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**VIRTUAL COACHING CLASSES  
ORGANISED BY BOS, ICAI**

**INTERMEDIATE LEVEL  
PAPER 2: CORPORATE AND OTHER LAWS**

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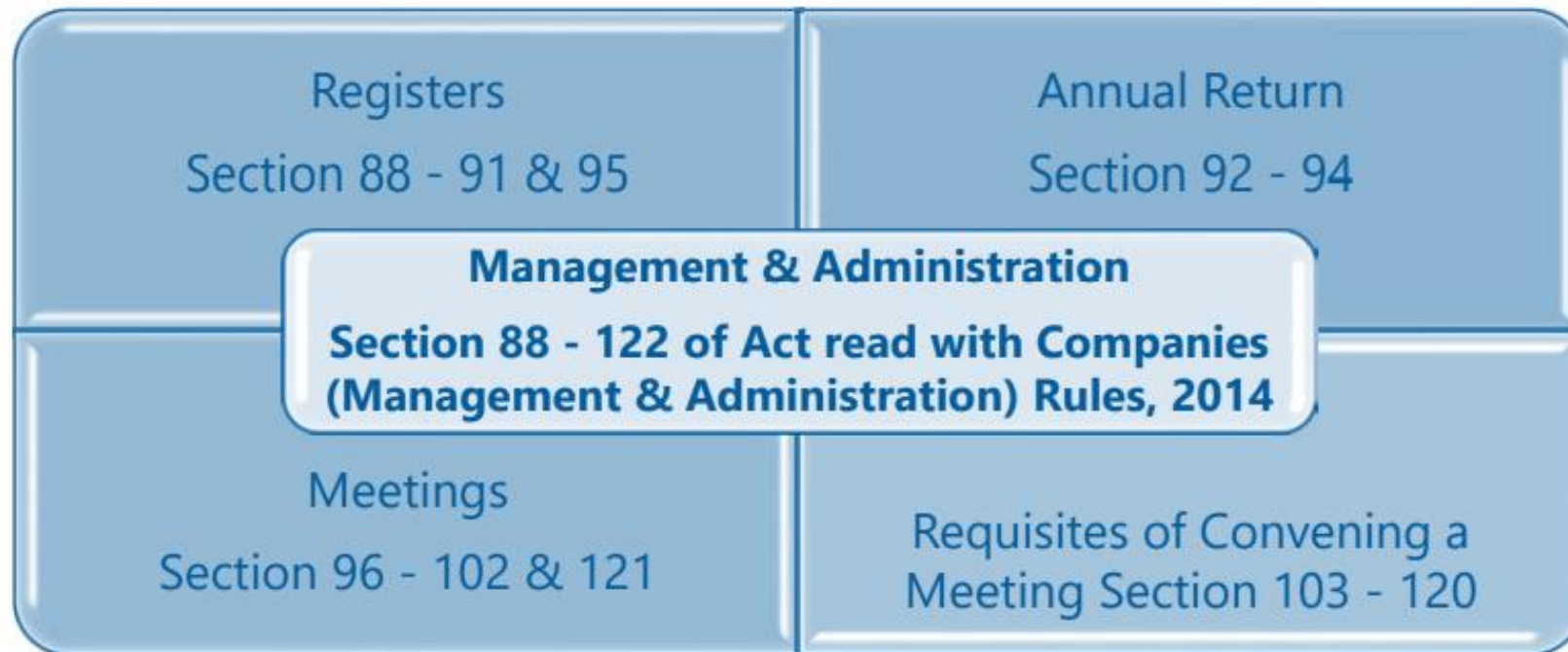


# MANAGEMENT AND ADMINISTRATION

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SECTION 88 TO 122 OF COMPANIES ACT, 2013 READ WITH  
COMPANIES (MANAGEMENT & ADMINISTRATION) RULES, 2014





**Applicability of Ch. VII:** This chapter applies to all the companies, public and private, and has special provisions applicable to One Person Company (OPC), which is enumerated in section 122 of the Act and is discussed later in this chapter.



# WHO IS A MEMBER

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## S.2 (55) - “Member”, in relation to a company, means—

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

*In Balakrishna Gupta v. Swadeshi Polytex Limited [[1985] 58 Comp Cas 563], Supreme Court has held that unless a person agrees in writing to become member of the company and unless his name is entered in the Register of Members he cannot be considered as Member of the Company. No oral application will be valid. “The privileges of a member of a company can be exercised only by that person whose name is entered in the register of members”.*

# MEMBERS

Subscriber to memorandum

Person named in the register of members

Beneficial owner of shares

# MODES OF ACQUIRING MEMBERSHIP

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By subscribing  
to  
memorandum

By allotment of  
shares

By transfer

By Transmission

By becoming a  
beneficial  
owner of shares

By estoppel or  
acquiescence



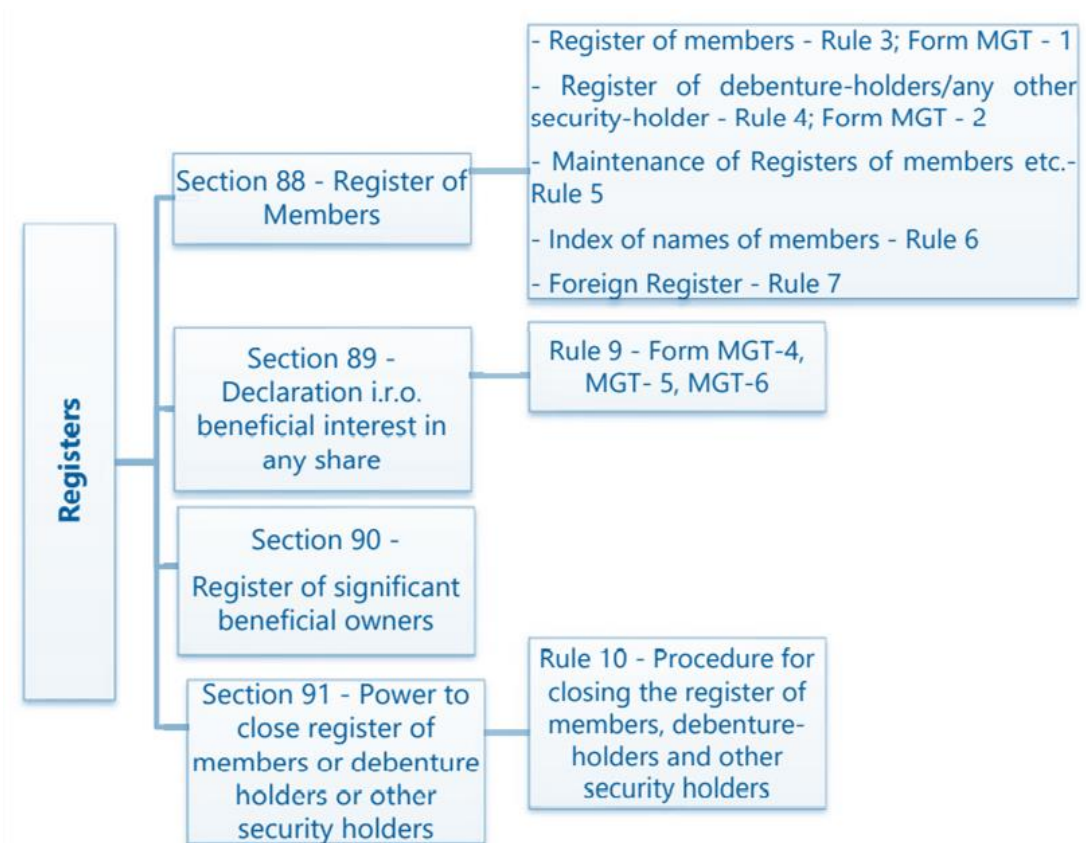
# WHO IS A DEBENTURE HOLDER

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- In business, issuing debentures is one of the ways to raise money for the working of the company.
- Debentures are a kind of security against the loan borrowed. It can be defined as a written instrument or certificate providing evidence of a debt taken by the company
- As per the definition of **debenture given in Section 2(30) of the Companies Act 2013** "Debenture includes debenture stocks, bonds or any other instruments of a Company evidencing a debt, whether constituting a charge on the assets of the Company or not.
- When one buys debentures issued by the company he becomes a creditor to the company.
- The advantage of being of being a debenture holder is that, in case of winding-up/bankruptcy the debenture holders are considered to be the creditors and they are the ones who would be re-paid first.

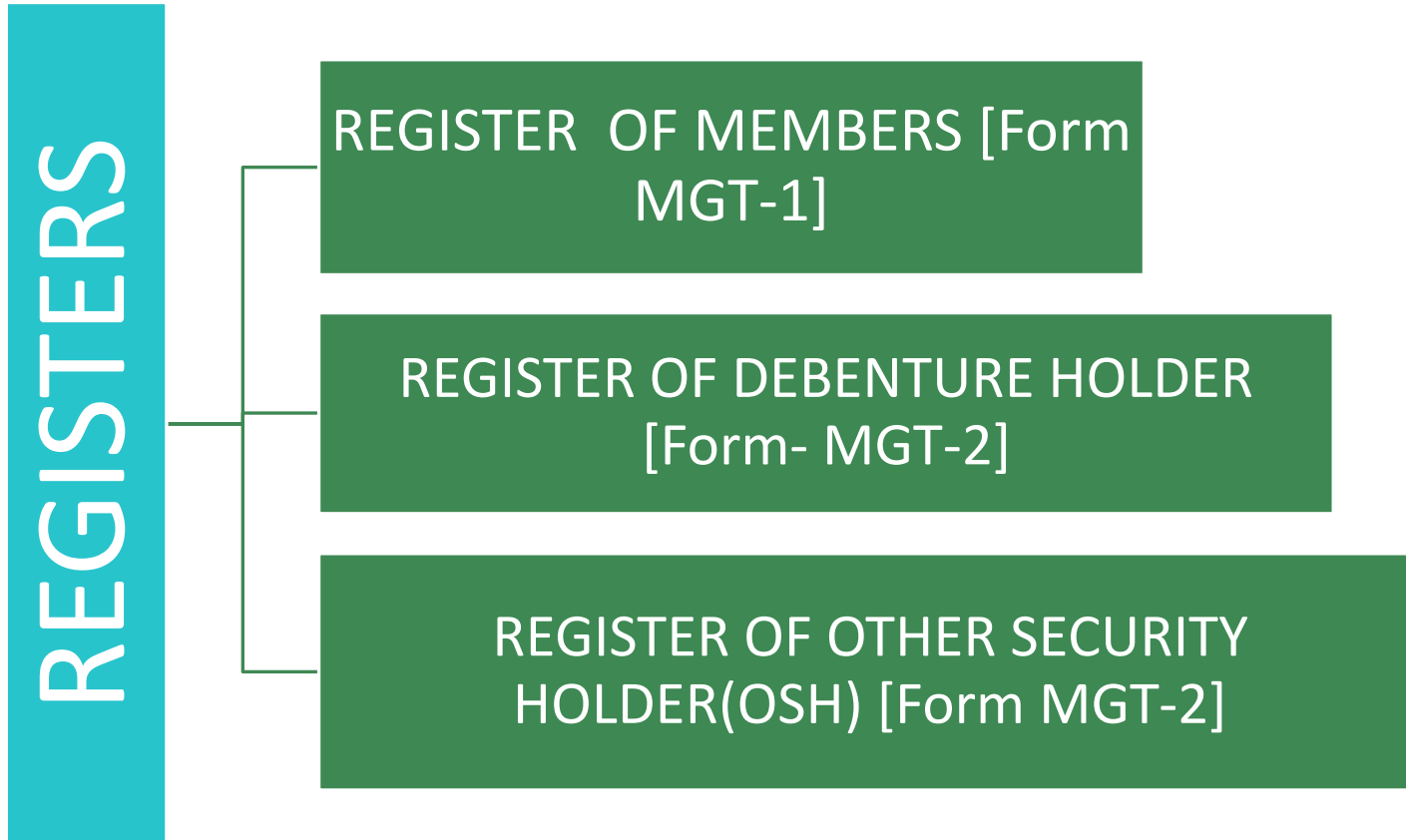


# REGISTERS





# REGISTER OF MEMBERS ETC., [S.88]



- (1) Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—**
- (a) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;**
  - (b) register of debenture-holders; and**
  - (c) register of any other security holders.**

# REGISTER OF MEMBERS S.88(1)(a)

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- the holding of each class of equity
- and preference shares by each member residing in or outside India
- will have to be shown separately in the register of members
- Form and Manner- Rule 3
- Maintenance of register- Rule 5



# REGISTER OF MEMBERS ETC., [S.88]

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(2) Every register maintained under sub-section (1) shall include an **index** of the names included therein.

(3) The register and **index of beneficial owners** maintained by a depository under section 11 of the Depositories Act, 1996 (22 of 1996), shall be deemed to be the corresponding register and index for the purposes of this Act.

(4) 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 referred to in sub-section (1), called —foreign register|| containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India. [ **FOREIGN REGISTER**]



# REGISTER OF MEMBERS ETC., [S.88]

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## PENAL PROVISION

(5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be **punishable with fine** which shall not be less than **fifty thousand rupees** but which may extend **to three 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.**



# PROVISIONS CONTAINED IN THE RULE

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## **RULE 3 REGISTER OF MEMBERS:**

*(1) Every **company limited by shares** shall, from the date of its registration, maintain a register of its members in **Form No. MGT.1**:*

*“Provided that in the case of a company existing on the commencement of the Act, the particulars as available in the register of members maintained under the Companies Act, 1956 shall be transferred to the new register of members in Form No.MGT-1 and in case additional information, required as per provisions of the Act and these rules, is provided by the members, such information may also be added in the register as and when provided.”;*

*[ Substituted by Notification Companies (Management and Administration) Amendment Rules, 2016 Dated 23rd September, 2016.]*



# PROVISIONS CONTAINED IN THE RULE

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- (2) *In the case of a **company not having share capital the register of members shall contain the following particulars, in respect of each member, namely:-***
  - *(a) Name of the member; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or CIN; Unique Identification Number, if any; Father's/Mother's/Spouse's name; Occupation; Status; Nationality; in case member is a minor, name of the guardian and the date of birth of the member; name and address of nominee;*
  - *(b) date of becoming member;*
  - *(c) date of cessation;*
  - *(d) amount of guarantee, if any;*
  - *(e) any other interest if any; and*
  - *(f) instructions, if any, given by the member with regard to sending of notices etc.*



# PROVISIONS CONTAINED IN THE RULE

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*“Provided that in the case of a company existing on the date of commencement of the Act, the particulars as available in the register of members maintained under the Companies Act, 1956 shall be transferred to the new register of members in Form No.MGT-1 and in case additional information, required as per provisions of the Act and these rules, is provided by the members, such information may also be added in the register as and when provided.*

## **RULE 4 Register of Debenture Holders or Any Other Security Holders**

*Every company which issues or allots debentures or any other security shall maintain a separate register of debenture holders or security holders, as the case may be, for each type of debentures or other securities in **Form No.MGT.2.***





# PROVISIONS CONTAINED IN THE RULE

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## ***RULE 5 Maintenance of the Register of Members etc. Under Section 88***

*Every company shall maintain the registers under clauses (a), (b) and (c) of sub-section (1) of section 88 in the following manner namely:-*

***(1) The entries in the registers maintained under section 88 shall be made within seven days after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.***

***(2) The registers shall be maintained at the registered office of the company unless a special resolution is passed in a general meeting authorising the keeping of the register at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than one-tenth of the total members entered in the register of members reside.***



# PROVISIONS CONTAINED IN THE RULE

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*(3) Consequent upon any forfeiture, buy-back, reduction, sub-division, consolidation or cancellation of shares, issue of sweat equity shares, transmission of shares, shares issued under any scheme of arrangements, mergers, reconstitution or employees stock option scheme or any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates, **entry shall be made within seven days after approval by the Board or committee, in the register of members or in the respective registers, as the case may be.***

*(4) **If any change occurs in the status of a member or debenture holder or any other security holder whether due to death or insolvency or change of name or due to transfer to Investor Education Protection Fund or due to any other reason, entries thereof explaining the change shall be made in the respective register.***



# PROVISIONS CONTAINED IN THE RULE

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*(5) If any **rectification** is made in the register maintained under [section 88](#) by the company pursuant to any order passed by the competent authority under the Act, the necessary reference of such order shall be indicated in the respective register.*

*(6) If any **order is passed by any judicial or revenue authority or by Security and Exchange Board of India (SEBI) or Tribunal attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest, the necessary reference of such order shall be indicated in the respective register.***



# PROVISIONS CONTAINED IN THE RULE

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*(7) In case of companies whose securities are listed on a stock exchange in or outside India, the **particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within fifteen days from such an event.***

*(8) If promoters of any listed company, which has formed a joint venture company with another company have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, **the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event***



# PROVISIONS CONTAINED IN THE RULE

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## ***Rule 6 Index of Names to be Included in Register***

*(1) Every register maintained under sub-section (1) of [section 88](#) shall include an index of the names entered in the respective registers and the index shall, in respect of each folio, contain sufficient indication to enable the entries relating to that folio in the register to be readily found:*

*Provided that the maintenance of index is not necessary in case the number of members is less than fifty.*

*(2) The company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such Register.*



# FOREIGN REGISTER [S.88(4) Read with Rule 7]

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**Maintenance of foreign register:** Section 88(4) read with Rule 7 provides that a company which has share capital or which has issued debentures or any other security **may, if so authorised by its articles, keep in any country outside India,** a part of the register of members or as the case may be, of debenture holders or of any other security holders or of beneficial owners, resident in that country.

The register may be referred to as “**Foreign Register**”



# COMPLIANCES FOR FOREIGN REGISTER

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**The Foreign Register is optional.** Once company decides to keep, it shall comply to the following–

- **within 30 days from the date of the opening** of any foreign register, file with the Registrar of Companies (‘RoC’) notice of the situation of the office in the prescribed from **Form No. MGT – 3 along with the fee** where such register is kept; and in the event of any change in the situation of such office or of its discontinuance, shall, within 30 days from the date of such change or discontinuance, as the case may be, file notice in Form No.MGT.3 with the RoC of such change or discontinuance.
- deemed to be part of the company’s register (‘principal register’)



# COMPLIANCES FOR FOREIGN REGISTER

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- shall be **open to inspection and may be closed**, and extracts may be taken therefrom and copies thereof may be required, in the same manner, as is applicable to the principal register, except that **the advertisement before closing the register shall** be inserted in at least two newspapers circulating in the place wherein the foreign register is kept.
- If a foreign register is kept by a company in any country outside India, the decision of the appropriate competent authority in regard to the rectification of the register shall be binding. [*The Term appropriate competent authority has not been defined in the Rules or in the Act. The authority under the local law of the place where the foreign register was kept shall be competent authority at first instant, unless particular jurisdiction was barred under the Act itself.*]





# COMPLIANCES FOR FOREIGN REGISTER

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- Entries in the foreign register maintained under section 88(4) shall be made after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.
- The company shall –
  - 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
  - Keep at such office a duplicate register of every foreign register duly updated from time to time and it shall be deemed to part of the principal register.
  - No transaction with respect to any shares, debentures, or any other security, registered in a foreign register shall, during the continuance of such foreign register, be registered in any other register



# COMPLIANCES FOR FOREIGN REGISTER

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- The company may discontinue the keeping of any foreign register, and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register



# AUTHENTICATION OF ENTERIES MADE IN REGISTER [RULE 8]

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- *The entries in the registers maintained under section 88 and index included therein shall be authenticated by the **company secretary of the company or by any other person authorised by the Board for the purpose**, and the date of the board resolution authorising the same shall be mentioned.*
- *(2) **The entries in the foreign register** shall be authenticated by the company secretary of the company or person authorised by the Board by appending his signature to each entry.*

# BENEFICIAL INTEREST

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In general parlance the concept of beneficial ownership refers to having a beneficial interest in any property, goods including securities.

Beneficial interest may be referred to a "profit, benefit or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control."

A beneficial interest is different from the rights of someone like a trustee or an official who has the responsibility to perform and/or title to the assets but does not share in the benefits.



# DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE [S.89]

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**Who is a Registered owner?** – A person whose name is registered in the Register of Members as the holder of shares in that company but who does not hold the beneficial interest in such shares is commonly called as the registered owner of the shares

**What is beneficial interest?** - A beneficial interest is the right to receive benefits on shares held by another party. A beneficial interest is “that right which a person has in a contract made with another (third party)”

Black’s Law Dictionary [9th edition, page 913] defines ‘beneficial interest’ as “A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing”.

*\*Note: Section 89 is NA on Govt. Companies - - [Notification dated 5th June, 2015.](#)*



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S.89(10) defines beneficial interest as : *For the purposes of this section and section 90, 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—*

*(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*

**Under the Act, 2013, section 89 requires** making of declaration in cases where the registered owner and the beneficial owner of shares in a company are two different persons.



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## **Declaration by registered holder of shares:**

- A person whose name is entered in the register of members of a company as the holder of shares in that company but
- who does not hold the beneficial interest in such shares (hereinafter referred to as “the registered owner”),
- shall file with the company, a declaration to that effect in **Form No.MGT.4**,
- specifying the name and other particulars of the person who holds the beneficial interest in such shares,
- **within a period of thirty days** from the date on which his name is entered in the register of members of such company.



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## **Declaration by person holding beneficial interest in shares:**

- Every person who holds or acquires a beneficial interest in share of a company
- shall make a declaration to the company in form MGT-5,
- within 30 days after acquiring such beneficial interest,
- specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.





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## **Declaration in case of change in beneficial interest:**

- Where any change occurs in the beneficial interest in any shares
- in respect of which a declaration has been filed u/s 89 (1) and (2),
- then, within 30 days of such change, a declaration is to be made to the company.

**Filing of return by the company with the registrar:** 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 thirty days from the date of receipt of declaration by it, a return in Form No.MGT.6 with the Registrar in respect of such declaration with fee.

*Note: \*In case of an unlisted public company and private company which is licensed to operate from the IFSC, in section 89(6) for the word “30 days” read as “60 days”*



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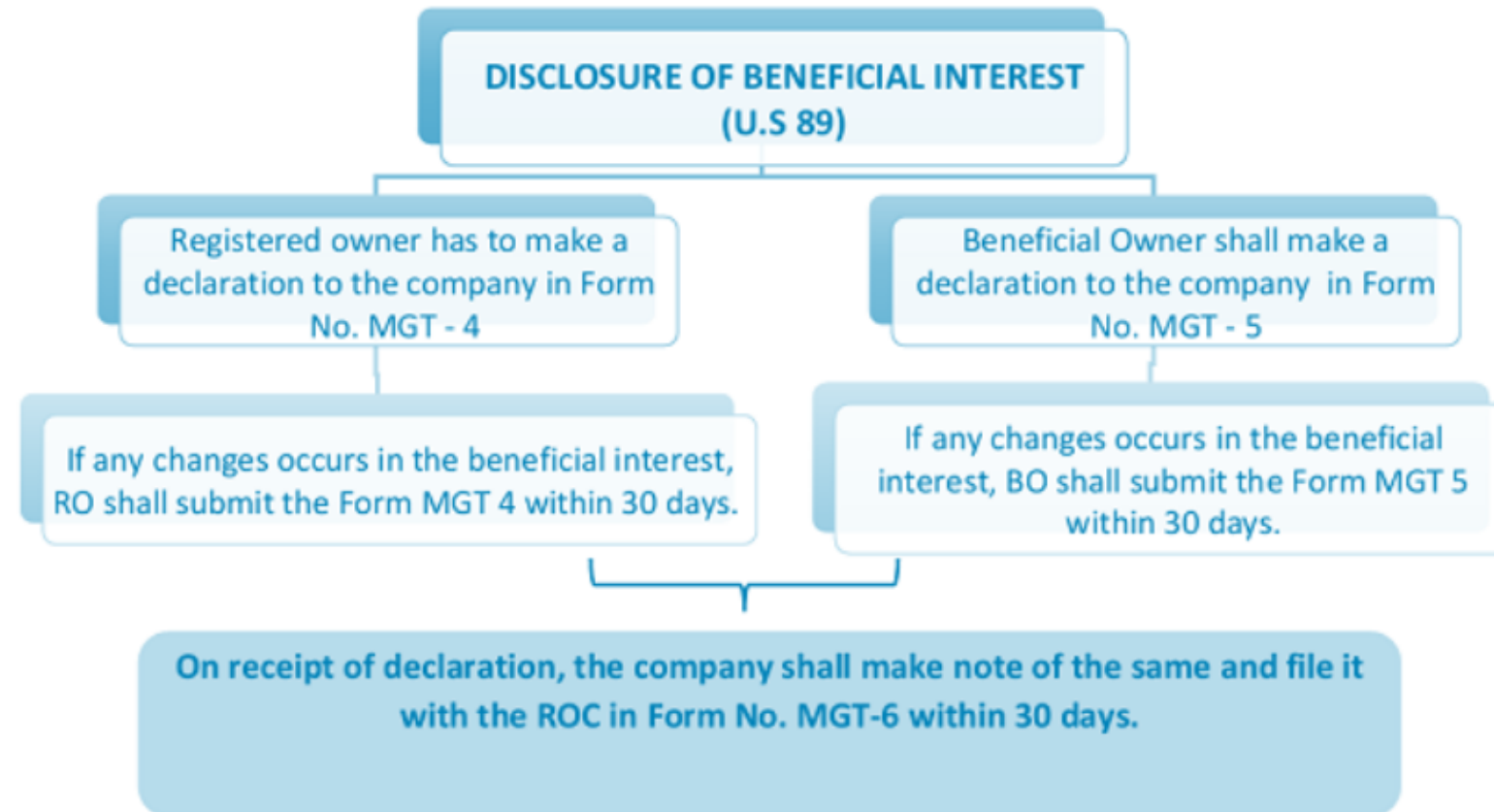
**Consequence of non-filing of declaration:** where a declaration required u/s 89 is not filed by the beneficial owner, then, any right with respect to such shares shall not be enforceable by the beneficial owner or by any person claiming through him.

**Exemption:** trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by SEBI. These entities need not file the declarations as envisaged under this section.

**Duty of the Company to pay dividend not affected:** Nothing contained in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.

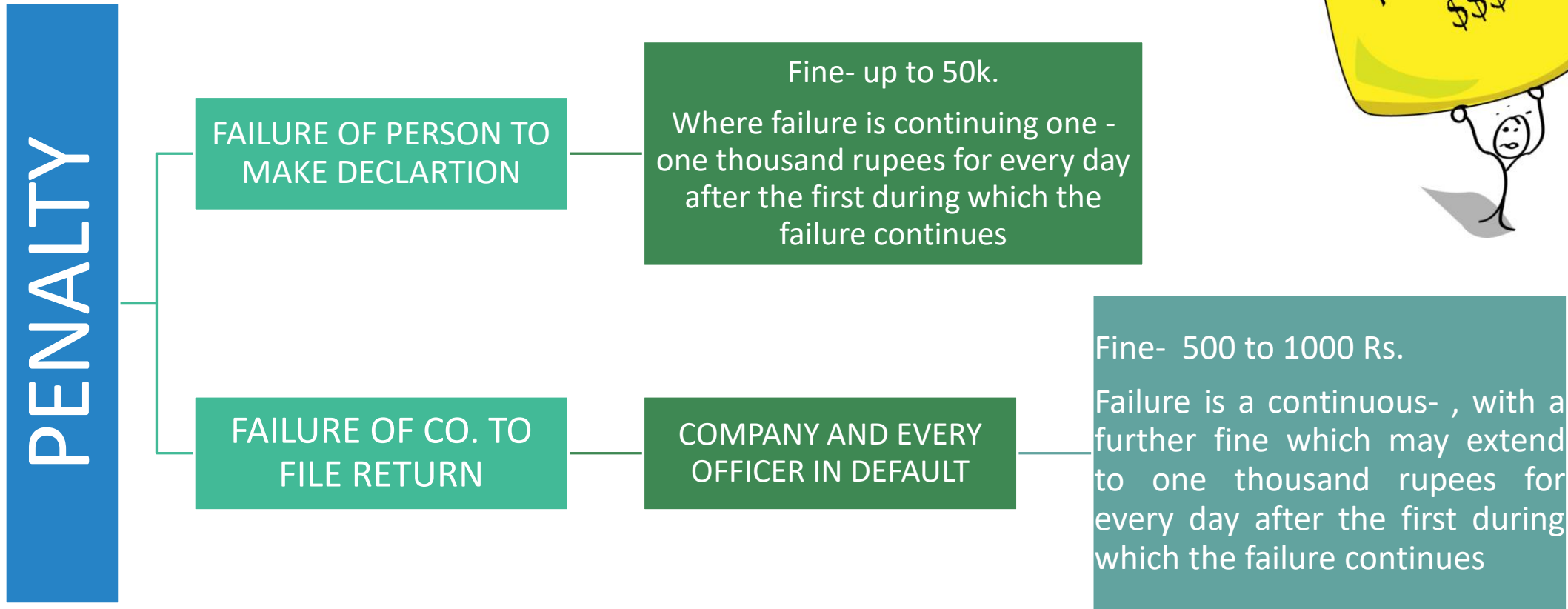
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# PENALTY





# PENALTY

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Two kinds of penal provisions are included under section 89 –

**1. Related to persons required to make a declaration [Section 89(5)]-** If **any person fails** to make a declaration as required u/s 89, without any reasonable cause, he shall be **punishable with fine** which may extend to **fifty thousand 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..



# PENALTY

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**2. Related to company**[Section 89(7)]- If a **company, required to file a return u/s 89(6), fails to do so** within 30 days of receipt of declaration by it, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand 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.

**3. Exemption to Govt. Co.--** In case of Government Company - Section 89 shall not apply. The above mentioned exemption shall be applicable to a government company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar-Notification dated 13<sup>th</sup> June, 2017.



# REGISTER OF SIGNIFICANT BENEFICIAL OWNER [S.90]

The term 'significant beneficial owner' "SBO" has been defined in section 90 of the Act as:

*“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 as defined in clause (27) of section 2 [(i.e., control of at least twenty per cent of total voting power, or of business decisions under an agreement)], 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.

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However, Companies (Significant Beneficial Owners) Amendment Rules, 2019

("Amendment Rules") has amended the definition of the term SBO. In terms of Rule 2(1) (h) of the SBO Rules, the term **'Significant Beneficial Owner' (SBO) is defined as an individual who—**

- i. acting alone or together, or
- ii. through one or more persons or trust,

Possess one or more of the following rights or entitlements in the Reporting Company (i.e. the company in respect of which SBO declaration is required to be filed)—:



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- i. holds indirectly, or together with any direct holdings, not less than 10% of the shares;
- ii. holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;
- iii. has the right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- iv Has the right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone

S.No	Where member is	Particulars	Percentage
1	Company	Significant beneficial owner is the natural person, who, <ul style="list-style-type: none"> <li>– Whether acting alone or</li> <li>– together with other natural persons, or</li> <li>– through one or more other persons or trust</li> </ul>	Hold atleast 10% of share capital of the Company or Who exercises significant influence or control in the company through other means.
2.	Partnership firm	Significant beneficial owner is the natural person, who, <ul style="list-style-type: none"> <li>– Whether acting alone or</li> <li>– together with other natural persons, or</li> <li>– through one or more other persons or trust</li> </ul>	Hold atleast 10% of capital or Has entitled to not less than 10% of profits of the firm.
3	Where no natural person is identified under (A) and (B) mentioned above?	In this case, the SBO is the relevant natural person who holds the position of senior managing official	
4.	Trust through trustee	The beneficial owner shall includes, <ul style="list-style-type: none"> <li>– identification of the author of the trust,</li> <li>– the trustee,</li> <li>– the beneficiaries with not less than 10% interest in the trust and</li> <li>– any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.</li> </ul>	

# DIFFERENCE BETWEEN BO & SBO

Beneficial Owner (Sec. 89)	Significant Beneficial Owner (Sec. 90)
Every person holding or acquiring a beneficial interest in shares of a company not registered in his name.	SBO means <b><i>an individual</i></b> , who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holding <b><i>ultimate beneficial interest of not less than 10%</i></b> and whose name is not entered in the register of members of a Company.
Beneficial owner is required to make disclosures as per Section 89 even if interest is more than or less than 10%.	Disclosures requirement of SBO shall occur only if interest is at least 10%.

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## **Significant influence:**

- The term “significant influence” was previously not defined specifically for the rules.
- to provide clarity, the following definition has been inserted through SBO rules: “Significant influence” means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies

**Majority stake:** The Amendment Rules inserted a new term, “Majority Stake,” which means

- i. holding more than one-half of the equity share capital in the body corporate;
- or
- ii. holding more than one-half of the voting rights in the body corporate; or
  - iii. Having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate.

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**Direct and Indirect shareholding:** The Amendment Rules provide that when an individual holds any rights or entitlement directly in the reporting company, the said individual shall not be considered as SBO.

An individual will be considered to hold a right or entitlement directly in the Relevant Company, if he satisfies any of the following criteria:

- a. the shares in the Relevant Company representing such right or entitlement are held in the name of such individual;
- b. the individual holds or acquires a beneficial interest in the shares of the Relevant Company under section 89(2) of the CA 2013, and has made a declaration in this regard to the Relevant Company.

Indirect shareholding is, when a shareholder is a (a) Body corporate; (b) Hindu Undivided Family (c) Partnership (d) Trust (e) Pooled investment vehicle.



# REGSITER OF SIGNIFICANT BENEFICIAL OWNER [S.90]

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(2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) 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 under sub-section (2) 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.

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**Maintenance of Register:** according to the section 90 of the Act read with amended rules

- every company shall maintain a register of significant beneficial owners in Form No. BEN-3
- which shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide,
- by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.



# REGISTER OF SIGNIFICANT BENEFICIAL OWNER [S.90]

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(4A) Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.

(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.



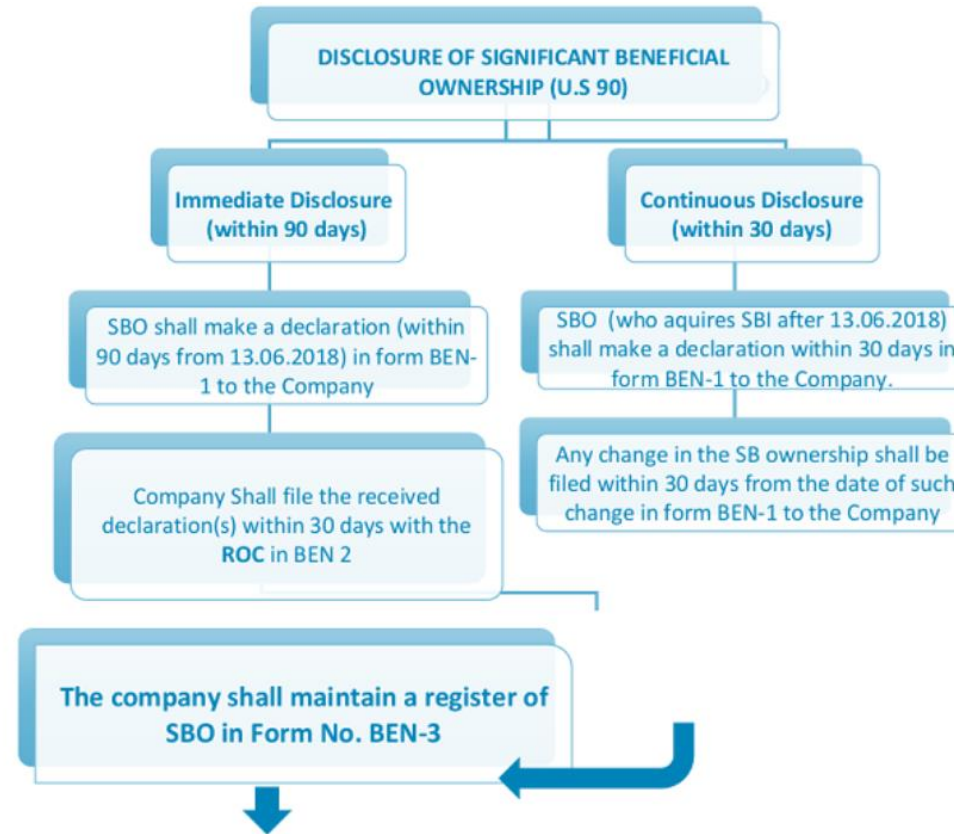
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**Onus on the reporting company:** The duty is on the reporting company to identify a SBO and cause such SBO to make a declaration in the prescribed Form. As per the Amendment Rules, every reporting company shall give notice in the Form BEN4 to any person 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.





# REGISTER OF SIGNIFICANT BENEFICIAL OWNER [S.90]

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(6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty 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 fifteen 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.



# REGISTER OF SIGNIFICANT BENEFICIAL OWNER [S.90]

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(8) On any application made under sub-section (7), 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 sixty 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 under sub-section (8), within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed



# REGISTER OF SIGNIFICANT BENEFICIAL OWNER [S.90]

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(9A) The Central Government may make rules for the purposes of this section.

(10) If **any person fails to make a declaration** as required under sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees or with both 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



# REGISTER OF SIGNIFICANT BENEFICIAL OWNER [S.90]

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(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), 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 wilfully 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.

*\*Note: Section 90 is NA on Govt. Companies - - [Notification dated 5th June, 2015.](#)*

# CONT..

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## **Declaration by SBO:**

- a. Every individual who is a SBO in the Reporting Company, as on the date of commencement of the Amendment Rules, is required to file a declaration with the Reporting Company in Form BEN-1 within 90 days from such commencement. In turn, the Reporting Company will be required to file the said disclosure with the Registrar within 30 days of receiving it from the SBO.
- b. Any individual, who subsequently becomes a significant beneficial owner in the Reporting Company or whose significant beneficial ownership undergoes any change, is required to file a declaration with the Reporting Company in Form BEN-1 within 30 days of such acquisition or change.

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c. If an individual becomes a significant beneficial owner in the Reporting Company or her significant beneficial ownership undergoes any change within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.



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**NON-APPLICABILITY** The amended Rules will not be applicable where the shares of the Relevant Company are held by:

- (a) the Investor Education and Protection Fund Authority;
- (b) its holding company which has complied with section 90 of CA 2013 and the Rules, provided that the details of such holding company are reported in Form BEN-2;
- (c) the Central Government, any State Government or any local authority;
- (d) an entity/ body corporate controlled wholly or partly by the Central Government and/ or State Government(s);

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(e) investment vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) registered with and regulated by the Securities and Exchange Board of India; and

(f) investment vehicles regulated by the Reserve Bank of India, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

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**Example: Mr. X becomes the registered holder of shares of ABC Ltd whose beneficial holder is M/s XYZ Ltd, a Partnership Firm.**

Since a beneficial interest is created therefore, the declaration as prescribed u/s 89 of the Act shall be given by Mr. X and M/s XYZ Ltd and subsequently by ABC Ltd.

**Example: Mr. X is the registered owner of 500 shares of ABC Ltd whose beneficial holder is M/s XYZ Ltd, a Partnership Firm. Again Mr. Y is the registered owner of 1000 shares of ABC Ltd whose beneficial holder is M/s XYZ Ltd, a Partnership Firm. Mr. X transfers 500 shares to Mr. Y.**

The requirement to give declaration arises both in the case of change in registered as well as beneficial ownership. Therefore, in the above case declaration is required to be given. Further, since the registered owner of the shares is transferring the shares to another registered owner of the shares, therefore, the Share Transfer deed is to be executed and thereafter form SH-4 needs to be sent to the Company

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**Example: Mr. Anil is the registered owner of 5,000 shares (Constituting 25% of the share capital) of Viata Ltd whose beneficial holder is M/s XYZ & Co., a Partnership Firm. Mr. Anil transfers 500 shares to Mr. Bijo whose beneficial interest shall lie with M/s BBC & Co., a Partnership Firm in which Mr. X and Mr. Y are partners sharing profits equally.**

Solution: In the instant case there is change in the beneficial interest of the shares held by Mr. Anil, therefore, declaration as prescribed u/s 89 shall be given by Mr. Bijo in MGT 4 and M/s BBC & Co., a Partnership Firm in MGT 5 and thereafter by Viata Ltd in MGT 6. Also, there is a SBO of more than 10% by the partners Mr. X and Mr. Y and hence, declaration as prescribed u/s 90 shall be given by Mr. X and Mr. Y in BEN 1 and thereafter by M/s. Viata Ltd., in BEN 2. Also, M/s. Viata Ltd shall maintain a register of interest declared by Mr. X and Mr. Y and changes therein in Form No. BEN-3.

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**Problem:** Company 'ABC Ltd' holding 60% in Subsidiary Company (XYZ Ltd). Mr. Arun, Mr. Bijo and Mrs. Chandra hold 10%, 25% and 40% of shares of Company 'ABC Ltd' i.e Holding Company. Whether Mr. Arun, Mr. Bijo and Mrs. Chandra have to declare SBO to the Company XYZ Ltd?

**Solution:** SBO of Mr. Arun, Mr. Bijo and Mrs. Chandra in 'XYZ Ltd' shall be as follow:

S. No.	Shareholders	Holdings	Actual Interest in XYZ Ltd	BEN-1
1.	Mr. Arun	10%	$(60 \times 10\%) = 6\%$	No
2.	Mr. Bijo	25%	$(60 \times 25\%) = 15\%$	Yes
3.	Mrs Chandra	40%	$(60 \times 40\%) = 24\%$	Yes



# POWER TO CLOSE REGISTER [ S.91]

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Acc. To Section 91(1) a company may close the register of members, debenture-holders and other security holders by giving minimum **7 days' notice** or such lesser period as specified by Securities Exchange Board of India ('SEBI').

Section 91(1) further states that the registers may be closed for any period not exceeding 30 days at any one time and for an aggregate period of 45 days in one year.

Section 91(2) sets out that **if the registers is closed without giving the notice** as prescribed in sub-section (1), **or after giving a shorter notice** than that so provided, **or for a continuous period or an aggregate period** in excess of the limits specified in that sub-section, the **company and every officer** of the company who is in default shall be liable to a penalty of ` **Rupees 5,000 per day subject to a maximum of ` 1,00,000** during which the register is kept closed. However, the offence is a compoundable offence under section 441 of the Companies Act, 2013



# POWER TO CLOSE REGISTER [ S.91]

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Acc. to Rule 10 of the *Companies (Management & Administration) Rules, 2014* ,

- A company closing the register of members/DH/OSH shall give **at least seven days previous notice**,
- if such company is a listed company or intends to get its securities listed, by **advertisement** at least once in a **vernacular newspaper** in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, **and at least once in English language** in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated **and publish the notice on the website** as may be notified by the Central Government and on the website, if any, of the Company. [Sub rule (1)]

*Note: the private companies have been exempted from issuing public notice in newspapers, provided it issues 7 days' notice to its members before effecting closure of the registers.*



# ANNUAL RETURN [ Section 92, 94]

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- Provisions with regard to Annual Return are contained in section 92 and Rules 11 and 12 of the Companies (Management & Administration) Rules, 2014.
- Every company shall prepare an annual return in Form No. MGT. 7 as prescribed in Rules **containing the following particulars:**
  - Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies.
  - Its shares, debentures and other securities and shareholding pattern.
  - Its indebtedness
  - Its members and debenture-holders along with the changes therein since the close of the previous financial year





# ANNUAL RETURN [ Section 92, 94]

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- Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year.
- Meetings of members or a class thereof, Board and its various committees along with attendance details.
- **Remuneration of directors and key managerial personnel**
- 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.
- Matters relating to certification of compliances, disclosures
- Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them.
- **Note: In case of Private Company** - aggregate amount of remuneration drawn by directors will be submitted instead of individual remuneration drawn by Director and KMP



# ANNUAL RETURN [ Section 92, 94]

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## **WHO SIGNS THE ANNUAL RETURN**

- AR is signed by a director of the company and the company secretary.
- In case, there is no company secretary, by a company secretary in practice.
- 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.



# ANNUAL RETURN [ Section 92, 94]

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Sub section 2 of section 92 read with Rule 11(2) of the *Companies (Management & Administration) Rules, 2014*, provides

- that the annual return,
- filed by a listed company or a company having
- paid-up share capital of ` 10 crore or more;
- or a turnover of ` 50 crore or more,

shall be **certified by a Company Secretary in practice** and the certificate shall be in **Form MGT – 8**. It must state that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Act.



# ANNUAL RETURN [ Section 92, 94]

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The extract of annual return shall be attached with the Board's Report in Form MGT – 9, as per section 92(3) read with rule 12(1). [ Note: NA In case of Specified IFSC Public Company and Specified IFSC Private Company ]

A copy of annual return shall be filed with the RoC within **60 days** from the date on which the Annual General Meeting ('AGM') 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**, along with the **reasons** for not holding the AGM.

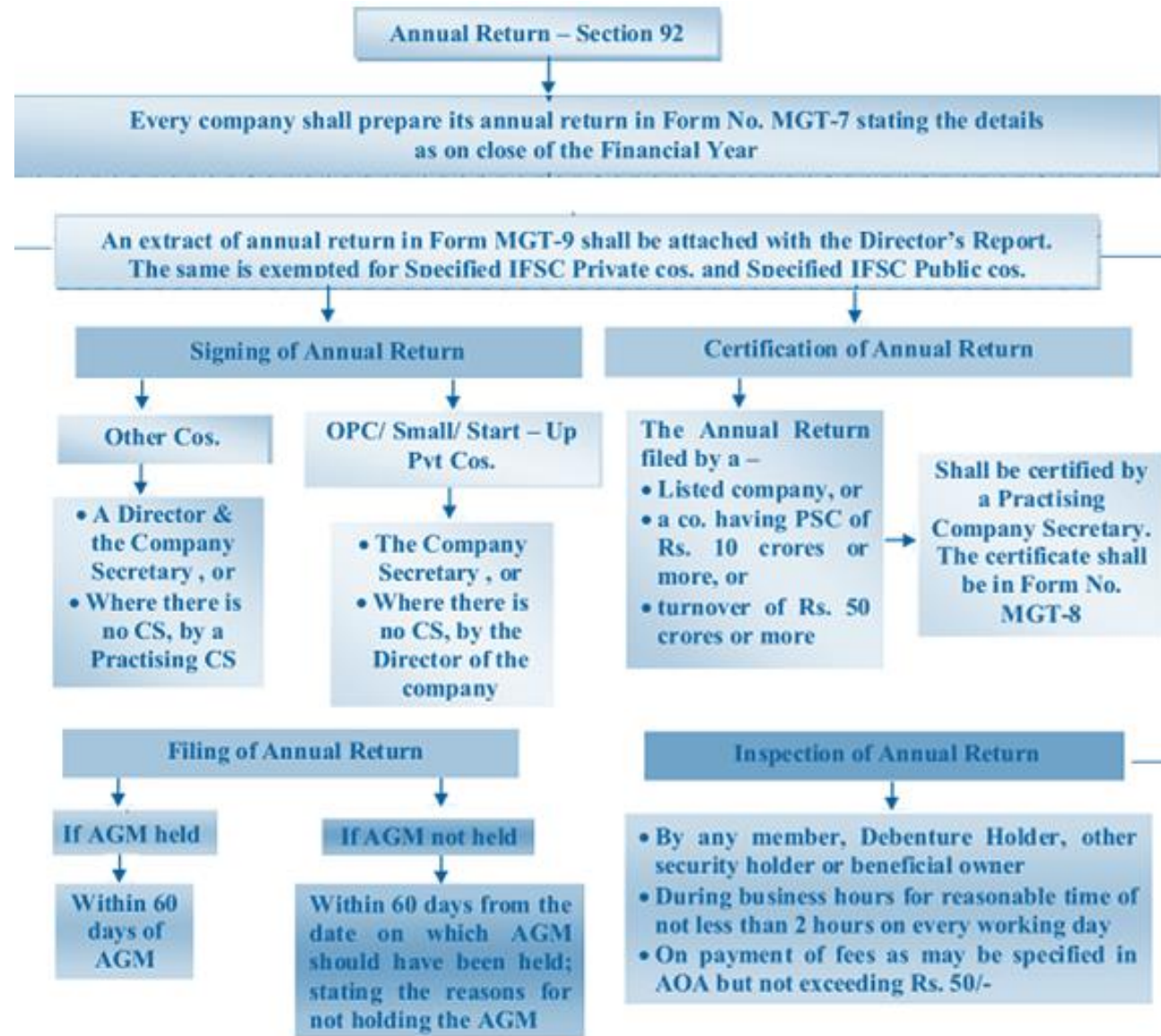


# PENALTY

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Section 92(5) of the Act specifies that **if any company fails** to file its annual return under sub-section (4), before the expiry of the period specified therein, **such company and its every officer who is in default** shall be liable to a penalty of **fifty thousand rupees** and in case of continuing failure, with further penalty of **one hundred rupees for each day during which such failure continues**, subject to a maximum of five lakh rupees.

If a **company secretary in practice**, certifies the annual return otherwise than in accordance with this section and the rules made thereunder, he shall be punishable with fine which shall not be less than ` **50,000 but which may extend to ` 5,00,000.**





# PLACE OF KEEPING AND INSPECTION OF REGISTERS, RETURNS, ETC.- [S.94]

Place of keeping registers and returns  
- **Section 94**



**Registered Office**

Can also be kept at a place in India, other registered office, where more than 1/10th of total members reside; if approved by SPECIAL RESOLUTION



# INSPECTION OF REGISTERS ETC.

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As per Rule 14(1),

- the registers and indexes maintained pursuant to [section 88](#) and copies of returns prepared pursuant to [section 92](#),
- shall **be open for inspection during business hours**, at such reasonable time on every working day as the board may decide,
- by any member, debenture holder, other security holder or beneficial owner **without payment of fee** and
- **by any other person on payment of such fee** as may be specified in the articles of association of the company but not exceeding fifty rupees for each inspection.

Explanation.- For the purposes of this sub-rule, reasonable time of not less than two hours on every working day shall be considered by the company.





# INSPECTION OF REGISTERS ETC.

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According to Section 94(3) read with Rule 14(2),

- any member, debenture-holder or security holder or beneficial owner can take the extracts during any business **without payment of any fee** or
- can also get copies thereof with payment of fee not exceeding ` 10 for each page.
- Such copies or entries or return shall be supplied within 7 days of deposit of fee.



# PRESERVATION OF REGISTER OF MEMBERS ETC.

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**Preservation of register of members-** that the **register of members** along with the index shall be preserved **permanently** and shall be kept in the custody of company preservation of register of members secretary of the company or any other person authorised by the Board for such purpose;

**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 from the date of redemption of debentures or securities**, as the case may be, and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose.



# PRESERVATION OF REGISTER OF MEMBERS ETC.

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**Copies of documents filled with ROC to be preserved:** Copies of all annual returns prepared under section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of **8 years from the date of filing with the RoC.**

**Preservation of foreign register:** shall be **preserved permanently**, unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register. **Foreign register of debenture-holder or any other security holder shall be preserved for a period of 8 years** from the date of redemption of debenture or securities.



# PENALTY FOR REFUSING THE INSPECTION OR MAKING ANY EXTRACT OR COPY REQUIRED

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the company and every officer of the company who is in default shall be liable for each such default, to a penalty of ` Rs.1, 000 for every day subject to a maximum of ` Rs.1, 00,000 during which the refusal or default continues.

The Central Government may also, by order, direct an immediate inspection of the document, or directs that the extract required shall forthwith be allowed to be taken by the person requiring it.



# MEETINGS



# MEETINGS

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## General meeting

- meeting of a company's shareholders as per the provisions of the Act .
- The general meeting can be an annual general meeting (AGM) or an Extraordinary General meeting (EGM).
- An annual general meeting (AGM) is a mandatory yearly gathering of a company's interested shareholders.
- The objective of holding an AGM is to provide an opportunity to members to discuss the functioning of the company, and take steps to protect their interests. They can discuss any matter relating to the conduct of the affairs of the company.
- An Extraordinary General Meeting (an EGM) can be defined as a meeting of shareholders which is not an AGM. The objective of holding an EGM is to discuss any matter of urgent importance which cannot be postponed till the next Annual General Meeting.



# MEETINGS

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**Board Meeting**, is the meeting of the board of directors of the company

**Class meeting** is the meeting of special class of persons, like, creditors, preference shareholders, etc.





# NOTICE OF MEETING [S.101 & Rule 18]

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S.101 (1) reads as:

A general meeting of a company may be called by giving not less than **clear twenty-one days notice** either **in writing** or **through electronic mode** in such manner as may be prescribed.

## What is meant by 21 Clear days

21 days clear notice means the day of sending the notice and the day of Meeting shall not be counted.

Further in case the notice of the general meeting is sent by post, service of notice of the meeting shall be deemed to have been effected at the expiry of 48 hours after it was posted.[posted (Rule 35(6) of the Companies Incorporation Rule, 2014]





# NOTICE OF MEETING [S.101 & Rule 18]

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**Question :** If a general meeting is to be held at 3 p.m. on 27th April,2020 service of notice of the meeting will be deemed to have been duly effected if it had been despatched by post at any time before 3 p.m. on \_\_\_\_\_.

Exception: Section 8 company- 14 clear days notice





# NOTICE OF MEETING [S.101 & Rule 18]

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## WHAT IS MEANT BY ELECTRONIC MODE

**Rule 18** of the **Companies (Management and Administration) Rules, 2014** prescribes conditions to be complied with in case a company elects to send the notice by electronic means.

“electronic mode” shall mean any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.





# NOTICE OF MEETING [S.101 & Rule 18]

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As per Rule 18, of the **Companies (Management and Administration) Rules, 2014**

- A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.
- The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company or as provided by the depository:

**Provided** that the company shall provide an advance opportunity atleast once in a financial year, to the member to register his e-mail address and changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose e-mail ids are already registered.



# NOTICE OF MEETING [S.101 & Rule 18]

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- The subject line in **e-mail shall state the name of the company, notice of the type of meeting, place and the date on which the meeting is scheduled.**
- When notice or notifications of availability of notice are sent by e-mail, the company should ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as “proof of sending”.
- The company’s obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control



# NOTICE OF MEETING [S.101 & Rule 18]

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- If a member entitled to receive notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.
- The notice made available on the electronic link or Uniform Resource Locator has to be readable, and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company if any and on the website as may be notified by the Central Government.



# NOTICE OF MEETING [S.101 & Rule 18]

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**Example 1** Mr. Abeer filed a complaint against the company, Elixir Private Limited since it did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Abeer, inviting him to attend the annual general meeting of the company. Abeer alleges that he never received the email. State whether the company is liable as guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with rules.

**Answer:** As per Rule 18(3) of the Companies (Management & Administration) Rules, 2014, the company's obligation shall be satisfied when it transmits the email and the company shall not be held responsible for a failure in transmission beyond its control. Also, if the member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.



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**THANK YOU**