

SHORT FORMS USED IN THIS SUMMARY NOTES:

Short	Full Form	Short	Full Form
AP	Abridged Prospectus	OR	Ordinary Resolution
BC	Body Corporate	PFI	Public Financial Institutions
BoD	Board of Directors	PO	Public Offer
CASH	Company or of its holding, subsidiary or associate company	PP	Private Placement
CP	Commercial Paper	PROI	Person Resident Outside India
DH	Debenture Holders	PSC	Preference Share Capital
DPIT	Department for Promotion of Industry and Internal Trade	PUSC	paid-up share capital
DVR	Differential Voting Rights	RD	Regional Director
ESC	Equity Share Capital	RGTB	Reasonable Ground To Believe
FPO	Further Public Offer	RHP	Red Herring Prospectus
FS	Financial Statement	RoC	Registrar or Registrar of Companies
GM	General Meeting	RoM	Register of Members
ID	Independent Director	RP	Resolution Professional
IEPF	Investor Education and protection Fund	RPAD	Registered Post with Acknowledgement Due
IOT	Intimation of Transmission	SEBI	Securities and Exchange Board of India
IPO	Initial Public Offer	SH	Shareholders
IRDA	Insurance Regulatory & Development Authority	SP	Shelf Prospectus
KMP	Key Managerial Person	SR	Special Resolution
LR	Legal Representative	T&C	Terms and Conditions
MoA	Memorandum or Memorandum of Association	TEE	Transferee
OFS	Offer for Sale	TOR	Transferor
OG	Official Gazette	VR	Voting Rights
OOBH	Opportunity of being heard	WEH	Which Ever is Higher
OPC	One Person Company	WEL	Which Ever is Lower

Chapter 1 - Preliminary

Objective of this Act:

Act to consolidate and amend the law relating to companies

Enactment:

- Received the assent of the Hon'ble President of India on 29th August 2013
- Notified in Official Gazette on 30th August 2013 (different dates may be appointed for enforcement)

Flow:

- 29 Chapters (+Rules)
- 470 Sections (Sec 1 to 148 covered in Intermediate)
- 7 Schedules

Section 1: Short Title, Extent, Commencement and Application:

Short Title - Companies Act, 2013

Extent - Whole of India (by default includes J&K)

Commencement - From date as appointed by CG by notification in OG

Applicability - The provision of this Act shall apply to:

- companies incorporated under this Act or under any previous company law
- insurance cos., except where provisions are inconsistent with that of Insurance Act, 1938 or IRDA Act, 1999;
- banking companies, except where provisions are inconsistent with that of Banking Regulation Act, 1949
- cos. engaged in generation/supply of electricity, except where provisions are inconsistent with that of Electricity Act, 2003
- other company governed by any Special Act, except where provisions are inconsistent with that of Special Act
- such body corporate, incorporated by any Act for the time being in force, as may be notified by CG [Example - Food Corporation of India (FCI), National Highway Authority of India (NHAI)]

Section 2: Definitions:

Definitions are considered as 'Internal aids to construction'

In this Act, unless the context otherwise requires:

Clause	Definition:
1	<p><u>Abridged Prospectus</u> Means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf</p>
2	<p><u>Accounting Standards</u> Means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;</p> <p><u>Section 133: Central Government to Prescribe Accounting Standards</u> As per Sec 133, CG may prescribe the AS or any addendum thereto, as recommended by ICAI, constituted u/s 3 of the CA Act, 1949, in consultation with and after examination of recommendations made by National Financial Reporting Authority (NFRA)</p> <p><u>Rule 7 of Companies (Accounts) Rules, 2014:</u> Accordingly,</p>

	<p>i. The standards of accounting as specified under Companies Act, 1956 shall be deemed to be AS until AS are specified by CG under section 133.</p> <p>ii. Till the NFRA* is constituted u/s 132 of the Act, the CG may prescribe the standards of accounting or any addendum thereto, as recommended by ICAI in consultation with and after examination of recommendations made by National Advisory Committee(NAC) on AS constituted u/s 210A of Cos Act, 1956.</p> <p>Further, in exercise of powers conferred u/s 133, the CG in consultation with the National Advisory Committee on AS prescribed that Companies (AS) Rules, 2006 and Companies (Ind AS) Rules, 2015 may be followed.</p>
3	<p><u>Alter or Alteration</u> Includes the making of additions, omissions and substitutions;</p>
5	<p><u>Articles</u> Means the articles of association of a company:</p> <ul style="list-style-type: none"> • as originally framed, or • as altered from time to time, or • applied in pursuance of any previous company law or this Act;
6	<p><u>Associate Company</u> In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company</p> <p><u>Explanation:</u> For the purpose of this clause: (a) "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement; (b) "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement</p> <p><u>Clarification:</u> Shares held by a company in another company in a fiduciary capacity shall not be counted for the purpose of determining the relationship of associate company</p> <p>A fiduciary is a person who holds a legal or ethical relationship of trust with one of more parties (persons or group of persons). Typically, a fiduciary prudently takes care of money or other assets for another person.</p>
7	<p><u>Auditing standards</u> means the standards of auditing or any addendum thereto for companies or class of companies referred to u/s 143(10)</p> <p>Section 143(10) - Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by ICAI, constituted u/s 3 of the CA Act, 1949, in consultation with and after examination of recommendations made by NFRA</p> <p>Provided that until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.</p>
8	<p><u>Authorised Capital or Nominal Capital</u> means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;</p>

10	Board of Directors or Board means the collective body of the directors of the company							
11	Body corporate or Corporation Includes a company incorporated outside India , but does not include: i. a co-operative society registered under any law relating to co-operative societies; and ii. any other body corporate (not being a company as defined in this Act), notified by CG ;							
12	"Book and Paper" and "Book or Paper": Includes: <table border="1" style="margin-left: 20px;"> <tr> <td>Books of Accounts</td> <td>Deeds</td> <td>Voucher</td> <td>Writings</td> <td>Documents</td> <td>Minutes</td> <td>Registers</td> </tr> </table> maintained on paper or in electronic form;	Books of Accounts	Deeds	Voucher	Writings	Documents	Minutes	Registers
Books of Accounts	Deeds	Voucher	Writings	Documents	Minutes	Registers		
13	"Books of account" includes records maintained in respect of: (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (ii) all sales and purchases of goods and services by the company; (iii) the assets and liabilities of the company; and (iv) the items of cost as may be prescribed u/s 148 in the case of a company which belongs to any class of companies specified under that section;							
14	Branch office , in relation to a company, means any establishment described as such by the company;							
15	Called-up capital means such part of the capital, which has been called for payment ;							
16	Charge means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage ;							
17	Chartered accountant means a CA as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;							
18	Chief Executive Officer means an officer of a company, who has been designated as such by it;							
19	Chief Financial Officer means a person appointed as the Chief Financial Officer of a company;							
20	Company means a company incorporated under this Act or under any previous company law; Example: Reliance Industries Limited incorporated in year 1973, Tata Steel Limited incorporated in year 1907, Infosys Limited incorporated in year 1981. Such companies are incorporated under Companies Act, 1956 (previous company law) are also included in the above definition							
21	Company limited by guarantee means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up ;							
22	Company limited by shares means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them; Example: A shareholder who has paid Rs. 75 on a share of face value Rs. 100 can be called upon to pay the balance of Rs. 25 only.							
26	Contributory means a person liable to contribute towards the assets of the company in the event of its being wound up . Explanation: For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;							

27	Control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner
30	Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not. Provided that, following instrument shall not be shall not be treated as debenture: a. instruments referred to in Chapter III-D of the RBI Act, 1934; and b. such other instrument, as may be prescribed by CG in consultation with RBI, issued by a company,
34	Director means a director appointed to the Board of a company;
35	Dividend includes any interim dividend;
36	Document includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;
37	Employees stock option means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;
38	"Expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
40	Financial statement in relation to a company, includes: i. Balance sheet as at the end of the financial year; ii. a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year; iii. cash flow statement for the financial year; iv. a statement of changes in equity, if applicable; and v. any explanatory note annexed to, or forming part of, any doc. referred to in sub-clause (i) to (iv): Provided that the FS, with respect to OPC, small company and dormant company, may not include the cash flow statement;
41	Financial Year , in relation to any company or BC, means period ending on 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof FS of the company or BC is made up. Provided that where a company or BC, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different FY for consolidation of its accounts outside India, the CG may, on an application made by that company or BC in such form and manner as may be prescribed, allow any period as its FY, whether or not that period is a year.
43	Free reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend. <u>Provided that, following shall not be treated as free reserve:</u> i. any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or ii. any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value;

45	Government company means any company in which not less than 51% of the paid-up share capital is held by CG , or by any SG , or partly by CG and partly by one or more SG , and includes a company which is a subsidiary company of such a Government company ;
46	Holding company , in relation to one or more other companies, means a company of which such companies are subsidiary companies ;
50	Issued Capital means such capital as the company issues from time to time for subscription ;
51	Key Managerial Personnel , in relation to a company, means: <ol style="list-style-type: none"> the CEO or the managing director or the manager; the company secretary; the whole-time director; the Chief Financial Officer such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and such other officer as may be prescribed;
52	Listed company means a company which has any of its securities listed on any recognised stock exchange ("RSE") ; <p>Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the SEBI, shall not be considered as listed companies.</p> <p>According to Rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:</p> <ol style="list-style-type: none"> Public companies which have not listed their equity shares on a RSE but have listed their: <ol style="list-style-type: none"> non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; both categories of (i) and (ii) above. Private companies which have listed their non-convertible debt securities on private placement basis on a RSE in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; Public companies which have not listed their equity shares on a RSE but whose equity shares are listed on a stock exchange in a jurisdiction as specified in section 23(A) of the Act.
53	Manager means an individual who: <ul style="list-style-type: none"> subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;
54	Managing Director means a director who <ul style="list-style-type: none"> By virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

	<p>Explanation: For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board shall not be deemed to be included within the substantial powers of management;</p> <p>Power to do administrative act:</p> <table border="1"> <tr> <td>power to affix the common seal to any document</td> <td>draw and endorse any cheque in any bank</td> <td>draw and endorse any negotiable instrument</td> <td>sign any certificate of share</td> <td>direct registration of transfer of any share</td> </tr> </table>	power to affix the common seal to any document	draw and endorse any cheque in any bank	draw and endorse any negotiable instrument	sign any certificate of share	direct registration of transfer of any share
power to affix the common seal to any document	draw and endorse any cheque in any bank	draw and endorse any negotiable instrument	sign any certificate of share	direct registration of transfer of any share		
55	<p>Member in relation to a company, means:</p> <ol style="list-style-type: none"> the subscriber to the memorandum of co. 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; 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; every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository; 					
56	<p>Memorandum means the MoA of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;</p>					
57	<p>Net worth means the:</p> <table border="1"> <tr> <td> <p>Aggregate value of:</p> <ol style="list-style-type: none"> paid-up share capital, All reserves created out of the profits*, Securities premium account and debit or credit balance of P&L account </td> <td> <p>After deducting aggregate value of:</p> <ol style="list-style-type: none"> the accumulated losses, deferred expenditure and miscellaneous expenditure not written off </td> </tr> </table> <p>*but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation</p>	<p>Aggregate value of:</p> <ol style="list-style-type: none"> paid-up share capital, All reserves created out of the profits*, Securities premium account and debit or credit balance of P&L account 	<p>After deducting aggregate value of:</p> <ol style="list-style-type: none"> the accumulated losses, deferred expenditure and miscellaneous expenditure not written off 			
<p>Aggregate value of:</p> <ol style="list-style-type: none"> paid-up share capital, All reserves created out of the profits*, Securities premium account and debit or credit balance of P&L account 	<p>After deducting aggregate value of:</p> <ol style="list-style-type: none"> the accumulated losses, deferred expenditure and miscellaneous expenditure not written off 					
58	<p>Notification means a notification published in OG and expression "notify" to be construed accordingly;</p>					
59	<p>Officer includes any director, manager or KMP or any person in accordance with whose directions or instructions the BoD or any one or more of the directors is or are accustomed to act;</p>					
60	<p>Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:</p> <ol style="list-style-type: none"> Whole-time director; KMP; where there is no KMP, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified; any person who, under the immediate authority of the Board or any KMP, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default; any person in accordance with whose advice, directions or instructions the BoD of company is accustomed to act, other than a person who gives advice to the Board in a professional capacity; every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation 					

	<p>in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;</p> <p>(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;</p>
62	One Person Company (OPC) means a company which has only one person as a member ;
63	Ordinary or Special Resolution means an OR/SR as referred to in section 114;
64	<p>Paid-up share capital or share capital paid-up means:</p> <p>such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;</p>
65	Postal ballot means voting by post or through any e-mode ;
66	Prescribed means prescribed by rules made under this Act;
68	<p>Private Company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:</p> <ol style="list-style-type: none"> i. restricts the right to transfer its shares; ii. except in case of OPC, limits the number of its members to 200: <p>Provided that in case joint holding - Treat them as single member</p> <p>Provided further, following shall not be included in number of members:</p> <ol style="list-style-type: none"> a. persons who are in the employment of the company; and b. persons who, having been formerly in employment of company, were members of company while in that employment and have continued to be members after the employment ceased <p>iii. prohibits any invitation to the public to subscribe for any securities of the company;</p> <p>The requirement of having a Minimum PUSC shall not apply to a Section 8 company (Formation of companies with charitable objects, etc.) provided it has not committed a default in filing its financial statements u/s 137 of the Companies Act, 2013, or annual return u/s 92 of the said Act with RoC.</p>
69	<p>Promoter means a person:</p> <ol style="list-style-type: none"> i. who has been named as such in a prospectus or is identified by the company in annual return u/s 92, ii. who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or iii. in accordance with whose advice, directions or instructions the Board of the company is accustomed to act: <p>Provided that nothing in sub-clause (c) shall apply to person who is acting merely in a professional capacity;</p>
70	Prospectus means any document described or issued as a prospectus and includes a red herring prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate ;
71	<p>Public company means a company which:</p> <ol style="list-style-type: none"> i. is not a private company; and ii. has a minimum paid-up share capital as may be prescribed (N.A. to Sec 8 companies) <p>Provided that subsidiary of a public company shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;</p>

	Example: A Pvt. Ltd. is wholly owned subsidiary of AB Ltd., a public company. A Pvt. Ltd. wanted to avail exemptions as provided to private companies. In this case, since A Pvt. Ltd. is subsidiary of AB Ltd., which is a public company, therefore A Pvt. Ltd. will be deemed to be a public company and will be not allowed to avail exemptions provided to a private company.
74	Register of companies means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;
75	Registrar means a Registrar , an Additional Registrar , a Joint Registrar , a Deputy Registrar or an Assistant Registrar , having the duty of registering companies and discharging various functions under this Act
76	<p>Related Party:</p> <pre> graph TD RP[Related Party] --> P[Person] RP --> F[Firm] RP --> PC[Private Company] RP --> PubC[Public Company] P --> DR[Director and Relatives] P --> KMP[KMP and Relatives] F --> DM[Director, Manager or relative is a partner] PC --> DM2[Director, Manager or Relative is - Member or Director] PubC --> DM3[Such director or manager of Relative is - a director AND holds along with relatives >2% of PUSC] RP --> BC[Body Corporate (N.A to Private Company)] RP --> AP[Any person] RP --> OP[Other person] BC --> BOD[BOD / MD / Manager is accustomed to act per advice or instruction of director or manager and relative] BC --> H[holding, subsidiary, co-subsidiary or associate of such company] BC --> I[Investing company or venturer of the company (such investment leads to the company becoming associate)] AP --> AD[on whose advice or instruction of director or manager and relative is accustomed to act] OP --> APrescribed[As may be prescribed] OP --> D[Director (other than I.D), KMP of the holding co. or relatives of such directors or KMP] </pre>
77	<p>Relative:</p> <p>Anyone who is related to another and covers the following:</p> <ol style="list-style-type: none"> they are members of a HUF (Hindu Undivided Family); they are husband and wife; or one person is related to the other in the prescribed manner as under: <ol style="list-style-type: none"> Father (including step-father); Mother (including step-mother); Son (including step-son); Son's wife; Daughter (including step-daughter); Daughter's husband; Brother (including the step-brother); Sister (including the step-sister).
78	Remuneration means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961
84	Share means a share in the share capital of a company and includes stock ;
85	<p>Small company means a company, other than a public company:</p> <ol style="list-style-type: none"> PUSC of which does not exceed Rs. 50 lakh or such higher amount as may be prescribed which shall not be > Rs. 10 crores; and turnover of which as per P&L account for the immediately preceding FY does not exceed Rs. 2 crores or such higher amount as may be prescribed which shall not be > Rs. 100 crores

	<p>Provided that nothing in this clause shall apply to:</p> <ol style="list-style-type: none"> i. a holding company or a subsidiary company; ii. a company registered under section 8; or iii. a company or body corporate governed by any special Act. <p>As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of section 2(85), PUSC and T/O of the small company shall not exceed rupees two crores and rupees twenty crores respectively.</p> <p>Example: H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2019 of S Pvt. Ltd., its turnover was to extent of Rs. 1.50 crores; and paid-up share capital was Rs. 40 lacs. Since S Pvt. Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' it wants to be categorized as 'small company'. S Pvt. Ltd. cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.)</p>
86	<p>Subscribed capital means such part of the capital which is for the time being subscribed by the members of a company;</p> <p>Example: ABC Ltd. was registered with Registrar with an Authorised capital of Rs. 2,00,00,000 where each share is of Rs. 10. In response to the advertisements made by the company to buy shares in the company, applications have been received for 10,00,000 shares but company actually issued 700,000 shares where company has called for Rs. 8 per share. All the calls have been met in full except three shareholders who still owe for their 6000 shares in total.</p> <p><u>Amount of various share capital</u></p> <p>Authorized share capital = Rs. 2,00,00,000 (2 crores) Subscribed capital = 10,00,000 shares x 10 = Rs. 1,00,00,000 (1 Crore) Issued capital = 7,00,000 x 10 = Rs. 70,00,000 Called-up capital = 7,00,000 x 8 = Rs. 56,00,000 Paid-up capital = 56,00,000 - (6000 x Rs. 8) = Rs. 55,52,000</p>
87	<p>Subsidiary company or Subsidiary, in relation to any other company, means a company in which the holding company—</p> <ol style="list-style-type: none"> i. controls the composition of the Board of Directors; or ii. exercises or controls more than $\frac{1}{2}$ of the total voting power either at its own or together with one or more of its subsidiary companies. <p>Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.</p> <p>Explanation: For the purposes of this clause:</p> <ol style="list-style-type: none"> a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company; b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors; c) the expression "company" includes any body corporate; d) layer in relation to a holding company means its subsidiary or subsidiaries;

	Note - Shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding -subsidiary relationship.
88	Sweat equity shares means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions .
89	Total voting power , in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes ;
90	Tribunal means the NCLT constituted u/s 408;
91	Turnover means the gross amount of revenue recognised in the P&L account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a FY ;
92	Unlimited company means a company not having any limit on the liability of its members;
93	Voting Right means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;

Chapter 2 - Incorporation of Company and Matters incidental thereto

Section 3 - Formation of Company:

A company may be formed for any **lawful purpose** by:

- (a) **> = 7** persons in case of a **public** company;
- (b) **> = 2** persons in case of a **private** company; or
- (c) **1 person**, where the company to be formed is to be **OPC** that is to say, a **private company**, by **subscribing** to a **memorandum** and complying with the requirements of this Act.

A Company formed above may either be - Limited by Shares, Guarantee or an Unlimited company.

Provided that the **MoA of OPC** shall indicate the **name** of the **other person**, with his prior **written consent** in the prescribed form, who shall, in the **event** of the subscriber's **death** or his incapacity to contract become the **member** of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the **OPC** along with its MoA and AoA (i.e., **specify nominee**)

Additional Points:

1. Nominee may **withdraw** consent any time in prescribed form
2. Member of OPC may, at any time, change the name of Nominee by:
 - a. Giving **notice** in prescribed form
 - b. Intimating the **company** about such change
 - c. On receipt of such intimation, company to inform **Registrar**.
 - d. Change of such name shall **NOT be deemed as Alteration of MoA**

Section 3A - Members severally liable in certain cases:

If at any time, the **no. of members is reduced** below prescribed limit i.e., 7 (public) or 2 (private)



Company carries on **business for > 6 months** while no. of members is so reduced

Every person who is a member during the time that it so carries on business **after those 6m** and is **cognizant** of the fact that it is carrying on business with **< 7 or 2 members**, as the case may be, shall be **severally liable** for payment of **whole debts** contracted during that time, and **may be** severally sued therefor

Section 7 - Incorporation of Company:

•STEPS FOR INCORPORATION

1.

•Reservation of name by filing e- application

2.

•Drafting & signing of MOA & AOA and its submission to ROC. These documents have to be e-filed and e-stamped

3.

•Consent of persons nominated as directors to act as directors to be submitted electronically

4.

•Submission of statutory declaration of compliances and other declarations

5.

•Pay fees & amount of stamp duty electronically

6.

•Obtain certificate of incorporation digitally signed by ROC

7.

•File declaration about address of Registered office

1. File the following documents and information with the Registrar within whose jurisdiction the Registered Office (RO) of a company is proposed to be situated:

MoA and AoA of co. duly signed by Subscribers to MoA

Declaration that req. of Act/Rules w.r.t., incorp. is complied with by:

1. Advocate, CA, Cost Accountant, CS in practice engaged in formation of co.
2. Person named in AoA as a director, mgr. or secretary of co.

Address for correspondence till RO is estb.

Related to first directors - Interest in other firms/BC + Consent to act as directors

Particulars of name, residential address, nationality and other particulars of every subscriber to MoA + Proof of identity

Particulars of first directors - Names, DIN, residential address, nationality and other particulars + Proof of identity

Declaration from each Subscribers and First Directors that he is not convicted of offence w.r.t., promotion, formation or mgt. of any co., or that he has not been found guilty of any fraud/misfeasance or breach of duty to any co. during preceding 5 years AND that all docs filed with RoC for registration contain correct, complete and true information to best of his knowledge and belief

2. **Issue of Certificate of incorporation ("COI")** - RoC shall, on basis of above doc and info, register and issue a COI in the prescribed form to the effect that the proposed company is incorporated under this Act
3. **Allotment of Corporate Identity Number (CIN)** - RoC shall allot to the co. a CIN, which shall be a distinct identity for the company and which shall also be included in the COI

4. Company shall maintain & **preserve at its RO** copies of all docs & info. as originally filed u/ss (1) till **dissolution**.
5. If person furnishes any **false/incorrect** particulars of info. or **suppresses** any material info., of which he is aware in any of docs filed with RoC above, → Such person shall be **liable** for action **u/s 447**
6. If at incorporation, it is proved that co. is incorporated by furnishing **false/incorrect** info. or representation or by **suppressing** any material info. for incorporating such company, or by any fraudulent action:
 - a. the **promoters**, the **first directors** and persons making **declaration** u/s 3(1)(b) shall **each be** liable u/s 447.
 - b. Tribunal may, on an application made to it:
 - i. pass orders for **regulation of management** of the co. including changes, if any, in its MoA/AoA, in **public interest** or in the interest of company and its members and creditors; or
 - ii. direct that **liability** of the members shall be **unlimited**; or
 - iii. direct **removal** of the name of the company from the register of companies; or
 - iv. pass an order for the **winding up** of the company; or
 - v. pass such **other orders** as it may deem fit

Provided that - Prior to such orders - Reasonable **OoBh** + Take into consideration transaction entered into by co.

Simplified Proforma for Incorporating Company Electronically (SPICE) - For ease of doing business, MCA has not simplified the process of filing of forms for incorporation of company though SPICE.

Formation of One Person Company (OPC):

- MoA of OPC to indicate name of other person (nominee) who becomes member of the OPC in case of death/incapacity of subscriber
 - Nominee to give his prior **written consent** in prescribed form.
 - Such written consent to be **filed with RoC** along with MoA/AoA
 - Nominee may **withdraw** consent any time in prescribed form
 - Member of OPC may, at any time, change the name of Nominee by:
 - a. Giving **notice** in prescribed form
 - b. Intimating the **company** about such change
 - c. On receipt of such intimation, company to inform **Registrar**.
 - d. Change of such name shall **NOT be deemed as Alteration of MoA**
 - Only a **natural person** who is an **Indian citizen** whether **resident** in India or otherwise:
 - shall be eligible to **incorporate OPC**;
 - shall be a **nominee** for the sole member of OPC.
- "Resident in India" means a person who has stayed in India for **> = 120 days** during immediately preceding FY.
- A natural person shall not be member of **> 1 OPC** at any point of time and **the said person** shall not be a **nominee** of **> 1 OPC**.
 - Where a natural person being member in **OPC becomes member** in another such company by virtue of his being a **nominee** in that OPC, such person shall meet **eligibility criteria** (as given in point above) **within 180 days**.
 - **No minor** shall become member or nominee of the OPC or can hold share with beneficial interest.
 - Such Company **cannot** be incorporated or **converted** into a company **u/s 8** of the Act.
 - OPC **may be converted to private/public companies** in certain cases. The procedure of conversion is given in the Rules 6 & 7 of Chapter II of the Companies Act, 2013.
 - OPC **cannot carry out** Non-Banking Financial Investment activities including investment in sec. of any BC

Section 8 - Formation of companies with charitable objects, etc:

1. Where CG is **satisfied** that a person/AOP proposed to be registered as **Limited company**:

a. Has its **objects** to promote -

Commerce	Art	Science	Sports	Education	Research	Social Welfare
Religion	Charity	Protection of environment	Other Object			

b. intends to **apply** its **profits**, if any, or other income in promoting its objects; and

c. intends to **prohibit** the payment of any **dividend** to its members,

CG may issue a **license** and thereupon the RoC shall register such company as **Limited Company**. [Without addition of the word "Limited" or "Pvt. Ltd" as the case may be]

2. Sec 8 co = Privileges and obligation of Limited company.

3. Can a **Firm** become member of Section 8 company - **Yes!**

4. Additional points relating to Section 8 co.:

a. **Not alter** provision of MoA or AoA w/o prior approval of **CG**

b. **May be converted** to any other kind of company only after complying with conditions prescribed

5. CG may suo motu also issue license to an existing public or private co.

6. **Revocation of License and conversion to normal company**: CG may, by order, revoke license (after **OOBH**) if:

a. the co. **contravenes** any requirements of this section or any conditions subj. to which a license is issued or

b. the affairs of co. are conducted **fraudulently** or in manner violative of objects of co. or prejudicial to **public interest**,

Without prejudice to any other action against the company under this Act, **direct the company to convert** its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the **Registrar** shall register the company accordingly:

7. Where license is revoked, CG may, in public interest, order winding up under this Act (reasonable OOBH)

8. Where license is revoked, CG may, in public interest, amalgamate such co. with other company registered under this section and having similar objects. Constitution, powers, rights, etc. to be defined by CG

9. If on winding up/dissolution → There remains, after satisfaction of its liabilities, **any asset**, they may be:

a. **transfer to another company** registered under this section having similar objects subject to T&C imposed by Tribunal, or

b. **sold** and proceeds thereof credited to **Insolvency and Bankruptcy Fund** formed u/s 224 of IBC, 2016

10. Section 8 co. to amalgamate only with Sec 8 co. having similar objectives

11. **Punishment for default**:

If a co. makes any default in complying with requirements of this section, the co. shall be **punishable with fine** which shall not be less than **Rs. 10 lakhs** but which may extend to **Rs. 1 crores** **AND** the **directors** and every **officer** of the company who **is in default** shall be punishable with fine which shall not be less than **Rs. 25,000** but which may extend to **Rs. 25 lakhs** [Amended w.e.f. Dec 2020]

Examples of exceptions to Sec 8 companies:

a. Call for GM by giving clear 14 days' notice (instead of 21)

b. Requirement of min. no. of director, ID, does not apply.

c. Need not constitute NRC or SRC

Section 9 - Effect of Registration:

From the **date of incorporation** mentioned in **COI**, such **subscribers** to MoA and all other persons, as may, from time to time, become **members** of the company, shall be:

- a **body corporate** by the name contained in the memorandum,
- b. capable of exercising all the functions of an incorporated company under this Act and
- c. having **perpetual succession** with **power** to acquire, hold and dispose of **property**, both movable and immovable, tangible and intangible, to **contract** and to **sue** and be sued, by the said name.

Certain case laws to understand the effect of registration:

Hari Nagar Sugar Mills Ltd. vs. S.S. Jhunjhunwala	From date of incorp. (as per COI), the co. becomes a legal person separate from the incorporators; and there comes into existence a binding contract b/w company and its members as evidenced by MoA/AoA
State Trading Corporation of India vs. Commercial Tax Officer	A company on registration acquires a separate existence and the law recognizes it as a legal person separate and distinct from its members
Spencer & Co. Ltd. Madras vs. CWT Madras	Merely because a company purchases all shares of another company, it will not serve as a means of putting an end to the corporate character of another company and each company is a separate juristic entity
Heavy Electrical Union vs. State of Bihar	The mere fact that entire share capital has been contributed by CG and all its shares are held by the President of India and other officers of CG does not make any difference in the position of registered company and it does not make a company an agent either of the President or CG

Section 4 - Memorandum of Association: [As defined u/s 2(56)]

Basics of MoA:

- Base document for the formation of the company (MoA + AoA = Constitutional Document)
- It contains object for formation of co. beyond which its actions cannot go.
- A **memorandum** is a **public document u/s 399** of the Companies Act, 2013. Consequently, every person entering into a contract with the company is **presumed** to have **knowledge** of conditions contained therein.
- Shareholders must know the **purposes** for which his money can be used by the company and what **risks** he is taking in making the investment.
- Co. cannot depart from provisions contained in MoA - Otherwise, UltraVires Act.

Provisions:

1. The MoA of a company shall state: [**NR SOLO**]

- a. the **Name** of company with last word "Limited" (public limited co.), or "Private Limited" (Pvt. limited co.); Requirement of Name clause **N.A. to Sec 8 Co.**
- b. the **State** in which the **Registered office** of the company is to be situated;
- c. the **Objects** for which the company is proposed to be incorporated and any **matter** incidental thereto;
- d. the **Liability** of members of company, whether limited or unlimited, and also state that liability is limited to unpaid amount of shares (in case of co. limited by shares) or amount upto which member undertake to contribute in event of winding up (in case of limited by Guarantee)
- e. in the case of a company having a **share capital (SC)**:
 - (i) **amt. of SC** with which co. is to be registered (ASC) and **division** thereof into shares of fixed **amount** and **no. of shares** which subscribers to MoA agree to subscribe which shall **not be < one share**; **and**
 - (ii) the **no. of shares** each subscriber to MoA intends to take, indicated opposite his name;
- f. in case of OPC → **Name** of person who, in event of **death** of subscriber, shall become the **member** of OPC.

2. **Name Clause:** The name stated in the memorandum shall **NOT**:

- (a) be **identical** with or resemble too nearly to the name of an **existing co.** registered under this/previous Act;
 (b) be such that its use by the company:
 (i) will constitute an **offence** under any law for the time being in force; or
 (ii) is **undesirable** in the opinion of the Central Government.

3. Without prejudice to provision u/ss (2), a co. shall **not** be registered with a **name** which contains:
 a. any **word** or expression which is likely to give the **impression** that the company is in any way connected with, or having the **patronage** of, the **CG**, any **SG**, or any **local authority**, corporation or body constituted by the **CG/SG** under any law for the time being in force; or
 b. such **word** or expression, as may be **prescribed**, unless the **previous approval** of **CG** has been **obtained** for the use of any such word or expression.

Rule 8B of Companies (Incorporation) Rules, 2014:

Following **words** and combinations thereof shall **not be used** in the name of a company in English or any of the languages depicting the same meaning unless the **previous approval of the CG** has been obtained:

• Board;	• National;	• Authority;	• Rashtrapati;	• Development Authority;
• Union;	• Republic;	• Municipal;	• Forest corporation;	• Small Scale Industries;
• Nation;	• President	• Panchayat;	• Development	• PM or CM;
• Central;	• Minister;	• Commission;	Scheme;	• Financial Corporation and
• Federal;	• Governor;	• Undertaking;	• Court or Judiciary;	the like;
• Bureau			• Statute or	• Khadi and Village Industries
			Statutory;	Corporation;

The use of **word of Scheme** with the name of Government (s), **State, India, Bharat** or any Government authority or in any manner resembling with the schemes launched by **CG/SG** or local Governments/auth.

If the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., unless a **declaration** is submitted by the applicant that the **requirements** mandated by the respective **regulator**, such as IRDA, RBI, SEBI, MCA etc. have been **complied** with by the applicant:

4. A person **may** make an application (SPICe+/RUN form) to **Registrar** for **reservation** of a **name** set out in appln as:
 (a) the name of the **proposed** company; or
 (b) the name to which the company **proposes** to **change** its name.
5. **Reservation of Name:**
 i. Upon receipt of appln u/ss (4), the **Registrar may**, on the basis of info. and docs furnished with application, **reserve** the name **for 21 days** from the date of approval or such other period as may be prescribed:
 Provided that in case of an application for reservation of name or for change of its name by an **existing company**, the Registrar may reserve the name for **60 days** from the date of **approval**.
- ii. Where after reservation, it is **found** that name was applied by furnishing **wrong** or incorrect **info**, then:
 a. if company not yet incorporated → **Cancel** reserved name + **Applicant** liable for penalty **upto Rs. 1 lakh**;
 b. if company is incorporated → **Registrar** may, after giving the company an OOBH:
 i. either direct the company to **change** its name **within 3 months**, after passing an **OR**;
 ii. take action for **striking off** the name of the company from the register of companies; or
 iii. make a petition for **winding up** of the company.

General Circular No. 29/2014 dated 11th of July, 2014:

CG directed Registrar that while allotting names to Companies/LLPs, the RoC concerned should exercise due care to ensure that the names are not in contravention of the provisions of the "Emblems and Names (Prevention of Improper Use) Act, 1950. It is necessary that Registrars are fully familiar with provisions of the said Act.

6. MoA shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable.
7. In case of co. limited by guarantee and not having a share capital - Any provision in MoA/AoA purporting to give any person a right to participate in the divisible profits of co. otherwise than as a member, shall be void.

Doctrine of Ultra Vires

- In case of a company, whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires.
- An act which is ultra vires is void, and does not bind the company.
- Neither the company nor the contracting party can sue on it.
- The company cannot make it valid, even if every member assents to it.

Important Case Laws:

Rajendra Nath Dutta v. Shilendra Nath Mukherjee, 1982.	An act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form
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House of Lords in - Ashbury Railway Carriage and Iron Co. Ltd. v. Riche

Facts of the case: MoA defined its objects as - "The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers and **general contractors.....**". The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation of this contract by the company on the ground of its being ultra vires, Riche brought a case for damages on the ground of breach of contract, as according to him the words "general contractors" in the objects clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. **More so** because the contract was **ratified** by a majority of shareholders.

Decision by The House of Lords:

Held that the contract was **ultra vires** the company and, therefore, **null and void**. The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. The Court held that if every shareholder of the company had been in the room and had said, "That is a contract which we desire to make, which we authorise the directors to make", still it would be ultra vires. The **shareholders cannot** ratify such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

The purpose of doctrine of ultra vires has been defeated as now the object clause can be easily altered, by passing just a special resolution by the shareholders

Section 5 - Article of Association: [As defined u/s 2(5)] [N.A. to company registered under 1956 Act]

1. AoA shall contain the **regulations for management** of the company
2. AoA to include such **matters**, as may be prescribed.
Provided that company may include such additional matters in AoA as may be considered necessary for mgt.

3. AoA may contain provisions for **entrenchment** to the effect that specified provisions of AoA may be **altered** only if conditions or procedures as that are **more restrictive** than those applicable in case of **special resolution**, are met or complied with.
4. Provisions for **entrenchment** shall **only** be made **either** on **formation** of a company, or by an **amendment in AoA** to by **all members** (in case of **private** company) or by a **special resolution** (in case of **public** company)
5. Where AoA contain prov. for **entrenchment** → Co. shall give **notice** to **Registrar** of such prov. (in presc. form)
6. AoA shall be in respective forms specified in Tables, **F, G, H, I and J** in Schedule I as applicable to such co.
7. A company may **adopt** all or any of the regulations contained in the **model** articles applicable to such co.
8. In case of any company, which is **registered** after the **commencement** of this **Act**, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those **regulations (in the model)** shall, so far as applicable, be the **regulations** of that **company** in the same manner as if they were contained in the duly registered articles of the company.

Doctrine of Indoor Management:

- Persons dealing with the company **cannot be assumed** to have knowledge of internal problems of the company.
- **Stakeholders** need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that it is all done.
- The **doctrine** helps **protect external members** from the company and states that the people are entitled to **presume** that **internal proceedings** are as per documents submitted with the Registrar of Companies.

Doctrine of Indoor Management (DIM) vs Doctrine of Constructive Notice (DCN)

The DIM evolved around 150 years ago in the context of the DCN. The role of DIM is **opposed** to the role of DCN. Whereas the **DCN protects a company** against outsiders, the **DIM protects outsiders** against the actions of a company. This doctrine also is a **possible safeguard** against the possibility of abusing the DCN

Basis for Doctrine of Indoor Management

- What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
- If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Exceptions to DIM (i.e., Applicability of DCN):

Knowledge of irregularity: In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under DIM would no longer be available. In fact, he/she may well be considered part of the irregularity.

Negligence: If with a minimum of effort, the irregularities within a company could be discovered, the benefit of the DIM would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.

Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

Section 6 - Act to Override Memorandum, Articles, etc.

Save as otherwise expressly provided in this Act—

- a. the **provisions** of this **Act shall have effect** notwithstanding anything to the contrary contained in the MoA/AoA, or in any agreement executed by it, or in any resolution passed in GM or by its BoD, whether the same be registered, executed or passed, as the case may be, before/after commencement of this Act; **and**
- b. any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is **repugnant** to the provisions of this Act, become or be **void**, as the case may be.

Section 10 - Effect of Memorandum and Articles

1. Subject to the provisions of this Act, the MoA and AoA shall, when registered bind the **company** and the **members** thereof to the same extent as respectively signed by them and contained covenants on its and his part to **observe** all the provisions of the MoA/AoA.
2. All monies payable by any member to the company under MoA/AoA shall be a **debt due** from him to company.

Note - Company is liable to members and vice-versa. But members are not liable to each other.

Section 13 - Alteration of Memorandum [Alteration = Addition, Omission or substitution]

1. Alter provisions of MoA → **SR** + Comply with procedure of this section
2. Change in **Name** - Prior approval of **CG** required (power delegated to **RoC**)
Provided that - **No approval** if the only change is addition/deletion of the word "**Private**" on **conversion**
3. **Filing with RoC**: A company shall, in relation to any alteration of its memorandum, file with the Registrar—
 - (a) the **SR** passed by the company u/ss (1);
 - (b) the approval of **CG** u/ss (2), if alteration involves any change in the name of the company.
4. On change of name - RoC shall **enter** the new name in register of cos. and issue new **COI**.
Name change effective from issue of CoI
5. Alteration of registered office **from one state to another** - Approval of **CG** on application in prescribed form
A **certified copy** of the order of CG approving such change in state shall be filed by **Co.** with **RoC of each of the States** in manner prescribed, who shall **register the same**, and the **Registrar of the State where the registered office is being shifted to**, shall **issue a fresh CoI** indicating the alteration
6. On application u/s 13(4):
 - a. **CG** to dispose application within **60 days**
 - b. Before passing order, **satisfy** itself that:
 - i. Alteration has the **consent** of Crs., DH and other persons concerned with the company, or
 - ii. sufficient **provision** has been made by co. for due discharge of all its **debts** and obligations or
 - iii. adequate **security** has been provided for such discharge
7. **Change in object for which money raised from Public**:
A company, which has **raised money** from public through prospectus + still **has any unutilised amount** out of the money so raised, shall **not change** its objects for which it raised the money through prospectus unless a **special resolution** is passed by the company **and**:

- a. the **details**, as may be prescribed, in respect of such resolution shall also be **published** in the **newspapers** (one in English and one in vernacular language) which is in circulation at the place where **RO is situated** and shall also be **placed** on the **website** of the company, if any, **indicating** the justification for such change;
- b. the **dissenting shareholders** shall be given an **opportunity to exit** by the promoters and shareholders having control in accordance with regulations to be specified by the **SEBI**.

8. Alteration of Object clause of MoA:

The RoC shall **register** any alteration of MoA w.r.t, the **objects** of the company and certify the registration **within 30 days** from the date of filing of the **SR** u/ss (6)(a) of this section.

9. No alteration made under this section shall have any **effect** until it has been **registered** as per this section.
10. Any **alteration** of the MoA of a **company limited by guarantee and not having a share capital**, purporting to give any person a **right to participate in divisible profits** of the company otherwise than as a member, shall be **void**.

Summary of provision related to Amendment of MoA:

MOA clause	Members' Resolution	External approvals	Outcome	Applicability
Name Clause	Special Resolution	Approval of CG + Subj. to Sec 16	New CoI issued by ROC	N.A. where only word "Private" is added/deleted on class conversion
Domicile Clause	Special resolution	Approval of CG required only when RO is changed from one state to another	The CG shall dispose the appln within 60 days and before passing its order may satisfy itself that the consent of the creditors, debenture-holders and other persons concerned or that the sufficient provision has been made for the due discharge or that adequate security has been provided for discharge of debts.	
Objects Clause	Special resolution	-	A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a SR is passed and: <ul style="list-style-type: none"> i. the details of SR - published in newspapers + Placed on website of co. indicating justification for such change; ii. the dissenting shareholders shall be given an opportunity to exit by the promoters and SH having control as per SEBI regulations 	
Liability /Capital Clause	Special resolution	-	Any alteration of the MoA of a company limited by guarantee and not having a share capital, purporting to give any	

			person a right to participate in the divisible profits of the company otherwise than as a member, shall be void .	
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Section 14 - Alteration of articles

1. Company may, by **SR**, alter its AoA.

Alteration of AoA includes conversion of:

- Pvt co. to public co.
- Public co. to Private co. (subject to **approval of CG** by application in prescribed form)

Provided that - Where a Pvt. co. alters its article such that it does not include the restriction/limitation which a Pvt. co. is required to include in AoA as per the Act, such Pvt. co. shall cease to be private from date of alteration [Bole toh - Agar restriction on trf. of share hataa diya AoA se, toh fir Pvt. nahin rahega]

- Every Alteration of AoA + Approval of CG for such alteration + Altered AoA → **File within 15 days with RoC for registration** in prescribed manner
- Any alteration of the AoA registered u/ss (2) shall, subject to the provisions of this Act, be **valid** as if it were **originally** in the articles.

Andrews vs Gas Meter Co. - The power to alter articles vests with the Company by virtue of Companies Act, 2013. A company cannot divest itself of these power.

Section 15: Alteration of MoA/AoA to be noted in every copy

(1) Alteration shall be noted in **every copy** of the MoA/AoA, as the case may be.

(2) If default u/s 15(1) → Co. + Every OID - Liable to penalty of **Rs. 1,000 for every copy issued** w/o alteration.

Section 17: Copies of memorandum, articles, etc., to be given to members.

1. A company shall, on being so **requested** by a member, send to him **within 7 days** of the request and subject to the payment of such fees as may be prescribed, a **copy** of each of the following documents, namely:

the memorandum	the articles	every agreement and every resolution referred u/s 117(1) if not embodied in MoA/AoA
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2. If default u/s 17 → Co. + Every OID - Liable **for each default - Rs. 1,000/day or Rs. 1 lakh WEL**

Section 12: Registered Office of Company

1. Co. shall, **within 30 days** of incorporation and at all times, thereafter, have a RO, capable of receiving comm.

2. Co. to furnish to RoC **verification of RO within 30 days** of incorporation

3. Every company shall:

- paint or affix its **name**, and the **address** of its **RO** on the **outside** of every **office** or place in which its business is carried on, in a **conspicuous** position, in **legible** letters in the **languages in general use** in that locality.
- have its name **engraved** in legible characters on its **seal**; if any
- get its name, address of its RO and the CIN along with telephone number, fax number, if any, e-mail and website addresses, if any, **printed** in all its business **letters**, billheads, letter papers and in all its notices and other official publications; and
- have its name **printed** on **hundreds**, promissory notes, bills of exchange and such other docs as prescribed

Provided that, in case name change during the **last 2 years**, print or affix the former name as well.

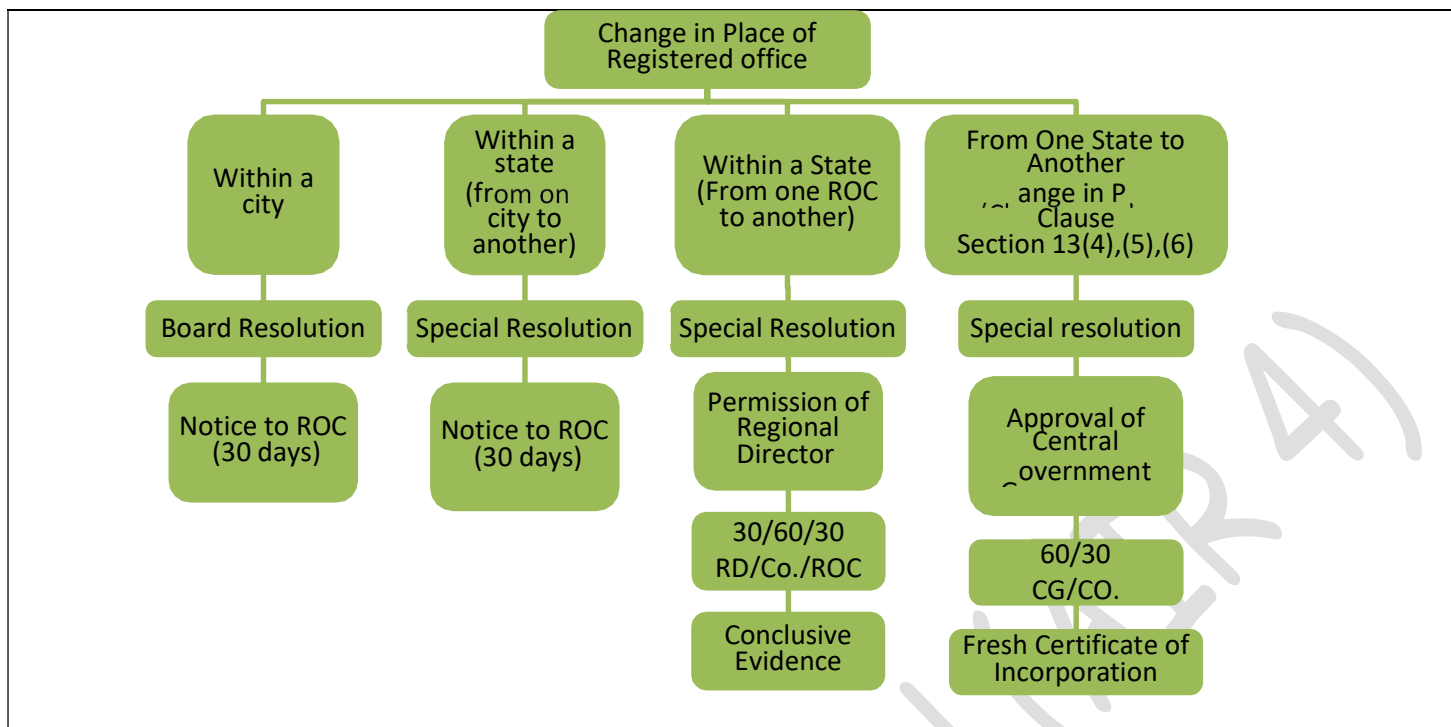
In case of OPC - The words "One Person Company" to be mentioned in bracket below such name.

4. Change in RO - Notice of change in situation of RO, verified in manner prescribed → Send to RoC **within 30 days** of change
5. Except by passing a **special resolution**, the RO shall NOT be changed:
 - a. in the case of an existing company, outside the **local** limits of any city, town or village where such office is situated at commencement of this Act or where it may be situated later by virtue of SR passed by co.;
 - b. in the case of any other company, outside the **local** limits of any city, town or village where such office is **first situated** or where it may be situated later by virtue of a SR passed by the company:

Provided that **no company** shall change the place of RO from **jurisdiction** of 1 RoC to another RoC within the **same State unless** confirmed by **Regional Director (RD)** on appln made in this behalf by Co. in prescribed manner.

6. On application u/ss 5, RD to communicate **confirmation within 30 days** from date of receipt of application
On such confirmation, co. to file the same with **RoC within 60 days** of date of confirmation
RoC shall **register** the same **and certify** the registration **within 30 days** from date of filing such confirmation.
7. The certificate referred u/ss (6) shall be **conclusive evidence** that all the **requirements** of this Act w.r.t, change of RO have been **complied with and** the change shall take effect from the date of the certificate.
8. If any **default** is made in complying with this section → **Company** and every OID shall be liable to penalty of **Rs. 1,000/day** during which the default continues but **not > Rs. 1 lakhs**.
9. If RoC has **RGTB** that co. is **not carrying on any business or operations**, he may cause a **physical verification** of the RO in prescribed manner and if any **default** is found to be made in complying with requirements of sub-section (1) → Initiate action for the **removal** of the name of the company from register of companies

Can RO be different from Head Office or Corporate office? - **Yes!**



Section 10A: Commencement of business etc.

1. A **company having a share capital** shall not commence any business or exercise any borrowing powers unless:
 - a. a **declaration** is filed by a **director** within **180 days** of date of **incorporation** of the company in such form and verified in such manner as may be prescribed, with the **Registrar** that every **subscriber** to the **memorandum** has **paid** the **value** of shares agreed to be taken as on date of making such declaration; **and**
 - b. The company has filed with the **Registrar** a **verification** of its RO as provided u/s 12(2)
2. If any **default** under this section → company - Rs. 50,000 **and** every OID - Rs. 1,000/day upto Rs. 1 lakh
3. If no declaration within 180 days + RoC has **RGTB** that co. is **not carrying on any business or operations** → RoC may initiate action for the **removal** of the name of the company from register of companies

As per the Companies (Incorporation) Rules, 2014:

Declaration u/s 10A by a director shall be in prescribed form **and** contents of the said form shall be **verified** by a **CS/CA or a Cost Accountant, in practice.**

Additionally, in case of a **co.** pursuing objects requiring registration/approval from any **sectoral regulators** such as RBI, SEBI, etc., the regt./approval from such regulator shall also be **obtained** and attached with the declaration.

Section 16: Rectification of Name of Company:

1. If, through **inadvertence** or otherwise, a company on its **first registration** or on its registration by a new name, is registered by a name which:
 - a. in opinion of **CG**, is **identical** with or **too nearly resembles** the name by which a company in existence had been previously registered, it may **direct** the company to **change its name** and the company shall change its name **within 3 months** from such direction, after adopting an **ordinary resolution** for the purpose;
 - b. on an application by a registered **proprietor** of a **trade mark** that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to **CG** **within 3 years** of incorporation or registration or change of name of the company, in the opinion of **CG**, is identical with or too nearly resembles to an existing trade mark, it may **direct** the company to change its name and the company shall change its name or new name, as the case may be, **within 3 months** from the issue of such direction, after adopting an **ordinary resolution** for the purpose.

2. Where a company **changes its name** or obtains a new name u/ss (1), it shall **within 15 days** from date of such change, give **notice** of the change to **Registrar** along with the **order** of **CG**, who shall carry out necessary changes in the **CoI** and **memorandum**.
3. If a company is in default in complying with any direction given u/ss (1), the **CG** shall allot a new name to the company in prescribed manner and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh **CoI** with the new name, which the company shall use thereafter **[w.e.f. 1st Sept 2021 - Remove the penalty in your module]**

Provided that nothing here shall prevent a company from subsequently changing its name as per Sec 13

Section 18: Conversion of Companies Already Registered:

1. A co. of **any class** registered under this Act **may convert** itself as a company of **other class** under this Act by **alteration** of **MoA and AoA** of the company in accordance with the provisions of this Chapter.
2. Where the **conversion** is required to be done under this section, the **Registrar** shall on an **application** made by the company, after satisfying himself that the provisions of this Chapter have been complied with, **close the former registration** of the company and after registering the documents referred to in sub-section (1), issue a **certificate of incorporation** in the same manner as its first registration.
3. The **registration** of a company under this section shall **not affect any debts, liabilities**, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

Section 19: Subsidiary Company not to hold Shares in its Holding Company

1. No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be **void**

Provided that nothing in this sub-section shall apply to a case:

- a. where sub sy company holds such shares as **legal representative** of a deceased member of holding co.; or
- b. where the subsidiary company holds such shares as a **trustee**; or
- c. where sub sy company is a **SH even before it became a subsidiary company** of the holding company:

Provided further that sub sy company referred to in the preceding proviso shall have a **right to vote** at a **meeting** of holding company only w.r.t., the shares held by it as a LR/trustee, as referred to in said proviso.

2. The reference in this section to the shares of a **holding company which is a company limited by guarantee or an unlimited company, not having a share capital**, shall be construed as a reference to the **interest** of its **members**, whatever be the form of interest.

Section 20: Service of Documents

1. A **document** may be served **on a company** or an officer thereof by sending it to the company or the officer at the registered office of the company by:

registered
post

speed
post

courier
service

leaving it
at its RO

means of such electronic or other
mode as may be prescribed

However, where securities are held with a **depository**, the **records** of the **beneficial ownership** may be served by such depository on the company by means of electronic or other mode.

2. A **document** may be served **on Registrar** or any **member** by sending it to him by:

registered post

speed post

courier service

delivering at his office or address

means of such electronic or other mode as may be prescribed

Provided that member may request delivery through a particular mode by paying fees as determined in AGM.

Exception to Nidhi Co.

In case of Nidhi Company, u/s 20 (2), docs may be served **only on members** who hold **shares > Rs. 1,000 in face value or >1% of the total PUSC** whichever is **less**.

For other SHs, docs may be served by a **public notice** in **newspaper** circulated in the district where the RO of Nidhi is situated; **and** publication of the same on the **notice board** of the Nidhi.

Refer Rule 35 (Service of Documents) of Companies (Incorporation) Rules, 2014 from ICAI Module

Section 21: Authentication of documents, proceedings and contracts

Save as otherwise provided in this Act,

(a) a document or proceeding requiring **authentication** by a company; or

(b) **contracts** made by or on behalf of a company,

may be **signed** by any **KMP** or an **officer** or employee of the company duly **authorised** by the **Board** in this behalf.

Section 22: Execution of bills of exchange (BOE), etc.

1. A BOE, hundi or promissory note shall be **deemed** to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company **by any person** acting under its **authority, express or implied**.

2. A company may, by writing under its **common seal**, if any, **authorise** any person, either generally or in respect of any specified matters, as its **attorney to execute** other deeds on its behalf in any place

Provided that in case if **no common seal**, the **authorisation** under this subsection shall be made by **2 directors** or by **director + CS**, wherever the company has appointed a Company Secretary.

3. A deed signed by such an attorney on behalf of the company and under his seal shall **bind** the company

Chapter 3 - Prospectus and Allotment of Securities

Form	Section No	Purpose
PAS - 1	Sec 27	Advertisement providing details of notice of SR for varying terms of contracts referred to in Prospectus or Objects for which Prospectus was issued
PAS - 2	Sec 31	Information Memorandum
PAS - 3	Sec 39 & 42	Return of allotment of securities
PAS - 4	Sec 42	Private placements offer cum application letter
PAS - 5	Sec 42	Record of Private placement offers
PAS - 6	Sec 29	Unlisted Public company to file with RoC within 60 days of each half year

Sec No.	Section Name
23	Public Offer and Private Placement
24	Power of Securities and Exchange Board to Regulate Issue and Transfer of Securities, etc.
25	Document Containing Offer of Securities for Sale to be Deemed Prospectus
26	Matters to be Stated in Prospectus
27	Variation in Terms of Contract or Objects in Prospectus
28	Offer of Sale of Shares by Certain Members of Company
29	Public Offer of Securities to be in Dematerialised Form
30	Advertisement of Prospectus
31	Shelf Prospectus
32	Red Herring Prospectus
33	Issue of Application Forms for Securities
34	Criminal Liability for Mis-statements in Prospectus
35	Civil Liability for Mis-statements in Prospectus
36	Punishment for Fraudulently Inducing Persons to Invest Money
37	Action by Affected Persons
38	Punishment for Personation for Acquisition, etc., of Securities
39	Allotment of Securities by Company
40	Securities to be Dealt with in Stock Exchanges
41	Global Depository Receipt
42	Offer or Invitation for Subscription of Securities on Private Placement

Overview

This Chapter is divided in two parts:

Part I - Provisions relating to issue of securities through **Public Offer** (Sec 23 - 41)

Part II - Provisions relating to issue of securities through **Private Placement** (Sec 42)

Section 23 - Public Offer (PO) and Private Placement (PP)

1. **Public** co. may issue securities:

through prospectus to public (PO)

Private Placement

Right issue and Bonus issue as per this Act (and SEBI in case of listed co./co. intending to get listed)

2. **Private** co. may issue securities:

through prospectus to public

Private Placement

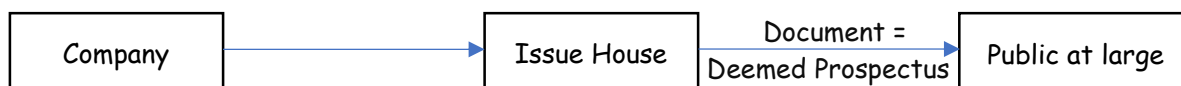
Right issue and Bonus issue as per this Act (and SEBI in case of listed co./co. intending to get listed)

Note - Public offer includes IPO, FPO and OFS

Important Definitions:

- **Securities** [Sec 2(81)] - As defined in Section 2(h) of SCRA, 1956
- **Prospectus** [Sec 2(70)] - Prospectus means any **document** described or issued as a prospectus and includes:
 - Red Herring Prospectus (**RHP**) as per Sec 32 and
 - Shelf Prospectus (**SP**) as per sec 31
 - Notice, circular, advt. /other **doc inviting offers** from public for subscripⁿ/purchase of any Sec. of BC

Section 25 - Document Containing Offer of Securities for Sale to be Deemed Prospectus



Meaning - Where a **company (A)** allots or agrees to allot any securities of the company (A) with a **view** that those securities shall be offered for sale to **public**, any **document** by which the offer for sale to the public is made shall, **for all purposes**, be **deemed** to be a **prospectus**.

Effect of deeming provision-

1. Law relating to content of prospectus and liabilities u/s 34,35 shall apply
2. Person making offer were person named as director in the co.

Presumptions: *Unless the contrary is proved*, it shall be **evidence** that an allotment of securities was made with a view to the securities being offered for sale to the public if it is shown:

- a. that offer for sale to the public was made **within 6m** after the allotment or agreement to allot; or
- b. that at the **date** when the **offer** was made, the **whole consideration** had **not been received** by the co.

In addition to matter stated u/s 26, following additional matter is to be included in the document:

- a. Net amt. of consideration received/to be received by the co.
- b. time and place at which contract for allotment of said securities may be inspected

Signature of document:

In case of co. - 2 directors; In case of Partners - At least $\frac{1}{2}$ of Partners

Section 26 - Matters to be Stated in Prospectus

Summary:

Dated and Signed	Copy to RoC for Registration	Signed by dir./proposed dir.	RoC not to register unless consent in writing of all person named received
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1. Every prospectus issued by/on behalf of public company (for IPO/FPO/OFS) shall be **dated** and **signed**.

Prospectus shall **state info.** and **set out** such **reports** on fin. Info. as specified by SEBI + CG. Unless specified by SEBI, the regulations made by SEBI shall apply.

Prospectus to include declaration about - (a) Compliance with this Act, and (b) Nothing in prospectus is contrary to this Act, SEBI and SCRA.

2. Above requirement of prospectus N.A in case of issue of prospectus/form of application for:
 - a. Issue of shares/debentures to **existing** mem./DH of the co. (whether or not there is right to renounce)
 - b. Issue of shares/debentures - **Uniform** with shares/debentures **previously issued** + **Quoted on RSE**.

3. Provision of 26(1) shall apply to prospectus/Form of application for IPO/FPO or OFS
Explanation - Date in prospectus = Deemed date of publication
 4. Prior to issue, Prospectus to be **delivered to RoC** for filing, a copy thereof **signed** by every person who is named therein as a **director** or **proposed director** of the company or by his duly authorised attorney.
 5. Where prospectus includes a statement purporting to be made by expert, it shall not be issued unless:
 - expert is a person who is **not engaged/interested** in formation/promotion/mgt. of co., **and**
 - has given his **written consent** to the issue of the prospectus and
 - has **not withdrawn** such consent before delivery of copy of prospectus to RoC for filing and
 - a **statement** to that effect shall be included in the prospectus.
 Read definition of Expert - Sec 2(38)
 6. Every prospectus issued under sub-section (1) shall, on the face of it,—
 - (a) state that a copy has been delivered to RoC u/ss (4); **and**
 - (b) specify **docs attached** to the copy so delivered or refer to statements included which specify these docs.
 8. Prospectus **not valid** if issued **> 90 days** after date of delivery to RoC
- Contravention of this section - Co. and Every person who is knowingly a party - Rs. 50,000 to Rs. 3 lakhs

Section 27 - Variation in Terms of Contract or Objects in Prospectus

General Rule - Company shall **not vary** terms of contract referred to in prospectus/objects

If co. wants to vary the terms, following 3 condition needs to be taken care of:

1. Pass **SR** at the **GM**
2. Publish in **newspaper** (Eng. + Vernacular of City of RO) - Prescribed details of the notice for such resolution
3. Amount so raised cannot be used for buying, trading or otherwise dealing in **Eq. shares** of listed cos.
(Can invest by passing SR? - No!)

Dissenting shareholder Exit Offer by promotor/controlling shareholders - Exit price as per SEBI Regulation

Rule 7 of The Companies (Prospectus and Allotment of Securities) Rules, 2014:

1. SR shall be passed through **Postal Ballot**. Notice of proposed SR to contain following details:

Original purpose/ object of issue	total money raised	money utilised for objects stated in the prospectus
extent (%) of achievement of proposed objects	unutilised amount out of the money so raised	particulars of the proposed variation
reason and justification for variation	proposed time limit within which the proposed varied objects would be achieved	
risk factors pertaining to the new objects	other relevant info	

2. Advertisement of the notice - **Form PAS-1** (published simultaneously with dispatch of notice)
3. Place notice on website of co.

Section 28 - Offer of Sale of Shares by Certain Members of Company [Vijay Shekar sold shares in Paytm IPO]

1. Authorise the co.
 - Where certain members (indv./BC) of a co. propose in consultation with BoD
 - To offer whole/part of their holding to public
 - They may auth. the co. to take necessary action and then reimburse the co. of all expense incurred
2. Doc. by which such OFS is made to public = Deemed prospectus.

The following provision of this chapter shall not be applicable in case of OFS:

- a. the provisions relating to **minimum subscription**;
- b. the provisions for minimum **application value**;
- c. the provisions requiring any statement to be made by BoD in respect of the **utilization** of money; **and**
- d. any other provision/information which cannot be compiled or gathered by the **offeror**, with **detailed justifications** for not being able to comply with such provisions.

Note - Prospectus shall disclose name of the person(s)/entity **bearing the cost** of making the OFS + reasons.

Section 29 - Public Offer of Securities to be in Dematerialized Form (Demat Form)

1. *Notwithstanding anything contained in any other provisions of this Act:*
 - a. every company making **public offer**; and
 - b. such other class or classes of public companies as may be **prescribed**,
 shall issue the securities only in **dematerialised** form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

Rule 9 of Companies (Prospectus and Allotment of Securities) Rules, 2014:

The promoters of every **public company** making a public offer of any **convertible securities** may hold such securities **only** in demat form.

Provided that the **entire holding** of convertible securities of the company by **promoters** held in **physical** form up to the **date of IPO** shall be **converted** into demat form before such offer is made.

In case of prescribed class of unlisted companies, the securities shall be held or transferred only in Demat form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.

Rule 9A of Companies (Prospectus and Allotment of Securities) Rules, 2014:

Dematerialisation of existing and future securities of UNLISTED Public Company (UPC):

1. UPC shall:
 - a. **Issue** sec. in demat form,
 - b. **Facilitate** dematerialisation of existing sec. as per the Depository Act, 1996 and regulations made thereunder.
2. For **UPC** intending to make **offer** of securities or buyback or bonus or rights, ensure entire holding of P/D/KMP is in Demat form
3. On or after 2/10/2018, every **holder** of sec. of UPC:
 - a. who intends to trf. sec - Get such sec. dematerialised before trf.
 - b. who subscribed to any sec. of UPC - Ensure existing sec. are held in demat form.
4. Every UPC shall:
 - a. **Facilitate** dematerialisation of existing sec. by making necessary appln. to Depository (as defined u/s 2(1)(e) of the Depository Act)
 - b. Secure International security Identification Number (**ISIN**) for each type of sec.
 - c. **Inform** existing sec. holder about such facility.

5. Every UPC shall ensure:
 - a. **Timely payment of fees** - Depository, Registrar to Issue (RTI) & Share Trf. Agent (STA)
 - b. Maintain sec. deposit of **>=2 years** of fees with D/RTI/STA as per agreement
 - c. **Complies** with regulations of SEBI or Depository w.r.t, dematerialisation of shares
 6. If UPC **defaulted** in above Rule 9A(5) - Cannot make offer of any sec./buyback/bonus/rights till payment to D/RTI/STA
 7. Provision of Depositories Act, SEBI (Depositories and Participants) Regulations, 2018 and SEBI (RTI and STA) Regulations, 1993 - Apply **Mutatis Mutandis**
 8. UPC to file **Form PAS-6 (certified by CA/CS in P) + Fees** with ROC within 60 days of conclusion of each half year (FY)
 - 8A. Any **diff.** b/w issued capital and capital in demat form - Co to bring to **notice** of Depository
 9. Grievances of Sec. holders - File with IEPF Auth. IEPF Auth. shall initiate action against
- This rule shall N.A. to an UPC which is - Nidhi, Govt. company or WOS

2. Any co., other than above, **may** convert its securities into demat form **or** issue its securities in **physical form** in accordance with the provisions of **this Act** or the Depositories Act, 1996 and the regulations made thereunder.

Section 30 - Advertisement of Prospectus

Where an **advrt.** of prosp. of a co. is published in any manner, it is necessary to specify the contents of MoA w.r.t.:

Objects	Liability of members	Amount of SC of Co. (ASC)	names of the signatories	No. of shares subscribed by them	Capital Structure
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Section 31 - Shelf Prospectus (SP)

Meaning

- SP means a **prospectus** in respect of which
- the **securities** or class of securities included therein
- are issued for subscription in **one or more issues** over a **certain period**
- **without** the issue of a further prospectus.

Eligibility to file SP - Any class(es) of Co., as SEBI may provide by **regulations** in this behalf.

Filing, Validity and No prospectus:

- Eligible cos. to file SP with RoC at the **stage of first offer**.
- SP to indicate validity period **not > 1 year**. Validity to commence from date of opening of first offer.
- No further prospectus shall be required for 2nd/subsequent offer

Information Memorandum (IM): (Form PAS-2)

- Within **1 month prior** to second/subsequent offer., co. to file IM with RoC
- IM to contain material facts relating to:

New charges created	Changes in fin. position*	Other changes as prescribed
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*Between first offer/previous offer and subsequent offer

Intimation of Changes:

- If co. receives application for allotment of sec. + **advance payment** before making such changes,
- Co. to intimate such changes to applicant
- If they desire to withdraw application - Refund payment **within 15 days** of subscription

Note: SP + IM = Prospectus!

Section 32 - Red Herring Prospectus (RHP)

Meaning - Prospectus which does not include complete particulars of quantum/price of securities included therein.

1. Co. proposing to make an offer of securities **may** issue a RHP prior to prospectus
2. RHP to be filed with **RoC at least 3 days** prior to opening of subscription list and the offer
3. RHP to have **same obligation** as prospectus.
Variation b/w RHP and prospectus to be **highlighted** as variation in prospectus
4. Upon **closing** of offer - **Prospectus** stating therein the **total capital** raised and **closing price** and any other details as are not included in RHP shall be filed with the **RoC** and the **SEBI**.

Section 33 - Issue of Application Forms for Securities

1. Every form of appln for purchase of any securities of a co. shall be accompanied by an **abridged prospectus**.

This sub-section shall N.A. if it is shown that the form of application was issued in connection with:

- a. a bona fide invitation to a person to enter into an **underwriting agreement** w.r.t. such sec.; or
 - b. in relation to securities which were **not offered to the public**.
2. Copy of the prospectus shall, on a request being made by any person **before the closing of the subscription** list and the offer, be **furnished** to him.
 3. Default in this section - Co. liable for **Rs. 50,000** for each default

Section 34 and Section 35 - Liability for Misstatement

Section 34 - Criminal Liability

If prospectus includes any statement - untrue or misleading, every person who authorizes the issue of such prospectus shall be liable under section 447.

Section N.A. if a person proves that:

- a. such statement/omission was **immaterial** or
- b. that he had **RGTB** that statement was true or the inclusion or omission was necessary.

Section 35 - Civil Liability

Case - Person **subscribed** + Acted on the statement included/omitted in prospectus + Sustained loss

Such person can sue company and every person who is:

1. Dir. at the time of issue of prospectus.
2. Agreed to become director in future
3. Promotor of co.
4. Auth. the issue of prospectus
5. Expert u/s 26(5)

Above person shall be liable to pay compensation to every person who has sustained such loss or damage.

Such person shall not be liable if he proves that:

- a. Having consent to become dir., withdrew the consent and Prosp. issued w/o consent.

	<p>b. Prosp issued w/o knowledge or consent + On becoming aware gave reasonable public notice</p> <p>c. For every misleading statement by expert - He had RGTB at the time of such statement that expert is competent to make it + Gave consent + Not withdrawn consent</p> <p>If proven that prospectus issued with intent to defraud - every person u/ss (1) shall be <u>personally responsible</u> - Unlimited liab.</p>
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Sec 447: Punishment for Fraud

Without prejudice to any liability including repayment of any debt under this Act or any other law in force, any person guilty of fraud shall be liable as follows:

Amount involved in the fraud	<u>At least</u> Lower of: a. Rs. 10 lakhs b. 1% of T/O	<u>At least</u> Lower of: a. Rs. 10 lakhs b. 1% of T/O	<u>Less than</u> Lower of: a. Rs. 10 lakhs b. 1% of T/O
Fraud involves public interest	No	Yes	No
Jail	6m - 10 years	3 years - 10 years	Upto 5 years
And/or	AND	AND	OR
Fine	Up to 3x amt involved	Up to 3x amt involved	Upto Rs. 50 lakhs or both

Fraud bole toh?:

Act	Ommission	Concealment of Fact	Abuse of position
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Committed with:

Intent to decieve	Gain undue advantage	Injure intt. of co/SH/crs/others
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Whether or not there is a wrongful gain/loss

Sec 36: Punishment for Fraudulently Inducing Persons to Invest Money

Any person who, either knowingly/recklessly makes any **statement**, promise or forecast which is **false**, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into:

- (a) any **agreement** for, or with a view to, acquiring, disposing of, subscribing for, or underwriting **securities**; or
- (b) any **agreement**, the purpose or the pretended purpose of which is to secure a **profit** to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
- (c) any agreement for, or with a view to, obtaining **credit facilities** from any bank or financial institution, shall be liable for action **u/s 447**.

Section 37: Action by Affected Persons

A suit may be filed, or any other action may be taken u/s 34,35 or 36 by any person, group of persons or any AOPs affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

Note - If Mr. M had purchased the shares based on statement in the prospectus, only Mr. M can initiate a suit against the co. and not Mr. X (to whom shares are transferred post allotment)

Allotment means appropriation of previously un-appropriated co. of capital.

[Issue of Prospectus - Invitation to offer; Receiving Application - Offer; Allotment - Acceptance]

Section 39: Allotment of Securities by Company

1. Co. can allot share to public only when:

- a. amount stated in prospectus as **min. amount** has been **subscribed (>=90%) and**
 - b. **sums payable on application** have been **paid** to and received by company by **cheque/** other instrument.
2. The application money shall not be **<5% of nominal amount** of sec. or **other %** or amt. specified by SEBI
 3. If the **stated min. amount** has **not been subscribed and** the application money is **not received** within **30 days/other period by SEBI** from the date of issue of prospectus - Return amount in **prescribed** time & manner

Rule 11 of Companies (Prospectus and Allotment of Securities) Rules, 2014 - Refund of Application Money:

1. If min. amt not subscribed + Application money not received within prescribed time - Application money to be **repaid within 15 days** from close of issue
If **not repaid** - **Directors** who are **OID** - Jointly and severally liable + **Intt @15% p.a.**
2. Refund shall be **credited** only to the **bank account from which the subscription was remitted.**

4. **Co. having SC** makes any allotment of securities - File with RoC - A **return of allotment (Form PAS-3).**
5. If default u/ss 3,4, Co. and its **OID** shall be **liable - Rs. 1,000/day or Rs. 1 lakh WEL** for each default

Section 40: Securities to be Dealt with in Stock Exchanges

1. Before Public Offer - Co. to make an **application** to 1/more RSE(s) and obtain **permission** for sec. to be dealt with in such RSE
2. Where prospectus states appln. u/ss (1) has been made - Also **state** the **name(s)** of RSE in which the securities **shall be dealt with.**
3. Application money shall be kept in a **separate bank account** in a **scheduled bank + Not to be utilised** for any purpose other than:
 - a. Adj. against allotment - If sec. have been permitted to be dealt with on RSE
 - b. Repayment - If co. unable to allot sec.
4. Any condition purporting to require or bind any applicant for securities to **waive compliance** with any of the requirements of this section shall be **void.**
5. **Default - Co. - Fine Rs. 5 lakh to Rs. 50 lakhs and OID - Fine - Rs. 50,000 to Rs. 3 lakhs**
6. Co. may pay **commission** to any person w.r.t, subscription to its sec. subject to conditions **prescribed.**

Rule 13 of Companies (Prospectus and Allotment of Sec) Rules, 2014 - Payment of Commission:

Commission can be paid subject to following conditions:

- a. Such payments to be auth. by AOA
- b. Comm. may be paid out of (a) Proceeds of issue, or (b) Profit of co., or both
- c. Rate of comm.

<u>In case of sec. issue being:</u>	<u>Comm. shall NOT exceed</u>
Shares	Lower of: <ol style="list-style-type: none"> a. 5% of price of share issue or b. Rate auth by AOA
Debentures	Lower of: <ol style="list-style-type: none"> a. 2.5% of price at which debenture issued or b. Rate auth. by AoA

d. Prospectus to disclose:

name of
underwriters

rate and amount of
commission payable to u/w

no. of sec. underwritten
or subsc. by u/w

e. No. comm. to be paid if sec. not issued to public.

f. Copy of contract for payment of comm. - File with RoC along with Prospectus for Reg.

Section 42: Offer or Invitation for Subscription of Securities on Private Placement (PP)

1. Subject to this section, a co. may make PP of sec.

Rule 14: Private Placement:

The proposal to make PP has to be previously approved by SH of co. by a **SR** for each such PP.

ES annexed to notice for SH approval shall made following disclosure:

- particulars** of the offer including date of passing of **Board resolution**;
- kinds** of securities offered and the **price** at which security is being offered;
- basis** or justification for the **price** (including premium, if any) at which the offer/invitation is made;
- name and address of **valuer** who performed valuation;
- amount** which the company intends to **raise** by way of such securities;
- material terms of** raising such securities

Provided that: In case of offer for Non-Convertible Debentures:

- If amount is within limit u/s 180(1)(C) - Board Resolution is enough (No SR)
- If amount is > Limit u/s 180(1)(c) - Pass **SR (Once in a year for all such offers)**

2. No. of members:

- PP to be made only to select group of person identified by BoD (Identified Persons (IPs)).
- IPs shall be less than - 50 or higher no. prescribed (Rules - 200 members in aggregate in FY)
- Above limit of 200 not to include - QIBs and Eees (ESOP) [N.A. - NBFC and HFC if Regulation by RBI/NHB complied with)

3. Co. to issue Private Placement Offer (PPOs) and Application form to IPs.

PPOs shall NOT carry right of renunciation.

Note: Deemed Public Offer:

If a co. makes an **offer** to allot **securities to more than prescribed number of IPs**, the same shall be **deemed** to be an **offer to public** and shall accordingly be **governed** by the provisions of Part I of this Chapter (irrespective of whether or not the payment for securities has been received or whether the company intends to list its securities or not on any RSE in or outside India)

4. Mode of payment of subscription money:

IPs willing to **subscribe** to PP issue shall **apply** in the PP and application issued to such person along with **subscription money** paid either by **cheque** or **demand draft** or other banking channel and **not by cash**.

Application money not to be utilised unless allotment made and return of allotment filed with RoC.

5. Prohibition on Fresh offer:

No fresh offer unless:

- allotments w.r.t, any **offer** or **invitation** made earlier have been completed or
- that offer or invitation has been **withdrawn** or **abandoned** by the co.

6. Co. shall **allot** its securities **within 60 days from receipt of appln. money**.
If co. **fails to allot** securities within that period - Repay the same **within 15 days** from expiry of 60 days
If co. **fails to repay** the appln. money - Liable to repay that money + Intt. @ 12% p.a. from expiry of 60th day:

Application money shall be kept in a **separate bank account in a scheduled bank + Not to be utilised** for any purpose other than:

- a. Adj. against allotment - If sec. have been permitted to be dealt with on RSE
 - b. Repayment - If co. unable to allot sec.
7. Co. making PP shall **NOT** release any **public advertisements** or utilise any media, marketing or distribution channels or agents **to inform the public at large** about such an issue.
8. Return of Allotment to be filed with RoC within 15 days from allotment date
Co. making PP to **file** with RoC a "Return of Allotment" in **Form PAS-3 within 15 days** from the date of the allotment. (Incl. a complete list of all **allottees**, with their full **names, addresses**, no. of sec. allotted , etc.)
9. Default u/ss (8) - Co., its promoters and directors - Fine Rs. 1,000/day for each default upto Rs. 25 lakhs
10. If co. makes PP in contravention of this section - Company, its promoters and directors - Fine which may extend to **amount raised** through the PP or **Rs. 2 crores**, whichever is **lower**, and the **company** shall also **refund** all monies **with interest** (12%) to subscribers within a period of **30 days** of the order imposing the penalty.

"Private Placement" means any **offer** or **invitation** to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through PP **offer-cum-application** as per this section.

"Qualified Institutional Buyer" means the QIB as defined in SEBI (ICDR) Regulations, 2009.

Rule 14: Private Placement (Continued)

- PP offer cum application letter shall be in Form PAS-4
- Co. to maintain complete record of PP offers in Form PAS-5
- Co. shall issue PP offer only after relevant SR/BR filed with RoC

Chapter 4 - Share Capital and Debentures

Form	Section No	Purpose
SH-3	Sec 54	Issue of Sweat Equity Shares
SH-4	Sec 56	Form for transfer of security held in physical form
SH-5	Sec 56	Notice by the company to the transferor and transferee in case of partly paid-up shares
SH-7	Sec 64	Notice to Registrar for the alteration of share capital
SH-9	Sec 68	Solvency declaration to be filed with the Registrar and additionally with the SEBI in case of listed companies in relation to buyback of shares or other securities
SH-10	Sec 68	Register of shares or other securities bought back
SH-11	Sec 68	Return on completion of the buyback of shares or other securities

Sec No.	Section Name
43	Kinds of Share Capital
44	Nature of Shares or Debentures
45	Numbering of Shares
46	Certificate of Shares
47	Voting Rights
48	Variation of Shareholders' Rights
49	Calls on Shares of Same Class to be Made on Uniform Basis
50	Company to Accept Unpaid Share Capital, Although not Called Up
51	Payment of Dividend in Proportion to Amount Paid-Up
52	Application of Premiums Received on Issue of Shares
53	Prohibition on Issue of Shares at Discount
54	Issue of Sweat Equity Shares
55	Issue and Redemption of Preference Shares
56	Transfer and Transmission of Securities
57	Punishment for Personation of Shareholder
58	Refusal of Registration and Appeal against Refusal
59	Rectification of Register of Members
60	Publication of Authorised, Subscribed and Paid-Up Capital
61	Power of Limited Company to Alter its Share Capital
62	Further Issue of Share Capital
63	Issue of Bonus Shares
64	Notice to be Given to Registrar for Alteration of Share Capital
65	Unlimited Company to Provide for Reserve Share Capital on Conversion into Limited Company
66	Reduction of Share Capital
67	Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares
68	Power of Company to Purchase its Own Securities
69	Transfer of Certain Sums to Capital Redemption Reserve Account
70	Prohibition for Buy-Back in Certain Circumstances
71	Debentures
72	Power to Nominate

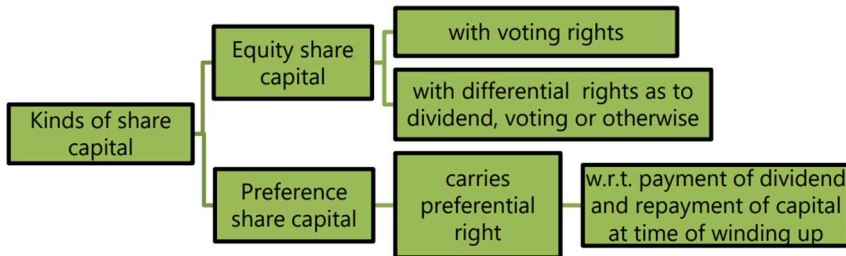
Key Definitions:

Section 2(84): "Share" means a share in the share capital of a company and includes **stock**.

Section 44 - Shares/debentures or other interest of member in co. = **Movable property** transferable as per AOA

Section 45 - Every share shall be **distinguished** by its **distinctive number** [N.A. in case of depository]

Section 42 - Kinds of Share Capital [N.A. to Private Co. if mentioned so in MoA/AoA]



"Equity share capital", w.r.t., any co. limited by shares, means **all share capital** which is **not pref. share capital**;

"Preference share capital", w.r.t., any co. limited by shares, means that part of the **issued share capital** of company which **carries** or would carry a **preferential right** w.r.t.:

- (a) payment of **dividend** (fixed amount or an amt. calculated at a fixed rate) - either free or subject to tax)
- (b) **repayment**, in the case of a **winding up**, of amount of PUSC.

Rule 4 of Cos (Share Capital and Debentures) Rules, 2014 - Equity Shares With Differential Rights:-

Conditions to issue equity shares with **Differential Rights** (DR): [A₂ VP FD₂]

- 1. **AoA** authorizes the issue of such shares;
- 2. Such issue is authorized by an **ordinary resolution** passed at GM.
If eq. shares are **listed** on RSE - Approval of members required through **postal ballot (still OR)**.
- 3. **Voting Power** (VP) of shares with DR shall **not be > 74%** of total voting power (incl. VP on shares with DR)
- 4. omitted
- 5. Co. has not defaulted in filing **FS** and **AR** for **3 FY** immediately prior to FY in which it decided to issue
- 6. Co. has no **subsisting** default in:

payment of declared **dividend**

repayment of matured **deposit + Intt.**

Redemption of pref. shares

Redemption of debenture + Intt

- 7. Co. has **not defaulted** in:

payment of **dividend** on pref. shares

repayment of term loan + Intt. - PFI/State FI / Sch. Bank.

Stat. dues w.r.t., Employee

Default in crediting amt. in IEPF to CG

Provided that a co. may issue such shares on **expiry of 5 years** from end of FY in which default made good.

- 8. the co. has **not** been **penalized** by Court/Tribunal during last **3 years** of offence under the **RBI Act, 1934**, the **SEBI Act, 1992**, the **SCRA, 1956**, the **FEMA, 1999** or any other **special Act**

Additional Points:

- 1. **ES to notice** for GM or Postal Ballot to contain prescribed details about the issue
- 2. Co. shall **NOT convert** existing ESC with Voting Rights into ESC carrying DVR and **vice versa**
- 3. Details of such issue to be disclosed in **BOD Report**
- 4. Holders of Eq. shares with DR shall **enjoy all other rights** such as bonus shares, rights shares etc., which the holders of eq. shares are entitled to, subj to the differential rights with which such shares are issued.
- 5. **Register of Members** u/s 88 to contain relevant particulars of such shares with details of the SHs.

Section 46 - Certificate of Shares

1. Certificate to be Prima Facie Evidence of title of such shares: - If such certificate is issued under:
 - a. Common seal, if any or
 - b. Signed by 2 dirs. or a dir. + CS (if co. has a CS)
2. Duplicate certificate may be issued if:
 - a. It is **proved** to have been lost or destroyed; **or**
 - b. has been defaced, **mutilated** or torn + **Surrendered** to company.
3. Details regarding manner of issue of certificate/duplicate - As may be prescribed
4. Where share is held in **depository form** - **Record** of depository is **prima facie** evidence of intt. of benf. owner.
5. If Co. issues a **duplicate** certificate of shares with intent to **defraud:**
Co. - Fine - 5x Face Value of Shares involved to (10x or Rs. 10 crores WEH) and **OID** - Liable u/s 447

Section 47 - Voting Rights [N.A. to Private Co. if mentioned so in MoA/AoA, subject to 92 + 137]

1. Subject to certain provisions of this Act:
 - a. every member holding **ESC**, shall have a **right to vote** on **every resolution** placed before the co.; **and**
 - b. his **voting right** on a **poll** shall be in **proportion** to his share in the **paid-up ESC** of the co.
2. Every **member** holding any **pref. share capital** shall, in respect of such capital, have a **right to vote only:**
 - a. on resolutions which **directly affect** the rights attached to his **pref. shares** and,
 - b. any resolution for the **winding up** of the company or
 - c. for the **repayment** or reduction of its **EQUITY or PSC** andhis voting right on a **poll** shall be in **proportion** to his share in the paid-up PSC of the co.

Provided that **proportion** of the voting rights of Eq. SH to the voting rights of Pref. SH shall be in the **same proportion** as the paid-up capital in respect of eq. shares bears to paid-up capital in respect of pref. shares

Provided further that where the **dividend** in respect of a class of pref. shares has **not been paid for >= 2 years**, such class of **pref. shareholders** shall have a **right to vote** on **ALL resolutions** placed before the co.

Section 48 - Variation of Shareholder's Rights

1. Rights can be varied by:
 - **SR** (at a separate meeting of such class) OR
 - **Consent** in writing of **> = 3/4th** of issued shares of that class.

Power to vary Right flows from? - AoA/MoA or not prohibited in terms of issue.

If variation of 1 class **affects rights of any other class**, the **consent of 3/4th of such other class** of shareholders shall also be obtained and the provisions of this section shall apply to such variation.
2. Where **holders** of **> = 10% of issued shares** of a **class** did **not consent** to such variation - they may apply to **Tribunal** to have the variation **cancelled**. Where such appln is made - Variation shall **not** have **effect until** it is **confirmed** by Tribunal:

Provided that - Such **application** to be made **within 21 days** after date of consent/resolution
3. The **decision** of the **Tribunal** on any application u/ss (2) shall be **binding** on the shareholders.
4. The company shall, **within 30 days** of the date of order of Tribunal - File a copy thereof with the **Registrar**.

Section 49 - Calls on Shares of Same Class to be Made on Uniform Basis

Where any **calls for further share capital** are made on shares of a class, such calls shall be made on uniform basis on all shares falling under that class. (Shares of same Nominal Value with different PUSC = Not same class)

Section 50 - Company to Accept Unpaid Share Capital, Although not Called Up.(Call in Advance)

1. Co. may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.
2. A member shall NOT be entitled to any voting rights w.r.t., amt. paid u/ss (1) until that amt. is called up.

Section 51 - Payment of Dividend in Proportion to Amount Paid-Up.

A co. may, if so authorised by its articles, pay dividends in proportion to the amount paid- up on each share
OTHERWISE - IN GENERAL, DIVIDEND TO BE ON NOMINAL VALUE

Section 52 - Application of Premiums Received on Issue of Shares

1. Where co. issues shares at premium (cash/otherwise) - Transfer such amt. to Securities Premium A/C (SPA)
Provision of Reduction in SC shall be applicable to SPA as if SPA = PUSC of co. (except where utilised for purpose as stated below)
2. Application/Utilisation of amount in SPA account: [BPERB]
 - a. Towards issue of unissued shares of co. to members as fully paid bonus shares
 - b. Write off Preliminary expenses of the co.
 - c. Write off - Expenses/Commission paid/Discount allowed on issue of shares/debentures of co.
 - d. providing for premium payable on Redemption of any redeemable pref. shares/ any debentures of the co.
 - e. purchase of its own shares u/s 68 (Buyback)
3. Notwithstanding above (1) and (2), in case of such class of cos. as may be prescribed + whose FS comply with prescribed AS u/s 133, the SPA shall be utilised for:
 - a. Towards issue of unissued shares of co. to members as fully paid bonus shares
 - b. ~~Write off Preliminary expenses of the co.~~
 - c. Write off - Expenses/Commission paid/Discount allowed on issue of shares/debentures of co.
 - d. ~~providing for premium payable on Redemption of any redeemable pref. shares/ any debentures of the co.~~
 - e. purchase of its own shares u/s 68 (Buyback)

Section 53 - Prohibition on Issue of Shares at Discount

1. Except as u/s 54, a company shall NOT issue shares at discount.
2. Any share issued by a company at a discount price shall be void.
Exception - Notwithstanding anything contained above, a co. may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the RBI under RBI Act.
3. Default under this section - Co. and OID - Fine upto amt. raised through issue of shares at a discount or Rs. 5 lakhs, whichever is less, and the co. shall also be liable to refund such money + Intt. @12% p.a. from date of issue of such shares to the persons to whom such shares have been issued

Section 54 - Issue of Sweat Equity Shares to Directors/Employees

Meaning of Sweat Eq. Shares [Sec 2(88)] - Such equity shares as are issued by a co. to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

1. Notwithstanding Sec 53, co. may issue sweat equity shares (of class of shares already issued), provided that:
 - a. Such is authorized by a SR (allotment to be made within 12m of passing SR)
 - b. Resoln. specifies: (a) No. of shares, (b) Current Mkt Price, (c) Consideration, if any and (d) to whom issued
 - c. Omitted

- d. If eq. shares are listed, such issue is as per **SEBI** Regulations. If not listed, as per **Rules**.
2. Rights, limitations and provisions of Eq. shares - Applicable to Sweat Eq. Shares and rank **Pari Passu**.

Rule 8 - Issue of Sweat Equity Shares:

"**Employee**" means:

- (a) a **permanent** employee of the company who has been working **in India or outside India**, or
(b) a **director** of the company, whether a whole time director or not; or
(c) Dir/Employee as per (a) or (b) above of **subsidiary**, in India or o/s India, or of a **holding** co. of the co.;

"**Value additions**" means actual or anticipated **economic benefits** derived/to be derived by co. from an **expert** or a **professional** for providing **know-how** or making available **rights** in the nature of **IPRs**, by such person to whom sweat equity is being issued **for which** the **consideration** is **not** paid or **included in the normal remuneration** payable under the contract of employment, in the case of an employee.

Additional Points:

- Allotment of sweat eq. shares to be made within 12 months of passing SR
- Co. shall **not** issue eq. shares **> 15% of existing Paid up ESC** or issue value of **Rs. 5 crores, WEH**
Provided that, issuance shall not **> 25% of PUESC at any time**
Provided further that - In case of **Startup** - Issue not **> 50%** of its **PUC** upto 10 years from incorp.
- Lock in - **3 years** from date of allotment
- Issue price of Sweat eq. shares - To be determined by Registered Valuer with proper justification
- Valuation** of IPR/Know how/Value Add - By RV with a proper report to BoD.
- Treatment of non-cash consideration in books:
 - Where non-cash consideration takes form of depreciable/amortizable asset - Carry to **BS** as per **AS**
 - Where clause (a) N.A. - **Expense** as per **AS**
- Co. to disclose specific details of such issue in **BoD report**
- Co. to maintain register **in Form SH-3** (at RO/place decided by BoD)

Section 55 - Issue and Redemption of Preference Shares

- Co. shall **not** issue pref. shares that are **irredeemable**
- Co. may, subject to **authorisation** by **AoA**, issue pref. shares **redeemable** within period **not > 20 years**

Note - Pref. shares **> 20 years but < 30 years** may be issued by co. engaged in setting up and dealing with **infra. Projects** provided that - **Min. 10%** of such pref. share is **redeemed** each year **from 21st year** at the **option** of pref. SH.

Additional Points for Redemptions:

- Redemption of such shares - Only out of - (A) **distributable profits** of the co. or (b) **Proceeds of fresh issue** made for purpose of such redemption
- Only **fully paid up** pref. shares can be redeemed
- Where such shares are **proposed** to be redeemed **out of profits**, trf. a sum = **Nominal value** of shares to "Capital Redemption Reserve" A/C and provision relating to reduction of **SC** shall apply to **CRR**.
- Prescribed class of co. + Accounting as per Sec 133 → **Premium** to be payable out of profit (**not SPA**)
For other class of co. premium payable out of **profits or SPA account**.

Rule 9 - Issue and Redemption of Preference Shares

- Conditions for issuance of pref. shares:
 - Such issue is authorised by **AoA**
 - Such issue is authorised by **SR** at **GM**

- c. On date of issue - Co. has no subsisting default in redemption of any pref. share or dividend thereon.
- 2. **Register** of members u/s 88 shall contain particulars w.r.t, such pref. SHs
- 3. If co. **intends to list** such pref. shares - Follow **SEBI** Guidelines
- 4. Redemption of PS - As per terms of issues/as varied after approval.
 - (a) at a fixed time or on the happening of a particular event;
 - (b) any time at the company's option;
 - (c) any time at the shareholder's option

- 3. If co. **unable to redeem/pay dividend** on any pref. shares - It may with **consent PSH of 3/4th** in value of PSH + Approval of **Tribunal** on petition - **Issue further redeemable Pref shares** = Amount of unredeemed pref. shares + interest. On such issue - Unredeemed pref. shares shall be **deemed** to have been **redeemed**.

Provided that, **Tribunal shall**, while approving such issue, order **forthwith** redemption of **dissenting** PSH

Note - Issue or redemption of pref. share is **not** = Reduction in SC of co.

- 4. CRR A/C shall be applied for - Paying up for the fully paid **bonus** shares.

Section 56 - Transfer and Transmission of Securities

- 1. In case of a company having NO share capital, **other than trf. between persons both of whose name appears as beneficial interest in records of depository**, a transfer of security or interest thereon shall not be registered by the co. unless the following conditions are satisfied:
 - a. Proper **trf. instrument** is executed in **Form SH-4**
 - b. Such instrument is duly **stamped, dated** and executed by TOR and TEE.
 - c. The instrument **specifies** the name, address and occupation of TEE
 - d. Inst. has been **delivered** to co. by TOR or TEE **within 60 days** of execution along with Share **Certificate** or **letter** of allotment (if no certificate is in existence)
If **instrument is lost/has not been delivered** within such time, co. may **register** on such terms as to **indemnity** as Board may think fit.

In case of **Government co.**, instrument of trf. not required in case of transfer of bonds issued by a Govt. co.. An **intimation** by TEE specifying name, address and occupation delivered to the co. + Bond **certificate** or Letter of Allotment should suffice.

- 2. Above shall not prejudice power of co. to register **TRANSMISSION** of any right to sec. by **operation of law** on receipt of **intimation** for the same from any person to whom such right is transmitted. (i.e., instrument not required in case of transmission. Instead, it requires Intimation of Transmission)
Cases of Transmission - (a) Death (to LR), (b) Insolvency (to RP), (c) Lunacy (to Administrator appt. by Court)
- 3. If appln. is made by **TOR** alone + it is **partly paid shares** - **Co. to give notice (in Form SH -5)** of the application to TEE and TEE to give **NOC** to the transfer **within 2 weeks** from receipt of notice.
- 4. Unless prohibited otherwise, co. to deliver certificates of all sec. allotted, transferred or transmitted:
 - a. Within **2 months** of incorporation - To **subscribers** to MoA.
 - b. Within **2 months** of allotment - In case of any **allotment**
 - c. Within **1 month** from date of receipt of **trf. instrument** or Intimation of **Transmission (IOT)**
 - d. Within **6 months** from date of allotment - In case of **allotment** of debentures.
 - e. **Immediately** - When sec. is dealt with in a **depository**.

5. Legal Representative (LR) of a deceased person is auth. to trf sec. of deceased person and execute instrument of trf. on behalf of deceased person.
6. Default in compliance of above - **Fine - Co. and OID - Rs. 50,000**
7. Without prejudice to any liability under the Depositories Act, 1996, where any **depository** or DP, with an **intention to defraud** a person, has **transferred shares**, it shall be **liable under section 447**.

	Transfer	Transmission
Voluntary?	Yes	No. Operation of Law
Transfer Instrument?	Yes	No. Intimation of Transfer
Consideration	Likely, Yes.	No.

Note - **Forged Transfer** is a **Nullity** and is not legally binding. A company can be forced to delete name of TEE in case of Forgery.

What is TEE transfers the share further? - Co. shall be responsible to compensate genuine buyer and shall be indemnified by the person who did the forgery.

Section 57 - Punishment for Personation of Shareholder

- If any **person deceitfully personates** as an **owner** of any security/interest/share warrant/coupon, **and**
- thereby **obtains** or attempts to obtain any such security or interest or any such share warrant or coupon, **or**
- **receives** or attempts to receive **any money due to any such owner**,
- he shall be **punishable with imprisonment** - 1 year to 3 years **AND** with **fine** Rs. 1 lakh to Rs. 5 lakhs.

Section 58 - Refusal of Registration and Appeal Against Refusal.

Refusal by Private Co:

Where a Pvt. co (limited by shares) refuses to register transfer or transmission, it shall:

- Send **Notice** of Refusal to TOR and TEE or IOT person **within 30 days of delivery** of trf instrument or IOT to the co.
- State the **reason for refusal** in such notice.

Refusal by Public Co:

- Securities of public companies are **freely transferrable**. Any contract w.r.t., trf of securities shall be a **valid contract** and enforceable.

Appeal in case of Refusal:

General Rule - TEE or IOT person may appeal to tribunal:

- **Within 30 days** of receipt of notice of refusal
- **Within 60 days** of delivery of instt. to co, where no notice of refusal is received from the co.

In case of refusal by a Public co. without sufficient cause:

TEE or IOT person may appeal to tribunal:

- **Within 60 days** of receipt of notice of refusal
- **Within 90 days** of delivery of instt. to co, where no notice of refusal is received from the co.

Order by Tribunal:

After hearing the parties, Tribunal may either dismiss the appeal or by order:

- a. Direct the co. to **register** trf/transmission and co. shall comply **within 10 days** of receipt of such order, or
- b. Direct **rectification** of the register and also direct the co. to **pay damages** to party aggrieved.

Person contraventions order of Tribunal - **Imprisonment** - 1 year to 3 years **AND Fine** Rs. 1 lakh to Rs. 5 lakhs.

Section 59 - Rectification of Register of Members

1. Application for Rectification of Register of Member (RoM):

If without sufficient cause:

Name is entered into RoM

Omitted from RoM

Unnecessary Delay in entering or removing name

Aggrieved person or Any Member may make an application for rectification of RoM to:

- a. Tribunal, or
 - b. Competent court o/s India specified by CG - In case of foreign members or DHs residing o/s India
2. Tribunal may either dismiss the appeal or by order:
- a. Direct co. to **register** trf/transmission and co. shall comply **within 10 days** of receipt of such order, or
 - b. Direct **rectification** of the register and also direct the co. to **pay damages** to party aggrieved.
3. The sections shall not restrict the holder of the sec. from **transferring** such sec. and any person acquiring such sec. shall be entitled to **Voting Rights**.
4. Where a trf. is made in contravention of any Law, Tribunal may, on application to it, direct the company or depository to set right the contravention and rectify registers.

Section 61 - Power of Limited Company to Alter its Share Capital

1. A limited co. having a SC may, if so authorised by its **AoA**, **alter** its MoA in its **GM** to:

- a. **increase** its ASC by such amount as it thinks expedient;
- b. **consolidate & divide** all or any of its share capital into shares of a **larger amount** than its existing shares. Provided that **no consolidation** and division which **results** in changes in the **voting percentage** of **SHs** shall take effect unless it is **approved** by the **Tribunal** on an **application** in prescribed manner;
- c. **convert** all or any of its **fully paid-up shares into stock**, and **reconvert** that stock into fully paid-up shares of any denomination;
- d. **sub-divide** its shares, or any of them, into shares of **smaller amount** than is **fixed by the memorandum**, so, however, that in the sub-division the **proportion** between the amount paid and the amount, if any, unpaid on each reduced share shall be the **same** as it was in the case of the share from which the reduced share is derived;
- e. **cancel** shares which, at the date of the passing of resolution in that behalf, have not been taken or agreed to be taken by any person, and **diminish** amount of its share capital by amt. of the shares so cancelled.

2. The **cancellation** of shares u/s(1) shall **not** be **deemed** to be a reduction of share capital.

Section 62 - Further Issue of Share Capital (Right issue/preferential allotment/Right of Pre-emption)

1. Where a co. proposes to increase its subscribed PUC, it may offer shares to - Existing SHs, Employees or Any Other Person.

a. Offer to holder of existing equity shares:

Such offer shall be made in **proportion to PUSC** by sending a letter of offer and subject to following:

ii. Offer to be made by **notice** specifying no. of shares offered and limiting time to accept offer.

Time limit shall be **not < 15 days** or days as may be prescribed and shall **not > 30 days**.

If **not accepted** within time limit - **Deemed declined**.

Note - In Pvt. co (92 + 137) - If < 90% of member give consent, then less than 15 days allowed

iii. Right to Renounce - **Unless AOA** provides otherwise, offer deemed to include right to renounce.

iv. On **expiry** of time limit/receipt of intimation declining offer - BoD to dispose such shares in manner **not dis-advantageous** to SH and the company

- b. Offer to employees - Under **ESOPs** subject to **SR** and prescribed T&C
(In case of Pvt co (92+137) - Pass OR instead of SR)
 - c. Offer to any person (other than Ees and existing SHs)
 - i. Auth. by **SR**
 - ii. For cash or **consideration** other than cash.
 - iii. **Prices** to be determined by **RV**
2. **Notice** to existing SH to be dispatched through - **Regt. post** or **speed post** or **e mode** or **courier** or any other mode having **proof of delivery** to existing SH **at least 3 days before opening of issue**.
 3. Provision of this section - **N.A.** in case of **conversion** of debenture/loan by way of exercise of option as per terms attached to such debt issued/loan raised. Provided that such an option in the issue of debenture/loan raised was approved by **SR**.

Conversion of Debenture issues to Government on T&C as per Govt.:

Notwithstanding provision u/ss(3), where any **debentures** have been issued, or **loan** has been obtained from any **Government** by a company, and if that Govt. considers it necessary in **public interest** so to do, it may, by **order**, **direct** that such debentures or loans or any part thereof shall be **converted** into shares of such co. on T&C as may appear **reasonable** to **Government** even if terms of debentures/loan do not include **option** for such conversion.

Provided that where T&C of such conversion are **not acceptable to co.**, it may, within **60 days** from date of communication of such order, **appeal** to Tribunal for order as NCLT may deem fit.

In determining the T&C, Govt. shall have due regard to: (a) **Fin. Position** of co., (b) **terms of issue** of such debt/loan, (c) rate of **interest** on such debt/loan, (d) **others**

Effect of Govt passing such order + No appeal or where appeal is made has been dismissed:

- a. MoA stands altered
- b. ASC stands increased by amt = Value of shares to which such debt/loan is converted into.

Rule 12 - Issue of **Employee** Stock Options (ESOP)

"**Employee**" includes same as Rule 8 but does not include:

- a. an employee who is a **promoter** or a person belonging to the promoter group; or
- b. a **director** who (himself or through relative/any BC) holds **> 10%** of o/s eq. shares of the company.
In case of Startups - Above 2 exceptions N.A. for **first 10** years.

To issue ESOP:

Listed company - Comply with SEBI Regulations.

Other than listed co, comply with following conditions:

- a. Such issue is approved by way of **SR** by SHs
- b. Co. to make specified disclosure in **ES** annexed to notice
- c. Co. granting such ESOPs has **freedom** to determine "Exercise Price" as per applicable A/C policies
- d. Min. **period of 1 year** b/w Grant and Vesting of options
(in case of amalgamation - Adjust the period for which shares held in prior co. with min. vesting period.)
- e. Co. has freedom to specify **lock in** period.
- f. **No right to vote/receive dividend** unless shares issues on exercise of option.
- g. Options **are non-transferrable**.
- h. Options granted shall not be pledged, hypothecated, etc.
- i. No person other than employee entitled to ESOPs.
- j. In case of death - Options granted to vest with Legal heirs or nominees
- k. In case of permanent incapacity - Option granted to vest on such employees
- l. In case of resignation/termination - option to expire.

Section 63 - Issue of Bonus Shares

A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of:

Free Reserve

Sec. premium Account

CRR Account

Provided that **no issue** of bonus shares to be made by **capitalising reserves** created by the **revaluation** of assets.

No company shall **capitalise its profits or reserves** for issuing fully paid-up bonus shares u/ss (1), **unless**:

Auth. by
AOA

On recommendation of
BoD - Auth in **GM**

Not **defaulted** in payment of intt/principal
w.r.t., FD or debt sec. issued by it

Not **defaulted** - Stat
due of employee

Partly paid up shares
are made fully paid up

**Condition prescribed - Bonus once
announced by BoD, cannot be withdrawn**

Can a company comply with above 6 conditions and issue bonus shares by capitalizing revaluation reserve? - **No!**

Note - Bonus shares shall **not** be **issued** in **lieu of dividend**.

Section 64: Notice to be Given to Registrar for Alteration of Share Capital

1. In the following cases:

Alteration of SC

Increase in ASC u/s 62(6)

Redemption of pref. shares

Co. shall file a Notice in **Form SH - 7** to RoC within 30 days of such action along with Altered MoA.

2. Contravention - Co. & OID - Fine of Rs. 500 per day subject to max. Rs. 5 lakhs (Company) or Rs.1 lakh (OID)

Section 66: Reduction in Share Capital

1. A company may reduce its share capital subject to:

- Confirmation by **Tribunal** on application by company, and
- By a **Special Resolution**
- Alteration of MoA by reducing the amt. of SC and no. of shares.

Manner of Reduction in SC:

- Extinguish** or reduce the liability on any shares **not paid up**
- Cancel** any PUSC which is **LOST** or is **unrepresented** by available asset.
- Pay off** any PUSC which is in excess of the wants of the co.

Provided that **no such reduction** shall be made if the **company** is in **arrears** in the **repayment** of any **deposits** accepted by it, or the **interest** payable thereon.

2. On receipt of application u/ss (1), the Tribunal shall give a notice thereof to:

CG

RoC

Creditors of co.

SEBI (in case of Listed Co.)

and shall take into consideration the representation, if any, made **within 3 months** of such notice.

If no representation - Presume no objection.

3. **Tribunal** to **order confirming** reduction of SC on T&C as it may deem fit - **Only** when it is satisfied that debt/claim of every **creditors** has been **discharged** or his **consent** is obtained.

Provided that Tribunal shall not sanction unless the **A/C treatment**, proposed by the co. **for such reduction** is in **conformity** with **AS** specified u/s 133 + a **certificate** by company's **auditor** has been **filed** with the **Tribunal**.

4. Order of Tribunal shall be published in manner as directed by Tribunal.

5. Co. to deliver **copy** of **order** to Tribunal **and** of a **minute** approved by Tribunal showing the following with ROC within 30 days of receipt for registration and issuance of certificate thereof.

Amount of SC

No. of shares into which it is to be divided

Amt. of each share

Amt. at the date of registration deemed to be paid up

6. **Nothing** in this section shall apply to buy-back of its own securities by a company u/s 68.
7. A **member**, past or present, shall **not** be **liable** to any **call**/contribution w.r.t, any **share** held by him **exceeding** [Amount paid up on the share - Amount of share as fixed by the order of reduction].
8. Where the name of a creditor is not entered in the list of creditors by reason of his own ignorance of proceeding for reduction **AND** after such reduction, the co. commits a default (Sec 6 of IBC) of his debt,;
- Every member of co. on the date of registration by RoC of order for reduction shall be liable to contribute to payment of that debt an amt. not > the amt he would have been liable in case of WUP, **AND**
 - If co. is wound up, the Tribunal may, on application of such cr. + proof of his ignorance - Settle a list of person so liable to contribute and enforce such calls on contributories as if they were ordinary cont.
9. If any **officer** of the company:
- knowingly **conceals** the name of any creditor entitled to object to the reduction;
 - knowingly **misrepresents** the nature or amount of the debt or claim of any creditor; or
 - abets** or is privy to any such concealment or misrepresentation as aforesaid
- he shall be liable **under section 447**.

Section 67: Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares

- No company having SC shall have power to buy its own shares w/o consequent reduction in SC as per this Act
- No **Public co.** shall give any loans, guarantee or any financial assistance for purchase/subsorption of its shares or its holding co.
- Nothing u/ss (2) shall apply to:
 - lending of money by a **banking** company in the ordinary course of its business;
 - the **provision** by a company of **money** in accordance with any scheme approved by company through **special resolution** for such purchase/subsorption if the purchase/subsorption for, the shares held by **trustees** for the benefit of the **employees** or such shares held by the employee of the company;
 - the giving of **loans** by a company to persons in the **employment** of the company other than its directors or KMP, for an **amount** not > their salary or wages for **6 months with** a view to enabling them to purchase or subscribe for fully paid-up shares in co. or its holding company to be held by them by way of BO.
Provided that disclosures in respect of **voting rights not** exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.
- Nothing in this section shall affect the right of a company to **redeem** any preference shares issued by it.
- Contravention** → Co. - Rs. 1 lakh to Rs. 25 lakh **and** OID - Jail upto 3 years **and** fine Rs. 1 lakh to 25 lakhs.

Section 68: Power of Company to Purchase its Own Securities ("Buy-back/BB")

This section talks about purchase of own shares or other specified securities (Buy-back/BB). Specified Securities include ESOPs or sec. notified by CG.

- Notwithstanding other provision of the Act, co. may BB out of:

Free Reserve

Sec. premium Account

proceeds of issue of any share/other sec.

Proviso- No BB of a kind of share/sec. shall be made out of proceeds of an earlier issue of the same kind.

2. Conditions to be fulfilled prior to BB:

- i. Auth. by AoA
- ii. Auth. by SR in the GM (see exception below)
- iii. BB is $\leq 25\%$ of total PUC + FR
- iv. In any FY, BB to be $\leq 25\%$ of total PUESC + FR in that FY.
- v. Ratio $\rightarrow \frac{\text{Debts (secured + unsecured) owed after buy back}}{\text{Paid up Equity Capital + FR}} = \text{Not} > 2$ (or higher ratio by CG)
- vi. All the shares/sec. for BB is fully paid up
- vii. If shares/sec are listed on RSE - BB as per SEBI Regulations. If not listed, then as per this Act

Proviso - BB shall **NOT** be made **within 1 year** reckoned from date of closure of **preceding BB**

SR not needed where:

- a. **Limit** - BB is $\leq 10\%$ of total PUESC + FR, and
- b. Auth. by **Board** by means of resolution passed at BM

3. The ES of the notice of meeting at which SR is proposed to be passed shall state: [FAST N]

full & complete disclosure of all material **Facts**;

Necessity for the buy-back;

Shares/Sec. intended to be purchased;

Amount to be invested; and

Time-limit for completion

4. Time limit for completion of BB - **Within 1 year** from date of passing SR/Board Resolution

5. Source of BB: BB may be from:

Existing SH on prop. basis

Open Market

Sec. issued to EEE pursuant to ESOP or Sweat eq.

6. Declaration of Solvency:

Before making BB, co. to file with **RoC** and **SEBI (only if listed)**, a "Declaration of solvency" in **Form SH-9** signed by atleast 2 Dirs. (1 MD compulsory). Such declaration is to be verified by an **affidavit** stating BoD has made **full inquiry** into affairs of co. and are of **opinion** that it is capable of **meeting liabilities** + will **not** be rendered **insolvent within 1 year** from date of declaration adopted by BoD.

7. Post BB - Co. to extinguish and physically **destroy** the share so bought back **within 7 days** of **last date** of completion of BB

8. Where a co. complete BB - Co. shall **NOT** make further issue of shares/sec. of SIMILAR Kind including allotment u/s 62(1)(a) within 6 months (except for bonus shares or shares to discharge subsisting obligations such as conversion of warrants, ESOPs, sweat equity or conversion of pref. shares/debentures into equity.

9. Co. to maintain register (in **Form SH-10**) showing:

shares/sec. so bought back

consideration paid

Date of **cancellation** of sec. so bought back

date of **extinguishing/** physically destroying shares

Other part.

10. After completion of BB - File a return with RoC + SEBI (if listed) **within 30 days** in **Form SH-11**

11. Default under this section \rightarrow Company and OID - Rs. 1 lakh to Rs. 3 lakhs

Section 69: Transfer of Certain Sums to Capital Redemption Reserve Account

1. Where a co. **purchases** its own shares out of **free reserves** or **SPA**, a **sum** = **Nominal value** of shares so purchased shall be trf. to **CRR A/C**
2. Details of such transfer shall be **disclosed** in the **balance sheet**.
3. CRR A/C may be **applied** by the company, in issue of bonus shares.

Section 70: Prohibition for Buy-Back in Certain Circumstances:

1. No **company** shall directly or indirectly **purchase** its own shares or other specified securities:
 - a. through any **subsidiary** company including its own subsidiary companies;
 - b. through any **investment company** or group of investment companies; or
 - c. if a **default**, is made by the company, in the **repayment** of **deposits** + interest payment thereon, redemption of **debentures** or **pref.** shares or payment of **dividend** to any shareholder, or repayment of any **term loan** or interest payable thereon to any financial institution or **banking** company:
Provided that the buy-back is not prohibited, if the default is **remedied** and **3 years has lapsed** after **such default ceased to subsist**.
2. No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has **not** complied with the provisions of **sections 92, 123, 127 and section 129**.

DEBENTURE (SECTION 71)

Section 2(30) - Debenture:

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

Provided that, following instrument shall **not** be shall not be treated as debenture:

- a. instruments referred to in Chapter III-D of the RBI Act, 1934; and
- b. such other instrument, as may be prescribed by **CG** in consultation with **RBI**, issued by a company.

Section 71:

1. A co. **may** issue debentures with an **option** to convert such debentures into **shares**, either wholly or partly at time of **redemption**.
Provided that the issue of such convertible debentures shall be approved by a **SR** passed at a **GM**.
2. **No** company shall issue any debentures carrying any **voting rights**.
3. **Secured** debentures may be issued by a company subject to such T&C as may be prescribed.

Rule 18 - Issue of Secured Debenture:

An issue of Sec. Debenture may be made by following companies provided period **> 10 years but < 30 years**.

- a. Co. engaged in setting up infra. Projects.
 - b. Infra. Finance Co.
 - c. Infra. Debt Fund NBFC
 - d. Co. as may be permitted by **CG/RBI** to issue for **> 10 years**.
4. **On issue** of debenture, co. shall **create a Debenture Redemption Reserve** account out of the **distributable profits** and amt. credited to such account shall **not be utilised** except for the **redemption** of debentures.
 5. **No** co. shall issue a **prospectus** to the public or to its members **> 500** for subscription of its debentures, **unless** the co. has, **appointed** one or more **debenture trustees**. (i.e., if **> 500** members, appoint debenture trustee)
After allotment of debentures - Within 60 days - Co. to execute debenture trust deed.
 6. A **debenture trustee** shall take steps to **protect** the **interests** of the **debenture-holders** and redress their grievances in accordance with such rules as may be prescribed.
 7. Any provision in trust deed which has the effect of exempting debenture trustee from liability for breach of trust where he fails to due care and diligence - Shall be **Void**.
Provided that - **Liability** of Debenture Trustee shall be subject to such **exemption** as agreed by **majority** of **DHs holding > 3/4th in value** of total debentures.
 8. A co. shall pay **interest** and **redeem** the debentures in accordance with the terms and conditions of their issue.

9. Where at any time, **Debt. Trustee** comes to **conclusion** that **assets** of co. are **insufficient**/likely to become insufficient to discharge the principal amount as and when it become due, **DT** may **file petition** before **Tribunal**. Tribunal may, after hearing, impose **restriction** on **further liab.** of co. as may be necessary in interest of DH
10. If **co. fails** to **redeem debentures** on date of maturity or **fails** to pay **interest** when due - **Tribunal** may, on **application** of DHs or DT, order the co. to **redeem** the debentures **forthwith** with payment of P+I thereon.

A contract with co. to **take up and pay** for any debentures of co. may be enforced by a **decree** for specific performance.

Read Section 71 from ICAI module. Includes Rule 18 as well.

Shubham Singhal (AIR 4)

Chapter 5 - Acceptance of Deposits by Company

[Section 73, 74, 75, 76 and 76A]

Form	Section No	Purpose
DPT 1	Sec 73 & 76	Circular or advertisement in a newspaper inviting deposits
DPT 2	Sec 76	Deposit trust deed
DPT 3	Sec 73 & 76	Return of deposits
DPT 4	Sec 74	Statement on existing deposits as on the date of commencement of the companies act

Certain Key Terms:

Section 2(31) - Deposits - "Deposit" **includes** any **receipt** of money by way of deposit or loan or in any other form by a co., but **does not include** such categories of amt. as may be prescribed in consultation with the **RBI**

Rule 2 of the Companies (Acceptance of Deposit by Company) Rules, 2014:

Deposits shall not include the following: [GF BP I CA]

SN	From	Amount received from:
1	G overnment	<ul style="list-style-type: none"> CG/SG/Local Authority Stat. Auth. constituted under any Act of Parliament or State Leg. Any other source where repayment is guaranteed by CG/SG
2	F oreign Source	<ul style="list-style-type: none"> Foreign Governments, Foreign Governments owned development financial institutions, Foreign or international banks, Multilateral financial institutions (e.g., International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction), Foreign Export Credit Agencies, Foreign collaborators Foreign Bodies Corporate and foreign Citizens, Foreign authorities or PROI as per FEMA
3	B anks	Amount received as a loan or facility from any banking company or SBI or Subsy
4	P FIs	Any amount received as a loan or financial assistance from notified PFIs
5	Issue of CPs	Amt. received against issue of CPs or other I nstruments as per RBI Guidelines
6	O ther co.	Any amount received by a company from any other company;
7	A pplication Money	<p>Any amount received pursuant to an offer made towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment.</p> <p><u>Explanation</u> - If securities for which Appln. money was received is not allotted within 60 days from receipt thereof and is not refunded within 15 days from completion of 60 days, such amount to be treated as a deposit as per these rules.</p> <p>Any adjustment other than what is allowed of such application money will NOT be considered as refund.</p>
8	D irector	<p>Amount received from person - who at the time of such receipt, was:</p> <ol style="list-style-type: none"> Director of the co. (whether public or private) Relative of the director of the co. (only in case of private co.) <p>To not consider such funds as deposit, conditions to be met are:</p>

		<ul style="list-style-type: none"> At the time of giving such money, director or relative to furnish a declaration to co. that such amt. is not being given out of loans/borrowings from others Co. to disclose money so accepted - In Board's Report.
9	Bonds or Debentures	<p>Amount raised by issue of:</p> <ul style="list-style-type: none"> Bonds/Debentures secured by a first charge or Pari Passu with first charge on tangible assets of co. (provided, amount of such bond/debt < Market value of such asset as assessed by RV) Bonds/Debentures compulsorily convertible into shares of co. within 10 years Non-convertible bond/debenture unsecured and listed on RSE as per SEBI
10	Sec. Deposit from Employee	Amt. received from Employee of co. < Annual Salary in nature of non-interest bearing security deposit .
11	Trust	Any non-interest bearing amount received and held in trust
12	In course of business	<p>Any amount received in course of business of co:</p> <ol style="list-style-type: none"> As an advance for supply of goods/services provided that such advance is appropriated against supply of goods/services within 365 days from date of acceptance of such advance (except where advance is subject matter of any legal proceeding) as advance received towards consideration for an immovable property as per an agreement provided that such advance is adjusted against such property as per the terms of agreement as security deposit for performance of contract for supply of goods/services as advance received under long term projects for supply of capital goods except those covered under item (b) above as an advance towards consideration for providing future services in form of a warranty/maintenance contract as per written agreement, provided that period for providing such services is not > 5 years or period as per common business practice whichever is less; as advance received and as allowed by sectoral regulator or as per CG/SG as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications; <p>Provided that if amount received under (a), (b) and (d) above becomes refundable (with or w/o interest) due to reasons that the co. does not have necessary permission to deal in goods or properties or services for which advance is received → On expiry of 15 days from date they become due for refund, it shall be deemed to be a deposit.</p>
13	Promoters	<p>Any amount brought in by promoters of Co. by way of unsecured loan subject to following conditions:</p> <ol style="list-style-type: none"> the loan is brought in pursuance of stipulation imposed by lending institutions/banks on promoters to contribute such finance the loan is provided by promoters themselves or their relatives or both; and the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter
14	Nidhi Co.	<p>Amt. accepted by a Nidhi company as per Section 406 and Rules made thereunder</p> <p>For the purposes of this clause, any amount:</p> <p>(a) received by co., whether in form of instalments or otherwise, from a person with promise to give returns (cash/kind) on completion of period specified or</p>

		(b) any additional contributions , over and above the amount under item (a) above, made by the company as part of such promise or offer, shall be considered as deposits unless specifically excluded under this clause
15	CIS	any amount received under any collective investment scheme as per SEBI
16	Start-Up	An amount of >= Rs. 25 lakhs received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within period < 10 years from date of issue in a single tranche) from a person. <u>Explanation:</u> For this sub-clause: a. Start-up co. means a Pvt. co. and recognised as per notification issued by Department for Promotion of Industry and Internal Trade; b. Convertible Note means an instrument evidencing receipt of money initially as a debt , which is repayable at the option of holder, or which is convertible into such number of Eq. shares of start-up company upon occurrence of specified events and as per the other T&C agreed to and indicated in the instrument.
17	Amt. received from AIF	Any amount received by a company from: <ul style="list-style-type: none"> • Alternate Investment Funds, • Domestic Venture Capital Funds, • Infrastructure Investment Trusts • Real Estate Investment Trusts and • Mutual Funds registered with SEBI
<p>'Depositor' means:</p> <p>i. any member of company (public or private) who has made a deposit as per Sec 73(2), or</p> <p>ii. any person who has made a deposit with a public company as per Sec 76;</p>		

Section 73: Prohibition on Acceptance of Deposits from Public

1. On and after the commencement of this Act, **no company** shall **invite**, **accept** or **renew** deposits under this Act from the **public** except in a manner provided under this Chapter:

Provided that nothing in this sub-section shall apply to a **banking** company and NBFC as per RBI Act and to such other company as **CG** may, after consultation with the Reserve Bank of India, specify in this behalf.

2. **Conditions** subject to which a co. may, by passing a resolution in the GM, accept deposit from its **members** may be accepted (in compliance with Rules prescribed by RBI):
- Resolution** is passed in GM (OR not SR)
 - Issuance of a **circular** (in Form DPT - 1) in the name of BoD of co. to the members including:

Statement showing Fin. position	Credit Rating Obtained	Total no. of depositors	Ant. due towards previously accepted deposits	Other particulars
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As per Rules relating to Circulars:

Manner of issue of circular	<ul style="list-style-type: none"> • Issue to all members by RPAD or Speed post or e-mode • Publish in newspaper - English + Vernacular. • Place on website of the co.
Attachment to Form DPT-1	Certificate from Stat. Auditor stating that co. has not defaulted in repayment of deposit + interest or that 5 years have lapsed from the date default was made good.
Circular to be signed and Registered	Co. to send to RoC - Copy of circular signed by majority of the directors - At least 30 days prior to issue → for registration
Validity of Circular in form of Advt.-	Earlier of: <ul style="list-style-type: none"> • Until 6m from date of closure of FY in which it is issued, or

	<ul style="list-style-type: none"> Date on which Fin. Statement is laid in AGM (if not held - Last date)
Fresh Circulars	To be issued, in each succeeding FY for inviting deposits during that FY.

- c. Filing copy of circular + Such Statement with RoC **within 30 days before** date of issue of the circular;
- d. Co. to **deposit**, on or **before 30th April** each year, sum \geq 20% of amt. of deposit maturing during **following FY** & keep in a scheduled bank in separated bank a/c called - Deposit Repayment Reserve A/C Purpose - The amount so deposited shall not be utilised for purpose other than repayment of deposit. Minimum Balance - 20% of amount maturing in **CURRENT FY**
- e. Co. to certify that no default in **repayment** of deposits + Interest and where deposit had occurred, **5 years** have lapsed since date of making the **default good**.
- f. providing **security**, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company. [i.e., Deposits has to be secured.]

Provided that in case where a co. **does not secure** the deposits or secures **partially**, then, the deposits shall be termed as "**unsecured deposits**" and shall be so **quoted in every circular, form, advertisement or in any doc.** related to invitation or acceptance of deposits.

Exemption to Private Companies:

The above provision of Sec 73(2) clause (b) to (e) **shall not apply to a Pvt. co.** which:

- accepts from its **members** monies **not > 100%** of PUSC + FR + SPA; **or**
- is a **start-up** → For **5 years** from the date of its incorporation; **or**
- Fulfils **ALL** the following conditions:
 - Not an associate or subsy. of any other co.
 - Borrowings from banks/FI or BC is < Lower of - 2x PUSC or Rs. 50 crores, **AND**
 - Co. has no subsisting default in repayment of borrowing at time of accepting deposit.

However, the above cos. will have to file details of deposit accepted with **RoC (Form DPT-3)**.

- Every **deposit** accepted by a co. u/ss (2) shall be **repaid with interest** as per the T&C of agreement.
- Where co. **fails to repay** the deposit or part thereof or any interest thereon - **Depositor** concerned may **apply** to the **Tribunal** for an order directing the company to **pay** the **sum due or for any loss or damage** incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Other provisions relating to Deposits (from Rules):

- Tenure** of deposit - A company cannot accept deposit which is:
 - Repayable on **demand**
 - Repayable within **6m** (see exception below)
 - Max. period **> 36 months** (3 years)

Exception to min. period of 6 months: Co. may accept deposit repayable within 6m subject to:

- Deposit \leq 10% of PUSC + FR + SPA, **AND**
- Deposit repayable on or after 3m from date of such deposit.

- Max. amount of deposit from Members (existing + new): **35% of PUSC + FR + SPA**
The above maximum limit will not apply to a **Private co.** which is:

- a. is a **Start-up** → For **10 years** from the date of its incorporation; or
- b. Fulfils **ALL** the following conditions:
- Not an associate or subdy. of any other co.
 - Borrowings from banks/FI or BC is < Lower of - 2x PUSC or Rs. 50 crores, **AND**
 - Co. has no subsisting default in repayment of borrowing at time of accepting deposit
- However, the above cos. will have to file details of deposit accepted with **RoC (Form DPT-3)**.
3. Rate of Interest and Brokerage Payable on Deposits - **Maximum** - As prescribed by RBI in case of NBFC for acceptance of deposit.
Brokerage payable on to those who are auth. by co. to solicit deposit and actually procure deposit.
4. Depositor to file application form and declaration:
Co. can accept deposit only when application is submitted by intending depositor
Along with application - Declaration that money is not borrowed from any other person.
5. Deposit in Joint Names - **Not > 3**.
A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.
6. Depositor **may** nominate a person at any **time**.
7. Deposit Receipt: Within 21 days from date of receipt of money/realization of cheque/date of renewal → Co. to furnish receipt to depositor/agent.
DR to be **signed** by duly auth. officer **and state date, name** & address, amount, rate of intt. & maturity date.
8. Premature Payment - Same as Public Deposit provision
9. Filing of Return of Deposit with RoC - A duly audited return in Form DPT-3 containing info upto 31/3 to be filed on or before 30th June
It is clarified by way of Explanation that DPT-3 shall be used to include particulars of deposits or particulars of transactions not considered as deposits or both by every company (other than a Government company).
10. No right to alter T&C of Deposit - Co. has no right to alter any T&C of deposit, **deposit trust deed** & deposit **insurance** contract which may prove **detrimental** to interest of depositors **after circular is issued** and deposits are accepted.
11. Disclosure in FS by way of a note -
- Public co. shall disclose about **money received from its directors**.
 - Pvt. company shall disclose about the money received from **directors/relatives** thereof
12. Penal Rate of Interest: In case co. **fails to repay** deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal rate of interest of **18% per annum for the overdue period**.
13. Punishment for Contravention: If co. inviting deposits or any other person contravenes any of the 'deposit rules' **for which no punishment** is provided in the Act, the **co. and OID** shall be punishable as under:
- with fine extendable to Rs. 5,000; and
 - Continuing one - Further fine up to Rs. 500 /day during which the contravention continues.

Section 76: Acceptance of Deposits from Public by Certain Companies

1. Notwithstanding section 73, ELIGIBLE COMPANIES may accept deposits from **persons other than its members** subject to compliance with Sec 73(2) and rules CG+RBI may prescribe.
Eligible Company = **Public** company having Net worth of \geq Rs. 100 crores **OR** Turnover of \geq Rs. 500 crores
2. Conditions to be satisfied for accepting such deposits:
 - a. Prior consent of members by **SR** in **GM** [Ordinary Resolution if deposit is within limit u/s 180(1)(c)]
 - b. **File** such consent (SR) with **RoC** prior to invitation for deposits
 - c. Obtain **credit rating** from recognised credit rating agency (as approved for NBFCs). This credit rating has to be informed to public at time of invitation of deposit.

As per Rule 3:

- Rating shall be obtained **every year during the tenure** of deposits.
- **Copy** of credit rating \rightarrow **RoC** along with Return of Deposits in **Form DPT-3**.
- Rating shall not be below **min. investment grade rating** or other specified rating for **fixed deposits**.

d. Creating of Charge in case of Secured Deposits:

- **Within 30 days** of acceptance.
- In **favor** of deposit holders or trustee for the depositor as per prescribed rules
- Amt. of charge(value of security) shall \geq **Amt.** of deposits accepted (and interest payable thereon).
- **Market value** of such asset to be determined by **RV**.
- Charge to be created only on its **tangible assets**. (Rule 6)

e. Tenure:

Tenure of deposit - A company cannot accept deposit which is:

- Repayable on **demand**
- Repayable within **6m** (see exception below)
- Max. period $>$ **36 months** (3 years)

Exception to min. period of 6 months: Co. may accept deposit repayable within 6m subject to:

- Deposit \leq 10% of PUSC + FR + SPA, **AND**
- Deposit repayable on or after 3m from date of such deposit.

f. Appointment of Trustee for Depositors:

- One/more trustees for depositors to be appointed **by the company** for creating security for deposits.
- A **written consent** shall be obtained from the trustees before their appointment.
- A **statement** shall appear in the **circular** with reasonable prominence to the effect that the **trustees** for depositors have given their **consent** to the company for such appointment.
- Co. to execute a **deposit trust deed** in **Form DPT-2** at least 7 days **before** issuing circular.

Can a company be appointed as Trustee? - Yes. Law says "Person".

Qualification of Trustee:

Person (incl. a company) shall **NOT** be appointed as a trustee if such person is:

- a. is a director, KMP or any other officer/employee of CASH or a **depositor in the company**;
- b. is **indebted** to CASH or a **subsidiary** of such holding company;
- c. has any **material** pecuniary relationship with the company;
- d. has entered into any **guarantee** arrangement w.r.t, principal debts secured by the deposits or interest thereon;
- e. is **related** to any person specified in clause (a) above.

Removal of Trustee:

- General Rule - Can't remove after issue of circular and before expiry of his term
- Procedure to remove:
 - Consent of all the directors present at a meeting of the board.
 - In case the Co. is required to have Independent Dir. - At least 1 ID present in such meeting

g. Maximum amount of Deposit:

Other than Govt co.:

From **Members** - 10% of PUSC + FR + SPA

From person **other** than Members - 25% of PUSC + FR + SPA

Govt. co. - 35% of PUSC + FR + SPA

h. Issuance of a **circular** (in Form DPT -1) in the name of BoD of co. to the members including:

Statement showing Fin. position	Credit Rating Obtained	Total no. of depositors	Ant. due towards previously accepted deposits	Other particulars
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As per Rules relating to Circulars:

Manner of issue of circular	<ul style="list-style-type: none"> • Issue to all members by RPAD or Speed post or e mode • Publish in newspaper - English + Vernacular. • Place on website of the co.
Circular to be signed and Registered	Co. to send to RoC - Copy of circular signed by majority of the directors - At least 30 days prior to issue → for registration
Validity of Circular in form of Advt.-	Earlier of: <ul style="list-style-type: none"> • Until 6m from date of closure of FY in which it is issued, or • Date on which Fin. Statement is laid in AGM (if not held - Last date)
Fresh Circulars	To be issued, in each succeeding FY for inviting deposits during that FY.
Effective Date	Date of issue of advertisement = Date on which Advt. appeared in newspaper Date of issue of circular = Date on which the circular was dispatched .

i. DRR A/C:

Co. to **deposit**, on or **before 30th April** each year, sum \geq 20% of amt. of deposit maturing during **following** FY & keep in a scheduled bank in separated bank a/c called - Deposit Repayment Reserve A/C Purpose - The amount so deposited shall not be utilised for purpose other than repayment of deposit.
Minimum Balance - 20% of amount maturing in **CURRENT** FY

j. Rate of Interest and Brokerage Payable on Deposits - **Maximum** - As prescribed by RBI in case of NBFC for acceptance of deposit.

Brokerage payable on to those who are auth. by co. to solicit deposit and actually procure deposit.

k. Depositor to file application form and declaration:

Co. can accept deposit only when application is submitted by intending depositor

Along with application - Declaration that money is not borrowed from any other person.

l. Deposit in Joint Names - **Not > 3.**

A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.

m. Depositor **may** nominate a person at any **time**.

n. Deposit Receipt: Within 21 days from date of receipt of money/realization of cheque/date of renewal → Co. to furnish receipt to depositor/agent.
DR to be **signed** by Auth. officer **and state date, name** & address, amount, rate of intt. & maturity date

o. Register of Deposits: Co. accepting deposits shall maintain 1/more separate registers for deposits accepted or renewed at its **RO**. Following particulars shall be entered in the case of each depositor:

name, address & PAN	particulars of the guardian (In case of minor)	particulars of the nominee;	deposit receipt number;	date & amt of each deposit;	duration & Repayment date	rate of interest
due date for payt. of interest;	mandate & instructions for payment of interest and for non- deduction of tax at source		date on which the payment of interest shall be made;	charge created for repayment of deposits	any other relevant particulars	

Entries in Register to be made within 7 days from issuance of receipt + Authenticated by dir./CS.
Preserve in good order for **>= 8 years** from FY in which the **latest entry** is made in the register.

p. Premature Repayment of Deposits:

- After 6m but before expiry of actual date of maturity,
- if depositor **requests** for premature repayment
- the RoI shall be **1% less** than what **would** be payable for period for which deposit has actually run

Note - If year is less than 6m, exclude that. Else, include full year.

Reduction of rate of interest (i.e., 1%) is **not applicable** in the following cases: Where the deposit is prematurely repaid in order to:

- Comply with Rule 3 i.e., to **reduce the total amt. of deposits** to bring it within permissible limits; or
- provide for **war risk** or other related benefits to the personnel of naval, military or air forces or to their families during the period of **emergency** declared under Article 352 of the constitution.

q. Premature Closure of Deposit by Holder to Earn Higher Rate of Interest:

In case a depositor desires to avail higher rate of interest by renewing the deposit before its actual maturity date, the company shall pay him the higher rate of interest only if the deposit is renewed for a period longer than the unexpired period of deposit.

r. Filing of Return of Deposit with RoC - A duly audited return in Form DPT-3 containing info upto 31/3 to be filed on or before **30th June**

It is clarified by way of Explanation that DPT-3 shall be used to include particulars of deposits or particulars of transactions not considered as deposits or both by every company (other than a Govt. co).

s. No right to alter T&C of Deposit - Co. has no right to alter any T&C of deposit, **deposit trust deed** & deposit **insurance** contract which may prove **detrimental** to interest of depositors **after circular is issued and** deposits are accepted.

t. Disclosure in FS by way of a **note** - Public co. shall disclose about **money received from its directors**.

u. Penal Rate of Interest: In case co. **fails to repay** deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal rate of interest of **18% per annum for the overdue period**.

v. Punishment for Contravention: If co. inviting deposits or any other person contravenes any of the 'deposit rules' **for which no punishment** is provided in the Act, the **co. and OID** shall be punishable as under:

- with fine extendable to Rs. 5,000; and
- Continuing one - Further fine up to Rs. 500 /day during which the contravention continues.

Section 76A - Punishment for Contravention of Section 73 or Section 76

- Where co., **accepts** or invites or causes any other person to accept any deposit in contravention of prov,
- if co. fails to **repay** deposit or any interest due thereon within the time specified u/s 73 or 76:

Penalty:

- a. Co. shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with **fine** - From (Rs. 1 crore or 2x Amt. of deposit whichever is **lower**) to **Rs. 10 crores**; and
- b. **OID** - Jail upto 7 years **AND** with fine - Rs. 25 lakhs to Rs. 2 crores.

Provided that if it is **proved** that the officer of the company who is in default, has contravened such provisions **knowingly** or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action **under section 447**.

Section 74: Repayment of Deposits, etc., Accepted Before Commencement of this Act

1. Filing of Statement of Deposits with RoC and Repayment thereafter:

Where deposit was accepted before commencement of this Act (i.e. before 1.4.2014), and remains unpaid as on 1.4.2014 or becomes due at any time thereafter, the company shall take the following steps:

- a. file, within **3 months from** such commencement or due date, with RoC - Statement of all deposits accepted by co. & sums remaining unpaid on such amt. with interest
- b. Repay within 3 years from such commencement or maturity date, whichever is earlier.

Note - If co. has been repaying such deposits and interest thereon without any default on due dates for the remaining period of such deposit as per the T&C, point (b) above shall be deemed to have been complied with.

2. Extension of time for repayment by Tribunal:

Tribunal may, on an application made by the company, after considering the financial condition of the co., amt. of deposit and interest payable thereon & such other matters, allow further time as considered reasonable to the company to repay the deposit.

3. Punishment for Non-Repayment of Deposits:

Company - Fine Min. of Rs. 1 crores and Max. of Rs. 10 crore; and
OID - Jail upto 7 years or with fine Rs. 25 lakhs to Rs. 2 crores or with both.

Chapter 6 - Registration of Charge

[Section 77 to Section 87]

Form No.	Purpose
CHG-1	Application to register the creation or modification of charge (other than debentures)
CHG-2	Certificate of registration of charge
CHG-3	Certificate of modification of charge
CHG-4	Intimation to the Registrar regarding particulars for the satisfaction of charge
CHG-5	Certificate of registration of satisfaction of the charge
CHG-6	notice of appointment or cessation of a receiver or a manager
CHG-7	Register of charges created, modified and satisfaction by the company
CHG-8	Application to CG requesting an extension of time to file details of registration of creation or modification or satisfaction of charge as well as rectification any omission or misst. of any details
CHG-9	Application for registering creation/modification of charge for debentures including rectification

Introduction:

Section 2(16) - Charge means:

- an **interest** or **lien**
- **created** on the **property** or assets of a company or any of its undertakings or both
- as **security** and
- includes a mortgage;

Fixed Charge vs Floating Charge:

Fixed Charge	Floating Charge
Charge on specific asset of borrowing company	Charge on assets which are of fluctuating nature or changing in nature
Examples - Land and Building, office premises, machinery, etc.	Examples - Raw material, stock-in-trade, debtor, etc.
Usually, mortgage or deposit of title deeds	--
Not allowed to sell (except with permission of charge holder). But can use.	Permitted to use for trading or producing final goods for sale.
Vacated when money repaid in full	Crystallization of floating charge - Enforce security or company goes into liquidation

Conceptual check - Is charge passed on in case of goods which is under floating charge? - No!

Section 77: Duty to Register Charges, etc.

1. Charge to be registered:

- **Duty** of every **company** creating a charge (in or o/s India)
- To **register** the particulars of the charge signed by co. and charge holder with the instrument creating such charge [in **Form CHG-1** (for other than debentures) or Form CHG - 9(for debentures)]
- **Within 30 days** of creation such charge.
- On payment of such fees and in such manner as prescribed

Note:

- a. Charge created within India or O/S India - Both needs to be registered
- b. Charge created on property or asset which is situated within India or O/S India - Register
- c. Tangible or intangible - Register

Rule 3 of Company (Registration of Charges) Rule, 2014:

Verification of instruments filed with RoC:

a. Where underlying property is situated outside India - Verify by a certificate issued under:

seal of the co., if any	hand of any dir/CS or auth. officer of charge holder	hand of some person other than the co. who is interest in such charge
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b. Where underlying property is situated in India - Verify by a certificate issued under:

seal of the co., if any	hand of any dir/CS or auth. officer of charge holder	hand of some person other than the co. who is interest in such charge
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Extension of Time Limit: (Effective From 2nd November 2018)

- On application by the Company (showing sufficient cause),
- RoC may allow such registration of charge to be made
- **Within 60 days** of such creation (i.e., extension of 30 days only) - On payment of **Additional Fee**

Further Extension:

- Where co. fails to register charge within 60 days,
- ROC is empowered to allow such registration within **further 60 days** - Pay **ad valorem fees**

Application for extension - Make in Form CHG -1 or 9 as the case may be.

2. Issuance of CoR:

On registration u/ss (1), RoC to issue a **Certificate of Registration** of such charge in **Form CHG-2** (CHG-3 in case of modification) to the charge holder and the company.

Note - Certificate of Registration shall be **conclusive evidence** that requirements of this Act w.r.t, charge have been complied with.

3. Consequence of Non-Registration:

- Notwithstanding anything contained in any other law for the time being in force,
- Such charge shall **NOT be taken into account by:**
 - **Liquidator** (appointed under this Act or IBC, 2016) or
 - any other **creditor**
- unless it is duly registered u/ss (1) and CoR is issued u/ss (2).

However, nothing in SS(3) to prejudice any contract/obligation for repayment of money secured by a charge.

Important consequence of non-registration or delayed registration - Charge-holder loses priority

Bank A has Rs. 1cr to Akash Limited against security of company's building at Mulund. The charge was created by deposit of title deeds on 1st June 2019. The co. did not register the charge within 30 days. Subsequently, charge was registered on 13th August 2019 after payment of ad valorem fees and proving sufficient cause.

In the meantime, Bank B has advanced Rs. 2cr. to Akash Limited against security of same property on 20th June 2019. This charge was duly registered on 27th June 2019.

Subsequently, Akash Limited goes into liquidation and property realises only Rs. 2 crores. Now, Bank B will receive its loan back fully, but Bank A will not realise anything. Because the subsequent registration of the charge in favour of Bank A will not prejudice the right of Bank B which obtained its right before the charge in favour of Bank A was actually registered. Thus, Bank B gets priority over Bank A even though its charge was created later

Section 78: Application for Registration of Charge

Charge-holder may apply for Registration:

- Where a company fails to register the charge within 30 days as u/s 77,
- without prejudice to its liability w.r.t., any offence under this Chapter,
- person **in whose favor** charge is created **may apply** to Registrar for registration along with instruments,
- within such time and in such form and manner as may be prescribed **and**
- the Registrar may, on such application, **within 14 days after giving notice to the company**, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, **allow** such registration on payment of such fees, as may be prescribed:

Recovery of Fees - Entitled to recover from company the amount of any **fees** or **additional fees** paid by him to the Registrar for the purpose of registration of charge.

Section 79: Section 77 to Apply in Certain Matters.

The provisions of section 77 relating to registration of charges shall, so far as may be, apply to:

- a. a company **acquiring any property subject to a charge** within the meaning of that section; or
- b. any **modification** in T&C or the extent or operation of any charge registered under that section.

Modification includes change in T&C of the underlying borrowing.

Section 80: Date of Notice of Charge - i.e., Registration to act as Constructive Notice

Where any charge is registered u/s 77, any **person** acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be **deemed** to have **notice of the charge** from the date of such registration.

Section 82: Company to Report Satisfaction of Charge

On payment or satisfaction of any charge registered under this chapter:

- a. Co. to intimate RoC **in Form CHG-4 within 30 days** of such payment/satisfaction.

Provided that - On application by the company or charge holder, RoC may allow such intimation within 300 days of payment/satisfaction **with additional fees**.

- b. Notice to Charge Holder:

On receipt of intimation u/ss (1), Registrar shall cause a **notice** to be sent to charge holder calling upon him to **show cause** within time specified in notice (**not > 14 days**), as to **why payment** or satisfaction in full should **NOT be recorded**.

Notice to CH not required - If intimation u/ss (1) is signed by CH.

If no cause is shown - RoC shall order that a memorandum of satisfaction shall be entered in register maintained u/s 81 and shall **inform** the co. (in Form CHG -5)

If cause is shown - RoC shall record a note to that effect in the register of charges and shall inform the co.

- c. Preserve instrument creating charge/modification - **8 years** from satisfaction of charge.

Section 83: Power of Registrar to Make Entries of Satisfaction & Release in Absence of Intimation from Co.:

Suo motu change in Register of Charges by RoC:

The Registrar may, **on evidence** being given to his satisfaction with respect to any registered charge that:

- a. the **debt** for which the charge was given has been **paid** or **satisfied** in whole or in part; or
- b. part of prop./undertaking charged has been **released** or **ceased** to form part of property or undertaking, it may enter in **register** of charges:

- **memorandum of satisfaction** in whole or in part, **or**
- **fact** that part of the prop/undertaking has been **released** or ceased to form part,

notwithstanding the fact that **no intimation** has been received by him from the company.

The Registrar shall **inform** the **affected parties** within **30 days** of making such entry. (and issue Form CHG-5)

Section 84: Intimation of Appointment of Receiver or Manager

- If any person obtains an **order** for **appointment** of a **receiver** of, or of a person to manage, the property, subject to a charge, of a company or
- if any person appoints such receiver or person under any power contained in any instrument,

he shall, within **30 days** from date of the passing of order or of the making of the appointment, give **notice** of such appointment to **company and Registrar** along with a copy of the order or instrument **and** the Registrar shall, on payment of the prescribed fees, **register** particulars of the receiver, person or instrument in the **register of charges**.

Any person **appointed** above shall, on **ceasing** to hold such appointment, give to the **company** and the **Registrar** a **notice** to that effect and the Registrar shall register such notice. (**Form CHG - 6**)

Section 86: Punishment for Contravention:

If **co. is in default** under this Chapter, penalty:

Co. - Rs. 5 lakhs and OID - Rs. 50,000

If willfully furnishes any false or incorrect info. - Liable for action u/s 447

Section 87: Rectification by Central Government in Register of Charge (or Extension of Time Limit)

The **CG** on being **satisfied** that:

- a. **omission** to give intimation to Registrar of **payment/satisfaction** of a charge, within required time; or
- b. **omission** or misstatement of any **particulars**, in any filing previously made to the **Registrar** w.r.t., any such charge/modification thereof or w.r.t., any memorandum of satisfaction or other entry made u/s 82 or 83, was **accidental** or due to **inadvertence** or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, **on the application of the company** or any person interested and on such T&C as it deems just and expedient, **direct** that the **time for the giving** of intimation of payment/satisfaction shall be **extended** or, as the case may require, that omission or misst. shall be rectified