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CS EXECUTIVE

MODULE-1

COMPANY LAW

BY:- **CS NITESH KR. JAISWAL**

(Company Secretary (FCS), LL.B.)

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Price : ₹ 1000/-

with the blessings of

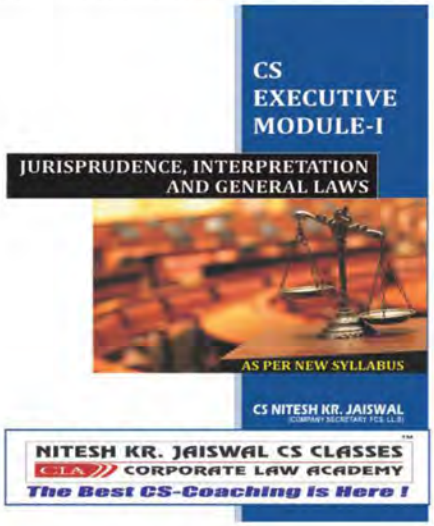
"maa sidhidatri"

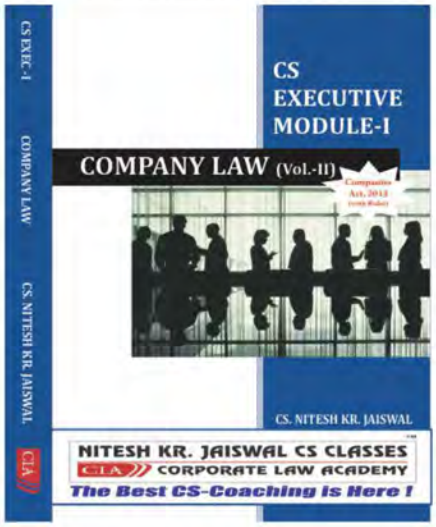
Dedicated to

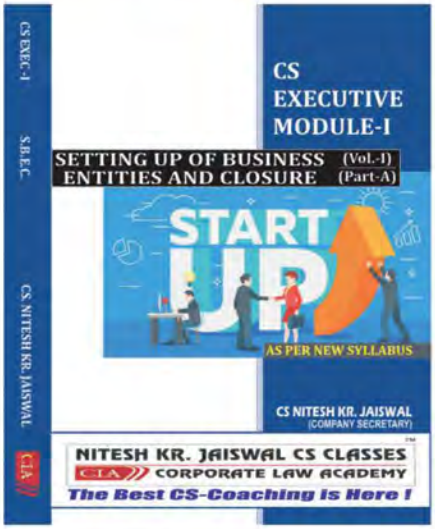
My mother **Late SUNITA JAISWAL**

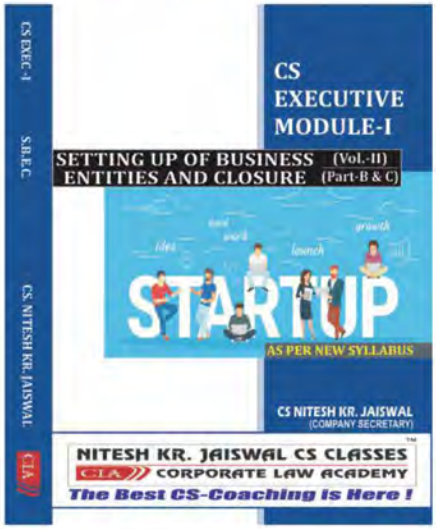
And father **SHRI SURENDRA PRASAD**

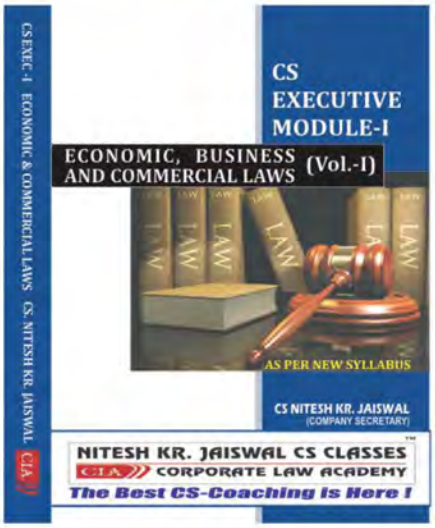
Other Books By the same Author

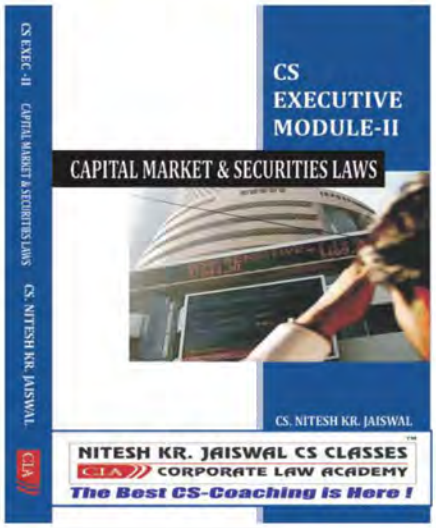












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And

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Preface

We have great pleasure in placing the book on Company Law in the hands of students. This book gives a complete and overall prospect about Company Law from examination point of view and meets the requirements of all levels of students preparing for Company Secretaryship examination. The focus continues on equipping the students with theories, concepts and techniques that can be applied to various spheres of Company Secretary professional.

The important features of this book are as follows:

- It is user friendly and provides information in well structured manner.
- It incorporates latest changes relating to the subject, Company Law.
- It elaborates the concept through practical problems.
- Tables and diagrams are used for explaining the key concepts.
- Lucid and comprehensive presentation of the complex and advanced subjects matter will help the students in easy understanding.
- **The book is comprehensive and even a student who has not studied the subject earlier can easily understand the concept and system of Company Law.**

There is no denying the fact that improvement is an unending process.

We look forward to the comments, suggestions and criticisms from the readers for improvement of this book and will be gratefully acknowledged.

However, it becomes necessary for every student to constantly update with legislative changes made as well as judicial pronouncements rendered from time to time by referring to the ICSI's monthly journal 'Chartered Secretary' and e-bulletin 'Student Company Secretary' as well as other law/professional journals and reference books.

Besides, as per the Company Secretaries Regulations, 1982, students are expected to be conversant with the amendments to the laws made upto six months preceding the date of examination.

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D-125A, 2nd FLOOR, NEAR SUBWAY/METRO STN.
LAXMI NAGAR. NEW DELHI-92
Phone no: +91-9013878840, +91-8010796433
E-mail: *corporatelawacademy@gmail.com*
WEBSITE:- *www.niteshjaiswalclasses.com*

CS. NITESH KR. JAISWAL
(Company Secretary (FCS), LL.B.)

EXECUTIVE PROGRAMME
Module 1
Paper 2
Company Law

SYLLABUS

Objectives

To impart expert knowledge of the various provisions of the Companies Act, its schedules, rules, notifications, circulars including secretarial practice, case laws and Secretarial Standards.

Part – I: Company Law, Principles & Concepts (50 Marks)

1. Introduction to Company Law
2. Shares and Share Capital
3. Members and Shareholders
4. Debt Instruments
5. Charges
6. Distribution of Profits
7. Corporate Social Responsibility
8. Accounts, Audit and Auditors
9. Transparency and Disclosures
10. An overview of Inter-Corporate Loans, Investments, Guarantees and Security, Related Party Transactions
11. Registers and Records
12. An overview of Corporate Reorganization
13. Introduction to MCA 21 and filing in XBRL
14. Global Trends and Developments in Company Law. Case Laws, Case Studies and Practical Aspects

COMPANY LAW (VOL-1)

{Strictly as per new Syllabus (2017) prescribed by The Institute of Company Secretaries of India (ICSI)}

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NKJ-PCET CLASSROOM EXAM/TEST		

This book should be read along with "Company Law Vol-2" containing additional Company Law Part-II & III

This book is updated
With all amendments
Till 30th December, 2019

(Afterwards amendments will be included / discussed in live lectures at classroom)

Structure of Companies Act, 2013

S.NO.	CHAPTER (Under Companies Act, 2013)	CHAPTER NAME	Section Range	RULES	AMENDMENT IN RULE	FORM SERIES
1	Chapter – I	Preliminary	Section 1 to 2	The Companies (Specification of definitions details) Rules, 2014 dated 31st March, 2014.	The Companies (Specification of definitions details) Amendment rules, 2014 dated 17th July, 2014. Companies (Restriction on number of layers) Rules 2017 dated 20th Sept., 2017	
2	Chapter – II	Incorporation of companies and matters incidental thereto	Section 3 to 20	The Companies (Incorporation) Rules, 2014 dated 31st March, 2014.	The Companies (Incorporation) Amendment Rules, 2015 dated 01st May, 2015 The Companies (Incorporation) Second Amendment Rules, 2015 dated 29th May, 2015 The Companies (Incorporation) Amendment Rules, 2016 dated 22nd January, 2016 The Companies (Incorporation) Second Amendment Rules, 2016 dated 23rd March 2016 The Companies (Incorporation) Third Amendment Rules, 2016 dated 27th July, 2016 The Companies (Incorporation) Fourth Amendment Rules, 2016 dated 1st Oct., 2016 The Companies (Incorporation) Fifth amendment rules dated 29th Dec, 2016 effective from 01st January, 2017 The Companies (Incorporation) Amendment Rules, 2017 dated 25th January, 2017 effective from 30th Jan., 2017 The Companies (Incorporation) Second Amendment Rules 2017 dated 27th July, 2017	INC

3	Chapter – III	Prospectus and allotment of securities	Section 26 to 42	The companies (Prospectus and allotment of securities) rules, 2014 dated 31st March, 2014.	The companies (Prospectus and allotment of securities) Amendment rules, 2014 dated 30th June, 2014	PAS
4	Chapter – IV	Share capital and debentures	Section 43 to 72	The Companies (Share capital and debentures) rules, 2014 dated 31st March, 2014.	The Companies (Share capital and debentures) amendment rules, 2014 dated 18th June, 2014. The Companies (Share capital and debentures) Amendment rules, 2015 dated 18th March, 2015. The Companies (Share Capital and Debentures) Second Amendment Rules, 2015 dated 29th May, 2015. The Companies (Share Capital and Debentures) Third Amendment Rules, 2015 dated 06th Nov., 2015. The Companies (Share Capital and Debentures) Amendment Rules, 2016 dated 10th March, 2016. The Companies (Share Capital and Debentures) Second Amendment Rules, 2016 dated 29th March, 2016. The Companies (Share Capital and Debentures) Third Amendment Rules, 2016 dated 19th July, 2016. The Companies (Share Capital and Debentures) Fourth Amendment Rules, 2016 dated 12th Aug., 2016	SH
5	Chapter – V	Acceptance of deposits by companies	Section 73 to 76	The Companies (Acceptance of deposits) rules, 2014 dated 31st March, 2014.	The Companies (Acceptance of deposits) amendment rules, 2014 dated 06th June, 2014. The Companies (Acceptance of deposits) amendment rules, 2015 dated 31st March, 2015. The Companies (Acceptance of Deposits) Second Amendment Rules, 2015 dated 15th Sept, 2015.	DPT

					The Companies (Acceptance of Deposits) Amendment Rules, 2016 dated 29th June, 2016. The Companies (Acceptance of Deposits) Amendment Rules, 2017 dated 11th May, 2017. The Companies (Acceptance of Deposits) Second Amendment Rules, 2017 dated 19th September, 2017.	
6	Chapter – VI	Registration of Charges	Section 77 to 87	The Companies (Registration of Charges) rules, 2014 dated 31st March, 2014.	The Companies (Registration of Charges) Amendment Rules, 2015 dated 29th May, 2015. The Companies (Registration of Charges) Amendment Rules, 2017 dated 7th April, 2017.	CHG
7	Chapter – VII	Management and administration	Section 88 to 122	The Companies (Management and administration) rules, 2014 dated 31st March, 2014.	The Companies (Management and administration) amendment rules, 2014 dated 23rd June, 2014. The Companies (Management and administration) second amendment rules, 2014 dated 24th July, 2014. The Companies (Management and administration) Amendment Rules, 2015 dated 19th March, 2015. The Companies (Management and Administration) Amendment Rules, 2015 dated 28th August, 2015. The Companies (Management and Administration) Second Amendment Rules, 2015 dated 24th Sept., 2015. The Companies (Management and Administration) Third Amendment Rules, 2015 dated 16th Nov., 2015. The Companies (Management and Administration) Amendment Rules, 2016 dated 23rd Sept., 2016.	MGT

8	Chapter – VIII	Declaration and payment of Dividend	Section 123 to 127	The Companies (Declaration and payment of Dividend) rules, 2014 dated 31st March, 2014. IEPF Authority (Recruitment, Salary and other Terms and Conditions of Service of Officers and other Employees) Rules, 2016- yet to be legislatively vetted. Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016 dated 13th January, 2016. IEPF Authority (Recruitment, Salary and other Terms and Conditions of Service Officers and other Employees), Rules 2016 dated 11th April, 2016. Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 – 5th September, 2016	The Companies (Declaration and payment of Dividend) Amendment rules, 2014 dated 12th June, 2014. The Companies (Declaration and Payment of Dividend) (Amendment) Rules, 2015 dated 24th February 2015. The Companies (Declaration and Payment of Dividend) Second Amendment Rules, 2015 dated 29th May, 2015. Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and Provision for offices and officers) Amendment Rules, 2016 – 5th September, 2016 Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017 dated 28th February, 2017.	
9	Chapter – IX	Accounts of Companies	Section 128 to 138	The Companies (Accounting Standards) Rules, 2006 dated 07.12.2006 The Companies (Accounts) rules, 2014dated 31/03/2014 The companies (CSR policy) rules, 2014 dated 27/02/2014	The Companies (Accounting Standards) Amendment Rules, 2008 dated 27.03.2008 The Companies (Accounts) Amendment rules, 2014 dated 14/10/2014 The Companies (Accounts) Amendment rules, 2015 dated 16/01/2015 The Companies (CSR policy) amendment rules,	AOC

				The Companies (Indian Accounting Standards) Rules, 2015 dated 16.02.2015 The Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015 dated 09.09.2015	2014 dated 12/09/2014 The Companies (CSR policy) amendment rules, 2015 dated 19/01/2015 The Companies (Accounts) Second Amendment Rules, 2015 dated 04th September, 2015 The Companies (Accounting Standards) Amendment Rules, 2016 dated 30.03.2016 The Companies (Indian Accounting Standards) Amendment Rules, 2016 dated 30.03.2016 The Companies (Indian Accounting Standards) (Amendment) Rules, 2017 dated 17th March, 2017 The Companies(Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2016 dated 04.04.2016 The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016 dated 23.05.2016 The Companies (Accounts) Amendment Rules, 2016 dated 27.07.2016 The Companies (Filing of Documents and Forms in Extensible Business Reporting language) Amendment Rules, 2017 dated 06.11. 2017 The Companies (Accounts) Amendment Rules, 2017 dated 07.11.2017 Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Second Amendment, Rules, 2017 dated 04.12.2017.	

10	Chapter – X	Audit and auditors	Section 139 to 148	The Companies (Audit and auditors) rules, 2014 dated 31/03/2014 The Companies (Cost Records and Audit) rules, 2014 dated 30/06/2014	The Companies (Audit and auditors) amendment rules, 2014 dated 14/10/2014 The Companies (Cost Records and Audit) Amendment Rules, 2014dated 31/12/2014 The Companies (cost records and audit) (Amendment) Rules, 2015 dated 12/06/2015 The Companies (Audit and auditors) Amendment Rules ,2015 dated 14.12.2015 The Companies (cost records and audit) Amendment Rules, 2016 dated 14.07.2016 The Companies (Audit and Auditors) Amendment Rules, 2017 dated 30th March, 2017 The Companies (Audit and auditors) Second amendment rules, 2017 dated 22/06/2017 The Companies (cost records and audit) Amendment Rules, 2017 dated 07.12.2017	**ADT**
11	Chapter – XI	Appointment and qualification of directors	Section 149 to 172	The Companies (Appointment and qualification of directors) rules, 2014 dated 31/03/2014	The Companies (Appointment and qualification of directors) amendment rules, 2014 dated 18/09/2014 The Companies (Appointment and qualification of directors) amendment rules, 2015 dated 19/01/2015 The Companies (Appointment and qualification of directors) amendment rules, 2017 dated 05/07/2017	**DIR**
12	Chapter – XII	Meetings of Board and its powers	Section 173 to 195	The Companies (Meetings of Board and its powers) rules, 2014 dated 31/03/2014	The Companies (Meetings of Board and its powers) Amendment rules, 2014 dated 12/06/2014 The Companies (Meetings of Board and its powers) Second Amendment rules, 2014dated 14/08/2014	,

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15	Chapter – XV	Compromises, Arrangements and Amalgamations	Section 230 to 240	The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 dated 14th December, 2016	The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 dated 13th April, 2017	
16	Chapter – XVI	Prevention of Oppression and Mismanagement	Section 241 to 246			
17	Chapter – XVII	Registered Valuers	Section 247 to 247	The Companies (Registered Valuers and Valuation) Rules, 2017 dated 18th October, 2017		

18	Chapter – XVIII	Removal of Names of Companies from the Register of Companies	Section 248 to 252	The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2017 dated 12th April, 2017	General Circular 16/2016 dated 26.12.2016–Removal of names of Companies from the Register of Companies –clarification regarding availability of Form STX on MCA-21 Portal	
19	Chapter – XIX	Revival and Rehabilitation of Sick Companies	Section 253 to 269	In terms of MCA Notification no. S.O. 3453(E) dated 15th November, 2016, section 255 of the Insolvency and Bankruptcy Code, 2016 was made effective. w.e.f. 15th Nov., 2016	Section 255 of the Insolvency and Bankruptcy Code, 2016 provides that the Companies Act, 2013 shall be amended in the manner specified in the Eleventh Schedule.	
20	Chapter – XX		Section 270 to 365	In terms of MCA Notification no. S.O. 3453(E) dated 15th November, 2016, section 255 of the Insolvency and Bankruptcy Code, 2016 was made effective. w.e.f. 15th November, 2016	Section 255 of the Insolvency and Bankruptcy Code, 2016 provides that the Companies Act, 2013 shall be amended in the manner specified in the Eleventh Schedule.	
21	Chapter – XXI	Companies authorised to register under this Act	Section 366 to 378	The Companies (Authorised to registered) rules, 2014 dated 31/03/2014 Companies (Registered Valuers and Valuation) Rules, 2017 dated 18/10/2017	The Companies (Authorised to Register) Amendment Rules, 2016 dated 31.05.2016	
22	Chapter – XXII	Companies Incorporated Outside India	Section 379 to 393	The Companies (Registration of Foreign Companies) rules, 2014 dated 31/03/2014		
23	Chapter – XXIII		Section 394 to 395			
24	Chapter – XXIV	Government Companies	Section 396 to 404			
25	Chapter – XXV	Registration Offices and Fees	Section 405 to 405	The Companies (Registration Offices and Fees) rules, 2014 dated 31/03/2014	The Companies (Registration Offices and Fees) Amendment rules, 2014 dated 28/04/2014 The Companies (Registration Offices and Fees) Amendment Rules, 2015 dated 24/02/2015	

					The Companies (Registration Offices and Fees) Second Amendment Rules, 2015 dated 29/05/2015 The Companies (Registration Offices and Fees) Amendment Rules 2016 dated 06.05.2016 The Companies (Registration Offices and Fees) Second Amendment Rules 2016 dated 07.11.2016	
26	Chapter – XXVI	Nidhis	Section 406 to 406	Nidhi Rules, 2014 dated 31/03/2014		
27	Chapter – XXVII	National Company Law Tribunal and Appellate Tribunal	Section 407 to 434	National Company Law Tribunal (Salary, Allowances and other Terms and Conditions of Service of President and other Members) Rules, 2015 dated 21/09/2015 National Company Law Appellate Tribunal (Salaries, Allowances and other Terms and Conditions of Service of Chairperson and other Members) Rules, 2015 dated 19/08/2015 National Company Law Tribunal Rules, 2016 dated 21.07.2016 National Company Law Appellate Tribunal Rules, 2016 dated 21.07.2016 Companies (Transfer of Pending Proceedings) Rules, 2016 dated the 7th December, 2016 The NCLT (Procedure for reduction of share capital of company) Rules, 2016 dated 15th December, 2016	National Company Law Tribunal (Amendment) Rules, 2016 dated 20th December,2016 Companies (Transfer of Pending Proceedings) Amendment Rules, 2017 dated 28/02/2017 NCLAT (Amendment) Rules 2017 dated 23.08.2017 National Company Law Tribunal (Amendment) Rules, 2017 dated 05.07.2017	

				Companies (Transfer of Pending Proceedings) Rules, Second Amendment Rules, 2017 dated 29th June, 2017.		
28	Chapter – XXVIII	Special Courts	Section 435 to 446	The Companies (Mediation and Conciliation) Rules, 2016 dated 9th September, 2016		
29	Chapter – XXIX	Miscellaneous	Section 447 to 470	The Companies (Miscellaneous) Rules, 2014 dated 31/03/2014 The Companies (Adjudication of Penalties) Rules, 2014 dated 31/03/2014	The Companies (Miscellaneous) Amendment Rules, 2014 dated 17/07/2014 The Companies (Central Government's) General Rules and Forms Amendment, rules 2014 dated 17/11/2014	

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Roll No……

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 8***

NOTE : *1. Answer **ALL** Questions.*

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

1. Comment on the following:

(a) A private company and a banking company, can freely accept deposits.

(b) Every financial statement of the company must give true and fair view of the state of affairs of the company at the end of the financial year.

(c) The Articles of Association of a company cannot impose a blanket ban prohibiting transfer of shares in favour of a minor. Such restrictions is unreasonable and not sustainable.

(d) Every shareholder of a company is known as member while every member may not be known shareholder.

(5 marks each)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. *(a)* "If a company does not receive minimum subscription, it should refund money received from participants within such time as may be prescribed". Explain the above statement with suitable comments.

(3 *marks each)*

(b) What are the requirements as to the maintenance of Register of Postal Ballot?

(3 *marks each)*

(c) Explain whether a Floating charge attached to the company's property generally remains dormant till it crystallize or become fixed.

(3 *marks each)*

(d) Who is a "related party" as defined in Section 2 (76)?

(3 *marks each)*

(e) State the time limit within certificate of securities as provided in Companies act ,2013 to be issued in case of:

(*i*) Any allotment of shares

(*ii*) Any allotment of debentures.

What is the punishment in case of default committed in the above case?

(3 *marks each)*

OR (Alternate question to Q. No. 2)

2A. (*i*) Referring to the provisions of Companies Act, 2013 advice a public company which declared dividend on 30th September, 2018 as the procedures to be followed in this regard for payment of dividend. Whether any interviewing holidays in the month of October 2018 shall be taken into account in calculating the time limit ?

(*ii*) Draft " A specimen of deed of assignment of shares of a company".

(*iii*) Who are all the persons required to obtain Digital signature Certificates?

(*iv*) Explain whether the Corporate Social Responsibility (CSR) Committee is entrusted with any specific functions under the Companies Act ,2013?

(*v*) XYZ Ltd. sold a mine, owned by it for Rs 28.20 crore. A minority shareholder brought an action for damages against the company itself stating that the real value of mine was Rs 100.00 crore. With reference to provisions of companies Act, 2013 state whether the action damage is maintainable?

(3 *marks each*)

3. *(a)* With reference to the provisions of the companies Act, 2013 and the rules framed there under, state the disqualification for a Debenture trustee. Explain whether the following persons can be appointed as Debenture Trustee?

(*i*) A relative of whole time director of the company.

(*ii*) A shareholder who has no beneficial interest.

(b) Vijay is an auiditor of XYZ Ltd. a listed public company having paid up share capital of ₹ 10 Crores. Advise him as to whether he can render the flowing services, keeping in mind, the relevant provisions of Companies Act, 2013 ?

(*i*) Vijay wants to conduct internal audit of XYZ Ltd. He also wishes to provide actuarial services to XYZ Ltd.

(*ii*) Vijay wishes to "design and implement one financial system" and offer management services to ABC Ltd. the holding company of XYZ Ltd.

(*iii*) What will be your answer in the above two cases if services are provided to PQR Ltd. a subsidiary company of XYZ Ltd ?

(c) A public limited company has only seven shareholders. Being all the shares paid in full, one such shareholder purchased all the shares of another shareholder in a private settlement between them reducing the no. of shareholder to six. The companies continues to carry on its business thereafter. Discuss with reference to the Companies Act, 2013 the implications of this transaction on the functioning of the company.

(5 *marks each)*

PART–II

4. (*a*) "A" Ltd., a public company wants to appoint Alternate Directors. Examine the validity of acts of company with reference to provisions of Companies Act, 2013 in following cases:

(*i*) 'D' a director was absent for a period of two and half months. It is proposed to appoint an alternate director.

(*ii*) 'E' a director was absent for 4 months. It is proposed to appoint 'F' as an alternate director in place of 'E'. 'F' is already acting as an alternate director in ''A'' Ltd. for a director 'G' Who was absent for 5 months.

(*iii*) Can the said appointment, if permitted, be passed by circular resolution?

(1+2+2=5 *marks*)

(*b*) Prepare an agenda items for a Board Meeting with a minimum of any eight items to be discussed.

(5 *marks*)

(*c*) DEF Ltd. has made profit for last 3 consecutive financial years as under:

Year	₹ in Crore
2017–18	100
2016–17	150
2015–16	200

Considering the provisions of companies Act 2013, state whether:

(*i*) DEF Ltd. can contribute ₹33.75 crore directly to political party by a bearer cheque ?

(*ii*) What is the limit on maximum amount that can be contributed by a company to political party?

(*iii*) Would your answer be different, if DEF Ltd. is a "Government company'' and donation is given by an "account payee cheque" ?

(1+2+2=5 *marks*)

(*d*) Jolly Retails Ltd. issued a notice for the meeting of its Board of directors scheduled for on 5th June 2019 at its corporate office. One of the directors intimated that he would be participating in the meeting through video conferencing. The Secretary contended that the meeting cannot insist that the company should provide video conferencing facilities for attending the board meeting. Is the contention of the Secretary tenable as per the provisions of the Companies Act, 2013 ? Discuss with relevant case laws, if any.

(5 *marks*)

Attempt all parts of either Q. No. 5 or Q. No. 5A

5. (*a*) Pluto Ltd. was incorporated on 10th June, 2013 in Delhi and is engaged in the business of providing specialised to catering services for corporate events. The Board of directors proposed to venture into event management services, which required the alteration of the object clause of the Memorandum of Association of the company. Draft the necessary resolution assuming relevant data.

(*4 marks*)

(b) State the situations under which a company is required to constitute the Audit Committee.

(*4 marks*)

(c) 'T' Ltd. listed company has ₹20 crore paid up share capital and has nine directors on its board. Advise T Ltd. on the following matters:

(*i*) The number of independent directors it should a appoint on its board.

(*ii*) How many independent directors should be appointed by T Ltd. in case it case it is an "unlisted public company"?

(*iii*) Can T Ltd. appoint an independent director for second consecutive term of 6 years whose first term, as independent director in T Ltd. was for 4 years ?

(*iv*) T Ltd. wants to appoint another independent director for further period of 2 years. He has already completed 2 consecutive tenures of 4 years each as an independent director in T Ltd. ?

(*4 marks*)

(d) Referring to the provision of companies Act,2013 advise the directors of a company in the following matters:

(*i*) The company wishes to obtain approval of the financial statement in a meeting held through video conferencing.

(*ii*) Due to urgency, the company wants to get its prospectus approved in a meeting held through video conferencing.

(*4 marks*)

(e) 'S' is a member of institute of a company secretaries of India. He has defaulted in payment of annual subscription and his name is removed from the register of members by ICSI on 31st December, 2018.

(*i*) Can he be appointed as "Company Secretary" by 'M' Ltd. with a paid up share capital of ₹ 10 crore on 1st January, 2019 ?

(*ii*) If M Ltd. has paid up share capital of ₹ 2 crore and it has appointed 'S' as a company secretary on part time basis, is it valid ?

(*4 marks*)

OR (Alternate question to Q. No. 5)

5A. (*i*) ABC Corporation Ltd. has no managerial person acting in professional capacity. During the current financial year the company sustained a loss. How can the company remunerate their non professional managerial personnel in such a situation ?

(*4 marks*)

(*ii*) 'X' was appointed as an Additional director of precious Ltd. w.e.f. 21st November, 2018 in a casual vacancy caused by the unexpected death of "P" by way of a circular resolution passed by the board of directors. With reference to the provisions of the companies Act, 2013 advise the company on the validity of the appointment of 'X' and his continuation as Additional director.

(*4 marks*)

(*iii*) Enumerate the difficulties encountered in holding virtual meeting of members.

(*4 marks*)

(*iv*) As a company secretary referring to the provisions of Companies Act, 2013 examine the validity of the following propositions :

(*a*) A company wishes to call its annual general meeting on a working day at 6:30 p.m.

(*b*) Due to the availability of chairman, the AGM of the company can be held only on 15th August, 2018. All members are ready to give consent in writing in advance for the same.

(*c*) Due to technical problem, company wants to hold its AGM at a city other than a city at which registered office of the company is situated.

(*1+2+1=4 marks*)

(*v*) Prism Ltd. which has 50 preference shareholders called a preference shareholders meeting for amending the terms of these shares. 'A' was the only preference shareholder who attend the meeting. He, however held the proxies from all other preference shareholders. He took the chair, conducted the meeting and passes passed a resolution for amending the terms of the issue of these shares. Examine the validity of the meeting and the resolution passed.

(*4 marks*)

PART–III

6. (*a*) Ragini, a practicing company secretary expressed her opinion on a report given to business firm called "Quick March Consultant". Ragini has an interest in the same to be extend of 12% of shares in the firm. Is she guilty of professional misconduct ?

(*b*) How would you substance the view that the members of the Institute of Company Secretaries of India (ICSI) are subject to disciplinary mechanism ?

(*5 marks each*)

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422

Roll No……

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 8***

NOTE : *1. Answer **ALL** Questions.*

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

1. *Co*mment on the following

(a) Raman Pvt. Ltd. has only two shareholders, X and Y. All shares were fully paid-up. X sold all his shares to Y and the company carries on its business activities thereafter.

(b) Every company is required to disclose the details of vigil mechanism in the Board Report.

(c) A public company may issue secured irredeemable debentures.

(d) Chief Financial Officer is responsible to maintain books of account of the company.

(5 marks each)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. *(a)* Any expenditure incurred for the benefit of the society will be considered as expenditure in pursuance of corporate social responsibility policy. Comment with reference to the provisions of the Companies Act, 2013.

(3 *marks)*

(b) Minutes of the meetings of the company shall be preserved for a period of not less than eight years. Comment with reference to the provisions of the Companies Act, 2013.

(3 *marks)*

(c) If a company has appointed a Company Secretary then his signature is mandatory on the share certificate issued by the company. Analyse with reference to the provisions of the Companies Act, 2013.

(3 *marks)*

(d) The concept of treasury shares in United Kingdom is same as buy-back of shares in India. Examine.

(3 *marks)*

(e) Filing of financial statements in XBRL mode and by using XBRL taxonomy is mandatory to certain companies. Discuss, referring to the provisions of the Companies Act, 2013.

(3 *marks)*

OR (Alternate question to Q. No. 2)

2A. (*i*) On 3rd December, 2018 the Registrar of Companies applied to the Regional Director for seeking sanction to file a winding up application against a company. On next day i.e. on 4th December, 2018 the Regional Director granted its sanction. Examine the validity of Regional Director's action.

(3 *marks*)

(*ii*) A company declared dividend on 21st November, 2018. It reports on 22nd December,2018 that it could not pay dividend to 46 members as they are not traceable for last three years. Advise the company with regard to unpaid dividend under the provisions of the Companies Act, 2013.

(3 *marks*)

(*iii*) A member of an incorporated company becomes insolvent. He claimed right to vote and receive dividend from the company. Referring to the provisions of the Companies Act, 2013 discuss whether his claim is valid.

(3 *marks*)

(*iv*) In a case pertaining to oppression and mismanagement, the respondents pleaded that the legal heirs of a deceased member whose name is still on the register of members are not entitled to apply before Tribunal, as only member of the company can complain about oppression and mismanagement. Thus, legal heirs have no *locus standi*. Examine this argument in the light of decided cases

(3 *marks*)

(*v*) The Board of directors of Wood Ltd. are authorised to borrow money upto ₹ 2 crore. The Board of directors got sanctioned a loan of ₹ 30 lakh from a Bank for payment of debt liabilities of the company. But the Board of directors used this amount towards payment of their travelling & tour expenses. Will Wood Ltd. be held liable for repayment of the loan ? Discuss.

(3 *marks*)

3. *(a)* Ram is a practicing Chartered Accountant and partner of two audit firms namely PYMG and YE. In the immediately preceding financial year, PYMG has completed its two terms of five consecutive years in Gayatri Pvt. Ltd. having paid-up share capital of ₹ 60 crore. Now Gayatri Pvt. Ltd. is considering appointing YE firm as its statutory auditors. Can Gayatri Pvt. Ltd. appoint YE firm as its auditors ?

What will be your answer in the following cases ?

(i) If appointing company is a one person company;

(ii) If appointing company is a small company.

(5 *marks)*

(b) Premium Ltd. is considering buy-back of its shares without using any proceeds of shares or other specified securities. The balance sheet of Premium Ltd. shows the following status as on 31st March, 2018 :

Asset/Liabilities	**Amount**
Share Capital :	
1,00,000 Equity shares of ₹ 10 each (fully paid)	₹ 10,00,000
Free reserves	₹ 5,00,000
Unsecured debt	₹ 7,00,000
Secured debt	₹ 15,00,000

Determine the maximum quantum of buy-back of shares with the shareholders' approval as on 1st April, 2018.

(5 *marks)*

(c) The Board of directors of XYZ Ltd. wants to delegate all or any of their powers to any of the directors of the company or any person even not in the employment of the company for transfer of securities. Referring to the provisions of the Companies Act, 2013 advise in the matter.

(5 *marks)*

PART—II

4. *(a)* Anil, a shareholder holding 9% equity shares of the company, who is not holding any directorship wants to stand for directorship in Pritam Ltd. in its next annual general meeting. State the procedure for appointment of Anil as per the provisions of the Companies Act, 2013.

(5 *marks*)

(b) Articles of Reality Ltd. provides that directors participating through audio-visual means in its Board meetings shall always be counted for quorum. Examine the validity of this provision with reference to the Companies Act, 2013.

(5 *marks*)

(c) Logical Solutions Ltd., a listed company, is having a Corporate Social Responsibility(CSR) committee constituted with the following members :

Rohan — Whole-time director & Chairman of CSR committee and Board

Sohan — Non-executive director

Mohan — Independent director

Can company constitute a Nomination and Remuneration committee consisting of same three members of CSR committee with same composition ? Discuss.

(5 *marks*)

(d) Draft an appropriate resolution to authorise the Board to borrow for company's business upto a limit beyond paid-up share capital and free reserves. Assume facts and figures.

(5 *marks*)

Attempt all parts of either Q. No. 5 or Q. No. 5

5. (*a*) Kirti Ltd. has total paid-up share capital of ₹ 23 crore and its annual general meeting is scheduled on 27th December, 2018. Ritik is holding paid-up share capital having nominal value of ₹ 3 crore and Sonu is holding paid-up share capital having nominal value of ₹ 2.4 crore. On 24th December, 2018 both Ritik and Sonu wanted to issue proxy in favour of Rohit to attend meeting on their behalf. Rohit is not a member of any company. Decide under the provisions of the Companies Act, 2013 whether both Ritik and Sonu can appoint Rohit as their proxy.

(4 *marks*)

(*b*) In Pallavi Chemicals Ltd. resolution for issue of bonus shares in the general meeting was put to remote e-voting and requisite majority has approved but quorum is not present at the general meeting. What would be the implications ?

(*4 marks*)

(*c*) Assume yourself as Company Secretary in practice and secretarial auditor of Rama Ltd. which is having its annual general meeting scheduled on 17th August, 2018 at its registered office in Mumbai. On 16th August, 2018 you have a business meeting fixed at Kochi and return flight to Mumbai in the evening of 16th August, 2018. But due to bad weather conditions all flights departing from Kochi are declared cancelled. Discuss the alternatives available to you with regard to the annual general meeting of Rama Ltd.

(4 *marks*)

(*d*) A Board meeting of a listed public company was called at shorter notice to transact an urgent business. None of the Independent directors could attend the meeting. Examine the validity of resolution(s) passed at the meeting referring to the provisions of the Companies Act, 2013.

(4 *marks*)

(*d*) Fashion Ltd. holds a general meeting for passing a special resolution regarding appointment of Shyamal aged 72 years as Managing Director of the company. Out of the 50 members present in the meeting 25 voted in favour, 15 against and 10 members did not cast their vote. Can company appoint Shyamal as Managing Director of the company ? Discuss.

(4 *marks*)

OR (Alternate question to Q. No. 5)

5A. (*i*) In a general meeting, a motion was put for removal of small shareholders' director. A small shareholder contended that only small shareholders are entitled to vote on this motion as it is related to removal of small shareholders' director and motion should be passed as special resolution. Is the argument valid ? Analyse with reference to the provisions of the Companies Act, 2013.

(4 *marks*)

(ii) On 4th September, 2018 Varun was appointed as Managing Director of Astha Ltd. by the Board of directors subject to the approval of the members at the next general meeting. On 10th September, 2018 Varun in the capacity of managing director executed an agreement with Shabeer to purchase some machines. On 3rd October, 2018 members in the general meeting did not approve the appointment of Varun. Later on company refuses to accept delivery of machines from Shabeer on the ground that agreement was executed by Varun whose appointment is not approved by the members. Is refusal of company valid on the said ground ? Examine.

(4 *marks*)

(*iii*) SRM Ltd. has paid ₹ 15 lakh as an insurance premium on behalf of its Company Secretary and Managing Director for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company. Can the company pay such insurance premium ? Discuss referring to the provisions of the Companies Act, 2013.

(4 *marks*)

(*iv*) Director, Ravi, was appointed on 1st July, 2018. On 2nd July, 2018 he wrote to Managing Director of the company to inspect the minutes of the board meeting held on 1st August, 2017. The Managing Director refused as he was not a director at that time. Ravi attended a meeting held on 1st September, 2018 and resigned on 3rd October, 2018. On 4th October, 2018 he wrote to the Managing Director to send him a copy of the signed minutes of the meeting held on 1st September, 2018. Again, the Managing Director refused. Are the actions of Managing Director valid under Companies Act, 2013/Secretarial Standards ? Comment.

(4 *marks*)

(*v*) On 5th January, 2018 in a general meeting a motion for removal of a director was put to vote. The Chairman declared the motion passed as ordinary resolution by show of hands. In the next general meeting held on 28th September, 2018, a member questioned the validity of the said resolution which was declared as passed by the Chairman alleging that majority votes were against the motion and asked the chairman to disclose number of votes cast in favour of and against the said resolution. Referring to the provisions of the Companies Act, 2013 discuss if the demand of member is tenable.

(4 *marks*)

PART—III

6. (*a*) Shalini, practicing Company Secretary, has disclosed information acquired in the course of her professional engagement to a person other than the client, without the consent of such client. Can she do so ? Can she retain the digital signature of her client for uploading e-forms on MCA portal ?

(*5 marks*)

(*b*) Rakesh, practicing Company Secretary, has accepted the position of Secretarial Auditor previously held by another Company Secretary in practice by communicating through SMS. He also used designation 'Company Law Consultant' in his visiting cards. Examine with reference to the relevant provisions of Company Secretaries Act, 1980 and/or Companies Act, 2013 whether these are in order.

(*8 marks*)

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CHAPTER

1

INTRODUCTION TO COMPANY LAW

Covering-

- Sections Chart
- ABC Analysis
- Company – Meaning
- Company – Administration
- Companies Act, 2013
- NCLT
- Constitution of NCLT
- Company – Characteristics
- Difference between Company and Firm
- Advantage and Disadvantage of Company
- Company-Citizenship, Nationality & Residence
- Experience of a Shareholder as Experience of a Company
- Lifting or Piercing the Corporate Veil
- Body Corporate or Corporation
- Illegal Association
- Additional Case Laws under this chapter
- Self Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (5 to 15)

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N.K.J - SECTION CHART

Section	Short Description
Section 2(11)	Definition of Body corporate or corporation
Section 2(20)	Definition of Company
Section 3	Formation of Company
Section 12	Registered office of company
Section 34	Criminal liability for misstatements in prospectus
Section 35	Civil liability for mis-statements in prospectus
Section 39	Allotment of securities by company
Section 44	Nature of shares or debentures
Section 75	Damages for fraud under deposits
Section 339	Liability for fraudulent conduct of business.
Section 464	Prohibition of association or partnership of person exceeding certain number.
Rule	Companies (Miscellaneous) Rules, 2014

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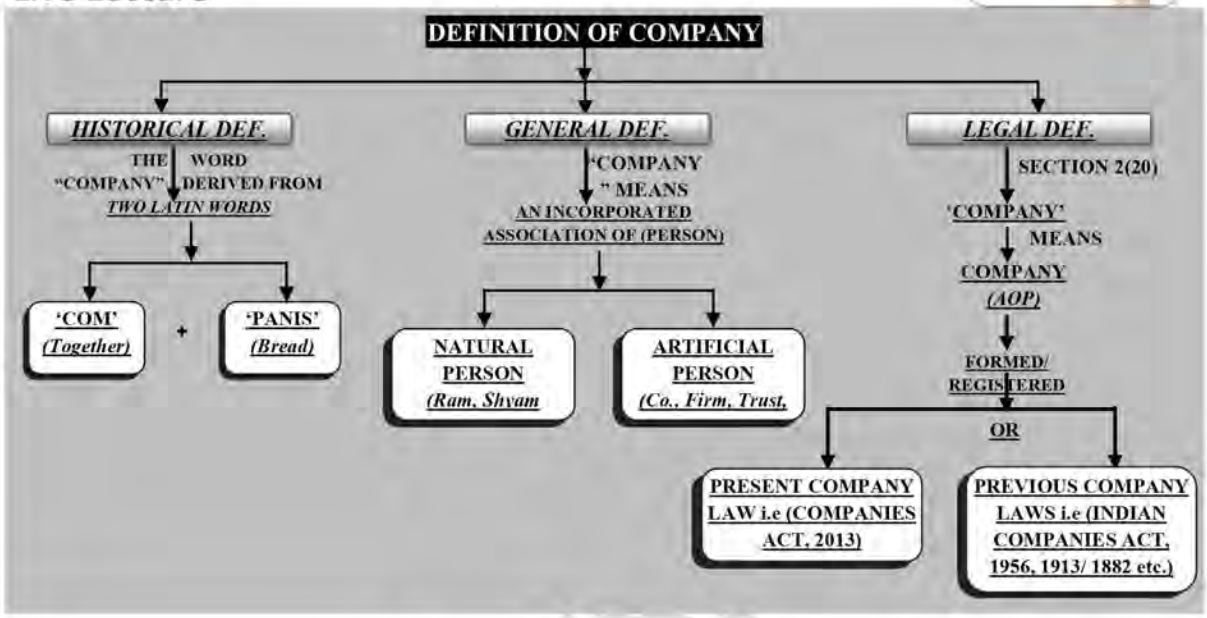

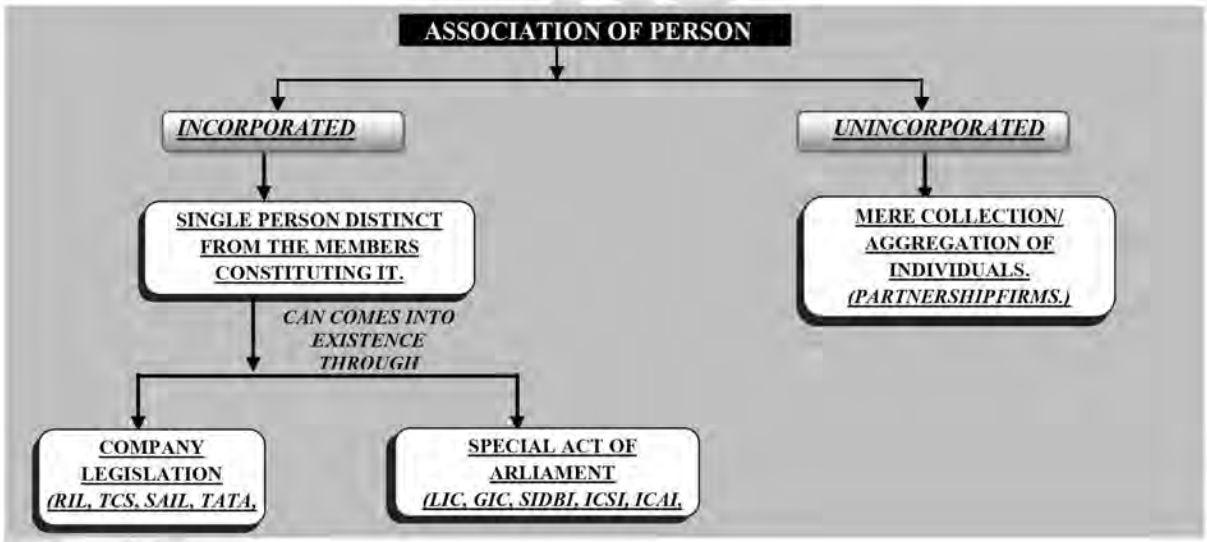

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INTRODUCTION TO COMPANY LAW

ABC Analysis
(ICSI -Exam Point of view)

A	1. Concept of Separate Legal Entities 2. Case Laws 3. Lifting or Piercing the Corporate Veil 4. Case Laws 5. Concept of NCLT
B	6. Concept of Body Corporation 7. Concept of Illegal Association 8. Company – Citizenship, Nationality & Residence
C	9. Company – Characteristics 10. Company – Administration

COMPANY-MEANING

SECTION 2(20)

A ***company is an association of both natural and artificial person incorporated under the existing law of the company***.

Company is a voluntary organization of persons who contributes their money in the common stock of the company and agrees to invest the same for a common goal or purpose, and to share the profit & losses arising there from. Such persons are called as shareholders or members and the common stock is called as the share capital of the company.

As per section **2(20)** of the Companies Act, 2013 'company' means a company ***formed and registered under the Companies Act, 2013 or under any of the previous laws relating to companies***.

COMPANY-ADMINISTRATION

COMPANY LAW

HISTORY OF COMPANY LAW IN INDIA

Indian Companies Act, 1850
↓
Indian Companies Act, 1856
↓
Indian Companies Act, 1882
↓
Indian Companies Act, 1913
↓
The Companies Act, 1956
↓
The Companies Act, 2013

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COMPANIES ACT, 2013

In India, Companies are governed by the Companies Act, 2013. It is an Act to consolidate and amend the law relating to companies and certain other association.

The Act comes into effect from **30th August, 2013**.

HISTORY OF THE COMPANIES ACT, 2013

2013
- Enacted as Companies Act, 2013, with President assent on 29th August 2013.
- Companies Bill passed in Rajya Sabha on 8th August 2013.

2012
- Companies Bill passed in Lok Sabha on 18th December, 2012.

2011
- Introduce in Lok Sabha on 14th December, 2011.

2010
- Bill referred to standing committee for review, report tabled in Lok Sabha on 13th August 2010.

2009
- 2008 Bill modified and re introduced on 3rd August 2009.

2008
- Companies bill 2008 introduced in Lok Sabha on 23rd October for the first time, to replace 52 year old Companies Act, 1956.
- But it lapsed due to dissolution of parliament.

OBJECTIVE OF THE COMPANIES ACT, 2013

(a) The Act intends to promote self-regulation and is aimed at building a smooth and easy corporate environment along with the new and improved measures of strong investor protection norms.

(b) The Act intends to encourage transparency, accountability and high standards of corporate governance.

(c) The Act intends to enforce stricter action against fraud and gross non-compliance of company law.

(d) The Act intends to promote the development of economy by encouraging entrepreneurships.

(e) The Act intends to create flexibility and simplicity in the formation and maintenance of companies.

STRUCTURE OF THE COMPANIES ACT, 2013

It has 470 sections, which is covered in 29 chapters, and there are VII Schedules.

The Companies Act, 2013 is more of a **rule-based legislation**. A significant part of the legislation is in the form of rules made by central govt.

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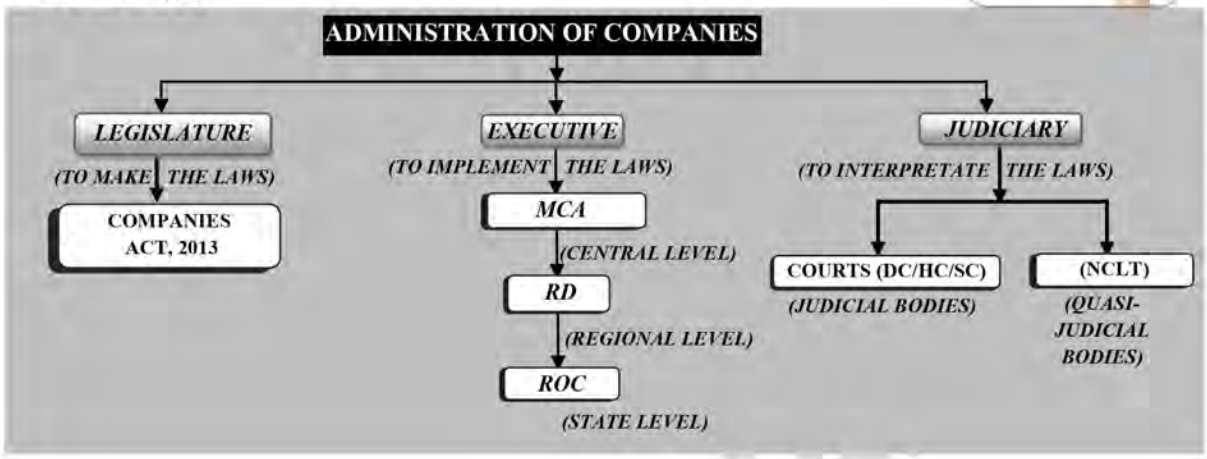

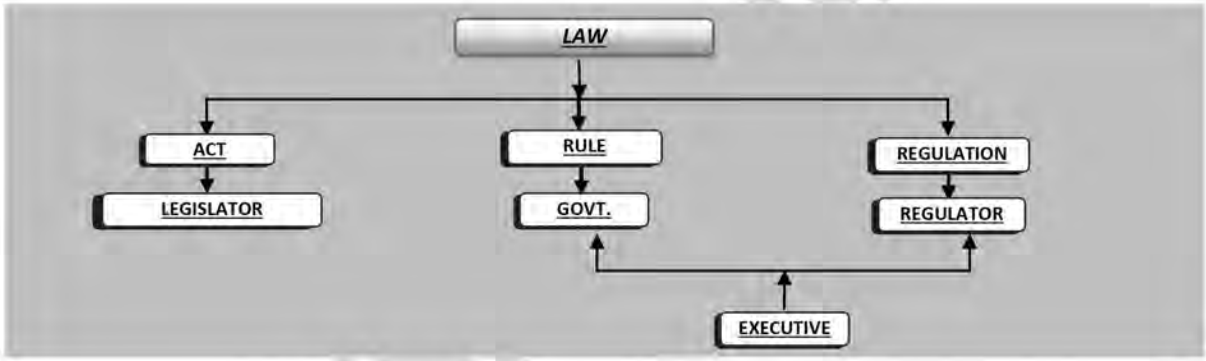

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Schedules Under the Act	
Schedule I	Memorandum and Articles of Association of Companies.
Schedule II	Useful lives to compute depreciation.
Schedule III	General instructions for preparation of Balance Sheet and Statement of Profit and Loss of a Company.
Schedule IV	Code for Independent Directors.
Schedule V	Appointment and Remuneration of a managing or whole time director or a manager.
Schedule VI	Infrastructural projects and infrastructural facilities.
Schedule VII	Corporate Social Responsibility activities.

AUTHORITIES UNDER COMPANIES ACT, 2013



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NCLT (National Company Law Tribunal)

The **National Company Law Tribunal** (NCLT) is a quasi-judicial body in India that adjudicates issues relating to companies in India. The NCLT is established under the companies Act 2013 and was constituted on **1st June, 2016.**

The Ministry of Corporate Affairs has issued notification for constitution of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) with effect from 1st Jun 2016.

Chairperson **(NCLAT)**	Hon'ble Justice S.J. Mukhopadhaya, Judge (Retd.), Supreme Court of India
President **(NCLT)**	Hon'ble Justice M. M. Kumar, Judge (Retd.)

Company Law Board (CLB) stands dissolved w.e.f. **1st June, 2016.**

BENCHES OF NCLT: Initially NCLT will have eleven Benches.

S. No.	PLACE	No. OF BENCHES
1.	New Delhi	2
2.	Mumbai	1
3.	Chennai	1
4.	Kolkata	1
5.	Bengluru	1
6.	Ahmedabad	2
7.	Hyderabad	2
8.	Guwhati	1
9.	Chandigarh	1
10.	Allahabad	1
11.	Jaipur	1
12.	Cuttack	1
13.	Kochi	1

NCLT can be considered as biggest Tribunal till date. Because NCLT will CONSOLIDATE the corporate jurisdiction of the followings:

(a) Company Law Board/ BIFR/AAEFR

(b) Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the high courts.

ADVANTAGE OF NCLT & NCLAT

(a) It shall avoid multiplicity of litigation before various. Forums (High Courts CLB, BIFR AAIFR,
(b) There shall be at least 11 benches of the NCLT, thereby providing justice almost at one doorstep.
(c) This tribunal shall comprise of technical experts who will provide more concrete and precise decision.
(d) There will be mixture of judicial and equitable jurisdiction while deciding matters
(e) There shall be reduction in period of winding up from 20-25 years to 2 years.

Power of NCLT

The NCLT has the power under the Companies Act to adjudicate proceedings:

1. Initiated before the Company Law Board under the previous act (the Companies Act 1956);
2. Pending before the Board for Industrial and Financial Reconstruction, including those pending under the Sick Industrial Companies (Special Provisions) Act 1985;
3. Pending before the Appellate Authority for Industrial and Financial Reconstruction; and
4. Pertaining to claims of oppression and mismanagement of a company, winding up of companies and all other powers prescribed under the Companies Act.

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SOMF MAJOR CHANGES AFTER CONSTITUTION OF NCLT/NCLAT

Winding up: The National Company Law Tribunal has also been empowered to pass an order for winding up of a company. Therefore Practicing Company Secretaries may represent the winding up case before the Tribunal.

Compromise and Arrangement: With the establishment of NCLT, a whole new area of practice will open up for Company Secretary in Practice with respect to advising and assisting corporate sector on merger, amalgamation, demerger reverse merger, compromise and other arrangements right from the conceptual to implementation level. Company Secretaries in practice will be able to render services in preparing schemes, appearing before NCLT/NCLAT for approval of schemes and post-merger Formalities.

SECTION 408 TO SECTION 433 DEALS WITH ADMINISTRATION OF NCLT AND NCLAT

Section 408	Constitution of (NCLT)
Section 409	Qualification: (President/Member of NCLT)
Section 410	Constitution of appellate tribunal
Section 411	Qualification: (Chairman/Member of NCLAT)
Section 412	Selection of Members
Section 413	Term of office of president, chairperson and other members
Section 414	Salary and allowances
Section 415	Acting President and Chairperson of Tribunal or Appellate Tribunal.
Section 416	Resignation of Members.
Section 417	Removal of Members.
Section 418	Staff of Tribunal and Appellate Tribunal.
Section 419	Benches of Tribunal.
Section 420	Orders of Tribunal.
Section 421	Appeal from Orders of Tribunal.
Section 422	Expeditious disposal by Tribunal and Appellate Tribunal.
Section 423	Appeal to Supreme Court.
Section 424	Procedure before Tribunal and Appellate Tribunal.
Section 425	Power to punish for contempt.
Section 426	Delegation of powers.
Section 427	President, Members, officers, etc., to be public servants.
Section 428	Protection of action taken in good faith.
Section 429	Power to seek assistance of Chief Metropolitan Magistrate, etc.
Section 430	Civil court not to have jurisdiction.
Section 431	Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.
Section 432	Right to legal representation.
Section 433	Limitation.

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CONSTITUTION OF NCLT

SECTION 408

The Central Government shall, by notification, constitute, with effect from **(1st JUNE 2016)** a Tribunal to be known as the **National Company Law Tribunal** consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

NCLAT (NATIONAL COMPANY LAW APPELLATE TRIBUNAL)

NCLAT (National Company Law Appellate Tribunal) is an appellate authority formed to hear appeals against orders of National Company Law Tribunal (NCLT), National Financial Reporting Authority (NFRA), Insolvency & Bankruptcy Board of India (IBBI) and Competition Commission of India (CCI).

COMPANY –CHARACTERISTICS

A ***company is a legal person, as separate legal entity distinct from its members, having perpetual succession with a common seal and having limited liability of members***.

1. Separate legal entity

A company is a legal person, as separate legal entity distinct from members constituting it. Since this separate entity concept is provided by law, it is said that a company has got a separate legal entity.

SALOMON V. SALOMON & COMPANY LIMITED

Mr. Salomon was carrying his shoe manufacturing business as sole proprietor. He formed a limited company (**SALOMON & COMPANY LIMITED)** consisting of himself, his wife and a daughter and four sons as shareholders of company. Then Salomon sold his business (shoe manufacturing business) to SALOMON & COMPANY LIMITED for consideration of **38782** pounds.

Company paid consideration to Mr. Salomon by issuing its 20,000 shares@1 pounds each, and 10,000 secured debenture@1 pound each & balance 8782 pounds in cash.

PAYMENT STRUCTURE:-

20,000 Shares @ 1 £ each allotted to Salomon	=	20,000 Pound
(+) 10,000 Secured Debenture @ 1 Pound each allotted to Salomon	=	10,000 Pound
(+) Cash to Salomon	=	8,782 Pound
Total	=	**38,782 Pound**

Company took unsecured loan of **8000 pounds** from other persons for business Purpose. Later Company went into winding up, and liquidator was appointed. The total assets of the company amounted to **6,050** pounds; its liabilities were 10,000 pounds secured debentures and 8,000 pounds owing to unsecured trade creditors. The unsecured trade creditors claimed the whole of the company's assets, viz. 6.050 pounds on the ground that as the company was a mere agent for Salomon and thus they were entitled to payment of their debts in priority to debentures.

HOUSE OF LORDS held that once the certificate of incorporation is issued, company has its own existence or personality separate and distinct from its members and, as a result, a shareholder cannot be equated with a company, **even if he holds virtually the entire share capital of the company.**

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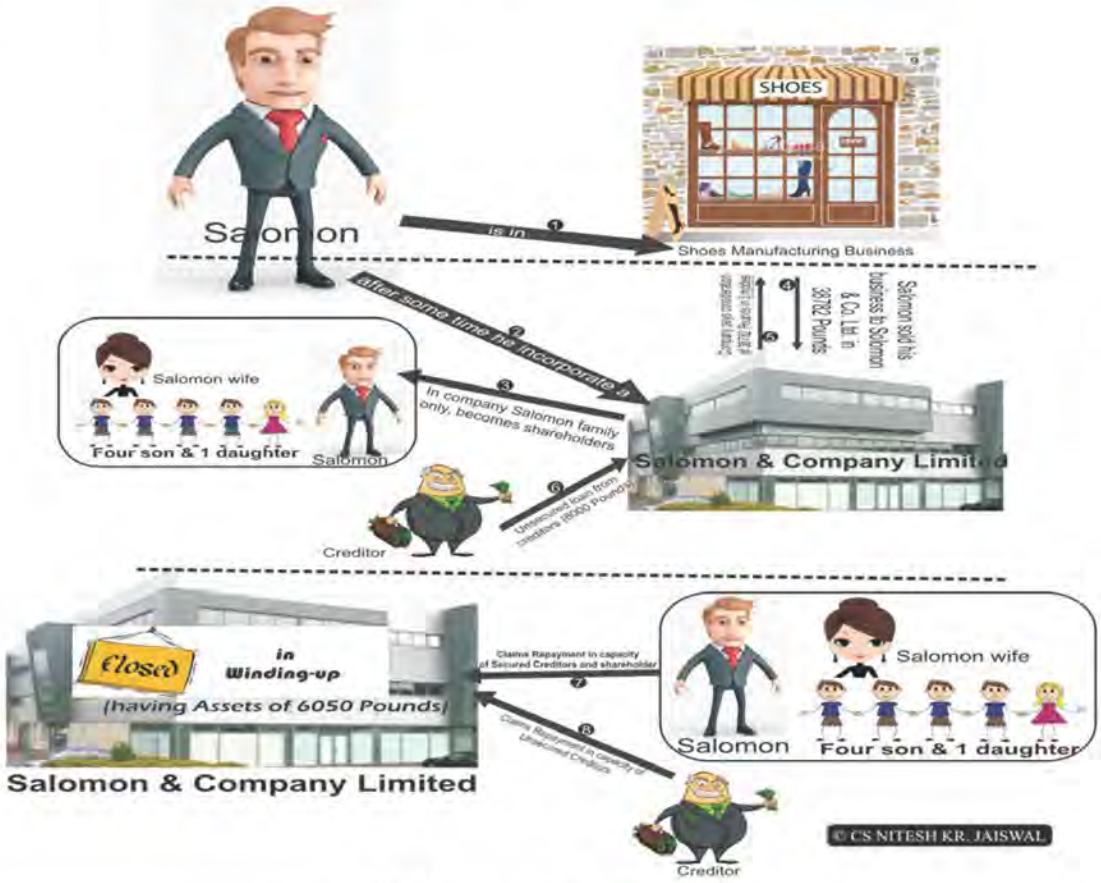
SALOMON CASE – Diagrammatic View



NKJ–CLASSROOM PRACTICE

SCANNER

Q. 1. Comment on the Following:
Three companies incorporated with the same set of shareholders are treated as same companies under the Companies Act, 2013. **[Dec. 2017; 5 Marks]**

2. Voluntary association

It can neither compel a person to become its members nor to give its membership.

3. Incorporated association

The company must be registered under Companies Act, 2013

4. Limited liability

Liability of the members is limited by shares/guarantee.

Exceptions to the principle of limited liability

(a)	Where a company has been **got incorporated by furnishing any false or incorrect information** or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company. (Section 448).
(b)	When the company is incorporated as an **Unlimited Company** under Section 3 of the Act
(c)	Under Section 35(3), where it is proved that a **prospectus** has been issued with intent to **defraud the applicants** for the securities of a company.

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(d)	As per section 75(*1*), where a company fails to **repay the deposit** or part thereof or any interest thereon within the time specified and it is proved that the deposits had been accepted with intent to **defraud the depositors**.
(e)	Where in the course of **winding up** it appears that any business of the company has been carried on with an **intent to defraud creditors** of the company (Section 339)

NKJ–CLASSROOM PRACTICE



Q. 1. "Members of a Limited Company may nevertheless have unlimited liability." Comment.

MEMBERS SEVERALLY LIABLE IN CERTAIN CASES/ REDUCTION OF MEMBERS

SECTION 3A

If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

NKJ–CLASSROOM PRACTICE



Q. 1. Raman Pvt. Ltd. has only two shareholders, X and Y. All shares were fully paid-up. X sold all his shares to Y and the company carries on its business activities thereafter. **[Dec. 2018, 5 Marks]**

NKJ–CLASSROOM PRACTICE



Q. 1. The members of a private limited company consist of 'A' and 'B' who are also its directors. On 4th August, 2015 'A' left India for a foreign business tour and on 28th August, 2015 he died abroad. On 1st September, 2015 'B' purchased on credit ₹10,000 worth of goods from 'C' on behalf of the company. 'C' now proposes to make 'B' personally liable for the payment of the debt. Is 'B' liable?

5. Perpetual Succession

A company is a legal person with perpetual succession i.e.; a company existence persists irrespective of the change in the composition of membership.

NKJ–CLASSROOM PRACTICE



Q. 1. Six persons are the only members of Tab (Pvt.) Ltd. All of them went to USA on a pleasure trip by aeroplane. On the way, the plane crashed and all the six members died. Does Tab (Pvt.) Ltd. still exist? **[Dec. 2016; 4 Marks]**

NKJ–CLASSROOM PRACTICE



Q. 1. Four persons are the only members of a private company. All of them go for a pleasure trip in a car and due to an accident all the four die. Does the private company exist?

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6. Separate Property

Being a separate legal person Company can hold property in its own name. No member can claim himself to be the owner of the company's properties either during its existence or in its winding up. A member does not even have an insurable interest in the property of the company. ***(Macaura v. Northern Assurance Company Ltd.)***

NKJ–CLASSROOM PRACTICE	
MODULE	**Q. 1.** Members are the owners of the company's undertaking.

7. Transferability of Shares

Section 44 of the Companies Act, 2013 provides that the shares held by members are movable property and can be transferred from one person to another in the manner provided by the articles of association of a company.

8. Common Seal

The company, though an artificial person has to depend on natural persons to get the job done. All the important documents of a company must be under the seal of the company. The common seal, thus, acts as the official signature of a company.

9. Capacity to sue and be sued

Being a separate legal entity, can sue and be sued in its own name.

10. Existence- Termination

It is created by law and law can only terminate its existence.

NKJ–CLASSROOM PRACTICE	
MODULE	**Q. 1.** A company being an artificial person cannot own property and cannot sue or be sued.

DIFFERENCE BETWEEN COMPANY AND FIRM

BASIS OF DISTINCTION	COMPANY	PARTNERSHIP FIRM
1. Mode of creation	A company comes into existence only when it is incorporated under the company Act.	A firm comes into existence by an agreement between the partners. Registration of firm is optional.
2. Separate Legal entity	A company has an identity of its own.	A firm is merely a collection of partners. It has no separate identity.
3. Perpetual Succession	A company enjoys the benefit of perpetual succession. Death or insolvency of shareholders (S) does not affect the continuity of the company.	A firm has no perpetual succession. A firm is close down in case of death or insolvency of all the partners (or of all except one partner).
4. Transfer of shares	A member of the company can transfer his share. On such transfer, the transferee becomes a member of the company.	A partner can also transfer his share to an outside. But, the transfer does not become a partner in a firm, although he become entitled to share the profit and property transferred to him.

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5. Management	A company is managed by the directors	A firm is managed by the partners themselves
6. Separate property	A company has separate property.	A firm has no separate property. The property of the firm is held in the name of the partners.

ADVANTAGES AND DISADVANTAGES OF COMPANY

ADVANTAGES AND DISADVANTAGES OF CORPORATE FORM OF ENTERPRISE

ADVANTAGES;-

(a) Separate legal entity
(b) Limited Liability
(c) Perpetual Succession
(d) Transferable Shares
(e) Separate property
(f) Capacity to sue

DISADVANTAGES;-

(a) Formalities and expenses
(b) Corporate disclosures
(c) Separation of control from ownership
(d) Greater social responsibility
(e) Greater tax burden in certain cases
(f) Detailed winding –up procedure

NKJ–CLASSROOM PRACTICE



Q. 1. What are the advantages of an incorporated company compared to partnership firms and unincorporated companies?

COMPANY – CITIZENSHIP, NATIONALITY & RESIDENCE

(Important Points)

1. The company, though a legal person, is not a citizen under the citizenship Act, 1955 or the Constitution of India. Though it is established through judicial decisions ***(State trading corporation of India v. Commercial tax officer)*** that a company cannot be a citizen, yet it has nationality, domicile and residence.
2. The Supreme Court stated in the above case that a company being, a person in the eyes of law can claim the protection of such fundamental rights as are guaranteed under Constitution of India to all persons, whether citizens or not. For e.g. "**Right to Equality"** (Article 14). A company however cannot claim the protection of such fundamental rights as are expressly guaranteed to citizens only. For e.g. **"Right to Freedom"** (Article 19).
3. A joint stock company resides where its place of incorporation is, where the meetings of the whole company or those who represent it are held and where its governing body meets in bodily presence for the purposes of the company and exercises the powers conferred upon it by statue and by the articles of the association. ***(Tulika v. parry & Co.)*** Thus, a company resides where the central control and management of its business is exercised.
4. On residence basis the liability of a company to pay income-tax is determined. The place of incorporation is considered as the primary evidence of a company. However it is not the conclusive test. So, an alternative test is applied to bring a company within the purview of a legal system in which it operates business and earns a fabulous income.

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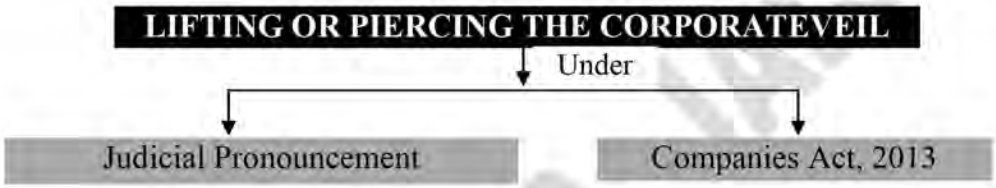
EXPERIENCE OF A SHAREHOLDER AS EXPERIENCE OF A COMPANY

The experience of a shareholder cannot be regarded as experience of a company.
However, in the case, of joint venture companies the experience of the company can only mean the experience of the constituent of the joint venture. [Reference - ***New Horizons Ltd. v. Union of India***]

LIFTING OR PIERCING THE CORPORATE VEIL

Law has clothed a corporation with the distinct personality, yet in reality it is an association of persons who are infact, in a way, the beneficial owners of the property of the body corporate.

The company, though an artificial person has to depend on natural persons to get the job done. Separate personality of the company is a statutory privilege, and must be used for business purpose only. If fraudulent and dishonest use is made of the legal entity, the individual concerned will not be allowed to take shelter behind the corporate personality. The Court will break through the corporate shell and apply the principle of what is known as **"LIFTING OR PIERCING THE CORPORATE VEIL"**. The Court will look behind the corporate entity and take action as though no entity separate from the members exists.



A. LIFTING OR PIERCING THE CORPORATE VEIL UNDER JUDICIAL PRONOUNCEMENT

Reference Case:-

1. Daimler Co. Ltd v. Continental Tyre & Rubber company ltd.
2. Gilford Motor Co. Ltd v. Horne
3. Re. Sir Dinshaw Manekji Petit
4. Associated Rubber Industries Ltd v. workmen
5. Connors Bros. v. Connors
6. Jones v. Lipman

B. LIFTING OR PIERCING THE CORPORATE VEIL AS PER PROVISIONS OF COMPANIES ACT

Section 35	Civil liability for false representation in prospectus.
Section 34	Criminal liability for false representation in prospectus.
Section 21 & 22	Where an officer or employee of a company signs on behalf of the company any bill of exchange, promissory note, cheque, etc., such person shall be personally liable to the holder, if the name of the company is not mentioned.
Section 39	Prohibition on allotment of securities where minimum subscription has not been received.

NKJ–CLASSROOM PRACTICE

MODULE

Q. 1. What do you understand by corporate veil and when is it disregarded?

Q. 2. "The fundamental attribute of corporate personality is that the company is a legal entity distinct from the members." Elucidate the above statement.

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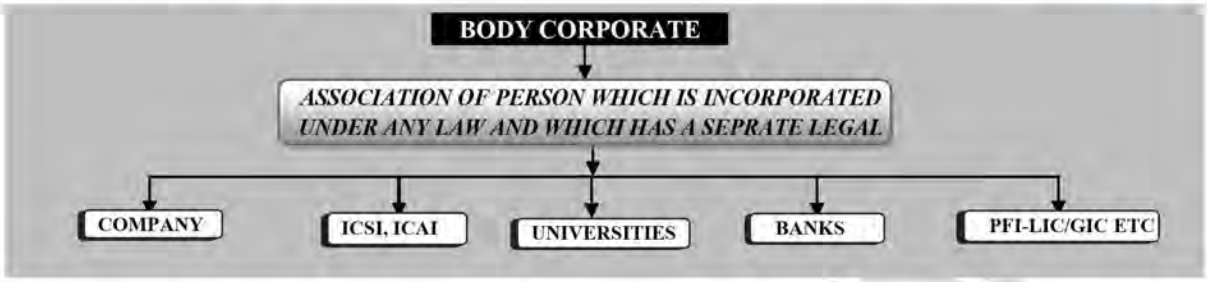

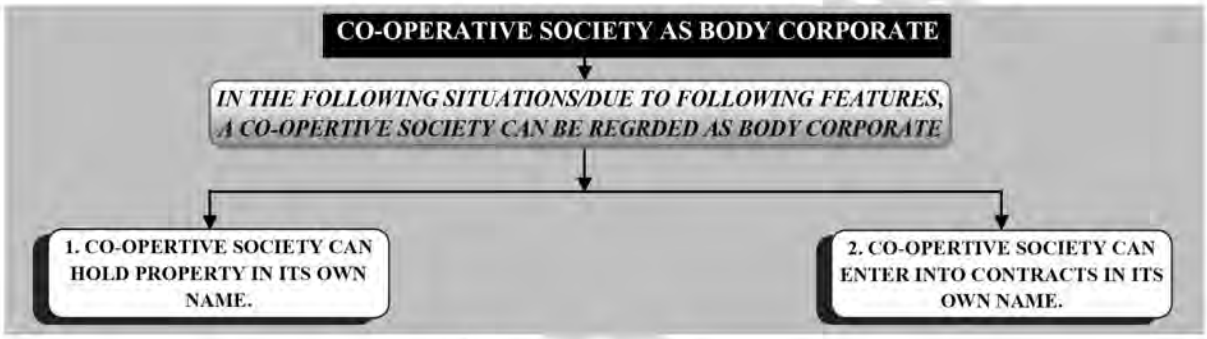

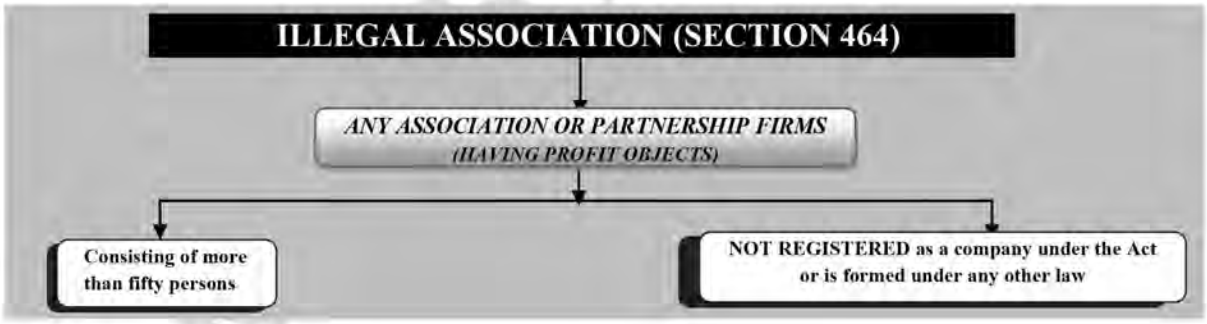

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BODY CORPORATE OR CORPORATION

SECTION-2(11)

According to section 2(11) of Companies Act, 2013

'Body Corporate' or 'Corporation, **includes** a company incorporated outside India, **but does not include** the following:-

(a) a co-operative society registered under any law relating to co-operative societies; and

(b) Any other body corporate, not being a company, which the Central Government may, by notification in the Official Gazette, specify in this behalf.

The term body corporate includes not only foreign company, it also includes corporations established under Special Acts of Parliament, Indian companies, all public financial institutions as well as nationalized banks. **Every Company is a body corporate, but everybody corporate need not be a company always.**

NKJ–CLASSROOM PRACTICE	
MODULE	**Q. 1.** The term "body corporate" connotes a wider meaning than the term "company".

ILLEGAL ASSOCIATION

SECTION 464

No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force.

Provided that the number of persons **which may be prescribed** under this sub-section shall not exceed **one hundred**.

Rule 10 of the Companies (Miscellaneous) Rules, 2014

No association or partnership shall be formed, consisting of more than fifty persons for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Act or is formed under any other law for the time being in force

Nothing in this section shall apply to—

(a) a Hindu undivided family carrying on any business; or

(b) an association or partnership, if it is formed by professionals who are governed by special Acts.

Consequences of an illegal association

Every member of an association or partnership carrying on business in contravention of section 464 shall be punishable with fine which may extend to **one lakh rupees** and shall also be **personally liable** for all liabilities incurred in such business.

Since, the **law does not recognize it, an illegal association:**

(a) cannot enter into any contract;
(b) cannot sue any member, or outsider, not even if the company is subsequently registered;
(c) cannot be sued by a member, or an outsider for recovery of any debts;
(d) cannot be wound up by an order of the Court. However, an illegal association is liable to be taxed.

NKJ–CLASSROOM PRACTICE	
MODULE	**Q. 1.** What types of associations are prohibited by the Companies Act, and what are the disabilities of such associations? **Q. 2.** Every member of an illegal association shall be personally liable for all liabilities incurred in carrying on the business.

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ADDITIONAL CASE LAWS Under this chapter

CASE LAW



New Horizons Ltd. ***v.*** ***Union of India***	The tender of the company, New Horizons Ltd., for publication of telephone directory was not accepted by the Tender Evaluation Committee on the ground that the company had nothing on record to show that it had the technical experience required to be possessed to qualify for tender. Supreme Court observed as under: "Once it is held that NHL (New Horizons Ltd.) is a joint venture, as claimed by it in the tender, the experience of its various constituents namely, TPI (Thomson Press India Ltd.), LMI (Living Media India Ltd.) and WML (World Media Ltd.) as well as IIPL (Integrated Information Pvt. Ltd.) had to be taken into consideration, if the Tender Evaluation Committee had adopted the approach of a prudent business man."
Daimler Co. Ltd ***v.*** ***Continental Tyre & Rubber company ltd.***	It was held that a company will be regarded as having enemy character, **if the persons having de facto control of its affairs are resident in an enemy country** or, wherever they may be, are acting under instructions from or on behalf of the enemy.
Gilford Motor Co. Ltd ***v.*** ***Horne***	Incorporation of co. for committing fraud
Re. Sir Dinshaw Manekji Petit	Incorporation of company for tax evasion
Associated Rubber Industries Ltd ***v.*** ***workmen***	The facts of the case were that a new company was created wholly by the principal company with no assets of its own except those transferred to it by the principal company i.e. only for the purpose of splitting the profits into two hands thereby reducing the obligation to pay bonus. The Supreme Court of India held that the new company was formed a device to reduce the gross profits of the principal company and thereby reduce the amount to be paid by way of bonus to workmen. The amount of dividends received by the new company should, therefore, be taken into account in assessing the gross profits of the principal company.
Connors Bros. ***v.*** ***Connors***	In this case the House of Lords determined the character of the company as "enemy" company, since the persons who were *de facto* in control of its affairs, were residents of Germany, which was at war with England at that time. The alien company was not allowed to proceed with the action, as that would have meant giving money to the enemy, which was considered as against "public policy".
Jones ***v.*** ***Lipman***	A agreed to sell certain land to B. Pending completion of formalities of the said deal, A sold and transferred the land to a company which he had incorporated with a nominal capital of £100 and of which he and a clerk were the only shareholders and directors. This was done in order to escape a decree for specific performance in a suit brought by B. The Court held that the company was the creature of A and a mask to avoid recognition and that **in the eyes of equity A must complete the contract, since he had the full control of the limited company in which the property was vested** and **was in a position to cause the contract in question to be fulfilled**.

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" CASE LAW–CASE BASED " WRITING PRACTICE



Q. 1. Rani is a wealthy lady enjoying large dividend and interest income. She has formed three private companies and agreed with each of them to hold a block of investment as an agent for it. Income received was credited in the accounts of the company but the company handed back the amount to her as a pretended loan. This way, she divided her income in three parts in a bid to reduce her tax liability. Discuss the legality of the purpose for which the three companies were formed. **[June 2010; 5 Marks]**

Ans. 1. Leading case law

Sir Dinshaw Maneck jee Petit, A.I.R. 1927 Bombay 371. If a company is used as a means to evade tax, the **Tribunal** may disregarded the corporate veil.

Analysis of the case law

(a) The Supreme Court held that the **Tribunal** is entitled to lift the mask o

(b) In such cases individual shareholders may be held liable to pay income tax.

(c) **In the given case,** the fact are similar to the above mentioned case. The reason to which the companies were formed by the assessee was purely and simply as a means of avoiding tax liability and the companies were nothing more than the assessee herself.

(d) Therefore, the **Tribunal** disregarded the corporate veil and found that the companies where formed by the assessee for the purpose of adding tax.

2. Conclusion

Hence, in view of the above case law Rani can be held liable.

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List of total Definition under The Companies Act, 2013

S. No.	Section No.	Definition	Explanation
1.	Section 2(99)	**ABRIDGED PROSPECTUS**	"abridged prospectus" 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;
2.	Section 2(2)	**ACCOUNTING STANDARD**	"accounting standards" means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;
3.	Section 2(3)	**ALTER**	"alter or alteration" includes the making of additions, omissions and substitutions;
4.	Section 2(4)	**APPELLATE TRIBUNAL**	"appellate tribunal" means the National Company Law Appellate Tribunal constituted under section 410;
5.	Section 2(5)	**ARTICLES**	"articles" means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act;
6.	Section 2(6)	**ASSOCIATE COMPANY**	"associate company" 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. Explanation— For the purposes of this clause, —significant influence means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;
7.	Section 2(7)	**AUDITING STANDARDS**	"auditing standards" means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143.
8.	Section 2(8)	**AUTHORIZED CAPITAL**	"authorized capital" or "nominal capital" means such capital as is authorized by the memorandum of a company to be the maximum amount of share capital of the company;
9.	Section 2(9)	**BANKING COMPANY**	"banking company" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949(10 of 1949);
10.	Section 2(10)	**BOARD OF DIRECTORS**	"Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company;
11.	Section 2(11)	**BODY CORPORATE OR CORPORATION**	"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),which the Central Government may, by notification, specify in this behalf;
12.	Section 2(12)	**BOOK AND PAPER**	"book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;
13.	Section 2(13)	**BOOKS OF ACCOUNT**	"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 under section 148 in the case of a company which belongs to any class of companies specified under that section;
14.	Section 2(14)	**BRANCH OFFICE**	"branch office", in relation to a company, means any establishment described as such by the company;
15.	Section 2(15)	**CALLED-UP CAPITAL**	"called-up capital" means such part of the capital, which has been called for payment;
16.	Section 2(16)	**CHARGE**	"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.	Section 2(17)	**CHARTERED ACCOUNTANT**	"chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949(38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;
18.	Section 2(18)	**CHIEF EXECUTIVE OFFICER**	"Chief Executive Officer" means an officer of a company, who has been designated as such by it;
19.	Section 2(19)	**CHIEF FINANCIAL OFFICER**	"Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company;
20.	Section 2(20)	**COMPANY**	"company" means a company incorporated under this Act or under any previous company law;
21.	Section 2(21)	**COMPANY LIMITED BY GUARANTEE**	"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.	Section 2(22)	**COMPANY LIMITED BY SHARES**	"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;
23.	Section 2(23)	**COMPANY LIQUIDATOR**	"Company Liquidator", in so far as it relates to the winding up of a company, means a person appointed by— (a) the Tribunal in case of winding up by the Tribunal; or (b) the company or creditors in case of voluntary winding up, as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275;
24.	Section 2(24)	**COMPANY SECRETARY**	"company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) who is appointed by a company to perform the functions of a company secretary under this Act;
25.	Section 2(25)	**COMPANY SECRETARY IN PRACTICE**	"company secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980 (56 of 1980);
26.	Section 2(26)	**CONTRIBUTORY**	"contributory" means a person liable to contribute towards the assets of the company in the event of its being wound up.
27.	Section 2(27)	**CONTROL**	"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;
28.	Section 2(28)	**COST ACCOUNTANT**	"cost accountant" means a cost accountant as defined in clause (b) of subsection(1) of section 2 of the Cost and Works Accountants Act, 1959(23 of 1959);
29.	Section 2(29)	**COURT**	"court" means — (i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub - clause (ii); (ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district; (iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law; (iv) the Special Court established under section 435; (v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;
30.	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;
31.	Section 2(31)	**DEPOSIT**	"deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;
32.	Section 2(32)	**DEPOSITORY**	"depository" means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);
33.	Section 2(33)	**DERIVATIVE**	"derivative" means the derivative as defined in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
34.	Section 2(34)	**DIRECTOR**	"director" means a director appointed to the Board of a company;
35.	Section 2(35)	**DIVIDEND**	"dividend" includes any interim dividend;
36.	Section 2(36)	**DOCUMENT**	"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.	Section 2(37)	**EMPLOYEES**	"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.	Section 2(38)	**EXPERT**	"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;
39.	Section 2(39)	**FINANCIAL INSTITUTION**	"financial institution" includes a scheduled bank, and any other financial institution defined or notified under the Reserve

			Bank of India Act, 1934 (2 of 1934);
40.	Section 2(40)	**FINANCIAL STATEMENT**	"financial statement" in relation to a company, includes — (i) a balance sheet as at the end of the financial year; (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year; (iii) cash flow statement for the financial year; (iv) a statement of changes in equity, if applicable; and (v) any explanatory note annexed to, or forming part of, any document referred to in sub - clause (i) to sub - clause (iv): Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;
41.	Section 2(41)	**FINANCIAL YEAR**	"financial year", in relation to any company or body corporate, means the period ending on the 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 financial statement of the company or body corporate is made up:
42.	Section 2(42)	**FOREIGN COMPANY**	"foreign company" means any company or body corporate incorporated outside India which— (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner.
43.	Section 2(43)	**FREE RESERVES**	"free reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend: Provided that — (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 recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;
44.	Section 2(44)	**GLOBAL DEPOSITORY RECEIPT**	"Global Depository Receipt" means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;
45.	Section 2(45)	**GOVERNMENT COMPANY**	"Government company" means any company in which not less than fifty – one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;
46.	Section 2(46)	**HOLDING COMPANY**	"holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;
47.	Section 2(47)	**INDEPENDENT DIRECTOR**	"independent director" means an independent director referred to in sub-section (6) of section 149;
48.	Section 2(48)	**INDIAN DEPOSITORY RECEIPT**	"Indian Depository Receipt" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;

49.	Section 2(49)	**INTERESTED DIRECTOR**	"interested director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;
50.	Section 2(50)	**ISSUED CAPITAL**	"issued capital" means such capital as the company issues from time to time for subscription;
51.	Section 2(51)	**KEY MANAGERIAL PERSONNEL**	"key managerial personnel", in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed;
52.	Section 2(52)	**LISTED COMPANY**	"listed company" means a company which has any of its securities listed on any recognised stock exchange;
53.	Section 2(53)	**MANAGER**	"manager" means an individual who, 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.	Section 2(54)	**MANAGING DIRECTOR**	"managing director" means a director who, 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.
55.	Section 2(55)	**MEMBER**	"member", in relation to a company, means— (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members; (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company; (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;
56.	Section 2(56)	**MEMORANDUM**	"memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;
57.	Section 2(57)	**NET WORTH**	"net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;
58.	Section 2(58)	**NOTIFICATION**	"notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

59.	Section 2(59)	**OFFICER**	"officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;
60.	Section 2(60)	**OFFICER**	"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:— (i) whole-time director; (ii) key managerial personnel; (iii) where there is no key managerial personnel, 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; (iv) any person who, under the immediate authority of the Board or any key managerial personnel, 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; (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity; (vi) 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 in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance; (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;
61.	Section 2(61)	**OFFICIAL LIQUIDATOR**	"Official Liquidator" means an Official Liquidator appointed under sub-section (1) of section 359;
62.	Section 2(62)	**ONE PERSON COMPANY**	"One Person Company" means a company which has only one person as a member;
63.	Section 2(63)	**ORDINARY OR SPECIAL RESOLUTION**	"ordinary or special resolution" means an ordinary resolution, or as the case may be, special resolution referred to in section 114;
64.	Section 2(64)	**PAID-UP SHARE CAPITAL**	"paid-up share capital" or "share capital paid-up means 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;
65.	Section 2(65)	**POSTAL BALLOT**	"postal ballot" means voting by post or through any electronic mode;

66.	Section 2(66)	**PRESCRIBED**	"prescribed" means prescribed by rules made under this Act;
67.	Section 2(67)	**PREVIOUS COMPANY LAW**	"previous company law" means any of the laws specified below:— (i) Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866); (ii) the Indian Companies Act, 1866 (10 of 1866); (iii) the Indian Companies Act, 1882 (6 of 1882); (iv) the Indian Companies Act, 1913 (7 of 1913); (v) the Registration of Transferred Companies Ordinance, 1942 (Ord.54 of 1942); (vi) the Companies Act, 1956 (1 of 1956); and (vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force — (A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913); or (B) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 (25 of 1968), in so far as other corporations are concerned; (viii) the Portuguese Commercial Code, in so far as it relates to Sociedades anonimas; and (ix) the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961);
68.	Section 2(68)	**PRIVATE COMPANY**	"private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, (i) restricts the right to transfer its shares; (ii) except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: Provided further that — (A) persons who are in the employment of the company; and (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and (iii) prohibits any invitation to the public to subscribe for any securities of the company;
69.	Section 2(69)	**PROMOTER**	"promoter" means a person — (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

70.	Section 2(70)	**PROSPECTUS**	"prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of body corporate;
71.	Section 2(71)	**PUBLIC COMPANY**	"public company" means a company which — (a) is not a private company; (b) has a minimum paid-up share capital as may be prescribed: Provided that a company which is a subsidiary of a company, not being a private 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 ;
72.	Section 2(72)	**PUBLIC FINANCIAL INSTITUTION**	"public financial institution" means— (i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956); (ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act; (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002); (iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act; (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India: Provided that no institution shall be so notified unless — (A) it has been established or constituted by or under any Central or State Act; or (B) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;
73.	Section 2(73)	**RECOGNISED STOCK EXCHANGE**	"recognised stock exchange" means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
74.	Section 2(74)	**REGISTER OF COMPANIES**	"register of companies" means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;
75.	Section 2(75)	**REGISTRAR**	"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.	Section 2(76)	**RELATED PARTY**	"related party", with reference to a company, means— (i) a director or his relative; (ii) a key managerial personnel or his relative; (iii) a firm, in which a director, manager or his relative is a partner; (iv) a private company in which a director or manager is a member or director; (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per

			cent. of its paid-up share capital; (vi) anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager; (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity; (viii) any company which is — (A) a holding, subsidiary or an associate company of such company; or (B) a subsidiary of a holding company to which it is also a subsidiary; (ix) such other person as may be prescribed;
77.	Section 2(77)	**RELATIVE**	"relative'', with reference to any person, means any one who is related to another, if— (i) they are members of a Hindu Undivided Family; (ii) they are husband and wife; or (iii) one person is related to the other in such manner as may be prescribed;
78.	Section 2(78)	**REMUNERATION**	"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(43 of 1961);
79.	Section 2(79)	**SCHEDULE**	"Schedule" means a Schedule annexed to this Act;
80.	Section 2(80)	**SCHEDULED BANK**	"scheduled bank" means the scheduled bank as defined in clause(e) of section 2 of the Reserve Bank of India Act, 1934(2 of 1934);
81.	Section 2(81)	**SECURITIES**	"securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42of 1956);
82.	Section 2(82)	**SECURITIES AND EXCHANGE BOARD**	"Securities and Exchange Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act,1992(15 of 1992);
83.	Section 2(83)	**SERIOUS FRAUD INVESTIGATION OFFICE**	"Serious Fraud Investigation Office" means the office referred to in section 211;
84.	Section 2(84)	**SHARE**	"share" means a share in the share capital of a company and includes stock;
85.	Section 2(85)	**SMALL COMPANY**	"small company" means a company, other than a public company,— (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees: Provided that nothing in this clause shall apply to— (A) a holding company or a subsidiary company; (B) a company registered under section 8; or (C) a company or body corporate governed by any special Act;
86.	Section 2(86)	**SUBSCRIBED CAPITAL**	"subscribed capital" means such part of the capital which is for the time being subscribed by the members of a company;

87.	Section 2(87)	**SUBSIDIARY COMPANY**	"subsidiary company" or "subsidiary", in relation to any other company(that is to say the holding company), means a company in which the holding company— (i) controls the composition of the Board of Directors; or (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies: 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. Explanation—For the purposes of this clause,— (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 anybody corporate; (d) "layer" in relation to a holding company means its subsidiary or subsidiaries;
88.	Section 2(88)	**SWEAT EQUITY SHARES**	"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, by whatever name called;
89.	Section 2(89)	**TOTAL VOTING POWER**	"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.	Section 2(90)	**TRIBUNAL**	"Tribunal" means the National Company Law Tribunal constituted under section 408;
91.	Section 2(91)	**TURNOVER**	"turnover" means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;
92.	Section 2(92)	**UNLIMITED COMPANY**	"unlimited company" means a company not having any limit on the liability of its members;
93.	Section 2(93)	**VOTING RIGHT**	"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;
94.	Section 2(94)	**WHOLE-TIME DIRECTOR**	"whole-time director" includes a director in the whole-time employment of the company;
95.	Section 2(95)		words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) shall have the meanings respectively assigned to them in those Acts.

REGIONAL DIRECTOR (RD) OFFICES IN INDIA

S.NO.	REGION	NAME	AREA
1	EASTERN REGION	**Sh. D. Bandopadhyay**	KOLKATA
2	NORTHERN REGION	**Dr. Raj Singh**	NEW DELHI
3	NORTH WESTERN REGION	**Sh. M. V. Chakranarayan**	AHMEDABAD
4	NORTH EASTERN REGION	**Sh. B. Mohanty**	SHILLONG
5	SOUTHERN REGION	**Sh. M. R. Bhat**	CHENNAI
6	WESTERN REGION	**Sh. Manmohan Juneja**	MUMBAI
7	SOUTH EAST REGION	**Sh. M. P. Singh**	HYDERABAD

General Legal Knowledge

REGISTRAR OF COMPANIES (ROC) OFFICES IN INDIA

S.NO.	AREAS	NAME	ROC
1	Telangana	**Shri Josekutty V. E.**	(ROC Hyderabad)
2	Bihar & Jharkhand	**Sh. Himanshu Shekhar**	(ROC cum OL) Patna
		Shri Prahlad Meena	(ROC Ranchi)
3	Goa, Daman & Diu	**Sh. K. S. Reddy**	(ROC cum OL) Goa
4	Jammu and Kashmir	**Sh. Ruvit Kumar**	(ROC cum OL) J&K
5	Kerala	**Sh. G. C. Yadav**	(ROC Ernakulam)
6	Maharashtra	**Sh. Vinod Sharma**	(ROC Mumbai)
		Sh. V. N. Khandare	(ROC Pune)
7	Puducherry	**Shri. M. Arun Prasad**	(ROC Puducherry)
8	Rajasthan	**Shri. U. S. Patole**	(ROC cum OL) Jaipur
9	Uttar Pradesh	**Sh. Sudhir Kapoor**	(ROC Kanpur cum OL Dehradun)
10	Uttarakhand	**Brijesh kumar KAIN**	Dehradun
11	Assam, Meghalaya, Manipura, Tripura, Mizoram, Nagaland & Arunachal Pradesh	**Dr. Ramesh Kumar**	(ROC Shillong with Additional charge of OL, Guwahati)
11	Chattisgarh	**Sh. Rathore K Gangjibhai**	(ROC cum OL for Bilaspur)
12	Delhi & Haryana	**Sh. Kamal Harjani**	(ROC Delhi)
13	Gujarat	**Sh. L. R. Meena**	(ROC Ahmedabad)

14	Karnataka	**Sh. C. V. Sajeevan**	(ROC Banglore)
15	Madhya Pradesh	**Sh. Rajpal Singh**	(ROC Gwalior)
16	Orissa	**Sh. A.K. Mahapatra**	(ROC cum OL) Cuttack
17	Punjab, Chandigarh	**Sh. M. S. Pachouri**	(ROC Chandigarh)
18	Tamil Nadu	**Sh. A. S. Ponraj**	(ROC) Chennai
		Shri C.S.Govindarajan	(ROC Coimbatore)
19	West Bengal	**Sh. K G Joseph Jackson**	(ROC Kolkata)



CS NITESH KR. JAISWAL

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

2

INTRODUCTION TO MCA-21 AND FILING IN XBRL

Covering-

- Sections Chart
- E-Governance (MCA-21) – Meaning
- MCA-21 – Scope
- MCA-21 – Key Benefits
- Organisation of ROC Offices under MCA-21
- MCA-21 – Important Features
- Infrastructure Required for E-Filing
- Role Check
- Mode of Payment
- Service Request Number (SRN)
- Physical Submission of Certain Documents
- Pre-Certification by Professional
- E-Filing – Various Terms Usages
- XBRL – Meaning
- XBRL Benefits
- List of E-Forms
- Self Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (4 to 8)

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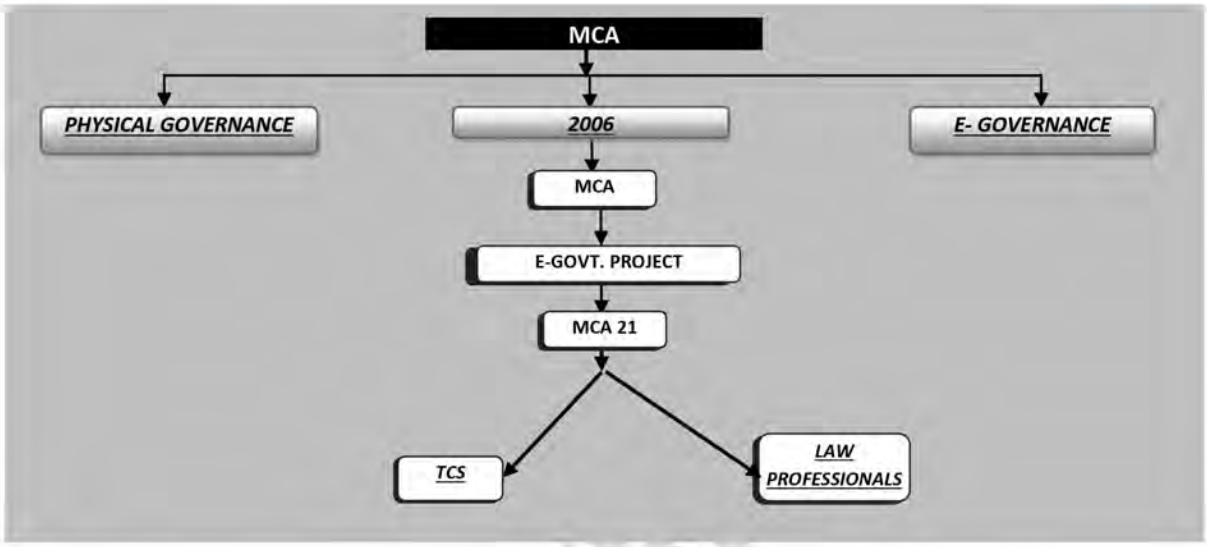

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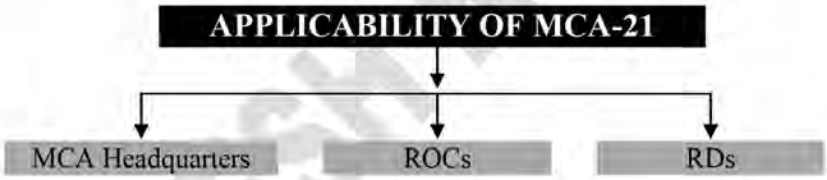
INTRODUCTION TO E-GOVERNANCE (MCA-21) AND FILING IN XBRL

E-GOVERNANCE (MCA-21) - MEANING

E-Governance or Electronic governance is the application of Information Technology to the government functioning. MCA-21 stands for e-governance initiative of Ministry of Corporate Affairs (MCA) of the 21st century. The project is named MCA-21 as it aims at repositioning MCA as an organization capable of fulfilling the aspirations of its stakeholder in 21st century.

MCA-21-SCOPE



The scope of MCA-21 project covers only the offices of ROCs, RDs, and the MCA headquarters at New Delhi. It does not include other offices of MCA like Official liquidators, CLB/NCLT and Court.

MCA-21-KEY BENEFITS

The key benefits are as follows:-	**1.** Online incorporation of companies.
	2. Simplified and easy modes of filing of Forms/documents.
	3. Filing of Forms/documents without visiting the ROC offices.
	4. Filing is open on 24X7 basis.
	5. Inspection of public documents of Companies anytime from anywhere.
	6. Availability of more time to MCA employees for qualitative analysis of corporate informations.
	7. Building up a centralized database repository of corporate operating in India.
	8. Pre-certification of certain e-forms by CS/CA/CMA has been made mandatory.

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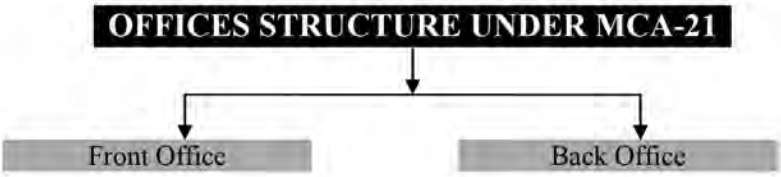
ORGANISATION OF ROC OFFICES UNDER MCA-21



1. FRONT OFFICE

Front office represents the interface of the corporate and public users with the MCA-21 system. It comprises of Virtual Front office and Registrar's Front office.

- **Virtual-Front-office** It represents a computer facility for filing of digitally signed e-forms by accessing the MCA portal through internet **(www.mca.gov.in)**
- **Registrar's Front office**
  To facilitate the change over from physical filing to e-filing, the MCA started offices known as Registrar's Front office. This office manned by MCA and TCS officials provides free services in all aspects of MCA e-governance projects.

2. BACK OFFICE

Back offices represent the offices of ROCs, RDs and MCA headquarters .they take cares of internal processing of the forms filled. All the e-forms along with the attachments are stored in the electronic repository, which the staff of MCA can view depending upon the access rights.

MCA-21-IMPORTANT FEATURES

- **DIGITAL SIGNATURE CERTIFICATE (DSC)**

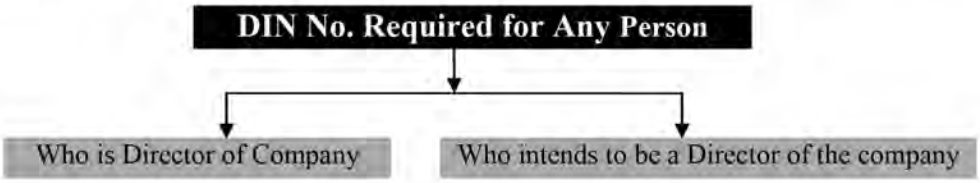
  According to Information Technology Act, 2000, a Digital signature is the electronic signature duly issued by a certifying authority that shows the authority of the person signing the same.

  Every user who is required to sign an e-form for submission to MCA is required to obtain a Digital Signature Certificate. MCA has identified following 4 types of user of DSC:-

  1. MCA (govt.) employees.
  2. Professionals(CS,CA,CWA and Lawyers)
  3. Authorized signatory of the company including MD, Directors, CS or Manager.
  4. Representative of banks and financial institutions.

- **DIRECTOR IDENTIFICATION NUMBER (DIN)**

  All existing and any Person intend to be appointed as directors are required to obtain the Director Identification Number (DIN). DIN is also mandatory for directors of Indian companies who are not citizen of India. Only a single DIN is required for an individual irrespective of number of directorships held by him. DIN is a unique identification number and once obtained is valid for life time of a director. DIN can be obtained by visiting MCA website (Link-*Apply for DIN*).



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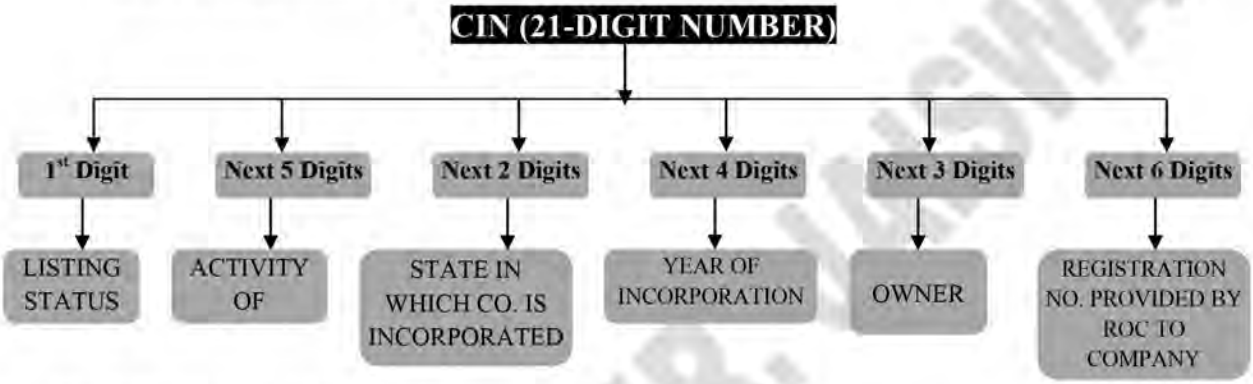
➢ CERTIFIED FILING CENTRE (CFC)

CFC is an extended arm of the MCA which is manned by professionals from three core areas i.e. CS/CA/CWA. These are managed and operated by professionals on user charge basis. With the recognition of CFCs, the services of MCA-21 are being provided in small towns and Cities.

➢ CORPORATE IDENTITY NUMBER (CIN)

Every company has been allocated a Corporate Identity Number (CIN). It is comprised of 21-digit number which indicates the following:-



CIN OWNERSHIP CODE;-

Codes	Ownership
GOI	Union Government Company
SGC	State Government Company
PLC	Public Limited Indian Non – Government Company
PTC	Private Limited India Non – Government Company
FLC	Public Limited Foreign Company incorporated in India
FTC	Private Limited Foreign Company incorporated in India
ULL	Unlimited Liabilities Public
ULT	Unlimited Liabilities private
GAP	Guarantee and Association Public
GAT	Guarantee and Association Private
NPL	Section 8 Company

VODAFONE CELLULAR LIMITED
U64202TZ1995PLC007674

RELIANCE INDUSTRIES LIMITED
L17110MH1973PLC019786

ICICI BANK LIMITED
L65190GJ1994PLC021012

INTERGLOBE AVIATION LIMITED
L62100DL2004PLC129768

GLOBAL LOCATION NUMBER (GLN)

Every foreign company has been allocated a Global Location Number.

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NFRASTRUCTURE REQUIRED FOR E-FILING

The minimum requirements are:-

1. P-4 computer with printer.
2. Windows 2000/XP.
3. Internet Explorer 6.0 version and above.
4. Adobe Acrobat Reader 7.0.5 version.
5. Scanner.
6. Java Runtime environment (JRE) 1.4.2. version.

ROLE CHECK

MCA system shall verify whether the Digital Signatures affixed on the e-form actually belongs to professional/other users.

MODE OF PAYMENT



MCA-21 system provides for the facility of payment of statuary fees through multiple choices i.e.:-

1. **Off-line payment** through challan generated by system and payment of fees at the counter of notified bank branches through cash/DD.
2. **On-line payment** through internet banking and credit cards.

SERVICE REQUEST NUMBER (SRN)

Each transaction under e-filing is uniquely identified by a Service Request Number. On filing of an e-form, the system will generate and provide a Service Request Number. A user can check the status of the document/transaction by entering SRN.

PHYSICAL SUBMISSION OF CERTAIN DOCUMENTS

Certain documents requiring stamp paper/fees like MOA, Orders of CLB, Courts etc are required to be sent in physical form to ROC. The user will be provided SRN while sending these forms/documents to MCA.

PRE-CERTIFICATION BY PROFESSIONAL

Some forms require pre-certification by professionals **(CS/CA/CWA)** to ensure authenticity. In addition to Digital signature of company official, a professional also has to certify the same by affixing Digital signature.

Some of the e-forms which requires pre-certification are;**-INC-21, INC-22, INC-28, PAS-3, SH-7, CHG1, CHG-4, CHG-9, MGT-14, DIR-6, DIR-12, MR-1, MR-2, MSC-1, MSC-3, MSC-4, GNL-3, ADT-1, NDH-l, NDH-2, NDH-3;**

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E-FILING-VARIOUS TERMS USAGES

PRE-FILL

Pre-fill button are used to automatically fill various static data like, the corporate identity. Once the CIN number is given, company details are automatically filled by using Pre-fill function.

CHECK FORM

Forms have built in facility of check and validation.

MODIFY

Forms can be modified by clicking 'modify' button.

PRE-SCRUTINY

After 'check form' has been done, it has to be digitally signed and on-line pre-scrutiny of forms is required to be done before the form is uploaded.

ATTACHEMENT

An attachment is a document which is sent as an enclosure with an e-form by means of an attached file. The motive behind attachment is to provide details relevant to the e-form for processing.

ADDENDUM TO AN E-FORM

User may be required to submit some additional supporting documents that are not submitted during the e-form filing but are required for processing of the e-form. The supporting documents which are uploaded as an addendum, gets duly associated with the e-form which was submitted originally. Payment of fees is not required for filing an addendum.

E-F-ORM SIZE

The size of an e-form cannot exceed **2.5 MB** to facilitate e-filing.

GENERAL STRUCTURE OF AN E-FORM AND E-FILING PROCESS

Features of e-form and e-filing process has been given as below:-

(a) The e-Form contains a number of **mandatory fields** which are required to be filled-in. Certain other fields are non-mandatory in nature which may be filled-in as may be relevant in any particular case.

(b) An **instruction kit** is available for each e-Form, which contains details of the instructions for properly filling the e-Form.

(c) An e-Form may be **filled in either online or offline**.

(d) An e-Form may require certain mandatory **attachments** to be filed along with it. Optional attachments may also be filed with an e-Form. The list of such attachments is displayed in the e- Form.

(e) Next to attachment, there is a **declaration** that is sought from the person filing the e-Form to the effect that the information given in the e-Form and the attachments is correct and complete.

(f) Most of the e-Forms require the **digital signature of the Managing Director or Director, Manager or Secretary** of the company for successful filing/ submission.

(g) In certain cases, **certification** from the **Company Secretary** or Chartered Accountant or Cost Accountant Company Secretary in whole-time practice is also required to authenticate the particulars contained in the e-Form.

(h) There are built-in facilities to check the filled-in e-Form for requisite validations, to do pre-**scrutiny and to modify** the e-Form when the same is required to be re-submitted.

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(i) When the "Submitted" button is pressed, the e-Form gets uploaded into the MCA central document repository.

(j) Thereafter, the requisite **fees** as applicable for the e-Form should be paid either on-line or off-line.

(k) Once the e-Form has been accepted and payment of fees has been acknowledged, a **work item is created and assigned to the appropriate MCA employee b**ased on pre-defined assignment rules as part of MCA back office workflow automation.

(l) In the case of an e-Form, the **authorized officer affixes his/her digital signature** for registering/approving/rejecting the same.

(m) After the processing of the e-Form is completed, an **acknowledgement email** is sent to the user regarding its approval/rejection.

DEFECTIVE FORMS / DOCUMENTS

A form for or document is defective for any one of the following reasons:-	**(a)** Certain particulars in the document or form have been left unfilled;
	(b) Certain particulars apparent on the face of it seem false;
	(c) The form or document does not contain the necessary enclosures;
	(d) The document is not filed in proper time or is not accompanied by the requisite filing fee;
	(e) The document is not properly signed or certified.

XBRL-MEANING

XBRL stands for **Extensible Business Reporting Language**.

XBRL is a language for the electronic communication of business and financial data which is revolutionising business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It is an open standard, free of licence fees, being developed by a non-profit making international consortium.

XBRL- BENEFITS

XBRL BENEFITS	**(a)** XBRL offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data.
	(b) XBRL increases the usability of financial statement information. The need to re-key financial data for analytical and other purposes can be eliminated.
	(c) By presenting its statements in XBRL, a company can meet the requirements of regulators, lenders and others consumers of financial information, who are increasingly demanding reporting in XBRL.
	(d) With the help of XBRL data from different company divisions with different accounting systems can be assembled quickly, cheaply and efficiently.
	(e) It enables electronic data interchange (EDI) and due to which the financial of a Company can easily be understood by different nation as per their format.

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CLASS OF COMPANIES REQUIRED TO FILE FINANCIAL STATEMENTS IN XBRL

The Ministry of Corporate Affairs has mandated the following select class of companies mentioned below to file financial statements in XBRL (eXtensible Business Reporting Language) mode and by using the XBRL taxonomy:

(i)	all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
(ii)	all companies having paid-up capital of Rupees five crore and above; or
(iii)	all companies having turnover of Rupees one hundred crore and above; or
(iv)	all companies who were required to file their financial statements for FY 2010-11, using XBRL mode.

Irrespective of the fact, whether the company has a net profit less than 5 crores or a turnover less than 100 crores, the company shall still file in XBRL mode only. In short, "Once an XBRL, Always am XBRL" However, the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies are exempted from XBRL filing till further orders

STEPS FOR FILING FINANCIAL STATEMENTS IN XBRL MODE

1. ***Creation of XBRL instance document***

   Companies have the option to create their own XBRL documents in house or to engage a third party to convert their financial statements into XBRL form. The first step in creation of an instance document is to do tagging of the XBRL taxonomy elements with the various accounting heads in the books of accounts of the company.

   This would create the mapping of the taxonomy elements with the accounting heads so that the accounting information can be converted into XBRL form. Each schedule of the balance sheet/ P&l Statement is known as an element and each schedule item or sub-schedule is known as child member.

   Mapping is the process of comparing the concepts in the financial statements to the elements in the published taxonomy, assigning a taxonomy element to each accounting concept published by the company.

   The complete information as contained in the annual accounts and related documents; and the information required to be filed with the Registrar of Companies should be reported in the XBRL instance documents to be submitted with MCA.

   Initially, all tagging, and mapping shall be done on the basic template (.RXO) file or the offline (.XLS) template provided and after all compilation is completed, such file shall be created as .XML document which shall be duly validated and pre-scutinised shall be attached to the AOC-4 Form For preparing instance document, the taxonomy as applicable for the relevant financial year is to be used.

1. Download XBRL validation tool from MCA Portal
2. Load the instance document in the validation tool
3. Validate the instance document.
4. This stage has to be carefully dealt, since the internal validation tool may only highlight the arithmetic errors, and only the MCA tool will give the .XML error required to be handled for filing.
5. Pre-scrutiny of the instance document
6. Convert to pdf and verify the contents of the instance document. (This step is essential to ensure that the disclosures contained in XBRL document are as per Audited Financial Statement adopted in the AGM and the textual information entered in the instance document are clearly viewable)
7. Attach instance document to the Form 23AC-XBRL and 23ACA-XBRL or From AOC-4(XBRL)
8. Submitting the XBRL Form on the MCA portal
9. Viewing of balance sheet and profit and loss submitted in XBRL form on MCA portal.

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LIST OF E-FORMS

(SOURCE:- www.mca.gov.in)

1. APPROVAL SERVICES (HEADQUARTERS)

Description	e-Form
Form of intimation of appointment of cost auditor by the company to Central Government.	**Form CRA-2**
Form for filing application or documents with Central Government	**Form CG-1**

2. APPROVAL SERVICES (REGIONAL DIRECTOR)

Description	e-Form
Application for removal of auditor(s) from his/their office before expiry of term	**Form ADT-2**
Application to Regional director for conversion of section 8 company into company of any other kind	**Form INC-18**
Application to Regional Director for approval to shift the Registered Office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State	**Form INC-23**
Memorandum of Appeal	**Form ADJ**
Applications made to Regional Director	**Form RD-1**
Application to Central Government for extension of time for filing particulars of registration of creation / modification / satisfaction of charge OR for rectification of omission or misstatement of any particular in respect of creation/ modification/ satisfaction of charge.	**Form CHG-8**

3. APPROVAL SERVICES (REGISTRAR OF COMPANIES)

Description	e-Form
Application by company to ROC for removing its name from register of Companies	**Form STK-2**
One Person Company- Application for Conversion	**Form INC-6**
Application for approval of Central Government for change of name	**Form INC-24**
Application to Registrar for obtaining the status of dormant company	**Form MSC-1**
Application for seeking status of active company	**Form MSC-4**
Applications made to Registrar of Companies	**Form GNL-1**
Application for grant of License under section 8	**Form INC-12**
Application for striking off the name of company under the Fast Track Exit (FTE) Mode	**Form FTE**

4. CHANGE SERVICES

Description	e-Form
One Person Company- Nominee consent form	**Form INC-3**
One Person Company- Change in Member/Nominee	**Form INC-4**
Notice of situation or change of situation of registered office	**Form INC-22**
Conversion of public company into private company or private company into public company	**Form INC-27**
Notice to Registrar of any alteration of share capital	**Form SH-7**
Particulars of appointment of Directors and the key managerial personnel and the changes among them	**Form DIR-12**
Return of alteration in the documents filed for registration by foreign company	**Form FC-2**
Annual accounts along with the list of all principal places of business in India established by foreign company	**Form FC-3**

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5. CHARGE MANAGEMENT

Description	e-Form
Application for registration of creation, modification of charge (other than those related to debentures)	**Form CHG-1**
Particulars for satisfaction of charge thereof	**Form CHG 4**
Notice of appointment or cessation of receiver or manager	**Form CHG-6**
Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures	**Form CHG-9**
Details of persons/directors/charged/specified	**Form GNL-3**

6. DIN FORMS

Description	e-Form
Application for allotment of Director Identification Number before appointment in an existing company	**Form DIR-3**
Application for surrender of Director Identification Number	**Form DIR-5**
Intimation of change in particulars of Director to be given to the Central Government	**Form DIR-6**
A Report by a company to ROC for intimating the disqualification of the director	**Form DIR-9**
Application for KYC of Directors	**Form DIR-3 KYC**

7. INCORPORATION SERVICES

Description	e-Form
Active Company Tagging Identities and Verification (ACTIVE)	**Form INC-22A**
New Version - Simplified Proforma for Incorporating Company Electronically (SPICe) - with mandatory PAN & TAN application included.	**SPICe**
eMemorandum of Association (SPICe MoA)	**SPICeMoA**
eArticles of Association (SPICe AoA)	**SPICeAoA**
Application for **G**oods and services tax Identification number, employees state **I**nsurance corporation registration p**L**us **E**mployees provident fund organisation registration (AGILE)	**AGILE**
One Person Company- Nominee consent form	**Form INC-3**
Application by a company for registration under section 366	**Form URC-1**
Information to be filed by foreign company	**Form FC-1**

8. COMPLIANCE RELATED FILING

Description	e-Form
Form for furnishing half yearly return with the registrar in respect of outstanding payments to Micro or Small Enterprise.	**Form MSME**
Form for filing Cost Audit Report with the Central Government	**Form CRA-4**
Return of deposits	**Form DPT-3**
Information to the Registrar by Company for appointment of Auditor	**Form ADT-1**
Notice of Resignation by the Auditor	**Form ADT-3**
Statement regarding deposits existing on the commencement of the Act	**Form DPT-4**
One Person Company- Intimation of exceeding threshold	**Form INC-5**

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Return of allotment	**Form PAS-3**
Letter of offer	**Form SH-8**
Declaration of Solvency	**Form SH-9**
Return in respect of buy-back of securities	**Form SH-11**
Filing of Resolutions and agreements to the Registrar	**Form MGT-14**
Notice of resignation of a director to the Registrar	**Form DIR-11**
Form for submission of documents with the Registrar.	**Form GNL-2**
Annual Return of a Foreign company	**Form FC-4**
Return of dormant companies	**Form MSC-3**
Persons not holding beneficial interest in shares	**Form MGT-6**

9. INFORMATIONAL SERVICES

Description	e-Form
Notice of situation or change of situation or discontinuation of situation, of place where foreign register shall be kept	**Form MGT-3**
Form for filing Report on Annual General Meeting	**Form MGT-15**
Notice of address at which books of account are maintained	**Form AOC-5**
Intimation to Registrar of revocation/surrender of license issued under section 8	**Form INC-20**
Notice of Order of the Court or any other competent authority	**Form INC-28**
Reply to call for information on CSR	**Form CFI(CSR)**

10. INVESTOR SERVICES

Description	e-Form
INVESTOR COMPLAINT FORM	**Form ICP**
SERIOUS COMPLAINT FORM	**Form SCP**

11. PROVISIONS RELATED TO MANGERIAL PERSONNEL

Description	e-Form
Form of application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors	**Form MR-2**
Return of appointment of MD/WTD/Manager	**Form MR-1**

12. ANNUAL FILING E-FORMS

Description	e-Form
Form for filing XBRL document in respect of financial statement and other documents with the Registrar	**Form AOC-4 (XBRL)**
Form for filing annual return by a company	**Form MGT-7**
Form for filing financial statement and other documents with the Registrar	**Form AOC-4**
Form for filing consolidated financial statements and other documents with the Registrar	**Form AOC-4 (CFS)**

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13. ADDENDUM FORM

Description	e-Form
Form for filing addendum for rectification of defects or incompleteness	**Form GNL-4**

14. REFUND EFORM

Description	e-Form
Application for requesting refund of fees paid.	**Form Refund**

15. 1956 Act Cost Audit Forms

Description	e-Form
Form of application to the Central Government for appointment of cost auditor	**Form 23C**
Form for filing XBRL document in respect of cost audit report and other documents with the Central Government	**Form I-XBRL**
Form for filing XBRL document in respect of compliance report and other documents with the Central Government	**Form A-XBRL**
Information by cost auditor to Central Government	**Form 23D**

16. Companies Act, 1956 Related

Description	e-Form
Form for filing XBRL document in respect of balance sheet and other documents with the Registrar	**Form-23AC (XBRL)**
Form for filing XBRL document in respect of Profit and Loss account and other documents with the Registrar	**Form-23ACA (XBRL)**
Filing annual return by a company having a share capital with the Registrar	**Form-20B**
Particulars of annual return for the company not having share capital	**Form-21A**
Filing balance sheet and other documents with the Registrar	**Form-23AC**
Filing Profit and Loss account and other documents with the Registrar	**Form-23ACA**
Information by auditor to Registrar	**Form-23B**
Form for submission of compliance certificate with the Registrar	**Form-66**

17. ATTACHMENTS

Description	e-Form
A Report by a company to ROC for intimating the disqualification of the director	**Form DIR-9**
Form of application for removal of disqualification of directors	**Form DIR-10**
Circular or circular in the form of advertisement inviting deposits	**Form DPT-1**
Return of Statutory Compliances	**Form NDH-1**
Application for extension of Time	**Form NDH-2**
Half Yearly Return	**Form NDH-3**
Information Memorandum	**Form PAS-2**
Private Placement Offer Letter	**Form PAS-4**

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Descriptive Questions:----------
   a) 'XBRL offers major benefits at all stages of business reporting and analysis'. Discuss.
   b) Front office represents the interface of the corporate and public users with the MCA – 21 system.
   c) Or MCA -21, four types of users which are identified as user of digital signature
2. Short Notes:----------
   a) Digital signature certificate
   b) Digital signature
3. Briefly explain the following terms used under e- filling-
   a) Pre –fill
   b) Attachment
   c) Check form
   d) Pre-scrutiny
4. What is the general structure of e- filling process under MCA-21?
5. Distinguish between:----------
   a) 'Pre-scrutiny' and 'check form'.

FROM ICSI MODULE

Answer the Following:-

1. Explain the CIN and DIN.
2. What are the key benefits of MCA-21 project?
3. Write short note on Digital Signature Certificate.
4. Briefly explain the general structure of an e-form and the e-filing process.

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 2:-

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CHAPTER

3

CONCEPT OF CAPITAL AND FINANCING OF COMPANIES

Covering-

- Section Charts
- ABC Analysis
- Classification of Capital
- Share – Meaning and Nature
- Difference between Share and Stock
- Kinds of Shares
- Distinguish between Preference share and Equity Share
- Issue of shares at a premium
- Prohibition to Issue the shares at discount
- Further Issue of share
- Issue of Share on Preferential Basis
- Bonus Shares / Bonus Issue
- Employee Stock Option Scheme
- Amendment to a Nidhis Company; Dated 5th June, 2015
- Amendment to a Private Company; Dated 5th June, 2015
- Self Test Questions
  - From Past CS Exam
  - From ICSI Module

EXPECTED MARKS COVERAGE (5 to 15)

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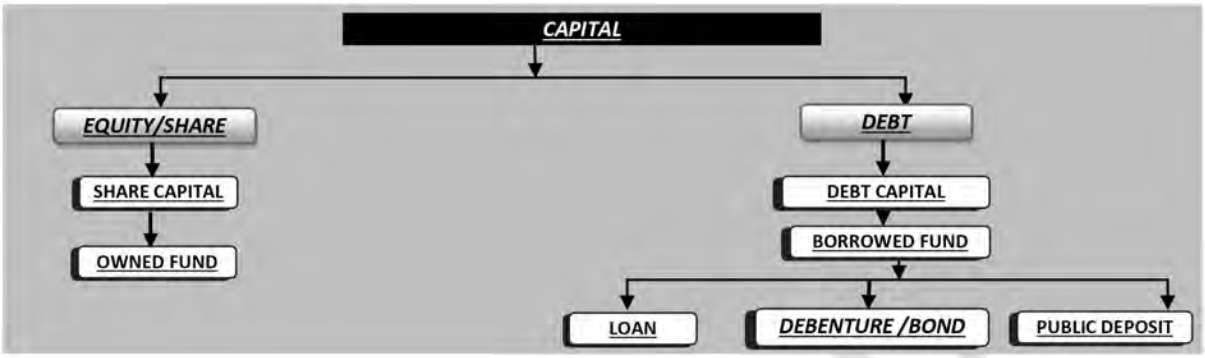

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N.K.J - SECTION CHART

Section	Short Description
Section 2(37)	Definition of Employees Stock Option
Section 2(84)	Definition of Share
Section 2(88)	Definition of Sweat Equity Shares
Section 43	Kind of Share Capital
Section 52	Application of premium received on Issue of shares
Section 53	Prohibition on issue of shares at discount
Section 62(1)(a)	Right Issue
Section 62(1)(b)	Employee Stock Option
Section 62(1)(c)	Private Placement of Securities
Section 63	Bonus Issue
Rule	Companies (Share Capital and Debentures) Rules, 2014
Rule	Companies (Indian Accounting Standards) Rules, 2015

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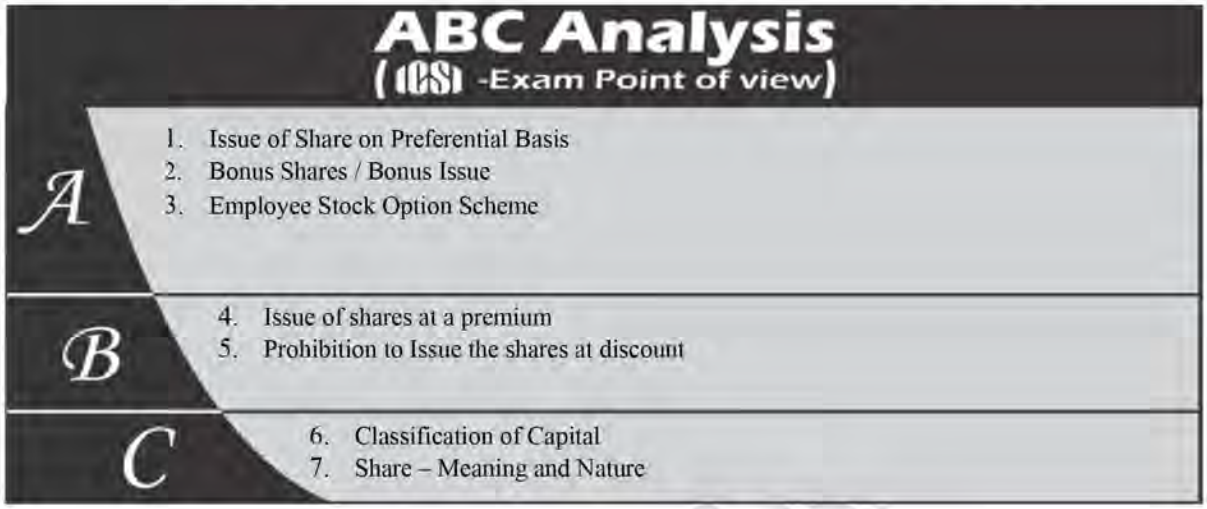
CONCEPT OF CAPITAL AND FINANCING OF COMPANIES



In Company, the ***"Capital" is the share capital of a company***.

CLASSIFICATION OF CAPITAL

Share capital of a company is classified as:-

1. NOMINAL, AUTHORISED OR REGISTERED CAPITAL

This is the sum stated in the memorandum of association of a company as the capital of the company with which it is registered. It is the maximum amount which the company is authorized to raise by issuing shares. This is the capital, on which it had paid the prescribed fee at the time of registration, hence also called Registered Capital.

2. ISSUED CAPITAL

It is part of the authorised or nominal capital which the company issues for the time being for public subscription and allotment.

3. SUBSCRIBED CAPITAL

It is that portion of the issued capital at face value which has been subscribed for or taken up by the subscribers of shares in the company.

4. CALLED UP CAPITAL

It is that portion of the subscribed capital which has been called up or demanded on the shares by the company.

5. UNCALLED CAPITAL

It is the total amount not yet called up or demanded by the company on the shares subscribed, which the shareholders are liable to pay as and when called.

6. PAID-UP-CAPITAL

It is the part of the total called up amount which is actually paid by the shareholder.

7. UNPAID CAPITAL

It is the total of the called-up capital remaining unpaid

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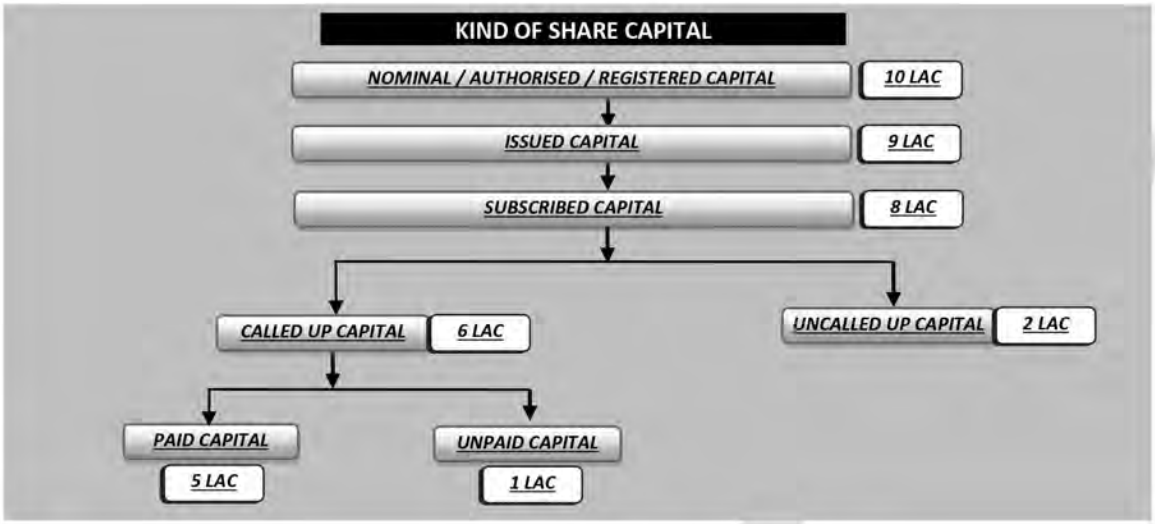

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DIFFERENCE BETWEEN 'RESERVE CAPITAL' AND 'CAPITAL RESERVE

Following are some of the important differences between 'Reserve Capital' and 'Capital Reserve':-

(a) Reserve Capital is a **part of uncalled capital** of the company as decided by passing a special resolution. But, Capital Reserve is the accumulation of profits created out of **capital profits or earnings**.

(b) Reserve Capital is receivable only at the time of **winding up** of the company. But, Capital Reserve is the amount **already received** by the company.

(c) Reserve Capital is applied only at the time of **winding up** of a company. But, Capital Reserve can be applied at **any time** to write off the losses of capital nature issue of bonus shares.

(d) It is **not mandatory** to create Reserve Capital. But, it is mandatory to create Capital Reserve in case of Capital Profit.

SHARE- MEANING AND NATURE

Section 2(84) of the Act defines a share as ***"a share in the share capital of a company and includes stock except where a distinction between stock and shares is expressed or implied.***

NATURE OF A SHARE

(a) A share is a **right to a specified amount of the share capital** of a company, carrying with it certain rights and liabilities while the company is a going concern and in its winding up.

(b) A share is **not a sum of money but a bundle of rights and liabilities;** it is an interest measured by a sum of money. These rights and liabilities are regulated by the articles of a company.

(c) A share is a right to participate in the profits made by a company, while it is a going concern and declares a dividend and in the assets of company when it is wound up.

(d) **Section 44** of the Companies Act provides that a share or other interest of any member in a company is a movable property transferable in the manner provided by the articles of the company.

DIFFERENCE BETWEEN SHARE AND STOCK

Basis for Comparison	Share	Stock
Meaning	The capital of a company is divided into small units, which are commonly known as shares.	The conversion of the fully paid up shares of a member into a single fund is known as stock.
Paid up value	Shares can be partly or fully paid up.	Stock can only be fully paid up.
Definite number	A share has a definite number known as distinctive number.	A stock does not have such number.
Fractional transfer	Not possible.	Possible.
Denomination	Equal amounts	Unequal amounts

KINDS OF SHARES

According to **Section 43** of the Companies Act, 2013, following are two kind/classes of shares:-

1. Equity share
2. Preference Share

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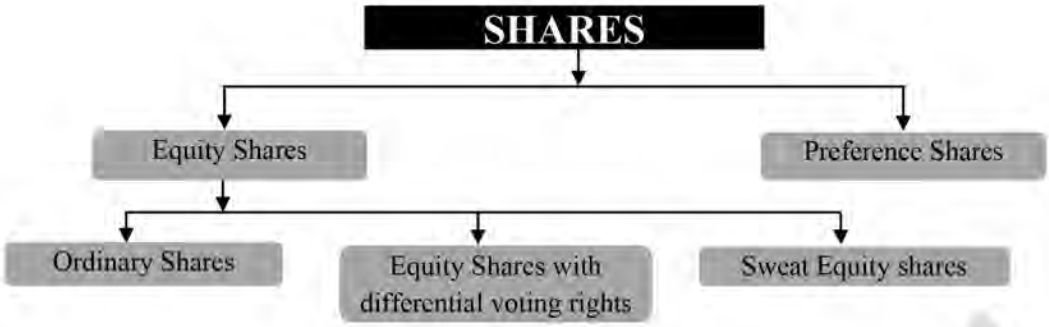

1. EQUITY SHARES

Equity share means the share which is not a preference share.

Equity shares, commonly referred to as ordinary share also represents the form of fractional ownership in company. The holder of such shares are member of the company and have voting rights.

A company may issue equity shares with;-

(a) Equal rights. (as to voting, payment of dividend etc.)

(b) Differential rights (as to voting, payment of dividend etc.)

➢ EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS

While Section 43 enables companies to issue a variety of equity shares with differential rights etc. **Rule 4 of Companies (Share Capital and Debentures) Rules, 2014** states the following **conditions** regarding issue of shares with differential voting rights by co. Limited by shares;-

(a) The articles of association of the company authorizes the issue of shares with differential rights;

(b) theissue of shares is authorized by an **ordinary resolution** passed at a general meeting of the shareholders: ***(postal ballot in case of listed co)***.

(c) the shares with differential rights **shall not exceed twenty-six percent** of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;

(d) the company having consistent track record of distributable profits for the last three years;

(e) the company has not defaulted in filing financial statements **and** annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;

(f) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures.

(g) the company has not defaulted in payment of the **dividend on preference shares** or **repayment of any term loan** from a public financial institution or State level financial institution or scheduled Bank that has become repayable or **interest** payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in **crediting the amount in Investor Education and Protection Fund** to the Central Government;

(h) the company has not been penalized by Court or Tribunal during the last three years of any offence under the RBI Act, 1934, the SEBI Act, 1992, the SCR Act, 1956, the FEMA, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

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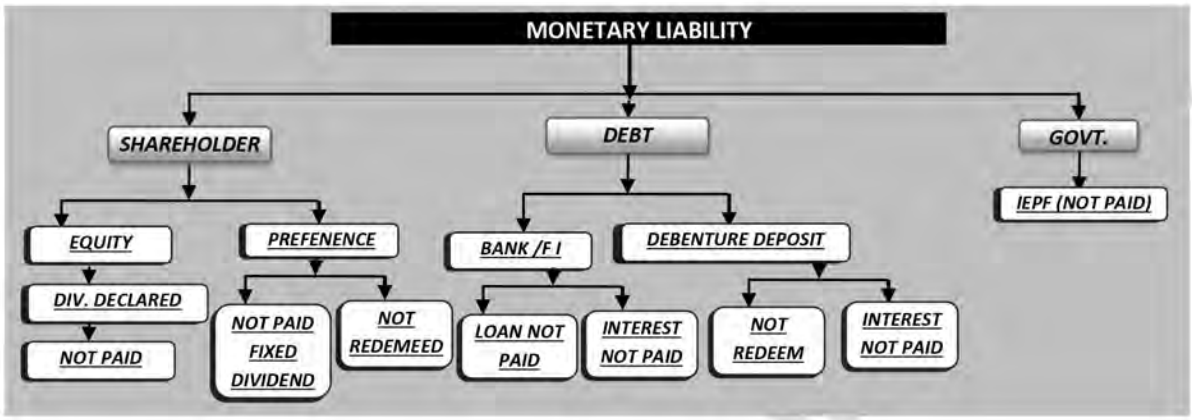

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Conversion of existing equity share capital into differential voting rights and vice-versa

Rule 4(3) states that the company **shall not** convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and *vice-versa.*

➢ SWEAT EQUITY SHARES

According to **section 2(88)**, sweat equity shares mean ***equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.***

CONDITIONS FOR ISSUE OF SWEAT EQUITY SHARES

Section 54 provides that **notwithstanding anything contained in Section 53,** a company can issue sweat equity shares, of a class of shares already issued, if the following conditions are satisfied:-	
(i)	The shares must be of class already issued.
(ii)	The issue has been authorised by a **special resolution** passed by the company in the general meeting.
(iii)	the following are clearly specified in the resolution:- **(a)** number of shares; **(b)** current market price; **(c)** consideration, if any; and **(d)** class or classes of directors or employees to whom such equity shares are to be issued.
(iv)	Atleast **one year should have elapsed** from the date on which the company had commenced business. (OMITTED)
(v)	a company whose shares are listed on a recognized stock exchange issuing sweat equity shares should comply with the regulations made in this behalf by SEBI.
(vi)	a company whose shares are not so listed should issue sweat equity shares in compliance with the rules made in this behalf by the Central Government (i.e., *Companies (Share Capital and Debentures) Rules, 2014).*

"COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014"

(a)	Special resolution authorising the issue of sweat equity shares shall be valid for a period of not more than **twelve months** from the date of passing of the special resolution.
(b)	the company shall not issue sweat equity shares for more than **fifteen percent** of the existing paid up equity share capital in a year or shares of the issue value of rupees **five crores**, whichever is higher.
(c)	The issuance of sweat equity shares in the Company shall **not exceed twenty five percent**, of the paid up equity capital of the Company at **any time**.
(d)	Sweat Equity Shares to be locked for **three years**.
(e)	the sweat equity shares to be issued shall be valued at a price determined by a registered valuer.
(f)	the valuation of intellectual property rights or of know how or value additions shall be carried out by a registered valuer.
(g)	the Board of Directors shall, disclose in the Directors' Report for the year in which such shares are issued, details of issue of sweat equity shares .
(h)	The company shall maintain a Register of Sweat Equity Shares in **Form No. SH.3.**

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Holders of Sweat Equity Shares to be ranked paripassu with other Equity share holders

Section 54 provides that the rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *paripassu* with other equity shareholders.

"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) an employee or a director as defined in sub-clauses (a)or (b) above of a subsidiary, in India or outside India, or of a holding company of the company;

2. PREFERENCE SHARES

A preference share or preference share capital is that part of share capital which fulfils both the following requirements:-

(a) With respect to dividend, it carries a preferential right to be paid a fixed amount or an amount calculated at a fixed rate.

(b) With respect to capital, it carries on winding up or re-payment of capital a preferential right to be repaid

CONDITIONS OF ISSUE OF PREFERENCE SHARES

Section 55 read with Companies (Share Capital and Debentures) Rules, 2014)

(a) A company limited by shares can not issue any preference shares which are irredeemable. (Section 55)

(b) A company limited by shares may, if so authorised by its articles, issue preference shares which are redeemable within a period not exceeding twenty years. (Section 55)

Exception;-

A company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period ***exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum ten percent of such preference shares per year*** *from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.* (Rule 10)

(c) a company having a share capital may, if so authorised by its articles, issue preference shares by passing a special resolution in the general meeting of the company. (Rule 9)

CONDITIONS OF REDEMPTION OF PREFERENCE SHARES

A company may redeem its redeemable preference shares subject to the following conditions:-

(a) Preference shares are fully paid up.

(b) Preference shares can be redeemed only out of **profits** available for distribution as dividend or out of proceeds of **fresh issue of shares** made for the purpose of redemption.

(c) Where the shares are redeemed out of the **profits** available for distribution as dividend, a sum equal to the nominal amount of the shares redeemed shall be transferred out of the profits to the **capital redemption reserve account**, which can be utilized only for the purpose of issuing fully paid bonus shares, otherwise it shall be deemed to be reduction of capital.

(d) If **premium** is payable on redemption, it must have been provided for out of **profits** or out of company's **securities premium account**.

However **such class of companies as may be prescribed whose financial statements comply with accounting standards** prescribed for such class of companies cannot utilize securities premium account for providing premium on redemption.

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(e) Where a company is **not in position** to redeem its preference shares, it may redeem unredeemed preference shares by issue of **further preference shares with the consent of holders of 75% in value** of such preference shares and the approval of **NCLT**.

(f) The particulars regarding redemption of preference shares is required to be filed to ROC in **form SH.7** within 30 days.

DISTINGUSH BETWEEN PREFERENCE SHARE/ CAPITAL AND EQUITY SHARE/ CAPITAL

PREFERENCE CAPITAL	EQUITY SHARE/ CAPITAL
Preference shares are entitled to a fixed rate of dividend.	The rate of dividend on equity shares depends upon the amount of profit available and the funds requirements of the company for future expansion etc.
Dividend on the preference shares is paid in preference to the equity shares.	The dividend on equity shares is paid only after the preference dividend has been paid.
In case of winding up, preference share holder get preference over equity share holders with regard to the payment of capital.	In case of winding up, equity share holder get payment of capital after the payment of capital to preference shareholders.
Dividend on preference share may be cumulative.	The dividend on equity shares is paid only after the preference dividend has been paid and it is not cumulative.
The voting rights of preference shareholders are restricted. A preference shareholder can vote only when his special rights as a preference shareholder are being varied.	An equity shareholder can vote on all matters affecting the company.

DISTINCTION BETWEEN SHARE CERTIFICATE AND SHARE WARRANT

SHARE CERTIFICATE	SHARE WARRANT
Holder is registered member.	Holder is not a registered member.
Both Pvt.& Public Co. Can issue	Only public co. Can issue
Not an negotiatable instrument	An negotiable instrument
Holder can present petition for w-up	Holder cannot present petition for w-up

ISSUE OF SHARES/SECURITIES AT A PREMIUM

A company may issue securities at a premium when it is able to sell them at a price above par or above nominal value. The Companies Act, 2013, does not stipulate any conditions or restrictions regulating the issue of securities by a company at a premium.

However, the Companies Act does impose conditions regulating the utilisation of the amount of premium collected on securities:-

(a) the premium **cannot be treated as profit** and as such the amount of premium is not available for distribution as **dividend**.

(b) the amount of premium whether received in cash or in kind must be kept in a separate account, known as the **"Securities Premium Account"**.

(c) the amount of premium is to be maintained with the **same sanctity** or care as the share capital.

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(d) Money in the securities premium account **cannot be treated asfree reserves**, as they are in the nature of **capital reserve**.

(e) Where a company issues shares at a premium, even though the consideration **may be other than cash**, **a sum equal** to the amount or value of the premium must be transferred to the securities premium account.

Utilisation of Securities premium

Section 52

In accordance with the provisions of Section 52 of the Act, the securities premium can be utilised only for:-

(a)	issuing fully paid bonus shares to members;
(b)	writing off the balance of the preliminary expenses of the company;
(c)	writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company;
(d)	for providing for the premium payable on redemption of any redeemable preference shares or debentures of the company; or
(e)	for the purchase of its own shares or other securities under section 68.

However **such class of companies as may be prescribed whose financial statements comply with accounting standards** prescribed for such class of companies can utilize securities premium account **only** for following:-.

(a) issuing fully paid bonus shares to members;

(b) writing off commission paid or discount allowed, or the expenses incurred on issue of **equity shares** of the company;

(c) for the purchase of its own shares or other securities under section 68.

OBLIGATION TO COMPLY WITH INDIAN ACCOUNTING STANDARDS (IND AS)

Rule 4 of Companies (Indian Accounting Standards) Rules, 2015

Following Companies and their auditors shall comply with the Indian Accounting Standards:-

(i) any company **may** comply with the Indian Accounting Standards (Ind AS) for financial statements for accounting periods beginning on or after **1st April, 2015**, with the comparatives for the periods ending on 31st March, 2015, or thereafter;

(ii) the following companies **shall** comply with the Indian Accounting Standards (Ind AS) for the accounting periods beginning on or after **1st April, 2016,** with the comparatives for the periods ending on 31st March, 2016, or thereafter, namely:-

- **(a)** companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India **and** having net worth of rupees **five hundred crore or more**;
- **(b)** companies other than those covered by sub-clause (a) of clause (ii) of sub-rule (1) **and** having net worth of rupees **five hundred crore or more**;
- **(c)** holding, subsidiary, joint venture or associate companies of companies covered by sub-clause clause (a) and (b) of clause (ii) of sub- rule (1) as the case may be;

(iii) the following companies **shall** comply with the Indian Accounting Standards (Ind AS) for the accounting periods beginning on or after **1stApril, 2017**, with the comparatives for the periods ending on 31st March, 2017, or thereafter, namely:-

- **(a)** companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of **less than rupees five hundred crore**;

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(b) companies other than those covered in clause (ii) of sub- rule (1) and sub-clause (a) of clause (iii) of sub-rule (1), that is, unlisted companies having net worth of **rupees two hundred and fifty crore or more but less than rupees five hundred crore**.

(c) holding, subsidiary, joint venture or associate companies of companies covered under sub-clause (a) and (b) of clause (iii) of sub- rule (1), as the case may be:

Provided that nothing in this sub-rule, except clause (i), shall apply to companies whose securities are listed or are in the process of being listed on **SME exchange** or on the **Institutional Trading Platform without initial public offering**.

MEANING OF - NET WORTH

Section 2(57)

Net worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

PROHIBITION TO ISSUE THE SHARES AT DISCOUNT

Section 53 states that **except as provided in section 54** (i.e. issue of sweat equity shares), a company shall not issue shares at a discount. **Any share issued by a company at a discount price shall be void**.

When a company contravenes the provisions of this section, the company shall be punishable with fine which may extend to amount equal to the amount raised through the issue of shares at discount or **five lakh rupees** whichever is less and the company shall be liable to refund the money with interest at the rate of 12% per anum from the date of issue of such shares to whom such shares has been issued.

"(2A) Notwithstanding anything contained in sub-sections (*1*) and (*2*), a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.".

FURTHER ISSUE OF SHARES / RIGHT ISSUE OF SHARES

SECTION 62

Section **62(1)(a)** states that whenever at **any time**, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, **such shares shall be offered to the existing holders of equity shares in proportion to the paid-up share capital**.

The company must give notice to each of the equity shareholders **through letter of offer**, giving him option to take the shares offered to him by the company. The notice shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders **at least 3 days** before the opening of the issue.

The company must give the shareholders at least 15 days but not more than 30 days to decide. If the shareholder does not convey to the company his acceptance of the company's offer of further shares he shall be **deemed to have declined the offer**.

Unless the articles of the company otherwise provide, the directors must state in the notice of offer of rights shares the fact that the shareholder has also the **right to renounce** the offer in whole or in part, in favour of some other persons. If a shareholder has **neither renounced in favour of another person nor accepted the shares,** the Board of directors may dispose of the shares so declined in such manner which is not dis-advantageous to the shareholders and the company.

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*However, it may be noted that in case of **private company,** where **90% of its members agree**, the aforesaid period(3 days/15 days) **can be reduced**.*

Exception to section 62(1)(a);-

(a) **Employees stock option scheme;-** **Section 62(1)(b)** provides that a company may issue further shares to its employees under a scheme of **employees' stock option**, subject to special resolution passed by company and subject to such conditions as may be prescribed.

(b) **Preferential allotment of shares;-Section 62(1)(c)** provides that a company can issue further shares to persons other than existing shareholders either for cash or for a consideration other than cash, if —

(1) the company in General Meeting passes a special resolution to this effect; and

(2) the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

(c) **Non-applicability of section 62**;-The restrictions contained in Section 62 of the Act regarding issue of further shares do not apply to:-

(a) increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loans raised by the company to convert such debentures or loans into shares in the company **[Section 62(3)]**.

Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loans by a **special resolution** passed by the company in the general meeting.

(b) conversion of part or whole of the debentures issued to or loans obtained from any Government in shares of the company in pursuance of a direction issued by that Government in public interest on such terms and conditions as appear to be fair and reasonable to the Government even if the terms of issue of such debentures or loans do not contain a term providing for an option for such

Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, **within sixty days** from the date of communication of such order, appeal to the **Tribunal** which shall after hearing the company and the Government pass such order as it deems fit.

ISSUE OF SHARES ON PREFERENTIAL BASIS/ PREFERENTIAL OFFER/ PREFERENTIAL ALLOTMENT OF SHARES

'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities;

According to Section **62(1)(c)** a company can issue further shares to persons other than existing shareholders either for cash or for a consideration other than cash, if —

(1)	the company in General Meeting passes a special resolution to this effect; and
(2)	the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

CONDITIONS ON PREFERENTIAL ISSUE (Rule 13)

(a) the issue is authorized by its articles of association;

(b) the issue has been authorized by a special resolution of the members;

(c) thesecurities allotted by way of preferential offer shall be made fully paid up at the time of their allotment.

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(d) the allotment of securities on a preferential basis shall be completed within a period of twelve months from the date of passing of the special resolution.

(e) the price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer;

BONUS SHARES/BONUS ISSUE

When a company accumulates large distributable profits, it converts these accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements. Members do not have to pay any amount for such shares. They are given free. These shares are known as bonus shares.
A company may, if its **Articles provide,** capitalize its profits by issuing fully-paid bonus shares.

ADVANTAGES OF ISSUING BONUS SHARES

(a) Fund flow is not affected adversely.

(b) Market value of the Company's shares comes down to their nominal value by issue of bonus shares.

(c) Bonus shares is not an income. Hence it is not a taxable income.

(d) Market value of the members' shareholdings increases with the increase in number of shares in the company.

CONDITIONS ON ISSUING BONUS SHARES

The following conditions must be satisfied before issuing bonus shares:-

(a) Bonus Issue must be authorised by the **articles** of the company.

(b) Bonus Issue must be sanctioned by shareholders in **general meeting** on recommendation of the Board of directors of the company.

(c) company has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(d) company has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(e) the existing shares are fully paid-up.

SOURCES FOR ISSUE OF BONUS SHARES

According to section 63(1), a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

(a)	its free reserves;
(b)	the securities premium account; or
(c)	the capital redemption reserve account.

However, it may be noted that;-

(a) The bonus shares shall not be issued in lieu of dividend. [Section 63(3)],

(b) the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same. (Rule 14).

EMPLOYEE STOCK OPTION SCHEME

According to Section 2(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.

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Section 62(1)(b) provides that a company may issue further shares to its employees under a scheme of **employees' stock option**, subject to **special resolution***(Ordinary resolution in case of private company)* passed by company and subject to such conditions as may be prescribed.

Important points/conditions regarding ESOP;- (Rule 12).

(a) a company may issue shares under Employees Stock Option Scheme by passing a special resolution in the general meeting of shareholders.

(b) there shall be a **minimum period of one year between the grant of options and vesting of option**.

(c) The option granted to employees shall not be transferable to any other person.

(d) The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.

(e) No person other than the employees to whom the option is granted shall be entitled to exercise the option.

(f) that in the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.

(g) company shall maintain a Register of Employee Stock Options in **Form No. SH.6**

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Q. 1. Radhika Textiles Limited has utilized the securities premium during the financial year 2016-17 as follows : **[June. 2017]**

(*i*) ₹15 lakhs against expenses of foreign travelling of directors.

(*ii*) ₹5 lakhs for writing-off the balance of the preliminary expenses of the company.

(*iii*) ₹10 lakhs distributed as dividend for the financial year ending 31st March 2017.

You, being the Secretarial Auditor of the company, referring to the provisions of the Companies Act, 2013 relating to the Securities Premium Account, examine the validity of the above.

Ans. **Utilization of securities premium**

In accordance with the provision of Section 52(2) of the Companies Act, 2013, the securities premium can be utilized only for:

1. Issuing fully paid bonus share to members;
2. Writing – off the balance of the preliminary expenses of the company;
3. Writing off commission paid or discount allowed, or the expenses incurred on issue of share or debenture of the company;
4. For providing for the premium payable on redemption of any redeemable preference shares or debentures of the company;
5. For the purchase of its own shares or other securities under section 68 of the companies act, 2013.

The validity of the area of utilization premium balance may be checked against the above provisions. The same shall yield the following result:

i. Amount of ₹15 lakh against expenses of foreign travelling of directors.	Company cannot do so as per above provision
ii. ₹5 Lakh against the writing off the balance of the preliminary expenses of the company.	Company can do so as per above provision
iii. ₹10 lakh distributed as dividend	Company cannot do so as per above provision

The premium cannot be treated as profit and as such the amount of premium is not available for distribution as dividend. Secondly, the amount of premium whether received in cash or in kind must be kept in a separate account, known as the 'Securities Premium Account'. Thirdly, the amount of premium is to be maintained with the same sanctity as the share capital.

Q 2. **Distinguish between redemption of shares and Redemption of debentures.** **[June 2018]**

Ans. Redemption of shares: All shares are not redeemable, only those to be redeemable, at the time of issue can be redeemed. Section 55 deals with redemption of preference shares. The payment for the shares must generally come from the reserves or profit of the company.

Redemption of debentures: Redemption of the debentures shall be made in accordance with Section 71 of the Companies Act, 2013. Redemption of debentures means payment of the amount of debentures by the company, when debentures are redeemed; liability on account of debentures is discharged.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Distinguish Between ----------
   a) 'Reserve capital' and 'capital reserve'.
   b) 'Sweat equity' issue of capital on preferential basis'.
   c) 'ESOS' and 'ESPS'.
   d) 'Nominal capital' and 'subscribed capital'.
2. Descriptive Questions
   Securities premium shall be utilized for certain specific purposes only.
3. Comment on following :----------
   a) Preference shares are non –cumulative unless expressly stated to be cumulative.
4. Whether equity shares already issued can be converted into redeemable preference shares?
5. Section62 of Companies Act, 2013 ensures pre-emptive rights of shareholder. Discuss.

FROM ICSI MODULE

Answer the Following:-

1. Discuss the various kinds of share capital. How is the preference share capital distinguished from equity share capital?
2. Define and explain the term share. What are the different classes of shares which a company may issue?
3. State the provisions of the Companies Act, 2013, relating to issue of shares at premium and at discount.
4. Discuss in brief SEBI Regulations for Public Issue of Shares?
5. Discuss the procedure for issue of further shares to existing shareholders under Section 62(1) of the Companies Act.
6. What is the difference between Reserve Capital and Capital Reserve?
7. Can a company issue shares with differential voting rights? If so, how?

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 2:-

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CHAPTER

4

ALTERATION OF SHARE CAPITAL

Covering-

- Section Chart
- Deference in Alteration of Share Capital and Reduction of Share Capital
- Diminution of Share Capital
- Distinction between Diminution of Capital and Reduction
- Reduction of Share Capital without Section of NCLT
- Self Test Questions
  - From Past CS Exam
  - From ICSI Module

EXPECTED MARKS COVERAGE (1 to 5)

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N.K.J -
SECTION CHART

Section	Short Description
Section 61	Power of Limited Company to alter its share capital
Section 66	Reduction of share capital

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ALTERATION OF SHARE CAPITAL

DIFFERENCE IN ALTERATION OF SHARE CAPITAL AND REDUCTION OF SHARE CAPITAL

S. No.	Alteration of share capital	Reduction of share capital
1	Alteration of share capital is governed by the provisions of **Section 61** of the Companies Act, 2013.	Reduction of share capital is governed by the provisions of **Section 66** of the Companies Act, 2013.
2	Alteration of share capital is required to be done by **ordinary resolution**.	Reduction of share capital is required to be done by **special resolution**.
3	Alteration of share capital is not required to be confirmed by the Tribunal.	Reduction of share capital is to be confirmed by the **Tribunal**.
4	Alteration of share capital may be done in the following manner:- **(a)** Increasing its nominal capital by issuing new shares. **(b)** Consolidating and dividing all or any of its share capital into shares of large denomination. **(c)** Converting fully paid up shares into stock or vice versa. **(d)** Sub dividing its shares or any of them into shares of smaller amount. **(e)** Cancelling shares which have not been taken up and diminishing the amount of share capital by the amount of the shares so cancelled.	Reduction of share capital may be done in the following manner:- **(a)** Extinguishing or reducing the liability of members in respect of the capital not paid up. **(b)** Writing off or cancelling any paid up capital which is in excess of the needs of the company. **(c)** Paying off any paid up share capital which is in excess of the needs of the company.

DIMINUTION OF SHARE CAPITAL

As per **section61(1)(e)** of the Companies Act, 2013 diminution of capital is the cancellation of the unsubscribed part of the issued capital. It can be effected by an **ordinary resolution** provided **articles** of the company authorises to do so.

According to **section 61(2)**, cancellation of shares under section 61(1) shall not be deemed to be reduction of share capital. It does not need any confirmation of the Tribunal under section 66.

DIMINUTION OF CAPITAL Vs. REDUCTION OF SHARE CAPITAL

In the following cases, the diminution of share capital is not to be treated as reduction of the capital:-

(i) Where the company cancels shares which have not been taken or agreed to be taken by any person.

(ii) Where redeemable preference shares are redeemed in accordance with the provisions of Section 55.

(iii) Where any shares are forfeited for non-payment of calls and such forfeiture amounts to reduction of capital;

(iv) Where the company buys-back its own shares under Section 68 of the Act.

(v) Where the reduction of share capital is effected in pursuance of the order of the Tribunal sanctioning any compromise or arrangement under section 230.

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DISTINCTION BETWEEN DIMINUTION OF CAPITAL AND REDUCTION

BASIS	DIMINUTION OF CAPITAL	REDUCTION OF CAPITAL
Meaning	It is the cancellation of unsubscribed part of issued capital.	It involves reduction of subscribed or paid up capital. There is no reduction of issued capital.
Resolution	Ordinary resolution in the General Meeting	Special resolution in the General Meeting
Confirmation of NCLT	It requires no confirmation of the NCLT.	It requires confirmation of the NCLT.
Order	No such Order	Court may order the Company to add the words "and reduction" after its name.
Notice to ROC	The Company is required to give notice of cancellation to ROC within 30 days of cancellation. The ROC shall record the cancellation and make necessary changes in company's Memorandum and Articles.	Reduction takes place only when the Tribunal's order and minutes are registered with ROC.

REDUCTION OF SHARE CAPITAL WITHOUT SANCTION OF THE NCLT

The following are cases which amount to reduction of share capital and where no confirmation by the Tribunal is necessary:

(a) Surrender of shares

"Surrender of shares" means the surrender to the company on the part of the registered holder of shares already issued. Where shares are surrendered to the company, whether by way of settlement of a dispute or for any other reason, it will have the same effect as a transfer in favour of the company and amount to a reduction of capital.

(b) Forfeiture of shares

A company may if authorised by its articles, forfeit shares for non-payment of calls and the same will not require confirmation of the Tribunal.

SELF TEST QUESTIONS

FROM PAST CS EXAMS 

FROM ICSI MODULE 

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 2:-

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CHAPTER

5

BUY BACK OF SECURITES

Covering-

- Section Charts
- ABC Analysis
- Buy Back of Shares – Meaning
- Buy Back – Objective
- Provisions of Section 68 in Case of Buy Back of Shares
- Transfer to and Application of Capital Redemption Reserve Account
- Prohibition on Buy-Back
- Securities which can't be bought back
- Practical Questions
- Self Test Questions
  - From Past CS Exam
  - From ICSI Module

EXPECTED MARKS COVERAGE (5 to 10)

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N.K.J - SECTION CHART

Section	Short Description
Section 68	Power of company to purchase its own securities
Section 69	Transfer of certain sums to capital redemption reserve account
Section 70	Prohibition for buy-back in certain circumstances
Rule	Companies (Share Capital and Debenture) Rules, 2014

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BUY BACK OF SECURITIES

ABC Analysis
(ICSI -Exam Point of view)

A

1. Provisions of Section 68 in Case of Buy Back of Shares
2. Practical Questions

B

3. Prohibition on Buy-Back
4. Securities which can't be bought back

C

5. Buy Back of Shares – Meaning
6. Buy Back – Objective

BUY BACK OF SHARES - MEANING

- Buy back of its own shares by a company is nothing but reduction of share capital. It is nothing but a process which enables a company to go back to the holders of its shares and offer to purchase from them the shares that they hold.
- Buy back results in the return of the shareholders' money and a reduction of the floating stock of the company's securities in the market while at the same time creating value for the remaining equity.
- Buy back benefit companies, shareholder, promoters and the economy as a whole. If shareholders sell they can then reinvest their gains elsewhere in the economy, where the returns are higher.
- Companies are saving their shareholders millions in taxes by buying back stock, rather than by increasing dividends as dividends attract tax.

BUY BACK - OBJECTIVE

Buy back of securities is one of the methods of financial reconstruction.

Securities may be brought back by the company on account of one or more of the <u>following reasons:</u>	➢ To increase promoters holding
	➢ Increase Earning per share
	➢ Maintaining shareholders' value in a situation of poor state of secondary market by a return of surplus cash to the shareholders
	➢ To counter a hostile takeover.
	➢ To return surplus cash not required by business to share holders
	➢ Some companies use this as a tool to maintain share prices in a bear run market by buying shares from the open market at a premium over the prevailing market price.
	➢ It is an alternative mode of reduction in capital without requiring approval of the National Company Law Tribunal
	➢ To serve the equity more efficiently.

LEGAL FRAMEWORK FOR BUY-BACK

(a) Companies Act, 2013
(b) Companies (Share Capital and Debentures) Rules, 2014.
(c) Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018.

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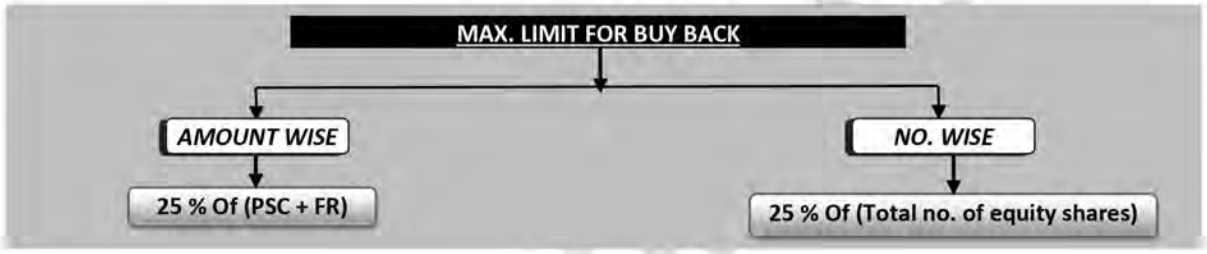

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PROVISIONS OF SECTION 68 IN CASE OF BUY BACK OF SHARES

SOURCE OF FUNDS FOR BUY-BACK

Notwithstanding anything contained in this Act, but subject to the provisions of sub-section 68(2), a company may purchase its own shares or other specified securities out of—

(i)	its free reserves; or
(ii)	the securities premium account; or
(iii)	the proceeds of any shares or other specified securities

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.



Free Reserves

Following reserve can be utilised for the proposed buy-back of shares:	Following reserves cannot be utilized for the buy-back of shares of the company.
(a) Investment fluctuation reserve **(b)** Securities premium account **(c)** General reserve **(d)** Foreign currency fluctuation reserve (provided it is not in the nature of provision)	**(a)** Statutory reserve **(b)** Foreign currency fluctuation reserve **(c)** Dividend redemption reserve preference shares) **(d)** Capital redemption reserve.

AUTHORISATION REQUIRED FOR BUY-BACK

The primary requirement is that the **articles of association** of the company should authorise buyback. Buy-back can be made with the approval of the Board of directors at a **board meeting and/or by a special resolution** passed by shareholders in a general meeting, depending on the quantum of buy back.

MAX. LIMIT / QUANTUM OF BUY-BACK

(a) A company can buy-back **up to 10%** of the total paid-up equity capital and free reserves of the company by the means of a **board resolution** passed at the board meeting.

(b) A company can buy-back **more than 10 % but up to 25%** of the total paid-up capital and free reserves of the company by the means of a **special resolution** passed at the general meeting.
However In case of a **listed company**, approval of shareholders shall be obtained by **postal ballot**.

(c) In respect of any financial year, the shareholders can approve by special resolution **upto 25% of total equity capital** in that year.

SPECIAL RESOLUTION TO BE ACCOMPANIED BY EXPLANATORY STATEMENT

The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating—

(a)	a full and complete disclosure of all material facts;
(b)	the necessity for the buy-back;
(c)	the class of shares or securities intended to be purchased under the buy-back;
(d)	the amount to be invested under the buy-back; and
(e)	the time-limit for completion of buy-back.

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POST BUY-BACK DEBT-EQUITY RATIO

The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is **not more than twice** the paid-up capital and its free reserves:

Provided that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies;

ALL THE SHARES OR OTHER SPECIFIED SECURITIES for buy-back are to be fully paid-up.

TIME GAP BETWEEN TWO BUYBACKS

No offer of buy-back shall be made within a period of **one year** reckoned from the date of the closure of the preceding offer of buy-back, if any.

Every buy-back shall be completed within a period of **one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board**.

METHODS OF BUY-BACK

The buy-back may be—

(a) from the existing shareholders or security holders on a proportionate basis;

(b) from the open market through
(i) book-building process
(ii) stock exchange

(c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

(d) from odd-lot holders.

It may be noted that no offer of buy back for 15% or more of paid up capital and free reserves, shall be made from the open market.

FILING DECLARATION OF SOLVENCY WITH ROC/ SEBI

When a company proposes to buy-back its own shares or other specified securities it shall, **before making such buyback,** file with the Registrar and the Securities and Exchange Board of India (in case of listed companies), a declaration of solvency signed by at least **two directors** of the company, one of whom shall be the managing director, if any, in **Form No. SH. 9**and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered **insolvent within a period of one year** from the date of declaration adopted by the Board.

EXTINGUISHMENT OF SECURITIES BOUGHT BACK

When a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within **seven days** of the last date of completion of buy-back.

PROHIBITION OF FURTHER ISSUE OF SHARES OR SECURITIES

When a company completes a buy-back of its shares or other specified securities it shall not make a further issue of the same kind of shares or other securities including allotment of new shares **within a period of six months** except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

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REGISTER OF BUY-BACK

When a company buys back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought in **Form No. SH.10** containing;- the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.

RETURN OF BUYBACK

A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board (in case of listed companies) a return in **Form No. SH.11** containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed.

PUNISHMENTS FOR CONTRAVENTION OF SECTION 68

If a company makes any default in complying with the provisions of 68 or any regulation made by the Securities and Exchange Board, in case of listed companies, the company shall be punishable with fine which shall not be less than **one lakh rupees** but which may extend to **three lakh rupees** and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to **three years** or with fine which shall not be less than **one lakh rupees** but which may extend to **three lakh** rupees, or with **both**.

TRANSFER TO AND APPLICATION OF CAPITAL REDEMPTION RESERVE ACCOUNT

(SECTION 69)

When a company purchases its own shares out of **free reserves or securities premium account,** a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet. The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

PROHIBITIONS ON BUY-BACK

(SECTION 70)

(a) No company shall directly or indirectly purchase its own shares or other specified securities—

- **(i)** through any subsidiary company including its own subsidiary companies;
- **(ii)** through any investment company or group of investment companies; or
- **(iii)** if a default, is made by the company, in the **repayment** of deposits accepted either before or after the commencement of this Act, **interest payment** thereon, redemption of debentures or preference 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:

However, the buy-back is not prohibited, if the default is **remedied and a period of three years has lapsed** after such default ceased to subsist.

(b) 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** (Annual Return), **123** (Declaration of Dividend), **127**(punishment for failure to distribute dividend) and section **129** (Financial Statement).

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CASE LAW



UNION OF INDIA *V.* STERLITE INDUSTRIES (INDIA) LTD.	In this case it was held that company can buy-back its shares subject to the compliance with the conditions mentioned in Section 68, without approaching the NCLT under Sections 66 or 230-234 of Companies Act, 2013
GURMIT SINGH *V.* POLYMERS PAPERS LTD.	In this case it was held that Section 68 has no application in a case where NCLT exercises its power under section 242 and powers of NCLT u/s 242 to direct purchase of shares by the co. Is not curtailed by Section 68.

SECURITIES WHICH CAN'T BE BOUGHT BACK

Following securities are not available for buy-back:-

(a) **Lock-in securities**:- any securities issued by a Listed company to its promoters or group of employees, which subject to lock-in period, are not available for buy-back before expiry of lock-in period.

(b) **Partly paid –up shares:-** a company can't buy-back its partly-paid up shares, on which call money is in arrears.

(c) **Disputed securities kept in abeyance:-** any disputed securities which are kept in abeyance can't be bought –back by the company.

(d) **Non-transferrable securities:-** those securities which are subject to lien or are pledged or restricted by an court, can't be bought –back by the company.

INCOME TAX ASPECTS

Section 46A of the Income-tax Act,1961 provides that any consideration received by a security holder from any company on buy back shall be chargeable to tax on the difference between the cost of acquisition and the value of consideration received by the security holder as capital gains.

The computation of capital gains shall be in accordance with the provisions of Section 48 of the Income-tax Act, 1961.

STAMP DUTY ON BUY-BACK

(a) In the case of buy-back, the shares bought back have to be statutorily extinguished within 7 days from the last date of completion of buy-back.

(b) Hence, no registration of such shares takes place in the name of the company.

(c) The names of the members/holders of the shares have to be struck off from the register of members if the entire holding is bought back .

(d) Therefore, buy-back cannot be construed as transfer and stamp would not be payable in a case where buy-back of shares takes place in physical form even if the shares are accompanied by an application form for transfer of shares in favour of the company.

(e) Further, buy-back of shares will not be construed as "release" falling under Article 55 of the Indian Stamp Act attracting stamp duty.

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PROCEDURE FOR BUY-BACK OF SECURITIES BY A LISTED COMPANY

SECTIONS 68, 69 & 70 OF THE COMPANIES ACT, 2013 READ WITH SEBI (BUY-BACK OF SECURITIES) REGULATIONS 2018 (w.e.f. September 11, 2018)

➢ *SOME COMMON STEPS FOR ALL METHODS*

1. AMENDMENT OF ARTICLES OF ASSOCIATION

Where articles do not contain a provision authorizing buy-back they should be first amended by passing a special resolution in the general meeting.

2. FILING OF BOARD RESOLUTION

Where the buy-back is pursuant to Board's Approvals Approval a copy of the Board Resolution, authorizing buy- back shall be filed by the company with SEBI and the Stock Exchange (s), where the securities of the company are listed, within 2 days of the date of passing of the resolution.

3. APPROVAL OF SHAREHOLDERS BY POSTAL BALLOT

Where the buy- back is pursuant to shareholder's Approval the company shall seek the approval of shareholders for buy-back by way of special resolution only by postal ballot. The company shall file a certified true copy of the special resolution, authorizing the buy-back, with the Registrar of Companies SEBI and the Stock Exchange (s) where the securities of the company are listed within 7 days of passing of the resolution.

4. EXPLANATORY STATEMENT

An explanatory statement containing full and complete disclosure of all the material facts and the disclosures, as prescribed in **Schedule I** to the Regulations shall be annexed to the notice, where the buy-back is pursuant to shareholders approval.

5. EXPLANATORY STATEMENT DISCLOSURES UNDER SCHEDULE I (CONTENTS OF EXPLANATO RY STATEMENT)

An explanatory statement containing full and complete disclosure of all the material facts and the following disclosures prescribed in Schedule I of the Regulations should be annexed to the notice where the buy-back is pursuant to shareholders' approval:

(i) Date of the Board meeting at which the proposal for buy back was approved by the Board of Directors of the company;
(ii) Necessity for the buy back;
(iii) Maximum amount required under the buy back and its percentage of the total paid up capital and free reserves;
(iv) Maximum price at which the shares or other specified securities are proposed be bought back and the basis of arriving at the buy-back price;
(v) Maximum number of securities that the company proposes to buy back;

6. NOMINATION OF COMPLIANCE OFFICER

The company shall nominate a compliance officer for ensuring compliance of the provisions of the Act, the Regulations, Listing Agreement and any other applicable laws relating to buy-back of securities and to redress the grievances of the investors.

The name telephone no. fax no. and e-mail ID of the compliance officer shall be given in the public announcement and letter of offer.

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7. INVESTOR SERVICE CENTRE

The company shall have at least one investor service center. It is desirable that such centers area opened in all such cities where the security holders holding 10 % or more of voting rights reside.

8. APPOINTMENT OF MERCHANT BANKER

The company shall appoint a merchant banker. Such appointment shall be made before the public announcement for buy-back of securities.

➢ *(A) BUY- BACK THROGH TENDER OFFER*

Regulation 6

A listed company may buy-back its securities from existing security holders in a proportionate basis through the tender offer.

In addition to common steps -Following are the important steps in this method:

1. PUBLIC ANNOUNCEMENT

The company which has been authorized by a special resolution or a resolution passed by the Board of Directors at its meeting shall make a public announcement within two working days from the date of Resolution in at least one English, Hindi and Regional Language Newspaper. Such public announcement shall contain the particulars specified in **Schedule II** to the Regulation.

2. FILING OF LETTER OF OFFER AND DECLARATION OF SOLVENCY TO SEBI

The company shall within five working days of the public announcement file with the Board a draft-letter of offer, along with soft copy, containing disclosures as specified in Schedule III through a merchant banker who is not associated with the company.

The Board may give its comments on the draft letter of offer not later than seven working days of the receipt of the draft letter of offer. In the event the Board has sought clarifications or additional information from the merchant banker to the buy-back offer, the period of issuance of comments shall be extended to the seventh working day from the date of receipt of satisfactory reply to the clarification or additional information sought.

In the event the Board specifies any changes, the merchant banker to the buyback offer and the company shall carry out such changes in the letter of offer before it is dispatched to the shareholders.

The company shall file along with the draft letter of offer, a declaration of solvency in the **Form No. SH.9** As provided in section 68(6) in the Companies Act.

3. DISPATCH OF LETTER OF OFFER TO SECURITY HOLDER

(1) A company making a buyback offer shall announce a record date for the purpose of determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buy-back offer.

(2) The letter of offer along with the tender form shall be dispatched to the security holders who are eligible to participate in the buy-back offer, not later than five working days from the receipt of communication of comments from the Board.

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4. OPENING AND CLOSING OF OFFER

The date of the opening of the offer shall be not later than five working days from the date of dispatch of letter of offer. The offer for buy back shall remain open for a period of ten working days.

5. ESCROW ACCOUNT

Escrow Account is an account opened by an obligator in a bank in which money payable under the obligation is credited, but the operation of the account of the account is left with a third party.

The company shall open an open an Escrow Account with a scheduled Commercial Bank on or before the date of opening of offer. The company shall deposit therein a specified amount as and by way of security for due performance of its obligations arising out of buy-back offer.

The specified sum to be deposited in the Escrow Account is as follows:-

(a) Where the consideration to be deposition payable for buy-back **does not exceed ₹100 crores –25%** of the consideration payable

(b) Where the consideration payable for buy-back **exceeds ₹ 100 crores - 25% of ₹100 crores consideration and 10% of the balance** of the consideration payable.

The escrow account referred to above shall consist of:

(i) cash deposited with a scheduled commercial bank, or

(ii) bank guarantee in favour of the merchant banker, or

(iii) deposit of acceptable securities with appropriate margin, with the merchant banker, or

(iv) a combination of (i),(ii) and (iii) above;

6. SUBMISSION OF TENDER OFFER

The Security holder shall submit their /offer from. They should submit separate tender/ offer forms for each of his folios or each of the depository accounts.

7. SPECIAL DEPOSITORY ACCOUNT

For shares tendered in dematerialized mode, the company shall open a special Depository Account through the Registrar to the Offer.

8. SPECIAL BANK ACCOUNT

The company shall open a special bank account with the Banker to the Issue.

The special account shall be opened immediately after the date of closure of the offer. Such amount as together with ninety percent of the amount lying in a escrow account make up the entire sum due and payable as consideration for Buy-back of securities shall be deposited in such account at the time of opening of the account. For the purpose of deposit in such account, the amount lying in the escrow account may be transferred to such special bank account.

9. VERIFICATION OF OFFER

The Company shall complete the verification of the offer received.

10. ACCEPTANCE OF SECURITIES ON PROPORTIONATE BASIS

Where the number of securities offered by the holders is more than the total number of securities to be bought back by the company, by acceptance shall be on a proportionate basis related to the number of securities offered per security holder.

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11. PAYMENT OF CONSIDERATION

The payment for buy-back of securities shall be made within 7 days from the date of completion of offer.

12. EXTINGUISHMENT OF SECURITY CERTIFICATES

The Company shall extinguish and physically destroy the security certificates so bought back in the Registrar to the Issue/ Merchant Banker and Statutory Auditors of the Company, within 7 days from the date of acceptance of securities.

13. CERTIFICATE OF EXTINGUISHMENT

The company shall furnish a certificate to SEBI and the Stock Exchange (s), certifying the compliance of the Regulations relating to extinguishments of certificates, within 7 days of extinguishments and destruction of the certificates.

Such certificate shall be duly verified by the Registrar to the Issue/ Merchant Banker; the Statutory Auditors of the Company; and two Whole-time Directors of the Company including the Managing Director.

14. PUBLIC ADVERTISEMENT- POST BUY –BACK

The company shall issue a public advertisement in a national daily, giving the details of buy-back within 2 days of completion of buy-back.

15. REGISTER OF BUY- BACK

The company shall prepare a register of securities bought- back in **Form No. SH.10.**

16. RETURN OF BUY – BACK

The Company shall file a return in **Form No. SH.11** with the ROC and SEBI, within 30 days of completion of buy-back.

➢ *(B)BUY- BACK THROUGH STOCK EXCHANGE*

(Regulation 16 to 18)

A company can buy-back its securities from the open market through stock exchanges.

***In addition to common steps** -Following are the important steps in this method:-*

(a) the buy-back of securities should not be from the promoters or persons in control of the company;

(b) the company shall appoint a merchant banker and make a public announcement as referred to in Regulation 7 pertaining to tender offer;

(c) the public announcement shall be made within 2 working days from the date of passing special resolution;

(d) simultaneously with the issue of such public announcement, the company shall file a copy of the public announcement with the Board;

(e) the company shall submit the information regarding the shares or other specified securities bought back, to the stock exchange on a daily basis in such form as may be specified by the Board and the stock exchange shall upload the same on its official website immediately;

(f) the company shall upload the information regarding the shares or other specified securities bought back on its website on a daily basis;

(g) the buy-back offer shall open not later than seven working days from the date of public announcement and shall close within six months from the date of opening of the offer.

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(h) the buy-back should be made only on stock exchanges having Nationwide Trading Terminal facility and only through the order matching mechanism except 'all or none' order matching system;

(i) the identity of the company as a purchaser would appear on the electronic screen when the order is placed.

(j) The company shall upload the information regarding the shares or other specified securities bought back, on its website on daily basis.

Escrow account for Open Market Buy-back through Stock Exchange (Regulation 20)

(1) The Company shall, before opening of the offer, create an escrow account towards security for performance of its obligations under these regulations, and deposit in escrow account 25 per cent of the amount earmarked for the buy-back as specified in the resolutions.

(2) The escrow account referred to may be in the form of,—

(a) cash deposited with any scheduled commercial bank; or

(b) bank guarantee issued in favour of the merchant banker by any scheduled commercial bank.

➢ *(C)BUY- BACK THROGH BOOK- BUILDING*

Regulation 22

In addition to common steps *-Following are the important points in this method:-*

(a) The special resolution or the Board of Directors resolution, as the case may be, shall be passed in accordance with the Regulation 5.

(b) The company should appoint a merchant banker and make public announcement.

(c) A public announcement shall be made at least seven days prior to the commencement of the buy-back.

(d) Subject to the provisions of Sub-clauses (i) and (ii), the provisions of Regulation 9 shall apply:

(i) The deposit in the escrow account should be made before the date of the public announcement.

(ii) The amount to be deposited in the escrow account should be determined with reference to the maximum price as specified in the public announcement.

(e) A copy of the public announcement must be filed with SEBI within two days of the announcement along with the fees as specified in Schedule V to the Regulations. The Public announcement shall also contain the detailed methodology of the book building process, the manner of acceptance, the format of acceptance to be sent by the security holders pursuant to the public announcement and the details of bidding centres.

(f) The book-building process should be made through an electronically linked transparent facility.

(g) The number of bidding centres should not be less than thirty and there should be at least one electronically linked computer terminal at all the bidding centres.

(h) The offer for buy-back shall be kept open to the security-holders for a period of not less than fifteen days and not exceeding thirty days.

(i) The merchant banker and the company should determine the buy-back price based on the acceptances received and the final buy-back price, which should be the highest price accepted should be paid to all holders whose securities have been accepted for the buy-back.

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(j) The procedure for verification of acceptances, opening of a account, payment of consideration and extinguishments of security certificate shall be followed in the same manner as is prescribed in the case of buy-back through tender offer.

➢ *(D) ODD LOT BUY BACK*

Regulation 12

Regulation12 states that the provisions pertaining to buy-back through tender offer as specified shall be applicable mutatis mutandis to odd-lot shares or other specified securities.

OBLIGATIONS OF THE COMPANY

Regulation 24

According to Regulation 24 of the Regulations, the company shall ensure that:

(a) the letter of offer, the public announcement of the offer or any other advertisement, circular, brochure, publicity material contains true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such documents;

(b) the company shall not issue any shares or other specified securities including by way of bonus till the date of expiry of buy-back period for the offer made under these Regulations;

(c) the company shall pay consideration only by cash;

(d) the company shall not withdraw the offer to buy-back after the draft letter of offer is filed with the SEBI or public announcement of the offer to buy-back is made;

(e) the promoter or his/their associates shall not deal in the shares or other specified securities of the company in the stock exchange or off market, including inter-se transfer of shares among the promoters during the period "from the date of passing the resolution of the board of directors or special resolution, as the case may be, till the closing of the offer.

(f) the company shall not raise further capital for a period of one year from the expiry of buy-back period, except in discharge of its subsisting obligations.

(g) The company shall nominate a compliance officer and investors service centre for compliance with the buyback regulations and to redress the grievances of the investors.

OBLIGATIONS OF THE MERCHANT BANKER

Regulation 25

Regulation 25 provides that the merchant banker should ensure that:-

(a) the company is able to implement the offer;

(b) the provision relating to escrow account has been made;

(c) firm arrangements for monies for payment to fulfil the obligations under the offer are in place;

(d) the public announcement of buy-back is made and the letter of offer has been filed in terms of the Regulations;

(e) the merchant banker should furnish to SEBI, a due diligence certificate which should accompany the draft letter of offer;

(f) the merchant banker should ensure that the contents of the public announcement of offer as well as the letter of offer are true, fair and adequate and quoting the source wherever necessary.

(g) the merchant banker should ensure compliance of Section 68,69 and 70 of the Companies Act,2013 and any other applicable laws or rules in this regard;

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(h) upon fulfillment of all obligations by the company under the Regulations, the merchant banker should inform the bank with whom the escrow or special amount has been deposited to release the balance amount to the company and send a final report to SEBI in the specified form, within 15 days from the date of closure of the buy-back offer.

PROCEDURE FOR BUY-BACK OF SECURITIES BY AN UNLISTED COMPANY

SECTIONS 68, 69 & 70 OF THE COMPANIES ACT, 2013 READ WITH RULE 17 OF COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014

METHODS OF BUY-BACK

A company may buy-back its securities by either of the following methods:-

(a) From the existing shareholders on a proportionate basis through private offer

(b) By purchasing the securities form the employees of the company to whom securities have been issued under a scheme of stock option or as sweat equity.

EXPLANATORY STATEMENT

An explanatory statement containing full and complete disclosure of all the material facts and the disclosures, as prescribed in rule 17 to the rules, shall be annexed to the notice, where the buy-back is pursuant to shareholders' approval.

LETTER OF OFFER AND DECLARATION OF SOLVENCY

After passing the special resolution or board resolution and before making buy-back, the company is required to file a 'letter of offer' in form no. SH.8 along with 'declaration of solvency' in Form No. SH. 9 with the registrar of companies.

DESPATCH OF LETTER OF OFFER TO SECURITYHOLDERS

The company shall dispatch the letter of offer to the securityholders only after filing it with the registrar of companies but not later than 20 days from the date of filing with it.

OPENING AND CLOSING OF OFFER

The offer should remain open for a period of not less than 15 days and not more than 30 days from the date of dispatch of letter of to the securityholders.

SPECIAL BANK ACCOUNT

The company shall open a special bank account with a scheduled bank for payment to securityholders immediately after the date of closure of the offer. The entire sum due and payable as consideration for buy-back shall be deposited in such account at the time of opening of the account.

VERIFICATION OF OFFER

The company shall complete the verification of the offers received within 15 days of the closure of the offer.

ACCEPTANCE OF SECURITIES ON PROPORTIONATE BASIS

Where the number of securities offered by the holders is more than the total number of securities to be bought back by the company, the acceptance shall be on a proportionate basis, related to the number of securities offered per securityholder.

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PAYMENT OF CONSIDERATION

The payment for buy-back securities shall be made within 7 days from the date of completion of verification of offers, as mentioned in the letter of offer.

REGISTER OF BUY-BACK

The company shall prepare a register of securities bought-back in form no. SH.10.

RETURN OF BUY-BACK

The company shall file a return in form no. **SH.11** with the ROC, within 30 days of completion of buy back. There shall be annexed to return filed with the ROC in form no. SH.11, a certificate in form no. **SH.15 signed by two directors of the company including the managing director, if any,** certifying that the buy-back of securities has been made in compliance with the provisions of the companies act, 2013 and the rules made there under.

COMPANY'S OBLIGATIONS

The company shall ensure that:-

(a) The company shall not issue any new shares including by way of bonus shares from the date of passing resolution authorizing the buy-back till the closure of offer, except those arising out of any outstanding convertible instruments

(b) The company shall not utilize any money borrowed from banks or financial institutions for the purpose of buying-back its shares.

(c) The company shall not withdraw the offer once it has announced the offer to the shareholders

Practical Question

Q. 1. The position of capital and reserves as on 31st March, 2009 of Matrix Ltd. are given below:

	₹
Equity shares (Fully paid-up of face value ₹ 10 each)	1,00,00,000
Equity shares (₹5 is paid-up on face value ₹10 each)	1,00,00,000
Equity shares with differential voting rights (Fully paid-up of face value of ₹10 each)	1,00,00,000
Preference shares (Fully paid-up of ₹100 each)	1,00,00,000
Free reserves	7,50,00,000

The managing director of Matrix Ltd. wanted to place proposal before the Board for buy-back of its 100% preference share capital. You, as a Company Secretary, advise your managing Director on the following issues:

(i) Maximum limit upto which Board can approve buy-back of shares.

(ii) Maximum limit upto which Shareholder can approve buy-back of shares.

(iii) Maximum limit upto which company can buy-back its own shares.

Ans. (i) Maximum amount upto which board can approve buy-back of shares is 10% of total paid-up equity capital & free reserves of the company.

In this case Matrix Ltd. has a paid-up equity capital = 3,00,00,000 and

Free reserves = 7,50,00,000

Total = 10,50,00,000

Maximum amount board can approve buy-back of shares

= 10% of 10,50,00,000

= ₹1,05,00,000

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(ii) Maximum amount upto which the shareholder can approve buy-back of shares is 25% of paid up capital & free reserves.

In this case; total paid up capital & free reserves

= (3,00,00,000 + 1,00,00,000 + 7,50,00,000) = 11,50,00,000

Shareholders can approve upto 25% of 11,50,000 = 2,87,50,000

(iii) Company can buy-back upto 25% of total paid-up capital & free reserves.

- Buy-back of equity shares should not exceed 25% of total paid up equity capital of the company in any financial year.
- Company is free to buy-back its entire preference share capital.
- In this question, due to above provisions, Matrix Ltd. will buy-back 25% of paid up equity share capital i.e. 25% of 3,00,00,000 = 75,00,000

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Q. 1. Enkebee Ltd. wants to purchase its own 1, 00,000 equity shares @ Rs 10 each out of the following: [June 2018]

(a) Unsecured loan ₹ 5 lakh
(b) Balance of depreciation reserve for ₹ 4 lakh.
(c) Securities premium account ₹ 4 lakh.

Examine the legality of the above transactions for the buy-back of securities of the company under the provisions of the Companies Act, 2013.

Ans. According to Section 68(1) of the Company Act 2013, a company may purchase its own shares or other specifities out of the following:

(i) Its free reserves; or
(ii) The securities premium account: or
(iii) The proceeds of any shares or other specified secularities

Hence, Enkebee Ltd. can purchase its own shares only out of the Securities Premium account and not out of unsecured loan or balance of depreciation reserve (not being free reserve).

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SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Descriptive Questions:----------
   a) "Diminution of share capital is not always regarded as reduction of capital."
   b) Explain the procedure for reduction of share capital.
   c) What are the modes of reduction of share capital? Specify the cases of diminution of share capital which are not regarded as reduction of share capital.
2. Distinguish Between:----------
   a) 'Share' and 'stock'.

FROM ICSI MODULE

Answer the Following:-

1. Distinguish between share and stock.
2. What are the methods for reduction of share capital of a company?
3. How can a company reduce its share capital without sanction of the Tribunal?
4. Write short notes on:
   (i) Diminution of share capital
   (ii) Surrender of shares
   (iii) Forfeiture of shares
5. Explain in detail, the provisions as regards buy-back of securities by the companies.

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

6

REDUCTION OF SHARE CAPITAL

Covering-

- Procedure for Reduction of Share Capital
- Procedure for Reduction of Share Capital-Flow Chart
- Self Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (0 to 5)

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REDUCTION OF SHARE CAPITAL

PROCEDURE FOR REDUCTION OF SHARE CAPITAL

The procedure is prescribed under **National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016,** Which is as follows:

Form of application or petition for Reduction of Share capital under section 66:-

(1) An application to the Tribunal to confirm a reduction of share capital of a company shall be in **Form No. RSC-1** along with the prescribed fees of ₹5,000/-.

(2) An application to confirm a reduction of share capital of a company shall be accompanied with-

(a) The list of creditors duly certified by the managing Director, or in his absence, by two directors, as true and correct, which is made as on a date not earlier than fifteen days prior to the date of filing of an application showing the details of the creditors of the company, class-wise, indicating their names, addresses and amounts owed to them;

(b) A certificate from the auditor of the company to the effect that the list of creditors referred to in clause (a) is correct as per the records of the company verified by the auditor;

(c) A certificate by the auditor and declaration by a director of the company that the company is not, as on the date of filing of the application, in arrears in the repayment of the deposits or the interest thereon; and

(d) A certificate by the company's auditor to the effect that the accounting treatment proposed by the company for the reduction of share capital is in conformity with the accounting standards specified in section 133 or any other provisions of Act.

(3) Copies of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees fifty for inspection and for taking extracts on payment of the sum of rupees ten per page to the company.

NKJ–CLASSROOM PRACTICE

SCANNER

Q. 1. Answer the following citing the relevant provisions of law/case law, if any :
(b) Explain the procedure for reduction of share capital. **[June 2014; 4 Marks]**

Issue of notice and directions by the National Company Law Tribunal.-

(1) The Tribunal shall, within fifteen days of submission of the application under rule 2, give notice, or direct that notice be gives to-

(i) The Central Government, Registrar of Companies, in all cases, in Form No. RSC-2;

(ii) The Securities and Exchange Board of India, in the case of listed companies in Form No. RSC-2;

(iii) The creditors of the company, in all cases in Form No.RSC-3; seeking their representations and objections, if any.

Seeking their representations and objections, if any.

(2) The notice under clause (iii) of sub-rule (1) shall be sent, within seven days of the direction given under that sub-rule or such other period as may be directed by the Tribunal, to each creditor whose name is entered in the list of creditors submitted by the company about the presentation of the application and of the said list, stating the amount of the proposed reduction of share capital and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor's name is entered in the said list, and the time within which the creditor may sent his representations and objections.

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(3) The tribunal shall along with directions under sub-rule (1) give directions for the notice to be published, in Form No. RSC-4 within seven days from the date on which the directions are given, in English language in leading English news paper and in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated, or such newspapers as may be directed by the Tribunal and for uploading on the website of the company (if any) seeking objections from the creditors and intimating about the date of hearing.

(4) The notice under sub-rule (3) shall state the amount of the proposed reduction of share capital, and the places, where the aforesaid list of creditors may be inspected, and the time as fixed by the Tribunal within which creditors of the company may send their objections:

Provided that the objections, if any, shall be field in the Tribunal within three months from the date of publication of the notice with a copy served on the company.

(5) The company or the person who was directed to issue notice and the publication in the newspaper under this rule shall, as soon as may be, but not later than seven days from the date of issue of such notices, file an affidavit in **Form No. RSC- 5** confirming the dispatch and publication of the notice.

(6) Where the Tribunal is satisfied that the debt or claim of every creditor has been discharged or determined or has been secured or his consent is obtained. It may dispense with the requirement of giving of notice to creditors or publication of notice under this rule or both.

Representation by Central Government, Registrar etc. under sub-section (2) of section 66.

If the authorities or the creditors of the company referred to in clause (i), clause (ii) and clause (iii) of sub-rule (1) of rule 3 desire to make any representation under sub-section (2) of section 66, the same shall be sent to the Tribunal within a period of three months from the date of receipt of notice and copy of such representation shall simultaneously be sent to the company and in case no representation has been received within the said period by the Tribunal it shall be presumed that they have no objection to the reduction.

Procedure with regard to representations and objections received.-

(1) The company shall submit to the Tribunal, within seven days of expiry of period upto which representations or objections were sought, the representations or objections or objections so received along with the responses of the company thereto.

(2) The Tribunal may give such directions as it may think fit with respect to holding of any enquiry or adjudication of claims or for hearing the objection or otherwise.

(3) At the hearing of the application, the Tribunal may, if it thinks fit, give such directions as may deem proper with reference to securing the debts or claims of creditors who do not consent to the proposed reduction, and the further hearing of the petition may be adjourned to enable the company to comply with such directions.

Order on application and Minute thereof:-

(1) Where the Tribunal makes an order confirming a reduction, the order confirming the reduction and approving the minute may include such directions or terms and conditions as the Tribunal deems fit.

(2) The order confirming the reduction of share capital and approving the minute shall be in **Form No. RSC – 6** on such terms and conditions as may be deemed fit.

(3) The certificate issued by the Registrar under sub-section (5) of section 66 shall be in **Form No. RSC -7.**

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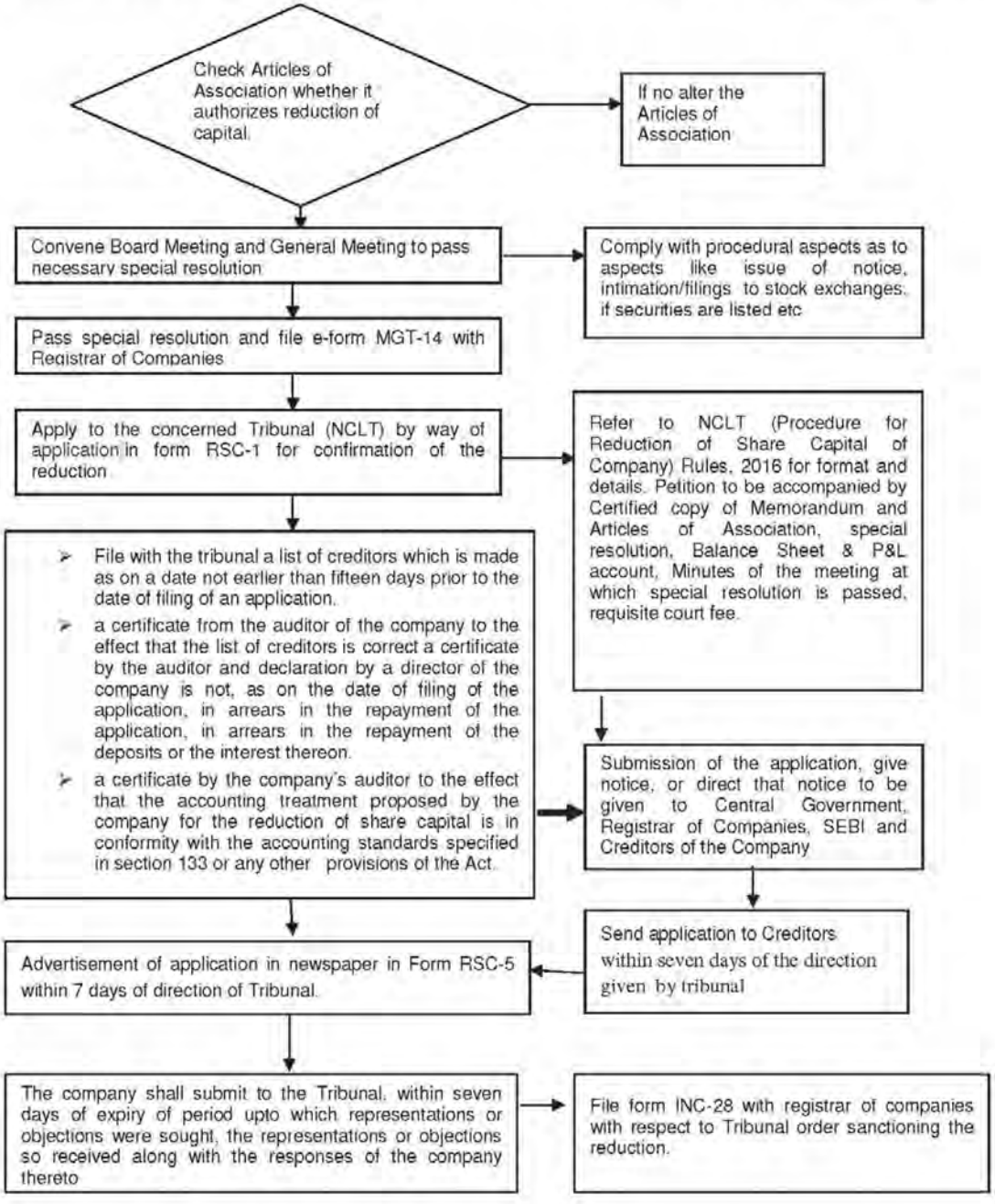
Can appeal against order of Single Judge allowing reduction, by a sole public shareholder, be allowed, when there is no fault in reasoning of Single Judge?

Where a company, reducing its share capital by cancelling and extinguishing some equity shares held by its subsidiary and some shares held by the public, passes the requisite resolution approving the reduction by a special majority in an extraordinary general meeting called for in this regard, and there is no fault in the reasoning given by the Single Judge approving the same, and also the valuation of shares, the appeal by a sole shareholder objecting to the said reduction is liable to be dismissed.

(Chander Bhan Gandhi v. Reckitt Benckiser (India) Ltd.

PROCEDURE FOR REDUCTION OF CAPITAL – A FLOW CHART



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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI
COMPANY PETITION NO. 407 OF 2017

In the matter of the Companies Act, 2013

And

In the matter of Section 66 of the Companies Act, 2013

And

In the matter of reduction of capital of Vodafone India Limited

Vodafone India Limited, a public limited company, incorporated under the provisions of the Companies Act, 1956 and having its registered office at Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400013, India.

CIN: U32200MH1992PLC119108 ...**Petitioner/ Petitioner Company**

Approval of Reduction of Share Capital by the National Company Law Tribunal, Mumbai Bench &

Notice of Registration of Order and Form of Minute

NOTICE is hereby given that vide order delivered on 17 May 2018 by the Hon'ble National Company Law Tribunal, Mumbai Bench ("Tribunal"), Company Petition No. 407 of 2017 was made absolute, whereby the Form of Minute of reduction of share capital of Vodafone India Limited was approved, as under:

"The issued and paid-up equity share capital of Vodafone India Limited (the "Company"), is henceforth reduced from Rs.28,132,958,230 (Rupees Twenty Eight Billion One Hundred Thirty Two Million Nine Hundred Fifty Eight Thousand Two Hundred Thirty) divided into 2,813,295,823 (Two Billion Eight Hundred Thirteen Million Two Hundred Ninety Five Thousand Eight Hundred Twenty Three) equity shares of Rs.10 (Rupees Ten) each to Rs.15,011,746,520 (Rupees Fifteen Billion Eleven Million Seven Hundred Forty Six Thousand Five Hundred Twenty) divided into 1,501,174,652 (One Billion Five Hundred One Million One Hundred Seventy Four Thousand Six Hundred Fifty Two) equity shares of Rs.10 (Rupees Ten) each, to be effected by cancelling an aggregate of 1,312,121,171 (One Billion Three Hundred Twelve Million One Hundred Twenty One Thousand One Hundred Seventy One) equity shares of Rs.10 (Rupees Ten) each of the Company, allocated among the shareholders pro rata to their shareholding in the Company, and distributing in consideration therefor, an aggregate of 500,504 (Five Hundred Thousand Five Hundred Four) equity shares of Re.1 (Rupee One) each held, directly or beneficially, by the Company in Indus Towers Limited to the shareholders of the Company pro rata to their shareholding in the Company."

TAKE NOTICE ALSO THAT the order delivered on 17 May 2018 by the Hon'ble Tribunal, along with the Form of Minute approved by the Hon'ble Tribunal, was duly filed by Vodafone India Limited, with the Registrar of Companies, Mumbai, on 22 June 2018, and has taken effect on 22 June 2018, accordingly.

Dated, at Mumbai, this 3rd day of July 2018.

Sd/-
Authorised Representative
VODAFONE INDIA LIMITED

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

7

ALLOTMENT

Covering-

- Section Chart
- ABC Analysis
- Allotment of Shares
- General Principles Regarding Allotment
- Legal Provisions Regarding Allotment
- Return of Allotment
- Self Test Questions
  - From Past CS Examination Questions
  - From ICSI Module

EXPECTED MARKS COVERAGE (0 to 10)

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N.K.J - SECTION CHART

Section	Short Description
Section 39	Allotment of Securities by Company
Section 40	Securities to be dealt with in stock exchanges

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ALLOTMENT

ABC Analysis
(ICSI -Exam Point of view)

A	1. General Principles Regarding Allotment 2. Legal Provisions Regarding Allotment
B	3. Return of Allotment 4. Time of Issue of Share Certificate
C	5. Calls 6. Forfeiture of Shares

ALLOTMENT OF SHARES

"Allotment" of shares means the ***act of appropriation by the Board of directors of the company out of the previously un-appropriated capital of a company*** of a certain number of shares to persons who have made applications for shares.

An allotment is the **acceptance of an offer** to take shares by an applicant in response to the shares or debentures offered to public for subscription.

It is on allotment that shares come into existence.

GENERAL PRINCIPLES REGARDING ALLOTMENT

With regard to the allotment of shares, the following general principles should be observed:-

(a) The allotment should be made by **proper authority**, i.e. the Board Directors of the company, or a committee authorised to allot shares on behalf of the Board. Allotment made without proper authority will be invalid. Allotment of shares made by an **irregularly constituted Board** of directors shall be **invalid**.

(b) Board should pass a **valid resolution** of allotment at a valid meeting.

(c) Allotment of shares must be made within a **reasonable time**.

(d) The allotment should be **absolute and unconditional**.

(e) The allotment must be **communicated**. Posting of letter of allotment or allotment advice will be taken as a valid communication even if the letter is lost in transit. ***(In Household Fire And Carriage Accident Insurance Co. Ltd. Grant)***

(f) No valid allotment can be made on an oral request. A person should agree in writing to become a member.

(g) Allotment should not be in contravention of any other law for e.g.;- If securities are allotted on an application of a minor, the allotment will be void.

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LEGAL PROVISIONS REGARDING ALLOTMENT

(a) No allotment of any securities of a company offered to the public for subscription shall be made unless the minimum subscription has been received. **(Section 39)**

(b) The amount payable on application on every security shall not be less than **five per cent** of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf. **(Section 39)**

(c) If the minimum subscription has not been received and the sum payable on application is not received, the amount so received shall be returned within **15 days from the closure of the issue**. If any such money is not so repaid within such period the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at **15%** P.A. **(Section 39)**

(d) Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

Where a prospectus states that an application for listing has been made, such prospectus shall also state the name or **names of the stock exchange** in which the securities shall be dealt with. **(Section 40)**

IRREGULAR ALLOTMENT

An **allotment is irregular if it is made without complying with the conditions** precedent to a regular allotment viz, the provisions of Section 39, 40 etc of the Act.

RETURN OF ALLOTMENT

Section 39 provides that whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in **Form PAS-3** within thirty days.

Rule 12 of Companies (Prospectus and Allotment of Securities) Rules, 2014states that, there shall be **attached to the Form PAS-3**

(a) a list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees.

(b) a copy of the contract, pursuant to which the securities have been allotted for any **consideration, other than cash**.

(c) When a contract is not reduced to writing, the company shall furnish along with the Form PAS-3 complete particulars of contract.

(d) a report of a registered valuer in respect of valuation of the consideration.

(e) In the case of **issue of bonus shares**, a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form PAS-3.

In case of any default of filing, the company and its officer who is in default shall be liable to a penalty, for each default, of **one thousand rupees for each day** during which such default continues or **one lakh rupees**, whichever is **less**.

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" CASE LAW–CASE BASED " WRITING PRACTICE

SCANNER

Q. 1. Confident Ltd. has forfeited 50,000 equity shares of the company @ ₹ 10 each and same were re-issued. After the filing of the annual return, the Registrar of Companies (ROC) has issued show cause notice to the company for default of provisions of section 39 of the Companies Act, 2013. Is the action of the ROC tenable under the provisions of the Companies Act, 2013? Discuss with relevant case law, if any.

[June 2018; 4 Marks]

Ans.

Re-issue of forfeiture shares does not require filling of returns of allotment. In a similar case Sri Gopal Jalan & Co. v. Calcutta Stock Exchange Association Ltd., the Supreme Court held that the exchange was not liable to file any return of the forfeited shares under Section 75(1) of the Companies Act, 1956 [Corresponds to Section 39 of the Companies Act, 2013] when the same were re-issued.

The Court observed that when a share is forfeited and re-issued, there is no allotment, in the sense of appropriation of shares out of the authorised and unappropriated capital and approved the observations of Harries C.J. in C.M. Nandy's case that: "On such forfeiture all that happened was that the right of the particular shareholder disappeared but the shares considered as a unit another shareholder was found for it".

Accordingly, in the present case Show cause notice issued by RoC to Confident Ltd. for default of provisions of **Section 39 of the Companies Act, 2013** is not tenable.

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SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Distinguish Between:----------
   a) 'Letter of allotment' and 'letter of renunciation'.
   b) 'Forfeiture of shares' and 'surrender of shares'.
2. Descriptive Questions:----------
   a) What are the important rules to forfeiture of shares?
   b) What is 'forfeiture of shares'? State the procedure for forfeiture of shares.
3. Explain the manner in which calls on shares should be made by company.
4. A public limited company forfeited 80 equity shares and re-issued the same which resulted in earning a surplus of ₹2,000 .The Company did not file return of allotment with the Registrar of companies in respect of reissued shares. Explain whether the company has contravened any provision of the Companies Act, 2013 by non-filling of the return.

FROM ICSI MODULE

Answer the Following:-

1. What is the significance of a Share Certificate?
2. What do you mean by a Split Certificate?
3. A share certificate is lost. What are the provisions under the Companies Act, 2013 for the issue of a duplicate share certificate?
4. Explain the legal effects of a share certificate citing case laws.
5. Is the share certificate an official publication? Give reasons for your answer.
6. What is allotment? State the statutory provision regarding allotment? Can allotment be made on an oral application?
7. Write short notes on:
   (a) Return of Allotment
   (b) Irregular Allotment
   (c) Minimum Subscription
   (e) Share certificate
8. What is forfeiture of shares and the rules to be followed for the same? Can the forfeited shares be re-issued?

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

8

SHARE CERTIFICATES

Covering-

- Share Certificate
- Time of Issue of Share Certificate
- Punishment for Personation of Shareholders
- Calls
- Forfeiture of Shares
- Surrender of Shares
- Self Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (0 to 5)

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N.K.J - SECTION CHART

Section	Short Description
Section 46	Certificate of shares
Section 50	Company to accept unpaid share capital, although not called up.
Section 56	Transfer and transmission of securities
Section 57	Punishment for personation of shareholder
Rule	Companies (Prospectus and allotment of securities) Rules, 2014
Rule	Companies (Share Capital and Debenture) Rules, 2014

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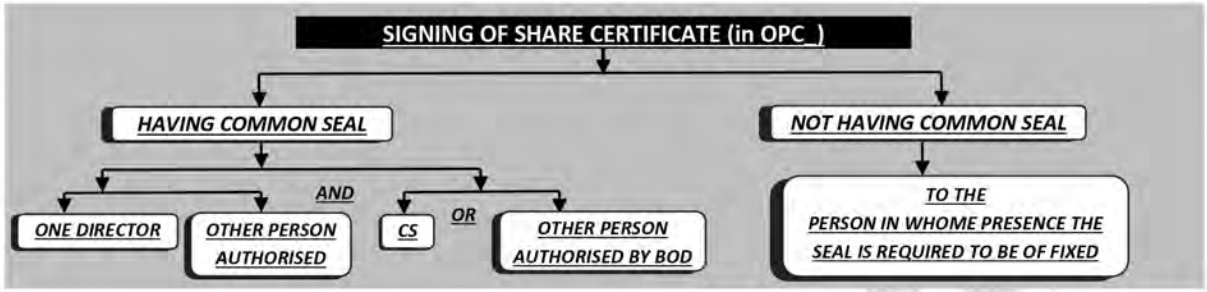

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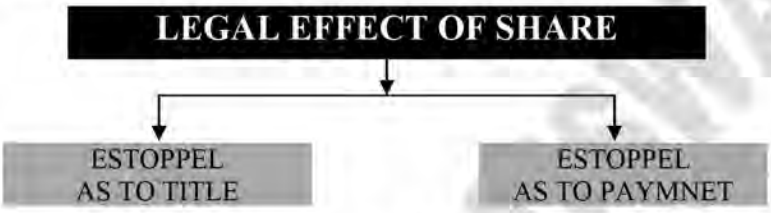
SHARE CERTIFICATE

A share certificate is a certificate issued to the members by the company under its common seal specifying the number of shares held by him and the amount paid on each share.
Every Share certificate is distinguished by its **distinctive number.**

PURPOSE OF SHARE CERTIFICATE

According to section 46, a share certificate under the common seal of the company is **prima facie evidence** of the title of the member to the shares specified therein.

LEGAL EFFECT OF SHARE CERTIFICATE



A share certificate under the common seal of the company is **prima facie evidence** of the title of the member to the shares specified therein.

A share certificate once issued by the company binds company in two ways, namely:-

(a)	by estoppel as to title, and
(b)	by estoppel as to payment.

Estoppel as to Title:- A share certificate "is a **declaration** by the company to all the **world** that the person in whose name it is made out and to whom it is given, is a **shareholder** in the company. In other words, the company holds him out as the holder of the shares mentioned therein and is, therefore, estopped from denying his title to those shares.

Estoppel as to Payment:- If the certificate states that on each of the shares full amount has been paid, the company is **estopped** as against a bona fide purchaser of the shares, from **alleging** that they are **not fully paid**.

FORM OF SHARE CERTIFICATE

The Act does not provide for any specific form of a share certificate.

Rule 5 of the Companies (Share capital and Debenture) Rules, 2014 provides that every share certificate shall be in **FORM SH.1** or as near there to as possible.

Every share certificate shall specify the **name**(s) of the person(s) in whose favour the certificate is issued, the **shares** to which it relates and the **amount paid-up** thereon. Every share certificate should also state the **name of company**, address of its **registered office** and **date of issue**.

In case of listed companies, the size, form and contents of the share certificate are required to be approved by the concerned Stock Exchange before its issue to the public.

ISSUE OF SHARE CERTIFICATES

The Companies (Issue of Share Certificate) Rules, 1960 provides that no share certificate shall be issued except:-

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(a) in pursuance of a Board resolution and;

(b) on surrender to the company of its letter of allotment

SEALING AND SIGNING OF CERTIFICATE

Accordance to Rule 5 Companies (Share capital and Debenture) Rules, 2014, Every share certificate shall be issued under the seal of the company if any, which shall be affixed in the presence of, and signed by-

(a) two directors duly authorized by the Board of Directors of the company for the purpose or the committee of the Board, if so authorized by the Board; and

(b) the secretary or any person authorised by the Board for the purpose

Provided that in case a company does not have a common seat, the share certificate shall be signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary: Provided further that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than a managan9 director or a whole time director:

Provided also that, in case of a One person Company, every share certificate shall be issued under the seal, if any, of the company, which shall be affixed in the presence of and signed by one director or a person authorised by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorised by the Board for the purpose, and in case the One person Company does not have a common seal, the share Certificate Shall be signed by the persons in the presence of whom the seal is required to be affixed in this proviso,.

The **two directors** and the **Company Secretary or other person** as appointed by board shall **sign** the share certificates. However where the composition of board of directors permits, then atleast one of the aforesaid two directors shall be director, **other than managing or whole time director.**

Explanation: A director may sign a share certificate by affixing his signatures thereon by means of any machine, equipment or other mechanical means, but not by means of a rubber stamp, provided that the director shall be responsible for the safe custody of such machine, equipment or other material used for the purpose.

TIME OF ISSUE OF SHARE CERTIFICATE/ CERTIFICATE OF SECURITIES

According to Section 56(4), every company must deliver the certificates of all securities allotted, transferred or transmitted:-

(a)	within a period of **two months** from the date of incorporation, in the case of **subscribers to the memorandum**;
(b)	within a period of **two months from the date of allotment**, in the case of any allotment of any of its shares;
(c)	within a period of **one month** from the date of receipt by the company of the instrument of **transfer** or, of the intimation of **transmission** of securities;
(d)	within a period of **six months** from the date of allotment in the case of any **allotment of debenture**.

Where any default is made in complying with the above provisions, the company shall be punishable with fine which shall not be less than **₹ 25,000** but which may extend to **₹ 5 lakh** and every officer of the company who is in default shall be punishable with fine which shall not be less than **₹ 10,000** but which may extend to **₹ 1,00,000**.

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NKJ–CLASSROOM PRACTICE	
 SCANNER	**Q. 1.** State the time limit within which certificate of securities as provided in CompaniesAct, 2013 to be issued in case of : (i) Any allotment of shares. (ii) Any allotment of debentures. What is the punishment in case of default committed in the above cases ? **[June. 2019; 3 Marks]**

SPLIT CERTIFICATE

A split certificate means a separate certificate claimed by a shareholder for a portion of his holding. The advantages of a split certificate are that the shareholder may benefit in case of a transfer by way of sale or mortgage in small lots and the right to multiply the certificates into as many shares held by the shareholder.

WHETHER SHARE CERTIFICATE AN OFFICIAL PUBLICATION

Ministry of Corporate Affairs has clarified that in terms of Section 44 the shares in a company are movable property transferable in the manner provided in the articles of the company. Section 44 of the Companies Act, 2013 provides that a certificate under the common seal of the company specifying any share held by any member shall be *prima facie* evidence of the title of the member to such share.

Thus, shares are movable property transferable in the manner provided in the articles of the company and that the share certificates are certificates of title and are movable property but are not publications in the nature of prospectus, balance sheet, profit and loss account, notice or advertisement.

Therefore, the share certificate is not an official publication.

ISSUE OF DUPLICATE SHARE CERTIFICATE

Rule 6 Companies (Share capital and Debenture) Rules, 2014 provides that a certificate may be renewed or duplicate of a certificate may be issued if such certificate is proved to have been lost or destroyed, or having been defaced or mutilated or torn is surrendered to the company.

No share certificate shall be issued either in exchange or in replacement of those which are defaced, torn, mutilated or worn out, or where the cages in the reverse of the certificate for recording transfers have been fully utilised, unless:-

(a) the **consent** of the **Board** is given (in case of loss or destruction of certificate);

(b) the certificate in lieu of which it is being issued is **surrendered** to the company and is **cancelled**;

(c) payment of **fees** for issue of duplicate certificate is made by the shareholder (not exceeding ₹ 50 per share certificate);

(d) proper **evidence and indemnity** to the satisfaction of the company is furnished;

(e) out-of-pocket **expenses** estimated to be incurred by the **company** in **investigating** the evidence, as the Board may think fit, are deposited with the company, in case of **lost or stolen** share certificates the cost of public notice shall also be **borne** by the **member**;

(f) the words *"Duplicate issued in lieu of Share Certificate No. .../Sub-divided/ Replaced/ Lost/ Consolidation of share* (as the case may be)*"* are rubber stamped on its face and also on the counterfoil. The word 'Duplicate' may either be rubber stamped or punched;

(g) In case **unlisted companies, the duplicate** share certificates shall be issued within a period of **three months** and in case of **listed companies such certificate shall be issued within Forty five days,** from the date of submission of complete documents with the company respectively.

Once a duplicate certificate is issued, the original certificate becomes extinct.

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PAYMENT IN ADVANCE OF CALLS

- If AOA authorises
- No voting right on advance payment
- If agreed by Company
  - Interest can be paid out of capital
- Not refundable except in winding
- If winding up payment in preference to other shareholders

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PUNISHMENT FOR PERSONATION OF SHAREHOLDERS

According to section 57, Where any person deceitfully personates an owner of any share or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and

(i) thereby obtains or attempts to obtain any such share or interest or any such share warrant or coupon, or

(ii) receives or attempt to receive any money due to any such owner

He shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to **3 years** and with fine which shall not be less than one lakh rupees but which may extend to **5 lakh rupees**.

CALLS

A call is a demand, by the company in pursuance of a Board resolution and in accordance with the articles of the company, upon its shareholders to pay the whole or part of the balance still due on each class of shares allotted or held by them made at any time during the life of the company. A call may also be made by the liquidator in the course of winding up of the company.

The amount payable in application on each share shall not be less than five per cent of the nominal amount of the share. The balance may be payable as and when called for in one or more calls.

REQUISITES OF A VALID CALL

Following are the requisite of a valid call:-

(a)	The power to make calls should be exercised by the **Board** in its **valid meeting** by means of a **valid resolution**.
(b)	The Board resolution must state the amount, time and place of payment. Otherwise, the resolution will be defective and the call will be invalid.
(c)	A proper notice must be given, and the notice must specify the amount called up and manner of payment of call. For each call at least **14 days notice** must be given to members.
(d)	The power to make call is in the nature of trust and must be exercised only for the benefit of the company, and not for the private ends of the directors.
(e)	Calls on same class of shares must be made on a **uniform basis**. Hence a call cannot be made only on some of the members unless they constitute a separate class
(f)	An **interval** of **one month** is required between **two** successive **calls** and **not more** than **twenty five per cent** of the nominal value of shares can be called **at one time**. However, companies may have their own articles and raise the limit.

The Board of directors has the power to revoke or postpone a call after it is made. Joint shareholders are jointly and severally liable for payment of calls.

PAYMENT IN ADVANCE OF CALLS

SECTION 50

Section 50 of the Act provides that the directors may, if authorised by the **articles**, allow shareholders to pay up the amount in whole or in part if due on their shares before any call has been made and may pay interest on the amount so paid in advance of calls. Where the **interest** is agreed to be paid, it may be paid out of the capital, if profits are not available. The amount so paid is **not refundable except in winding up** and such shareholders rank after creditors in respect of the advance, but in priority to the other shareholders.

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The effect of the payment in advance of calls is that the shareholder's liability in respect of the calls or call is extinguished. But they will not be entitled to any voting rights in respect of the moneys paid in advance of the calls.

FORFEITURE OF SHARES

If a member fails to pay a valid call within the stipulated time, the company after waiting for a reasonable period may forfeit the shares.

"Table F" of the schedule I to the Companies Act, 2013 permits directors to forfeit the shares, If a member fails to pay a valid call within the stipulated time.

Forfeited shares become the property of the company. To this extent forfeiture involves a reduction in the paid-up capital till the shares are re-issued. Normally, therefore, companies re-issue them.

The following rules may be noted in connection with forfeiture of shares:

(a) Shares can be forfeited for non-payment of any call, if the **articles** authorise.
(b) the **directors** should pass a **resolution** forfeiting the shares.
(c) Before the shares of a member are forfeited, a **proper notice** to that effect must have been served.
(d) Power of forfeiture must be exercised bona fide and for the benefit of the company

NKJ–CLASSROOM PRACTICE

SCANNER

Q. 1. Write a note on the following:
(b) Conditions for valid forfeiture of shares **[June 2014; 4 Marks]**

Ans.:

	Conditions for Valid Forfeiture of Shares	
1.	**Authority by articles of Association**	Articles must authorise the forfeiture and contain the regulation regarding notice, procedure and manner and if so authorized by articles, forfeiture shall include forfeiture of all dividends declared but not paid of forfeited shares.
2.	**Board Re-solution of Forfeiture**	Board of directors are required to pass a board resolution for the forfeiture of the shares as Article 30 of the Table F.
3.	**Proper Notice**	Send at least 14 days notice for payment of the calls to the shareholders before the forfeiture of the shares, mentioning that in the event of nonpayment, the shares will be forfeiture.
4.	**Bona fide and for the benefit of the company**	The power to forfeit be exercised bona fide and for the benefit of the company. The power must be used in order to coerce reluctant shareholders into paying their calls.

RE-ISSUE OF FORFEITED SHARES

Shares forfeited by a company may either be cancelled or re-issued to another person at the discretion of the Board. Generally, such shares are re-issued at a **discount** which **cannot exceed** the amount **already paid** on such shares. This is done by a **Board resolution**.

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Godrej Consumer Products Limited

CIN: L24246MH2000PLC129806
Regd. Office: Godrej One, 4th Floor Pirojshanagar, Eastern Express Highway, Vikhroli East, Mumbai 400 079 Tele No(s): 25194359 / 25195427
Email : investor.relations@godrejcp.com

NOTICE is hereby given that the following share certificate(s) is/are stated to be lost / misplaced / stolen and the registered holder(s) thereof / claimant(s) thereto has/have applied to the Company for issue of duplicate share certificate(s).

Folio Number	Name of the Shareholder	No. of Shares of Face Value Re 1/-	Distinctive Nos.		Old Cert no.
R010458	RAJIV KUMAR PALTA	600	70139461	70140060	553024
J003885	JAYANA S PATHAK	60	068641849	068641908	0541311
H004364	HARDEV SINGH TIWANA TERVINDER SINGH	240	068510489	068510728	0540108
0097122	JITENDRA K PAREKH USHA PAREKH	20	063944977	063944996	0523720
S017026	SUNIL VERMA ANEETA VERMA	180	070615337	070615516	0557285
0311050	MOHD SADIQ BAIG MOINA BAIG	3000	064597121	064600120	0528223
C001928	CHHAYA KAILASH TRIVEDI KAILASH KUMAR TRIVEDI	60	067952201	067952260	0536501
B001916	BIMAL ARVIND GAJARIA	120	067754201	067754320	0534934
0099166	PRAVINKUMAR PATEL NALINIBEN PATEL	120	063989053	063989172	0524134
A005971	ANITA MITTAL	60	067254065	067254124	0533094
0015772	PRAMOD PANDITRAO JOSHI MANJIRI PRAMOD JOSHI	60	061405653	061405712	0506574
N006952	NAJU RUSI UMRIGAR ROSHNI RUSI BILLIMORIA	28	069571225	069571252	0548001
0099772	MAHAVIR PRASAD MITTAL	120	064006373	064006492	0524298
R015050	RAJNISH KANSAL	60	063077065	063077124	0516071
N001718	NITA VIPUL MEHTA VIPUL NAVINCHANDRA MEHTA	60	069429645	069429704	0546859
K006718	KUMUD CHANDRASHEKHAR HEGDE	60	068849793	068849852	0543093
0099738	MAHAVIR PRASAD MITTAL	120	064005573	064005692	0524289
0002153	SUNILKUMAR BANIK BANDHANA BANIK	900	060212513	060213412	0501012
0077897	BHAVNA SHAH SANJAY SHAH	215	063593505 025887474	063593684 025887508	0520499 0570793
0077984	BHAVNA S SHAH SANJAY RAJNIKANT SHAH	215	063595713 025887554	063595892 025887588	0520518 0570796
S006181	SUBHASH ZUMBERLAL MUTHA	60	070334221	070334280	0554273
S011321	SHAKUNTLA JAIN	60	070448549	070448608	0555409
0041476	TUSHAR NAGRECHA	120	062754897	062755016	0513296
0311636	NITA VIPUL MEHTA VIPUL NAVINCHANDRA MEHTA	600	064725989	064726588	0528371
0109180	ANJU SHARMA MEENU SHARMA	120	073973524	073973536	0584064
0318740	RAJESH MALIK POONAM MALIK	600	065918265	065918864	0530185
0091038	VAISHALI VASANT GIRE VASANTI VASANT GIRE	120	063821037	063821156	0522628
0091036	VISHAKA VASANT GIRE VASANTI VASANT GIRE	60	063820917	063820976	0522626
V003820	VIKASH PAREEK MAHABEER PD PAREEK	28	071141569	071141596	0560553

In case any person has any claims in respect of the said shares/any objection(s) for the issuance of duplicate certificate(s) in favor of the above stated applicant(s) he/she/they should lodge each claim or objection within 15 days of the date of publication of this notice. If within 15 days from the date hereof no claim is received by the company in respect of the said certificate, duplicate certificates will be issued. The public is hereby cautioned against dealing in any way with the above-mentioned certificates.

For **Godrej Consumer Products Limited,**
V Srinivasan
Chief Financial Officer & Company Secretary

Place: Mumbai
Date : 27/02/2018

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ऑयल इंडिया लिमिटेड
(भारत सरकार का उद्यम)
Oil India Limited
(A Government of India Enterprise)

REGD. OFFICE: P.O. DULIAJAN, DISTT. DIBRUGARH, ASSAM - 786 602
CIN: L11101AS1959GOI001148, **Website:** www.oil-india.com

NOTICE is hereby given that the following original equity share certificates have been lost/misplaced and are not traceable and the holders/purchasers/legal heirs have applied to the Company for issue of duplicate share certificates. Any person who has a claim in respect of the said equity shares should write to the undersigned at OIL House, Plot No.19, Sector-16A, Noida, Distt G.B.Nagar 201301, Uttar Pradesh. The Company will proceed to issue duplicate share certificates in lieu of the said certificates if no objection is received within 15 days of the publication of this notice.

Name & Address	Folio No.	No. of shares	Certificate No.	Distinctive Number(s)
PHANI KALITA Oil India Colony Qtr No. C6, Oil India Limited, PHQ, P.O. Udayan Vihar, Guwahati 781171	OIL0000375	100 100 100 450	981 14342 27672 400709	98001-98100 141432801-141432900 142762851-142762950 241066110-241066559
YOGESH MALIK 38B, Malik Villa, Hanuman Road, New Delhi 110001	OIL0005390	100 50	13482 39538	141346801-141346900 143923101-143923150

By order of the Board
For OIL INDIA LIMITED

Sd/-
(S.R. KRISHNAN)
GGM (CS)

Place: Noida
Date: 28.01.2015

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Form No. SH-1

Share Certificate

[Pursuant to sub-section (3) of section 46 of the Companies Act, 2013 and rule 5(2) of **the Companies (Share Capital and Debentures) Rules 2014***]*

.....Limited/Private Limited

.....(Corporate Identification Number)

(Incorporated under...the Companies Act, 1956/2013)

Registered Office:.....

This is to certify that the person(s) named in this Certificate is/are the Registered Holder(s) of the within mentioned share(s) bearing the distinctive number(s) herein specified in the above named Company subject to the Memorandum and Articles of Association of the Company and the amount endorsed herein has been paid up on each such share.

EQUITY SHARES EACH OF RUPEES..... (Nominal value)

AMOUNT PAID-UP PER SHARE RUPEES.....

Register Folio No: Certificate No:

Name(s) of the Holder(s):

No. of shares held:..... .....

(in words) (in figures)

Distinctive No.(s): From..... To..... (Both inclusive)

Given under the common seal of the Company this..... day of..... 20.....

(1) Director:

(2) Director:

(3) Secretary/any other authorized person:

Note: No transfer of the Share(s) comprised in the Certificate can be registered unless accompanied by this Certificate.

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 2:-

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CHAPTER

9

TRANSFER AND TRANSMISSION OF SECURITIES

Covering-

- Sections Chart
- ABC Analysis
- Transfer of Shares
- Power of the Board of Directors to Refuse Registration
- Certification of Transfer
- Bank Transfer
- Forged Transfer
- Transmission of Shares
- Shares in Depository System / Electronic Shares
- Difference between Beneficial Owner and Registered Owner under Depository Mode
- Amendment to a Government Company; Dated 5th June, 2015
- Form No. SH-4
- Self Test Questions
  - From Past CS Exam
  - From ICSI Modules

EXPECTED MARKS COVERAGE (5 to 10)

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N.K.J - SECTION CHART

Section	Short Description
Section 44	Nature of shares or debentures
Section 56	Transfer and Transmission of Securities
Section 58	Refusal of registration and appeal against refusal
Rule	Companies (Share Capital and Debenture) Rules, 2014

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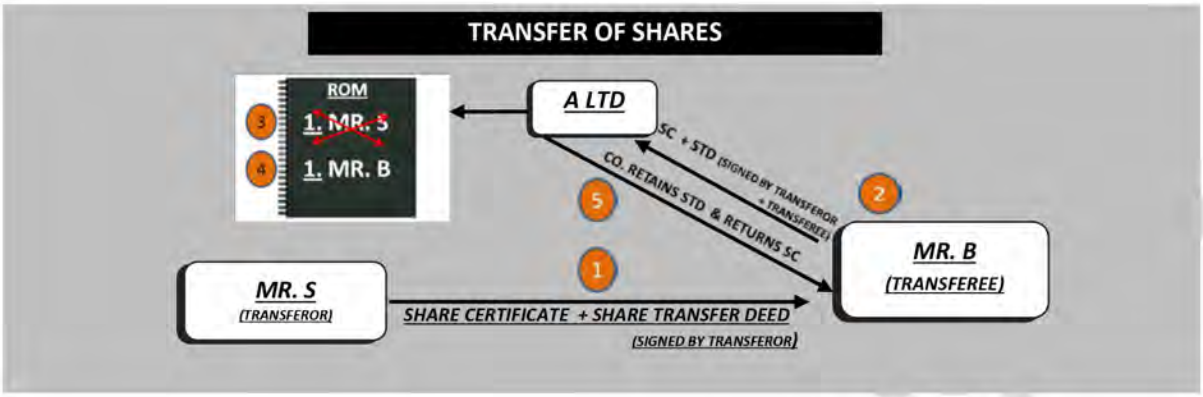

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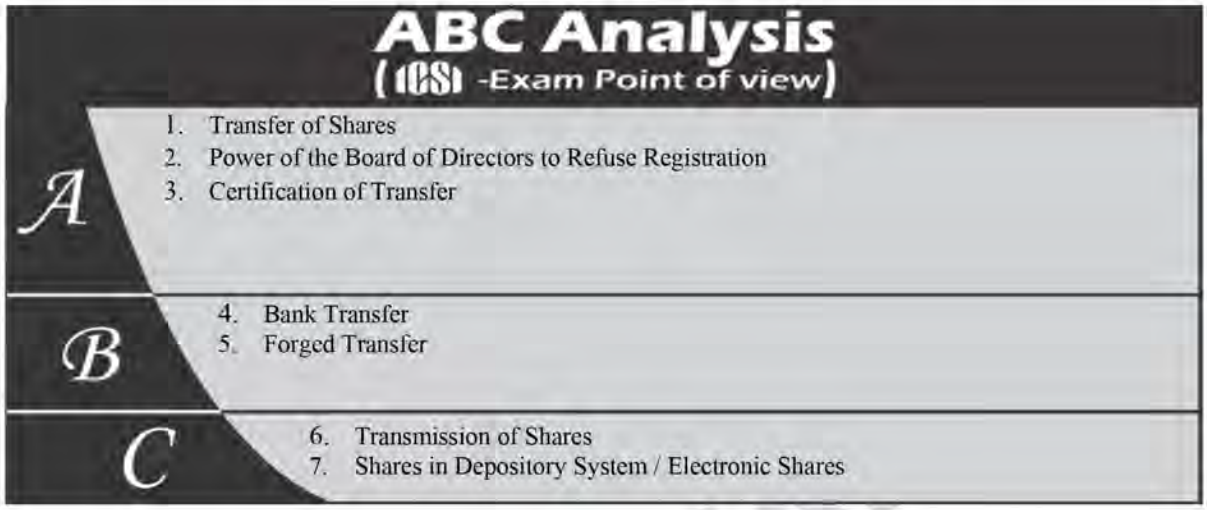
TRANSFER AND TRANSMISSION OF SECURITIES



TRANSFER OF SHARES

One of the most important characteristics of a company is that its shares are transferable. **Section 44** of the Companies Act, 2013 states that the shares or debentures or other interest of any member in a company shall be **movable property**, transferable in the manner provided by the articles of the company.

Shares of a public company are freely transferable. However, in terms of Section 2(68) a private company is required to restrict the right to transfer its shares by its articles.

LEGAL PROVISIONS REGULATING TRANSFER OF SHARES

According to **Section 56** of the Companies Act, 2013, a company, shall not register a transfer of securities of, the company, unless a **proper instrument of transfer** duly stamped, dated and executed by or on behalf of the transferor and the transferee has been delivered to the company by the transferor or transferee within a period of **sixty days from the date of execution** along with the **certificate** relating to the securities, or if no such certificate is in existence, then along with the related letter of allotment of securities.

STAMP DUTY PAYABLE AND AFFIXATION/ CANCELLATION OF STAMPS

Before the transfer is lodged with the company, it should be duly stamped. The transfer of securities attracts stamp duty under the Indian Stamp Act, 1899. Only the **Central Government** can levy stamp duty on share transfers. Stamps at the rate of twenty five paise for consideration of ₹ 100 or part thereof is payable.

The stamp duty payable on transfer of **debentures** is, however, governed by Article 62(b) of Schedule I to the Indian Stamp Act, 1899, and **also varies from State to State**. In this case, the duty would be:

(i) The duty applicable where the deed is executed, or
(ii) The duty applicable where the registered office of the company is situated,

whichever is higher.

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APPEAL TO NCLT AGAINST REFUSAL BY DIRECTOR

- In case of Private Company
  - Express refusal (within 30 days)
    - Within 30 days from the date of receipt of notice of refusal
  - Deemed Refusal (After 30 days)
    - Within 60 days from the date of deposit of "instrument of transfer" to co.
- In case of Public Company
  - Express refusal
    - Within 60 days from the date of receipt of notice of refusal
  - Deemed Refusal (after 60 days)
    - Within 90 days from the date of deposit of "instrument of transfer" to co.

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FORM OF SHARE TRANSFER DEED

An instrument of transfer of securities held in physical form shall be in **Form No. SH.4** and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution.

TIME LIMIT FOR DELIVERY OF CERTIFICATES

According to **Section 56(4)**, every company, unless prohibited by any provision of law or any order of court, tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted, within a period of **one month from the date of receipt** by the company of the instrument of transfer or be of the intimation of transmission.

TRANSFER OF PARTLY PAID UP SHARES

According to section 56(3), where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in **Form No. SH.5** to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

TRANSFER OF SECURITIES BY LEGAL REPRESENTATIVE

According to **section 56(5)** of the Companies Act, 2013 the transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

POWER OF THE BOARD OF DIRECTORS TO REFUSE REGISTRATION

➢ POWER OF PRIVATE COMPANY TO REFUSE REGISTRATION AND APPEAL AGAINST REFUSAL

Section 58(1)

The board of directors of a private company can refuse to register transfer of shares in terms of the provisions of articles of association of the company .when the board of directors refuses to transfer, they shall send **notice of the refusal within 30 days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, **giving reasons for such refusal**.

According to **section 58 (3)** If a private company limited by shares refuses to register the transfer or transmission, the transferee may appeal to the Tribunal against the refusal **within 30 days** from the date of receipt of the notice or in case no notice has been sent by the company, **within 60 days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

➢ POWER OF PUBLIC COMPANY TO REFUSE REGISTRATION AND APPEAL AGAINST REFUSAL

According to **section 58(4),** If a public company without sufficient cause refuses to register the transfer of securities within 30 days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within **60 days** of such refusal or where no intimation has been received from the company, within **90 days** of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal..

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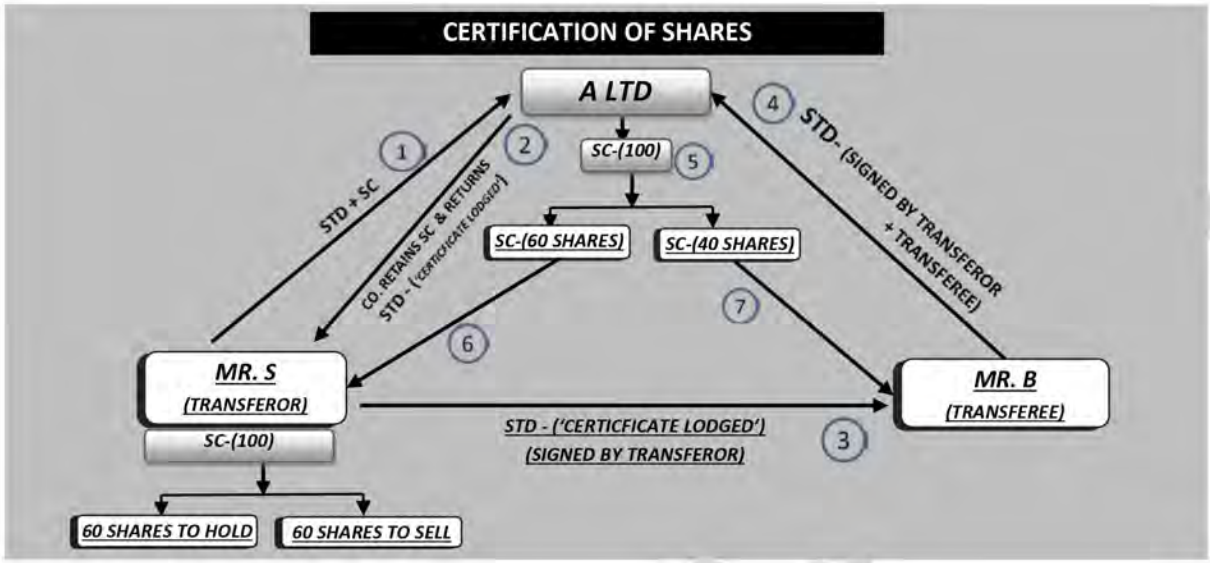

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POWERS OF TRIBUNAL ON APPEAL

The Tribunal, while dealing with an appeal made as stated above may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within 10 days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

If a person contravenes the order of the Tribunal, he shall be punishable with imprisonment for a term which shall not be less than **1 year** but which may extend to **3 years** and with fine which shall not be less than **1 lakh** rupees but which may extend to **5 lakh** rupees.

NKJ–CLASSROOM PRACTICE



Q. 1. An employee of a company purchased certain shares of his company through a member of a stock exchange and lodged with the company an application for transfer of shares in his (employee's) name. The company refused to execute the transfer on the suspicion that the employee, if admitted as a member of the company, will create nuisance in general meetings and seek access to the records of the company. Decide giving reasons —

(i) Whether the company's contention shall be tenable; and

(ii) What is the remedy available to the employee in the given case?

[June 2015; 4 Marks]

Ans.:

1.	**Securities are freely transferable**	The securities or other interest of any member in a public company are freely transferable.
2.	**Appeal to Tribunal in case of refusal of company to transfer the share to the transferee. Sec. 58(4) of Companies Act, 2013**	According to Section 58(4) of the Company Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from date on which the instrument of transfer may, within a period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer appeal to the tribunal.
3.	**Case law analysis**	Refusal to register share transfer on suspicion that the employee if admitted as a member will attend general meetings of the company and may create nuisance by raising irreverent issues and also obtain access to the records to the company as a shareholder is not a valid reason. Appeal to the CLB No. 27 of 1975 dated 17th August, 1976, Shri Nirmal Kumar v. Jaipur Metal and Electrical Limited.
4.	**Conclusion**	Hence: **(i)** Taking into account the above the refusal by the company to register the transfer shares in the name of the employee is not tenable. **(ii)** Employee in this case can go for appeal to the tribunal against the company's refusal.

CERTIFICATION OF TRANSFER

When a shareholder sells only a part of the shares (and not all of them) mentioned in the share certificate, then the transfer instrument, after being signed by the transferor, is not sent to the transferee, nor is the transferor's share certificate handed over to the transferee.

Both these documents are lodged by the transferor at the company's registered office. The **company retains the share certificate** and an officer of the company, usually the secretary, certifies the transfer by endorsing on the **transfer instrument** a signed statement ***"certificate lodged"*** and then return it to transferor. This is called "Certification of transfer".

When this "certified transfer instrument" is handed over to the transferee of shares, he signs it and forwards it to the company's registered office with a request for registration. When the transfer has been registered, the company cancels the old share certificate and issues two new certificates; one to the transferee in respect of the shares transferred and the other to the transferor.

BLANK TRANSFER

When a shareholder signs the transfer form **without filling in the name of the transferee and the date of execution** and hands it over with the share certificate to the transferee thereby enabling the transferee to deal with the shares, he is said to have made a transfer 'in blank' or a 'blank transfer'.

A blank transfer accompanied by the delivery of the share certificates vests in the transferee both equitable as well as legal rights in the shares. But until the registration of his name in the register of members, the transferee does not acquire a title and thus he cannot exercise any right as shareholder in respect of those shares.

FORGED TRANSFER

Sometimes, it may happen that a forged instrument of transfer is presented to the company for registration. In order to avoid the consequences which will follow a forged transfer, companies normally write to the transferor about the lodgement of the transfer instrument so that he can object if he wishes. The company informs him that if no objection is made by him before a day specified in the notice, it would register the transfer.

The **consequences of a forged transfer** are as follows:-

(a) A forged transfer is a **nullity** and, therefore, the **original owner of the shares continues to be the shareholder and the company is bound to restore** his name on the register of members.

(b) However, if the company **issues a share certificate to the transferee and he sells the shares to an innocent purchaser, the company is liable to compensate such a purchaser,** if it refuses to register him as a member, or if his name has to be removed on the application of the true owner.

(c) If the company is put to loss by reason of the forged transfer, as it may have paid damages to an innocent purchaser, **it may recover the same independently from the person who lodged the forged transfer**.

NKJ–CLASSROOM PRACTICE	
SCANNER	**Q. 1.** Write notes on the following : (i) A forged transfer of shares is a nullity **[Dec. 2014; 4 Marks]**

TRANSMISSION OF SHARES

'Transmission of shares' refers to those cases where a person acquires an interest in property by operation of any provision of law, such as by right of inheritance or succession or by reason of the insolvency or lunacy of the shareholder.

Transmission of shares takes place when the registered shareholder dies or is adjudicated as an insolvent, or if the shareholder is a company, it goes into liquidation.

LEGAL PROVISIONS REGULATING TRANSMISSION OF SHARES

No formal instrument of transfer is required since the owner is not capable of executing the same as transferor. The articles of association of a company generally contains the procedure, which the company may follow for transmission of shares.

Generally, the following documents are required for transmission of shares;-

(a) An application for transmission of shares.
(b) A letter of indemnity.
(c) A probate (attested copy of will) or letter of administration
(d) No-objection certificate, in case of more than one claimants.

DISTINCTION BETWEEN TRANSFER AND TRANSMISSION

The distinction between transfer and transmission is as under:-

(a) Transfer takes place by a **voluntary act of the transferor** while transmission is the result of the operation of law.
(b) An **instrument of transfer** is required in case of transfer but no instrument of transfer is required in case of transmission.
(c) Transfer is a **normal course** of transferring property whereas transmission takes place on death or insolvency of a shareholder.
(d) Transfer of securities is generally made for **some consideration**. Whereas Transmission of securities is generally made without any consideration.
(e) **Stamp duty** is payable on transfer of securities. Whereas no stamp duty is payable on transmission of securities.

SHARES IN DEPOSITORY SYSTEM/ELECTRONIC SHARES

ADVANTAGES OF THE DEPOSITORY SYSTEM

The main advantages of the Depository system are enumerated as under;-

(a) No bad delivery of shares
(b) No loss of shares certificate in postal transit.
(c) No courier/ postal charges.
(d) Exemption of stamp duty on transfer of shares.

NKJ–CLASSROOM PRACTICE



Q. 1. What are the benefits of the depository system of stock holding?
[Dec. 2012; 4 Marks]

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(e) Much faster payment of sale of shares.
(f) No requirement of sale of shares.
(g) Minimum handling paper.
(h) No Scope for theft/ forgery damage of share certificate.

DIFFERENCE BETWEEN BENEFICIAL OWNER AND REGISTERED OWNER UNDER DEPOSITORY MODE

Registered owner	Beneficial owner
1. Whose name entered as such in the register of issuer.	1. Share certificate belonging to the Investors are dematerialized and their name entered in the record of depository as beneficial owner.
2. The depository as a registered owner should not have any voting rights or any other rights in respect of securities held by it.	2. The beneficial owner is entitled to all the rights and benefits and subjected to all the liabilities in respect of securities held by depository.
3. Transfer of ownership of security on behalf of beneficial owners	3. The beneficial owner can do so on its own.

FUNGIBILITY OF SHARES

As per section 9 of the Depositories Act, 1996 specifies that all securities held in a depository shall be in a fungible form. That is all certificates of the same security are inter- changeable in the sense that the investors lose the rights to obtain the exact certificate they surrender at the time of entry into depository.

DEMATERIALISATION & REMATERIALISATION

Dematerialisation is a process by which the physical share are converted into electronic shares at the request of the investor. Dematerialisation of shares is optional and an investor can still hold shares in physical form.

Rematerialisation is a process by which the electronic share are converted back into physical shares at the request of the investor

DEMATERIALISATION PROCESS & REMATERIALISATION PROCESS

Dematerialisation process	Rematerialisation process
1. Investor opens account with DP **2.** Fills Dematerialisation Request Form (DRF) for registered shares **3.** Investor lodges DRF and certificates with DP **4.** DP intimates the Depository **5.** Depository intimates Registrar/Issuer **6.** DP sends certificates and DRF to Registrar/Issuer **7.** Registrar/Issuer confirms demat to Depository **8.** Depository credits investor a/c.	**1.** Client submits Rematerialisation Request Form (RRF) to DP **2.** DP intimates Depository **3.** Depository intimates the Registrar/Issuer **4.** DP sends RRF to the Registar/Issuer **5.** Registrar/Issuer prints certificates and sends to Investor **6.** Registrar/Issuer confirms remat to Depository **7.** Investor's account with DP debited.

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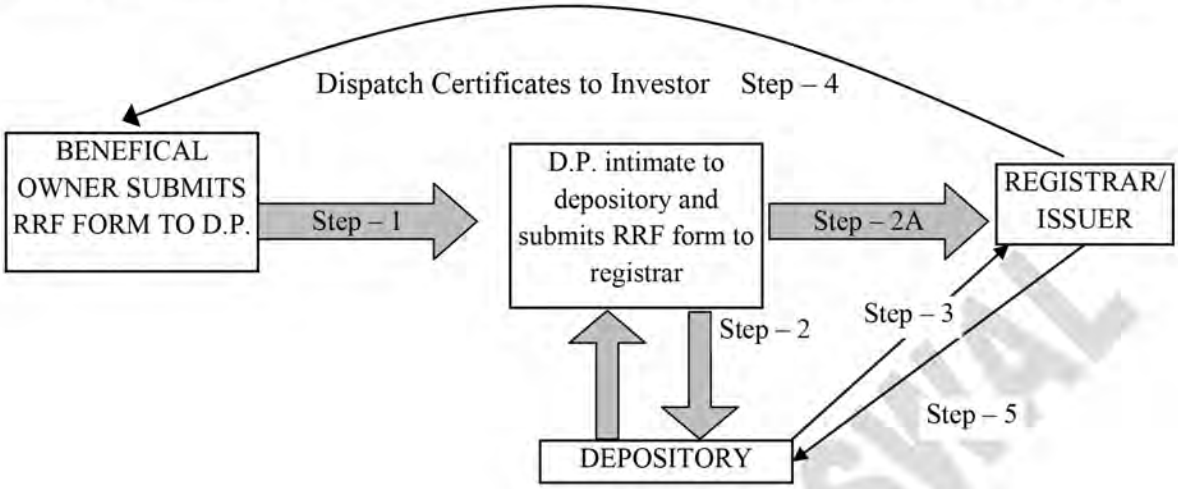
DIAGRAMMATIC REPRESENTATION OF REMATERIALISATION PROCESS



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Form No. SH-4

Securities Transfer Form

***[Pursuant to section 56 of the Companies Act, 2013 and sub-rule (1) of rule 11* of the Companies (Share Capital and Debentures) Rules 2014]**

Date of execution.....

FOR THE CONSIDERATION stated below the "Transferor(s)" named do hereby transfer to the "Transferee(s)" named the securities specified below subject to the conditions on which the said securities are now held by the Transferor(s) and the Transferee(s) do hereby agree to accept and hold the said securities subject to the conditions aforesaid.

CIN:

Name of the company (in full):

Name of the Stock Exchange where the company is listed, if any:

DESCRIPTION OF SECURITIES:

Kind/ Class of securities (1)	Nominal value of each unit of security (2)	Amount called up per unit of security (3)	Amount paid up per unit of security (4)

No. of securities being transferred		Consideration received (Rs.)	
In figures	In words	In words	In figures

Distinctive number	From						
	To						
Corresponding Certificate Nos.							

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Q. 1. Aniket has fraudulently sold his shares to two different transferees. Who will be entitled to the shares in priority ?

[June 2018]

Ans. Referring to Society General De Paris v. Joint Walker and other (1886) it was held that where a shareholder has fraudulently sold his shares to two different transferees, the first purchaser will, on the ground of time alone, be entitled to the shares in priority to the second.

Applying the case here, the first purchaser will be entitled to the shares in priority.

PLEDGE OR HYPOTHECATION OF DEMATERIALISED SHARES

A beneficial owner may, with the prior approval of the depository, pledge or hypothecate his shares held in a depository. Upon receipt of intimation from the beneficial owner about the pledge or hypothecation of his shares, the depository shall accordingly make entries in its records. Such an entry in the records of a depository shall be evidence of a pledge or hypothecation [Section 12]. Both the pledger and pledgee must have a depository account. The procedure for pledge or hypothecation of shares held in demat form is as under:-

(i) Investor shall submit the details of shares to be pledged to the DP in the prescribed format.

(ii) DP shall verify the records and on being satisfied that the shares are available for pledge, make a note in the records and forward the application to the Depository for approval.

(iii) Depository shall obtain confirmation from pledgee and record the pledge within 15 days of application.

(iv) Depository shall send intimation to the DP of both the pledger and pledgee who will inform the pledger and pledgee respectively.

(v) The pledgee may invoke the pledge in accordance with the terms of pledge and on such invocation the name of pledgee is entered in the Register of Beneficial Owners by the Depository.

(vi) During the period the pledge is in force, the DP shall not give effect to transfer of any security without the concurrence of the pledgee.

(vii) On closure of the loan, the pledger shall request the DP to close the pledge. The pledgee, on getting payment, shall make a request for closure of pledge to his DP.

(viii) For making hypothecation of shares held in demat form the above procedure is to be followed. However, before registering the hypothecatee as a beneficial owner, the Depository should obtain the consent from the hypothecator.

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SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Distinguish Between:----------
   a) 'Transfer' and 'Transmission 'of shares.
   b) 'Beneficial owners under depository mode' and 'registered owners under depository mode'.
2. Write shorts Notes:----------
   a) Fungibility
   b) Advantages of Depository system
3. What do you understand by 'transmission of shares.
4. Mohan applied for 4,000 shares in a company but no allotment was made to him. Subsequently, 4,000 shares were transferred to him without his request and his name was entered in the register of members. Mohan stood by and allowed his name to remain in the register of members. Subsequently, the company went to apply to the Court/ Tribunal for rectification of the register of members. Can he do so? Explain.
5. (a) Distinguish between transfer and transmission of securities.
   (b) "The directors have uncontrolled and unfettered powers to refuse registration of transfer of securities" — Comment.
6. What are the remedies available against refusal to register transfer of securities?
7. Explain the procedure for transfer of shares and debentures.
8. What are the consequences of a forged transfer?
9. Under what circumstances shares can be transferred during the winding up of a company?

FROM ICSI MODULE

Answer the Following:-

1. X and Y each held half the issued capital of the company. The Articles provided "the directors may, at any time, in their absolute and uncontrolled discretion refuse to register any transfer of shares". X died and his executor applied to have his shares registered in his name. Y, who is director, refuse under the above mentioned provision of Articles. Can the Court come to the rescue of X's executor?
2. An agreement for transfer of certain shares was entered into and the transferee was registered as a member without transfer deed being executed. Is the registration of the transfer valid?
3. State the powers of the Board of directors to refuse registration?
4. What are the benefits of depository system?
5. How does an investor avail services of a depository?
6. Are all eligible securities required to be in the depository mode?
7. How are the shares allotted/allocated and transferred under the Depository System?

CS INTER STUDY

Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

10

PRIVATE PLACEMENT

Covering-

- Section Charts
- ABC Analysis
- Companies Act, 2013 Regarding Issue
- Previous Relating to Issue of Securities
- Private Placement of Securities
- Self Test Questions
  - From Past CS Examination Questions
  - From ICSI Module

EXPECTED MARKS COVERAGE (5 to 20)

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N.K.J -
SECTION CHART

Section	Short Description
Section 2(1)	Definition of Abridge Prospectus
Section 2(70)	Definition of Prospectus

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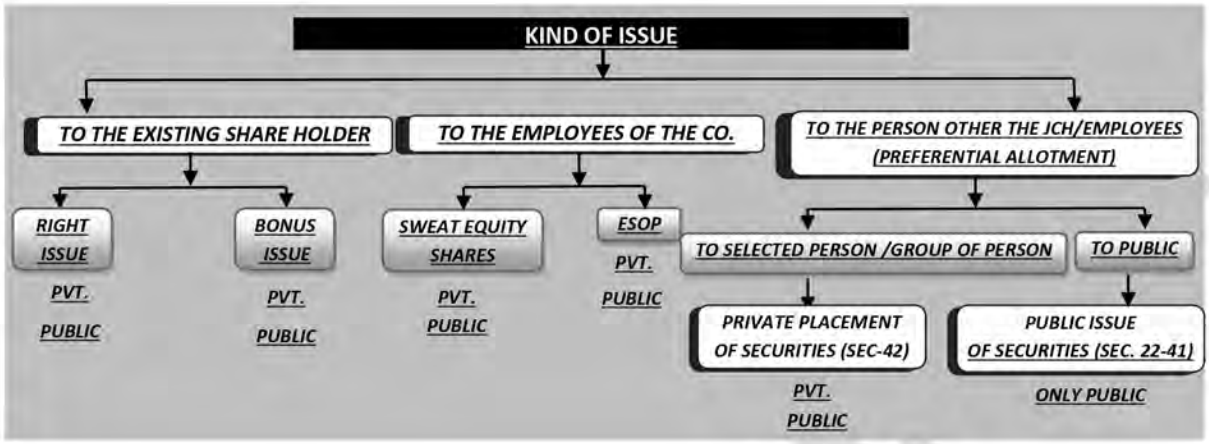

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PRIVATE PLACEMENT

ABC Analysis
(ICSI -Exam Point of view)

A
1. Private Placement of Securities
2. Prospectus- Meaning and Definition
3. The Golden or Golden Legacy

B
4. Self Prospectus
5. Red-Herring Prospectus

C
6. Abridged Prospectus
7. Liability for untrue statement in prospectus

COMPANIES ACT, 2013 REGARDING ISSUE

Section 23 of the Companies Act, 2013, provides that a company whether public or private may issue securities. **Chapter III** of the Companies Act, 2013 deals with "Prospectus and allotment of securities". Chapter III is divided into two parts, Part I deals with Public Offer and Part II deals with Private Placement.

PROVISIONS RELATING TO ISSUE OF SECURITIES

A public company may issue securities:

(a) To public through prospectus ("public offer").
(b) Through private placement.
(c) Through a rights issue
(d) Through a bonus issue

A private company may issue securities:-

(a) through private placement
(b) Through a rights issue
(c) Through a bonus issue

PRIVATE PLACEMENT OF SECURITIES

According to Section 42, Private placement means offer of securities or invitation to subscribe securities to a selected group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in section 42 of the Companies Act, 2013.

(*1*) A company may, subject to the provisions of this section, make a private placement of securities.

Explanation —"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 private placement offer-cum-application, which satisfies the conditions specified in this section.

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MAXIMUM NUMBER OF PERSONS TO WHOM OFFER CAN BE MADE

(*2*) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in a financial year subject to such conditions as may be prescribed.

Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 states that such offer or invitation shall be made to not more than **two hundred persons** in the aggregate (excluding qualified institutional buyers, and employees of the company being offered securities under a scheme of employee stock option) in a financial year.

Explanation—"qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.

Explanation —If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

PRIVATE PLACEMENT OFFER LETTER

(*3*) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:

Provided that the private placement offer and application shall not carry any right of renunciation. without prejudice to the provisions of section 26 (dealing with matters to be stated in the prospectus) a company may, subject to the provisions of this section, make private placement through issue of a private placement offer letter in **Form PAS-4**.

APPROVAL REQUIRED FOR PRIVATE PLACEMENT

Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014states that a company shall not make a private placement of its securities unless the proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a **Special Resolution.**

However, in case of offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year.

MODE OF PAYMENT

(*4*) Every identified person willing to subscribe to the private placement issue shall apply in the private placement 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:

Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (*8*).

Rule 14 states that the value of such offer or invitation per person shall be with an investment size of not less than **twenty thousand rupees** of face value of the securities;

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TIME PERIOD

(*5*) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:

Provided that, subject to the maximum number of identified persons under sub-section (*2*), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

TIME LIMIT FOR ALLOTMENT AND PAYMENT OF INTEREST/REFUND OF SUBSCRIPTION MONEY OTHERWISE

(*6*) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(*a*) for adjustment against allotment of securities; or

(*b*) for the repayment of monies where the company is unable to allot securities.

PROHIBITION ON ADVERTISEMENT

(*7*) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

RETURN OF ALLOTMENT

(*8*) A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(*9*) If a company defaults in filing the return of allotment within the period prescribed under sub-section (*8*), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

Rule 14 states that the company shall maintain a complete record of private placement offers in **Form PAS-5.**

A copy of such record along with the private placement offer letter in **Form PAS-4** shall be filed with the Registrar and where the company is listed, with the Securities and Exchange Board

CONTRAVENTION AND PENALTY

(*10*) Subject to sub-section (*11*), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (*6*) to subscribers within a period of thirty days of the order imposing the penalty.

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PRIVATE PLACEMENT DEEMED TO BE PUBLIC OFFER

(*11*) Notwithstanding anything contained in sub-section (*9*) and sub-section (*10*), any private placement issue not made in compliance of the provisions of sub-section (*2*) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable'.

ISSUE OF SECURITIES IN DEMATERIALISED FORM BY UNLISTED PUBLIC COMPANIES

Companies (Prospectus and allotment of securities) 3rd Amendment Rules 2018

Rule "9A

(1) Every unlisted public company shall –
   (a) issue the securities only in dematerialised form; and
   (b) facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

The Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies.

The audit report provided under Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated.

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

11

PUBLIC ISSUE AND PROSPECTUS

Covering-

- Public offer
- Prospectus- Meaning and Definition
- Matters to be Stated / Disclosed in the Prospectus
- Other provisions with regard to prospectus
- Self Prospectus
- Red-Herring Prospectus
- Abridged Prospectus
- The Golden or Golden Legacy
- Liability for untrue statement in prospectus
- Remedies for misrepresentation in prospectus
- Penalty for Fraudulently Inducing to Invest Money
- Amendment to a Nidhis Company; Dated on 5th June, 2015.
- Self Test Questions
  - From Past CS Examination Questions
  - From ICSI Module

EXPECTED MARKS COVERAGE (0 to 10)

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N.K.J - SECTION CHART

Section	Short Description
Section 23	Public offer and private placement
Section 25	Document containing offer of securities for sale to be deemed prospectus.
Section 28	Offer of sale of shares by certain members of company
Section 30	Advertisement of Prospectus
Section 31	Shelf Prospectus
Section 32	Red herring prospectus
Section 33	Issue of Application forms for securities
Section 34	Criminal liability for mis-statements in prospectus
Section 35	Civil liability for mis-statements in prospectus
Section 36	Punishment for fraudulently inducting persons to invest money
Section 42	Offer or Invitation for subscription of securities on private placement
Rule	Companies (Prospectus and allotment of securities) Rules, 2014

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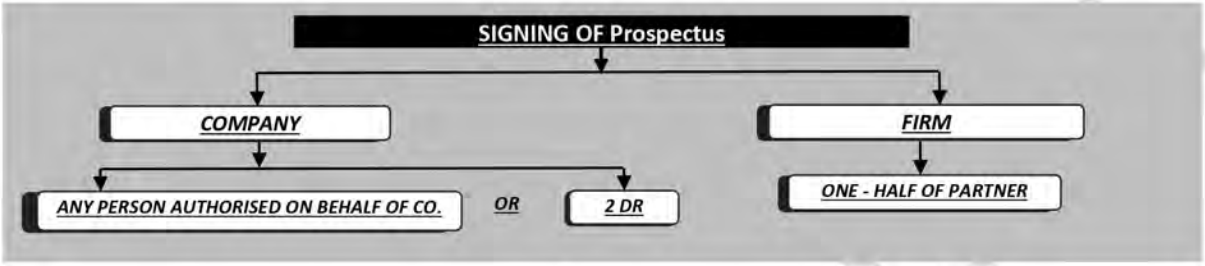

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PUBLIC ISSUE AND PROSPECTUS

PUBLIC OFFER

"Public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

PROSPECTUS- MEANING AND DEFINITION

Section 2(70) of the Companies Act, 2013 defines a prospectus as "any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 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."

ESSENTIAL ELEMENTS OF PROSPECTUS

The following ingredients may be said to constitute a 'prospectus':-

(a) there must be an invitation to the public;
(b) the invitation must be made "by or on behalf of the company or in relation to an intended company";
(c) the invitation must be "to subscribe or purchase";
(d) the invitation must relate to shares or debentures or such other instrument.

In essence, it means that a prospectus is an invitation issued to the public to offer for purchase/subscribe shares or debentures of the company.

CASE LAW



Re. South of England Natural Gas and Petroleum Co. Ltd.	Expression **'public' includes any section of people**. So If a document inviting persons to buy shares is issued, for example, to all advocates, or to all doctors, or to all foreigners living in India, or to all Indian citizens, or to all shareholders in a particular company, it will still be deemed to be issued to the public within the meaning of the Act.

A document is deemed to be issued to the public, if the invitation to subscribe for share capital is such as to be open to anyone who brings his money and applies in prescribed form, whether the prospectus was addressed to him or not. The **test** is not who receives the document, but **who** can **apply for shares** in response to the invitation contained in it.

DEEMED PROSPECTUS

Section 25 states that any document by which the **offer for sale** to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law relating to prospectus, shall apply with the modifications specified in **subsections (3) and (4).**

Additional matters to be provided in deemed prospectus as specified in 25(3)

(a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

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(b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

Section 25(4) states that where a person making an offer is a company or a firm, it shall be sufficient if the prospectus is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

'Offer for sale'

Section 28 states that where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed.

MATTERS TO BE STATED/DISCLOSED IN THE PROSPECTUS



As regards to the matters prescribed in the prospectus the company has to comply with Section 26 read with Rule 3 of Companies (Prospectus and Allotment of Securities) Rules 2014.

According to section 26, Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—

(a) "state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

(*b*) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder;

CONTENTS FOR ADVERTISEMENT OF PROSPECTUS

Section 30 provides that where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein;-

(a) the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company,

(b) and the names of the signatories to the memorandum and

(c) the number of shares subscribed for by them, and its capital structure.

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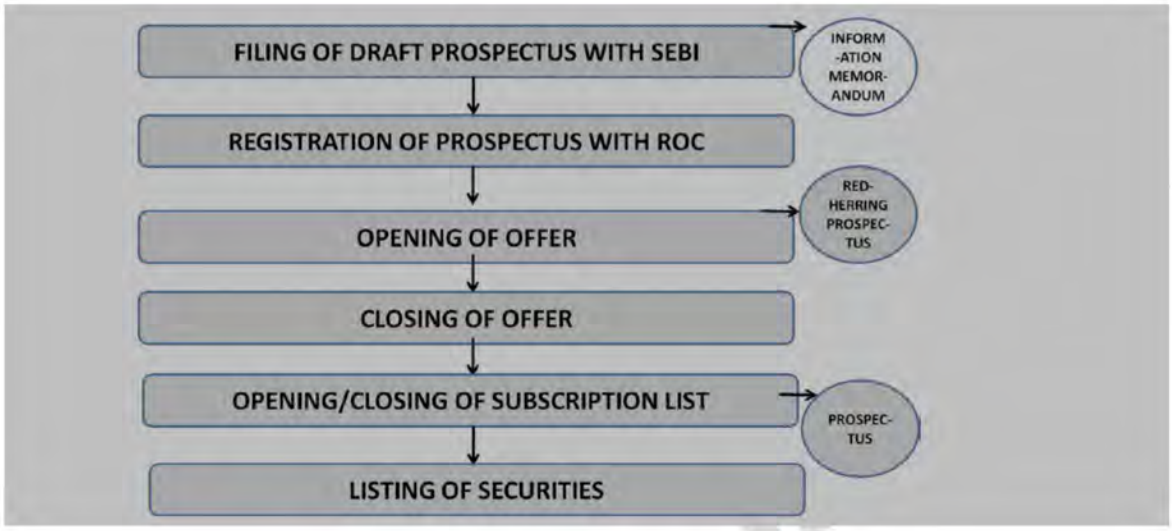

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OTHER PROVISIONS WITH REGARD TO PROSPECTUS

(a) Prospectus to be delivered to the registrar.

(b) Prospectus to be issued within **90 days after the date** on which a copy thereof is delivered to the registrar.

(c) Prospectus issued shall include a statement purporting to be made by an expert if the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or Management.

(d) Prospectus shall be date and signed.

SHELF PROSPECTUS

"Shelf Prospectus" 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.**

The concept of shelf prospectus will save expenditure and time of the companies in issuing a new prospectus every time they wish to issue securities to the public within a period of **one year**.

IMPORTANT PROVISIONS OF SECTION 31 RELATING TO SHELF PROSPECTUS

1. Any class of companies (i.e. financial institution or bank,) as prescribed by the Securities and Exchange Board **may file a shelf prospectus with the Registrar at the stage of the first offer** of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under such prospectus.

   Further, in respect of a second or subsequent offer issued during the period of validity of shelf prospectus, no further prospectus is required.

2. A company filing a shelf prospectus shall be required to file an information memorandum (in **Form PAS-2)** containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer and other prescribed changes, with the Registrar (within **one month)** prior to the issue of a second or subsequent offer of securities under such prospectus.

3. Where an information memorandum is filed, every time an offer of securities is made as aforesaid, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

RED-HERRING PROSPECTUS

"Red Herring Prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Red herring prospectus is issued during book building process.

IMPORTANT PROVISIONS OF SECTION 32 RELATING TO RED-HERRING PROSPECTUS

1. A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

2. A company proposing to issue a red herring prospectus shall file it with the Registrar at least **three days prior to the opening of the offer**.

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3. A red herring prospectus shall carry the same obligations as are applicable to a prospectus. Any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
4. Upon the closing of the offer of securities, the prospectus stating therein the total capital raised, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board of India.

ABRIDGED PROSPECTUS

As per Section 2(1) **"Abridged Prospectus"** 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.

Section 33 states that no form of application can be issued for the purchase of any securities of a company unless it is accompanied by an abridged prospectus.

However, following are **four exceptions** to this rule:

(a) where the offer is made in connection with the *bona fide* invitation to a person to enter into an underwriting agreement with respect to such securities;
(b) where the securities are not offered to the public;
(c) where the offer is made only to the existing members or debenture holders of the company with or without a right to renounce;
(d) where the shares or debentures offered are in all respects uniform with shares or debentures already issued and quoted on a recognised stock exchange.

A copy of the prospectus shall be furnished to a person on a request being made by him before the closing of the subscription list and the offer.

THE GOLDEN RULE OR GOLDEN LEGACY

It is the duty of those who issue the prospectus to be truthful in all respects. This Golden Rule was pronounced by Kinderseley, V.C. in ***New Brunswick, etc., Co.* v. *Muggeridge,*** and has come to be known as the "golden legacy".

CASE LAW



The rule says, the company must disclose all the real and correct material details in the prospectus. Concealment of any material fact would amount to misrepresentation. Thus, even if every specific statement is literally true, the prospectus may be false if by reason of the suppression of other material facts.

In **Re. *R.V. Kylsant*** all statements in the prospectus were literally true but it failed to disclose that the dividends stated in it as paid, were not paid out of trading profits, but out of realized capital profits (secret reserves). The statement that the company had paid dividends for a number of years was true. But the company has incurred losses for all those years and no disclosure was made of this fact. The prospectus was held to be false in material particulars and the managing director and chairman, who knew that it was false, were held guilty of fraud.

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LIABILITY FOR UNTRUE STATEMENT IN PROSPECTUS

Where an untrue statement occurs in a prospectus, there may arise **(i) civil liability (ii) criminal liability**. Every person who is a director of the company at the time of the issue of the prospectus, every promoter of the company and every person, including an expert, who has authorised the issue of a prospectus, shall be liable.

➢ *CIVIL LIABILITY*

(i) Damages for fraudulent misrepresentation

An allottee may sue the director for damages for deceit, if there are fraudulent misrepresentations in the prospectus.

(ii) Compensation for untrue Statement

As per **section 35**, an allottee is also entitled to claim compensation from directors, promoters and any other persons who authorised the issue of the false prospectus, for damages sustained by reason of any untrue statement in it.

WHEN CIVIL LIABILITY CAN BE AVOIDED

As per Section 35(2) no person referred above shall be liable for civil action if he proves:

(i) that having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(iii) an expert may escape the liability, if he proves that having given his consent under Section 26 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration to the Registrar.

➢ *CRIMINAL LIABILITY*

According to **Section 34** where a prospectus, issued, circulated or distributed includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under **section 447**.

Section 447 *provides that any person who is found to be guilty of fraud" involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower", shall be punishable with imprisonment for a term which shall not be less than* ***six months*** *but which may extend to* ***ten years*** *and shall also be liable to fine which shall not be less than the* ***amount involved*** *in the fraud, but which may extend to* ***three times*** *the amount involved in the fraud.*

Provided that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

However, where the fraud in question involves ***public interest****, the term of imprisonment shall not be less than* ***three years.***

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WHEN CRIMINAL LIABILITY CAN BE AVOIDED

where a person who has authorised the issue of prospectus proves, either that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary may be relieved from the criminal liability.

REMEDIES FOR MISREPRESENTATION IN PROSPECTUS

(a) Rescind the contract

A person who takes securities on the faith of a prospectus containing false statements, may apply to the Court for setting contract aside, and striking off his name from the register of members. He may also claim his money back.

(b) Sue for damages for deceit.

The allottee may recover damages from the company for any loss he may have suffered

(c) Remedies against Directors or Promoters

A person who subscribed for shares on the faith of a false prospectus may claim from directors or promoters:-

(i) damages for fraudulent misrepresentation,

(ii) Compensation under Section 35 of the Act,

(iii) Damages for non-compliance with the requirements of Section 26 of the Act.

PENALTY FOR FRAUDULENTLY INDUCING TO INVEST MONEY

Section 36 provides that any person who, either knowingly or 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, or to offer 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 under section 447.

NKJ–CLASSROOM PRACTICE



Q. 1. On receipt of 85% of the minimum subscription stated in the prospectus, Little Stars Ltd. allotted 200 shares to Ranjit and the money was deposited in a scheduled bank. Later on, it was revealed that 40% of the amount withdrawn was for acquisition of fixed assets for the company. Ranjit, knowing these facts, refused to accept the allotment contending that the allotment was irregular under the provisions of the Companies Act, 2013. As an expert on company law advise Ranjit. **[Dec 2014; 4 Marks]**

Ans. 1. Minimum Subscription under Companies Act, 2013

Section 39 of the Companies Act 2013, state that no shares shall be allotted to the public until the minimum subscription stated in the prospectus has been subscribed and the sums payable on application has been received by the company by cheques or other instruments.

2. Minimum Subscription of 90% including Under-writer subscription

In this context SEBI has prescribed that any company making public or right issue must receive a minimum 90% or issue including development on underwriter's subscription against the entire issue before making allotment.

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	3. Conclusion **In the given case,** it is stated that the prospectus shows 85% as minimum subscription. Mr Ranjeet's contention of claiming this allotment as irregular is correct.

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(This is only an advertisement for information purpose, not for publication or distribution, directly or indirectly outside India, does not constitute an invitation or offer to acquire, purchase or subscribe for securities and not a Prospectus announcement)

PNC INFRATECH LIMITED

Our Company was incorporated as 'PNC Construction Company Private Limited' on August 9, 1999 under the Companies Act, 1956 ("**Companies Act 1956**"), with the Registrar of Companies, Uttar Pradesh at Kanpur. Pursuant to conversion of our Company to a public limited company, our name was changed to 'PNC Construction Company Limited' and a fresh certificate of incorporation consequent upon change of name on conversion to public limited company was issued by the Registrar of Companies, Uttar Pradesh at Kanpur on February 12, 2001. Subsequently, our name was changed to 'PNC Infratech Limited' and a fresh certificate of incorporation consequent upon change of name was issued by the Registrar of Companies, Uttar Pradesh and Uttaranchal on August 2, 2007. On September 30, 2009, the Company Law Board approved change in location of our Registered Office from Uttar Pradesh to Delhi, with effect from November 1, 2009, and a certificate of registration of the order of the Company Law Board was issued by the Registrar of Companies, National Capital Territory of Delhi and Haryana (the "**RoC**") on November 12, 2009. For more information in relation to change in name and Registered Office of our Company, see "***History and Certain Corporate Matters***" on page 144 of the Red Herring Prospectus.

Corporate Identity Number: U45201DL1999PLC195937 **Registered Office:** NBCC Plaza, Tower II, 4th Floor, Pushp Vihar, Sector 5, New Delhi 110 017, India **Tel:** (+91 11) 2957 4600 **Fax:** (+91 11) 2958 3844 **Corporate Office:** PNC Tower, 3/22 D, Civil Lines, Agra Delhi Bypass Road, National Highway 2, Near Omaxe SRK Mall, Agra 282 002, India **Tel:** (+91 562) 405 4400 **Fax:** (+91 562) 407 0011 **Contact Person:** Mr. Binaya Kumar Dash, Company Secretary and Compliance Officer **Tel:** (+91 562) 405 4400 **Fax:** (+91 562) 407 0011 **E-mail:** cs@pncinfratech.com Website: www.pncinfratech.com

PROMOTERS: Mr. Pradeep Kumar Jain, Mr. Naveen Kumar Jain, Mr. Chakresh Kumar Jain, Mr. Yogesh Kumar Jain, PNC Project Private Limited, PNC Gold Storage Private Limited and Shri Parasnath Infrastructures Private Limited

INITIAL PUBLIC OFFERING OF UP TO 12,921,708 EQUITY SHARES OF FACE VALUE OF ₹ 10 EACH (THE "EQUITY SHARES") OF PNC INFRATECH LIMITED ("PNC INFRATECH" OR OUR "COMPANY" OR THE "COMPANY" OR THE "ISSUER") FOR CASH AT A PRICE OF ₹ [•] PER EQUITY SHARE (INCLUDING A SHARE PREMIUM OF ₹ [•] PER EQUITY SHARE) (THE "OFFER PRICE") AGGREGATING UP TO ₹ [•] MILLION (THE "OFFER"). THE OFFER COMPRISES A FRESH ISSUE OF UP TO 11,500,000 EQUITY SHARES BY OUR COMPANY (THE "FRESH ISSUE") AND AN OFFER FOR SALE OF UP TO 1,421,708 EQUITY SHARES BY NYLIM JACOB BALLAS INDIA (FVCI) III LLC (THE "SELLING SHAREHOLDER" OR "NYLIM JB") (THE "OFFER FOR SALE"). THE OFFER INCLUDES A RESERVATION OF 50,000 EQUITY SHARES FOR SUBSCRIPTION BY ELIGIBLE EMPLOYEES (AS DEFINED HERE IN AFTER IN THE "DEFINITIONS AND ABBREVIATIONS" SECTION ON PAGE 1 OF THE RED HERRING PROSPECTUS) (THE "EMPLOYEE RESERVATION PORTION"). THE OFFER LESS THE EMPLOYEE RESERVATION PORTION IS HERE IN AFTER REFERRED TO AS THE "NET OFFER", AGGREGATING UP TO 12,871,708 EQUITY SHARES. THE NET OFFER SHALL CONSTITUTE AT LEAST 25% OF THE POST-OFFER PAID-UP EQUITY SHARE CAPITAL OF OUR COMPANY.

THE FACE VALUE OF THE EQUITY SHARES IS ₹ 10 EACH
PRICE BAND: ₹ 355 TO ₹ 378 PER EQUITY SHARE
THE FLOOR PRICE IS 35.5 TIMES OF THE FACE VALUE AND THE CAP PRICE IS 37.8 TIMES OF THE FACE VALUE.
BIDS CAN BE MADE FOR A MINIMUM OF 35 EQUITY SHARES AND IN MULTIPLES OF 35 EQUITY SHARES THEREAFTER.

BASIS FOR OFFER PRICE

The Offer Price will be determined by our Company and the Selling Shareholder in consultation with the BRLMs, on the basis of assessment of market demand for the Equity Shares through the Book Building Process and on the basis of quantitative and qualitative factors as described below. The face value of the Equity Shares is ₹ 10 each and the Offer Price is 35.5 times the face value at the lower end of the Price Band and 37.8 times the face value at the higher end of the Price Band.

Qualitative Factors

Some of the qualitative factors which form the basis for the Offer Price are:

- expertise in the execution of major infrastructure projects;
- our governance platform;
- our experienced promoter and management team;
- efficient project execution capability pan-India;
- established track record in executing large construction projects particularly in the roads and highways, power transmission lines and airport runways sectors; and
- ability to implement a wide variety of construction projects that involve varying degrees of complexity.

For further details see, "**Risk Factors**", "**Our Business**" and "**Financial Statements**" on pages 13, 123 and 184, of the Red Herring Prospectus respectively.

Quantitative Factors

The information presented hereunder relating to our Company is based on the restated financial statements for fiscal 2014, 2013 and 2012 prepared in accordance with Indian GAAP and the Companies Act and restated in accordance with the SEBI ICDR Regulations. For details, see "**Financial Statements**" on page 184.

Some of the quantitative factors which may form the basis for computing the Offer Price are as follows:

- **Basic and Diluted Earnings Per Share ("EPS"), as adjusted for change in capital:**

As per our restated and audited consolidated financial statements:

Year ended	Basic EPS (in ₹)	Diluted EPS (in ₹)	Weight
March 31, 2012	19.69	19.69	1
March 31, 2013	18.75	18.75	2
March 31, 2014	13.06	13.06	3
Weighted Average	**16.06**	**16.06**	
Nine months period ended December 31, 2014#	15.68	15.68	

 # December 31, 2014 figures are not annualized

Notes:

(1) EPS calculations have been done in accordance with Accounting Standard 20-"Earning per share" issued by the Institute of Chartered Accountants of India.

(2) Weighted average number of Equity Shares is the number of Equity Shares outstanding at the beginning of the year/period adjusted by the number of Equity Shares issued during the year/period multiplied by the time weighting factor. The time weighting factor is the number of days for which the specific shares are outstanding as a proportion of the total number of days during the year.

- **Price/Earning (P/E) ratio in relation to Offer Price of ₹ [•] per Equity Share of ₹ 10 each:**

a. P/E based on basic and diluted EPS at the lower end of the Price Band is 27.18

b. P/E based on basic and diluted EPS at the higher end of the Price Band is 28.94

c. P/E based on basic and diluted EPS as per our restated financial statements for year ended March 31, 2014 is [•].

Industry P/E*

(i) Highest: 30.50

(ii) Lowest: 8.41

(iii) Average: 19.98

** Source: The highest and lowest Industry P/E shown above is based on the Industry peer set provided below under "Comparison of accounting ratios with Industry Peers". The Industry composite has been calculated as the arithmetic average P/E of the Industry peer set provided below, based on consolidated EPS numbers. For further details, see "* **Comparison of accounting ratios with Industry Peers***" hereunder.*

- **Return on Net Worth ("RoNW"):**

As per our restated and audited consolidated financial statements:

Year ended	RoNW (%)	Weight
March 31, 2012	15.98	1
March 31, 2013	13.28	2
March 31, 2014	8.51	3
Weighted Average	**11.35**	
Nine months period ended December 31, 2014*	9.31	

**December 31, 2014 figures are not annualized*

Note: The RoNW has been computed by dividing net profit after tax and extra ordinary items by net worth as at year end. Net worth has been computed by aggregating share capital and reserves and surplus and reducing capital reserve and miscellaneous expenditure as per the audited restated financial statements.

- Minimum Return on Increased Net Worth for maintaining Pre-Offer Basic and Diluted EPS for the year ended March 31, 2014 is [•]% at the Issue Price, 6.57% at the Floor Price and 6.41% at the Cap Price.
- Net Asset Value# ("NAV") per Equity Share of face value ₹ 10 each as at March 31, 2014 is ₹ 153.48 and for the nine months period ended December 31, 2014 is ₹ 168.51.
- NAV per Equity Share after the Offer: [•]
- Offer Price: [•]

Note: Net Asset Value per Equity Share represents net worth, as restated, divided by the number of Equity Shares outstanding at the end of the period.

- **Comparison of accounting ratios with Industry Peers (on a consolidated basis):**

Name of the Company	For the year ended March 31, 2014						
	Face Value (₹)	Total Revenue[1] (₹ in million)	Basic EPS[2] (₹)	Diluted EPS[2] (₹)	P/E[3]	RoNW[4] (%)	Net Asset Value/Equity Share[5] (₹)
PNC Infratech Limited[6]	10.0	13,642.43	13.06	13.06	NA	8.51%	153.26
Peer Group							
IRB Infrastructure Developers Limited	10.0	35,533.13	13.81	13.81	19.03	12.89%	107.1
Ashoka Buildcon Limited[7]	5.0	15,122.07	6.17	6.14	30.50	7.81%	78.0
IL&FS Transportation Networks Limited	10.0	68,024.82	21.79	21.79	8.41	9.25%	257.6
KNR Constructions Limited	10.0	9,122.15	21.50	21.50	29.40	9.90%	217.2
J Kumar Infraprojects Limited	10.0	11,975.92	30.23	30.23	22.52	14.61%	206.9
Industry Composite					**19.98**		

Note:

1: Total revenue is as sourced from the annual reports of the companies.

2: Basic and Diluted EPS refer to the basic and diluted EPS sourced from the annual reports of the companies.

3: P/E Ratio has been computed as the closing market prices of the companies on the BSE Limited sourced from the BSE website as on April 17, 2015, as divided by the basic EPS provided under Note 2.

4: RoNW for Peers have been computed as net profit after tax divided by the net worth of these companies. Net worth has been computed as sum of share capital and reserves.

5: NAV is computed as the closing net worth of the companies, computed as per Note 4, divided by the closing outstanding number of fully paid up equity shares as sourced from the annual reports for the company as on March 31, 2014.

6: All the numbers for our Company have been taken from restated and audited consolidated financial statements for fiscal 2014.

7: Share Application Money pending allotment with regard to subsidiary has not been considered as the part of Net worth.

The Offer Price of ₹ [•] has been determined by our Company and Selling Shareholder, in consultation with the BRLMs on the basis of the demand from investors for the Equity Shares through the Book-Building Process and is justified in view of the above qualitative and quantitative parameters. Investors should read the above mentioned information along with "Risk Factors" and "Financial Statements" on pages 13 and 184 of the Red Herring Prospectus, respectively, to have a more informed view. The trading price of the Equity Shares of our Company could decline due to the factors mentioned in "Risk Factors" or any other factors that may arise in the future and you may lose all or part of your investments. For further details, see section "Basis of Offer Price" on page 89 of the Red Herring Prospectus.

ASBA* Simple, Safe, Smart way of making an Application - Make use of it!!!

**Applications supported by blocked amount (ASBA) is a better way of applying to issues by simply blocking the fund in the bank account. Investors can avail the same. For details, check section on ASBA below.*

Continued on Next Page

ASBA* Simple, Safe, Smart way of making an Application - Make use of it!!!

*Applications supported by blocked amount (ASBA) is a better way of applying to issues by simply blocking the fund in the bank account. Investors can avail the same. For details, check section on ASBA below.

SECTION PERIOD

OPENS ON	CLOSES ON
FRIDAY, MAY 8 2015	TUESDAY, MAY 12, 2015

*Our Company and the Selling Shareholder, in consultation with the BRLMs, may consider participation by Anchor Investors. The Anchor Investor Bidding Date shall be one Working Day prior to the Bid/Offer Opening Date.

In case of revision in the Price Band, the Bid/Offer Period will be extended for at least three additional Working Days after revision of the Price Band subject to the Bid/Offer Period not exceeding a total of 10 Working Days. Any revision in the Price Band and the revised Bid/Offer Period, if applicable, will be widely disseminated by notification to the Stock Exchanges, by issuing a press release, and also by indicating the change on the websites of the BRLMs, and at the terminals of the members of the Syndicate and by intimation to Self Certified Syndicate Banks ("**SCSBs**") and the Registered Brokers.

In terms of Rule 19(2)(b) of the Securities Contracts (Regulation) Rules, 1957, as amended, (the "**SCRR**") the Net Offer is being made for at least 25% of the post-Offer paid-up Equity Share capital of our Company. The Offer is being made through the Book Building Process, in compliance with Regulation 26(1) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended (the "**SEBI ICDR Regulations**") wherein 50% of the Net Offer will be allocated on a proportionate basis to Qualified Institutional Buyers ("**QIBs**") (the "**QIB Category**"), provided that our Company and the Selling Shareholder, in consultation with the BRLMs, may allocate up to 60% of the QIB Category to Anchor Investors, on a discretionary basis (the "**Anchor Investor Portion**"), of which one-third shall be reserved for domestic Mutual Funds, subject to valid Bids being received from domestic Mutual Funds at or above the Anchor Investor Offer Price. Further, 5% of the QIB Category (excluding the Anchor Investor Portion) shall be available for allocation on a proportionate basis to Mutual Funds only. The remainder shall be available for allocation on a proportionate basis to QIBs and Mutual Funds, subject to valid Bids being received from them at or above the Offer Price. Further, not less than 15% of the Net Offer will be available for allocation on a proportionate basis to Non-Institutional Investors and not less than 35% of the Net Offer will be available for allocation to Retail Individual Investors, in accordance with the SEBI ICDR Regulations, subject to valid Bids being received at or above the Offer Price. Further, 50,000 Equity Shares will be available for allocation on a proportionate basis to Eligible Employees, subject to valid Bids being received from them at or above the Offer Price. Retail Individual Investors and Eligible Employees Bidding in the Employee Reservation Portion may participate in this Offer through the ASBA process by providing the details of the ASBA Accounts in which the corresponding Bid Amounts will be blocked by the SCSBs. QIBs (excluding Anchor Investors) and Non-Institutional Investors can participate in the Offer only through the ASBA process. Anchor Investors are not permitted to participate in this Offer through the ASBA process. For details in this regard, specific attention is invited to "Offer Procedure" on page 391 of the Red Herring Prospectus.

Listing: The Equity Shares issued through the Red Herring Prospectus are proposed to be listed on the Stock Exchanges. We have received in-principle approvals from the BSE and the NSE for the listing of the Equity Shares pursuant to letters dated November 19, 2014 and November 11, 2014, respectively. The NSE is the Designated Stock Exchange.

Disclaimer Clause of SEBI: SEBI only gives its observations on the offer documents and this does not constitute approval of either the issue or the specified securities or the offer document. The investors are advised to refer to the Red Herring Prospectus for the full text of the "Disclaimer Clause of SEBI" see the page no. 372 of the Red Herring Prospectus.

Disclaimer Clause of BSE: It is to be distinctly understood that the permission given by BSE Limited should not in any way be deemed or construed that the Red Herring Prospectus has been cleared or approved by BSE Limited nor does it certify the correctness or completeness of any of the contents of the Red Herring Prospectus. The investors are advised to refer to the Red Herring Prospectus for the full text of the "Disclaimer clause of the BSE Limited" see the page no. 378 of the Red Herring Prospectus.

Disclaimer Clause of NSE (The Designated Stock Exchange): It is to be distinctly understood that the permission given by NSE should not in any way be deemed or construed that the Offer Document has been cleared or approved by NSE nor does it certify the correctness or completeness of any of the contents of the Offer Document. The investors are advised to refer to the Offer Document for the full text of the "Disclaimer Clause of NSE.

General Risks: Investments in equity and equity-related securities involve a degree of risk and investors should not invest any funds in the Offer unless they can afford to take the risk of losing their investment. Investors are advised to read the risk factors carefully before taking an investment decision in the Offer. For taking an investment decision, investors must rely on their own examination of the Issuer and the Offer including the risks involved. The Equity Shares have not been recommended or approved by the Securities and Exchange Board of India ("SEBI"), nor does the SEBI guarantee the accuracy or adequacy of the Red Herring Prospectus. Specific attention of the investors is invited to "Risk Factors" on page 13 of the Red Herring Prospectus.

Contents of the Memorandum of the Company as regards its Objects: Investors are requested to refer to clause III of the Memorandum of Association of the Company for the main objects and other objects of the Company. The Memorandum of Association of the Company is a material document for inspection in relation to the Offer. For details, see the section "**Material Contracts and Documents for Inspection**" on page 456 of the Red Herring Prospectus.

Liability of the members of the Company: Limited.

Amount of share capital of the Company and Capital structure: The authorised, issued, subscribed and paid up share capital of the Company as on the date of the RHP is as follows:

Authorised share capital of ₹ 550,000,000 divided into 55,000,000 Equity Shares of face value of ₹ 10 each. Issued, Subscribed and Paid up capital before the Offer is ₹ 398,078,330 divided into 39,807,833 Equity Shares of face value of ₹10 each. Share Premium Account has a balance of ₹ 1,844,086,870. For further details on the share capital of the Company and its capital structure, see section "Capital Structure" on page 67 of the Red Herring Prospectus.

Names of signatories to the Memorandum of Association of the Company and the number of shares subscribed by them: Given below are the names of the signatories of the Memorandum of Association of the Company and the number of equity shares subscribed for by them at the time of signing of the Memorandum of Association: Mr. Pradeep Kumar Jain: 100; Mr. Chakresh Kumar Jain: 100; Mr. Yogesh Kumar Jain: 100; Total: 300.

Bidders should note that on the basis of Permanent Account Number (PAN) of the Bidders, Depository Participant ID (DPID) and Client ID provided by them in the Bid-cum-Application Form as entered into the electronic bidding system of the Stock Exchanges by member of the Syndicate or SCSBs or Registered Broker as the case may be, the Registrar will obtain from the Depository and ensure that they are true and correct, the demographic details including address, Bidders bank account details, MICR code and occupation (hereinafter referred to as "Demographic Details"). These bank account details would be used for giving refunds (including through physical refund warrants, direct credit, NECS, NEFT and RTGS) or unblocking of ASBA Account. Hence, Bidders are advised to immediately update their bank account details as appearing on the records of the Depository Participant. Please note that failure to do so could result in delays in despatch/ credit of refunds to Bidders or unblocking of ASBA Account at the Bidders sole risk and neither the BRLMs or the Syndicate Members or the Registrar or the Escrow Collection Banks or the SCSBs nor the Company or the Selling Shareholders shall have any responsibility and undertake any liability for the same. Hence, Bidders should carefully fill in their Depository Account details in the Bid-cum-Application Form. The Bidders should note that in case the DP ID and Client ID and PAN mentioned in the Bid-cum-Application Form and entered into the electronic bidding system of the Stock Exchanges by the Syndicate do not match with the DP ID and Client ID and PAN available in the database of Depositories, the Bid-cum-Application Form is liable to be rejected. Investors are cautioned that Bid cum Application Forms accompanied by non-CTS cheques, if such non-CTS cheques are not cleared in six Working Days or in case of any delay in clearing of cheques beyond six Working Days from the Bid/Offer Closing Date, for any reason whatsoever (including but not limited to any material/natural calamities or any extension by the bank on the time period for clearing with permission of RBI or otherwise) are liable to be rejected.

BOOK RUNNING LEAD MANAGERS		REGISTRAR TO THE OFFER	COMPANY SECRETARY AND COMPLIANCE OFFICER
ICICI Securities	**IDFC**	**LINK INTIME**	**Contact Person** Mr. Binaya Kumar Dash, Company Secretary and Compliance Officer Tel: (+91 562) 405 4400, Fax: (+91 562) 407 0011 E-mail: ipo@pncinfratech.com, Website: www.pncinfratech.com
ICICI Securities Limited ICICI Centre, H.T. Parekh Marg, Churchgate, Mumbai 400 020, India Tel: (+91 22) 2288 2460, Fax: (+91 22) 2282 6580 Email: pnc.ipo@icicisecurities.com Investor Grievance E-mail: customercare@icicisecurities.com Website: www.icicisecurities.com Contact Person: Mr. Maunendra Tiwari/ Mr. Ayush Jain SEBI Registration No.: INM000011179	**IDFC Securities Limited** Naman Chambers, C 32, G Block, Bandra Kurla Complex Bandra (East), Mumbai 400 051, India Tel: (+91 22) 6622 2500, Fax: (+91 22) 6622 2501 Email: pnc.ipos@idfc.com Investor Grievance E-mail: investorgrievance@idfc.com Website: www.idfccapital.com Contact Person: Akshay Bhandari SEBI Registration No.: MB/INM000011336	**Link Intime India Private Limited** C 13, Pannalal Silk Mills Compound L.B.S. Marg, Bhandup (West), Mumbai 400 078, India. Tel: (+91 22) 2596 7878, Fax: (+91 22) 2596 0329 E-mail: pnc.ipo@linkintime.co.in Website: www.linkintime.co.in Contact Person: Mr. Sachin Achar SEBI Registration No.: INR000004058	Investors can contact the Company Secretary and Compliance Officer, BRLMs or the Registrar to the Offer in case of any pre-Offer or post-Offer related problems such as non-receipt of letters of Allotment, credit of Allotted Equity Shares in the respective beneficiary account or refund orders. In case of ASBA Bids submitted to the members of the Syndicate, the Bidders can contact the relevant member of the Syndicate in relation to queries relating to the Bids.

AVAILABILITY OF RED HERRING PROSPECTUS: Investors are advised to refer to the RHP and the Risk Factors contained therein before applying in the Offer. Full copy of the RHP is available on the websites of the **Book Running Lead Managers** to the offer at **www.icicisecurities.com, www.idfccapital.com** and the website of the Company at **www.pncinfratech.com** and shall also be available on the websites of SEBI, BSE and NSE i.e. **www.sebi.gov.in, www.bseindia.com** and **www.nseindia.com** respectively.

AVAILABILITY OF BID-CUM-APPLICATION FORMS: Bid-cum-Application Forms can be obtained from the Registered office of Company and the **Book Running Lead Managers: ICICI Securities Limited**, Tel: +91 22 2288 2460 Fax: +91 22 2282 6580, **IDFC Securities Limited**, Tel: +91 22 6622 2500 Fax: +91 22 6622 2501, **Syndicate Member: Sharekhan Limited**, Tel: (+91 22) 6115 0000, Fax: (+91 22) 6749 1891 and at the select locations of the Sub-Syndicate members participating in the offer as given below:

Almondz Global Securities Ltd; Amit Jasani Financial Services Pvt Ltd; Anand Rathi Securities Pvt Ltd; Anand Rathi Share & Stock Brokers Ltd; Angel Broking Pvt Ltd; Ashika Stock Broking Ltd; Asit C Mehta Investment Intermediates Ltd; Axis Securities Ltd; Centrum Broking Limited; DB (International) Stock Brokers Ltd; Edelweiss Broking Ltd; Eureka Stock & Share Broking Services Ltd; Geojit BNP Paribas Financial services Limited; HDFC Securities Ltd; Hem Securities Ltd; Hitesh Shah; ICICI Securities Ltd; IDBI Capital Market Services Limited; India Infoline Ltd; Innovate Securities Pvt. Ltd; JM Financial Services Ltd; JM Financial Services Pvt Ltd; Jobanputra Fiscal Services Pvt Ltd; Joindre Capital Services Ltd; Karvy Stock Broking Ltd; Kaushik N Shah; KIFS Securities Limited; KJMC Capital Market Services Ltd; Kotak Securities Limited; Kunvarji Finstock Pvt Ltd; LKP Securities Ltd; Matalia Stock Broking Pvt Ltd; Mehta Equities Ltd; Monarch Project & Finmarkets Ltd; Motilal Oswal Securities Ltd; Networth Stock Broking Limited; Nirmal Bang Securities Pvt Ltd; Nitin Parikh & Co; Prabhudas Lladher Pvt Ltd; Pravin Ratilal Share and Stock Brokers Ltd; Reliance Securities Ltd; Religare Securities Ltd; RR Equity Broker Private Ltd; SBICAP Securities Limited; Sharewealth Securities Ltd; Shri Parasram Holdings Pvt Ltd; SMC Global Securities Ltd; SS Corporate Securities Limited; Sushil Financial Services Ltd; Swastika Investmart Ltd; Systematix Shares & Stocks (I) Ltd; Ventura Securities Ltd.

Electronic Bid-cum-Application Form will be available on the website of the Stock Exchanges at www.bseindia.com and www.nseindia.com. Physical Bid cum application form for Anchor Investor shall be made available at the offices of the BRLMs.

APPLICATIONS SUPPORTED BY BLOCKED AMOUNT (ASBA): Investors may apply through the ASBA process. ASBA can be availed by all the investors except Anchor Investors. Non-retail investors i.e. QIBs and Non-Institutional Bidders, have to compulsorily apply through ASBA to participate in the Offer. The investor is required to fill the Bid-cum-Application Form and submit the same to their respective SCSB or to the Syndicate Members (in specified cities only) or the Registered Brokers. The SCSB will block the amount in the account as per the authority contained in the Bid-cum-Application Form. On Allotment, amount will be unblocked and account will be debited only to the extent required to be paid for Allotment of Equity Shares. Hence, there will be no need of refunds. Bid-cum-Application Forms can also be downloaded from the websites of BSE and NSE: www.bseindia.com and www.nseindia.com. Bid-cum-Application Form can be obtained from the list of SCSBs that is available on the website of SEBI at http://www.sebi.gov.in/sebiweb/home/list/5/33/0/0/Recognised-Intermediaries. For details about ASBA, please refer to the details given in Bid-cum-Application Form, abridged prospectus and the section "Offer Procedure" beginning on page 391 of the Red Herring Prospectus.

BANKER(S) TO THE OFFER/ESCROW COLLECTION BANK(S): ICICI Bank Limited and HDFC Bank Limited.

Refund Bank: HDFC Bank Limited.

All capital terms used and not specifically defined shall have the same meaning ascribed to them in the Red Herring Prospectus.

For **PNC INFRATECH LIMITED**
on behalf of Board of Directors
Sd/-
Chairman and Managing Director

Date: April 28, 2015

PNC Infratech Limited is proposing, subject to receipt of requisite approvals, market conditions and other considerations, an initial public offering of its equity shares and has filed a Red Herring Prospectus dated April 28, 2015 with the Registrar of Companies, National Capital Territory of Delhi and Haryana ("RoC"). Investors should note that investment in equity shares involves a high degree of risk and for details refer to the Red Herring Prospectus, including the section titled "Risk Factors". The Red Herring Prospectus is available on the website of the Securities and Exchange Board of India ("SEBI") at www.sebi.gov.in and the websites of the Book Running Lead Managers at www.icicisecurities.com and www.idfccapital.com. The Equity Shares have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the "U.S. Securities Act") and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as defined in Regulation S under the U.S. Securities Act ("Regulation S") except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the U.S. Securities Act and applicable state securities laws. Accordingly, the Equity Shares are only being offered and sold outside the United States in offshore transactions in reliance on Regulation S of the U.S. Securities Act and the applicable laws of the jurisdiction where those offers and sales occur. No public offering of securities is contemplated in the United States or any other jurisdiction outside India.

Not for release in the United States. This is an advertisement for information purposes only. This is not a Prospectus announcement and does not constitute an invitation or offer to acquire, purchase or subscribe for securities. Not for publication or distribution, directly or indirectly outside India.

UFO MOVIEZ INDIA LIMITED

digital cinema

The Company was incorporated as "Valuable Media Private Limited" under the provisions of the Companies Act, 1956 pursuant to a certificate of incorporation dated June 14, 2004 issued by the Registrar of Companies, Maharashtra at Mumbai. For further details in relation to changes to our name, status and registered address, see "History and Certain Corporate Matters" on page 207 of the Red Herring Prospectus ("RHP").

Corporate Identity Number: U22120DL2004PLC164725; **Registered Office:** Office No. 12, 3rd Floor, 312 Surya Kiran Building, 19 Kasturba Gandhi Marg, New Delhi 110 001, India. **Tel:** +91 (11) 4370 4300/11; **Fax:** +91 (11) 4370 4322; **Website:** www.ufomoviez.com; **Corporate Office:** Valuable Techno Park, Plot No. 53/1, Road No. 7, MIDC, Marol, Andheri East, Mumbai 400 093, India. **Tel:** +91 (22) 4030 5000; **Fax:** +91 (22) 4030 5110; **Contact Person:** Mr. Sumeet Chavan (Company Secretary and Compliance Officer); **Tel:** +91 (22) 4030 5000; **Fax:** +91 (22) 4030 5124; **E-mail:** investors@ufomoviez.com

PROMOTERS OF THE COMPANY: MR. SANJAY GAIKWAD, MR. NARENDRA HETE, VALUABLE MEDIA LIMITED, VALUABLE TECHNOLOGIES LIMITED AND APOLLO INTERNATIONAL LIMITED

INITIAL PUBLIC OFFERING OF [•] EQUITY SHARES OF FACE VALUE OF ₹ 10 EACH ("EQUITY SHARES") OF UFO MOVIEZ INDIA LIMITED (THE " ISSUER" OR THE "COMPANY") FOR CASH AT A PRICE OF ₹ [•] PER EQUITY SHARE INCLUDING A SHARE PREMIUM OF ₹ [•] PER EQUITY SHARE, AGGREGATING TO ₹ 6,000 MILLION (THE "OFFER") THROUGH AN OFFER FOR SALE BY 3i RESEARCH (MAURITIUS) LIMITED ("3i RESEARCH"), P5 ASIA HOLDING INVESTMENTS (MAURITIUS) LIMITED ("P5"), SANJAY GAIKWAD (OUR MANAGING DIRECTOR), NARENDRA HETE, VALUABLE MEDIA LIMITED, VALUABLE TECHNOLOGIES LIMITED, RAAJA KANWAR, PRAFULLA VAIDYA, UDAY GAIKWAD, RAKESH GUPTA, AMIT K. MEHTA, AMIT S. SHELAR, ASHISH SADANAND MALUSHTE, DANIYAL APPA PARAB, DEEPAK RANJAN, DHEERENDRA SINGH MUCHHAL, K. SUVARNA, KAPIL KUMAR AGARWAL (OUR JOINT MANAGING DIRECTOR), KETAN NATWARLAL PITHADIA, MITALEE V. PATEL, MUKESH SHANKER SHERIGAR, NITIN LIONEL MONTEIRO, NITIN NOHANI, PRASHANT S. KELUSKAR, PRAVIN RAMDAS VAJE, RAJENDRA LAXMAN GAIKWAD, RAJESH B. MISHRA, RAVI SUKHADEO NAKHALE, SAMIR SHANTARAM SURVE, SANJAY PARDESHI CHAVAN, SUDALAIMANI KONAR, SUDHIR VITTAL SHETTY, SWAPNIL C. BORKAR, VIKRAM MACHAIAH AND VISHNU VITHALBHAI PATEL (TOGETHER THE "SELLING SHAREHOLDERS"). THE OFFER SHALL CONSTITUTE [•]% OF THE FULLY DILUTED POST-OFFER PAID UP EQUITY SHARE CAPITAL OF OUR COMPANY.

PRICE BAND: ₹ 615 TO ₹ 625 PER EQUITY SHARE OF FACE VALUE OF ₹ 10 EACH

THE FLOOR PRICE IS 61.5 TIMES THE FACE VALUE AND THE CAP PRICE IS 62.5 TIMES THE FACE VALUE

BIDS CAN BE MADE FOR A MINIMUM OF 24 EQUITY SHARES AND IN MULTIPLES OF 24 EQUITY SHARES THEREAFTER.

BID/OFFER PROGRAMME | **OPENS ON* TUESDAY APRIL 28, 2015** | **CLOSES ON THURSDAY APRIL 30, 2015**

*Our Company, 3i Research, P5 and the Promoter Selling Shareholders in consultation with the Managers, may consider participation by Anchor Investors in accordance with the ICDR Regulations. The Anchor Investor Bidding Date shall be one Working Day prior to the Offer Opening Date.

BASIS FOR OFFER PRICE

The Offer Price will be determined by our Company, 3i Research, P5 and the Promoter Selling Shareholders, in consultation with the Global Coordinators and Book Running Lead Managers ("Managers") on the basis of assessment of market demand for the Equity Shares through the Book Building Process and on the basis of the following qualitative and quantitative factors. The face value of the Equity Shares is ₹ 10 each and the Price Band is 61.5 times the face value at the lower end of the Price Band and 62.5 times the face value at the higher end of the Price Band.

Qualitative Factors

Some of the qualitative factors which form the basis for the Offer Price are: • leading player in the digital cinema space in India; • business model focused on creating value for all stakeholders in the cinema industry; • market leader in reach in the fast growing in-cinema advertising market in India; • advanced end-to-end technology platform with high uptime levels; • experienced management team with established track record; and • strong profitability with diversified and visible revenue streams.

For further details, please see "Business" and "Risk Factors" beginning on pages 185 and 24 of the Red Herring Prospectus, respectively.

Quantitative Factors

Information presented in this section is derived from the Restated Summary Statements prepared in accordance with Companies Act and the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulations"). Some of the quantitative factors which form the basis for computing the Offer Price, are as follows:

1. Basic Earnings Per Share (EPS) & Diluted Earnings Per Share (EPS)

a. As per our Restated Consolidated Summary Statements

Fiscal year ended / Period ended	Basic EPS (₹)	Diluted EPS (₹)	Weight Standalone
Financial Year 2014	16.77	16.66	3
Financial Year 2013	11.79	11.39	2
Financial Year 2012	0.62	0.47	1
Weighted average	**12.39**	**12.21**	
Nine months period ended December 31, 2014*	13.84	12.38	

*Not annualized

b. As per our Restated Unconsolidated Summary Statements

Fiscal year ended / Period ended	Basic EPS (₹)	Diluted EPS (₹)	Weight Standalone
Financial Year 2014	12.30	12.21	3
Financial Year 2013	8.53	8.30	2
Financial Year 2012	2.04	2.01	1
Weighted average	**9.43**	**9.21**	
Nine months period ended December 31, 2014*	8.69	8.44	

*Not annualized

Notes: i. The figures disclosed above are based on the Restated Summary Statements of the Company. ii. The face value of each Equity Share is ₹ 10. iii. Earnings Per Share has been calculated in accordance with Accounting Standard 20 - Earnings Per Share issued by the Institute of Chartered Accountants of India.

2. Price Earning (P/E) Ratio in relation to the Price Band of ₹ 615 to ₹ 625 per Equity Share of ₹ 10 each

S. No.	Particulars	P/E at the lower end of Price band (no. of times)	P/E at the higher end of Price band (no. of times)
1.	Based on basic EPS as per the Restated Consolidated Summary Statements for Financial Year 2014	36.68	37.28
2.	Based on basic EPS as per the Restated Unconsolidated Summary Statements for Financial Year 2014	50.00	50.81
3.	Based on diluted EPS as per the Restated Consolidated Summary Statements for Financial Year 2014	36.92	37.52
4.	Based on diluted EPS as per the Restated Unconsolidated Summary Statements for Financial Year 2014	50.37	51.19

3. Industry P/E ratio*

Particulars	P/E
Highest	220.7
Lowest	2.0
Average	27.5

* Source: Capital Market (Magazine), Vol. XXX/04: April 13, 2015 – April 26, 2015, Industry considered is "Entertainment / Electronic Media Software"

4. Average Return on Net Worth (RONW)

a. As per the Restated Consolidated Summary Statements

Financial	Period Consolidated (%)	Weight Standalone
Financial Year 2014	10.94	3
Financial Year 2013	8.62	2
Financial Year 2012	0.41	1
Weighted average	**8.46**	
Nine month period ended December 31, 2014**	7.09	

* Net Profit after tax, (after preference dividend and related tax) as restated / Net worth at the end of the period/year excluding preference share capital and cumulative preference dividend. **Not annualized

b. As per the Restated Unconsolidated Summary Statements

Financial	Period Consolidated (%)	Weight Standalone
Financial Year 2014	8.66	3
Financial Year 2013	6.83	2
Financial Year 2012	1.73	1
Weighted average	**6.83**	
Nine months period ended December 31, 2014**	4.47	

* Net Profit after tax, (after preference dividend and related tax) as restated / Net worth at the end of the period/year excluding preference share capital and cumulative preference dividend.
** Not annualized

There will be no change in the net worth post-Offer as the Offer is by way of offer for sale by the Selling Shareholders.

5. Net Asset Value per Equity Share

Period	Restated unconsolidated (₹)	Restated Consolidated (₹)
Financial Year 2014	142.81	153.33
Financial Year 2013	129.02	137.67
Financial Year 2012	119.80	119.40
As on December 31, 2014	149.82	169.44
NAV after the Offer *	[•]	[•]
Offer Price*	[•]	[•]

*There is no change in the net worth post-Offer as the Offer is by way of offer for sale by the Selling Shareholders.
*Offer Price per Equity Share will be determined on conclusion of the Book Building Process.
Net Asset Value per Equity Share = Net worth at the end of the period/year excluding preference share capital and cumulative preference dividend
Total number of equity shares outstanding at the end of the period/year

6. Comparison with listed industry peers

Name of Company	Standalone / Consolidated	Face Value (Rs. Per share)	EPS (₹) Basic	EPS (₹) Diluted	NAV (₹ per share)	P/E[6]	RONW (%)
UFO Moviez India Limited	Unconsolidated[1]	10.00	12.30	12.21	142.81	N.A.	8.66%
	Consolidated[2]	10.00	16.77	16.66	153.33	N.A.	10.94%
Peer Group							
Entertainment Network (India) Limited[3]	Consolidated	10.00	17.54	17.54	111.72	21.11	15.70%
Inox Leisure Limited[4]	Consolidated	10.00	4.85	4.85	46.20	73.57	8.31%
TV18 Broadcast Limited[5]	Consolidated	2.00	0.61	0.61	17.92	41.72	3.18%
PVR Limited[6]	Consolidated	10.00	13.72	13.69	87.14	34.11	15.65%
Zee Entertainment Enterprises Limited[7]	Consolidated	1.00	9.19	9.19	27.30	29.56	33.99%

(1) For the year ended March 31, 2014, based on Restated Unconsolidated Summary Statements. (2) For the year ended March 31, 2014, based on Restated Consolidated Summary Statements. (3) Source: Annual Report for Entertainment Network (India) Limited, 2014. (4) Source: Annual Report for Inox Leisure Limited, 2014. (5) Source: Annual Report for TV18 Broadcast Limited, 2014. (6) Source: Annual Report for PVR Limited, 2014. (7) Source: Annual Report for Zee Entertainment Enterprises Limited, 2014. (8) P/E ratio based on closing market price as on March 31, 2014 available on www.bseindia.com and using Basic EPS.

The Offer Price of ₹ [•] has been determined by our Company, 3i Research, P5 and the Promoter Selling Shareholders, in consultation with the Managers on the basis of the demand from investors for the Equity Shares through the Book Building Process. Our Company and the Managers believe that the Offer Price of ₹ [•] is justified in view of the above qualitative and quantitative parameters. Investors should read the above mentioned information along with the sections titled "Risk Factors", "Business" and "Financial Statements" beginning on pages 24, 185 and 337 of the Red Herring Prospectus respectively, to have a more informed view. The trading price of the Equity Shares of our Company could decline due to the factors mentioned in "Risk Factors" and you may lose all or part of your investments.

For further details, see the section "Basis for Offer Price" on page 140 of the Red Herring Prospectus.

ASBA* **Simple, Safe, Smart way of making an Application - Make use of it!!!**

*Applications supported by blocked amount (ASBA) is a better way of applying to issues by simply blocking the fund in the bank account. Investors can avail the same. For details, check section on ASBA below.

Continued on Next Page

ASBA* Simple, Safe, Smart way of making an Application - Make use of it!!!

*Applications supported by blocked amount (ASBA) is a better way of applying to issues by simply blocking the fund in the bank account, investors can avail the same. For details, check section on ASBA below.

In case of revision in the Price Band, the Offer Period will be extended for a minimum of three additional Working Days after revision of the Price Band subject to the Offer Period not exceeding 10 Working Days. Any revision in the Price Band and the revised Offer Period, if applicable, will be widely disseminated by notification to BSE and NSE, by issuing a press release, and also by indicating the change on the websites of the Managers and at the terminals of the Syndicate Members and Registered Brokers and by intimation to Self Certified Syndicate Banks ("**SCSBs**").

In terms of Rule 19(2)(b)(i) of the Securities Contracts (Regulation) Rules, 1957, as amended ("**SCRR**") read with Regulation 41 of the ICDR Regulations, this is an offer for atleast 25% of the post-Offer capital and is being made through the Book Building Process, wherein 50% of the Offer shall be available for allocation on a proportionate basis to Qualified Institutional Buyers ("**QIBs**"). Provided that our Company, 3i Research, P5 and the Promoter Selling Shareholders, in consultation with the Managers, may allocate up to 60% of the QIB Category to Anchor Investors on a discretionary basis out of which one-third shall be reserved for domestic Mutual Funds only subject to valid Bids being received from domestic Mutual Funds at or above the Anchor Investor Allocation Price. In the event of under-subscription in the Anchor Investor Portion, the remaining Equity Shares shall be added to the Net QIB Category. 5% of the Net QIB Category shall be available for allocation on a proportionate basis to Mutual Funds only, and the remainder of the Net QIB Category shall be available for allocation on a proportionate basis to all QIBs, including Mutual Funds, subject to valid Bids being received at or above the Offer Price. Further, not less than 15% of the Offer shall be available for allocation on a proportionate basis to Non-Institutional Investors and not less than 35% of the Offer shall be available for allocation, in accordance with the ICDR Regulations, to Retail Individual Investors, subject to valid Bids being received at or above the Offer Price.

All investors, other than Anchor Investors, can participate in the Offer through the Applications Supported by Blocked Amount ("**ASBA**") process by providing the details of their respective bank accounts in which the corresponding Bid Amount will be blocked by the "SCSBs". However, QIBs (excluding Anchor Investors) and Non-Institutional Investors are mandatorily required to submit their Bids by way of ASBA only. For details, see "Offer Procedure" on page 561 of the Red Herring Prospectus.

Bidders should note that on the basis of PAN, DP ID and Client ID as provided in the Bid cum Application Form, the Bidder may be deemed to have authorized the Depositories to provide to the Registrar to the Offer, any requested Demographic Details of the Bidder as available on the records of the depositories. These Demographic Details may be used, among other things, for giving refunds and allocation advice (including through physical refund warrants, direct credit, NECS, NEFT and RTGS), or unblocking of ASBA Account or for other correspondence(s) related to the Offer. Bidders are advised to update any changes to their Demographic Details as available in the records of the Depository Participant to ensure accuracy of records. Any delay resulting from failure to update the Demographic Details would be at the Bidders' sole risk. Bidders should ensure that PAN, DP ID and the Client ID are correctly filled in the Bid cum Application Form. The PAN, DP ID and Client ID provided in the Bid cum Application Form should match with the PAN, DP ID and Client ID available in the Depository database, **otherwise, the Bid cum Application Form is liable to be rejected.**

Contents of the Memorandum of Association as regards its Objects: Investors are requested to refer to clause III of the Memorandum of Association for the main objects and other objects of the Company. The Memorandum of Association is a material document for inspection in relation to the Offer. For details, see the section "Material Contracts and Documents for Inspection" on page 587 of the Red Herring Prospectus.

Liability of the members of the Company: Limited by shares

Amount of share capital of the Company and Capital structure: The authorised share capital of the Company is ₹ 1,885,000,000 divided into 450,000,000 Equity Shares of ₹ 10 each and 1,385,000 Preference Shares of ₹ 1,000 each. As on the date of the Red Herring Prospectus, the issued and paid up share capital of the Company is ₹ 258,976,890 divided into 25,897,689 Equity Shares of ₹ 10 each. For further details, see section "Capital Structure" on page 95 of the Red Herring Prospectus.

Names of signatories to the Memorandum of Association and the number of Equity Shares subscribed by them: Given below are the names of the signatories of the Memorandum of Association of the Company and the number of Equity Shares subscribed for by them at the time of signing of the Memorandum of Association: **1. Mr. Sanjay S. Gaikwad** (3,500 Equity Shares); 2. **Mr. Masood B. Zaidi** (3500 Equity Shares); 3. **Mr. Narendra Hete** (3000 Equity Shares); **Total** Equity Shares: 10,000.

Listing: The Equity Shares offered through the Red Herring Prospectus are proposed to be listed on BSE and NSE. The Company has received in-principle approvals from BSE and NSE for listing of the Equity Shares pursuant to letters dated January 8, 2015 and January 19, 2015 respectively. For the purposes of the Offer, BSE shall be the Designated Stock Exchange.

Disclaimer Clause of SEBI: "SEBI only gives its observations on the offer documents and this does not constitute approval of either the Offer or the specified securities or the Offer document." The investors are advised to refer to page 554 of the Red Herring Prospectus for the full text of the Disclaimer clause of SEBI.

Disclaimer Clause of BSE: "It is to be distinctly understood that the permission given by BSE Limited should not in any way be deemed or construed that the Red Herring Prospectus has been cleared or approved by BSE Limited nor does it certify the correctness or completeness of any of the contents of the Red Herring Prospectus. The investors are advised to refer to the Red Herring Prospectus for the full text of the Disclaimer clause of the BSE Limited."

Disclaimer Clause of NSE: "It is to be distinctly understood that the permission given by NSE should not in any way be deemed or construed that the Offer Document has been cleared or approved by NSE nor does it certify the correctness or completeness of any of the contents of the Offer Document. The investors are advised to refer to the Offer Document for the full text of the Disclaimer clause of NSE."

General Risks: Investments in equity and equity-related securities involve a degree of risk and investors should not invest any funds in the Offer unless they can afford to take the risk of losing their investment. Investors are advised to read the Risk Factors carefully before taking an investment decision in the Offer. For taking an investment decision, investors must rely on their own examination of the Company and the Offer, including the risks involved. The Equity Shares offered in the Offer have not been recommended or approved by the Securities and Exchange Board of India ("SEBI"), nor does SEBI guarantee the accuracy or adequacy of the Red Herring Prospectus. Specific attention of the investors is invited to the section "Risk Factors" on page 24 of the Red Herring Prospectus.

GLOBAL COORDINATORS AND BOOK RUNNING LEAD MANAGERS		REGISTRAR TO THE OFFER	COMPANY SECRETARY AND COMPLIANCE OFFICER
AXIS CAPITAL **Axis Capital Limited** 1st Floor, Axis House, C-2, Wadia International Centre, P.B. Marg, Worli, Mumbai 400 025, Maharashtra, India **Telephone:** +91 (22) 4325 2183; **Facsimile:** +91 (22) 4325 3000 **E-mail:** ufoipo@axiscap.in; **Website:** www.axiscapital.co.in **Investor grievance ID:** complaints@axiscap.in **Contact person:** Ms. Simran Gadh **SEBI registration number:** INM000012029	citi **Citigroup Global Markets India Private Limited** 1202, 12th Floor, First International Financial Centre, G-Block, Bandra Kurla Complex, Bandra East, Mumbai 400 051, Maharashtra, India **Telephone:** +91 (22) 6175 9999 **Facsimile:** +91 (22) 6175 9961 **E-mail:** ufo.ipo@citi.com **Website:** http://www.online.citibank.co.in/rhtm/citigroupglobalscreen1.htm **Investor grievance ID:** investors.cgmib@citi.com **Contact person:** Mr. Aashray Tandon **SEBI registration number:** INM000010718	KARVY **Karvy Computershare Private Limited** Karvy Selenium Tower B, Plot 31-32, Financial District, Nanakramguda, Gachibowli, Hyderabad – 500 032 **Telephone:** +91 (40) 6716 2222; **Facsimile:** +91 (40) 2300 1153 **Toll Free no.:** 1800-345-4001 **E-mail/Investor grievance ID:** ufo.ipo@karvy.com **Website:** https://karisma.karvy.com; **Contact person:** Mr. M Murali Krishna **SEBI registration number:** INR000000221	**Mr. Sameer Chavan** Valuable Techno Park, Plot No. 53/1, Road No. 7, MIDC, Marol, Andheri East, Mumbai – 400 093 **Telephone:** +91 (22) 4030 5060 **Facsimile:** +91 (22) 4030 5124 **E-mail:** investors@ufomoviez.com Investors can contact the Compliance Officer or the Registrar to the Offer in case of any pre-Offer or post-Offer related problems, such as non-receipt of letters of Allotment, credit of Allotted Equity Shares in the respective beneficiary account and refund orders.

AVAILABILITY OF RED HERRING PROSPECTUS: Investors are advised to refer to the Red Herring Prospectus and the Risk Factors contained therein before applying in the Offer. Full copy of the Red Herring Prospectus is available at www.sebi.gov.in and the websites of the Managers at www.axiscapital.co.in, http://www.online.citibank.co.in/rhtm/citigroupglobalscreen1.htm and websites of BSE & NSE i.e. www.bseindia.com and www.nseindia.com.

AVAILABILITY OF BID CUM APPLICATION FORMS: Bid-cum-application forms can be obtained from **UFO MOVIEZ INDIA LIMITED**, the Global Coordinators and Book Running Lead Managers to the Offer: **Axis Capital Limited, Telephone:** +91 (22) 4325 2183, **Facsimile:** +91 (22) 4325 3000, **Citigroup Global Markets India Private Limited, Telephone:** +91 (22) 6175 9999, **Facsimile:** +91 (22) 6175 9961; Escrow Collection Banks i.e. Axis Bank Ltd., HDFC Bank Ltd., ICICI Bank Ltd. and at the select locations of the Sub-Syndicate members participating in the Offer as given below. Bid-cum-Application forms will also be available on the websites of BSE, NSE and the designated branches of SCSBs.

Axis Securities Limited, Ajcon Global Services Limited, Alankit Assignments Limited, Almondz Global Securities Limited, Amit Jasani Financial Services Pvt Limited, Amrapali Capital & Finance Services Limited, Anand Rathi Share & Stock Brokers Ltd, Anand Share Consultancy, Anil Dhiwa, ANS Pvt Limited, Ashika Stock Broking Limited, Asit C Mehta Investment Intermediates Limited, Bonanza Portfolio Limited, Centrum Broking Limited, Chugh Securities (P) Limited, Dalal & Broacha Stock, Edelweiss Broking Limited, Eureka Stock & Share Broking Services Limited, Geojit BNP Paribas Financial Services, HDFC Securities Limited, Hem Securities Limited, Hitesh Shah Share & Stock Brokers, ICICI Securities Limited, IDBI Capital Market Services Limited, India Infoline Limited, Innovate Securities Pvt Limited, Jhaveri Securities, JM Financial Services, Jobanputra Fiscal Services Pvt Limited, Jsindre Capital Services Limited, Kalpataru Multiplier Limited, Kamlesh D Joshi, Karvy Stock Broking Limited, Kaushik N. Shah, Keynote Capitals Limited, KIFS Securities, KJMC Capital Market Services Limited, Kotak Securities Limited, Leo Financial Services Limited, LKP Securities Limited, Marwadi Shares & Finance, Malabla Stock Broking Pvt Limited, Mehta Equities Limited, Microsec Capital Limited, Monarch Projects & Finmarkets Limited, Motilal Oswal Securities Limited, Mukesh D Joshi, Networth Stock Broking Limited, Nirmal Bang Securities Pvt Limited, Nitin Parikh & Co, Prabhudas Lilladher Pvt Limited, Pratibhut Viniyog Limited, Pravin Ratilal Share & Stock Brokers Limited, PRL stock & Share Brokers Pvt Limited, Reliance Securities Limited, Religare Securities Limited, RR Equity Brokers Pvt Limited, Sharekhan Limited, SMC Global Securities Limited, SS Corporate Securities Limited, Sun 'N' Sun Financial, Suresh Securities & Finance Limited, Sushil Financial Services Pvt Limited, Systematix Shares & Stocks (I) Limited, Tanna Financial Services, Way2wealth Brokers Pvt Limited.

APPLICATIONS SUPPORTED BY BLOCKED AMOUNT (ASBA): Investors may apply through the ASBA process. ASBA can be availed by all the investors except Anchor Investors. Non-Retail investors have to compulsorily apply through ASBA to participate in the Offer. The investor is required to fill the Bid cum Application Form and submit the same to their respective SCSB or to the Managers at the Specified Locations or the Registered Brokers at Broker Centres. The SCSB will block the amount in the account as per the authority contained in the Bid cum Application Form. On Allotment, amount will be unblocked and account will be debited only to the extent required to be paid for Allotment of Equity Shares. Hence, there will be no need for refunds. Bid cum Application Forms can also be downloaded from the websites of BSE and NSE at www.bseindia.com and www.nseindia.com. Bid cum Application Form can be obtained from the list of SCSBs that is available on the website of SEBI at http://www.sebi.gov.in/sebiweb/home/list/5/33/0/0/Recognised-Intermediaries. For details about ASBA, please refer to the details given in Bid cum Application Form and Abridged Prospectus and the section "Offer Procedure" beginning on page 561 of the Red Herring Prospectus. **Escrow Collection Banks:** Axis Bank Limited, HDFC Bank Limited and ICICI Bank Limited.

Refund Bank: Axis Bank Limited

Public Offer Account Bank: Axis Bank Limited

For **UFO MOVIEZ INDIA LIMITED**
on behalf of Board of Directors
Sd/-
COMPANY SECRETARY AND COMPLIANCE OFFICER

Place: Mumbai
Date: April 20, 2015

UFO Moviez India Limited is proposing, subject to receipt of requisite approvals, market conditions and other considerations, to undertake an initial public offering of its securities and has registered a red herring prospectus with the Registrar of Companies, National Capital Territory of Delhi and Haryana. The Red Herring Prospectus is available on the website of the Securities and Exchange Board of India (SEBI) at www.sebi.gov.in and the respective websites of the Global Coordinators and Book Running Lead Managers at www.axiscapital.co.in and http://www.online.citibank.co.in/rhtm/citigroupglobalscreen1.htm. Investors should note that investment in equity shares involves a high degree of risk and for details relating to the same, please refer to the Red Herring Prospectus, including the section "Risk Factors" on page 24 of the Red Herring Prospectus. Potential investors should not rely on the draft red herring prospectus filed with the SEBI in making any investment decision. This document is not an offer of securities for sale in the United States or elsewhere. This document has been prepared for publication in India and is not for publication or distribution, directly or indirectly, in or into the United States. The Equity Shares have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the "U.S. Securities Act") or any state securities laws in the United States, and may not be offered or sold within the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the U.S. Securities Act and applicable state securities laws. Accordingly, the Equity Shares are being offered and sold (i) in the United States only to "qualified institutional buyers" (as defined in Rule 144A under the U.S. Securities Act) in transactions exempt from the registration requirements of the U.S. Securities Act and (ii) outside the United States in compliance with Regulation S under the U.S. Securities Act and the applicable laws of the jurisdiction where those offer and sales occur. There will not be any public offering of securities in the United States. As such, please read the Preliminary Offering Memorandum available with the Managers before making an investment decision.

DRAFT RED HERRING PROSPECTUS
Dated July 12, 2013
100% Book Building Offer

ENGINEERS INDIA LIMITED

The Company is a Government Company and was originally incorporated in New Delhi on March 15, 1965 under the Companies Act, 1956, as a private limited company under the name 'Engineers India Private Limited' pursuant to a formation agreement dated November 20, 1964 and in accordance with a memorandum of agreement dated June 27, 1964 between the Government of India and Bechtel International Corporation.

Registered and Corporate Office: Engineers India Bhawan, 1, Bhikaiji Cama Place, New Delhi 110 066, India;
Telephone: +91 11 2676 2121; **Facsimile:** +91 11 2619 8210
For details of changes in our name and registered office, please see "History and Corporate Structure – Changes in the Registered Office" on page 142.

Company Secretary and Compliance Officer: Mr. Rajan Kapur; **Telephone:** +91 11 2610 0258; **Facsimile:** +91 11 2619 1690; **E-mail:** company.secretary@eil.co.in
Website: www.engineersindia.com

PROMOTER: THE PRESIDENT OF INDIA, ACTING THROUGH THE MINISTRY OF PETROLEUM AND NATURAL GAS ("MoPNG"), GOVERNMENT OF INDIA

FURTHER PUBLIC OFFER OF 33,693,660 EQUITY SHARES OF ₹ 5 EACH ("EQUITY SHARES") OF ENGINEERS INDIA LIMITED ("EIL" OR "THE COMPANY") THROUGH AN OFFER FOR SALE BY THE PRESIDENT OF INDIA, ACTING THROUGH THE MINISTRY OF PETROLEUM AND NATURAL GAS, GOVERNMENT OF INDIA (THE "SELLING SHAREHOLDER") FOR CASH AT A PRICE OF ₹ [●]* PER EQUITY SHARE AGGREGATING UP TO ₹ [●] MILLION (THE "OFFER"). THE OFFER COMPRISES A NET OFFER TO PUBLIC OF 33,193,660 EQUITY SHARES (THE "NET OFFER") AND A RESERVATION OF 500,000 EQUITY SHARES FOR SUBSCRIPTION BY ELIGIBLE EMPLOYEES (THE "EMPLOYEE RESERVATION PORTION"). THE OFFER SHALL CONSTITUTE 10% OF THE POST OFFER PAID-UP EQUITY SHARE CAPITAL OF THE COMPANY AND THE NET OFFER SHALL CONSTITUTE 9.85 % OF THE POST OFFER PAID-UP EQUITY SHARE CAPITAL OF THE COMPANY.

THE PRICE BAND, THE MINIMUM BID LOT AND THE RUPEE AMOUNT OF THE RETAIL DISCOUNT AND THE EMPLOYEE DISCOUNT WILL BE DECIDED BY THE SELLING SHAREHOLDER AND THE COMPANY IN CONSULTATION WITH THE BOOK RUNNING LEAD MANAGERS AND ADVERTISED IN ONE ENGLISH NATIONAL DAILY NEWSPAPER AND ONE HINDI NATIONAL DAILY NEWSPAPER, EACH WITH WIDE CIRCULATION, AT LEAST ONE WORKING DAY PRIOR TO THE OFFER OPENING DATE, WITH THE RELEVANT FINANCIAL RATIOS CALCULATED AT THE FLOOR PRICE AND AT THE CAP PRICE.

THE FACE VALUE OF THE EQUITY SHARES IS ₹ 5 EACH.

Discount of ₹ [●] and ₹ [●] to the Offer Price is being offered to the Retail Individual Bidders ("Retail Discount**") and Eligible Employees ("**Employee Discount**") respectively.*

In case of revision in the Price Band, the Offer Period will be extended for at least three additional Working Days after the revision of the Price Band subject to the Offer Period not exceeding 10 Working Days. Any revision in the Price Band and the revised Offer Period will be widely disseminated by notification to the Self Certified Syndicate Banks ("**SCSBs**"), the BSE Limited (the "**BSE**") and the National Stock Exchange of India Limited (the "**NSE**"), by issuing a press release, and also by indicating the change on the websites of the Book Running Lead Managers ("**BRLMs**") and at the terminals of the members of the Syndicate.

This Offer is being made through the Book Building Process where not more than 50% of the Net Offer will be allocated on a proportionate basis to Qualified Institutional Buyers ("**QIBs**") ("**QIB Portion**"). Further, subject to valid Bids, 5% of the QIB Portion will be available for allocation on a proportionate basis to Mutual Funds only. The remainder will be available for allocation on a proportionate basis to QIBs, including Mutual Funds, subject to valid Bids being received from them at or above the Offer Price. In addition, not less than 15% of the Net Offer will be available for allocation on a proportionate basis to Non-Institutional Bidders and not less than 35% of the Net Offer will be available for allocation to Retail Individual Bidders, subject to valid Bids being received at or above the Offer Price. Further, 500,000 Equity Shares shall be available for allocation on a proportionate basis to the Eligible Employees, subject to valid Bids being received from them at or above the Offer Price. Retail Individual Bidders and Eligible Employees have an option to participate in the Offer either through the ASBA or the non-ASBA process. QIBs and Non Institutional Bidders must Bid through the ASBA process on a mandatory basis if they wish to participate in the Offer. For more information, please see "Offer Procedure" on page 322.

GENERAL RISKS

Investments in equity and equity-related securities involve a degree of risk and Bidders should not invest any funds in this Offer unless they can afford to take the risk of losing their investment. Bidders are advised to read the Risk Factors carefully before making an investment decision in this Offer. For making an investment decision, Bidders must rely on their own examination of the Company and this Offer, including the risks involved. The Equity Shares offered in this Offer have not been recommended or approved by the Securities and Exchange Board of India ("**SEBI**"), nor does SEBI guarantee the accuracy or adequacy of this Draft Red Herring Prospectus. The attention of Bidders is invited to "Risk Factors" on page 16.

THE SELLING SHAREHOLDER'S AND THE COMPANY'S ABSOLUTE RESPONSIBILITY

The Company and the Selling Shareholder, having made all reasonable inquiries, accept responsibility for and confirm that this Draft Red Herring Prospectus contains all information with regard to the Company, the Selling Shareholder and this Offer which is material in the context of this Offer, that the information contained in this Draft Red Herring Prospectus is true and correct in all material aspects and is not misleading in any material respect, that the opinions and intentions expressed herein are honestly held and that there are no other facts, the omission of which makes this Draft Red Herring Prospectus as a whole or any of such information or the expression of any such opinions or intentions misleading in any material respect.

LISTING

The Equity Shares are listed on the BSE and the NSE. For the purposes of this Issue, the [●] is the Designated Stock Exchange. We have received in-principle approval from the NSE and the BSE for commencement of trading of the shares offered for sale pursuant to letters dated [●] and [●] respectively.

BOOK RUNNING LEAD MANAGERS			REGISTRAR TO THE OFFER
ICICI Securities Limited ICICI Centre, H.T. Parekh Marg, Churchgate, Mumbai – 400 020. Telephone: +91 22 2288 2460 Facsimile: +91 22 2282 6580 Email: eil.fpo@icicisecurities.com Investor Grievance Id.: customercare@icicisecurities.com Website: www.icicisecurities.com Contact Person: Mr. Mangesh Ghogle SEBI Registration No.: INM000011179	**IDFC Capital Limited** 2nd Floor, Naman Chambers C – 32, G Block, Bandra Kurla Complex, Bandra (E) Mumbai - 400 051 Telephone: +91 22 6622 2600 Facsimile: +91 22 6622 2501 Email: eil.fpo@idfc.com Investor Grievance Id.: complaints@idfc.com Website: www.idfccapital.com Contact Person: Mr. Hiren Raipancholia SEBI Registration No.: INM000011336	**Kotak Mahindra Capital Company Limited** 1st Floor, Bakhtawar 229 Nariman Point, Mumbai – 400 021 Telephone: +91 22 6634 1100 Facsimile: +91 22 2284 0492 Email: eil.fpo@kotak.com Investor Grievance Id.: kmccredressal@kotak.com Website: www.investmentbank.kotak.com Contact Person: Mr. Ganesh Rane SEBI Registration No.: INM000008704	**Karvy Computershare Private Limited** Plot No. 17-24, Vittal Rao Nagar, Madhapur, Hyderabad 500 081 Telephone: +91 40 4465 5000 Facsimile: +91 40 2343 1551 E-mail: eil.fpo@karvy.com Website: https://karisma.karvy.com/ Contact Person: Mr. M. Murali Krishna SEBI Registration No.: INR000000221

OFFER PROGRAMME			
OFFER OPENS ON	**[●], 2013**	**OFFER CLOSES ON (FOR QIB BIDDERS)**	**[●], 2013**
		OFFER CLOSES ON (FOR ALL OTHER BIDDERS)	**[●], 2013***

**The Selling Shareholder and the Company may, in consultation with the Book Running Lead Managers, decide to close Bidding by QIBs one day prior to the Offer Closing Date.*

(This is only an advertisement for information purpose not for publication or distribution, directly or indirectly outside India, and not a prospectus announcement)

ENGINEERS INDIA LIMITED

The Company is a government company and was originally incorporated in New Delhi on March 15, 1965 under the Companies Act, 1956, as a private limited company under the name 'Engineers India Private Limited' pursuant to a formation agreement dated November 20, 1964 and in accordance with a memorandum of agreement dated June 27, 1964 between the Government of India and Bechtel International Corporation. **Registered and Corporate Office:** Engineers India Bhawan, 1, Bhikaji Cama Place, New Delhi 110 066, India; **Telephone:** +91 11 2676 2121; **Facsimile:** +91 11 2619 8210. For details of changes in our name and registered office, please see "History and Certain Corporate Matters – Change in our Registered Office" on page 150 of the Red Herring Prospectus (**"RHP"**). **Company Secretary and Compliance Officer:** Mr. Rajan Kapur, **Telephone:** +91 11 2610 0258; **Facsimile:** +91 11 2619 1690; **E-mail:** company.secretary@eil.co.in; **Website:** www.engineersindia.com.

PROMOTER: THE PRESIDENT OF INDIA, ACTING THROUGH THE MINISTRY OF PETROLEUM AND NATURAL GAS ("MoPNG"), GOVERNMENT OF INDIA

FURTHER PUBLIC OFFER OF 33,693,660 EQUITY SHARES OF ₹ 5 EACH ("EQUITY SHARES") OF ENGINEERS INDIA LIMITED ("EIL" OR "THE COMPANY") THROUGH AN OFFER FOR SALE BY THE PRESIDENT OF INDIA, ACTING THROUGH THE MINISTRY OF PETROLEUM AND NATURAL GAS, GOVERNMENT OF INDIA (THE "SELLING SHAREHOLDER") FOR CASH AT A PRICE OF ₹ [•] PER EQUITY SHARE AGGREGATING UP TO ₹ [•] MILLION (THE "OFFER"). THE OFFER COMPRISES A NET OFFER TO PUBLIC OF 33,193,660 EQUITY SHARES (THE "NET OFFER") AND A RESERVATION OF 500,000 EQUITY SHARES FOR SUBSCRIPTION BY ELIGIBLE EMPLOYEES (THE "EMPLOYEE RESERVATION PORTION"). THE OFFER SHALL CONSTITUTE 10% OF THE POST OFFER PAID-UP EQUITY SHARE CAPITAL OF THE COMPANY AND THE NET OFFER SHALL CONSTITUTE 9.85 % OF THE POST OFFER PAID-UP EQUITY SHARE CAPITAL OF THE COMPANY.

THE FACE VALUE OF THE EQUITY SHARES IS ₹ 5 EACH

PRICE BAND: ₹ 145 TO ₹ 150 PER EQUITY SHARE

THE FLOOR PRICE IS 29.00 TIMES OF THE FACE VALUE AND THE CAP PRICE IS 30.00 TIMES OF THE FACE VALUE.

BIDS CAN BE MADE FOR A MINIMUM OF 100 EQUITY SHARES AND IN MULTIPLES OF 100 EQUITY SHARES THEREAFTER.

Discount of ₹ 6 to the Offer Price is being offered to the Retail Individual Bidders ("Retail Discount"**) and Eligible Employees (**"Employee Discount"**).*

In case of revision in the Price Band, the Offer Period will be extended for atleast three additional Working Days after the revision of the Price Band subject to the Offer Period not exceeding 10 Working Days. Any revision in the Price Band and the revised Offer Period will be widely disseminated by notification to the Self Certified Syndicate Banks (**"SCSBs"**), the BSE Limited (the **"BSE"**) and the National Stock Exchange of India Limited (the **"NSE"**), by issuing a press release, and also by indicating the change on the websites of the Book Running Lead Managers (**"BRLMs"**) and at the terminals of the members of the Syndicate.

This Offer is being made through the Book Building Process in accordance with the Securities and Exchange Board of India (Issue of Capital Disclosure Requirements) Regulations, 2009, as amended ("SEBI ICDR Regulations"), where not more than 50% of the Net Offer will be allocated on a proportionate basis to Qualified Institutional Buyers (**"QIBs"**) (**"QIB Portion"**). Further, subject to valid Bids, 5% of the QIB Portion will be available for allocation on a proportionate basis to Mutual Funds only. The remainder will be available for allocation on a proportionate basis to QIBs, including Mutual Funds, subject to valid Bids being received from them at or above the Offer Price. In addition, not less than 15% of the Net Offer will be available for allocation on a proportionate basis to Non-Institutional Bidders and not less than 35% of the Net Offer will be available for allocation to Retail Individual Bidders, subject to valid Bids being received at or above the Offer Price. Further, 500,000 Equity Shares shall be available for allocation on a proportionate basis to the Eligible Employees, subject to valid Bids being received from them at or above the Offer Price. Retail Individual Bidders and Eligible Employees have an option to participate in the Offer either through the ASBA or the non-ASBA process. QIBs and Non Institutional Bidders must Bid through the ASBA process on a mandatory basis if they wish to participate in the Offer. For more information, please see "Offer Procedure" on page 337 of the RHP.

ASBA* Simple, Safe, Smart way of making an Application - Make use of it!!!

"Applications supported by blocked amount (ASBA) is a better way of applying to issues by simply blocking the fund in the bank account. Investors can avail the same. For details, check section on ASBA below.

For details of the share capital of our Company and our capital structure, see "Capital Structure" on page 78 of the Red Herring Prospectus. The signatories to the Memorandum of Association of our Company were the President of India, acting through Mr. P.K. Nayak, Bechtel International Corporation and R.M. Dorman who held 51 equity shares, 24 equity shares and 25 equity shares of ₹ 100 each respectively. The liability of the members of our Company is limited. For details of the main objects as contained in the Memorandum of Association of our Company, see "History and Certain Corporate Matters" on page 150 of the Red Herring Prospectus.

OFFER PROGRAMME **OPEN | CLOSING DATE# EXTENDED TO FEBRUARY 12, 2014**

ADDENDUM

In relation to the Offer, our Company has filed the Red Herring Prospectus dated January 30, 2014 with the Registrar of Companies, National Capital Territory of Delhi and Haryana ("RoC") and the Securities and Exchange Board of India. All capitalized terms used in this addendum notice shall, unless the context otherwise required, have the meaning as ascribed in the Red Herring Prospectus. Investors may note the following additions to the disclosures in the Red Herring Prospectus. The same may be taken as updated and included in the Bid cum Application Form and Abridged Prospectus.

The Offer was initially scheduled to close on February 10, 2014. However, the public sector banks have proposed a strike on February 10, 2014 and February 11, 2014, owing to which Bidders in the Offer will not be able to submit Bids through the public sector banks on February 10, 2014. Therefore, the Selling Shareholder and the Company, in consultation with the Book Running Lead Managers, have decided to extend the Offer Period till February 12, 2014 and the Offer Closing Date shall now be February 12, 2014.

The above notice is required to be read in conjunction with the other disclosures in the Red Herring Prospectus. Except for the above, the contents of the Red Herring Prospectus, Bid cum Application Form and Abridged Prospectus remain unchanged. The Prospectus to be filed by our Company with the ROC will be updated accordingly and suitable disclosures will be made therein.

Listing: The Equity Shares are listed on the BSE and the NSE. For the purposes of this Offer, the BSE is the Designated Stock Exchange. We have received in-principle approval from the NSE and the BSE for commencement of trading of the shares offered for sale pursuant to letters dated August 5, 2013 and July 29, 2013 respectively.

Disclaimer Clause of SEBI: SEBI only gives its observations on the offer documents and this does not constitute approval of either the issue or the specified securities or the offer document. The investors are advised to refer to the Red Herring Prospectus for the full text of the "Disclaimer Clause of SEBI."

Disclaimer Clause of BSE (The Designated Stock Exchange): It is to be distinctly understood that the permission given by BSE Limited should not in any way be deemed or construed that the Red Herring Prospectus has been cleared or approved by BSE Limited nor does it certify the correctness or completeness of any of the contents of the Red Herring Prospectus. The investors are advised to refer to the Red Herring Prospectus for the full text of the "Disclaimer clause of the BSE Limited".

Disclaimer Clause of NSE: It is to be distinctly understood that the permission given by NSE should not in any way be deemed or construed that the Offer Document has been cleared or approved by NSE nor does it certify the correctness or completeness of any of the contents of the Offer Document. The investors are advised to refer to the Offer Document for the full text of the "Disclaimer clause of NSE".

Bidders should note that on the basis of Permanent Account Number (PAN) of the Bidders, Depository Participant ID (DPID) and Client ID provided by them in the Bid-cum-Application Form as entered into the electronic bidding system of the Stock Exchanges by member of the Syndicate or SCSBs or Registered Broker as the case may be, the Registrar will obtain from the Depository and ensure that they are true and correct, the demographic details including address, Bidders bank account details, MICR code and occupation (hereinafter referred to as "Demographic Details"). These bank account details would be used for giving refunds (including through physical refund warrants, direct credit, NECS, NEFT and RTGS) or unblocking of ASBA Account. Hence, Bidders are advised to immediately update their bank account details as appearing on the records of the Depository Participant. Please note that failure to do so could result in delays in despatch/ credit of refunds to Bidders or unblocking of ASBA Account at the Bidders sole risk and neither the BRLMs or the Syndicate Members or the Registrar or the Escrow Collection Banks or the SCSBs nor the Company or the Selling Shareholders shall have any responsibility and undertake any liability for the same. Hence, Bidders should carefully fill in their Depository Account details in the Bid-cum-Application Form. The Bidders should note that in case the DP ID and Client ID and PAN mentioned in the Bid-cum-Application Form and entered into the electronic bidding system of the Stock Exchanges by the Syndicate do not match with the DP ID and Client ID and PAN available in the database of Depositories, the Bid-cum-Application Form is liable to be rejected.

BOOK RUNNING LEAD MANAGERS | REGISTRAR TO THE OFFER

Continued on Next Page

BOOK RUNNING LEAD MANAGERS			REGISTRAR TO THE OFFER
ICICI Securities Limited ICICI Centre, H.T. Parekh Marg Churchgate, Mumbai – 400 020 Telephone: +91 22 2288 2460 Facsimile: +91 22 2282 6580 Email: eil.fpo@icicisecurities.com Investor Grievance Id.: customercare@icicisecurities.com Website: www.icicisecurities.com Contact Person: Mr. Mangesh Ghogle SEBI Registration No.: INM000011179	IDFC Capital Limited 2nd Floor, Naman Chambers C – 32, G Block, Bandra Kurla Complex Bandra (E), Mumbai - 400 051 Telephone: +91 22 6622 2600 Facsimile: +91 22 6622 2501 Email: eil.fpo@idfc.com, Investor Grievance Id.: complaints@idfc.com Website: www.idfccapital.com Contact Person: Mr. Hiren Raipancholia SEBI Registration No.: INM000011336	Kotak Mahindra Capital Company Limited 27 BKC, 1st Floor, Plot No.C-27 "G" Block, Bandra Kurla Complex Bandra (East), Mumbai - 400051 Telephone: +91 22 4336 0000 Facsimile: +91 22 6713 2447 Email: eil.fpo@kotak.com Investor Grievance Id.: kmccredressal@kotak.com Website:www.investmentbank.kotak.com Contact Person: Mr. Ganesh Rane SEBI Registration No.: INM000008704	Karvy Computershare Private Limited Plot No. 17-24, Vittal Rao Nagar Madhapur, Hyderabad 500 081 Telephone: +91 40 4465 5000 Facsimile: +91 40 2343 1551 E-mail: eil.fpo@karvy.com Website: https://karisma.karvy.com Contact Person: Mr. M. Murali Krishna SEBI Registration No.: INR000000221

Company Secretary and Compliance Officer: Mr. Rajan Kapur; **Telephone:** +91 11 2610 0258; **Facsimile:** +91 11 2619 1690; **E-mail:** company.secretary@eil.co.in

Investors can contact the Compliance Officer or the Registrar to the Offer in case of any pre-Offer or post-Offer related problems such as non-receipt of letters of Allotment, credit of Allotted Equity Shares in the respective beneficiary account or refund orders. In case of ASBA Bids submitted to the members of the Syndicate, the Bidders can contact the relevant member of the Syndicate in relation to queries relating to the Bids.

AVAILABILITY OF RED HERRING PROSPECTUS: Investors are advised to refer to the RHP and the Risk Factors contained therein before applying in the Offer. Full copy of the RHP is available on the websites of the **Book Running Lead Managers** to the offer at **www.icicisecurities.com, www.idfccapital.com** and **www.investmentbank.kotak.com** and the website of the Company at **www.engineersindia.com** and on the websites of SEBI, BSE and NSE i.e. **www.sebi.gov.in, www.bseindia.com** and **www.nseindia.com** respectively.

AVAILABILITY OF BID-CUM-APPLICATION FORMS: Bid-cum-Application Forms can be obtained from the Company and the **Book Running Lead Managers: ICICI Securities Limited**, Tel: +91 22 2288 2460 Fax: +91 22 2282 6580, **IDFC Capital Limited**, Tel: +91 22 6622 2600 Fax: +91 22 6622 2501, **Kotak Mahindra Capital Company Limited**, Tel: +91 22 4336 0000 Fax: +91 22 6713 2447, Syndicate Member: **Kotak Securities Ltd.**, Telephone: +91 22 22655074 / 84 / 05, Fascimile: +91 22 66154060 and at the select locations of the Sub-Syndicate members participating in the offer.

Electronic Bid-cum-Application Form will be available on the website of the Stock Exchanges and the Designated Branches of the SCSBs.

APPLICATIONS SUPPORTED BY BLOCKED AMOUNT (ASBA): Investors may apply through the ASBA process. ASBA can be availed by all the investors except Anchor Investors. Non-retail investors i.e. QIBs and Non-Institutional Bidders, have to compulsorily apply through ASBA to participate in the Offer. The investor is required to fill the Bid-cum-Application-Form and submit the same to their respective SCSB or to the Syndicate Members (in specified cities only) or the Registered Brokers. The SCSB will block the amount in the account as per the authority contained in the Bid-cum-Application Form. On Allotment, amount will be unblocked and account will be debited only to the extent required to be paid for Allotment of Equity Shares. Hence, there will be no need of refunds. Bid-cum-Application Forms can also be downloaded from the websites of BSE and NSE: www.bseindia.com and www.nseindia.com. Bid-cum-Application Form can be obtained from the list of SCSBs that is available on the website of SEBI at http://www.sebi.gov.in/sebiweb/home/list/5/33/0/0/Recognised-Intermediaries. For details about ASBA, please refer to the details given in Bid-cum-Application-Form, abridged prospectus and the section "Offer Procedure" beginning on page 337 of the RHP.

BANKER(S) TO THE OFFER /ESCROW COLLECTION BANK(S): Axis Bank Limited, State Bank of India, Kotak Mahindra Bank Limited, Union Bank of India, ICICI Bank Limited, Punjab National Bank and HDFC Bank.

Attention Investors

The Reserve Bank of India has issued standard operating procedure in terms of paragraph 2(a) of RBI circular number DPSS.CO.CHD.No./133/04.07.05/2013-14 dated July 16, 2013, detailing the procedure for processing CTS 2010 and Non-CTS 2010 instruments in the three CTS grid locations. As per this circular, processing of non-CTS cheques shall be done only on three days of the week. SEBI Circular No.CIR/CFD/DIL/3/2010 dated April 22, 2010 fixes the time between issue closure and listing at 12 days. In order to enable compliance with the above timelines, investors are advised to use CTS cheques or use ASBA facility to make payment. Investors using non-CTS cheques are cautioned that applications accompanied by such cheques are liable to be rejected due to any clearing delays beyond 6 working days from the date of the closure of the issue, in terms of the aforesaid SEBI Circular.

For Engineers India Limited,
on behalf of the Board of Directors
Sd/-
Chairman & Managing Director

Place: New Delhi
Date: February 09, 2014

Engineers India Limited is proposing, subject to market conditions and other considerations, a further public offer of its equity shares through an offer for sale by Government of India through the Ministry of Petroleum and Natural Gas and has filed a Red Herring Prospectus with the Registrar of Companies at National Capital Territory of Delhi and Haryana. The Red Herring Prospectus is available on the website of SEBI at www.sebi.gov.in and on the websites of the Book Running Lead Managers at www.icicisecurities.com, www.idfccapital.com and www.investmentbank.kotak.com. Investors should note that investment in equity shares involves a high degree of risk and for details relating to the same, see the section titled "Risk factors" of the Red Herring Prospectus. The Equity Shares have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the "U.S. Securities Act") and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as defined in Regulation S under the U.S. Securities Act ("Regulation S") except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the U.S. Securities Act and applicable state securities laws. The Equity Shares are being offered and sold (i) in the United States only to U.S. persons that are "qualified institutional buyers" (as defined in Rule 144A under the U.S. Securities Act ("Rule 144A"), in reliance on the exemption from registration under the U.S. Securities Act provided by Rule 144A or other available exemption and (ii) outside the United States in offshore transactions in reliance on Regulation S. No public offering of securities is contemplated in the United States or any other jurisdiction outside India.

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COMMON BID CUM APPLICATION FORM FOR ASBA / NON-ASBA	**ENGINEERS INDIA LIMITED** **FURTHER PUBLIC OFFER - R**	FOR RESIDENT INDIANS, INCLUDING RESIDENT QIBs, AND ELIGIBLE NRIs APPLYING ON A NON-REPATRIATION BASIS

TO,
THE BOARD OF DIRECTORS
ENGINEERS INDIA LIMITED

BOOK BUILDING OFFER
ISIN : INE510A01028

Bid cum Application Form No.

SYNDICATE'S / SCSB / REGISTERED BROKER'S STAMP & CODE	BROKER'S AGENT'S STAMP & CODE
ESCROW BANK / SCSB BRANCH STAMP & CODE	SUB-BROKER'S / SUB-AGENT'S STAMP & CODE
BANK BRANCH SERIAL NO.	REGISTRAR'S / SCSB SERIAL NO.

1. NAME & CONTACT DETAILS OF SOLE / FIRST APPLICANT

Mr. / Ms.

Address

Email

Tel. No (with STD code) / Mobile

2. PAN OF SOLE / FIRST APPLICANT

The Equity Shares have not been and will not be registered under the U.S. Securities Act of 1933, as amended ("**Securities Act**"), or any state securities laws in the United States, and, unless so registered, may not be offered or sold within the United States, or to, or for the account or benefit of, U.S. persons (as defined in Regulation S of the Securities Act ("**Regulation S**")), except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws. The Equity Shares are being offered and sold (a) in the United States only to persons reasonably believed to be "Qualified Institutional Buyers" (as defined in Rule 144A under the Securities Act ("**Rule 144A**")), in transaction exempt from the registration requirements of the Securities Act and (b) outside the United States in offshore transaction in reliance on Regulation S and the applicable laws of the jurisdiction where those offers and sales occur. No public offering of securities is contemplated in the United States or any other jurisdiction outside India.

3. BIDDER'S DEPOSITORY ACCOUNT DETAILS ☐ NSDL ☐ CDSL

For NSDL enter 8 digit DP ID followed by 8 digit Client ID / For CDSL enter 16 digit Client ID

4. BID OPTIONS (ONLY RETAIL INDIVIDUAL BIDDERS CAN BID AT "CUT-OFF")

Bid Options	No. of Equity Shares Bid (In Figures) (Bids must be in multiples of Bid Lot as advertised)	Price per Equity Share (₹)/ "Cut-off" (Price in multiples of ₹ 1/- only) (In Figures)			
		Bid Price	Discount, if any	Net Price	"Cut-off" (Please ✓tick)
Option 1					☐
(OR) Option 2					☐
(OR) Option 3					☐

5. CATEGORY

☐ Retail Individual
☐ Non-Institutional
☐ QIB

6. INVESTOR STATUS

☐ Individual(s) - IND
☐ Hindu Undivided Family* - HUF
☐ Bodies Corporate - CO
☐ Banks & Financial Institutions - FI
☐ Mutual Funds - MF
☐ Non-Resident Indians - NRI (Non-Repatriation basis)
☐ National Investment Fund - NIF
☐ Insurance Funds - IF
☐ Insurance Companies - IC
☐ Venture Capital Funds - VC
☐ Others (Please specify) - OTH

* HUF should apply only through *Karta* (*Application by HUF would be treated on par with Individual*)

7. PAYMENT DETAILS (PLEASE TICK (✓) ANY ONE OF PAYMENT OPTION A OR B BELOW) — PAYMENT OPTION - FULL PAYMENT

Amount Paid (₹ in figures) (₹ in words)

☐ (A) CHEQUE/ DEMAND DRAFT (DD)

Cheque/DD No. Dated

Drawn on (Bank Name & Branch)

☐ (B) ASBA

Bank A/c No.

Bank Name & Branch

I/WE (ON BEHALF OF JOINT APPLICANTS, IF ANY) HEREBY CONFIRM THAT I/WE HAVE READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS BID CUM APPLICATION FORM AND THE ATTACHED FORM 2A AND THE GENERAL INFORMATION DOCUMENT FOR INVESTING IN PUBLIC ISSUES ("GID") AND HEREBY AGREE AND CONFIRM THE 'BIDDERS UNDERTAKING' AS GIVEN OVERLEAF. I/We (on behalf of joint applicants, if any) hereby confirm that I/We have read the Instructions for filling up the Bid Cum Application Form given overleaf.

8A. SIGNATURE OF SOLE / FIRST APPLICANT	8B. SIGNATURE OF ASBA BANK ACCOUNT HOLDER(S) (AS PER BANK RECORDS) (FOR ASBA OPTION ONLY)	BROKER'S / SCSB BRANCH'S STAMP (Acknowledging upload of Bid in Stock Exchange system)
Name Date	I/We authorize the SCSB to do all acts as are necessary to make the Application in the Offer 1) 2) 3)	

TEAR HERE

ENGINEERS INDIA LIMITED
FURTHER PUBLIC OFFER - R

Acknowledgement Slip for Member of Syndicate / SCSB/Registered Broker

Bid cum Application Form No.

PAN of Sole / First Applicant

DPID / CLID

Amount Paid (₹ in figures) | Bank & Branch | Stamp & Signature of Banker

Cheque / DD/ASBA Bank A/c No.

Received from Mr./Ms.

Telephone / Mobile | Email

TEAR HERE

ENGINEERS INDIA LIMITED
FURTHER PUBLIC OFFER - R

	Option 1	Option 2	Option 3
No. of Equity Shares			
Bid Price			
Amount Paid (₹)			

Stamp & Signature of Member of Syndicate / SCSB / Registered Broker

Cheque / DD/ASBA Bank A/c No.

Bank & Branch

Name of Sole / First Applicant

Acknowledgement Slip for Bidder

Bid cum Application Form No.

Oriental Press Limited Tel.: 022-40265888

PLEASE FILL IN BLOCK LETTERS

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SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Descriptive Questions:----------
   a) Public Companies can issue 'shelf prospectus'.
   b) Define 'prospectus' what are the ingredients to constitute a prospectus?
   c) Answer the following citing the relevant provisions of law/case, if any :
   A company has issued a prospectus to the public stating that the company has paid dividend regularly and the prospectus is silent relating to the sources of profits, i.e. whether trading profits or capital profits. The fact is that the company has incurred losses for all the last 5 years, but the dividend is paid out of realized capital profits (i.e., secret reserves). Y, a shareholder, claimed that the prospectus is false. Whether Y's contention is correct?
2. Distinguish Between:----------
   'Shelf prospectus and 'red-herring prospectus'.
3. Practical Questions:----------
   Answer the following citing the relevant provisions law/case law, if any:
   A deceitful prospectus was issued by the directors on behalf of the company. Pavan received a copy of it, but did not take any shares in the company. The allotment of shares to applicants was completed. Several months later, Pavan bought 2, 000 shares of that company from the stock market. He proceeded with a suit against the directors for issuing deceitful prospectus. Will he succeed?
4. Write notes on the following:----------
   a) The golden rule or golden legacy;
   b) Cases in which prospectus is not required to be issued
5. Comment on the following:----------
   'Red-herring prospectus' means a prospectus which has complete particulars on the price of the securities offered and the quantum of securities offered.

FROM ICSI MODULE

Answer the Following:-

1. What is a prospectus? Is the issue of a prospectus compulsory on the part of a company?
2. What amounts to a misstatement in a prospectus? What are the remedies available to a subscriber who has taken shares on the basis of a misstatement in a prospectus?
3. Discuss the liability of a company for untrue statements or omissions in its prospectus.
4. Discuss the civil as well as criminal liability of persons who authorise the issue of a false prospectus.
5. Explain the legal provisions relating to issue and registration of a prospectus?
6. What are the remedies open to an allottee of securities who have had applied for them on the faith of a false and misleading prospectus and what are the defenses available to the directors of the company who have issued such a prospectus?
7. Discuss in detail the contents and the form of a prospectus.
8. Who is deemed to be an expert in relation to the prospectus of a company? What conditions must be satisfied before a report by an expert can be published therein? Is there any remedy available to the allottee of the securities who has been induced to take securities on the faith of an untrue statement of an expert in the prospectus?
9. 'Prospectus is the window through which company is displayed without distortion'. — Comment.
10. Write short notes on:
    (a) Abridged prospectus;
    (b) Registration of a prospectus.
    (c) Shelf prospectus.
    (d) Information Memorandum.
    (e) Red-herring prospectus.
    (f) Deemed Prospectus

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

12

DEBT INSTRUMENTS

Covering-

- Borrowing
- Power of Company to Borrow
- Unauthorized or Ultra Vires Borrowing
- Intra vires borrowing but outside the scope of Agents' authority
- Types of borrowings
- Self Test Questions
  - Form Past CS Exam
  - From ICSI Module

EXPECTED MARKS COVERAGE (0 to 5)

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DEBT INSTRUMENTS

BORROWING

In order to run a business effectively/successfully, adequate amount of capital is necessary. Borrowing is a mechanism used whereby the money is arranged through external resources with an implied or expressed intention of returning money.

POWER OF COMPANY TO BORROW

The power of the company to borrow is exercised by its directors, who cannot borrow more than the sum authorized. The powers to borrow money and to issue debentures whether in or outside India can only be exercised by the Directors at a duly convened meeting. Pursuant to Section 179 directors have to pass resolution at a duly convened Board Meeting to borrow moneys. The power to issue debentures cannot be delegated by the Board of directors. However, the power to borrow monies can, however, be delegated by a resolution passed at a duly convened meeting of the directors to a committee of directors, managing director, manager or any other principal officer of the company.

Section 180 of the Act prohibits the Board of directors of a company from borrowing a sum which together with the monies already borrowed exceeds the aggregate of the paid-up share capital of the company and its free reserves apart from temporary loans obtained from the company's bankers in the ordinary course of business unless they have received the prior sanction of the company by a special resolution in general meeting.

UNAUTHORIZED OR ULTRA VIRES BORROWING

Where a company **borrows without the authority conferred on it by the articles or beyond the amount set out in the Articles**, it is an *ultra vires* borrowing.

Any act which is *ultra vires* the company is void. In such a case the contract is void and the lender cannot sue the company for the return of the loan. If the lender has parted with his money to the company under an *ultra vires* borrowing, and is, therefore, unable to sue for its return, or enforce any security granted to him, **he nevertheless has, in equity, the following remedies:**

(A) Injunction and Recovery: Under the equitable doctrine of restitution he can obtain an injunction provided he can trace and identify the money lent, and any property which the company has bought with it.

(B) Subrogation: Where the money of an *ultra vires* borrowing has been used to pay off lawful debts of the company, he would be subrogated to the position of the creditor paid off and to that extent would have the right to recover his loan from the company.

(C) Suit against Directors: In case of *ultra vires* borrowing, the lender may be able to sue the directors for breach of warranty of authority, especially if the directors deliberately misrepresented their authority.

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INTRA VIRES BORROWING BUT OUTSIDE THE SCOPE OF AGENTS' AUTHORITY

A distinction should always be made between a company's borrowing powers and the authority of the directors to borrow. Where the directors borrowed money beyond their authority and the borrowing is not *ultra vires* the company, such borrowing is called *Intra vires* borrowing but outside the Scope of Agents' Authority. The company will be liable to such borrowing if the borrowing is within the directors' ostensible authority and the lender acted in good faith or if the transaction was ratified by the company.

TYPES OF BORROWINGS

A company uses various kinds of borrowing to finance its operations. The various types of borrowings can generally be categorized into:

(1)	Long term/short term borrowing,
(2)	Secured/unsecured borrowing,
(3)	Syndicated/ Bilateral borrowing,
(4)	Private/Public borrowing.

1A. **Long Terms Borrowings** - Funds borrowed for a period ranging for five years or more are termed as long-term borrowings. A long term borrowing is made for getting a new project financed or for making big capital investment etc. Generally Long term borrowing is made against charge on fixed Assets of the company.

1B. **Short Term Borrowings** - Funds needed to be borrowed for a short period say for a period up to one year or so are termed as short term borrowings. This is made to meet the working capital need of the company. Short term borrowing is generally made on hypothecation of stock and debtors.

1C. **Medium Term Borrowings** - Where the funds to be borrowed are for a period ranging from two to five years, such borrowings are termed as medium term borrowings. The commercial banks normally finance purchase of land, machinery, vehicles etc.

2A **Secured/unsecured borrowing** – A debt obligation is considered secured, if creditors have recourse to the assets of the company on a proprietary basis or otherwise ahead of general claims against the company.

2B **Unsecured debts comprise** financial obligations, where creditors do not have recourse to the assets of the company to satisfy their claims.

3A **Syndicated borrowing** – if a borrower requires a large or sophisticated borrowing facility this is commonly provided by a group of lenders known as a syndicate under a syndicated loan agreement. The borrower uses one agreement covering the whole group of banks and different types of facility rather than entering into a series of separate loans, each with different terms and conditions.

3B **Bilateral borrowing** refers to a borrowing made by a company from a particular bank/financial institution. In this type of borrowing, there is a single contract between the company and the borrower.

4A **Private borrowing** comprises bank-loan type obligations whereby the company takes loan from a bank/financial Institution.

4B **Public borrowing** is a general definition covering all financial instruments that are freely tradable on a public exchange or over the counter, with few if any restrictions i.e. Debentures, Bonds etc.

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

13

DEBENTURES

Covering-

- Debenture – Definition
- Debenture – Features
- Distinguish between Debentures and Shares
- Liability of Trustee to Debentureholders
- Debenture Trust Deed
- Inspection of Trust Deed by Debentureholders
- Creation of Debenture Redemption Reserve (DRR)
- Failure in Redemption of Debentures
- Remedies to Debentureholders
- Provision of SEBI Laws on Public Issue of Convertible Debt Instruments
- Self Test Questions
  - From Past CS Examination Questions
  - From ICSI Module

EXPECTED MARKS COVERAGE (0 to 10)

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N.K.J - SECTION CHART

Section	Short Description
Section 2(30)	Definition of Debenture
Section 71	Debentures
Section 179	Powers of Board
Section 180	Restrictions on powers of board
Rule	Companies (Share Capital and Debenture) Rules, 2014

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DEBENTURES

ABC Analysis
(ICSI -Exam Point of view)

A
1. Kind of Debentures
2. Appointment of Debenture Trustee
3. Qualification of Debenture Trustee

B
4. Power of Company to Borrow
5. Unauthorized or Ultra Vires Borrowing

C
6. Types of borrowings
7. Remedies to Debentureholders

DEBENTURE- DEFINITION

According to **Section 2 (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—

(*a*) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and

(*b*) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture;";

Basically, **A debenture is an instrument which acknowledges a debt by a company to some person or persons.**

DEBENTURE- FEATURES/ CHARACTERISTICS

Following are some features of a debenture;-

(a) A debenture is usually in the form of a certificate (like a share certificate) issued under the common seal of the company.

(b) Debentureholders are treated as the creditors of the company.

(c) The certificate is an acknowledgement by t

(d) The company of indebtedness to a holder.

(e) A debenture provides for the payment of a specified sum at a specified date.

(f) A debenture usually provides for payment of interest until the principal sum is paid back.

(g) A company shall not issue any debentures carrying voting rights. (Sec. 71)

DISTINGUISH BETWEEN "DEBENTURES AND SHARES"

Basis	Debentures	Shares
Status	Debentures holder is only a creditor of the company	But a shareholder or a member is a joint owner of the company
Voting right	They do not have any voting Right.	They enjoy voting rights.

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Income	Interest on debenture is Payable even if no profit is available.	But dividend on shares is to be paid only out of profit and not otherwise
Repayment	Debentures are repayable / redeemable as per terms of the issue.	Shares are not refundable unless the company goes into liquidation.
Repurchase	A company may purchase its own debentures unless they are perpetual or irredeemable	Whereas it is not open to a company to purchase its own shares as per Section 67 of Companies Act, 2013.
Discount on issue	Debenture can be issued at a discount.	Whereas shares cannot be issued at discount.
Security	Debenture are generally secured and carry a charge on the asset of company	Whereas shares have no charge

KINDS OF DEBENTURE

Debentures may be of various types, namely:

Naked or unsecured debentures:

Debentures of this kind do not carry any charge on the assets of the company. The holders of such debentures do not therefore have the right to attach particular property by way of security as to repayment of principal or interest.

Secured debentures:

Debentures that are secured by a mortgage of the whole or part of the assets of the company are called mortgage debentures or secured debentures.

A company shall not issue secured debentures, unless it complies with the following conditions, namely:-

(a) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue. However, a company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding thirty years;

(b) such an issue of debentures shall be secured by the creation of a charge on the assets of the company, by way of either mortgage or hypothecation only, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;

"Provided further that in the case of any issue of debenture by a government company which is fully secured by the guarantee given by the central government or one or more state government or by statutory body, the requirement for creation of charge shall not apply.

Provided also that in case of any loan taken by subsidiary company from any bank or financial institution, the charge or the mortgage may also be created on the properties or asset of the holding company.

(c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures; and

(d) the company shall execute a debenture trust deed in **Form No. SH.12** or as near thereto as possible, within sixty days from the date of allotment of the debentures.

Redeemable debentures:

Debentures that are redeemable on expiry of certain period are called redeemable debentures.

Perpetual debentures:

If the debentures are issued subject to redemption on the happening of specified events which may not happen for an indefinite period, e.g. winding up, they are called perpetual debentures.

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Bearer debentures:

Such debentures are payable to bearer and are transferable by mere delivery. The name of the debenture holder is not registered in the books of the company, but the holder is entitled to claim interest and principal as and when due.

Registered debentures:

Such debentures are payable to the registered holders whose name appears on the debenture certificate/letter of allotment and is registered on the companies register of debenture holders .

Based on convertibility, debentures can be classified under three categories:

Fully Convertible Debentures (FCDs):

These are converted into equity shares of the company with or without premium as per the terms of the issue, on the expiry of specified period or periods.

A company may issue convertible debentures subject to the approval of shareholders by way of special resolution passed at a general meeting.

Non Convertible Debentures (NCDs):

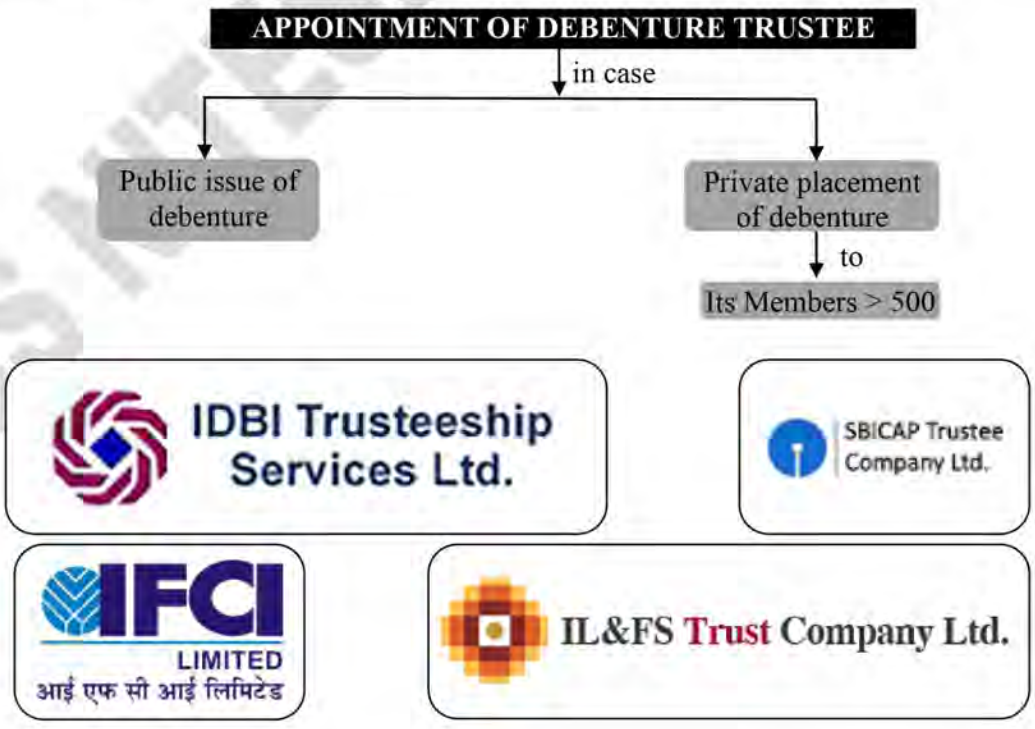
These debentures do not carry the option of conversion into equity shares and are therefore redeemed on the expiry of the specified period or periods.

Partly Convertible Debentures (PCDs):

These may consist of two kinds namely - convertible and non-convertible. The convertible portion is to be converted into equity shares at the expiry of specified period. However, the non convertible portion is redeemed at the expiry of the stipulated period.

Optionally Convertible Debentures (OCD): The investor has the option to either convert these debentures into shares at price decided by the issuer/agreed upon at the time of issue.

APPOINTMENT OF DEBENTURE TRUSTEE



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When the company issues prospectus or make an offer or invitation to the **public** or to its members **exceeding 500** for the subscription of its debentures, then it is required to appoint a debenture trustee.

The company shall appoint debenture trustees, after complying with the following conditions namely:-

(a) the names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders;

(b) before the appointment of debenture trustee or trustees, a **written consent** shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures;

DISQUALIFICATION OF DEBENTURE TRUSTEE

A person shall not be appointed as a debenture trustee, if he:-

(a) beneficially holds shares in the company;

(b) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

(c) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(d) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(e) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

(f) has any pecuniary relationship with the company amounting to two per cent, or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(g) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel;

DUTIES AND FUNCTIONS OF DEBENTURE TRUSTEE

The **functions** of the debenture trustee shall generally be:-

(a) to protect the interest of holders of debentures (including creation of securities within the stipulated time); and

(b) to redress the grievances of holders of debentures effectively.

In particular, it shall be the **duty** of every debenture trustee to:-

(a) satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;

(b) call for periodical status or performance reports from the company;

(c) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefore;

(d) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;

(e) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed,

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(f) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;

(g) do such acts as are necessary in the event the security becomes enforceable;

Calling of meetings of debentureholders by debenture trustee

The meeting of all the debenture holders shall be convened by the debenture trustee on:-

(a) **requisition** in writing signed by debenture holders holding **at least one-tenth** in value of the debentures for the time being outstanding;

(b) the happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

LIABILITY OF TRUSTEE TO DEBENTUREHOLDERS

In general, a debenture trustee is liable to debentureholders for any type of breach of trust. However, he may escape the liability in the following cases : -

(a) Where the trustee can show that he took such care and diligence as required of him as a trustee having regard to the powers, authorities and discretions conferred on him by the trust deed;

(b) Where a majority of, not less than 3/4th in value, debentureholders, present and voting in person agree, at a meeting summoned for the purpose, with respect to specific acts or omissions of the trustee.

DEBENTURE TRUST DEED

When debentures are issued for public subscription a trustee is appointed for the supervision of their common interest of debenture holders.

A debenture trust deed is made under which some person is appointed as trustee, whereby the properties of the company are mortgaged or charged to trustee. The trust deed also contains provisions dealing with the rights of the debentureholders and the company. The trustees act as watchdogs to ensure that company's obligations under the trust deed are carried out and they can act expeditiously and effectively to safeguard the interests of the debentureholders.

ADVANTAGES OF A TRUST DEED/APPOINTMENT OF DEBENTURE TRUSTEE

Several advantages of having a debenture trustee and trust deed are as follows :-

(a) The trustees hold the title deeds of the mortgaged property, which prevents the company from misusing the title deeds for any purpose.

(b) The trustees are given, power under the trust deed so that the property mortgaged is kept insured and is maintained in proper condition.

(c) The company can, with the consent of the trustees, enjoy a number of powers over the property charged, e.g., by way of sale, exchange or lease, thus enabling the company to put the property to advantageous use without jeopardizing the interest of debentureholders.

(d) In case of default by the company, the trustees can take necessary steps to realise the security without the aid of the Court.

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INSPECTION OF TRUST DEED BY DEBENTURE HOLDERS

Any member or debentureholder of the company may inspect the debenture trust deed and take the extracts thereof, during business hours being not less than two hours on every working day, without any fees.

Further, a copy of the trust deed shall be forwarded to every member or debentureholder of the company, at his request, **within 7 days** of the making of the request, on payment of such fee as may be specified in the articles of association of the company but not exceeding **ten rupees for each page**.

CREATION OF DEBENTURE REDEMPTION RESERVE (DRR)

According to **section 71**, the company shall create a Debenture Redemption Reserve **for the purpose of redemption of debentures**, in accordance with the conditions given below:-

(a) The Debenture Redemption Reserve shall be created out of the **profits** of the company available for payment of dividend;

(b) The company shall create Debenture Redemption Reserve equivalent to at least **twenty five percent** of the amount raised through the debenture issue **before debenture redemption commences**.

INVESTMENT IN DRR

(a) Every company required to create Debenture Redemption Reserve shall **on or before the 30th day of April in each year**, invest or deposit, as the case may be, a sum which shall not be less than **fifteen percent,** of the amount **of its debentures maturing** during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:-

- **(i)** in deposits with any scheduled bank, free from any charge or lien;
- **(ii)** in unencumbered securities of the Central Government or of any State Government;
- **(iii)** in unencumbered securities/bonds mentioned in Indian Trusts Act, 1882;

(b) The amount remaining invested or deposited, as the case may be, shall not at any time fall below **fifteen percent of the amount of the debentures** maturing during the year ending on the 31st day of March of that year;

(c) In case of **partly convertible debentures,** Debenture Redemption Reserve shall be created in respect of **non-convertible portion** of debenture issue in accordance with this sub-rule.

(d) The amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

FAILURE IN REDEMPTION OF DEBENTURES

(A) Where at any time the debenture-trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amounts as and when it becomes due, the debenture-trustee may file a petition before the **Tribunal** and the Tribunal may by order, impose such restrictions as may consider necessary in the interests of the debenture-holders.

(B) Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the **Tribunal may, on the application of any or all of the debenture-holders, or debenture-trustee** and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.

(C) If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to **three years** or with fine which shall not be less than **two lakh rupees** but which may extend to **five lakh rupees,** or with **both**.

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REMEDIES TO DEBENTUREHOLDERS

The remedies to debentureholders vary according to whether he is secured or unsecured.

1. **If debentures are unsecured, the debentureholder may;-**
   - **(a)** Sue the company according to the terms of issue as an unsecured creditor; and / or
   - **(b)** Present a petition for winding up of the company and prove his debt in the winding up as an unsecured creditor for the amount due.
2. **If debentures are secured the debentureholder may;-**
   - **(a)** sue, on behalf of himself and all other debentureholders, to obtain payment or to enforce his security by sale. The Court will appoint a receiver and order the sale of a property;
   - **(b)** present a petition for the winding up of the company, this is so even if the debentures are bearer debentures;
   - **(c)** sell the assets charged as security, if an express power to do so is contained in the issue of debentures;
   - **(d)** appoint a Receiver, if the conditions of the issue of debentures give him power to do so. The Receiver will sell the property charged and the sale proceeds will be utilized for the payment of the debentures;
   - **(e)** apply to the Court for a foreclosure order. The effect of the order is to terminate the company's interest in the assets charged, the debentureholders becoming the owners of them;
   - **(f)** have the property sold by the trustee, if the debenture trust deed permits such sale.

PROVISION OF SEBI LAWS ON PUBLIC ISSUE OF CONVERTIBLE DEBT INSTRUMENTS

Under SEBI (ICDR) Regulations 2009, "specified securities" means equity shares and convertible securities. The conditions specified under these regulations for Equity shares are equally applicable to public issue of convertible debt instruments also.

Additionally, the issuer of convertible debt instruments has to comply with the following.

- **(a)** obtain credit rating from one or more credit rating agencies;
- **(b)** appoint one or more debenture trustees in accordance with the provisions of Section 71(5) of the Companies Act, 2013] and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993;
- **(c)** create debenture redemption reserve in accordance with the provisions of Section 71(4) of the Companies Act, 2013;]
- **(d)** if the issuer proposes to create a charge or security on its assets in respect of secured convertible debt instruments, it shall ensure that:
  - such assets are sufficient to discharge the principal amount at all times;
  - such assets are free from any encumbrance;

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Q. 1. KAJ Ltd., a company incorporated under the Companies Act, 2013 wants to go for issue of secured debentures. Referring to relevant provisions and Rules, state the conditions to be satisfied before the company goes for such issue of debentures. Will your answer be different in case such issue of debentures is by a Government company where the Central Government has given a guarantee ? **[Dec. 2017]**

Ans. In accordance with Rule 18(10 of Companies (Share Capital and Debentures) Rules, 2014, a company shall not issue secured debentures unless it complies with the following conditions:

1. an issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue. A company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding thirty year;
2. such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due replacement of the amount of debentures and interest thereon;
3. The company shall appoint a debenture trustee before the issue of prospectus of letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders; and
4. The security for the debentures by way of a charge or mortgage shall be treated in favour of the debenture trustee on-
   (i) any specific moveable property of the company (not being in the nature of pledge); or
   (ii) any specific immoveable property wherever situate, or any interest therein.

   In case a non banking financial company, the charge or mortgage may be created on any moveable property.

Further in case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Governments of by both, there is no requirement for creation of charge under this sub-rule.

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SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Descriptive Question:----------
   What are the rights, powers and disabilities of debenture trustees?
2. Distinguish Between:----------
   (a) 'Debentures' and 'shares'

FROM ICSI MODULE

Answer the Following:-

1. What are the restrictions imposed on the borrowing powers of the Board of directors? If a company borrows beyond its powers, examine the remedies open to such creditor:
   (i) When the money has not been spent;
   (ii) When the money has been spent to pay the debts of the company.
2. What is the difference between debenture and a loan? Is fixed deposit a Debenture or Loan?
3. What is debenture? What are the kinds of debentures?
4. What is a convertible debenture? What are the provisions of the Companies Act, 2013 regarding convertible debentures or loans?
5. What is underwriting?
6. Summarise the SEBI guidelines pertaining to the issue of Debentures.
7. Is it compulsory to maintain a Debenture Redemption Reserve Account? If yes, how?
8. Write short notes on the following:
   (i) Ultra vires borrowings
   (ii) Intra vires borrowings
   (iii) Security for borrowings
   (iv) Types of borrowings
   (v) Raising loans from financial institutions.
9. Who is a debenture trustee? Why is it compulsory to appoint a trustee in connection with the issuance of debentures? What are the duties of a trustee?

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

14

DEPOSITS

Covering-

- Section Charts
- ABC Analysis
- Deposits / Public Deposit / Fixed Deposit
- Deposit Definition
- Kind of Deposit
- Depositor – Definition
- Terms and Conditions of Acceptance of Deposits by Company
- Farm and particulars of advertisements of circulars
- Deposit Insurance
- Creation of Security
- Appointment of Trustee for Depositors, Etc.
- Nomination Facility to Depositors
- Maintenance of Liquid Assets
- Register of Deposits
- Premature Surrender of Deposits
- Return of Deposits
- Penal Rate of Interest
- Damages for Fraud
- Penalty for Contravention of Section 73 or 76
- Amendment to a Private Company; Dated 5th June, 2015
- Self Test Question
  - From Past CS Exam
  - From ICSI Module

EXPECTED MARKS COVERAGE (5 to 10)

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N.K.J - SECTION CHART

Section	Short Description
Section 73	Prohibition on acceptance of deposits from public
Section 75	Damages for fraud
Section 76	Acceptance of deposits from public by certain policies
Section 76A	Penalty for contravention of Section 73 or Section 76 or Rule made thereunder
Rule	Companies (Acceptance of deposits) Rules 2014

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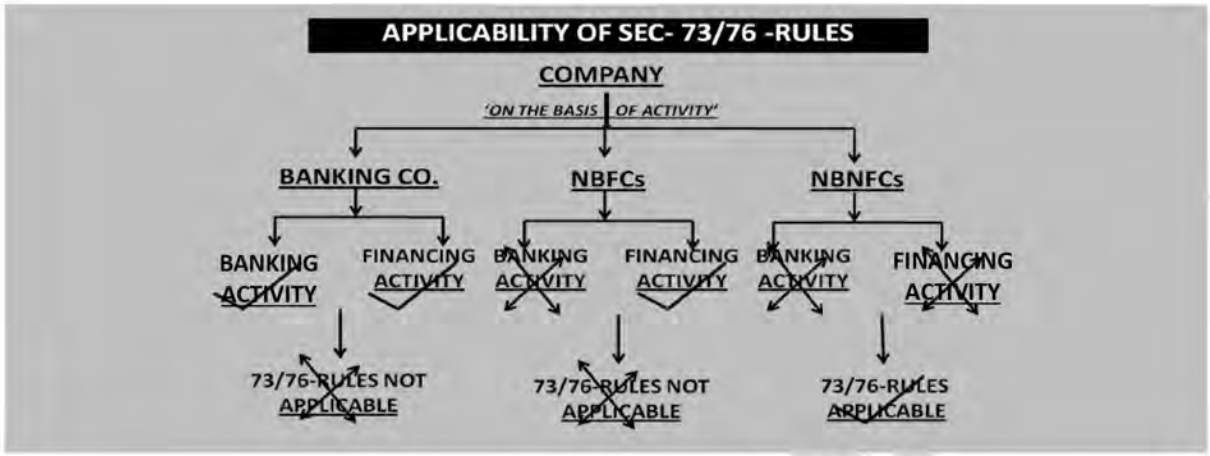

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DEPOSITS

ABC Analysis
(ICSI -Exam Point of view)

A
1. Deposit Definition
2. Kind of Deposit
3. Terms and Conditions of Acceptance of Deposits by Company

B
4. Deposit Insurance
5. Creation of Security

C
6. Return of Deposits
7. Damages for Fraud

DEPOSITS/PUBLIC DEPOSIT/FIXED DEPOSIT

Deposit is a kind of borrowing made by the companies. Deposits may be secured or unsecured borrowings.

Sections **73 and 76** of the Companies Act, 2013 and **Companies (Acceptance of Deposits) Rules, 2014** are the relevant provisions relating to Deposits. These Sections and Rules provide for the limits up to which, the manner in which and the conditions subject to which the deposits-can be invited and/or accepted by Non-Banking Non-Financial companies.

It may be noted that Sections 73 and 76 of the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 do not apply to acceptance of deposits by Banking Companies, Non-Banking Financial Companies (NBFCs), Housing Finance Companies and such other class of companies as my be notified by the Central Government from time to time.

DEPOSIT- DEFINITION

RULE 2

According to the Section 2(31) of the Act read with Rule 2(c) of Companies (Acceptance of Deposits) Rules, 2014 ***"deposit" includes any receipt of money by way of deposit or loan or in any other form by a company***, **but does not include-**

Clause	PROVISONS
(i)	***Amount from government*** Any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;
(ii)	**Amount from foreign Governments** Any amount received from foreign Governments, foreign or international banks, multilateral financial institutions, foreign Governments owned development financial institutions, foreign export credit agencies etc.
(iii)	**Loan from banking company/ Public Financial Institutions etc.** Any amount received as a loan or facility from any banking company or from a co-operative bank or financial assistance from Public Financial Institutions or any regional financial institutions or Insurance Companies.

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(iv)	**Commercial paper, etc.** Any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;
(v)	**Inter -company LOAN** Any amount received by a company from any other company;
(vi)	**Share Application Money etc.** Any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities not allotted within sixty days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within fifteen days from the date of completion of sixty days
(vii)	**Amount from director** Any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the Private company: ***Provided*** that the director of the company or relative of the director of the private company the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;
(viii)	**Bonds or debentures** Any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking paripassu with the first charge on any assets excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within ten years: ***Provided that*** if such bonds or debentures are secured by the charge of any assets excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer;
(ix)	**Amount accepted by nidhi company** Any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act.
(x)	**Unsecured loans from promoters** Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions, namely:- **(a)** the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance; **(b)** the loan is provided by the promoters themselves or by their relatives or by both; and **(c)** the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter
(xi)	**Employee security deposit** Any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit;
(xii)	**Trust** Any non-interest bearing amount received and held in trust;
(xiii)	**Supplier Advances, security deposits capital advances, etc.** Any amount received in the course of, or for the purposes of, the business of the company, as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance *Provided that* in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty five days shall not apply;

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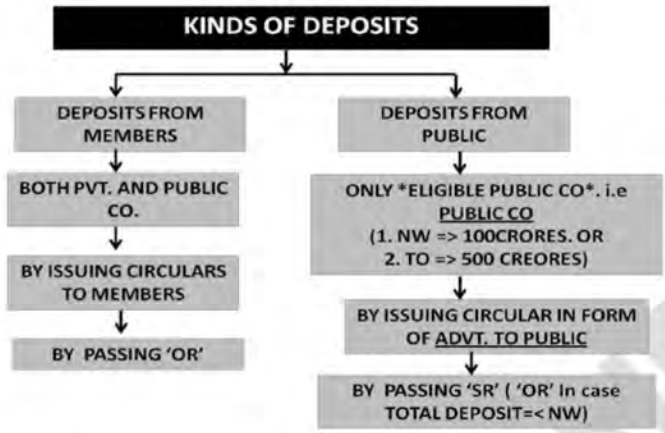

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(xiv)	**Amount accepted by Chit Fund company** Any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982.
(xv)	**Amount accepted by collective investment scheme** Any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India.
(xvi)	**Amount accepted by start-up company** An amount of twenty five lakh rupees or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) in a single tranche, from a person. **Explanation.**-*"start-up company" means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 180(E) 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry;*
(xvii)	**Amount accepted by Alternate Investment Funds** Any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it.

KINDS OF DEPOSIT

Acceptance of deposit from Members (Section 73)

Any company **(whether private or public)** can accept deposits from its **members**, subject to the passing of a resolution in general meeting and subject to certain specified conditions.

In order to accept deposits from members, the company has to certify, in circular, that it has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;"

1. Acceptance of deposits from the Public (Section 76)

Only a **public company**, having a **net worth** of not less than **one hundred crore rupees** or a **turnover** of not less than **five hundred crore rupees**, can accept deposits from the Public. Such kind of public company, shall be referred to as **'Eligible Company'**.

An eligible company is also required to pass **special resolution** in general meeting and also to **file the resolution** with the Registrar of Companies before making any invitation to the Public for acceptance of deposits. However if the amount of proposed deposits from the public together with the existing borrowings of the company **do not exceed its net worth** (i.e., sum total of paid-up share capital and free reserves), an eligible company may accept deposits by means of an **ordinary resolution**.

In order to accept deposits from the public, the company has to certify, in circular in the form of an **advertisement**, that it has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits. Further, such company shall obtain the **credit rating** from a recognized credit rating agency for information the public about such rating at the time of invitation of deposits from the public. The rating shall be obtained for every year during the tenure of deposits. The rating shall be obtained for every year during the tenure of deposits and filed along with return of deposit.

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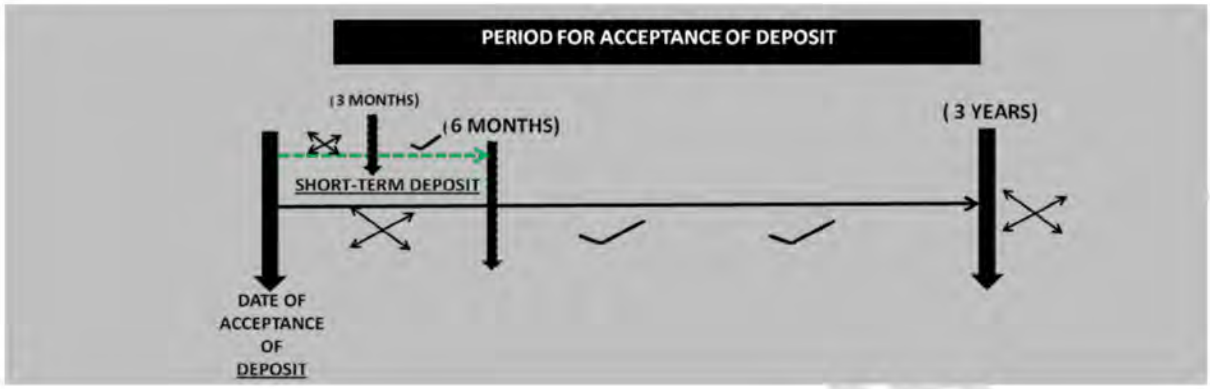

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DEPOSITOR- DEFINITION

RULE 2(1)(D)

"Depositor" means any member of the company who has made a deposit with the company in accordance with the provisions of section 73 of the Companies Act; or any person who has made a deposit with an eligible company in accordance with the provisions of section 76 of the Companies Act.

TERMS AND CONDITIONS OF ACCEPTANCE OF DEPOSITS BY COMPANIES

RULE 3

1. Periods of Acceptance of Deposits

No company shall accept or renew any deposit, which is repayable on **demand; or on notice;** or after a period of **less than 6 months** or **more than 36 months** from the date of acceptance or renewal of such deposits, as the case may be.

However a company may, for meeting **short-term requirements of funds**, accept or renew short-term deposits for repayment **earlier than 6 months** from the date of deposit or renewal; provided that such deposits **do not exceed 10% of the aggregate of the paid-up share capital and free reserves** of the company and such deposits are not repayable **earlier than 3 months** from the date of acceptance or renewal, as the case may be.

2. Ceiling limits for acceptance of Deposits

(a) For a Company other than an Eligible Company:-

It may accept or renew any deposit from its **members**, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits does not exceed **twenty-five (25%) per cent of the aggregate of the paid-up share capital and free reserves** of the company.

Provided that the **maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies**, namely:—

(i) a private company which is a start-up, for five years from the date of its incorporation;

(ii) a private company which fulfils all of the **following conditions, namely**:—

- **(a)** which is not an associate or a subsidiary company of any other company;
- **(b)** the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less
- **(c)** such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73

Provided that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in **Form DPT-3**.".

(b) For an Eligible Company :-

An Eligible Company, **other than a Government Eligible Company,** can accept or renew deposits, together with existing deposits, subject to the following ceiling:-

(i) Deposits from Members: **10%** of the aggregate of paid-up share capital and free reserves.

(ii) Any other Deposits: **25%** of the aggregate of paid-up share capital and free reserves.

A Government Eligible Company can accept or renew deposits, together with existing deposits, up to **35%** of aggregate of its paid-up capital and free reserves.

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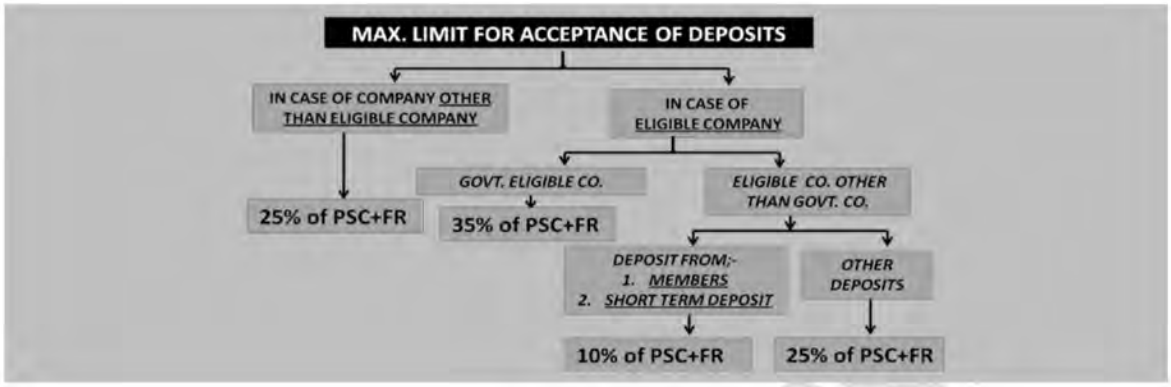

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3. Ceiling on Rate of Interest and Brokerage

No company shall accept/renew deposits at a rate of interest exceeding the maximum rate of interest prescribed by RBI that the NBFCs can pay on their public deposits.

Similarly, no company shall pay brokerage at a rate exceeding the maximum rate of brokerage prescribed by RBI that the NBFCs can pay on their public deposits.

FORM AND PARTICULARS OF ADVERTISEMENTS OR CIRCULARS

RULE 4

Every company, **other than an Eligible Company**, intending to invite deposit from its members shall issue a **circular** to all its members by registered post with acknowledgement due or speed post or by electronic mode in **Form DPT-1**.

Every **Eligible Company** intending to invite deposits shall issue a circular in the form of an advertisement in **Form DPT-1** in English language in an English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated. Every company inviting deposits from the public shall upload a copy of the circular on its website, if any.

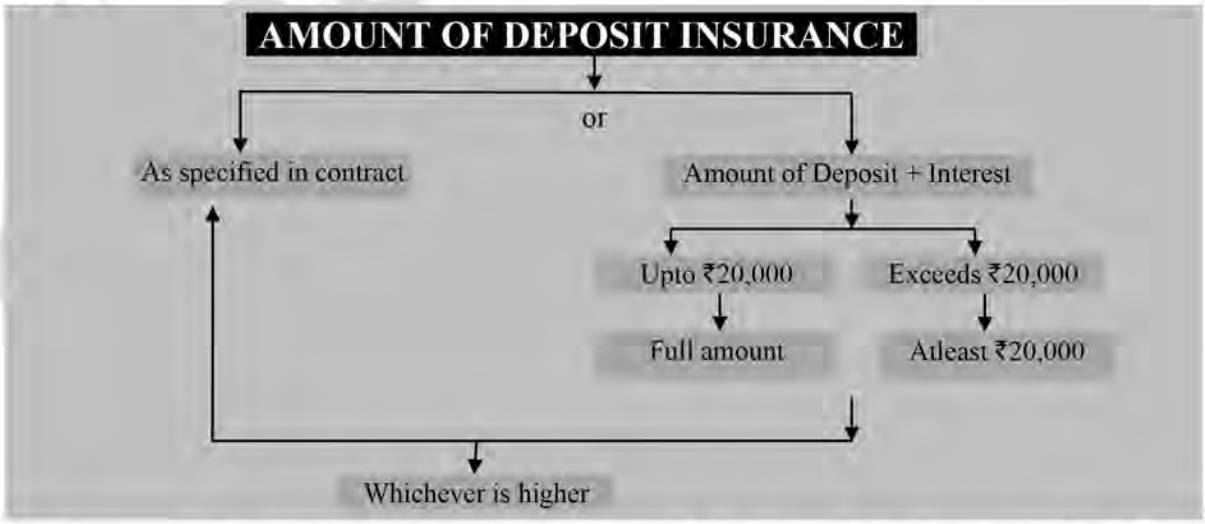
Such circular or circular in the form of an advertisement must be issued **only on the authority and in the name of the Board of Directors** of the company and must contain a reference to the conditions, subject to which deposits shall be accepted by the company.

No company shall issue circular or circular in the form of an advertisement inviting deposits unless, **not less than 30 days on before the date of its issue,** a copy of the same has been delivered to the **Registrar of Companies for registration**. The copy of circular or circular in the form of an advertisement delivered to the Registrar must be **signed by the majority of the directors** of the Company.

A circular or circular in the form of advertisement issued shall be valid until the expiry of **six months** from the date of closure of the financial year in which it is issued **or** until the date on which the financial statement is laid before the company in annual general meeting, **whichever is earlier**.

DEPOSIT INSURANCE (omitted)

RULE 5



Every company inviting deposits shall enter into a contract for providing deposit insurance at least **thirty days** before the issue of circular or circular in the form of advertisement or at least thirty days before the date of renewal, as the case may be.

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The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the of principal amount of deposits and the interest thereon by the insurer **up to the monetary ceiling as specified in the contract**. However, in the case of any deposit and interest not exceeding **twenty thousand rupees**, the deposit insurance contract shall provide for payment of the **full amount** of the deposit and interest and in the case of any deposit and the interest thereon in excess of twenty thousand rupees, the deposit insurance contract shall provide for payment of an amount **not less than twenty thousand rupees** for each depositor.

CREATION OF SECURITY

RULE 6

Every company inviting secured deposits shall, **within 30 days** from the date of acceptance, provide for security by way of a charge on its assets, by way of either mortgage or hypothecation only.

The company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon.

APPOINTMENT OF TRUSTEE FOR DEPOSITORS, ETC.

RULE 7,8,9

Every company, inviting **secured deposits** shall appoint one or more trustees for depositors for creating security for the deposits. The company shall execute a **deposit trust deed** in **Form DPT-2** at least **seven days** before issuing the circular or circular in the form of advertisement.

The duties and functions of depositor trustee shall generally be:-

(i) to protect the interest of holders of depositors (including creation of securities within the stipulated time); and

(ii) to redress the grievances of holders of depositors effectively.

The trustee for depositors shall call a meeting of all the depositors on:-

(a) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding;

(b) the happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors.

NOMINATION FACILITY TO DEPOSITORS

RULE 11

Every depositor-may, at any time, nominate any person to whom his deposits shall vest in the event of his death and the provisions of Section 72 of Companies Act, 2013 shall, as far as possible, apply to the nomination made by the depositor.

MAINTENANCE OF LIQUID ASSETS / DEPOSIT REPAYMENT RESERVE ACCOUNT

RULE 13

A company is required to deposit at least **20%** of the amount of its deposits maturing during a financial year (i.e., 1st April to 31st March) and the financial year next following the year, and kept in a scheduled bank in a separate bank account to be called as **deposit repayment reserve account**. This amount is required to be deposited by the **30th of April** each year. The amount so deposited cannot be utilized for any purpose other than for repayment of deposits maturing during the year.

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However, the amount remaining deposited should not, at any time during the year, fall below **15% of deposits** maturing and remaining to be paid until the end of current financial year and the next financial year.

REGISTER OF DEPOSITS

RULE 14

Every company accepting deposits shall keep, at its registered office, one or more registers in which there shall be entered, separately in the case of each depositor, the following particulars, namely:-

(a)	name and address of the depositor;
(b)	date and amount of each deposit;
(c)	duration of the deposit and the date on which each deposit is repayable;
(d)	rate of interest;
(e)	date or dates on which payment of interest will be made;
(f)	any other particulars relating to the deposit.

The register or registers must be preserved in good order for a period of not less than eight calendar years, from the financial year in which the latest entry is made in the register.

PREMATURE SURRENDER OF DEPOSITS

RULE 15

If a company makes repayment of any deposit after the expiry of 6 months from the date of such deposit but before, the maturity date of deposit, it should, reduce the interest on such deposit by 1% from the rate which the company would have paid, had the deposit been accepted for the period for which such deposit had run; and the company should not pay interest at a rate higher than the rate so reduced.

Where the period for which the deposit had run contains any part of year, then if such part is 6 months or more, it should be reckoned as one year for the purpose of this Rule.

RETURN OF DEPOSITS

RULE 16

Every company shall file a return of deposits, in **Form DPT-3**, with the Registrar of Companies on or before 30th June of every year. This return shall contain information as on 31st March and shall be duly certified by the Auditors of the Company.

Every Company except Government Company shall have to file Form DPT 3 providing particulars of transaction that *has not been considered as deposit.*

PENAL RATE OF INTEREST

RULE 17

A penal rate of interest of **18%** per annum shall be paid for the overdue period, in case of public deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

DAMAGES FOR FRAUD

SECTION 75

Section 75 provides that in case the company fails to pay the deposit or any interest thereon within one year from the commencement of the Act or from the date on which such payments becomes due, whichever is earlier, or within such time periods as allowed by the NCLT and it is proved that the deposits had been accepted with intent to defraud the depositors, every officer who was responsible for acceptance of such deposits shall be liable without prejudice to the provisions contained under **section 74** and liability for fraud under section **447**, be ***personally responsible, without any limitation of liability for all losses or damages incurred by the depositors***.

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PENALTY FOR CONTRAVENTION OF SECTION 73 OR SECTION 76 OR RULES MADE THEREUNDER

SECTION 76A

"Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73;-

(a) the company shall, **in addition to the payment of the amount of deposit or part thereof** and the interest due, be punishable with fine which shall **not be less than** "one crore rupees or twice the amount of deposit accepted by the company, whichever is lower" **but which may extend to ten crore rupees;** and

(b) every officer of the company who is in default shall be punishable with **imprisonment which may extend to seven years with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees,:**

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**."

SPECIFIC EXEMPTION FROM SECTION 73 TO PRIVATE COMPANY

If a private company

(A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account; or

(B) which is a start-up, for five years from the date of its incorporation; or

(C) which fulfils all of the following conditions, namely:-

(a) which is not an associate or a subsidiary company of any other company;

(b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and

(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

And file the details of money accepted to ROC then, the following provisions {73(2) (a-e)} **shall not apply:-**

(*a*) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(*b*) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;

(*c*) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

(*d*) providing such deposit insurance in such manner and to such extent as may be prescribed;

(*e*) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits;

THE K.C.P. LIMITED

CIN : L65991TN1941PLC001128
Regd. Office : "Ramakrishna Buildings"
No.2, Dr. P.V. Cherian Crescent Road, Egmore, Chennai - 600 008.
Tel : +91-44-66772600, 66772616 Fax : +91-44-66772620
E-Mail : investor@kcp.co.in corporate@kcp.co.in Website : www.kcp.co.in

RATED FA-/(Negative) BY CRISIL

Application for Fixed Deposit Schemes

UNSECURED

For Public and Shareholders w.e.f. 18-08-2014

SCHEME : 1 FIXED DEPOSITS

INTEREST PAYABLE QUARTERLY

Period	Rate of Interest P.A.**	Minimum Amout of Deposit	Interest Payable
1 year	10.50%	Rs.21,000/-	Quarterly
2 years	10.75%	Rs.21,000/-	Quarterly
3 Years	11.00%	Rs.21,000/-	Quarterly

SCHEME : 2 CUMULATIVE DEPOSITS

INTEREST PAYABLE ON MATURITY COMPOUNDED QUARTERLY

Period	Rate of Interest P.A.**	Minimum Amount of Deposit	Maturity Value	Effective Yield
1 year	10.50%	Rs.21,000/-	Rs.23,293/-	10.92%
2 years	10.75%	Rs.21,000/-	Rs.25,963/-	11.82%
3 Years	11.00%	Rs.21,000/-	Rs.29,080/-	12.83%

HIGHLIGHTS

- Deposits will be accepted in multiples of Rs.1,000/- subject to a minimum ofRs.21,000/-
- Deposits will be accepted for the Period of **ONE/ TWO/THREE years.**
- The Principal amount on Deposits will be Payable on maturity by A/c Payee Cheques payable at par. If depositors specifically require repayment of principal through Demand Drafts, the same will be issued after deducting DD charges there from, Premature withdrawals are generally not permitted. However, under special circumstances they may be considered at the discretion of the Company.
- Interest will be payable every quarter on 30th June, 30th September, 31st December, 31st March under Scheme I and on Maturity under Scheme 2 by Account Payee Cheques payable at par at specified branches of HSBC Bank and Axis Bank only.
- **Interest is payable subject to deduction of tax at source, wherever applicable.
- The Company reserves the right to revise review the interest rate(s) within the permissible limits from time to time.

HOW TO APPLY

- Application Forms should be carefully filled after having read and understood all terms and conditions attached to the Form
- Remittances for Deposits should be made by means of A/c Payee Cheques / Demand Drafts drawn on Chennai Banks favouring The K.C.P. Limited.
- Outstation Depositors can send deposits by way of Demand Drafts favouring **The K.C.P Limited** payable at Chennai. Demand Draft charges are not deductable from the Principal. **Outstation cheques will not be accepted.**
- No Deposit will be accepted by way of Cash.
- Request for Renewal will be considered on a fresh application accompanied with the Deposit Receipt.Renewal will be accepted for the Principal amount only. In case of renewal, where the principal amount is less than the minimum amount of Rs.21000/-, the difference up to the minimum amount and the additional amount, if any, will be accepted in thousands by way of cheque / Demand Draft favouring "The K.C.P. Limited" payable at Chennai.
- The Deposit holders can avail the Nomination facility as provided in the Application Form.

Deposits of substantial amounts will be accepted upon such terms and conditions as the Company may think fit, subject however to the provisions of the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

The duly filled in Applications Forms along with the necessary remittance should be sent to the Company's Registered Office : "Ramakrishna Buildings", No.2, Dr. P V Cherian Crescent Road, Egmore, Chennai - 600 008.

THE K.C.P. LIMITED
CIN :L65991TN1941PLC001128
"Ramakrishna Building", 2, Dr.P.V. Cherian Crescent, Egmore, Chennai- 600 008.
Website: www.kcp.co.in, E-mail:Investor@kcp.co.in
Tel : +91-44-66772600, 66772616 Fax : +91-44-66772620

Deposit Schemes
(Unsecured)
For Public And Shareholders

(Circular in the Form of Advertisement inviting deposits from public and Shareholders pursuant to section 73 (2)(a) and section 76 and rule 4(1) and 4(2) of the Companies (Acceptance of Deposits) Rules, 2014)

The Company invites and accepts fixed deposits on the following broad terms: REFER PAGE NO.1

1. GENERAL INFORMATION:

A. Name, Address,Website And Other Contact Details Of The Company;

The K.C.P.Limited
"Ramakrishna Buildings"
No.2,Dr.P.V. Cherian Crescent Egmore, Chennai-600 008
Tel:91 44 66772600, 66772616; Fax:91 4466772620;
Email: investor@kcp.co.in; Website: www.kcp.co.in

B. Date of incorporation of the company; July 3,1941

C. Business carried on by the company and its subsidiaries with the details of branches or units,if any;

Business carried on by the company

The Company is engaged in Manufacture of Cement, Heavy Industrial Machinery and in power Generation.

Details of branches or Units:

The Registered Office of the Company is situated at 'Ramakrishna Buildings' No.2, Dr P V Cherian Crescent, Egmore, Chennai- 600 008.

(a) The Cement Production Units are located at
- Macherla - 522426 Guntur District, Andhra Pradesh
- Ramakrishnapuram, Muktyala- 521175, Krishna District, Andhra Pradesh

(b) The Engineering Units are located at
- Tiruvottiyur, Chennai- 600 019
- Mosur Road, Ekhunagar, Arakonam- 631004,Tamilnadu.

(c) The Power Generating Units are located at:
- Hydel unit at B.No.AE-1, NSP Colony, Nekarikallu-522 615 in Guntur District, A.P.
- Wind Mill at Uthumalai,Tirunelveli District, Tamilnadu.
- Thermal power at Macherla- 522426, Guntur District, A.P.

Subsidiary and its business:

The Company has a subsidiary in Vietnam- KCP Vietnam Industries Limited which is engaged in Manufacture of Sugar.

D. Brief particulars of The Management of the company;

The Company is being managed by the Chairman & Managing Director,Joint Managing Director,Executive Director and Technical Directors,Subject to the superintendence, direction and control of the Board of Directors.

E. Names, DIN, Address and Occupation of the Directors;

Sl. No.	Name & Din of the Director	Residential Address	Occupation
1.	**Dr. V.L. Dutt** Chairman & Managing Director DIN : 00143013	No.2, Dr.P.V. Cherian Crescent Egmore, Chennai - 600 008	Business
2.	**Smt. V.L.Indira Dutt** Joint Managing Director DIN: 00139883	No.2, Dr.P.V. Cherian Crescent Egmore, Chennai - 600 008	Business
3.	**Smt. Kavitha Dutt Chitturi** Executive Director DIN: 00139274	Old No.4, New No.7 First Crescent Park Road Gandhi Nagar, Adyar Chennai - 600 020	Business
4.	**Sri.V.Gandhi** Technical Director DIN: 00140320	118/2, P.S.Sivasamy Salai Mylapore Chennai - 600 004	Company Executive
5.	**Sri.O. Swaminatha Reddy** Director DIN: 00006391	Plot No.813, (MCH No.234), Road No.41, Jubilee Hills Hyderabad - 500 033	Chartered Accountant & Company Director
6.	**Sri. V.H. Ramakrishnan** Director DIN: 00143948	Flat 1005, Block 2A,SMR Vinay City Bollaram Road, Miyapur Hyderabad - 500 049	Chartered Accountant & Company Director
7.	**Sri. Vijay Sankar** Director DIN: 00007875	194, T.T.K. Road, Chennai - 600 018	Chartered Accountant & Company Director
8.	**Sri. P.S. Kumar** Director DIN: 00267280	No. 5, Second Street, Wallace Gardens Chennai - 600 006	Chartered Accountant & Company Director
9.	**Sri. Narasimhappa Muttuluri** Director DIN: 03319847	Plot No.22, Kamalapuri Colony Phase I Hyderabad 500 073	Company Director

F. Management's perception of risk factors;

Both the classes of Deposits (Fixed/Cumulative) being Unsecured in nature but the Company has proven track record in servicing the Depositors till date, without any defaults either in repayment of deposit or payment of interest.

Pursuant to applicable provisions of the Companies Act, 2013 and rules made there under the company undertakes to deposit fifteen percent of the amount of its deposits maturing during a financial year and the financial year next following in deposit repayment reserve account maintained with a Scheduled Bank and to provide Insurance Cover to the Depositors to the extent prescribed by the Companies (Acceptance of Deposits) Rules, 2014 once the product is available in the Market.

According to CRISIL rating report that the KCP business risk profile will remain impacted over the near to medium term by the continuing challenges in both cement and engineering divisions. Its sugar business will nevertheless continue to record steady improvement. Additionally, the group's ability to integrate and stabilize the upcoming Captive Power Plant, and step up room occupancy at its Hotel will also be critical. Given the anticipated weak cash generation, the KCP group's financial risk profile is expected to remain at moderate levels over the medium term.

G. Details of default, including the amount involved, duration of default and present status, in repayment of-

i) statutory dues; NIL

ii) debentures and interest thereon; NIL

iii) loan from any bank or financial institution and interest thereon. NIL

2. PARTICULARS OF THE DEPOSIT SCHEME: CONFIRM WHETHER NEW PROPOSAL TO BE GIVEN: YES (Particulars Provided In 1st Page)

a) Date of passing of board resolution; 22/05/2014

b) Date of passing of resolution in the general meeting authorizing the invitation of such deposits;

Resolution has been proposed for the *approval of members* in the notice convening 73rd AGM scheduled to be held on August 11, 2014

c) Type of deposits, i.e., Whether secured or unsecured

UNSECURED DEPOSITS

d) Amount which the company can raise by way of deposits as per the Act and the rules made there under, and the aggregate of deposits actually held on the last day of the immediately preceding financial year and on the date of issue of the circular or advertisement and amount of deposit proposed to be raised and amount of deposit repayable within the next twelve months;

Sl.No	Particulars	As on 31.03.2014 (Rs. in lakhs)
1	From Public: (25% of the aggregate paid-up capital and free reserves)	8776.24
2	From its shareholders: (10% of the aggregate Paid-up Capital and Free reserves) •	3510.50
	TOTAL	12286.74

The aggregate of Deposits actually held on the last day of the immediately preceding financial year, i.e. 31st March, 2014: Rs.76,39,35,000/-

Date of Circular or Advertisement May 22, 2014

The aggregate amount of deposits repayable within the next twelve months as on the last day of the immediately preceding financial year, i.e., 31st March, 2014: Rs.19,58,26,000/- (which includes deposits matured and unclaimed amounting to Rs.2,05,03,000/-)

e) Terms of raising of deposits: Duration, Rate of interest, mode of payment and repayment;

Main terms and conditions applicable for both the schemes: Refer Page 1 & page 4 of the application form.

f) Proposed time schedule mentioning the date of opening of the Scheme and the time period for which the circular or advertisement is valid;

Opening date is 18th August,2014 and the time period for which this circular is valid is until the expiry of six months from the data of closure of the financial year 2014-15 or until the date of the next Annual General Meeting whichever is earlier.

g) Reasons or objects of raising the deposits;

For meeting long term requirements of the company and to augment the long term resources.

h) Credit rating obtained; Name of the credit rating agencies, Rating obtained, meaning of the rating obtained,Date on which rating was obtained.

Crisil FA-/(Negative) Dt. 22/05/2014

i) Extent of deposit insurance, ; Name of the Insurance Company, terms of the Insurance coverage, duration of coverage, extent of coverage, procedure for claim in case of default etc.

We, The K.C.P. Ltd., undertake to provide necessary insurance coverage once the product is available in the Market.

j) Short particulars of the charge created or to be created for securing such deposits, if any; NOT APPLICABLE

k) Any financial or other material interest of the directors, promoters or key managerial personnel in such deposits and the effect of such interest in so far as it is different from the interests of other persons.

None of the Directors, Key Managerial Personnel and their relatives are concerned or interested.

3. DETAILS OF ANY OUTSTANDING DEPOSITS (UNCLAIMED) AS ON 31-3-2014:

a. Amount Outstanding; Rs.2,05,03,000/- (224 Nos)

b. Date of acceptance; Accepted on different dates

c. Total amount accepted; Rs76,39,35,000/-

d. Rate of interest; 9%,10%,10.25% and 10.50%

e. Total number of depositors; 7531 Nos.

f. Default,if any, in repayment of deposits and payment of interest thereon,if any, including number of depositors, amount and duration of default involved; NIL

g. Any waiver by the depositors, of interest accrued on deposits; NIL

CIA CORPORATE LAW ACADEMY™ NITESH KR. JAISWAL CS CLASSES

4. FINANCIAL POSITION OF THE COMPANY FOR THE LAST THREE YEARS:-

PARTICULARS	As at 31-3-2014 Rs.	As at 31-3-2013 Rs.	As at 31-3-2012 Rs.
I.EQUITY AND LIABILITIES			
Shareholders' Funds			
Share Capital	20,89,21,160	27,89,21,160	32,89,21,160
Reserves & Surplus	3,42,49,50,092	3,44,58,26,089	3,31,68,42,075
	3,63,38,71,252	**3,72,47,47,249**	**3,64,57,63,235**
Non-Current Liabilities			
Long-term Borrowings	3,12,51,85,307	1,94,81,95,339	1,76,26,57,957
Trade Payables	45,25,851	26,07,721	33,28,788
Deferred Tax Liability (Net)	57,63,48,047	57,58,53,983	48,92,50,625
Other Long-Term Liabilites	31,64,17,346	31,44,14,702	19,14,12,580
Long-Term Provisions	3,96,94,130	3,64,67,403	2,61,22,283
	4,06,21,70,681	**2,87,75,39,148**	**2,47,27,72,233**
Current Liabilities			
Short-Term Borrowings	89,02,51,210	1,18,68,69,180	82,44,20,099
Trade Payables	57,03,61,169	54,01,86,818	37,17,10,684
Other Current Liabilities	1,14,96,61,757	1,32,21,55,560	1,50,06,45,245
Short Term Provisions	3,22,44,362	18,39,79,900	31,88,87,949
	2,64,25,18,498	3,23,31,91,458	3,01,56,63,977
TOTAL	**10,33,85,60,431**	**9,83,54,77,855**	**9,13,41,99,445**
II. ASSETS			
Non-Current Assets			
Fixed Assets			
Tangible Assets	5,13,89,36,787	5,06,63,62,975	5,20,99,09,060
Intangible Assets	23,89,272	-	-
Capital Work-in-Progress	1,50,39,35,637	99,74,87,829	22,75,25,326
Non-current Investments	28,89,81,241	28,89,81,241	28,89,59,669
Deferred Tax Assets (Net)	-	-	-
Long Term Loans & Advances	50,61,88,672	54,37,12,388	14,17,93,316
Trade Receivables	1,53,92,554	1,17,14,266	1,12,46,914
	7,46,40,81,094	6,91,27,64,699	5,87,94,34,285
Current Assets			
Current Investments	-	-	-
Inventories	1,23,52,72,427	1,18,35,66,227	1,48,39,55,072
Trade Receivables	45,18,29,448	48,20,98,583	74,37,56,275
Cash and Bank Balances	19,60,36,270	52,58,17,624	35,04,04,858
Short Term Loans and Advances	91,55,94,466	65,16,87,969	64,32,77,469
Other Current Assets	7,57,46,726	7,95,42,753	3,33,71,486
	2,87,44,79,337	2,92,27,13,156	3,25,47,65,160
TOTAL	**10,33,85,60,431**	**9,83,54,77,855**	**9,13,41,99,445**

a. Profits of the company, before and after making provision for Tax,for the Three financial years immediately preceding the date of issue of circular or advertisement:

(Rs. In Lacs)

For The Year ended	Profit /(Loss)Before Tax	Profit /(Loss)After tax
31-03-2012	8478.03	6153.34
31-03-2013	4339.43	3045.54
31-03-2014	120.31	127.65

b. Dividends declared by the company in respect of the said three financial years; Interest coverage ratio for last three years
(Cash Profit after tax plus interest paid on interest paid)

For the year Ended (Equity)	Dividend Declared	Dividend (%)	Dividend Declard (Preference Shares)	Interest Coverage Ratio
31-03-2012	1933.82	*150	240.00	4.01
31-03-2013	1289.21	100	221.42	2.98
31-03-2014	128.92	**10	153.99**	1.79

*Dividend for the year 2011-12 includes special dividend of 50% (Rs.0.50 per Share) declared to commemorate the completion of 70th year of the company.

**Dividend for the year is recommended by the Board of Directors at their meeting held on 22/5/2014 and the same has to be approved by the shareholders in the ensuing Annual General Meeting scheduled to be held on August 11, 2014.

c. A summary of the financial position of the company as in the three audited balance sheets immediately preceding the date of issue of circular or advertisement; Particulars provided in sl.no.4

d. Audited cash flow statement for the three years immediately preceding the date of issue of circular or advertisement; as filed with ROC.

e. Any change in accounting policies during the last three years and their effect on the profits and the reserves of the company. Nil

5. DECLARATION BY THE DIRECTORS

The Board hereby declares:-

a. The company has not defaulted in the repayment of deposits accepted either before or after the commencement of the act or payment of interest there on:

b. The Board Of Directors have satisfied themselves fully with respect to the affairs and prospects of the company and that they are of the opinion that having regard to the estimated future financial position of the company, The company will be able to meet its liabilities as and when they become due and that the company will not become insolvent within a period of the year from the date of issue of the circular or advertisement;

c. The company has complied with the provisions of the act and the rules Made there under;

d. The compliance with the act and the rules does not imply that repayment of deposits is guaranteed by the Central Government;

e. The company has accepted public deposits under the relevant provisions of the Companies Act, 1956 and rules made under that Act (hereinafter known as "Earlier Deposits") and has been repaying such deposits and interest thereon in accordance with such provisions and will continue to repay such deposits and interest due thereon on due dates for the remaining period of such deposits in accordance with the terms and conditions and period of such earlier deposits and in compliance with the requirements under the Companies Act, 2013 and rules made there under.

f. In case of any adverse change in credit Rating, depositors will be given a chance to withdraw deposits without any penalty.

g. The deposits shall be used only for the purposes indicated in the circular or circular in the form of advertisement;

h. The deposits accepted by the company (other than the secured deposits, if any, aggregate amount of which to be indicated) are unsecured and rank paripassu with other unsecured liabilities of the company.

Note

The text of this advertisement has been approved by the Board of Directors of the company in their meeting held on May 22,2014. A copy of this advertisement signed by a majority of the Directors on the Board of Directors of the company, has been filed with the Registrar of Companies, Chennai- 600 006,Tamilnadu as required by the companies (acceptance of deposits) Rules, 2014 as amended.

The advertisement is issued on the authority and in the Name of Board of Directors of the company.

(By Order of the Board)

Place: Chennai
Date:22nd May, 2014

FOR THE K.C.P. LIMITED
(Y VIJAYAKUMAR)
COMPANY SECRETARY

APPLICATIONS FOR ACCEPTANCE AND RENEWAL OF DEPOSITS ARE ALSO AVAILABLE AT:

1. The K.C.P. Limited, Macherla - 522 426, Guntur District, A.P. Phone No.08642-222302-222305.
2. The K.C.P. Limited, "Ramakrishnapuram", Jaggayyapet Mandal, Muktyala-521457, Krishna District, A.P. Phone No.08654-296006-296008
3. The K.C.P. Limited, 10/3, Sarvapriyavihar, II Floor, New Delhi-110 066. Phone No.011-26567217.
4. The K.C.P. Limited, 201, Hubtown Viva, Off. Western Express Highway, Jogeshwari East, Mumbai-400 060. Phone No.09322597037
5. The K.C.P. Limited, H.No.8-3-293/82/NL/10, Plot No.10, Road No.10C, MLA & MP Colony, Y R Guda, Jubilee Hills, Hyderabad - 500033; Phone No.040-23253502/503
6. The K.C.P. Limited, 145, Rattaiah Street, Governorpet, Vijayawada - 520 002. Phone No.0866-2574015

Integrated since 1974 Investments Simplified

All correspondence with regard to deposits should be addressed to Registrars to the Deposit Schemes:-

M/s. INTEGRATED ENTERPRISES (INDIA) LIMITED
CIN : U65993TN1987PLC014964
2nd FLOOR, "KENCES TOWERS", NO.1, RAMAKRISHNA STREET OFF. NORTH USMAN ROAD, T. NAGAR, CHENNAI-600 017. PHONE NOS:28140801-28140803; FAX:28142479

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Q. 1. A private company incorporated under the Companies Act, 2013 may issue debentures to any number of persons and can accept deposit from the public. **[Dec. 2017]**

Ans. According to the definition of private company under Section 2(68), a private limited company may not make an invitation to the public to subscribe for any securities of the company. However under Section 42 read with Section 2(68), it may issue such securities to any person (number of persons not exceeding 200).

In terms of provisions of Section 73(2) read with Exemption Notification dated 5th June, 2015, a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital and free reserves subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposit from its members on such terms and conditions, as may be agreed upon between the company and its member subject to the fulfillment of certain conditions, as provided under the act.

Q. 2. Fun and frolic Ltd has received ₹5 lakh from its promoters as unsecured loan in pursuance of the stipulation of credit facilities from Bank. Can the company accept the unsecured loan? What would be your answer if the company has repaid full its amount of credit faculties and after such repayment, company continues this unsecured loan? Refreshing to the provision of the Companies Act, 2013 advice the company. **[June 2018]**

Ans. According to Rule 2 of Company (Acceptance of Deposit) Rules, 2014 any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank, shall not be treated as deposit, subject to fulfillment of the following conditions, namely:-

(a) The loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance,

(b) The loan is provided by the promoters themselves or by their relatives or by both; and

(c) The exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not there after;

Accordingly, in case of fun and Frolic Ltd. ₹5 Lakh may be accepted from the Promoters, as the same is in pursuance to stipulation of credit from bank. Once the credit facilities are paid in entirety and the company continues to retain the unsecured loan, it shall be treated as deposit under Companies Act, 2013.

Q. 3 Please check which of the following source of funds are coming under the definition of deposits in case of a company.

(a) ₹5 Crore from Government Agency, Financial institutions, Banks or by way of Commercial Paper.

(b) ₹50 Lakhs by way of Share Application money

(c) ₹50 Lakhs from one of its director by way of loan

(d) ₹50 Lakhs from issue of bonds and debentures

(e) Rs.50 Lakhs by means of inter corporate deposit

(f) ₹25 Lakhs from its employees.

(g) ₹50 Lakhs as business advance from customers

(h) ₹50 Lakhs as advance against consideration for an immovable property.

(i) ₹25 Lakhs as security deposit for performance of provision of services

(j) ₹50 Lakhs from its promoter.

(k) ₹25 Lakhs raised by issue of non convertible debentures. These are not constituting charge on assets of the company.

Ans. (a) The said amount is to be received or borrowed from any government agency or Financial Institutionor Bank or by way of Commercial paper is not covered under deposits.

(b) Company must allot share within 60 days of receipt of share application money or it must refund the share application money to the subscribers within 15 days from the date of completion of sixty days, otherwise, such amount shall be treated as a deposit.

(c) Company can receive loan from its director (or relative of director of the private company) provided they give a declaration to the company that the loan given is from own funds and not from borrowed money.

(d) Company can raise money by way of bonds and debentures provided amount is secured by a first charge against property; or such bonds or debentures should be compulsorily convertible into shares within10 years; otherwise it would come under the definition of deposits.

(e) Inter corporate deposits are not covered in the definition of deposits (f) If amount received from employee doesn't exceed their total annual salary; and such deposits should be non-interest bearing security deposit it would not come under the definition of deposit.

(g) Advance can be raised from customers however; such advance should be adjusted within 365 days from the date of receipt of advance. Otherwise it would be termed as deposits.

(h) Such amount should be adjusted against such property only; otherwise it would be termed as deposits.

(i) Security deposits are out of the ambit of definition of deposits. It is suggested to accept security deposits Under specific agreement.

(j) Amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank is not deposits subject to fulfillment of the following conditions, namely:-

(i) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;

(ii) the loan is provided by the promoters themselves or by their relatives or by both; and

(iii) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;

(k) This amount is not a deposit in term of rule 2(1)(c) (ixa) provided these non-convertible debenture are listed on recognized stock exchange

CHECKLIST OF SECRETARIAL COMPLIANCE FOR ACCEPTANCE OF DEPOSITS AS PER COMPANIES ACT, 2013:

Checklist of secretarial compliance for acceptance of deposits under Companies Act, 2013, are discussed below. The Company Secretary should check:

1. Whether proper Board meeting has been held and the matter of acceptance of deposit has been proposed and issue of notice for holding general meeting for obtaining approval of the shareholder has been taken place.
2. Whether general meeting has been held and approval of the shareholders by means of a special or ordinary resolution has been passed.
3. Whether the said resolution has been filed with Registrar in Form MGT-14 within 30 days of passing of such resolution.
4. Whether Board meeting has been held to obtain the approval for the draft Circular/Form of Advertisement from the Board and the said draft Circular/Form of Advertisement has been signed by majority of the directors of the Company.
5. Whether copy of Circular/Form of Advertisement approved by the Board has been filed with the Registrar of Companies in Form DPT-1 for registration.
6. Whether one or more deposit trustees for creating security for the secured deposits has been appointed and the company has executed a deposit trust deed in Form DPT-2 at least seven days before issuing circular or circular in the form of advertisement.
7. Whether the company has obtain the rating unless exempted,(including its net worth, liquidity and ability to pay its deposits on due date) from are cognized credit rating agency for informing the public the rating given to the Company.
8. Whether the company has issued circular/form of advertisement after 30 days from the date of filing of a Copy of Circular/Form of Advertisement with the Registrar.
9. Whether the circular has been issued to members by registered post with acknowledgement due or speed post or by electronic mode or publish the circular in the form of an advertisement inform DPT-1 and in addition to such issue of circular the company has published the same in one English newspaper having country wide circulation and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company.
10. Whether the company has uploaded the copy of the circular on the Company's website, if any.
11. Whether the company has issued deposit receipt in the prescribed format and under the signature of officer duly authorized by Board, within a period of two weeks from the date of receipt of money or realization of cheques.
12. Whether the company has made entries in the register as per the instruction provided in the rules within seven days from the date of issuance of the deposit receipt and such entries shall be authenticated by a director or secretary of the Company or by any other officer authorized by the Board.
13. Whether the company has filed deposit return in Form DPT-3 by furnishing information contained therein as on 31st day of March duly audited by auditors before 30th June every year.
14. Whether the company has prepared the statement regarding deposits existing as on the date of commencement of the act in Form DPT-4.

These are some of the checklist which are to be taken care of from compliance point of view.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Unsecured loans from promoters are always treated as exempt deposits. Comment.
2. Practical Questions:----------
   a) Shine Well Ltd. has accepted deposits from the public under the Companies (Acceptance of Deposits) Rules, 2014. The Company has now decided to repay some of its deposits before maturity. Can the company do so? If yes, what are the conditions attached thereto?

FROM ICSI MODULE

Answer the Following:-

1. Explain the manner in which the Companies Act, 2013 regulates and controls the invitation for and acceptance of deposits by the companies from their members and the public at large.
2. Discuss the limits of accepting 'deposits' as prescribed under the Companies (Acceptance of Deposits) Rules, 2014 as amended up-to-date.
3. What are the legal requirements if a company wants to invite deposits from the public?
4. What transactions are not deemed to be deposits?
5. What are the particulars to be included in a circular or circular in the form of advertisement inviting deposits by a company?
6. What is the validity period of such a circular or circular in the form of advertisement inviting deposits by a company?
7. What kind of deposits are not deposits as per the definition of 'deposits' under the Companies (Acceptance of Deposits) Rules, 2014?
8. Explain:
   (a) Non-financial companies can accept deposits.
   (b) Circular or circular in the form of advertisement in the context of public deposits.
9. Write short notes on Return of deposits.

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

15

CHARGES

Covering-

- Section Charts
- Charges - Definition
- Kinds of Charges
- Crystallisation of Floating Charges
- Registration of Charges
- Satisfaction of Charges
- Extension of Time
- Self Test Questions
  - From Past CS Exam
  - From ICSI Module

EXPECTED MARKS COVERAGE (5 to 10)

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N.K.J - SECTION CHART

Section	Short Description
Section 77	Duty of register charges, etc.
Section 78	Application for registration of charge
Section 79	Section 77 to apply on modification of charge
Section 80	Date of notice of charge
Section 81	Register of charges to be kept by Registrar
Section 82	Company to report satisfaction of charge
Section 85	Company's register of charges
Section 87	Rectification by Central Government in register of charges
Rule	Companies (Registration of charges) Rules 2014

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CHARGES

CHARGE

A charge is security given for securing loans or debentures by way of a mortgage on the assets of the company.
For the purpose Companies Act, 2013 Charge also **includes a lien, hypothecation or pledge**.

KINDS OF CHARGES

A charge on the property of the company as security for debentures may be of the following kinds, namely:-

(1) Fixed or specific charge;
(2) Floating charge.

- **FIXED OR SPECIFIC CHARGE**

  A charge is fixed or specific when it is made specifically to cover assets which are **ascertained and definite** or are capable of being ascertained and defined, at the time of creating charge e.g., land, building, or heavy machinery. A fixed charge, therefore, is against security of certain specific property, and the company looses its right to dispose off that property as unencumbered.

- **FLOATING CHARGE**

  A floating charge is a charge on a class of assets present and future which in the ordinary course of business is **changing from time to time** and leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security.

  A floating charge is not attached to any definite property but covers property of a **fluctuating type** e.g., stock-in-trade and is thus necessarily equitable.

CRYSTALLISATION OF FLOATING CHARGE

A floating charge attaches to the company's property generally and remains dormant till it crystallises or becomes fixed. The company has a right to carry on its business with the help of
assets having a floating charge till the happening of some event which determines this right.

A floating charge crystallises and the security becomes fixed in the following cases:-

(a)	when the company goes into liquidation;
(b)	when the company ceases to carry on the business;
(c)	when the creditors or the debenture holders take steps to enforce their security.
(d)	on the happening of the event specified in the deed.

Although a floating charge is a present security, yet it leaves the company free to create a specific mortgage on its property having priority over the floating charge.
In ***Government Stock Investment Co. Ltd. v. Manila Railway Co. Ltd.*** the debentures created a floating charge. Three months' interest became **due but the debenture holders took no steps** and so the charge did not crystallize but remained floating. The company then made a mortgage of a specific part of its property. Held, the mortgagee had priority. The security for the debentures remained merely a floating security as the debenture holders had taken no steps to enforce their security.

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EFFECT OF CRYSTALLISATION OF A FLOATING CHARGE

On crystallisation, the floating charge converts itself into a fixed charge on the property of the company. It has priority over any subsequent equitable charge and other unsecured creditors.

REGISTRATION OF CHARGES

FILINGS ON CREATION OF CHARGE

SECTION-77

Section 77 of the Act requires a company to file, within **30 days** after the date of the creation of a charge, with the Registrar, complete particulars together with the instrument, if any, creating or evidencing the charge. The particulars of charge is required to be filed in **Form CHG.1**, together with the instrument. In case charge relates to **debentures**, the particulars of charge shall be filed in **Form CHG.9**.

Provided that the Registrar may grant **extention** of 60 **days** on payment of such additional fee, if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period.

Provided further that if the registration is not made within the period specified—

The Registrar may, on an application, allow such registration to be made within a further period of **Sixty Days** after payment of such ***ADVALOREM*** fees as may be prescribed

According to **section 78** Where a company fails to register the charge, the person in whose favour the charge is created may apply to the registrar for registration and the registrar may, on such application, within a period of 14 days after giving notice to the company, unless the company itself register the charge or shows sufficient cause why such charge should not be registered, allow such registration.

If any person wilfully furnishes any false or incorrect information of knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.

EFFECT OF REGISTRATION

A registration of charge constitutes a **notice** to whosoever acquires a future interest in the charged assets. **Section 80** provides that where any charge on any property of a company has been registered, any person acquiring such property or part thereof or any share or interest therein shall be deemed to have notice of the charge as from the date of such registration.

CONSEQUENCES OF NON-REGISTRATION

If a charge which requires registration under Section 77 is not registered, the consequences are as follows:-

(a) The charge will be void as against the liquidator (if the company goes into liquidation) and against creditors, but against them only.

(b) The charge is good against the company and the amount becomes payable immediately.

(c) Although a security becomes void by non-registration, it does not affect the contract or obligation of the company to repay the money thereby secured.

(d) During liquidation the charge-holder (creditor) assumes the status of an unsecured creditor, as the charge is void against liquidator and creditors.

(e) The company shall be punishable with fine which shall not be less than **one lakh rupees** but which may extend to **ten lakh rupees** and every officer of the company or other person who is in default shall be punishable with imprisonment for a term which may extend to **six months** or with fine which shall not be less than **twenty-five thousand** rupees but which may extend to **one lakh rupees every day** or with **both.**

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MODIFICATION OF CHARGE

Section 79 of the Act makes it clear that the requirement of registering the charge shall also apply to any modification in terms and conditions of any charge already registered.

The provisions relating to condonation of delay shall apply, mutatis mutandis, to the modification of charge under section 79 of the Act.

COMPANY'S REGISTER OF CHARGES

SECTION-85

Every company is required to keep at its registered office a register of all charges (including mortgages) in prescribed **Form CHG.7.**

Further, every company must keep at its registered office, a copy of every instrument creating any charge.

Inspection of the Register of Charges and of the instrument creating charges can be allowed only during the business hours to any **creditor** or **member** of the company **without fee** and to any **other person** on payment of a fee .

REGISTRAR'S REGISTER OF CHARGES

SECTION-81

Section 81 requires the Registrar to keep a register containing all the charges requiring registration with respect to each company.

ROC on payment of the prescribed fee, shall enter in the Register with respect to every such charge the following particulars :-

(a) the date of its creation.

(b) the amount secured by the charge;

(c) short particulars of the property charged; and

(d) the persons entitled to the charge

The documents including the forms of charges can be accessed electronically upon payment of statutory fees.

SATISFACTION OF CHARGES

SECTION-82

Section 82 of the Act requires that the **company shall** give intimation to the Registrar of the payment or satisfaction in full, of any charge relating to the company within **30 days** from the date of such payment or satisfaction. The company shall intimate satisfaction of the charge in **Form CHG.4.**

"Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed".

Letter of chargeholder (i.e. 'no dues letter') stating that the amount has been satisfied is required to be **attached** with **Form CHG.4**.

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EXTENSION OF TIME/CONDONATION OF DELAY AND RECTIFICATION OF REGISTER OF CHARGES MAINTAINED BY ROC BY CENTRAL GOVERNMENT

SECTION 87

When a company omits to file with the registrar the particulars of the payment or satisfaction of a charge, within the time required, it has to make application **(Form CHG.8)** before the central government **(power delegated to RD)** for extension of time.

The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

If the RD is satisfied that the omission to file with the registrar the particulars of any satisfaction of charge was:-

(a)	accidental or
(b)	due to inadvertence or due to some other sufficient cause or
(c)	is not in a nature to prejudice the position of creditors or shareholders of the company,
(d)	on any other grounds, it is just and equitable to grant relief, it may direct that time for filing of charge or intimation for satisfaction of charge shall be extended.

DISTINCTION BETWEEN MORTGAGE AND CHARGE

S. No.	Mortgage	Charge
1.	A mortgage is created by the act of the parties.	A charge may be created either through the act of parties or by operation of law.
2.	A mortgage requires registration under the Transfer of Property Act, 1882.	A charge created by operation of law does not require registration. But a charge created by act of parties requires registration.
3.	A mortgage is for a fixed term.	The charge may be in perpetuity.
4.	A mortgage is a transfer of an interest in specific immovable property.	A charge only gives a right to receive payment out of a particular property.
5.	A mortgage is a transfer of an interest in a specific immovable property.	There is no such transfer of interest in the case of a charge. Charge does not operate as transfer of an interest in the property and a transferee of the property gets the property free from the charge provided he purchases it for value without notice of the charge.

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VARIOUS FORMS USED UNDER THIS CHAPTER

S. NO.	FORM	PURPOSE
1.	CHG-1	Creating or modifying the charge (for other than Debentures)
2.	CHG-2	Certificate of registration
3.	CHG-3	Certificate of modification of charge
4.	CHG-4	Intimation of the satisfaction to the Registrar
5.	CHG-5	Memorandum of satisfaction of charge
6.	CHG-6	Notice of appointment or cessation of receiver or manager
7.	CHG-7	Register of charges
8.	CHG-8	Application for condonation of delay shall be filed with the Central Government
9.	CHG-9	Creating or modifying the charge in (for debentures including rectification)
10.	CHG-10	Application for delay to the registrar

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Q. 1. XYZ Limited has office building in London. The company has been granted a term loan of ₹15 crore from a Bank. The company wants to mortgage office building of London. Examining the provisions of the Companies Act, 2013, answer the following :
(i) Whether the company can mortgage the above office building ?
(ii) Whether a charge can be created for property situated outside India ? **[June. 2017]**

Ans. In accordance with the provision of the Companies Act ,2013 , as contained in section 77(1), it shall be the duty of every company creating a charge within or outside India , on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particular of the charge signed by the company and the charge holder together with the instrument if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the regular within thirty days of its creation.

Therefore, XYZ Limited can mortgage the office building of London (UK) according to rule 3 of companies (Registration of charges) Rules, 2014; e form prescribed for the purpose of creating the charges is form No. CHG-1 and it will be filed within the prescribed period.

Q. 2. The authorized share capital of shine Ltd. is ₹ 50 lakh. The paid – up capital of the company is ₹ 20 lakh. The Board of directors at its 100th meeting held in the residence of Managing Directors of the company resolved to create charge on uncalled share capital of ₹ 30 lakh. With reference to the provisions of the Companies Act, 2013 ascertain if the resolution is valid. **[June 2018]**

Ans. A loan taken by a company may be secured by a charge on uncalled capital;.

A company does not have implied power of charging its uncalled share capital and a company may charge its uncalled capital if its articles or memorandum authorize it to charge it. The memorandum may give an express power to charge uncalled capital, or the power may be so wide that it can be inferred by implication. In Newton v. Debenture holders of Anglo –Australian investment Co. (1895)A.C.224, the memorandum authorized the company to borrow "upon any security of the company". It was held that the power was wide enough to include a charge on uncalled capital.

In present case the company may lake a loan secured by charge on uncalled capital only if the article or memorandum of the company so permits.

CHARGE AND PLEDGE DISTINGUISHED

According to the generally accepted definition, a 'pledge' is a bailment of personal property as security for some debt or engagement, redeemable on certain terms, and with an implied power of sale on default. It consists of a delivery of goods by a debtor to his creditor as security for a debt or other obligation, to be held until the debt is repaid along with interest or other obligation of the debtor is discharged, and then to be delivered back to the pledger, the title not being changed during the continuance of the pledge. Unlike a pledge, a 'charge' is not a transfer of property of one to another. It is a right created in favour of one, referred to as "the lender" in the immovable property of another, referred to as "the borrower", as security for repayment of the loan and payment of interest on the terms and conditions contained in the loan documents evidencing charge. Both a pledge and a charge are the result of voluntary act of parties. Both create security but the nature of the security is different.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Shorts Notes:----------
   a) Consequences Of non – registration of charge
   b) Essentials of a mortgage
2. Descriptive Questions:----------
   What is meant by 'floating charge' and how it would be crystallized?
   What is meant by crystallization of floating charge? What are its effects?
3. Distinguish Between :----------
   a) 'Mortgage' and 'charge'.
4. What are the consequences of non –registration of charge which requires registration under Section 77 (1) of Companies Act, 2013?
5. State the provisions regarding registration and modification of charges.
6. Discuss the provisions relating to 'registration of charges'

FROM ICSI MODULE

Answer the Following:-

1. Define mortgage. State the various types of mortgages.
2. What are the essentials of a mortgage?
3. What is a charge? Enumerate the statutory provisions for their registration. State the circumstances under which certain charges may be void against the liquidator or the creditors of company.
4. What information must be entered in the register of charges maintained by the company? What is the effect of a failure to register a charge?
5. Can a floating charge become a fixed charge? If so, under what circumstances?
6. Distinguish between :
   (a) Fixed and Floating Charge
   (b) Mortgage and Charge
7. Under what circumstances a Floating Charge is crystallised?

CS NITESH KR

Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

16

MEMBERS AND SHAREHOLDERS

Covering-

- Member- definition
- Modes of acquiring Membership
- Who can become a Member
- Joint members/shareholders
- Distinction between members and shareholder
- Rights of members
- Variation of members' rights
- Cancellation of the variation in the members' rights
- Liability of members
- Register and index of members/debentureholder etc.
- Register and index of beneficial owners
- Closing the register of members / debenture holders, other Security holder
- Record date
- Cessation/ termination of membership
- Expulsion of a member
- Registration of shares in the name of public office
- Nomination by security holders
- Claim of rights by Nominee
- Variation of Nominee
- Self Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (0 to 5)

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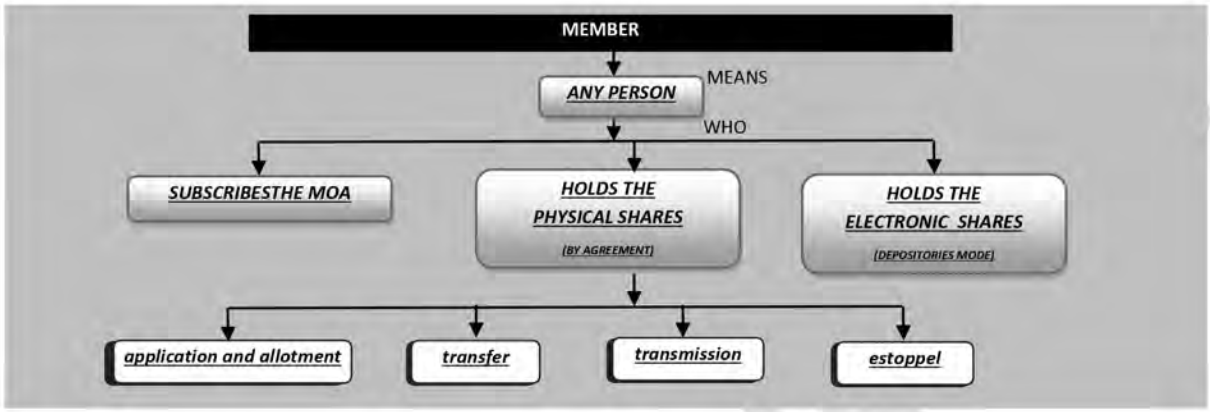

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MEMBERS AND SHAREHOLDERS

MEMBER- DEFINITION

According to **Section 2(55)**:-

(a) The **subscribers of the memorandum** of a company shall be deemed to have agreed to become members of the company, and on registration, shall be entered as members in its register of members. ***(Subscriber to memorandum)***

(b) Every other person who **agrees in writing** to become a member of a company and whose name is entered in its register of members shall, be a member of the company. ***(Person named in the register of members)***

(c) Every person holding shares of a company and whose name is entered as **beneficial owner in the records of the depository** shall be deemed to be member of the concerned company."
(Beneficial owner of electronic shares)

MODES OF ACQUIRING MEMBERSHIP

As per **Section 2(55)** a person may acquire the membership of a company :-

(a) by subscribing to the memorandum of association (deemed agreement);

(b) by agreeing to become a member:-
- **(i)** by making an application to the company for allotment of shares; or
- **(ii)** by executing an instrument of transfer of shares as transferee; or
- **(iii)** by consenting to transfer of shares of a deceased member in his name; or
- **(iv)** by acquiescence or estoppel,

and on his name being entered in the register of members of the company.

(c) by holding equity shares in the electronic mode and on his name being entered as beneficial owner in the records of the depository.

1. BY SUBSCRIBING TO THE MEMORANDUM

In the case of a subscriber, **no application or allotment** is necessary to become a member. By virtue of his subscribing to the memorandum, **he is deemed to have agreed** to become a member, and he become ipso facto member on the incorporation of the company and Is liable for the shares he has subscribed.
A subscriber to the memorandum cannot rescind the contract for the purchase of shares; even on the ground of fraud by the promoters **(In Re. *Metal Constituents Company)***.

2. BY AGREEING TO BECOME A MEMBER

(a) **By an application and allotment:-** A person who applies far shares becomes a member when shares are allotted to him, a notice of allotment is issued to him and his name is entered on the register of members.

(b) **By transfer of shares :-** A person can become a member by acquiring shares from an existing members and by having the transfer of shares registered in the books of the company, i.e. by getting his name entered in the register of members of the company.

(c) **By transmission of shares:-** A person may become a member of a company by operation of law, e.g. if he succeeds to the estate of a deceased member. On* the death of a member, his executor or the person who is entitled under the law to succeed to his estate, gets the rights to have the shares transmitted and registered in his name in the company's register of members,

(d) **By acquiescence (accept without protest) or estoppels:-** A person is deemed to be a member of a company if he allows his name, without sufficient cause, to be on the register of members of the company or otherwise holds himself out or allows himself to be held out as a member. In such a case, he is estopped from denying his membership.

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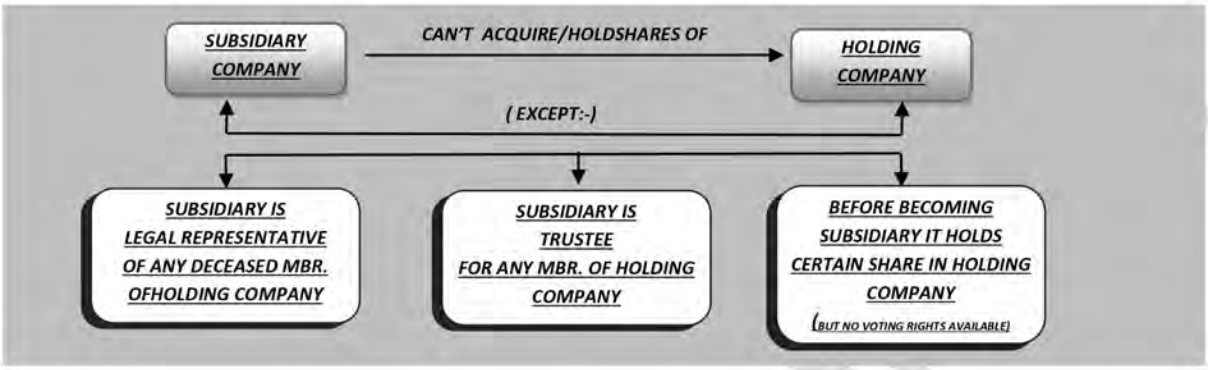

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3. BY HOLDING SHARES AS BENEFICIAL OWNER IN THE RECORDS OF A DEPOSITORY

A person holding share capital of a company whose name is entered in the records of the depository shall be deemed to a member of the concerned company.

WHO CAN BECOME A MEMBER

Subject to the memorandum and articles of a company, ***any sui juris (a person who is competent to contract) can become a member of a company***.

1. Company as a member of another company

A company is a legal person and so is competent to contract. Therefore, it can become a member of any other company. However, it must be authorised by its memorandum of association to invest in the shares of other company.

Section 19 provides that a **subsidiary company cannot become a member of its holding company.** Section 19 prohibits holding company to allot or transfer its shares to any of its subsidiary companies. Any such allotment or transfer of shares of a company shall be void.

However, following are **certain exceptions to section 19**:-

(a) Where a subsidiary company acts as the legal representative of a deceased member of the holding company;

(b) Where the subsidiary company acts as a. trustee for some shareholder of the holding company; and

(c) A subsidiary company can continue to be a member of its holding co., if it was its member before becoming subsidiary. But in this case, the subsidiary co. cannot exercise any right of vote at any meeting of the holding company.

NKJ–CLASSROOM PRACTICE	
 SCANNER	**Q. 1.** ABC Ltd. holds 75% equity share capital of DEF Ltd. and controls composition of Board of Directors of DEF Ltd. ABC Ltd. goes for public issue for raising further share capital. Board of Directors of ABC Ltd. allot 10% of the issue to DEF Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of Board's decision to allot 10% of issue to DEF Ltd. DEF Ltd. holds certain number of shares as a legal representative of a deceased member of ABC Ltd. and has a right to vote at a general meeting of ABC Ltd. in respect of such shareholdering, will this right be affected by issue of 10% to DEF Ltd. by ABC Ltd.? **[Dec 2017; 4 Marks]**

2. Partnership firm as a member

A partnership firm is not a legal person and so much it cannot, in its own name, become member of a company. However, it can become a member of Section 8 company.

3. Foreigners as members

A foreigner may take shares in an Indian company and become a member with the general or special permission of the RBI under the FEMA, 1999. However, in the event of war with his country, he becomes an alien enemy and his power of voting and his right to receive notices are suspended.

4. Minor as member

A minor is not competent to enter into a contract so he cannot become a member of a company and an agreement by a minor to take shares is void ab - initio.

However if the shares are fully paid, a minor applying through his natural guardian for being registered as a member is entitled to be so registered. (***Miss Nandita Jain v. Benett Coleman & Co. Ltd.)***

5. Pawnee

A pawnee has no right of foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law. In view of the foregoing, a pawnee cannot be treated as the holder of the shares pledged in his favour and the pawner continues to be a member and can exercise the rights of a member.

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6. **Receiver**
A receiver whose, name is not entered in the register of members cannot exercise any of the membership rights attached to a share **unless** in a proceeding to which company is a party, an order is made therein.

7. **Bankrupt**
A bankrupt may be a member of a company, as long as he is on the register of members.

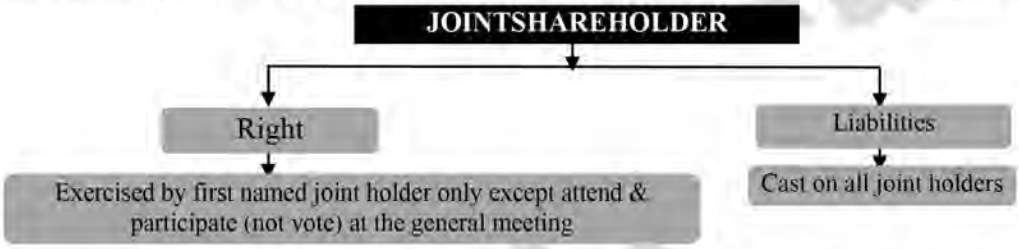
8. **Trade Union**
A trade union, registered under the Trade Union Act, can be registered, as a member and can hold shares in the company in its own corporate name.

9. **Limited Liability Partnership**
LLP being an incorporated body under the statute, can become a member of a company.

10. **Section 8 company**
A non-profit making company licensed under Section 8 of the Companies Act,2013 can become a member of another company if it is authorised by its Memorandum of Association toinvest into shares of the other company.

JOINT MEMBERS/SHAREHOLDERS

If more than one persons apply for shares in a company and shares are allotted to them, each one of such applicants becomes a member. Each of the joint holders of shares is a member of the company. However in the case of a private company, joint members are counted as one member for the purpose of Sec. 2(68).



In the case of joint shareholders, usually rights are exercised by the first named joint holder but duties are cast on all the joint holders.

All the joint holders have, however, right to attend and participate at the annual and other general meetings but only one of them can vote. In the case of joint holders, the vote of the senior who tenders a vote, shall be accepted to 'the exclusion of the votes of the other joint holders. For this purpose, seniority shall be determined by the order in which the names stand in the Register of Members.

No transfer of shares shall be registered by the company unless the instrument of transfer is executed by all the joint shareholders as transferors of the shares. Joint members are liable jointly and severally to pay calls on the shares held by them.

DISTINCTION BETWEEN MEMBERS AND SHAREHOLDER

Basis of distinction	Member	Shareholder
1. Definition	The term 'member' is defined u/s 2(55) of the Companies Act, 2013.	The term 'shareholder' has not been defined under the Companies Act.
2. Meaning	The term 'member' generally means a person whose name is entered in the register of members.	The term 'shareholder' means a person who holds shares in a company.
3. Nature of company	Every company shall have the minimum number of members, whether it is limited by share capital or guarantee.	Only a company having a share capital can have shareholders. A company limited by guarantee and having no share capital does not have any shareholders.

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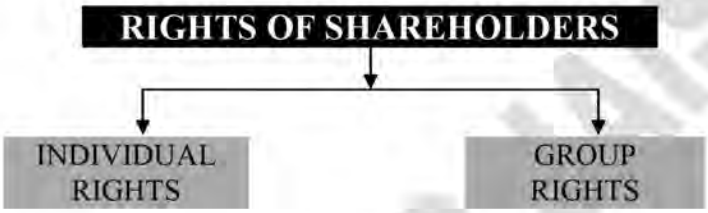
4.	**Signatory to memorandum**	A person who signs the memorandum is a member even before shares are allotted to him.	A person who signs the memorandum becomes a shareholder only when the shares are actually allotted to him.
5.	**Transferor of shares until change in the register**	A transferor of shares continues to be a member until his name is removed from the register of members, although he may not be a shareholder.	Where a person transfers his shares, he immediately ceases to be a shareholder, even though his name continues to appear in the register of members.
6.	**Bearer of share warrant**	The bearer of a share warrant is not a member.	A bearer of share warrant is a shareholder.

RIGHTS OF MEMBERS

Since the shareholders furnish the funds and bear the risk, they have been given certain rights, both in their individual capacity and as a group. It is as a group, when attending general meetings of the company, that shareholders enjoy the privilege of exercising control over the policy in relation to the working of the company.



➢ INDIVIDUAL RIGHTS

The individual rights of a shareholder include the right to:-

(i) Receive notice of general meetings of the company and to attend those meetings and vote at them either in person or by proxy;
(ii) Receive dividends, when declared;
(iii) Transfer his shares, subject to restrictions, if any, imposed by the articles;
(iv) Inspect registers and records of the company and obtain extracts;
(v) Apply to the Court to have any variation or abrogation of his rights set aside by the Court;
(vi) Share in the assets of the company on its dissolution.

➢ COLLECTIVE MEMBERSHIP RIGHTS / GROUP RIGHTS

The law requires certain things to be done only with the consent of the shareholders in a meeting. Some of them are following:-

(a) consent is not required if the investment is made in trust securities)
(b) issue of bonus shares;
(c) reorganisation of the capital;
(d) amendment of the memorandum and articles;
(e) voluntary winding up of the company.

These **powers of the shareholders are the minimum and cannot be taken away or reduced**, although they can be **enlarged** by making suitable provisions in the articles. Furthermore, enhanced powers are given to the shareholders in a meeting in certain important matters in as much as they can be transacted only by a special resolution.

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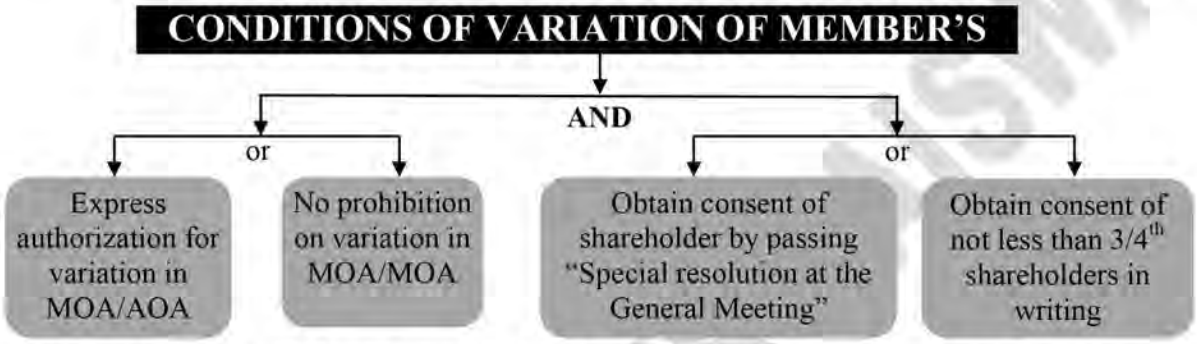
So long a persons' name is standing registered in the books as member, even if he has sold the shares and has given the share certificates and the blank transfer deed duly signed, he alone is entitled to exercise the rights of membership. ***(LIC v. Escorts Ltd. & Others)***

➢ VOTING RIGHTS OF SHAREHOLDERS

(A) Voting rights of equity shareholders: A person who holds the equity shares of a company has a right to vote on every resolution placed before the company. His voting right on a poll is in proportion to his share of the paid up equity capital of the Company.

(B) Voting rights of preference shareholders: A person who holds the preference shares of a company does not have a right to vote on every resolution of the company. He has a right to vote only on those resolutions which directly affect his rights attached to preference shares.

VARIATION OF MEMBERS' RIGHTS



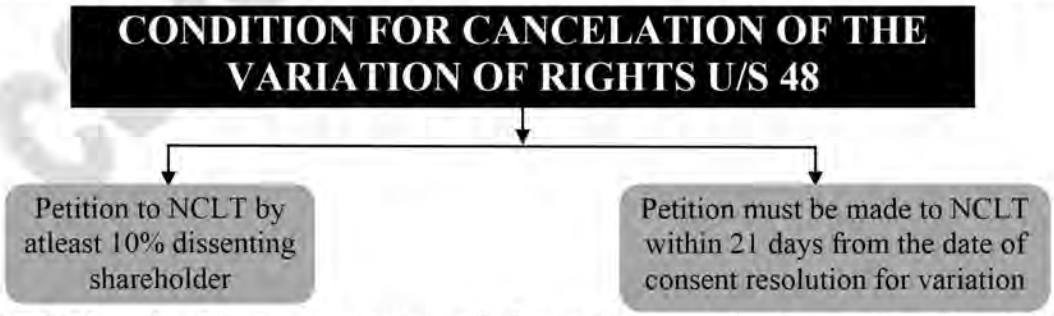
According to **Section 48** the rights attached to the shares of any class can be varied, subject to the following two conditions :-

(a) Such variation is authorized by the Memorandum and Articles of association of the Company or if it is not so, then such variation is not prohibited by the terms of issue of shares of that class; and

(b) Consent in writing of the holders of not less than three-fourths of the issued shares of that class is obtained or a special resolution is passed at a separate meeting of the holders of the issued shares of that class.

The aforesaid Special Resolution shall be passed by Postal Ballot. However, it is not so required in the case in the case of OPC and other companies having members not more than Two Hundred (200).

CANCELLATION OF THE VARIATION IN THE MEMBERS' RIGHTS



The shareholders who did not consent to or vote in favour of the resolution for variation of members' rights are called **dissentient shareholders**.

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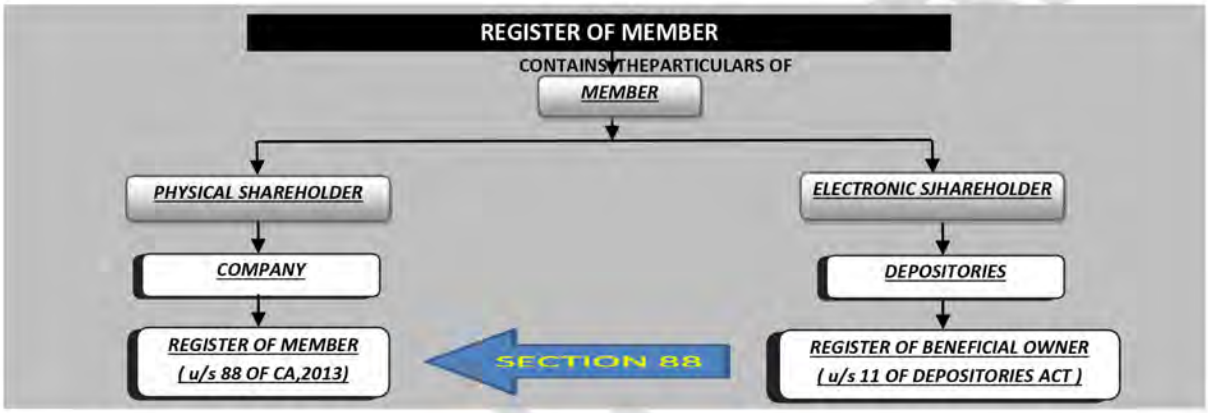

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According to **Section 48** of the Companies Act, 2013 any variation in the members' rights may be cancelled, by making a petition to the NCLT, by the dissentient shareholders holding **not less than 10% of the issued shares** of that class within a period of **21 days** from the date when the consent was given or resolution was passed as the case may be.

LIABILITY OF MEMBERS

In the case of a **company limited by shares**, the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them. If his shares are fully paid-up, he has nothing more to pay.

In the case of a **company limited by guarantee,** the liability of its members limited to such an amount as the members may respectively thereby undertake, by the memorandum of association of the company, to contribute to the assets of the company. However in this case the liability of members to pay their guaranteed amounts arises only when the company has gone into liquidation and not when it is a going concern.

If a guarantee company has share capital, the shareholders have two-fold liability; to pay the amount which remains unpaid on their share whenever called upon to pay, and secondly, to pay the amount payable under the guarantee when the company goes into liquidation.

In the case of an **unlimited company**, there is no limit on the liability of its members. Thus, the maximum liability of the members of such a company could extend to their entire personal property to meet the debts and obligations of the company.

REGISTER AND INDEX OF MEMBERS/ DEBENTUREHOLDER ETC.

According to **Section 88**, every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—

(a)	**register of members** indicating separately for each class of equity and preference shares held by each member residing in or outside India;
(b)	**register of debenture-holders;** and
(c)	**register of any other security holders**
(d)	**Foreign register**.

Every register maintained shall include an **index** of the names included therein. However, the maintenance of index is not necessary in case the number of security holder is less than 50.

Register of member shall contain the following particulars:

(a)	the name and address, and the occupation, if any, of each member;
(b)	in the case of a company having a share capital, the shares held by each member, distinguishing each share by its number except where such shares are held with a depository, and the amount paid or agreed to be considered as paid on those shares;
(c)	the date at which each person was entered in the register as a member; and
(d)	the date at which any person ceased to be a member.

According to **Rule 3 of Companies (Management and Administration) Rules, 2014** Every company limited by shares shall maintain a register of its members in **Form No. MGT.1. Further, Rule 8** provides that the entries in the registers maintained under section 88 and index included therein shall be authenticated by the **company secretary** of the company or **by any other person** authorised by the Board for the purpose.

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If a company does not maintain a register of members etc. the company and every officer of the company who is in default shall be punishable with fine which shall not be less than **fifty thousand rupees** but which may extend to **three lakh rupees** and where the failure is a continuing one, with a further fine which may extend to **one thousand rupees for every day,** after the first during which the failure continues."

REGISTER AND INDEX OF BENEFICIAL OWNERS

The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Companies Act, 2013.

CLOSING THE REGISTER OF MEMBERS / DEBENTURE HOLDERS, OTHERSECURITY HOLDER

SECTION 91

According to Section 91, the register of members of a company may be closed, after giving not than seven days' previous notice, by advertisement in English Newspaper and also in some vernacular language newspaper circulating in the district in which the registered office of the company is situated. The register can be closed for any period not exceeding in the aggregate forty five (45) days in each year but not exceeding thirty days (30) at any one time. The register of members can be closed for the following purposes :-

(i) to finalise the list of shareholders to whom to notice of general meeting is to be sent:
(ii) to determine the entitlement of dividend;
(iii) To determine the entitlement, when rights share or bonus share are to be issued.

Section 91 Also applies to closing of register of debenture holders and register of other security holder.

In the case of Listed Company, closure of books is only at the time of **AGM.** At any other time, of the books are closed; it is called record date.

RECORD DATE

Record date is a date fixed by a company for taking a record of its shareholders or debenture holders for declaration of dividends, issue of right or bonus shares or conversion of debenture into shares

CESSATION/ TERMINATION OF MEMBERSHIP

A person ceases to be a member of a company **when his name is removed from its register of members,** which may occur in any of the following situations :-

(a) he transfers his shares to another person;
(b) his shares are forfeited;
(c) he makes a valid surrender of his shares;
(d) his shares are sold by the company to enforce a lien;
(e) he dies or is adjudged insolvent;
(f) his redeemable preference shares are redeemed;
(g) his shares are bought-back;
(h) his shares are attached by the Court in satisfaction of a decree.

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EXPULSION OF A MEMBER

The articles of association of a company cannot provide for expulsion of a member, as such a power is opposed to the fundamental principle of the Company Jurisprudence and, therefore, ultra vires the company.

The articles of association are a contract between the company and its members setting out the rights of members inter-se under the contract and expulsion of a member is not only the violation of this contract but it also opposed to the principle of natural justice. Any assumption of the powers by the Board of Directors to expel a member by alteration of articles of association shall be illegal and void.

REGISTRATION OF SHARES IN THE NAME OF PUBLIC OFFICE

The Companies Act, 2013 contains **no provisions** regarding holding of shares in the name of a public office. Shares cannot, therefore, be registered in the names of public offices like the Collector of Central Excise or the Commissioner of Income-tax etc. Hence, shares in a company cannot be registered in the name of a Public Office, **which is not a corporation sole** as understood in law.

*A **"corporation sole" is a corporation constituted in a single person who in the right of some office or function and has corporate status**.*

Under **Article 299** of the Constitution of India, **all contracts** for and on behalf of the **Government of India** are required to be in the name of the **President of India** and **all contracts** for and on behalf of any **State Government** are required to be in the name of the **Governor of the State.** The President of India or the Governor of a State can hold shares in a company in his name and become member of a company.

NOMINATION BY SECURITY HOLDERS

Section 12 provides nomination facility to the security holders i.e shareholders, debenture holders, depositors, etc.,

According to Section 72;-

(a) A security holder can, at anytime, make nomination by filling in and sending **Form No.SH.13** to the company. The nomination can be made only by individuals holding securities singly or jointly. Non - individuals including a society, trust, body corporate, partnership firm, Karta of HUF and holder of Power of Attorney cannot nominate.

(b) Once a nomination is made, the same will override all claims from the legal heirs.

(c) If the nominee is a minor, security holder can also appoint any person to receive the amount / benefits in the event of his death during the minority of the nominee. The person so appointed is an alternative nominee and his authority comes to an end as soon as the minor nominee attains majority.

CLAIM OF RIGHTS BY NOMINEE

Following are the important provisions in this regard :-

(a) Upon death of the security holder, the nominee would be required to furnish the following documents for the purpose of identification :-

(i) Certified true copy of death certificate of security holder.

(ii) Proof of dale of birth of the nominee, in case the nominee is a minor.

(iii) An affidavit / declaration by the nominee declaring his rights.

(iv) The original security certificate (s).

The company, on production of the above documents, and on being satisfied about the identity of the nominee, will request the nominee elect either to register himself as holder of security or to transfer the security. The nominee is then required to issue a notice of election. If the nominee elects to be registered as a holder of security, he shall send a notice in writing to the company stating that he so elects.

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VARIATION OF NOMINEE

A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in **Form No. SH.14.**

The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.

CS NITESH KR JAISWAL

Q. 1. Members of a company incorporated under the Companies Act, 2013 are the agents of the company. Therefore, the company can be held liable for their acts. **[Dec. 2017]**

Ans. Members (Shareholders) of a company are not the agents of the company and so they cannot bind the company their acts. The company does not hold its property as an agent or trustee for its members and they cannot sue to enforce its rights, nor can they be sued in respect of its liabilities. Thus, to clarify, since members of the company are not agents of the company, the company can

Alternative Answer

The Companies Act, 2013 do not create any agent-principal relation between the company and its members. Thus the company cannot be held liable for their (member's) acts

This is to clarify that the company under section 9 has power to contract and therefore may appoint any person, whether member or not, as its agent, where required. Where the company enters into any such contract, it may be liable under the contractual obligation.

Q. 2. ABC Ltd. holds 75% equity share capital of DEF Ltd. and controls composition of Board of Directors of DEF Ltd. ABC Ltd. goes for public issue for raising further share capital. Board of Directors of ABC Ltd. allot 10% of the issue to DEF Ltd. Referring to the provisions of the Companies Act, 2013, examine the validity of Board's decision to allot 10% of issue to DEF Ltd. DEF Ltd. holds certain number of shares as a legal representative of a deceased member of ABC Ltd. and has a right to vote at a general meeting of ABC Ltd. in respect of such shareholdering, will this right be affected by issue of 10% to DEF Ltd. by ABC Ltd. ?

Ans. In accordance with the provisions of the Companies Act, 2013, as contained in Section 19(1), a subsidiary company shall not either by itself or through its nominees hold 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.*

Therefore ABC Limited cannot allot 10% shares of public issue to DEF Limited, in view of the above provisions. Allotment of shares to DEF Limited shall be *void.*

Further, in the following circumstances where is subsidiary can hold the shares of the holding company;

1. Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
2. Where the subsidiary company holds the shares as trustee; or
3. Where the subsidiary company is a shareholders even before it become a subsidiary company of its holding company.

The subsidiary company, however, as referred above shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or a trustee.

Q. 3. A2Z Management Services Limited is a listed company quoted at Bombay Stock Exchange Limited. The company closed its register of debenture holders in June and August 2016for 12 and 21 days respectively. The Chief Financial Officer (CFO) of the company has informed the Secretary of the company to consider closing the register in December for another 15 days for some strategic reasons. Referring to the provisions of the Companies Act, 2013, examine the validity of the above action of the company. **[June. 2017]**

Ans. By virtue of the provision of the companies Act, 2013, as contained in section 91(1), a company may close the register of members or the register of debenture-holders or the register of other security holder for any periods or periods not exceeding in the aggregate 45 days in each year, but not exceeding 30 days at any one time.

In the given case, A2Z management services Limited has closed its registered of debenture holder for 12 and 21 days in June and August, 2016 respectively therefore, the closure is within the time limits prescribed in section 91(1) as each closure has not exceeded 30days.

If the company closes the register again in Dec., 2016 for another 15 days, the aggregate closure during the year would be 48 days which will exceed the prescribe time limit of 45 days.

If the company closes the register again in Dec, 2016 for another 15 days, the aggregate closure during the year would be 48 days which will exceed the prescribed time limit of 45 days.

Hence, the proposal of CFO of the company is not valid under the above provisions of the companies Act, 2013.

SHAREHOLDER'S AGREEMENT

Shareholders' agreements (SHA) are quite common in business. In India shareholder's agreement have gained popularity and currency only lately with bloom in newer forms of businesses. There are numerous situations where such agreements are entered into – family companies, JV companies, venture capital investments, private equity investments, strategic alliances, and so on. Shareholders' agreement is a contractual arrangement between the shareholders of a company describing how the company should be operated and the defining inter-se shareholders' rights and obligations. shareholders' agreement. SHAs are the result of mutual understanding among the shareholders of a company to which, the company generally becomes a consenting party. Such agreements are specifically drafted to provide specific rights, impose definite restrictions over and above those provided by the Companies Act.

VETO POWER OR RIGHTS

A right is inherent. Shareholders rights refer to rights enshrined in the constitutional document of the company or as provided by the law. A power has its genesis under the provisions of law.

As per the provisions of the Companies Act, 2013 there are some resemblance where the management can take decisions own their own, by virtue of law. However, there are some instances where the consent of the shareholders is mandatory to approve any decision or transaction which is said to be as the veto power or veto right of shareholders of the company.

VETO POWER AND CASTING VOTE

Veto power is different than casting vote of Chairman. Casting vote is applicable on in case of equality of votes in favour and against. In case of equality the Chairman may give vote either in favour or against the resolution and it can be carried accordingly. Veto power has not been defined in Companies Act.

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SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Short Notes:----------
   a) Rights of dissentient shareholders.
2. Practical Questions:----------
   a) ABC & CO., a partnership firm applied for shares in XYZ Ltd. The Company allotted the shares required by the partnership firm. In the given context, what is liability of the partners and the partnership firm?
   b) Fortune Ltd. refused to enter the name of the minor son of a deceased member in the register of members on the ground that the minor cannot enter into a contract as per section 11 of the Indian Contract Act, 1872. The shares are fully paid-up Comment on the decision of the company and suggest remedies available.
   c) John, who was is a member of Alex Ltd. is of unsound mind .Can the shareholder of unsound mind exercise his voting in respect of his membership in the said company / Give your advice.
   d) Rahees, who is a member of vivek Ltd., a public company, has very recently become an insolvent. Can the insolvent Rahee continue as a member of the company?
3. Descriptive Questions :----------
   a) All the shareholders of a company are members and all the members of a company are shareholders.
   b) In what manner 'membership' in a company can be sought?
   c) Four types of persons, viz., a Section 8 of a Companies Act, 2013 Company, an insolvent individual, trade union and a Pawnee, apply for membership in your public limited company. Will you accept them as members of your company? Why?
4. Explain when a person ceases to be a member of the company.

FROM ICSI MODULE

Answer the following:

1. Every shareholder of a company is known as a member while every member may not be known as a shareholder. Comment.
2. Define a 'member'. Distinguish him from a shareholder. In what ways a person can become and cease to be a member of the company?
3. Who can become a member of the company? Can the following persons or institutions become member of a company:

   (a) Minor; (b) Company; (c) Partnership firm; (d) Foreigner; (e) Insolvent.
4. Describe the circumstances under which a register of members may be rectified? Illustrate your answer in the light of the relevant provisions of the Companies Act, 2013.
5. What are the particulars to be recorded in a register of members of a company? Where is the register to be maintained and who has to maintain it? Can a member have access to the register?
6. The name of X is found entered in the register of a company. But X contends that he is not a member of the company. The company maintains that X had orally agreed to become a member and hence his name was entered in the register and so he is a member. Is the contention of the company valid?
7. What are the individual and group rights of a member?
8. When does the liability of a member of a limited company become unlimited?
9. Write short notes on:
   (a) Cessation of membership of a company;
   (b) Index of members;
   (c) Variation of members' rights;
   (d) Registration of shares in the name of public office.
   (e) Nomination by security holders.

Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

17

ACCOUNT

Covering-

- ABC Analysis
- Place of Keeping Books of Account
- Inspection of Books of Account
- Person responsible for keeping the books of account
- Financial Statement
- Re-Opening of Account
- National Financial Reporting Authority
- Authentication of Financial Statement, Board's Report, ETC.
- Right of Member to Copies of Audited Financial Statement
- Filing of Financial Statement with Registrar
- Extensible Business Reporting Language (XBRL)
- Self-Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (5 to 10)

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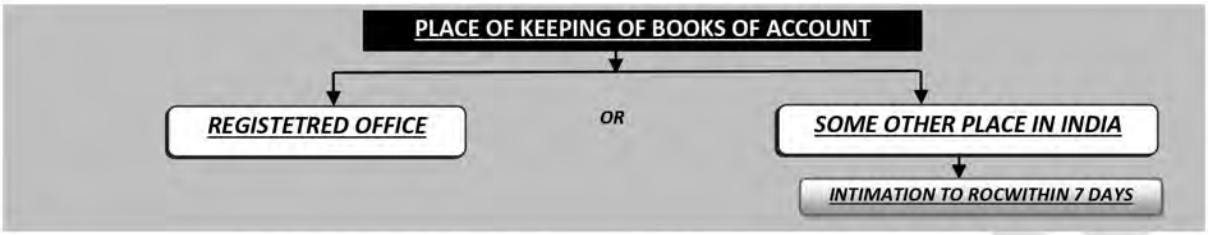

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ACCOUNTS

ABC Analysis
(ICSI -Exam Point of view)

A	1. Inspection of Books of Account 2. Filing of Financial Statement with Registrar 3. Extensible Business Reporting Language (XBRL)
B	4. National Financial Reporting Authority 5. Authentication of Financial Statement, Board's Report, ETC.
C	6. Re-Opening of Account 7. Right of Member to Copies of Audited Financial Statement

The shareholders provide capital to the company for running the business. They are in a way, the owners of the company. But, all of them cannot take part in managing the affairs of the company as their number is usually much more. **But they have every right to know as to how their money has been dealt with by the directors in a particular period.** This is why, the disclosure through annual information (annual accounts) to the shareholders by the directors about the working and financial position of the company has been made mandatory under Companies Act, 2013.

PLACE OF KEEPING BOOKS OF ACCOUNT

SECTION 128

Section 128 requires that every company shall keep at its registered office proper books of account. However, these books may be kept at such other place in India as the Board of Directors thinks fit. Here, within **7 days** of the decision, a notice in writing indicating full address is required to be given to the Registrar of Companies. The notice regarding address at which books of account may be kept shall be in **Form AOC-5**."

NATURE OF TRANSACTION TO BE RECORDED IN 'BOOKS OF ACCOUNT'

The original books of account, which must be kept by a **company, are with respect to:-**	**(a)**	All sums of money received and expected by the company;
	(b)	All sales and purchases of the goods and services by the company;
	(c)	The assets and liabilities of the company;
	(d)	In the case of a company engaged in production, processing, manufacturing of mining activities, such particulars relating to utilization of material or labour or other items of cost as may be prescribed.

BRANCH OFFICE

Where a company has a branch office, whether in India or outside India or outside India, the books of account relating to transactions effected at the branch office may be kept at that office and proper summarized returns should be sent to the registered office or such other place where the books are kept, at **quarterly** intervals.

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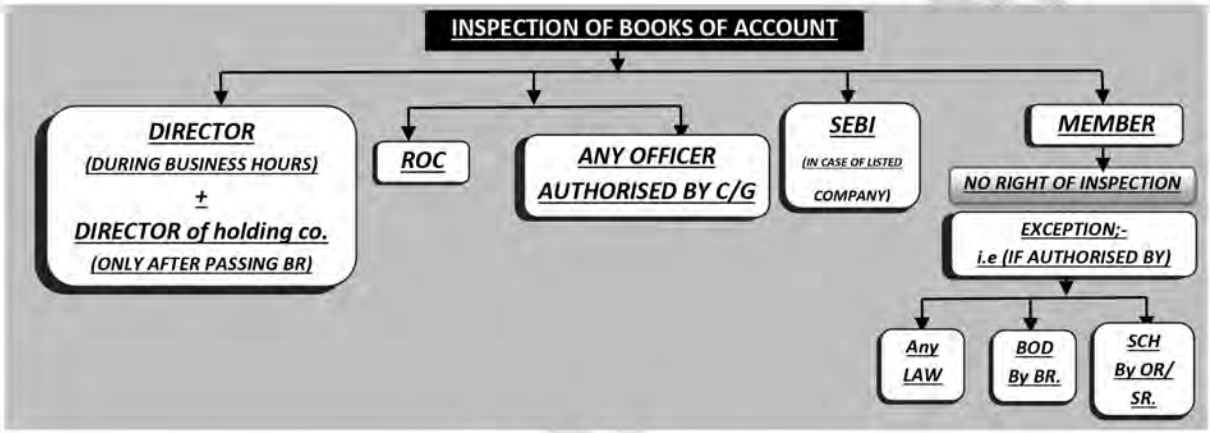

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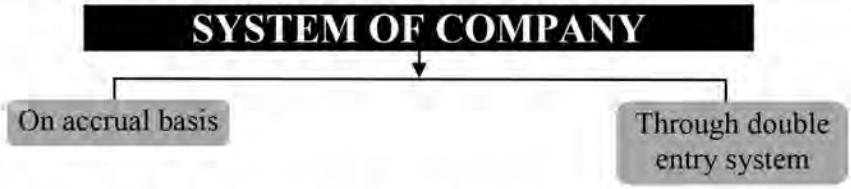
SYSTEM OF ACCOUNTING



The books of account should be kept on accrual basis and according to the double entry system of accounting.

MAINTENANCE OF BOOKS OF ACCOUNT IN ELECTRONIC FORM

The companies Act, 2013 permits the companies to maintain books of account and other books and **papers in electronic mode and is optional**. For this, the companies shall have to maintain a proper system of storage, retrieval, display or printout of electronic records in the manner as the Audit Committee, if any, or the BODs may deem appropriate and such record shall be capable of being displayed in a legible form.
No books of accounts in electronic form shall be disposed off or rendered unusable, unless permitted by law.

INSPECTION OF BOOKS OF ACCOUNT

SECTION 128

Section 128 provides that any director can inspect the books of accounts and other books and papers of the company during business hours. Such inspection may be done by any type of director- nominee, independent, promoter or whole time.

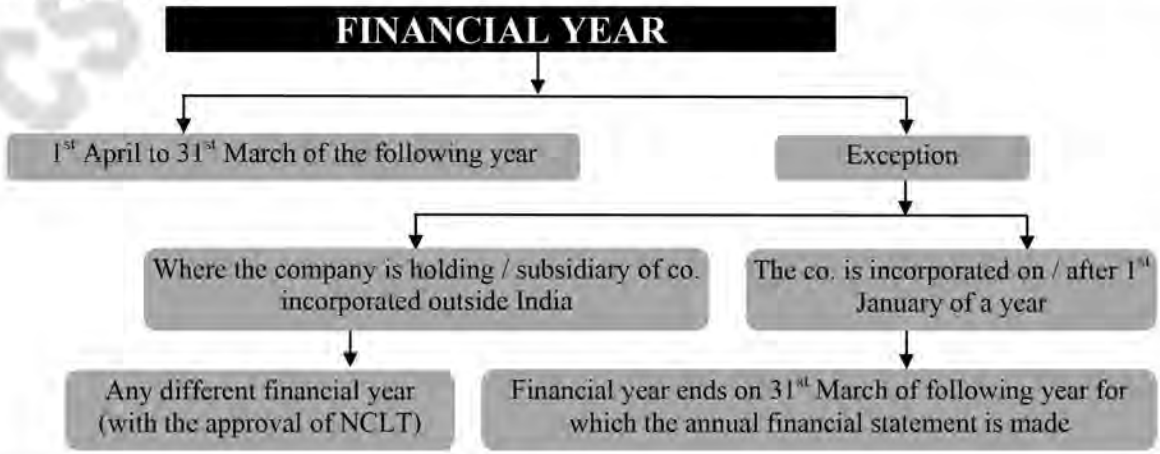
Director of the company can inspect the books of accounts of subsidiary, only on authorization by way of the resolution of Board of Directors. Where any other financial information maintained **outside the country is required by a director, the director shall furnish a request to the company.** The said information shall be provided to director within **15 days** of receipt of request.

PERIOD OF PRESERVATION

The books of accounts together with the vouchers relevant to the entry in such books, relating to period of at least **8 financial years immediately preceding the current year shall be preserved** in good order. In case an investigation has been ordered, the Central Government shall have power to ask the company to keep the books of account for a period longer than financial years.

FINANCIAL YEAR

SECTION 2(41)



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Companies Act 2013 makes it mandatory for every company to follow a homogeneous financial year starting form 1st April to 31st March of the following year.
But, a company which is a holding company or a subsidiary or associate company of company incorporated outside India is given the option to follow a different financial year provided the National Company law Tribunal (NCLT) is satisfied that the same is necessary for the purposes of consolidation of accounts.

However, where a company has been incorporated on or after the 1st day of January of a year, the financial year would be period ending on the 31st day of March of the following year in respect whereof financial statement of the company or body corporate is made up.

PERSONS RESPONSIBLE FOR KEEPING THE BOOKS OF ACCOUNT

The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be:-

(i) Managing Director;
(ii) Whole- Time Director, in charge of finance;
(iii) Chief Financial officer;
(iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

FINANCIAL STATEMENT

SECTION 129

According to section 2 (40), Financial Statement includes the following:-	**(a)**	Balance Sheet
	(b)	Profit and Loss account or Income and Expenditure account
	(c)	Cash flow Statement
	(d)	Statement of change in equity, if applicable
	(e)	Any explanatory notes annexed to or forming part of financial statements, giving information required be giving and allowing to be given in the form of notes.

However, the financial statement with respect to one Person Company, small company and dormant company **and private company (if such private company is a start-up)**, may not include the cash flow statement.

The term "start-up" or "start-up company" means a private company incorporated under the Companies Act, 2013 (18 of 2013) or the Companies Act, 1956 (1 of 1956) and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry."

Financial statements should be prepared for financial year and shall be in form as per **Schedule III**.

Section 129 provides that the financial statements shall give a true and fair view of the state of affairs of the companies in the form as provided for different class of classes in Schedule III and shall comply with accounting standards.

At every annual general meeting of the company, the Board of directors must lay before the company, the financial statements in respects of a financial year.

Consolidation

Where a company has one or more subsidiaries or associate companies, it shall, in addition to own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company. Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed:

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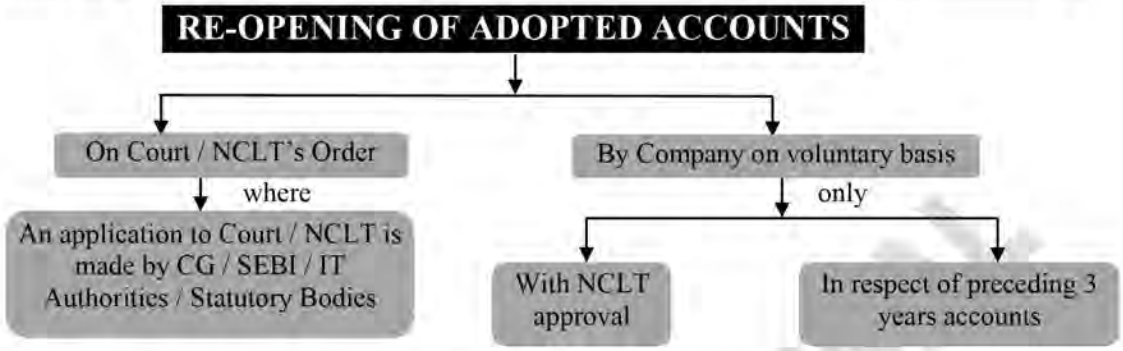
The Central Government shall have the power to exempt a class or classes of companies from any of the requirements of this section.

RE-OPENING OF ACCOUNTS



1. RE-OPENING OF ACCOUNTS ON COURT'S OR NCLT'S ORDER

SECTION 130

Section 130 prohibits a company to re-open its books of account or recast its financial statement unless an application is made by the central Government, SEBI, Income- tax authorities, any other statutory regulatory body or authority or any other person concerned to the National Company Law Tribunal or the Court.

No order shall be made under section in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year:

Provided that where a direction has been issued by the Central Government for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period."

2. VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT

SECTION 131

Section 131 provides that if it appears to the directors of a company that Financial statements of the company or the report of the Board do not comply with the provision of section 129 or Section 134, they may prepare revised financial statements or a revised financial statements or a revised report in respect of any of the three preceding financial years after obtaining **approval of the Tribunal**.

NATIONAL FINANCIAL REPORTING ATHOURITY

SECTION 132

The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.

Following are the important function of National Financial Reporting Authority:-	(a) To make recommendations to the Central Government on the formulation and lying down of accounting and auditing polices and standards for adoption by companies or class of companies or their auditors, as the case may be;
	(b) To monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
	(c) To oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
	(d) To perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

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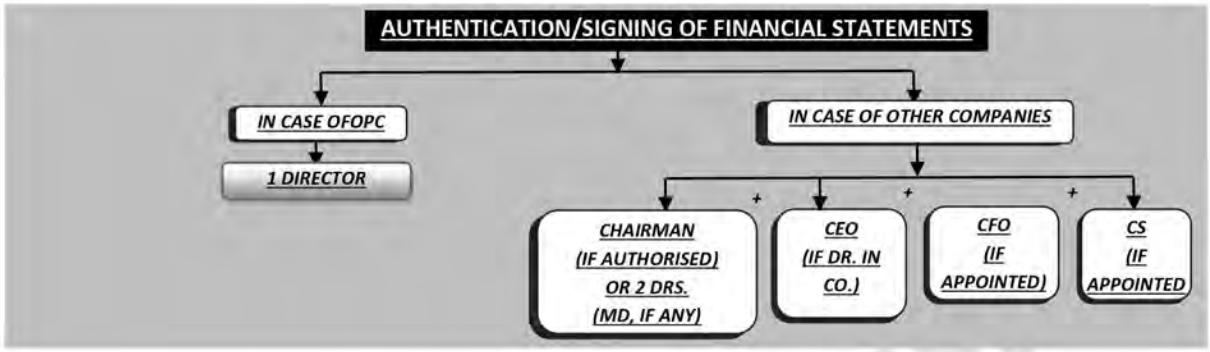

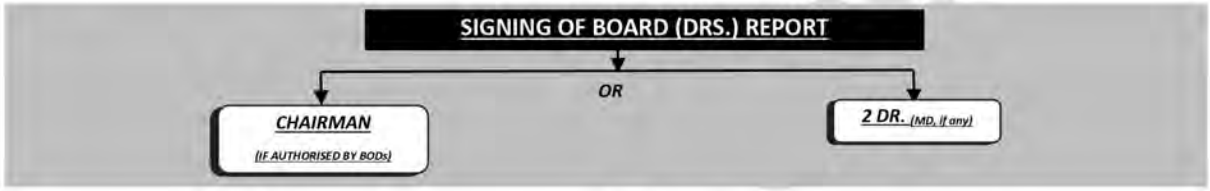

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AUTHENTICATION OF FINANCIAL STETMENT, BOARD'S REPORT, ETC.

SECTION 134

1. **Approval and Signing of financial Statement**

   Section 134 provides that the financial statement including consolidated financial statements shall be approved by the Board of directors before they are signed and submitted to auditors for their report.

   The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.";

2. **Auditor's Report to be attached with Financial Statements**

   The author's report is required to be attached to every financial statement.

3. **Board's Report to be attached with Financial Statements**

   A report by the Board of directors containing details on the specified matters including directors responsibility statement, particulars of loans, guarantees or investments, particulars of contract or arrangements with related parties, risk management policy, details on corporate social responsibility, etc., shall be attached to every financial statement.

   In the case of one person company, Board's report mean a report containing explanations or comments by the Board on ever qualification, reservation or adverse remark of disclaimer made by the auditor in his report.

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

   Signing of Board's report:

   The Board's report and any annexures there shall be signed by its chairperson of the company if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

4. **Circulation of Financial Statement**

   A signed copy of every financial statement shall be circulated, issued or published along with all notes annexed the auditor's report and Board's report.

Matters to be included in Board's Report for One Person Company and Small Company

The Companies (Accounts) Amendment Rules, 2018

Rule 8A

(1) The Board's Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-

- **(a)** the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;
- **(b)** number of meetings of the Board;
- **(c)** Directors' Responsibility Statement as referred to in sub-section (5) of section 134;
- **(d)** details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;
- **(e)** explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;

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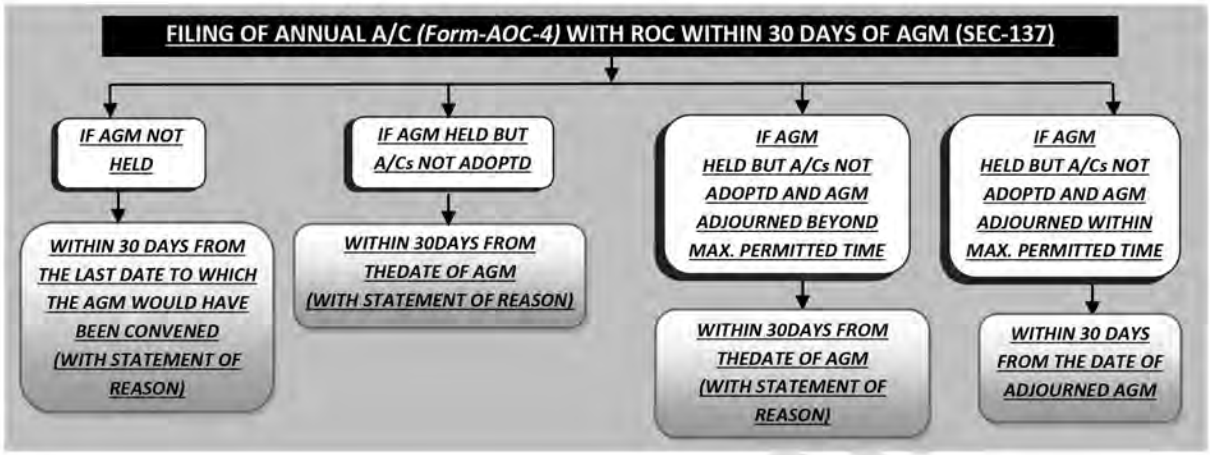

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(f) the state of the company's affairs;

(g) the financial summary or highlights;

(h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;

(i) the details of directors who were appointed or have resigned during the year;

(j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2."

RIGHT OF MEMBER TO COPIES OF AUDITED FINANCIAL STATEMENT

SECTION 136

A copy of financial statement including consolidated financial statement, if any, auditor's report along with annexure/ attachments shall be sent to every member, every trustee for the debenture- holder, and all other persons, who are so entitled, **twenty-one days** before the date of general meeting.

Shorter period

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

(*a*) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(*b*) having, if the company has no share capital, not less than ninety five per cent. of the total voting power exercisable at the meeting:

However in case of ***Section 8 company,*** *the aforesaid documents shall be sent* ***fourteen days*** *before the date of general meeting.*

Listed companies need not send full copy of financial statement in case the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed from **AOC-3 (Abridged Accounts)** is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty one days before the date of the meeting unless the shareholders ask for full financial statements.

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

(a) By electronic mode to such members whose shares is in dematerialised format and whose email-ids are registered with Depository for communication purpose;

(b) Where shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode; and

(c) By dispatch of physical copies through any recognized mode of delivery as specified under section 20 of the Act, in all other cases.

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FILING OF FINANCIAL STATEMENT WITH REGISTRAR

SECTION 137

Section 137 requires every company shall file the financial statements with Registrar together with **Form AOC-4** and the consolidated financial statement, if any, with Form **AOC-4 CFS**within **30 days from the day on which the annual general meeting held and adopted** the financial statements.

The **one Person company** shall file the copy of financial statements duly adopted by its member within a period of one hundred and eighty days from the closure of financial year.

If the financial statements are not adopted at the annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be field with the Registrar within thirty days of the date of annual general meeting. The Registrar shall take them in his record as provisional, until the adoption of accounts at annual general meeting.

If annual general meeting has not been held, the financial statement duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filled with the Registrar within 30 days of the last day before which the annual general meeting should have been held.

Filing in respect of foreign subsidiary

In the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'.

EXTENSIBLE BUSINESS REPORTING LANGUAGE (XBRL)

XBRL is a **language for the electronic communication of business and financial data** which is revolutionizing business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data. XBRL is a data rich dialect of XML (Extensible Markup Language), the universally preferred language for transmitting information via the internet. XBRL provides a common, electronic format for business reporting.

XBRL FILING

The following class of companies shall file their financial statement and other documents under section 137 of the Companies Act, 2013 with the Registrar in **e-form AOC-4 XBRL.**

using the XBRL taxonomy namely:-	**(a)** all companies **listed** with any Stock Exchange(s) in India and their **Indian subsidiaries**; or
	(b) all companies having paid up capital of rupees **five crore or above;**
	(c) all companies having turnover of rupees **hundred crore or above**; or
	(d) all companies which were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011.

Exempted;-

1. Banking
2. Insurance
3. Power Sector and
4. Non- Banking Financial companies

are exempted from XBRL filing'

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Provided that where a company or body corporate, which is a holding company or a subsidiary or associated company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such from and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

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Q. 1. Board of Directors of Anil Limited has decided not to preserve the books of accounts and other related records of accounts, for more than five years immediately preceding the relevant financial year of 2016-17 due to shortage of space in the office premises. Referring to the provisions of the Companies Act, 2013, examine the validity of the Board's decision. **[June. 2017]**

Ans. According to sub section (5) of section 128 of the companies Act, 2013, the books of accounts, together with vouchers relevant to any entry in such books are required to be preserved for a period of not less than eight financial year immediately preceding a financial year. Where the company had been immediately preceding a financial year. Where the company had been in existence for a period less than eight years, the book of account in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order. The provision of the income tax Act, 1961 shall also be compiled with in this regard. As per proviso to sub section (5) of section 128, where an investigation has been ordered in respect of the company under chapter XIV, the central Government may direct that the books of accounts may be kept for such longer period as it may deem fit and give direction to that effect.

The decision taken by the board of directors of Anil Limited is not in accordance with the provision of law and the company cannot do so.

Q. 2. CIF Technosystems Private Limited is proposed to be incorporated in Bhubaneshwar, Orissa under the Companies Act, 2013. The company will be a holding company of CIF Holding Private Limited, already incorporated in Brazil under the Company Law of Brazil. The company in Brazil follows financial year 1st January to 31st December of a calendar year. Referring to the provisions of the Companies Act, 2013, state whether the financial year of CIF Technosystem can also be 1st January to 31st December, in order to make it easier to prepare consolidated financial statements. **[June. 2017]**

Ans. Section 2(41) of the companies Act, 2013 has defined the term "financial year" it states that financial in relation to any company or body corporate, means the period ending on the 31st day of march every year.

The financial year of every company registered under the companies Act in India has to be from April of a calendar year to march of the next calendar year.

However, proviso to section 2(41) reads that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the tribunal may, if it is satisfied allow any period as its financial year.

On the basis of the position of law hereinabove, CIF Technosystems Private Limited proposed to be incorporated under the companies Act, 2013 has to have its financial year to end 31st march every calendar year.

However, as it is a holding company of CIF Private Limited, a company in Brazil incorporated outside India, and that company follows its financial year 1st January to 31st December of a calendar year, the Indian company CIF Technosystems Private Limited can apply to tribunal to allow its financial year to be aligned to end on 31st December for ease of consolidation of financial statements. The tribunal will decide on the basis of merit in application.

Q. 3. From the following information in respect of two companies viz. ZYX Limited and CBA Private Limited, compute the amount the companies are required to spend on account of Corporate Social Responsibility (CSR) : **[June. 2017]**

Financial Year	ZYX Ltd. Net Profit/(Loss) ₹ (In crore)	CBA Private Ltd. Net Profit/(Loss) ₹ (In crore)
2014-15	Not incorporated	(4)
2015-16	6	(1)
2016-17	18	6

Ans. Section 135(1) read with section 135 (5) of the Companies Act, 2013 provides that every company having net worth of ₹500 crore or more, or turnover of ₹1000 crore pr more or a net profit of ₹5 crore or more during any financial year shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years.

In the given case, in case of ZYX Limited, the net profit for financial year 2016-2017 is ₹18 crore. The average net profits for preceding 3 financial year is ₹(0+6+18)crore/3= ₹24 crore/3 = ₹8 crore. It is to be noted that through the company was not incorporated in the financial year 2014-2015, yet that year is to be considered for calculation of average net profits. Accordingly, the company has to spend 2% of ₹33.33 lakh, i.e. 0.96 lakh towards CSR activities.

Q. 4. XBRL tags and XBRL taxonomies. **[June. 2018]**

Ans. In XBRL, information is not treated as a static block of text or set of numbers. Instead, information is broken down into unique items of data (e.g. total liabilities =100). These data items are then assigned mark–up tags that make them computer readable. For example, the tag <Liabilities> 100 </Liabilities> enables a computer to understand that the item is liabilities, and it has a value of 100.

Computers can treat information that has been tagged using XBRL 'intelligently they can recognize, process, store, exchange and analyze it automatically using software.

Because XBRL tags are formed in a universally–accepted way, they can be read and processed by any computer that has XBRL software. XBRL tags are defined and organized using categorization schemes called taxonomies.

XBRL Taxonomies

Different countries use different accounting standards. Reporting under each standard reflects differing definitions. The XBRL language uses different dictionaries, known as taxonomies, to define the specific tags used for each standard ,Different dictionaries may be defined for different purposes and types of reporting. Taxonomies are the computer–readable 'dictionaries of XBRL. Taxonomies provide definitions for XBRL tags, they provide information about the tags, and they organize the tags so that have a meaningful structure.

As a result, taxonomies enable computers with XBRL software to:

(a) understand what the tag is (e.g. whether it is a monetary item, a percentage or text),
(b) in tagging section, "n" refers to navigating. "A" refers to attaching the disclosures "T" refers to text entry etc.
(c) what characteristics the tag has (e.g. if it has a negative value)
(d) its relationship to other items (e.g. if it is part of a calculation)

Taxonomies differ according to reporting purposes, the type of information being reported and reporting presentation requirements.

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

18

AUDIT AND AUDITORS

Covering-

- ABC Analysis
- Auditors
- Qualification of Auditors
- Disqualification of Auditors
- Appointment of Auditors
- Re-Appointment of Auditors
- Appointment of Auditors by Filling Casual Vacancy
- Rotation of Auditors
- Term of Auditor
- Remuneration of Auditors
- Registration by an Auditor
- Removal of Auditors
- Rights of Auditors
- Duties of Auditors
- Audit of Branch Accounts
- Auditor Prohibited to Render certain services
- Signing and Reading out of Auditors Report
- Companies (Auditor's Report) Order, 2015 (CARO, 2015)
- Reporting of Fraud by Auditor
- Cost Audit
- Internal Audit
- Secretarial Audit
- Self Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (5 to 10)

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AUDIT AND AUDITORS

ABC Analysis
(ICSI -Exam Point of view)

A
1. Qualification of Auditors
2. Disqualification of Auditors
3. Appointment of Auditors

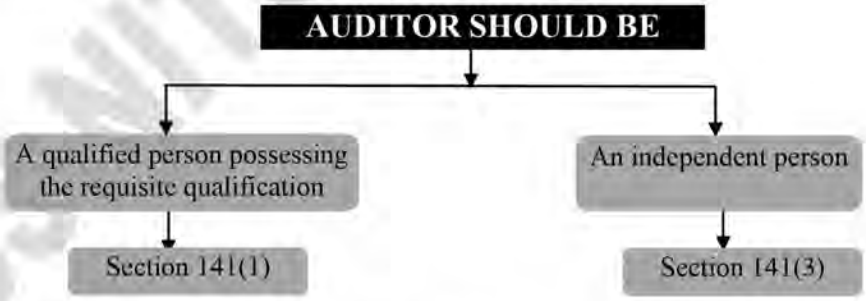
B
4. Auditor Prohibited to Render certain services
5. Companies (Auditor's Report) Order, 2015 (CARO, 2015)

C
6. Rotation of Auditors
7. Term of Auditor

Audit is an examination of accounting records undertaken with a view to establish the correctness or otherwise of the transactions reflected therein. It involves the intelligent scrutiny of the books of account of a company with reference to documents, vouchers and other relevant records to ensure that the entries made therein give a true picture of the business conducted during the period under review.

The main object of audit is to ensure that the statement of accounts of the relevant financial year truly and fairly reflect the state of affairs of the company. An audit of accounts is conducted with **two-fold purpose**: (i) ***detection and prevention of errors***; (ii) ***detection and prevention of fraud***.

AUDITORS



Audit is useful only if it is conducted by some independent and qualified authority. The auditor must possess requisite qualifications and must act in an independent capacity. An auditor is an agent of the shareholders. He is expected to safeguard their interests.

QUALIFICATION OF AUDITORS

SECTION 141(1)

Section 141 states that only a Chartered Accountant (individual) or a Firm, where majority of partners practicing in India are Chartered Accountants, can be appointed as auditor of any company, whether public or private.

Where a firm including a limited liability partnership (LLP) is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm.

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DISQUALIFICATION OF AUDITORS

SECTION 141(3)

As per section 141 (3) none of the following persons shall be qualified for appointment as auditor of a company:-

(*a*) a body corporate other than a limited liability partnership.

(*b*) an officer or employee of the company;

(*c*) a person who is a partner, or who is in the employment, of an officer or employee of the company;

(*d*) a person who, or his relative or partner—

(*i*) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

Provided that the relative may hold security or interest in the company of **face value not exceeding one thousand rupees** or such sum as may be prescribed ***(₹one Lac)***;

Provided further that in the event of acquiring any security or interest by a relative, above the threshold limit i.e. ₹one lac, the corrective action to maintain the limits (₹one lac) shall be taken by the auditor **within 60 days of such acquisition or interest**;

(*ii*) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed***(Rupees five lakh)***; or

(*iii*) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed***(one lakh rupees)***;

(*e*) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

(*f*) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

(*g*) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than **twenty companies**;

However, while counting the limit of 20 companies,

1. OPC,
2. Small company,
3. Dormant company and
4. Private company having paid up share capital of less than 100 crore rupees

shall not be counted.

(*h*) a person who has been convicted by a court of an offence involving **fraud** and a period of **ten years** has not elapsed from the date of such conviction;

(*i*)

Further, an internal auditor cannot act as statutory auditor.

If an auditor becomes disqualified in any of the above ways after his appointment as auditor, then he shall be deemed to have vacated his office and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

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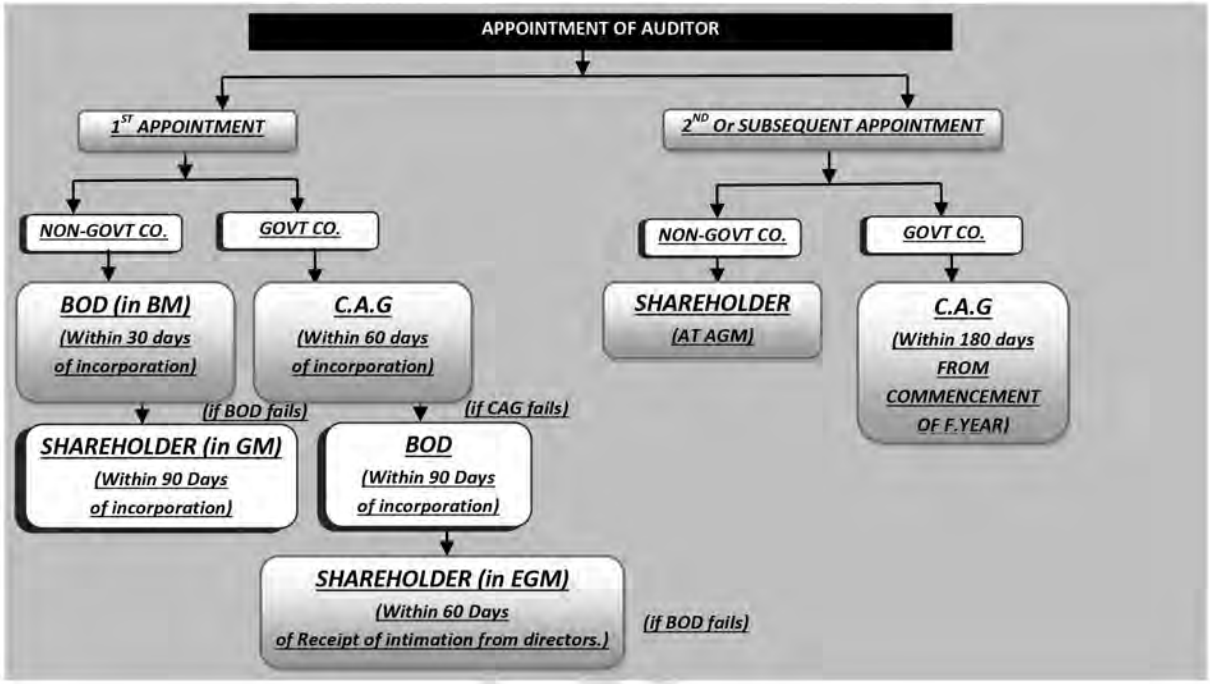

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APPOINTMENT OF AUDITORS

Where a company is required to constitute the Audit Committee, the **committee shall recommend** the name of an individual or a firm as auditor to the Board for consideration who in turn recommend it to the shareholders for appointment, **and in other cases the Board shall consider and recommend** an individual or a firm as auditor to the members in the AGM for appointment or re- appointment.

1. APPOINTMENT OF FIRST AUDITOR

SECTION 139 (6)

The first auditor of a company, other than a Government Company, is to be appointed by the Board of Directors within **30 days** of the date of the incorporation of the company. If the Board of Directors fails to appoint the first auditor within 30 days of its incorporation the company in general meeting within 90 days of the date of the incorporation of the company, may appoint the first auditor.

The first auditor so appointed is to hold office until the conclusion of the first annual general meeting of the company.

2. SUBSEQUENT APPOINTMENT OF AUDITORS

SECTION 139 (1)

It is necessary for every company, before making an appointment at any AGM of an auditor, to obtain from the auditor proposed to be appointed his written consent and a certificate to the following effect:-

(a)	The individual is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules of regulations made there under;
(b)	The proposed appointment is as per the term provided under the Act;
(c)	The proposed appointment is within the limits laid down by or under the authority of the Act;
(d)	The list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

The Certificate shall also indicate whether the auditor satisfies the criteria provided in section 141 of the Act.

Section 139 (1) of the Companies Act, 2013 read with rule 3 of Companies (Audit and Auditors) Rules, 2014 provides that company, other than a Government Company, shall at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting (AGM) and therefore till the conclusion of every sixth meeting.

Such appointment shall be subject to ratification in every AGM till the sixth AGM by way of passing of an ordinary resolution. If the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid in this behalf under the Act. (omitted)

The Company shall inform the auditor concerned of his or its appointment and also file a notice of such appointment with the registrar in Form **ADT-1** within 15 days of the meeting in which the auditor is appointed.

3. APPOINTMENT OF AUDITORS IN A GOVERNMENT COMPANY

SECTION 139 (5)

The First auditor shall be appointed by the Comptroller and Auditor General within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

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In case of subsequent auditor for existing government companies, the Comptroller & Auditor General shall appoint within a period of 180 days from the commencement of the financial year and the auditor so appointment shall hold his position till the conclusion of the Annual General Meeting.

The CAG shall have a right to the conduct a supplementary audit of financial statement of the company and comment upon or supplement such audit report within 60 days from the date of receipt of the audit report u/s 143 (5).

RE- APPOINTMENT OF AUDITORS

SECTION 139 (9)

A retiring auditor shall be re- appointed unless:-

(a) He is not qualified for re- appointment; or

(b) He has given to the company notice in writing of his unwillingness to re-appointed; or

(c) A special resolution has been passed at that meeting appointing somebody instead of him or expressly providing that he shall not be appointed.

Section 139 (10) lays that where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

APPOINTMENT OF AUDITOR OTHER THAN RETIRING AUDITOR

The procedure for appointing an auditor, who is not the retiring auditor, is as follows:-

(1) A special notice of minimum 14 clear days is required for appointing as auditor a person other than the retiring auditor shall not be reappointed. However, special notice is not required if the retiring auditor has completed the term of 5 or 10 years as the case may be.

(2) On receipt of notice is received of such a resolution, the company can conveniently send a copy of the same to the retiring auditor.

(3) Where the notice is received well in advance, the company can conveniently send the notice of the resolution to the members including the same in the notice of the AGM. Where it is received just 14 days before the meeting and it is not feasible for the company to send notice of the same to members, the company has to notify the same in English and Vernacular language newspapers at least 7 days before the meeting.

(4) The retiring auditor can make a representation and request for the notification to members. The company should do so unless the representation is received too late, then representations shall be read out at the meeting. It may be noted that if a copy of the representation is not sent as aforesaid, a copy thereof shall be filled with the Registrar of companies.

(5) If on the application of the company or any other person who claims to be aggrieved, the National Company Law Tribunal; on being satisfied that the rights are being abused to secure needless publicity for defamatory matter, the company need not send a copy of or read out the representations.

(6) At AGM, the appointment will be considered and the necessary resolution be passed.

(7) After the appointment, the company shall inform the auditor concerned of his or its appointment and also file a notice of such appointment with the Registered in Form ADT-1 within 15 days of the meeting in which the auditor is appointed.

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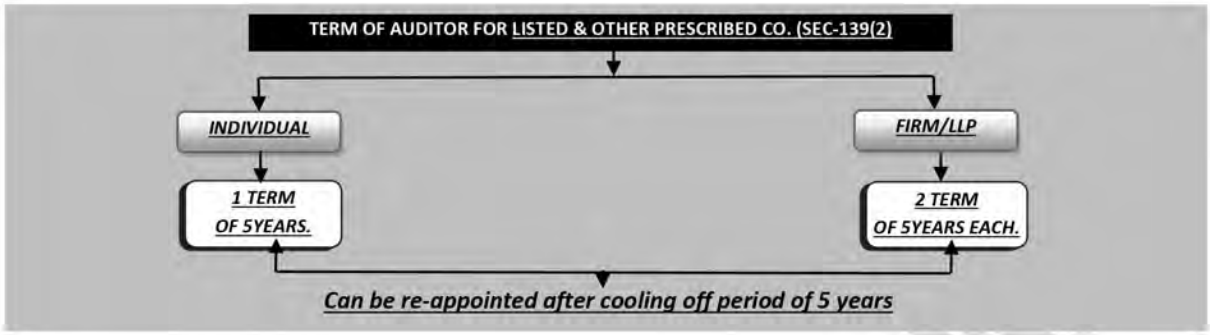

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APPOINTMENT OF AUDITOR BY FILLING CASUAL VACANCY

SECTION 139 (8)

The casual vacancy in the office of auditor may be filled by the Board. But where the vacancy is caused by resignation of auditor, such vacancy shall only be filled by the company in general meeting within 3 months of the recommendation of the Board. The auditor so appointed shall hold the office until the conclusion of the next AGM.

The casual vacancy in the office of an auditor of a Government Company or government controlled (directly/indirectly) company shall be filled by the Comptroller and Auditor General within 30 days from the date of vacancy and in case of failure to do so, Board shall fill up the same within next 30 days.

In case the company had appointed more than one auditor, the remaining auditor or auditors can continue to act notwithstanding the vacancy caused by the resignation of other auditor.

ROTATION OF AUDITORS

Member of a company can provide for following by passing a resolution:-

(a) In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or

(b) The audit shall be conducted by more than one auditor.

TERM OF AUDITOR

Following companies shall not appoint or re-appoint an **individual as auditor for more than once** term of 5consecutive years; and an **audit firm as auditor for more than two terms** of 5 consecutive years:-

(a) A Listed Company;

(b) An unlisted Public Company having a paid up share capital of ₹10 crores or more;

(c) A private Limited Company having a paid up share capital of ₹50 crores or more;

(d) All Companies having public borrowings from Banks, Financial Institutions or Public deposit of ₹50 crores or more.

Further, no audit firm shall be appointed as auditor of the company for a period of five years, if same firm presently having a common partner's to the previous audit firm, whose tenure has expired in a company immediately preceding the financial year.

It may be noted that these auditor (either individual/ audit firm) can be re-appointed after cooling off period of 5 years.

REMUNERATION OF AUDITORS

SECTION 142

Section 142 provides that the remuneration of the auditor of a company shall be determined by the shareholders or in such manner as the shareholders may determine. Board may fix the remuneration of the first auditor appointed by it.

In general, the authority appointing the auditor has to fix the remuneration. However, in the case of government Company, auditor is appointed by CAG but remuneration is determined by the shareholders or in such manner as the shareholders may determine.

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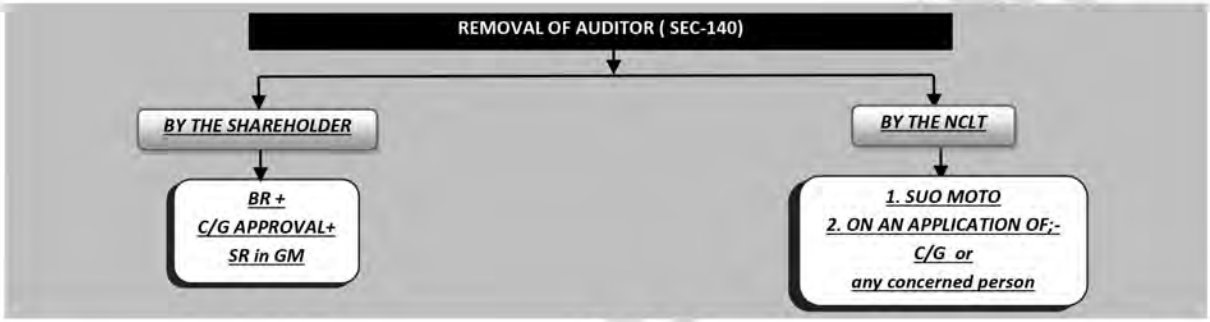

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RESIGNATION BY AN AUDITOR

The auditor who is resigned from the company shall file a statement in **Form ADT-3** indicating the reasons and other facts as may be relevant with regard to his resignation as follows:-

(i) In case of other than Government Company, the auditor shall within 30 days from the date of resignation, file such statement to the company and Registrar.

(ii) In case of Government Company or government controlled company, auditor shall within 30 days from the resignation, file such statement to the company and the registrar and also file the statement with the Comptroller and Auditor General of India (CAG).

The onus to file such statement containing relevant facts and reasons for resignation is on the resigning auditor.

REMOVAL OF AUDITORS

1. BY THE SHAREHOLDERS

The auditor appointment under section 139 may be removed from his office before the expiry of the term only by:-

(i) Obtaining the prior approval of the Central Government by filling an application in **form ADT-2** within 30 days of resolutions passed by the Board

(ii) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

(iii) The auditor concerned shall be given a reasonable opportunity of being heard.

2. BY THE NATIONAL COMPANY LAW TRIBUNAL

National company Law Tribunal (NCLT) can either:-

(i) Suo moto; or

(ii) On an application from Government, or

(iii) On an application from person concerned,

Can direct the company to change the auditor if it is satisfied that the Auditor of a company has, whether directly or indirectly acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers.

In the case of application being made by the Central Government and the NCLT being satisfied that change of auditor is required, it shall within 15 days of the receipt of such application, make an order that the Auditor shall not function as an auditor of the company and the Central Government may appoint another auditor in his place. This will happen only when an application is made by the Central Government and not any other person.

Where the auditor, whether individual or firm, against whom the final order as aforementioned is passed by the NCLT under this section, he shall not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of passing of such order. Further, in addition they shall also be liable for action under Section 447 which provides for punishments for frauds.

RIGHTS OF AUDITORS

Following are the important rights of Auditors:-

1. Right of access to Books of Accounts
2. Right to obtain information and explanation

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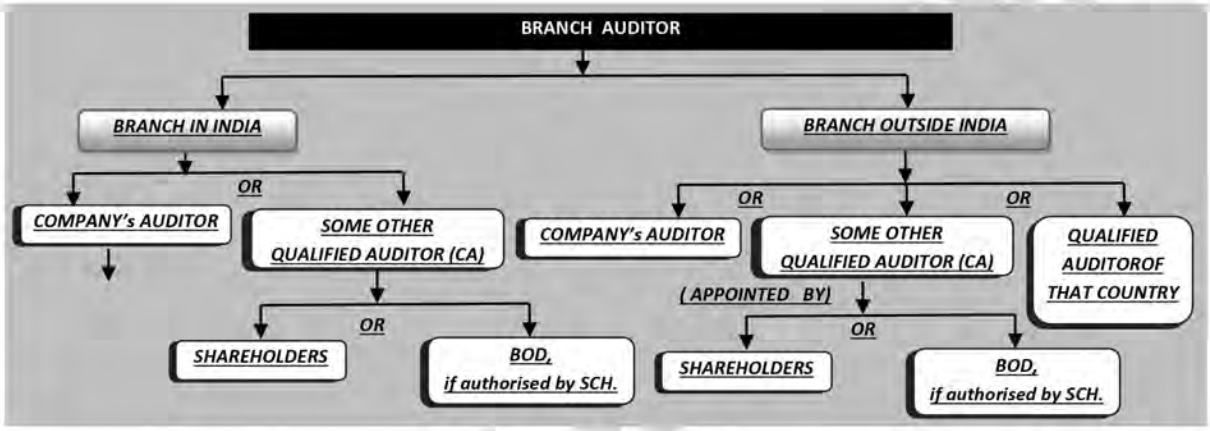

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3. Right to attend the general meeting
4. Right to be heard at the general meeting
5. Right to visit branch office.
6. Right to receive remuneration.
7. Right of lien.

DUTIES OF AUDITORS

Following are the important of Auditors:-

1. Duty to make and audit report
2. Duty to make adequate disclosures in the audit report
3. Duty to give reasons for qualifications
4. Duty to sign the audit report
5. Duty to attend the meetings of Audit Committee of Directors.

AUDIT OF BRANCH ACCOUNTS

SECTION 143

Section 143 provides that if a company has branch offices, the accounts of every branch office must be audited by the company's auditor or the company may appoint another qualified auditor for the purpose. If any branch office of the company is outside India, the accounts shall be audited by a person qualified to audit accounts according to laws of that country or the company's auditor or a person qualified for appointment as auditor under the companies Act, 2013.

The branch auditor shall receive such remuneration and shall hold his appointment subject to such terms and conditions as may be fixed either by the company in general meeting or by the Board of directors, if so authorized by the company in general meeting.

The branch shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor who shall in preparing the auditor's report, deal with the same in such manner as he considers necessary.

AUDITOR PROHIBITED TO RENDER CERTAIN SERVICES

SECTION 144

An auditor shall provide to the company only such other services as are approved by the Board of Directors/ the audit committee, but which shall not include any of the following services (whether such services are rendered directly or indirectly) to the company or its holding company or subsidiary company, namely:-

(a) Accounting and book keeping services;
(b) Internal audit;
(c) Design and implementation of any financial information system;
(d) Actuarial services;
(e) Investment advisory services ;
(f) Investment banking services;
(g) Rendering of outsourced financial services;
(h) Management services; and
(i) Any other kind of services as may be prescribed.

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SIGNING AND READING OUT OF AUDITORS REPORT

SECTION 145

As per Section 145 of the Companies Act, 2013, only the person appointment as auditor of the company or where a firm is so appointed only a partner in the firm who are chartered accountants may sign the auditor's report on behalf of the firm.

Further, any qualifications, observations or comments on financial transactions matters, which have any adverse effect on the functioning of the company mentioned in the auditors report shall be read out before the company in general meeting and shall be open to inspection by any member of the company.

COMPLIANCE OF AUDITING STANDARDS

SECTION 143 (9) & (10)

Every auditor must comply with the auditing standards. While the Central Government prescribes the Auditing Standards or addendums thereto, it shall consult with and take recommendations of the Institute of Chartered Accountants of India **(ICAI)** and the National Financial Reporting Authority **(NFRA)**.

COMPANIES (AUDITOR'S REPORT) ORDER, 2016 (CARO, 2016)

Every report made by the auditor under section 143 of the Companies Act, on the accounts of every company examined by him to which CARO applies **shall contain the matters specified in CARO.**

APPLICABILITY OF CARO, 2016

It shall apply to every company including a foreign company.

NON-APPLICABILITY OF CARO, 2016

It shall not apply:-	**(i)** a banking company
	(ii) an insurance company
	(iii) Section 8 company
	(iv) a One Person Company and a small company
	(v) (1) A private company which is not holding or subsidiary company of a public company, and (2) A private company having a paid up capital and reserve and surplus not more than ₹1 crore as on the balance sheet date, and (3) A private company which does not have total borrowing exceeding ₹1 crore from any bank and financial institution at any point of time during the financial year, and (4) A private company which does not have total revenue exceeding ₹10 crore during the financial year.

MATTERS TO BE INCLUDED IN THE AUDITOR'S REPORT

The auditor's report on the account of a company to which this Order applies shall include a statement on the following matters, namely:—

(a) whether the company is **maintaining proper records** showing full particulars, including quantitative details and situation of fixed assets;

(b) whether these **fixed assets have been physically verified** by the management at reasonable intervals; whether any **material discrepancies were noticed** on such verification and if so, whether the same have been properly dealt with in the books of account;

(c) whether **physical verification of inventory** has been conducted at reasonable intervals by the management;

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(d) whether the company has **granted any loans, secured or unsecured to companies,** firms or other parties covered in the register maintained under **section 189** of the Companies Act. If so,

(e) in case the company has **accepted deposits**, whether the directives issued by the Reserve Bank of India and the provisions of sections **73 to 76 or any other relevant provisions of the Companies Act and the rules** framed thereunder, where applicable, have been complied with

(f) whether **any fraud on or by the company has been noticed or reported during the year**; If yes, the nature and the amount involved is to be indicated.

(g) Utilisation of IPO and further public offer -Whether money raised by way of initial public offer or further public offer and the term loans were applied for the purpose for which those are raised.

(h) Whether **managerial remuneration** has been paid or provided in accordance with the requisite approvals mandated by the provision of Section 197 read with schedule 5 to the Companies Act, 2013.

(i) Whether the **Nidhi company** has complied with the net owned funds to deposit in the ratio

(j) Whether all transaction with the **related party** is in compliance with Section 177 and 188 of the Companies Act, 2013 where applicable and the details have been disclosed in the financial statement etc., as required by the applicable accounting standard.

(k) Whether the company has made any **preferential allotment or private placement of shares** or fully or partly convertible debentures during the year under review and if so, as to whether the requirement of Section 42 of Companies Act, 2013 have been complied with

(l) Whether the company has entered into any **non-cash transaction** with the director or person concerned with his and if so, whether the provision of Section 192 of Companies Act, 2013 has been complied with.

(m) Whether the company is required to be registered under **Section 45 IA** of Reserve Bank of India Act, 1934 and if so, whether the registration has been obtained

REPORTING OF FRAUD BY AUDITOR

SECTION 143(12)

If an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud **involving such amount or amounts as may be prescribed, is being or has been committed** in the company by its officers or employees, the auditor shall **report the matter to the Central Government** within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving **lesser** than the specified amount, the auditor shall report the matter to the **audit committee or to the Board**.

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about **such frauds in the Board's report**.

The provisions of this section shall mutatis mutandis apply to—

(a) the cost accountant in practice conducting cost audit under section 148; or

(b) the company secretary in practice conducting secretarial audit under section 204.

COST AUDIT

SECTION 148

Cost audit is the **verification of cost accounts and a test on the compliances to the cost accounting plan.**

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(a) Section 148(1) states that the Central Govt. may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilization of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies.

(b) Section 148(2) states that the Central Govt. is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

(c) Section 148 (3) states that the audit under sub section (2) shall be conducted by a cost Accountant who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed.

(d) Section 148 (4) states that the audit under conducted this section be in addition to the audit conducted under section 143.

(e) Section 148(5) states the qualifications, disqualifications, rights, duties and obligations applicable to auditors under this chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company.

(f) Further the report on the audit of cost records shall be submitted by the cost accountant to the **Board of Directors** of the Company.

(g) Section 148(6) state that a company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub section (2) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

(h) Section 148 (7) states that if, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub section (6), the Central Government is of the opinion that any further information or explanation is necessary, it may call for such as may be specified by Central Government.

INTERNAL AUDIT

SECTION 138

The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors:-

(a) Every listed company;

(b) Every unlisted public company having:-

(i)	Paid up share capital of **fifty crore rupees or more** during the preceding financial year; or
(ii)	Turnover of **two hundred crore rupees or more** during the preceding financial year; or
(iii)	Outstanding loans or borrowings from banks or public financial institutions exceeding **one hundred crore rupees or more** at any point of time during the preceding financial year; or
(iv)	Outstanding deposits of **twenty five crore rupees or more** at any point of time during the preceding financial year; and

(c) Every private company having:-

(i) Turnover of **two hundred crore rupees or more** during the preceding financial year; or

(ii) Outstanding loans or borrowings from banks or public financial institutions exceeding **one hundred crore rupees or more** at any point of time during the preceding financial year.

The company board shall be free to appoint any practicing Chartered Accountant or a Cost Accountant **or any other person, internal or external,** whom it deems fit be appointed as its internal auditor.

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SECRETARIAL AUDIT

Secretarial Audit is a compliance audit and it is a part of total compliance management in an organisation. The Secretarial Audit is an effective tool for corporate compliance management. It helps to detect noncompliance and to take corrective measures.

Secretarial Audit is a process to **check compliance with the provisions of various laws and rules/ regulations/procedures, maintenance of books, records etc., by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed the due process**. It is essentially a mechanism to monitor compliance with the requirements of stated laws.

Secretarial Audit is an independent, objective assurance intended to add value and improve an organisation's operations. It helps to accomplish the organisation's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

Considering the increasing importance of Corporate Governance, **Section 204** of the Companies Act, 2013 mandates **every listed company and such other class of prescribed companies** to annex a Secretarial Audit Report, given by a company secretary in practice with its Board's report.

The Central Government through rules has **prescribed such other class of companies** as under-

(a) every **public** company having a **paid-up share capital of fifty crore rupees or more;** or

(b) every **public** company having a **turnover of two hundred fifty crore rupees or more**.

It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

The Board of Directors, in their report, shall explain in full any qualification or observation or other remarks made in the Secretarial Audit Report.

Audit is to be on the principle of "Prevention is better than cure" rather than post mortem exercise and to find faults. Broadly, the need for Secretarial Audit is:

(a) Effective mechanism to ensure that the legal and procedural requirements are duly complied with.

(b) Provides a level of confidence to the directors & Key Managerial Personnel etc.

(c) Directors can concentrate on important business matters as Secretarial Audit ensures legal and procedural requirements.

(d) Strengthen the image and goodwill of a company in the minds of regulators and stakeholders.

(e) Secretarial Audit is an effective governance and compliance risk management tool.

(f) It helps the investor in analyzing the compliance level of companies, thereby increases the reputation.

Q. 1. Ram is a chartered accountant in practice. His proprietary concern has been appointed as the statutory auditor of a private limited company. Subsequently, it came to light that Mrs. Ram has been holding less than 1% shares of that private limited company. Examine the legal validity of the appointment of statutory auditor. **[Dec. 2017]**

Ans. Pursuant to Section 141, a person who himself, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company is not eligible for appointment of auditor of the company.

Provided that the relative may hold security of interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed under the Companies (Audit and Auditors) Rules, 2014.

As per Rule 10 of the Companies (Audit and Auditor) Rules, 2014, a relative of an auditor may hold securities in the company of face value not exceeding one lakh.

In accordance with the provisions stated above, Mrs. Ram may hold shares of the value not exceeding one lakh rupees to render Mr. Ram eligible for appointment as the auditor.

Since the question is silent on the value of 1% shares of the company, the conclusion regarding the appointment of Ram may be drawn as under:

If the holdings of Mrs. Ram **exceed one lakh rupees;** based on aforesaid provision of law Mr. Ram cannot appointed as auditor.

However, if Mrs. Ram holding is **less than one lakh rupees;** Mr. Ram can be appointed as auditor.

Q. 2. 'Internal Audit' and 'Secretarial Audit'. **[June. 2017]**

Ans.

INTERNAL AUDIT	***SECRETARIAL AUDIT***
Governed by the provision of section 138	Governed by the provision of section 204
Applicable on every Private Company having : • Turnover of ₹200 crore rupees or more during the preceding financial year; or • Outstanding loans or borrowings from banks or PFIs exceeding ₹100 crore or more at any point of time financial year.	Not applicable on Private companies
The auditor may be a Chartered Accountant or a cost Accountant, or a company Secretary or a firm thereof or any employee of the company, as may be decided by the Board to conduct internal audit of the functions and activities of the company.	The audit is conducted by a company Secretary in practice.
The audit committee or Board shall in consultation with the internal auditor formulate the scope, functioning, periodicity and methodology for conduct of internal audit	If there is qualification or adverse remark in the audit report, the Board of director have to comment on the same in their report to members.
	The format of the secretarial Audit Report shall be in form No. MR.3. Every listed company and a company belonging to other class of companies shall annex with its Board report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice.

Q. 3. Appointment and rotation of statutory auditor is mandatory for one Person Company and Small Company. **[June. 2018]**

Ans. As per Section 139(1) of the Companies Act, 2013 inter alia provides that every company shall, at the first annual meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.

The Companies Act, 2013 has introduced the system of rotation of auditors under section 139. As per Rule 5 of the Companies (Audit and Auditors) Rules, 2014 rotation of auditors is applicable to-

(a) All listed companies;
(b) All unlisted public companies having paid up share capital of rupees 10 crore or more.

(c) All private limited companies having paid up share capital of rupees 20 crore or more.

(d) All companies having paid up share capital of below threshold limit mentioned in (a) And (b) above, but having public borrowings from financial institutions ,banks or public deposits of rupees 50 crore or more.

In view of the above it is clear that appointment is applicable on all the Companies including one person companies and small companies, however, the provisions of rotation of auditors shall not apply to one person companies and small companies.

Q. 4. Perfect Pvt. Ltd. wishes to appoint its secretary, Satish, as an internal auditor. Refering the provisions of the Companies Act, 2013 advise the company. **[June. 2018]**

Ans. According to Section 138 (1) of the Companies Act, 2013 read with the rule 13 of the Companies (Accounts) Rules 2014, following persons may be appointed as an internal auditor of the company-

(a) A Chartered Accountant or;

(b) A Cost Accountant or;

(c) Such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the Company.

Further, rule 13 of the Companies (Accounts) Rules, 2014 inter alia provides that the internal auditor may or may not be an employee of the Company.

Mr. Satish being the Secretary of Perfect Ltd. may be appointed as an internal auditor of the company only if so decided by the Board to conduct internal audit of the functions and activities of the Company.

Q. 5. Who will appoint Secretarial Auditor of the company: Board of Directors or shareholders ? What is the duty of Board of Directors towards secretarial auditor and audit report? **[June. 2018]**

Ans. According to section 204, every listed company and every company having paid –up share capital of fifty crore rupees or more; or public company having a turnover of two hundred fifty crore rupees or more shall attach Secretarial Audit Report given by Practicing Company Secretary (PCS.)

As per section 179 of the Companies Act, 2013 read with rule 8 of the Companies (Meeting of Board and its Powers) Rules, 2014 the Board of Directors, only by means of resolution passed at meetings of the Board, shall appoint a Secretarial Auditor.

It shall be the duty of the company to give all assistance and facilities to the Company Secretary in Practice (Secretarial Auditor), for auditing the secretarial and related records of the company. (Section 204(2))

The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report.

CS Nitesh Kr. Jaiswal

SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE

1. Short Notes:----------
   (a) Approval and signing of the balance sheet and profit and loss account.
   (b) Intangible assets
   (c) Write a short note on 'appointment of cost auditor'.
   (d) Qualifications and disqualifications of auditors
2. Descriptive Questions:----------
   (a) A director of a company has an absolute right of inspection of the books of account.
   (b) The power of directors to approve the annual accounts can be delegated to a committee of directors or some of some of the directors.
3. Practical Questions:----------
   (a) A director of the company along with another director was prosecuted under section 220 for their failure to file annual return, annual accounts and audited balanced sheet required to be laid before the AGM. The Directors filed petition before the Court/ Tribunal to quash the prosecution initiated by the Registrar of Companies. As Company Secretary in Practice, advise in the matter.
   (b) An auditor of a company signed the balance sheet, profits and loss account and schedules/ notes and furnished the auditor's report on the same date on which the reports were signed by the directors on behalf of the Board. One of the directors raised objection stating that the audit cannot be completed and certified in a day. Do you agree with the director and if not, why?
4. Comment on following :----------
   (a) It is not obligation for every company to preserve its books of account.
   (b) Where a company has a branch office, where in India or abroad, the original books of account, records, etc. of the branch office will have to be maintained in the registered office of the company.

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

19

DISTRIBUTION OF PROFITS

Covering-

- ABC Analysis
- Difference Between Dividend and Interest
- Types of Dividend
- Ascertainment of Divisible profits and dividends
- Companies (Declaration and Payment of Dividend) Rules 2014
- Unpaid and unclaimed dividend and its payment
- Investor Education & Protection Fund [IEPF]
- Right to dividend, etc. pending registration of shares
- Punishment for failure to distribute dividends
- Interim Dividend
- Self Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (5 to 10)

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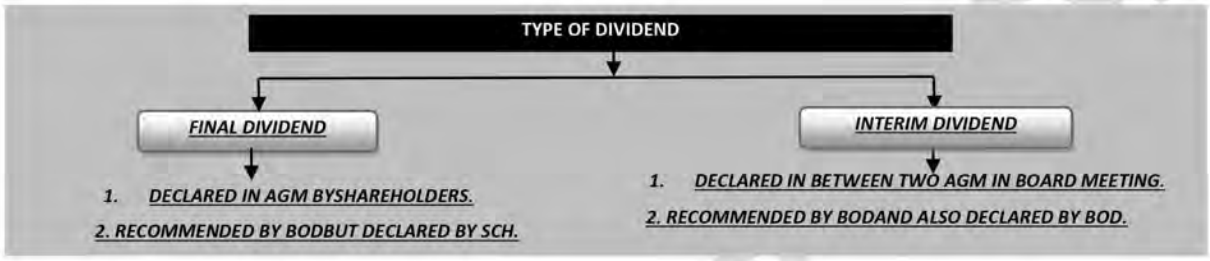

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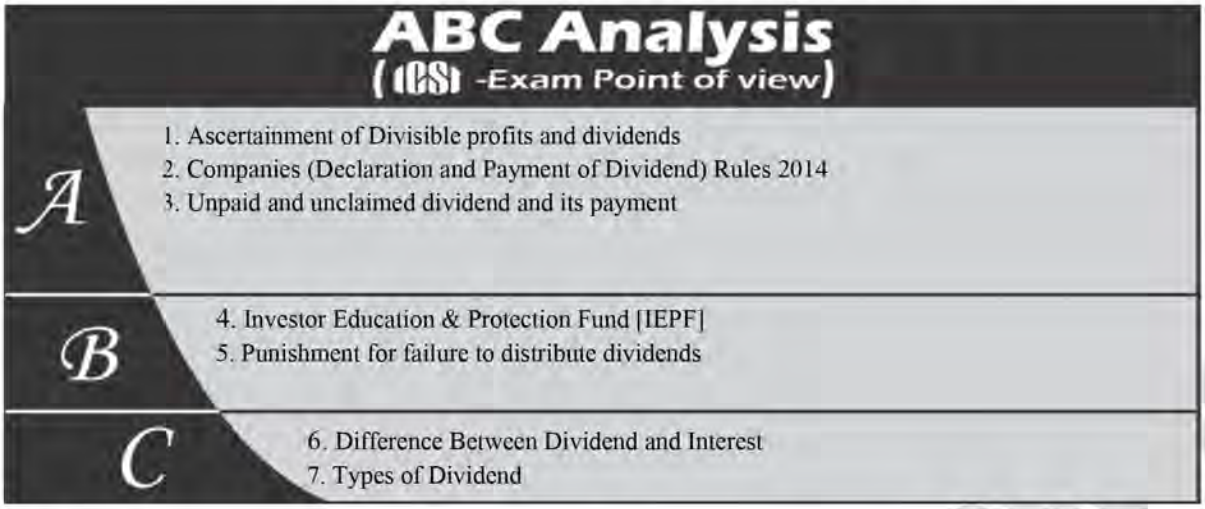
DISTRIBUTION OF PROFITS



Dividend is the return on the share capital subscribed for and paid to a company by its shareholders. ***Dividend is the share of the company's profit distributed among the members.***

Dividend is paid to shareholders in on proportion to the amount paid - up on the shares held by them. **Preference shareholders are always paid the dividend in preference to the equity shareholders**.

All companies subject to the provisions of the Companies Act, 2013, except companies registered under Section 8 (i.e., non-profit companies), can declare dividend.

DIFFERENCE BETWEEN DIVIDEND AND INTEREST

(a) Dividend is paid on preference and equity shares, whereas interest is paid on debentures and long term and short term loans/borrowings including fixed deposits.
(b) Interest is a debt, whereas a dividend becomes a debt only after it has been declared by the company.
(c) Generally interest is paid out of the company's assets, whereas Dividend cannot be paid out of the assets of the company, generally it can be declared only out of the profit available for the purpose.
(d) Interest is a charge on profits whereas dividend is an appropriation of profits.

TYPES OF DIVIDEND

1. FINAL DIVIDEND

Final dividend is **recommended** by the **Board of directors** and it is **declared** by the **shareholders** at the **annual general meeting**. Usually articles of association of companies provide that the shareholders **cannot increase the rate or amount of dividend** than the one recommended by the Board. The shareholders may, however, declare the payment of dividend on equity shares at a rate lower than the one recommended by the directors in their report.

It is the discretion of the Board of directors to recommend or not to recommend the declaration of final dividend, which has to be exercised in good faith in the interest of the company. The shareholders have no power to declare final dividend in the absence of a recommendation of the Board of directors in this regard.

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2. INTERIM DIVIDEND

Section 2(35) provides that the term **'dividend' includes any interim dividend**. Section 123(3) of the Companies Act, 2013 provides that the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the Profit and Loss Account and out of profits of the financial year in which such interim dividend is sought to be declared.

The interim dividend is paid **between** two **annual general meetings** of the company.

ASCERTAINMENT OF DIVISIBLE PROFITS AND DIVIDENDS

SECTION 123

1. DECLARATION OF DIVIDEND AT ANNUAL GENERAL MEETING

Dividend is to be declared at an annual general meeting but it has no power to declare a dividend exceeding the amount recommended by the Board. On declaration, dividend becomes a debt payable by the company to the registered shareholders, who are entitled to sue the company for the non – payment of declared dividend.

It is beyond the powers of a company to declare a further dividend after the declaration of a dividend at the AGM. However, a company, which could not declare a dividend at an AGM, may do so at a subsequent EGM.

The MCA has clarified that declaration of dividend should be unconditional and should not be subject to prior approval of financial institutions, banks, etc. However, companies should take prior approval from financial institutions / banks, wherever required as per the loan agreement, before dividend is declared.

2. SOURCES OF DIVIDEND

The payment of dividend is bound by two fundamental principles, which are :-

(a) Dividend must never be paid out of the capital; and

(b) Dividend shall be declared only out of the profits.

The Companies Act allows dividend to be paid out of the following sources :-

(a) Profits of the company for the year for which the dividend is to be paid;

(b) Undistributed profits of the previous financial years; and

(c) Moneys provided by the Central Government or a State Government for payment of dividend in pursuance of a guarantee given by the concerned Government.

3. TRANSFER TO RESERVES

A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the free reserves of the company.

4. INADEQUACY OF PROFITS

If owing to inadequacy or absence of profits in any year, a company proposes to declare dividend out of the accumulated profits earned by the company in any previous financial year or years and transferred to free reserves, such declaration of dividend shall not be made except in accordance with the Companies (Declaration and Payment of Dividend) Rules, 2014.

*However compliance of abovementioned rules will not be necessary for govt. companies in which **entire paid up share capital** is held by c/g or by one or more s/g or by c/g and one or more s/g.*

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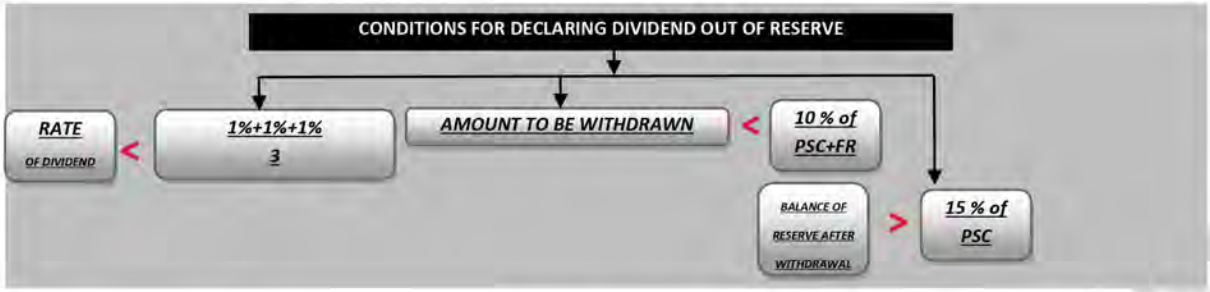

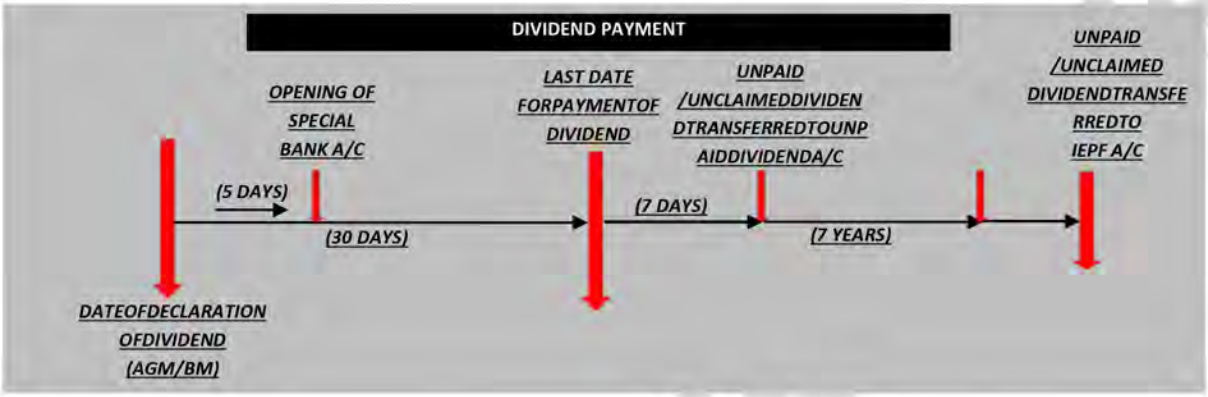

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5. DEPRECIATION TO BE PROVIDED

A company can declare dividend, only after providing the depreciation on all the depreciable assets, according to the rates of depreciation specified in Schedule II to the Companies Act, 2013.

Set-off

No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year."

6. MODE OF PAYMENT OF DIVIDEND

First of all, the amount of declared dividend shall be deposited in a separate bank account in a Scheduled Bank within 5 days from the date of declaration and shall be utilized for the payment of dividend only.

*However aforesaid requirement of deposit within 5 days will not be necessary for govt. companies in which **entire paid up share capital** is held by c/g or by one or more s/g or by c/g and one or more s/g or **one or more govt. companies**.*

Section 123 provides that no dividend shall be payable except in cash provided that nothing in this section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid - up bonus shares or paying up any amount, for the time being unpaid on any shares held by the members of the company.

Any dividend payable in **cash** may be paid by **cheque** or **warrant** or in any **electronic mode** to the shareholder entitled to the payment of dividend.

A company which does not comply with the provisions relating to acceptance and repayment of deposits as provided under sections 73 and 74 would be barred to declare dividend.

COMPANIES (DECLARATION AND PAYMENT OF DIVIDEND) RULES, 2014 / DECLARATION OF DIVIDEND OUT OF RESERVES

A company can declare dividend in case of absence or inadequacy of profits for a financial year out of the accumulated profits of the previous years. But for such a declaration, the following conditions are to be fulfilled simultaneously :-

1. RATE OF DIVIDEND

The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year.

The aforesaid provision shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

2. TOTAL AMOUNT TO BE DRAWN

The total amount to be drawn from the accumulated profits shall not exceed an amount equal to one - tenth of the sum of its paid - up capital and free reserves and the amount so drawn shall first be utilised to set off the losses incurred in the financial year before any dividend is declared.

3. BALANCE OF RESERVES

The balance of reserves after such withdrawal shall not fall below 15% of its paid - up share capital.

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UNPAID AND UNCLAIMED DIVIDEND AND ITS PAYMENT

SECTION 124

Where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of the expiry **of the** said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed, to a special account to be opened by the company in that behalf in any scheduled bank to be called 'Unpaid Dividend Account of ..... Company Limited / Company (Private) Limited'.

Where a default is made in transferring the amount, the company shall pay, from the date of suchdefault, interest on so much of the amount as has not been transferred to the said account, at the rate of 12% per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

Any money transferred to the unpaid dividend account which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.

INVESTOR EDUCATION & PROTECTION FUND (IEPF)

SECTION 125

The Central Government has established a Fund known as 'Investor Education & Protection Fund' under Section 125 of the Companies Act, 2013.

INVESTOR EDUCATION AND PROVIDENT FUND (ACCOUNTING, AUDIT, TRANSFER AND REFUND) RULES, 2016

Investor Education and Protection Fund Authority ("Authority") shall administer the IEPF. The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued."

Following **amounts shall be credited** to IEPF :-

(a) Unpaid Dividend;
(b) Unpaid application money received by companies for allotment of securities and due for refund;
(c) Unpaid matured deposits;
(d) Unpaid matured debentures;
(e) Interest accrued on (a) to (d) above;
(f) Grants and donations given to IEPF by the C/G, S/Gs, companies or any other institutions for the purposes of IEPF;
(g) Interest or other income received out of the investments made from the IEPF;
(h) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;

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(i) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
(j) such other amount as may be prescribed:

It may noted that amounts mentioned in clauses (a) to (d) shall be transferred to IEPF only after they have remained unpaid and unclaimed for a period of 7 years from the date they become due for payment.

TRANSFER OF SHARES IN RESPECT OF WHICH "DIVIDEND HAS NOT BEEN PAID OR CLAIMED

All **shares** in respect of which **"dividend has not been paid or claimed for seven consecutive years or more shall be transferred** by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed:

"Explanation— For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.''.

Utilization of fund

The Fund shall be utilized for:-

(a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
(b) promotion of investors' education, awareness and protection;
(c) distribution of any disgorged amount among eligible and identifiable applicants for scares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
(d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the NCLT; and
(e) any other purpose incidental thereto, in accordance with such rules as may be prescribed.

RIGHT TO DIVIDEND, ETC. PENDING REGISTRATION OF SHARES

SECTION 126

Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, then the dividend is required to be paid to the transferee in case the transferor has given a mandate to that effect In case no mandate has been given, the dividend in respect of the shares should be transferred to the Unpaid Dividend Account. Further, the company shall keep in abeyance the rights shares and bonus shares, to be issued in respect of transferred shares but not registered.

PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS

SECTION 127

Section 127 lays down penalty for non-payment of dividend after its declaration. It states that where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted, within 30 days from the date of declaration, to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with **simple imprisonment which may extend to 2 years** and shall also be liable to fine of**₹ 1,000 for every day during which such default continues**. Further, company shall be liable to pay simple interest **@ 18% p.a. for the period of default**.

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However, **no offence shall be deemed to have been committed** within the meaning of this section in the following cases, namely :-	**(a)** Where the dividend could not be paid by reason of the operation of any law;
	(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;
	(c) where there is a dispute regarding the right to receive the dividend;
	(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder;
	(e) where, for any other reason, the failure to pay the dividend Here, the term 'payment' implies the act of posting of dividend warrant or cheque irrespective of the fact whether the shareholder concerned receives it or not.

INTERIM DIVIDEND

Section 123(3) of the Companies Act, 2013 The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:

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

The amount of declared interim dividend shall be deposited in a separate bank account in a Scheduled Bank within 5days from the date of declaration and shall be utilized for the payment of interim dividend only.

It may be noted that **declaration of interim dividend by the Board of Directors does not create a debt enforceable against the Company, as it open to the Board of Directors to rescind its resolution before dividend is paid**.

The MCA is of the view that approval of dividend is the privilege of the general meeting. However, the Board of Directors can pay interim dividend, if so authorised by the articles of association, subject to the regularisation of the interim dividend by the company in general meeting.

Section 2(35) provides that the term 'dividend' includes any interim dividend. It means that the provisions of Companies Act, 2013 pertaining to final dividend, to the extent possible, shall also apply to the interim dividend.

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Q. 1. The Board of Directors of American Express Ltd. declared interim dividend third time during the financial year 2015-16. After declaration, the Board of Directors decided to revoke third interim dividend as they noticed that company's financial position did not permit payment of such interim dividend. The Board of Directors seek you advice in this matter. Please advise the Board as a company secretary. Will your advice be different in case it was a regular dividend instead of interim dividend ? **[Dec. 2017]**

Ans. The Board of Directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in separate bank account within 5 days from the date of declaration of such dividend. A dividend when declared becomes debt and a shareholder is entitled to sue for recovery of the same after expiry of the 30 days prescribed under Section 127.

Section 2(35) defines 'Dividend' to include interim dividend.

Therefore the interim dividend once declared cannot be revoked except with the consent of the shareholders.

Based on aforesaid facts, Board of Directors of American Express Limited cannot revoke the interim dividend and should pay the same.

No, Regular dividend also cannot be revoked even by the shareholders. It's a statutory debt against the company once it is declared.

Q. 2. Board of Directors of AVB Limited wants to declare dividend ₹15 lakhs out of capital profits for the year ended 31st March, 2017, without making a provisions for depreciation. Referring to the provisions of the Companies Act, 2013, you being the Secretary of the Comapny advise the board whether it can go ahead with its proposal? **[June. 2017]**

Ans. In accordance with the provision of the Companies Act, 2013 as contained in third proviso to section 123(1), no dividend shall be declared or paid by a company from its reserves other than free reserves. As per section 2(43) of the companies Act, 2013, "fee reserves" means such reserves which, as per the latest audited balance sheet of provision of schedule II.

Therefore, in the given case AVB Limited can neither declared dividend from capital profit and nor it can declare dividend without making provision for depreciation.

Q. 3. The Board of Director of peculiar Ltd. proposes to recommend a final dividend of 25 each to all the equity shareholders of the company. The company seeks your opinion on the following:

(1) The company wants to deposit the dividend amount to co-operative bank.

(2) The company is a defaulter in the repayment of deposits and proposes to repay its all deposit after the payment of dividend within 10 days.

(3) Dividend will be declared out of the capital reserves of the company.

(4) The company wants to pay such dividend through the cash counter by way of cash voucher. **[June. 2018]**

Ans. The Peculiar Ltd has to follow below procedure for recommending final dividend:

(1) Referring to section 123(4) of Companies Act, 2013 the amount of the dividend has to be deposited in a scheduled bank. The Company should first ensure that said co-operative bank is scheduled bank from the list of scheduled bank available at RBI website, and then it may deposit the dividend amount in the scheduled Co-operative Bank.

(2) Referring to section 123 (6) of Companies Act, 2013 a company which fails to comply with the provisions relating to acceptance and repayment of deposits shall not, so long as such failure continues, declare any dividend on its equity shares. Hence Peculiar ltd. cannot declare dividend till the failure persists.

(3) Referring to third proviso to Section 123(1) no dividend shall be declared or paid by a company from its reserves other than free reserves.

Free reserves, as per Section 2 (43), means such reserves which, as per the latest audited balance sheet of a company are available for distribution as dividend: Provided that-

(a) Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(b) Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves.

Hence dividend cannot be declared out of the capital reserves of the company.

(4) Referring to section 123 (5) dividend shall not be payable in cash .Hence company's proposal to pay dividend through cash counter by way of cash voucher is not permitted under law.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Descriptive Questions:----------
   (a) The Board of directors of a company in a meeting held on 30th April, 2013 declared interim dividend. In another meeting held on 18th may, 2013, the Board revoked the interim dividend declared without assigning any reason. Advice the company in the matter.
   (b) Can the dividend be declared out of previous years' profits transferred to reserve?
   (c) 'Dividend once declared becomes debts" Explain.
2. Short Notes:----------
   (a) Interim dividend.
   (b) Investor education and protection fund
   (c) Divisible profits
3. A company for the financial year 2011-12 declared dividend on 19th September, 2012 but failed to distribute the same within the prescribed period. A case was filed against a director in this regard .The director has contended that he had resigned before the declaration of dividend. Decide fate of the director in the light of the relevant provisions of the Companies Act, 2013
4. Comment on the following:----------
   (a) Dividend can be paid out of capital only if the articles of association of a company authorized such payment
5. Explain the provisions for transfer of unclaimed dividend.
6. Distinguish Between 'Dividend' and 'interest'.

FROM ICSI MODULE

Answer the following:

1. Define the term 'Dividend'. State briefly the provisions.
2. Distinguish between 'Dividend' and 'Interest'
3. State the procedure for transfer of unpaid or unclaimed dividend to the Investor Education and Protection Fund.
4. Explain the law relating to declaration and payment of final dividend.
5. Define Interim Dividend. Distinguish between 'Interim Dividend' and 'Final Dividend'.
6. Write short notes on the following:-
   (i) Investor Education and Protection Fund (IEPF).
   (ii) Punishment of failure to distribute dividend and exceptions.

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

20

CORPORATE SOCIAL RESPONSIBILITY

Covering-

- Corporate Social Responsibility (CSR)
- Benefits of CSR
- Applicability of CSR
- Cessation
- Constitution of CSR Committee
- Functions of the CSR Committee
- CSR Policy
- CSR Contribution
- CSR Contribution Areas / Activities
- Disclosure Requirements
- Frequently Asked Question

EXPECTED MARKS COVERAGE (5 to 10)

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CORPORATE SOCIAL RESPONSIBILITY (CSR)

The government perceives CSR as the business contribution to the nation's sustainable development goals. Essentially, it is about how business takes into account the economic, social and environmental impact of the way in which it operates. Perception of the government about CSR gained shape and form in the Companies Act, 2013, which mandates Companies to undertake Corporate Social Responsibility, as one of the Board Agenda.

Corporate Social Responsibility is the way companies manage their businesses to produce an overall positive impact on society through economic, environmental and social actions. Corporate social responsibility (CSR), also called corporate conscience, corporate citizenship, social performance, or sustainable responsible business/ businesses. Business depends for its survival on long term prosperity of the society.

CORPORATE SOCIAL RESPONSIBILITY (CSR)

SECTION 135

WHAT IS CSR

CSR can be understood to be a **concept imposing a liability on the Company to contribute to the society** (whether towards environmental causes, educational promotion, social causes etc.) along with the reinforced duty to conduct the business in an ethical manner.

CSR is a **form of self-regulation integrated into a business model**. It is also known as corporate conscience, corporate citizenship, social performance or sustainable business/responsible business.

CSR involves both internal as well as external stakeholders. Internal stakeholders include the employees of the company whereas external stakeholders include community & environment, customers, vendors, shareholders, government etc.

BENEFITS OF CSR

The benefits of CSR includes the following:-

(a) Strengthened brand positioning
(b) Enhanced corporate image and reputation
(c) Satisfaction of economic and social contribution to society
(d) Contribution to the surrounding society
(e) Increased ability to attract, motivate and retain employees
(f) Enhanced sales and market share
(g) Increased appeals to investors and financial analysts
(h) Local economy gains in all dimensions

APPLICABILITY OF CSR

Every company, whether listed or unlisted which has in immediately receding financial year" a	**(a)** net worth of ₹ 500 crore or more
	(b) a turnover of ₹ 1,000 crore or more or
	(c) net profit of ₹ 5 crore or more

Shall constitute a CSR committee to, inter alia, formulate and monitor the CSR policy of the company.

According to the CSR Rules, the CSR provision will also be applicable to every company including its holding or subsidiary, and a foreign company having its branch office or project office in India having net worth of rupees five hundred crore (500 Crore) or more, or turnover of rupees one thousand crore (1000 crore) or more or a net profit of rupees five crore (5 Crore) or more during any financial year.

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CESSATION

Thus, the CSR Rules specify that a company which does not satisfy the specified criteria for a consecutive period of three financial years is not required to comply with the CSR obligations, implying that a company not satisfying any of the specified criteria in a subsequent financial year would still need to undertake CSR activities unless it ceases to satisfy the specified criteria for a continuous period of three years.

CONSTITUTION OF CSR COMMITTEE

Companies that trigger any of the aforesaid conditions must constitute a Corporate Social Responsibility Committee. The CSR Committee shall consist of three or more Directors, out of which at least one Director shall be an Independent Director. Provided that where a company is not required to appoint an independent director it shall have in its Corporate Social Responsibility Committee two or more directors.";

A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

FUNCTIONS OF THE CSR COMMITTEE

(a) The Committee shall **formulate and recommend** to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in **Schedule VII** of the Act.

(b) The Committee shall also initiate a CSR Policy, which shall stipulate how, where, and when they want to **invest their funds** with respect to this requirement.

(c) The Committee shall recommend the **amount of expenditure** to be incurred on the activities referred to above.

(d) The CSR Committee is under an obligation to **monitor the implementation** of the CSR policy from time to time.

CSR POLICY

The CSR Policy of the company shall, inter alia includes the following, namely :

(a) A list of CSR **projects or programs** which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedule for the same; and

(b) **Monitoring process** of such projects or programs.

The Board shall ensure that the **activities** included by the company in its CSR Policy are related to the activities mentioned in **Schedule VII** of the Act.

CSR CONTRIBUTION

A company that crosses any one of the limits shall be required to contribute towards CSR activities **2 percent** of its average profits of the preceding three years *or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years.*

However, if the company fails to contribute, it is required to specify reasons in its Board's report for towards CSR activities. *and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year"*

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Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in persuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both

CSR CONTRIBUTION AREAS/ACTIVITIES

SCHEDULE VII

Activities which may be included by companies in their Corporate Social Responsibility Policies activities relating to:—

(a) eradicating extreme hunger and poverty;
(b) promotion of education;
(c) promoting gender equality and empowering women;
(d) ensuring environmental sustainability;
(e) social business projects;
(f) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development.
(g) Ensuring sustainability
(h) Protecting heritage
(i) Working for the benefits of the country's armed forces
(j) Fostering and training for sports activities

Disclosure Requirements

It is mandatory for companies to disclose in Board's Report, an annual report on CSR. The report of the Board of Directors attached to the financial statements of the Company would also need to include an annual report on the CSR activities of the company in the format prescribed containing following particulars–

(a) A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
(b) The Composition of the CSR Committee.
(c) Average net profit of the company for last three financial years.
(d) Prescribed CSR Expenditure.
(e) Details of CSR spent during the financial year.
(f) In case the company has failed to spend the two per cent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.
(g) A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company

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Frequently asked Questions

Sl. No.	FAQs
1.	**Whether CSR expenditure of a company can be claimed as business expenditure?**
	The amount spent by a company towards CSR cannot be claimed as a business expenditure. The Finance Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.
2.	**What tax benefit can be availed under CSR?**
	No Specific Tax Exemptions Have Been Extended to CSR Expenditure Per Se. The Finance Act, 2014 Also Clarifies That Expenditure On CSR does not form part of business expenditure. While no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agricultural extension projects, etc., which find place in Schedule VII, already enjoy exemptions under different sections of the Income Tax Act, 1961.
3.	**Whether a holding or subsidiary of a company which fulfils the criteria under section 135(1) has to comply with section 135, even if the holding and subsidiary itself does not fulfill the criteria.**
	Holding or subsidiary of a company does not have to comply with section 135(1) unless the holding or subsidiary itself fulfills the criteria.
4.	**Whether provisions of CSR are applicable on Section 8 company, if it fulfills the criteria of section 135(1) of the Act.**
	Section 135 of the Act reads "Every company……", i.e. no specific exemption is given to section 8 companies with regard to applicability of section 135, hence section 8 companies are required to follow CSR provisions.
5.	**Whether display of CSR policy of a company on website of the company is mandatory or not?**
	As per section 135(4) the Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approves the CSR policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any (refer Rule 8 & 9 of CSR Policy, Rules 2014).
6.	**Whether reporting of CSR is mandatory in Board's Report?**
	The Board's Report of a company qualifying under section 135(1) pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure. (refer Rule 9 of CSR Policy, Rules 2014).
7.	**Whether it is mandatory for Foreign Company to give report on CSR activity?**
	In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.
8.	**Can the unspent amount from out of the minimum required CSR expenditure be carried forward to the next year?**
	The Board is free to decide whether any unspent amount from out of the minimum required CSR expenditure is to be carried forward to the next year. However, the carried forward amount should be over and above the next year's CSR allocation equivalent to at least 2% of the average net profit of the company of the immediately preceding three years.

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9.	**What is the role of Government in monitoring implementation of CSR by companies under the provision of the Companies Act, 2013?**
	The main thrust and spirit of the law is not to monitor but to generate conducive environment for enabling the corporates to conduct themselves in a socially responsible manner, while contributing towards human development goals of the country. The existing legal provisions like mandatory disclosures, accountability of the CSR Committee and the Board, provisions for audit of the accounts of the company etc., provide sufficient safeguards in this regard. Government has no role to play in monitoring implementation of CSR by companies.
10.	**Can CSR funds be utilized to fund Government Scheme?**
	The objective of this provision is indeed to involve the corporates in discharging their social responsibility with their innovative ideas and management skills and with greater efficiency and better outcomes. Therefore, CSR should not be interpreted as a source of financing the resource gaps in Government Scheme. Use of corporate innovations and management skills in the delivery of 'public goods' is at the core of CSR implementation by the companies. In principle, CSR fund of companies should not be used as a source of funding Government Schemes. CSR projects should have a larger multiplier effect than that under the Government schemes. However, under CSR provision of the Act and rules made thereunder, the Board of the eligible company is competent to take decision on supplementing any Government Scheme provided the scheme permits corporates participation and all provisions of Section 135 of the Act and rules thereunder are complied by the company.
11.	**How can companies with small CSR funds take up CSR activities in a project/programme mode?**
	A well designed CSR project or programme can be managed with even small fund. Further, there is a provision in the CSR Policy Rules, 2014 that such companies can combine their CSR programs with other similar companies by way of pooling their CSR resources. (refer Rule 4 in Companies (CSR Policy) Rules, 2014).

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Q. 1. RS Ltd. has incurred 5 lakh for the fulfillment of Labour Law. Land acquisition Act and Food safety & Standers Action the month of May, 2018.The Company has accounted for this ₹5 lakh as Corporate Social Responsibility (CSR) expenditure. Explaining the provisions of the Companies Act, 2013 discuss whether the company has rightly accounted for the amount in CSR. **[Dec. 2018]**

Ans. According to the provisions of section 135 of the Companies Act, 2013 and rules and clarification there under, expenses incurred by companies for the fulfillment of any count as CSR expenditure under Companies Act, 2013.

In accordance with the aforementioned clarification, expenditure of ₹5 lass rotating to fulfillment of requirement under Labor law, Land Acquisition Act and Food Safety and Standard Act by RS Ltd. will not be treated as the CRS expenditure.

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

21

AN OVERVIEW OF INTER-CORPORATE LOANS AND SECURITY, RELATED PARTY TRANSACTIONS

Covering-

- Limit and approval for inter-corporate loans and investments
- Other requirements
- Investments of company to be held in its own name
- Self Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (5 to 10)

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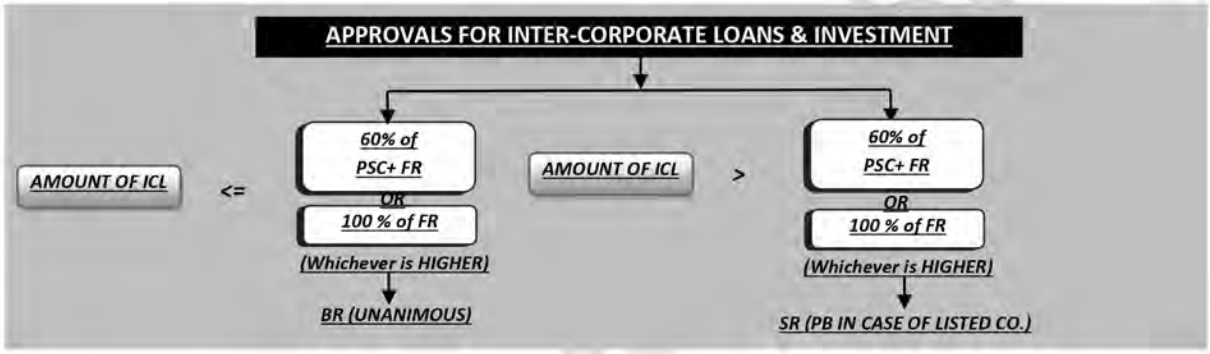

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AN OVERVIEW OF INTER-CORPORATE LOANS AND SECURITY, RELATED PARTY TRANSACTIONS

LIMIT AND APPROVAL FOR INTER-CORPORATE LOANS AND INVESTMENTS

SECTION 186 (2)

➢ BY PASSING BOARD RESOLUTION

A company can directly or indirectly, make inter-corporate or to any other person loans or give guarantee or provide security or make inter- corporate investments **up to 60% of its aggregate of paid – up share capital, free reserves and securities premium account or 100% of its reserves and securities premium account, whichever is more,** with the approval of Board of Directors.

The approval must be by way of an **unanimous resolution** of Board of Directors of the company and this resolution must be passed at a Board meeting only.

➢ BY PASSING SPECIAL RESOLUTION

No company shall directly or indirectly —
(*a*) give any loan to any person or other body corporate;
(*b*) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
(*c*) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

It can do so by passing a prior **Special Resolution** in the General Meeting.

It may be noted that where a loan or guarantee is given or where a security has been provided by a company to its **WOS company or a joint venture company**, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of , the securities of its WOS company, then the aforesaid **special resolution is not required;** provided that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement.

For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.

OTHER REQUIREMENTS

1. ***Section 186(1):-***A company shall, unless otherwise prescribed make investment through not more than two layers of investments companies:-
   Provided that the provisions of this sub-section shall not affect:-
   (i) A company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per laws of such country;
   (ii) A subsidiary company from having any investment subsidiary for the purpose of meeting the requirements under any law or under any rule or regulation framed any law for the time being in force.
2. ***Approval of Public Financial Institution:-***If the inter- corporate loans/ investments and other loans is **beyond** 60% or 100% as the case may be, then prior approval of the public financial institution is required in all cases.
3. ***Interest Rate:-*** No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

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4. ***Register of Loans/ Investments:-*** Every company shall keep a register of loans/ investments **in form MBP 2** at its registered office in which entry shall be made within 7 days of making loans/ investments. The register shall be open for inspection (free of cost) to every member of the company. Every member may also take extracts on payment of such fees as may be prescribed in the AOA of the Company, which shall not exceed ten rupees per page. Further a member may demand for a copy of the register on payment of fees.

5. ***Restriction on Loans/ Investments:-*** No company, which has defaulted in complying with the provisions relating to public deposits, shall, directly or indirectly, make any loans/ investments, till such default is subsisting

Non- Applicability:-"
186(*11*)

Nothing contained in this section, except sub-section (*1*), shall apply—

(*a*) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;

(*b*) to any investment—

(*i*) made by an investment company;

(*ii*) made in shares allotted in pursuance of clause (*a*) of sub-section (*1*) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;

(*iii*) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.";

However, section 186 shall not apply to;-

(a) *A govt. company engaged in defence sector.*

(b) *A govt. company, if such company obtains approval from incharge ministry/department of c/g or s/g as the case may be before making any loan/giving guarantee or providing any security.*

INVESTMENTS OF COMPANY TO BE HELD IN ITS OWN NAME

SECTION 187

All investments made or held by a company in property, security or other asset must be made and held by it in its own name. The company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do; to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

Exceptions;-

Following are the exceptions to the aforesaid provisions:-

(a) A company may deposit with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or

(b) A company may deposit with, or transferring to, holding in the name of State Bank of India or a scheduled bank, being the bankers of the company any shares or securities in order to facilitate the transfer thereof, but required to again hold the shares or securities in its own name within a period of six months;

(c) A company may deposit with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it;

(d) A company may hold investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

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PRACTICAL QUESTION-1

A proposal had been made by one of the directors for investment of surplus cash available with the co. in
5,000 SHARES OF A LTD @ RS. 4500/SHARE and
5,000 SHARES OF B LTD @ RS. 780 /SHARE.
THE CO'S ,
PSC=RS. 20 CRORE
FR=RS. 20 CRORE
Co. has not made any loan and investment, but it has outstanding guarantee of RS 1 CRORE. Advice.

PRACTICAL QUESTION-2

Balance sheet extracts of ABC ltd;-
PSC=10 CRORE
RESERVE & SURPLUS=20 CRORES
RESERVE FOR REDEMPTION OF DEBENTURE=5 CRORE
The co. has already advanced to the following cos ;-
XYZ LTD=6 CRORE
MNO LTD=2 CRORE
STU LTD (corporate guarantee) = 5 CRORES
PQR LTD has approached ABC LTD for loan of 8 crore.
As a CS of ABC LTD, advice the management on the limit of making inter corporate loans and investment.

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Maintenance of Register

Every company shall maintain a register in **Form MBP 3**and enter therein, chronologically, the particulars of investments in shares or other securities beneficially held by the company but which are not held in its own name and the relationship or contract under which the investment is held in the name of any other person.

The register shall be maintained at the registered office of the company. The said register shall be open to inspection by any member or debenture holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting imposes.

FROM INDUSTRY

In 2008, the Satyam board approved a US$1.6 billion acquisition of the Maytas Infra ($300 million) and Maytas Properties ($1.3 billion). The acquisition attempt was seen as an attempt by the Raju family to exploit Satyam's cash resources, as the transaction would have left Satyam in a debt of around $400m. After protests from the institutional shareholders, the deal was abandoned.

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Q. 1. XYZ Ltd., a company, has a paid up share capital of ₹60 crores and free reserves of ₹25 crores. It desires to make a loan of ₹20 crores to M Ltd. The company XYZ Ltd. has already made investments in many other companies including loans to the extent of ₹35 crores. Can the company go ahead with loan to M Ltd. ? Please advise the company about the procedure to be followed by it. **[Dec. 2017]**

Ans. No companies shall directly or indirectly give any loan to any person or other body corporate exceeding 60% of its paid up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account whichever, is more unless the same is previously authorised by special resolution passed in a general meeting.

In the given case xyz Limited cannot grant loan above 100% of ₹25 crore, i.e., ₹25 crore or 60% of ₹(60+25) crore i.e., ₹51 crore which is more.

Since the company has already made investment and given loans to the extent of ₹35 crore therefore a further lone of ₹20 crore shall require the approval of shareholders.

Q. 2. RR Limited has decided to make investment in other companies for ₹50 lakhs, which is in excess of 60% of the company's paid-up share capital, free reserves and securities premium account. Company has 5 directors. Four directors were present in the Board meeting, three directors have given their consent but one director abstained from voting. The decision of the Board was noted in the minutes of Board meeting and decided to make such investment by passing of Board resolution with majority. Referring to the provisions of Companies Act, 2013, examine the validity of the Board's decision. **[June. 2017]**

Ans. In accordance with the provision of the companies Act, 2013 as contained in section 186(5) no investment shall be made or loan guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting is obtained.

Further, under the provision of section 186(20) and 186(3), the loan amount must not exceed 60% of its paid up capital, free reserves and securities premium account or 100% of free reserves and securities premium account, whichever is more. In case the company wishes to exceed the said limit, prior approval of company through special resolution would be acquired.

In the given case, in absence of adequate information, even if we assume that ₹50 lakh does not exceed the 100% of free reserves and securities premium account. RR limited has not complied with the provision of section 186(5) of the companies Act, 2013 where consent of all the director present is required. The resolution of the board of directors therefore, is not valid and has no legal effect.

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SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Descriptive Questions:----------

   (a) The power to invest funds of the company is the prerogative of the Board of directors under Section 179. Discuss the limitations on such powers of the Board, if any, relating to inter-corporate loans and investments under section 186.

   (b) State the procedure for granting by one company to another company.

   (c) Your company, which is public limited company wishes to make investments in shares of a Company. The total investment exceeds the statutory limit stipulated by the Companies Act, 2013 what are the formalities to be complied with in this regards?

   (d) All investments made by a company must be held by it in its own name

FROM ICSI MODULE

Answer the following:

1. Discuss the law relating to loans and investments by companies.
2. Which companies are exempt from the provisions with regard to loans and investments by companies?
3. What particulars are required to be entered in the Register of Loans and Investments?
4. Your company, which is a public limited company wishes to make investments in shares of a company. The total investment exceeds the statutory limit stipulated by the Act. What are the formalities to be complied with in this regard?

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

22

REGISTERS & RECORDS

Covering-

- Statutory books / registers
- Optional books / registers
- Place of keeping the registers and returns
- Inspection, extract and copy of registers and returns
- Rectification of register of members
- Returns
- Annual return
- Singing of annual return
- Self Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (0 to 5)

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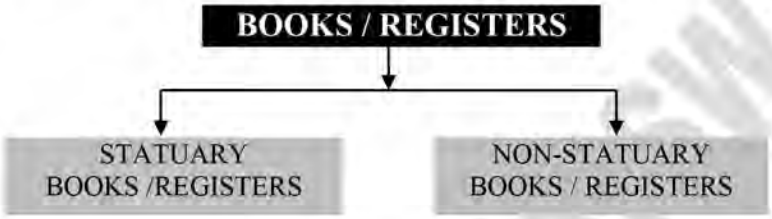
REGISTERS AND RECORDS

The Companies Act, 2013 lays down that every company incorporated under this Act must maintain and keep at its registered office certain books, registers and file certain returns etc.

Every company incorporated under the Act is required to keep at its registered office, inter alia, the following books and registers –



STATUTORY BOOKS / REGISTERS

Every company incorporated under the Act is required to keep at its registered office, inter alia, the following statutory books and registers:-

(a) Register of Securities bought back. [Section 68]
(b) Register of deposits. [Sections 73]
(c) Register of charges. [Section 85]
(d) Register of members. [Section 88]
(e) Index of members. [Section 88]
(f) Register of debenture holders. [Section 88]
(g) Index of debenture holders. [Section 88]
(h) Register and index of beneficial owners. [Sections 88]
(i) Foreign register of members, etc. [Section 88]
(j) Register of Sweat Equity S hares. [Section 54]
(k) Register of Postal Ballot. [Section 110]
(l) Minutes of General Meeting and Board Meetings. [Section 118]
(m) Books of accounts. [Section 128]
(n) Register of Directors / Key Managerial Personnel. [Section 170]
(o) Register of Loans, Guarantee, Security Investment [Section 186]
(p) Register of Investment in securities not held in Company's name. [Section 187]
(q) Register of Contracts with companies / firms in which directors are interested. [Section 189]

OPTIONAL BOOKS / REGISTERS

With a view of keeping proper records, companies invariably maintain some other books in addition to statutory books. These are called optional books. They are :-

(a) Register of transfer of shares.
(b) Register of documents sealed.
(c) Register of share application and allotment.
(d) Register of share warrants.
(e) Director's Attendance Books.
(f) Register of attendance of shareholders, etc.
Register of proxies for general meeting.

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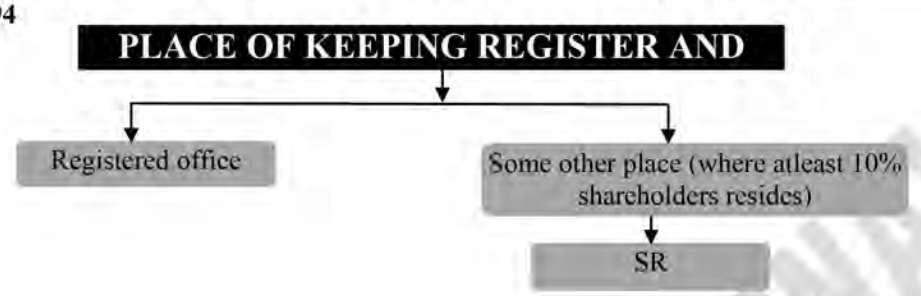
PLACE OF KEEPING THE REGISTERS AND RETURNS

SECTIONS 94



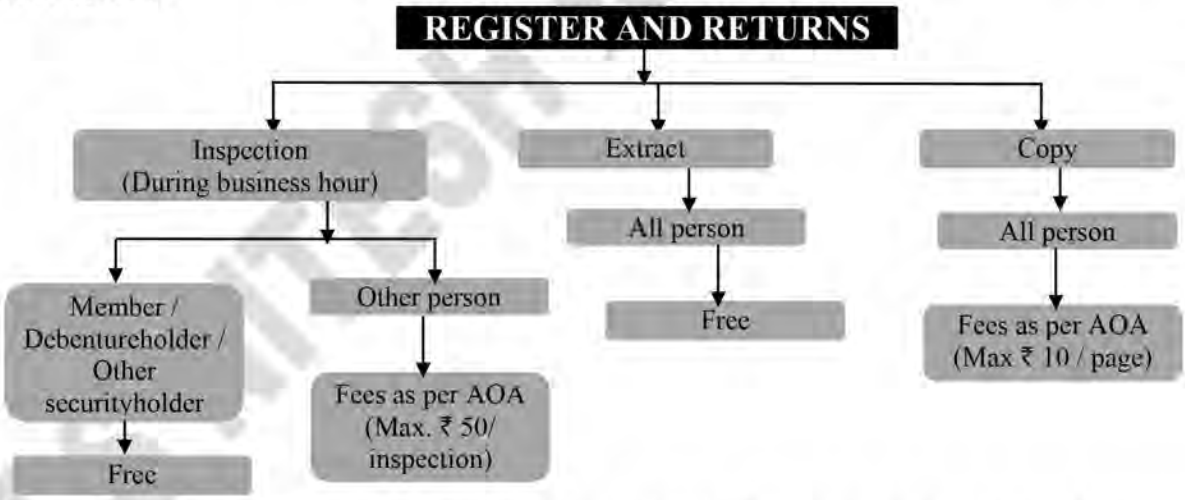
Section 94 provides that the register of members, debenture – holders and any other security-holders and copies of annual returns shall be kept at the **registered office**.

However, a company may also keep the said registers and returns at any other place in India other than the registered office where more than **one– tenth of total number of members reside,** if:

(a) Such other place has been approved for this purpose by a **special resolution** passed by the company in general meeting; and

INSPECTION, EXTRACT AND COPY OF REGISTERS AND RETURNS

SECTIONS 94



The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any **member, debenture – holder,**
Other security holder of beneficial owner, during business hours, **without payment of any fees** and by any **other person** on payment of such fees as may be specified in the AOA of a company subject to a **maximum of ₹ 50/-** for each inspection.

Any such member, debenture – holder, other security holder or beneficial owner or any other persons may:-

(a) take extracts from any register, or index or return without payment of any fee; or

(b) require a copy of any such register or entries therein or return on payment of such fees as may be specified on the AOA of the company subject to **maximum of ₹10/-** for each page. Such request has to be honoured with7 days from the date of deposit of fees.

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RECTIFICATION OF REGISTER OF MEMBERS

SECTIONS 59

Any person may apply to the **NCLT** for rectification of the register; -

(a) where the name of a person is without sufficient cause, entered in the register of members of a company;

(b) where his name, having been entered, is removed without sufficient cause; or

(c) where default is made or unnecessary delay takes place in entering in the register of members the fact of any person having become, or ceased to be, a member of company.

The NCLT has full powers to decide any question relating to the title of any person entered or omitted from the register of members.

If default is made in complying with the order of the NCLT, the company shall be punishable with fine which shall not be less than **one lakh rupees but which may extend to five lakh** rupees and every officer of the company who is in default shall be punishable with imprisonment for at erm which may extend to **one year** or with fine which shall not be less than **one lakh rupees but which may extend to three lakh rupees, or with**

REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY

SECTION 90

(*1*) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (*27*) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, (BEN-1) specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

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

(*2*) Every company shall maintain a register of the interest declared by individuals (BEN-3) under sub-section (*1*) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

(*3*) The register maintained under sub-section (*2*) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.

(*4*) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form (BEN-2) and manner as may be prescribed.

(*5*) A company shall give notice, in the prescribed manner (BEN-4), to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

(*a*) to be a significant beneficial owner of the company;

(*b*) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(*c*) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.

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

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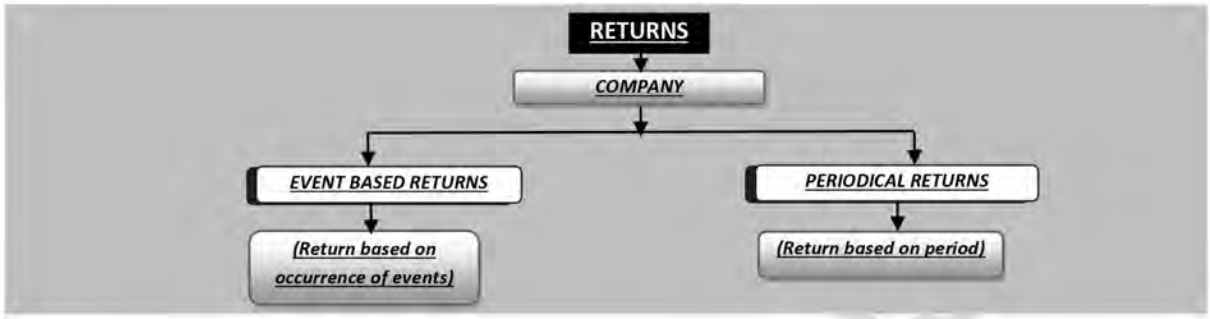

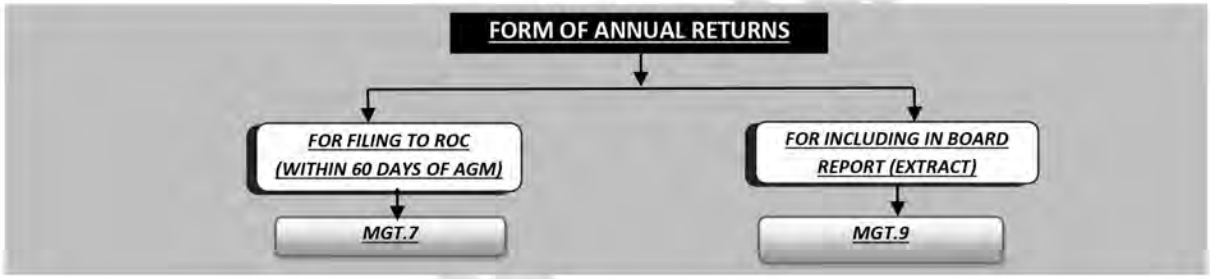

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RETURNS

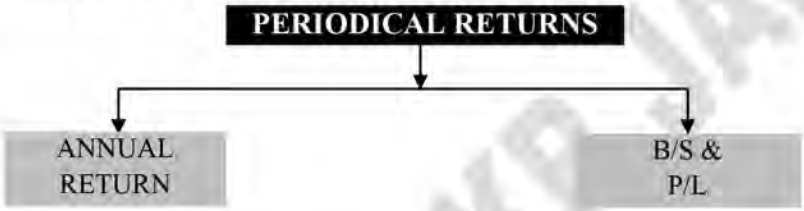
Returns can be classified into two categories, namely:

A. Returns on occurrence of certain events/casual returns.

These returns are those returns which are required to be filed as and when contingency arises for eg. return on the creation of charge, return of allotment, change of directors, change in the registered office, passing of a special resolution, etc.

B. Periodical Returns.

These returns have to be filed after a specified period.
There are **two** important periodical returns. These are:
(1) Annual Return
(2) Balance Sheet and Profit and Loss Account



ANNUAL RETURN

SECTIONS 92

Every company shall, within **60 days** from the day on which each of the annual general meeting is held, prepare and file the Registrar, an annual return in **Form No MGT.7,** containing particulars regarding :-

(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
(b) its shares, debentures and other securities and shareholding pattern;
(c) its indebtedness; (deleted)
(d) its members and debenture – holders along with changes therein since close of the previous financial year;
(e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
(f) meeting of members or a class thereof, Board and its various committees along with attendance details;
(g) remuneration of directors and key managerial personnel;
(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
(i) matter relating to certification of compliances, disclosures as may be prescribed;
(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign institutional Investors
(k) such other matters as may be prescribed,

in case AGM is not held for a year, annual return should be filed within 60 days from the latest day on which the AGM should have been held as per law. **annual return should contain the details as on the date of closure of financial year.** An extract of the annual return in **Form No MGT.9** shall form part of the Board's report.

Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report".

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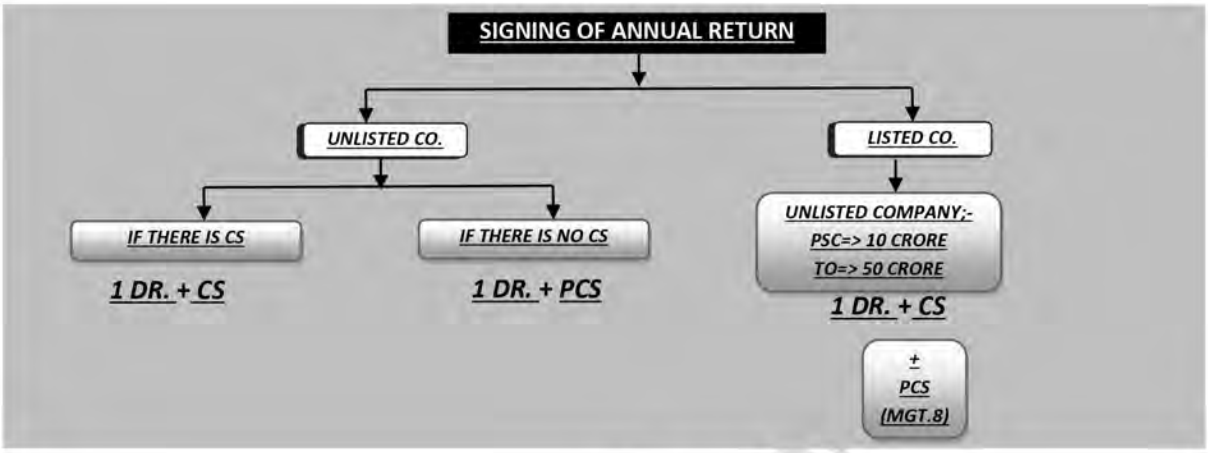

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SINGING OF ANNUAL RETURN

Annual return is required to be signed by **one director and Company Secretary** of the company and where there is no company secretary by a company secretary in whole – time practice.

In relation to **One Person Company (OPC)** and **Small Company and private company (if such private company is a start-up),** the annual return shall be signed by the Company Secretary of the company. Or where there is no company secretary, by a director of the company.

In case of **listed company** and a company having paid –up share capital of **₹ 10 Crores of more** 'or' turnover of **₹50 Crores or more,** the annual return shall also be certified by a company secretary in practice, **in Form No MGT.8,** stating that the annual return disclosed the facts correctly and adequately and that the company has complied with all the provisions of this Act.

FEE FOR FILING, ETC

[Section 403]

Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

Penalty

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

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Q. 1. Fabulous Ltd. is in the process of finalization of its annual return it is a listed company with paid –up capital 1 crore. The company seeks your advice on the following:

(1) Who will sing the return on behalf of the company?

(2) What are the requirements of certification of the annual return by a practicing Company Secretary?. **[June. 2018]**

Ans. (1) As per section 92 of the Companies Act, 2013 every company shall prepare its annual return containing the required particulars as they stood on the close of the financial year and shall be signed by a director and Company Secretary or where there is no Company Secretary, by a company secretary in practice.

Whereas in case of One Person Company and small company, the annual return shall be signed by the Company Secretary or, where there is no Company Secretary, by the director of the company.

(2) Every listed company ,or a company with paid up share capital of 10 crore or more or a company with turnover of ₹50 crore or more, shall be required to get a certificate by the Practicing Company Secretary (PCS) stating the facts that the requirements of the Company Act. 2013 and Rules thereto have been company with and Annual Return discloses the facts correctly and adequately.

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SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Descriptive Questions:----------
   (a) Chairman of your company wants to know the procedure of companies. As a company secretary, prepare a note for consideration of the chairman.
2. Distinguish Between:----------
   (a) 'Statutory books 'and 'statistical books'.

FROM ICSI MODULE

Answer the following :

1. Write the provisions of maintenance, preservation and signing of the following registers:
   (a) Register of Directors
   (b) Minute Book
2. What are the particulars to be entered in the
   (i) Register of Securities bought back
   (ii) Register of Fixed Deposits
   (iii) Register of Charges
   (iv) Register of Postal Ballot.
3. What is the procedure for keeping the Register and Returns at a place other than the registered office?
4. Briefly explain the important returns which are required to be filed with the Registrar of Companies.

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Q. 1.

Answer to Question No. 1:-

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Q. 2.

Answer to Question No. 1:-

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CHAPTER

23

MERGER, DEMERGER, AMALGAMATION, COMPROMISE AND ARRANGEMENTS - AN OVERVIEW

Covering-

- Merger and amalgamation – Definition
- Reasons / Objectives for merger and amalgamation
- Important legal aspects of merger and amalgamation
- Legal provisions / applicable sections on merger / amalgamation
- Power of the central government to provide for amalgamation of companies in public interest
- Merger or amalgamation of a company with foreign company
- Self Test Questions
  - From ICSI Module

EXPECTED MARKS COVERAGE (0 to 5)

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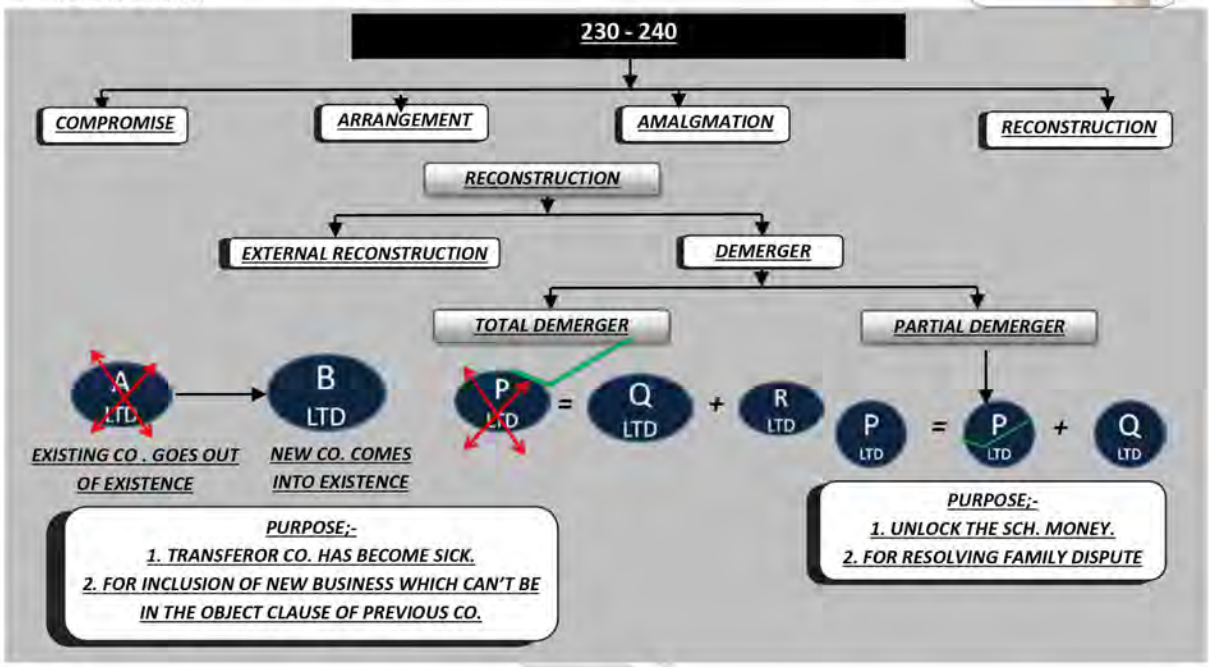

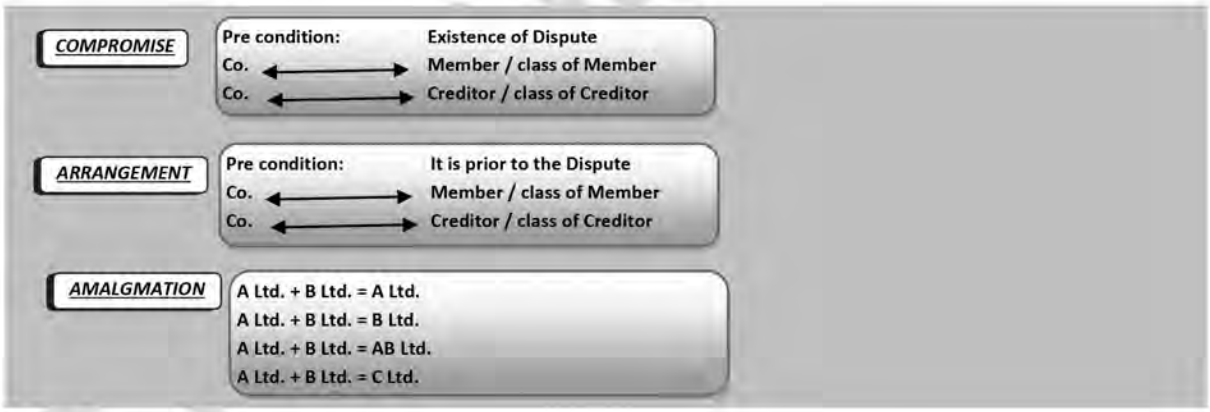

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MERGER, DEMERGER, AMALGAMATION, COMPROMISE AND ARRANGEMENTS - AN OVERVIEW

MERGER AND AMALGAMATION – DEFINITION

A **merger** can be defined as the fusion or absorption of one company by another. It may also be understood as an arrangement, whereby the assets of two (or more) companies get transferred to, or come under the control of one company (which may or may not be one of the original two companies).

A merger may mean ***absorption of one company by another company, wherein one of the two existing companies loses its legal identity after transferring all its assets, liabilities and other properties to the other company.***

Amalgamation is an 'arrangement' or 'reconstruction'. ***Amalgamation is a legal process by which two or more companies are joined together to form a new entity or one or more companies are to be absorbed or blended with another and as a consequence the amalgamating company loses its existence and its shareholders become the shareholders of new company or the amalgamated company.***

REASONS / OBJECTIVES FOR MERGER AND AMALGAMATION

Mergers and amalgamations are usually intended to achieve any or some or all of the following purposes:-

(a) Synergistic operational advantages
(b) Economies of scale
(c) Reduction in production, administrative, selling, legal and professional expenses.
(d) Optimum use of capacities and factors of production.
(e) Tax advantages (Carry forward and set off of losses)
(f) Removing financial constraints for expansion
(g) Diversification.
(h) Competitive advantage
(i) Revival of a weak or sick company.
(j) Accelerating company's market share.

IMPORTANT LEGAL ASPECTS OF MERGER AND AMALGMATION

✓	Companies Act, 2013 is the legislation that facilitates amalgamation of two or more companies.
✓	For the purpose of Companies Act, 2013 the terms 'Merger' and 'Amalgamation' are synonymous.
✓	Amalgamation is not defined in the Companies Act, 2013.
✓	**Chapter XV (Sections 230 to 240)** of the Companies Act, 2013 contain provisions on 'compromise, arrangements and amalgamation'.
✓	**Companies (Compromise, Arrangements and Amalgamation) Rules, 2016** lay down procedure for 'Compromise, Arrangements and Amalgamation'.

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THE REGULATORY FRAMEWORK OF MERGERS AND AMALGAMATION

(a) The Companies Act, 2013 **{Chapter XV (Sections 230 to 240)}**
(b) Companies (Compromise, Arrangements and Amalgamation) Rules, 2016 **(Rule 1 to 29)**
(c) SEBI (LOADR) Regulations, 2015
(d) FEMA,1999
(e) Competition Act, 2002
(f) Indian Stamp Act, 1899
(g) Income Tax Act, 1961
(h) AS-14 / Indian Accounting Standard 103
(i) Banking Regulation Act 1949

LEGAL PROVISIONS / APPLICABLE SECTIONS ON MERGER / AMALGAMATION

Companies Act, 2013 has provided for a set of provisions specially dealing with amalgamation of companies, to facilitate the transactions. The statutory provisions relating to Merger and Amalgamations are contained in **Chapter XV (Sections 230 to 240)** of the Companies Act, 2013.

Compromise, Arrangements and Amalgamation under Chapter XV of the Companies Act, 2013

Chapter XV (Section 230 to 240) of the Act, which deals with the Compromises, Arrangements and Amalgamation. The rules framed under Chapter XV is known as Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and it came into force w.e.f. 15th December, 2016.

The scheme of **Chapter XV** goes as follows:	**(1)** Section 230: Power to compromise or make arrangements with creditors and members.
	(2) Section 231: Power of Tribunal to enforce compromise or arrangement
	(3) Section 232: Merger and amalgamation of companies
	(4) Section 233: Merger or amalgamation of certain companies
	(5) Section 234: Merger or amalgamation of company with foreign company
	(6) Section 235: Power to acquire shares of shareholders dissenting from scheme or contract approved by majority
	(7) Section 236: Purchase of Minority shareholding.
	(8) Section 237: Power of central government to provide for amalgamation of companies in public interest.
	(9) Section 238: Registration of offer of schemes involving transfer of shares.
	(10) Section 239: Preservation of books and papers of amalgamated companies.
	(11) Section 240: Liability of officers in respect of offences committed prior to merger, amalgamation etc.

POWER OF THE CENTRAL GOVERNMENT TO PROVIDE FOR AMALGAMATION OF COMPANIES IN PUBLIC INTEREST

Section 237 states that when the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.

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MERGER OR AMALGAMATION OF A COMPANY WITH A FOREIGN COMPANY

Section 234 states that subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

Section 234 further states that the provisions of **Chapter XV** unless otherwise provided under any other law for the time being in force, shall apply **mutatis mutandis** to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government.

OVERVIEW OF REGISTERED VALUERS

Who shall conduct the valuation?

Section 247(1) of the Companies Act, 2013 states that where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Companies Act, 2013, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

LIABILITY OF VALUER

Sub - section (4) of Section 247 states that where a valuer has been convicted under sub-section (3), he shall be liable to— (i) refund the remuneration received by him to the company; and (ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

REGULATORY AUTHORITY FOR REGISTERED VALUER

The Central Government delegated its powers and functions under section 247 of the Companies Act, 2013 to the Insolvency and Bankruptcy Board of India (IBBI) and specified the IBBI as the Authority under the Companies (Registered Valuers and Valuation) Rules, 2017.

INSTITUTE OF COMPANY SECRETARIES OF INDIA – REGISTERED VALUER ORGANISATION (ICSI-RVO)

What is ICSI – RVO?

As specified above, Section 247 of the Companies Act, 2013 provides that where a valuation is required to be made in respect of any assets it shall be valued by a person who, having the necessary qualifications and experience, and being a valuer member of a recognised valuer organisation, is registered as a valuer with the Authority. Accordingly, to enable the members of the Institute/others to practice as Registered Valuers, the Institute incorporated **ICSI-RVO.**

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ICSI- RVO is a Section 8 company which has been formed with the intent to enrol, register, educate, train, promote, develop and regulate Registered Valuers Rules while establishing and promoting high standards of practice and professional conduct and furthermore, to promote good professionalism, ethical conduct and competency of Registered Valuers for ensuring quality of valuation work.

WHO CAN OFFER VALUATION SERVICES?

For conducting valuations required under the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016, a person is to be registered with the IBBI as a registered valuer. For registering with IBBI, a person must have necessary qualification and experience, has to be enrolled as a valuer member with a Registered Valuer Organisation (RVO), has to complete a recognised educational course conducted by the RVO, and pass valuation examination conducted by IBBI.

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Q. 1. SUP Ltd. is a public company incorporated in India. It wants to propose a scheme of arrangement (merger) with another company in the same line of business in India. Help the company in preparing such a scheme of arrangement firstly. Secondly, help the company in taking approval of NCLT. Advise how company should approach NCLT for its approval to the scheme and discuss grounds on the basis of which NCLT will accord its approval. **[Dec. 2017]**

Ans. **Preparation of Scheme of Amalgamation**

The scheme of amalgamation to be prepared by the company should contain *inter-alia* the following information:

1. Brief details of transferor and transferee companies.
2. Appointed date.
3. Main terms and transfer of assets and liabilities from transferor to transferee.
4. Effective date of the scheme.
5. The terms of carrying on the business activities by transferor between 'appointed date' and 'effective date'.
6. Details of share capital of transferor and Transferee Company.

No compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under Section 133.

In terms of provisions of Section 232(1), an application is required to be made on the Tribunal of sanctioning a scheme of an arrangement (merger) proposed between a company and another company.

On receiving the application, the Tribunal may order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of Section 230 shall apply *mutatis mutandis.*

The company, after receiving such order must circulate the required documents for members/creditors meeting as stated under the provisions of Section 232(2).

Q. 2. In a scheme of amalgamation, it was proposed that name of the transferor company shall be deemed to be name of transferee company. The regional Director (Rd), Ministry of Company Affairs, objected to the same on the ground that proposed name is undesirable if it is identical with or too nearly resembling name of an existing company. Decide if the stand taken by the RD is valid under the companies Act, 2013. Reference may be made of decided case laws. **[Dec. 2018]**

Ans. It has been held in earlier judgments PMP Auto Industries Ltd. that in case of amalgamation chapter of Companies Act 1956 (Corresponding to chapter xv of Companies Act 2013) is a complete code in the nature of a "single window clearance" system, the object of which is to eliminate frequent applications being made to the court in order effectively to implement a scheme of amalgamation which the court sanctions in exercise of its powers. Further in case, Michelin India Private limited High court held that a complete codes by itself on the subject of arrangement /compromise and reconstruction comprehensive enough a change in the name consequent on the amalgamation or arrangement.

Thus considering the above, in present case the objection of RD is invalid.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



Answer the following:

1. Describe the provisions relating to cross border mergers in Companies Act 2013.
2. What are the requirements relating to notice required under Section 230 of the Companies Act 2013?
3. Companies Act simplified the mergers between smaller companies. Do you agree?

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Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL

Q. 2.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL

CHAPTER

24

WINDING UP – AN OVERVIEW

Covering-

- Winding up – Meaning
- Purpose of winding up
- Important differences
- Modes of winding up
- Compulsory winding up / winding up by NCLT
- Dissolution of the company by Tribunal
- Power of the NCLT to Declare Dissolution of the company Void
- Duties of the company secretary in respect of compulsory winding up
- Self Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (1 to 5)

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WINDING UP – AN OVERVIEW

WINDING UP -MEANING

Winding up of a Company is defined ***as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors.***

An administrator called the liquidator is appointed and he takes control of the company, collects its assets, pays debts and finally distributes any surplus among the members in accordance with their rights.

PURPOSE OF WINDING UP

The main purpose of winding up of a company is to realize the assets and pay the debts of the company expeditiously and fairly in accordance with the law. However, the purpose must not be exploited for the benefit or advantage of any class or person entitled to submit petition for winding up of a company.

EFFECT OF WINDING UP

At the end of winding up, the company will have no assets or liabilities. When the affairs of a Company are completely wound up, the dissolution of the company takes place. On dissolution, the company's name is struck off the register of companies and its legal personality as a corporation comes to an end.

It may be noted that on winding up, the company does not cease to exist as such except when it is dissolved. The administrative machinery of the company gets changed as the administration is transferred in the hands of the liquidator. Even after commencement of the winding-up, the property and assets of the company belong to the company until dissolution takes place.

On dissolution the company ceases to exist as a separate entity and becomes incapable of keeping property, suing or being sued. Thus in between the winding up and dissolution, the legal status of the company continues and it can be sued in the court of law.

IMPORTANT DIFFERENCES

- **WINDING UP AND INSOLVENCY**

  Following are some of the differences between the effects of insolvency of an individual or a firm and winding up of a company:-

  (a) In the case of insolvency the whole of the insolvent property is taken out of his hands and rests in the court or the official Assignee in winding upon the other hand the property remain vested in the name of company.

  (b) In insolvency an insolvent individual can obtain his discharge and continue living and working free from the burden of these debts, whereas, a company in liquidation cannot obtain its discharge and continue free from the burden of its debts.

  (c) in the case of an individual the administration of his property by the official assignee the official receiver occurs only if he is declared an insolvent the court, but he assumption of the director's powers by the liquidator occurs even if the company is fully solvent liquidation **or** winding up even of a solvent company can be proceeded without the aid of the court as in voluntary winding up.

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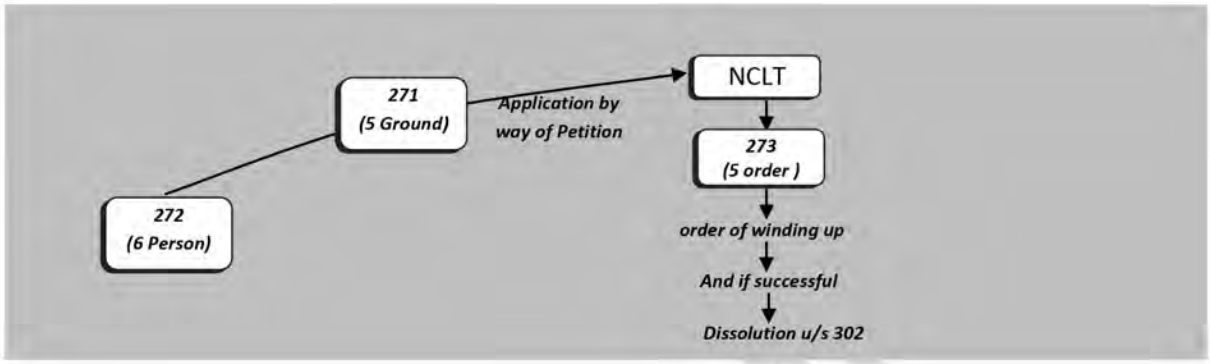

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- **WINDING UP AND DISSOLUTION**

Following are some of the differences between winding- up and dissolution of a company:-

(a) The entire procedure for bringing about a lawful end to the life of a company is divided into two stages – 'winding up' and 'dissolution'. Winding up is the first stage in the process whereby assets are realised, liabilities are paid off and the surplus, if any, distributed among its members. Dissolution is the final stage whereby the existence of the company is withdrawn by the law.

(b) The liquidator appointed by the company or the court carries out the winding up proceedings but the order for dissolution can be passed by the court only.

(c) creditors can prove their debts in the winding up but not on the dissolution of the company.

(d) Winding up in all cases does not end in dissolution. Even after paying all the creditors there may still be a surplus; company may earn profits during the course of beneficial winding up; there may be a scheme of compromise with creditors while company is in winding up and in all such events the company will in all probability come out of winding up and hand over back to shareholders/old management. Dissolution is an act which puts an end to the life of the company.

MODES OF WINDING UP

A company registered under the Companies Act, 2013 may be wound up in any of the following modes:-

Mode of winding up	Applicable laws
1. Compulsory Winding Up **Or** Winding Up by the NCLT	**Chapter XX of Companies Act, 2013**
2. Voluntary winding up	**Chapter V of Part II of Insolvency and Bankruptcy Code, 2016**

COMPULSORY WINDING UP/ WINDING UP BY NCLT

Winding up by the tribunal or compulsory winding up is initiated by an application by way of petition to the NCLT for a winding up order.

WHO MAY PETITION FOR THE WINDING UP

SECTION 272

An application for the winding up of a company has to be made by way of petition to the Tribunal. A petition may be presented under Section 272 by any of the following persons:-

(a) The Company.

Here the directors shall make a petition in the name of the company with the sanction of general meeting by way of special resolution.

(b) Any contributory or contributories.

A contributory is entitled to present a winding up petition, if the shares in respect of which he is a contributory or some of them :

(i) were originally allotted to him; or

(ii) have been held by him and registered in his name for at least 6 months during the 18 months immediately before the commencement of winding up; or

(iii) have devolved upon him through the death of a former holder.

A transfer of shares had been executed, stamped and dated in June, 1967. The company did not register it until October, 1968. The shareholder presented a petition for the winding up of the company in December, 1968. It was held that the petition did not lie, as the petitioner did not hold her shares for 6 months in her name. **[Re, Gattapardo Ltd.]**

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The legal representative of a deceased shareholder is a contributory for the purpose of this section. He can also file a petition for winding up though his name is not there in the register of members.

(c) All or any of the persons specified above in clauses (a) and (b).

(d) The Registrar of Companies.

Registrar of Companies is entitled to present a petition for winding up of a company on any one or more of the grounds specified in clauses (b) to (d) of Section 271. It is obligatory on the part of the Registrar to obtain prior sanction of the Central Government before presentation of the petition. Before granting the permission, the Central Government shall give a reasonable opportunity of making representations to the Company.

(e) Any person authorized by the Central Government for making the petition for winding up.

(f) In a case falling under Section 271(b), by the Central Government or a State Government.

A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall submit his views to the Tribunal within sixty days of receipt of such petition.

Petition **presented by the company** for winding up before the Tribunal shall be admitted only if accompanied by a **Statement of Affairs** in such form and in such manner as may be prescribed.

In ***Mumbai Labour Union v. Indo French Time Industries,*** it was held that a trade union cannot file winding up petition for unpaid wages of workmen/employees. They are disentitled as other legitimate and efficacious remedy under labour laws is available. In such case, filing winding up petition is abuse of law.

Though the workers have no right to present a winding up petition, the workers may still be entitled to appear and be heard in support of or in opposition to the winding up petition. That would depend upon whether their interest is likely to be affected by any order, which may be made on the winding up petition.***(National Textile Workers' Union v. P. R. Ramakrishnan)***

GROUNDS ON WHICH A COMPANY MAY BE WOUND UP BY THE COURT

SECTION 271

A company under Section 271 may be wound up by the Court if:-	**(a)**	the company has passed a special resolution of its being wound up by theTribunal ;
	(b)	if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
	(c)	if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
	(d)	if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years;
	(e)	if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

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POWERS OF NATIONAL COMPANY LAW TRIBUNAL

SECTION 273

(1) The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:-

(a) Dismiss it, with or without costs;

(b) Make any interim order as it thinks fit;

(c) Appoint a provisional liquidator of the company till the making of a winding up order;

(d) Make an order for the winding up of the company with or without costs; or

(e) Any other order as it thinks fit:

Provided that an order under this sub-section shall be made within ninety days from the date of presentation of the petition:

Provided further that before appointing a provisional liquidator under clause (c), the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice:

Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.

COMMENCEMENT OF WINDING UP BY TRIBUNAL

SECTION 357

Section 357 provides that the winding up of a company by the Tribunal shall be deemed to commence at the time of presentation of petition for the winding up.

Unless the Tribunal otherwise orders, any disposition of the company's property including actionable claims; and the transfer of shares, made after the commencement of the winding up, is void.

DISSOLUTION OF THE COMPANY BY TRIBUNAL

SECTION 302

The Tribunal shall make a dissolution order in the following circumstances:	**(1)** When the affairs of the company have been completely wound up.
	(2) When the Court is of the opinion that the Liquidator cannot proceed with the winding up of a company for want of funds and assets.
	(3) When for any other reason, whatsoever, it is just and reasonable to dissolve the company.

A company in liquidation continues to exist as a legal person till an order of dissolution is passed by the Tribunal. An order of dissolution puts an end to the existence of the company and no action can be brought in its name thereafter. A copy of the dissolution order shall be forwarded by the Company Liquidator to the Registrar of Companies within 30 days from the date of the order that shall make in his books a minute of the dissolution of the company.

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POWER OF THE NCLT TO DECLARE DISSOLUTION OF THE COMPANY VOID

SECTION 356

Section 356 empowers the Tribunal to make an order at any time within 2 years of the date of dissolution, declaring the dissolution to be void in appropriate cases.

The person who obtains the order avoiding the dissolution shall file a certified copy of the order of the Tribunal with the Registrar of Companies, within 30 days of the order or within such further time as the Tribunal may allow.

DUTIES OF THE COMPANY SECRETARY IN RESPECT OF COMPULSORY WINDING UP

The duties of the Secretary in respect of compulsory winding up, the Secretary should help the directors in drawing up the petition.

(a) If the company itself makes the petition for compulsory winding up, the Secretary should help the directors in drawing up the petition.

(b) He should see that a copy of winding up order, when passes by the NCLT is filed with the Registrar within 30 days of the, making of the order.

(c) He should help in preparation of the statement of affairs of the company in the prescribed form for submission to the Official Liquidator. He should see that it is properly verified by an affidavit.

(d) He should give all necessary information to the NCLT, when called upon by it during the course of the winding up.

(e) He should see that all documents, correspondence etc., issued by the company during the period of winding up contain a statement that the company is being wound up.

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Q. 1. The Mumbai Bench of National Company Law Tribunal has received a petitions for winding up of presentable Commodities Ltd. Pramod Manager (Human Resource) of the company wants to know from you, Secretary of the company, what orders can be passed by the Tribunal in this regard. Advise Pramod, under the relevant provision of the Companies Act, 2013. **[Dec. 2017]**

Ans. According to section 273(1) of the Company Act,2013 the Tribunal may, on receipt of a petition for winding up may pass any of the following orders:-

(a) Dismiss it, with or without costs,

(b) Make any interim order as it thinks fit ,

(c) Appoint a provisional liquidator of the company till the making of a winding up order:

(d) Make an order for the winding up of the company with or without costs, or

(e) Any other order as it thinks fit:

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SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Distinguish between:----------
   (a) 'Members' voluntary winding–up and creditors' voluntary winding –up'.
   (b) 'Insolvency of an individual /firm 'winding –up of company'
2. Descriptive Questions:----------
   (a) Discuss in detail the powers of the Court to intervene in the Voluntary winding –up of a company.
   (b) Briefly explain the various modes of winding-up of company.
3. Comment on the following :----------
   (a) In case of a company, the terms 'winding-up and dissolution' convey the same meaning.
   (b) Winding –up is only a process while dissolution puts an end to the existence of a company.
4. Who may petition for winding –up of a company/ what are the procedures for winding - up of unregistered company?

FROM ICSI MODULE

Answer the following:

1. What are the various modes of winding up?
2. What is compulsory winding up? Who are entitled to make a petition to the Court?
3. Distinguish between winding up and dissolution.
4. Distinguish between Members' and Creditors' voluntary winding up.
5. What are the different modes of winding up provided under Companies Act 2013?
6. What are the circumstances under which a company may be wound up by National Company Law Tribunal?
7. What are the circumstances under which a Company may be wound up voluntarily?

CS NITESH KR. JAISWAL

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL

Q. 2.

Answer to Question No. 1:-

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CHAPTER

25

GLOBAL TRENDS AND DEVELOPMENTS IN COMPANY LAW

Covering-

- Mordernisation of Company Law for Global Competitiveness
- Salient features of company law in United Kingdom (Companies Act, 2006)
- Salient features of Australian Corporations Act
- Salient features of Canadian Business Corporations Act
- Salient features of Hong Kong Companies Ordinance
- Salient features of Singapore Companies Act
- Salient feature of MBCA of US Corporations
- Self Test Questions
  - From Past CS Exams
  - From ICSI Module

EXPECTED MARKS COVERAGE (1 to 5)

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GLOBAL TRENDS AND DEVELOPMENTS IN COMPANY LAW

MODERNIZATION OF COMPANY LAW FOR GLOBAL COMPETITIVENESS

Most of the countries in the world today including UK, Hong Kong, Singapore, Australia and Canada are in the various stages of modernizing their company law. A fair modern and effective framework of company law is crucial to the performance of any economy and society. To achieve competitiveness, it is essential that while the law must balance the needs of many interests, for example, shareholders, directors, employees, creditors and customers, it must also avoid unnecessary burdens.

In the current national and international scenario of complex business operations, there is a need for simplifying corporate laws so that they are amenable to clear interpretation and provide a framework that would facilitate faster economic growth. It is also being recognised that the framework for regulation of corporate entities has not only to be in tune with the emerging economic scenario, it must also encourage good corporate governance and enable protection of the interests of investors and other stakeholders.

SALIENT FEATURES OF COMPANY LAW IN UNITED KINGDOM (COMPANIES ACT, 2006)

Mode of forming incorporated company (Section 7)

Any one or more persons associated for a lawful purpose may, by subscribing their names to the memorandum of association and otherwise complying with the requirement of the Act in respect of registration, form an incorporated company, with or without limited liability. A company may not be so formed for an unlawful purpose.

Minimum Authorized capital (public companies) (Section 763)

The amount of share capital with which the public company is proposed to be registered, must not be less than the authorized minimum (£50,000 or the prescribed euro equivalent or such other sum as the Secretary of State may by order specify).

Minimum membership (for carrying on business)

If a company, other than a private company limited by shares or by guarantee, carries on business without having at least two members and does so for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months (a) is a member of the company and (b) knows that it is carrying on business with only one member, is liable (jointly and severally with the company) for the payment of the company's debts contracted during the period or, as the case may, that part of it.

SALIENT FEATURES OF AUSTRALIAN CORPORATIONS ACT

Under the Corporations Act, a proprietary company must have at least one director. That director must ordinarily reside in Australia. For this purpose, a proprietary company is a company that is registered as, or converts to, a proprietary company under this Act.

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A proprietary company must:

(a) be limited by shares or be an unlimited company with a share capital;

(b) have no more than 50 non-employee shareholders;

Remuneration of Directors

The directors of a company are to be paid the remuneration that the company determines by resolution. The company may also pay the directors' travelling and other expenses that they properly incur: (a) in attending directors' meetings or any meetings of committees of directors; and (b) in attending any general meetings of the company; and (c) in connection with the company's business.

Company Secretaries

A company other than a proprietary company must have a company secretary. However, a proprietary company may choose to have a company secretary. The directors appoint the company secretary. A company secretary must be at least eighteen years old. If a company has only one company secretary, they must ordinarily reside in Australia. If a company has more than one company secretary, at least 1 of them must ordinarily reside in Australia.

SALIENT FEATURES OF CANADIAN BUSINESS CORPORATIONS ACT

INCORPORATION

Incorporators

(1) One or more individuals not one of whom

(a) is less than eighteen years of age,

(b) is of unsound mind and has been so found by a court in Canada or elsewhere, or

(c) has the status of bankrupt, may incorporate a corporation by signing articles of incorporation and complying with section 7.

Bodies Corporate

(2) One or more bodies corporate may incorporate a corporation by signing articles of incorporation and complying with section 7.

SALIENT FEATURES OF HONG KONG COMPANIES ORDINANCE

Short Title and Commencement (Section 1)

(1) This Ordinance may be cited as the Companies Ordinance.

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial

Services and the Treasury by notice published in the Gazette.

Company Formation and Related Matters

Types of companies (Section 66)

(a) Only the following companies may be formed under this Ordinance –

(b) a public company limited by shares;

(c) a private company limited by shares;

(d) a public unlimited company with a share capital;

(e) a private unlimited company with a share capital;

(f) a company limited by guarantee without a share capital.

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SALIENT FEATURES OF SINGAPORE COMPANIES ACT

Formation of companies (Section 17)

(1) Any person may, whether alone or together with another person, by subscribing his name or their names to a constitution and complying with the requirements as to registration, form an incorporated company.

(2) A company may be –
   (a) a company limited by shares;
   (b) a company limited by guarantee; or
   (c) an unlimited company.

(3) No company, association or partnership consisting of more than 20 persons can be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other written law in Singapore or letters patent.

SALIENT FEATURES OF MBCA OF US CORPORATIONS

A Business Corporation Act is the collection of laws in each state that governs corporations.

A model corporation statute compiled by the American Bar Association has been adopted in whole or in part by, or has influenced the statutes of many states.

Secretary (1.40)

"Secretary" means the corporate officer to whom the board of directors has delegated responsibility under section 8.40(c) for custody of the minutes of the meetings of the board of directors and of the share holders and for authenticating records of the corporation.

Incorporation (Section 2.03)

(a) Upon the effectiveness of filing of the articles, corporate existence begins.

Purposes (Section 3.01)

(a) Every corporation incorporated under this Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this Act only if permitted by, and subject to all limitations of, the other statute.

Corporate Name (Section 4.01)

(a) A corporate name:

   (1) must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of like import in another language; and

   (2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by relevant section and its articles of incorporation.

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