. If there are more than 1 application, then NCLT may decide one applicant as lead applicant.
3. Cost of expenses shall be initially form by company. however, later on it will be reimbursed by person who has conducted oppression.

***NCLT order shall be binding on all members, depositors, company and directors**

Punishment	
Company Min 5 lakhs or maximum 5 lakhs	Officer in default imprisonment upto 3 years & fine minimum Rs. 25,000 maximum 1 lac

Note :

Any application which is vexatious (out of envy) or frivolous, the applicant has to pay cost, any amount upto Rs. 1,00,000

PRODUCER COMPANY (PART TITLE IX A)

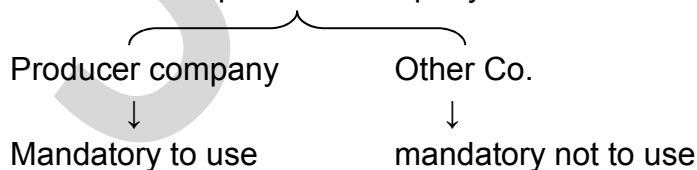
1. Introduction
2. Memorandum
3. Article
4. Amendment in article
5. Limited return withheld price
6. Patrons
7. Patronage bonus
8. Formation –
 - i) Direct
 - ii) Conversion
9. Membership –
 - i) Nomination
 - ii) Surrender
 - iii) Transfer
 - iv) Expulsion
 - v) Benefits
 - vi) Voting rights
10. Directors
11. Board meeting
12. General meeting
13. Vacation
14. Investment
15. Miscellaneous

Introduction

1. Producer ≠ Public Company

≠ Private Company
= Producer Company

- Name ends with “producer company ltd.”



Contravention – Max. Rs.10,000

2. Producer company Applicability

Part title IX A
(Overriding)

Companies Act

Memorandum

In memorandum of producer company, it shall be same provision as that of other company but its object clause should contain provision of section 581B

↓

Producer company shall exclusively engage in activities related to “primary produce” or “producer”	
Primary Produce	Producer (Any person engaged in primary produce activity)
<ul style="list-style-type: none"> - Agriculture - Floriculture - Horticulture - Animal husbandry - Bee farming - Handloom - Handicraft - Cottage industry 	

Activities related to primary produce

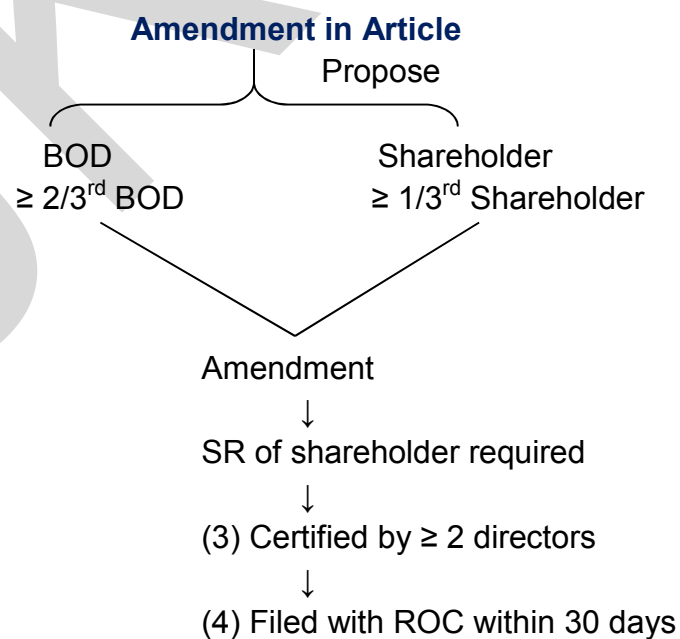
Harvesting, ploughing, brewing, drying, marketing etc.

Activity related to producer

Education, awareness finance power etc.

Article of Association

- AOA should contain principle of mutual assistance
- Membership in producer company should be voluntarily
- Producer company cannot make political contribution
- Producer company can make contribution to other co-operative society or producer company, maximum 3% of net profit of preceding F.Y.



Limited Return

Maximum rate of return of dividend as per AOA of company

Withheld price

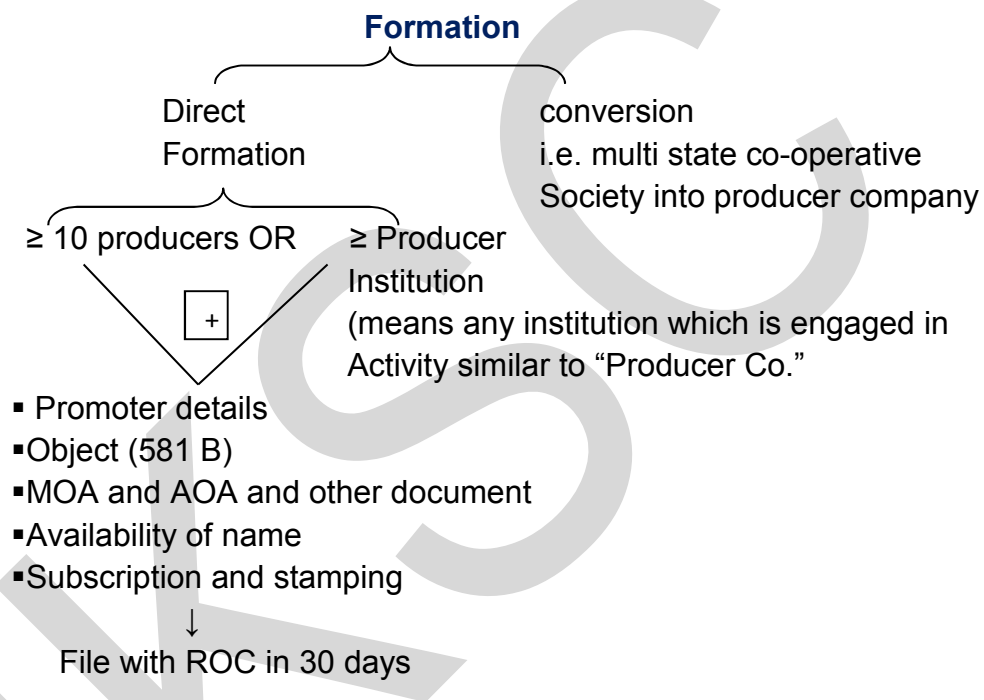
When producer company buy primary produce from producer then it may retain certain % of transaction as per article which is termed as withheld price. It is paid to produce either lump sum or in the form of shares after certain interval.

Patrons

When producer avails services from Producer Company then producer will be termed as patron

Patronage bonus

Apart from limited return, producer is eligible for additional benefit for being patron, this is called patronage bonus

**Conversion of MSCS into Producer Company**

1. Approval $\geq 2/3^{\text{rd}}$ of total members required for conversion
2. Copy of notice / minutes/ resolution by member
3. Details of embers / director / CEO
4. Document i.e. MOA, AOA and other document of producer company
5. Declaration that business activity of producer company shall be within the scope of section 581B

Note : after conversion

All assets, liabilities, receivables, payable, licence of MSCS shall vest in Producer Company
All employees of MSCS will become employers of Producer Company, however they can resign without compensation

Membership

- Nomination - within 3 months member should appoint nominee who will receive shares after death of producer. However at the time of nomination, nominee may not be producer. But after death when shares are getting transfer, such nominee must be producer otherwise nominal value of such shares shall be given (i.e. not admitted as member)

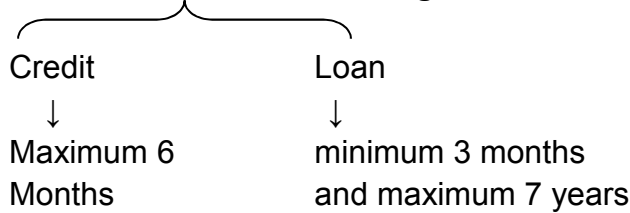
- Surrender – producer can surrender its shares at nominal value to producer company
- Transfer – producer can transfer its shares to producer at nominal value
- Expulsion – special resolution (SR) of shareholders required to expel producer

Producers can be expelled on following ground

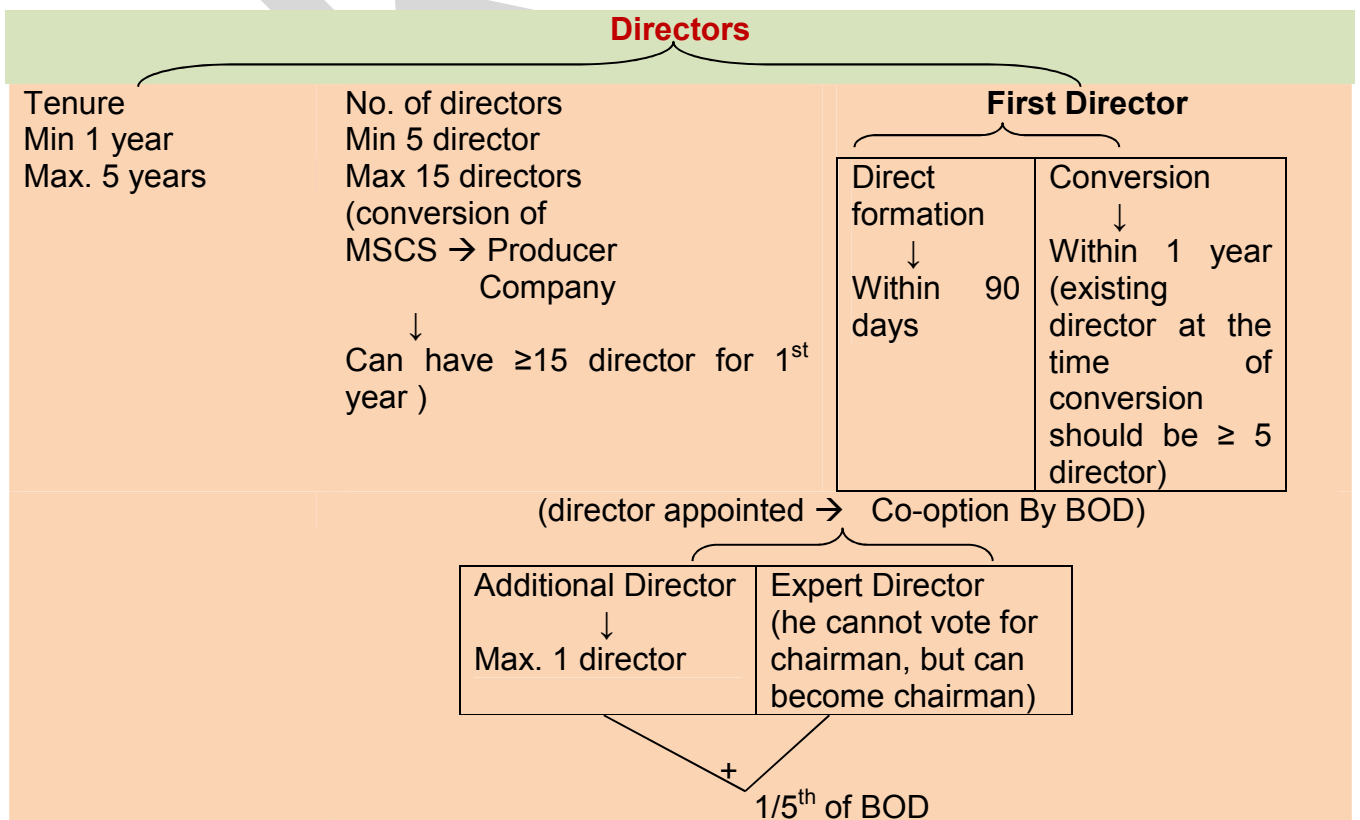
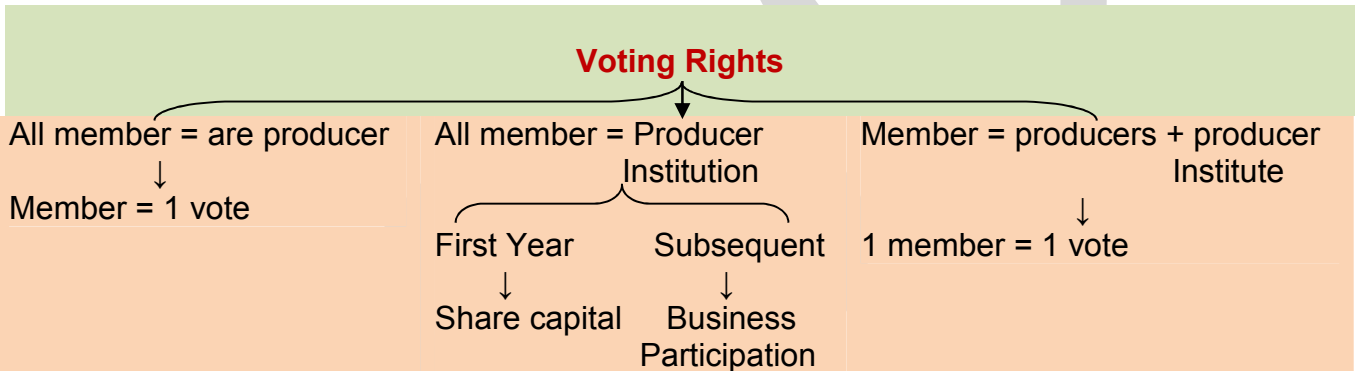
- Producer has entered into competing business
- Members ceases to be producers

Members will be expelled after receiving nominal value of shares

Benefits – members are eligible for credit and loans

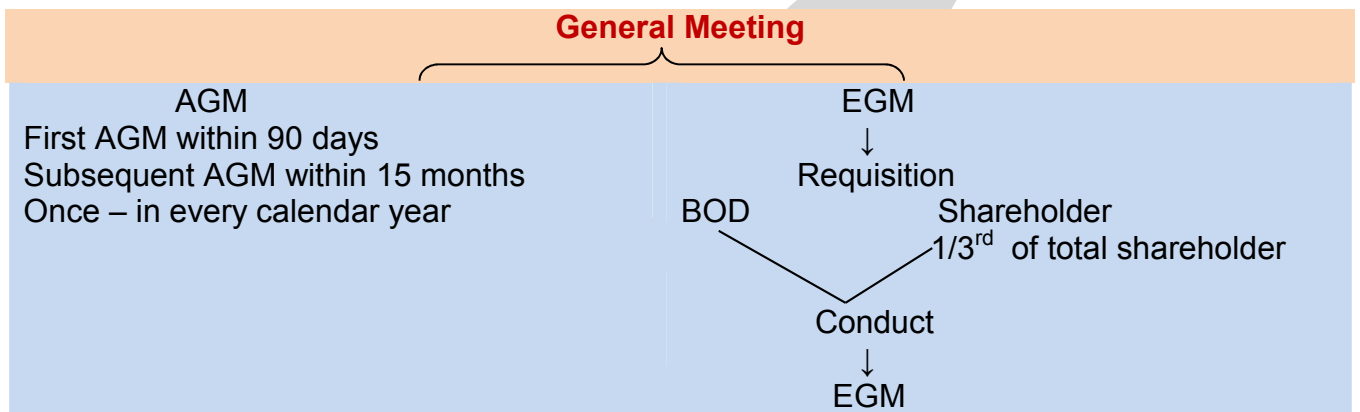


Note : credit and loan can be given to directors after PRIOR approval of shareholder



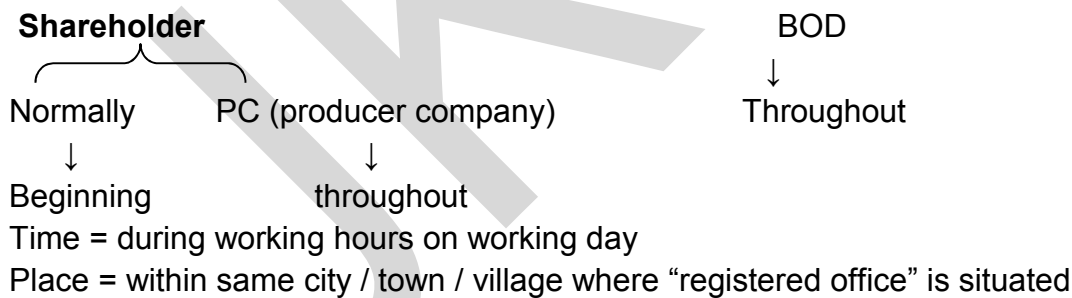
Board Meeting

	Companies Act	Producer Company										
1. No. of Board Meeting	≥ 4 BM in a year max. gap- 120 days	≥ 4 BM in a year, atleast 1 in a quarter <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>A</td> <td>J</td> <td>S</td> <td>D</td> <td>M</td> </tr> <tr> <td></td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> </table>	A	J	S	D	M		1	2	3	4
A	J	S	D	M								
	1	2	3	4								
2. Length of notice	Atleast 7 days short notice in case of short notice – attended / ratified by one independent director	Atleast 7 days Short notice – allowed in reasonable case										
3. Quorum	1/3 rd of total director or 2 directors which is higher	1/3 rd of total director or 3 directors which is higher										



General Meeting

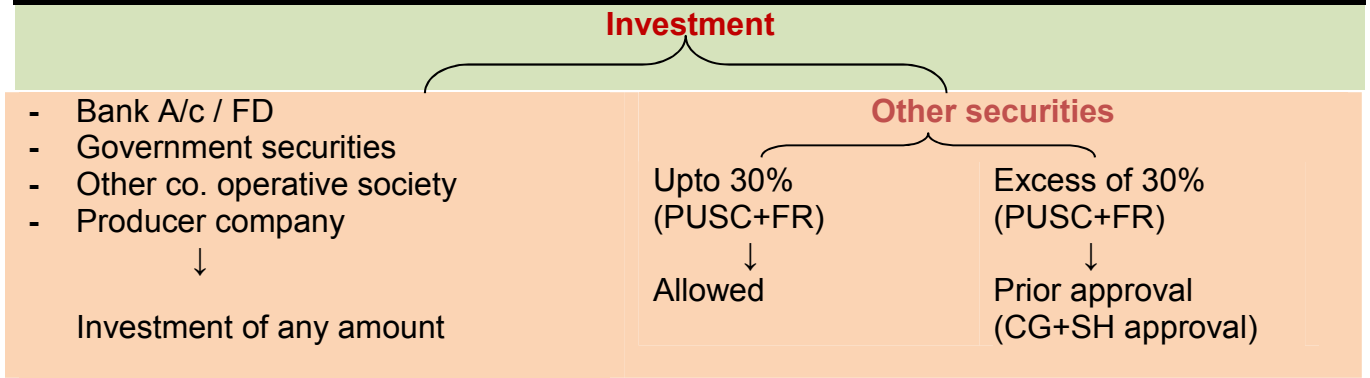
Length of notice = 14 days
 Quorum – 1/4th of total shareholders
 It should be present throughout shareholder meeting



Vacation

- 1) Convicted imprisonment ≥ 6 months on moral turpitude ground
- 2) Not filed – annual Account & annual return for continuous period of 3 years
- 3) Producer Company ← Loan any person
Default ≥ 90 days
- 4) Director ← Loan Producer Company
Default
- 5) Not conducting meeting for election of appointment of director
- 6) Not conducted AGM / EGM

Exception – not conducted due to natural calamity



Matter to be discussed at general meeting

1. Issue of bonus shares
2. Adoption of annual accounts
3. Issue of patronage bonus
4. Declaration of limited return and patronage
5. Approval (general approval) of any other matter which is to be discussed in general meeting
6. Approval of limit of loan to director

Company Secretary

Annual turnover ≥ 5 crore in all preceding 3 FY

↓
1 whole time CS

Bonus Shares

Recommend – BOD

Declare – shareholder

↓

Capitalization of reserve