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CS EXECUTIVE

MODULE-1

COMPANY LAW

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

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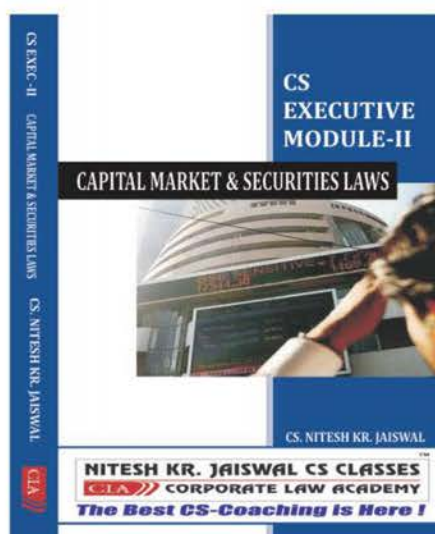
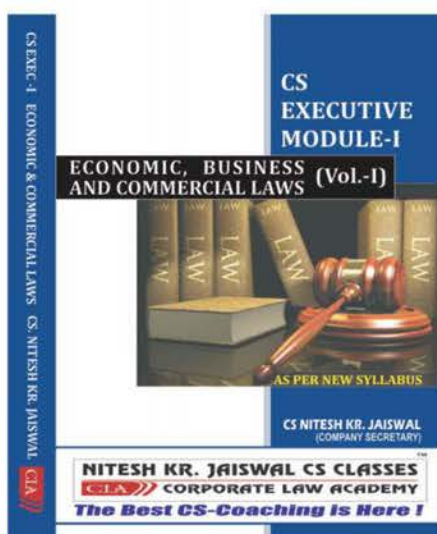
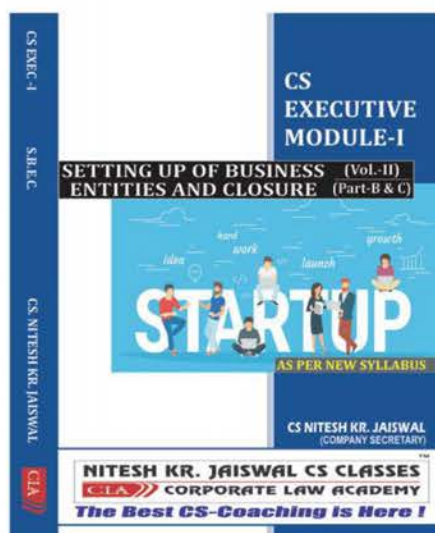
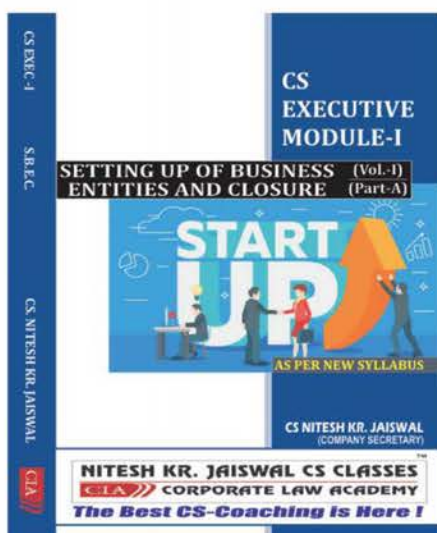
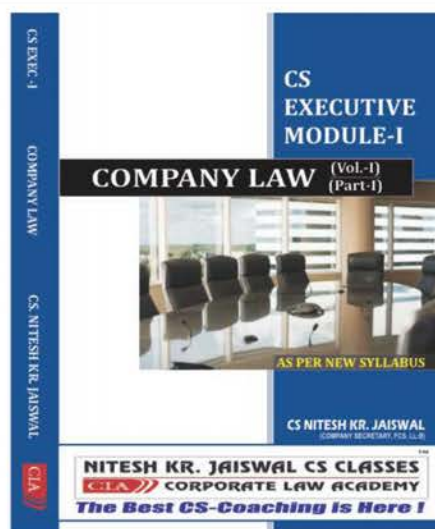
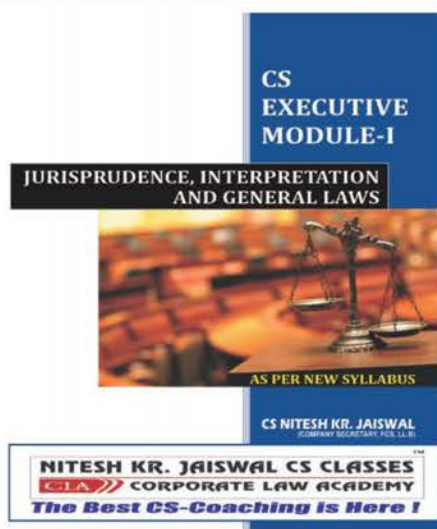
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with the blessings of
“*maa sidhidatri*”

Dedicated to
My mother **Late SUNITA JAISWAL**
And father **SHRI SURENDRA PRASAD**

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And



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 Economic, Business and Commercial Laws 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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COMPANY LAW (VOL-2)

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

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**This book should be read along with “Company Law Vol-1”
containing additional Company Law Part-I**

**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 31 st March, 2014.	The Companies (Specification of definitions details) Amendment rules, 2014 dated 17 th July, 2014. Companies (Restriction on number of layers) Rules 2017 dated 20 th Sept., 2017	
2	Chapter – II	Incorporation of companies and matters incidental thereto	Section 3 to 20	The Companies (Incorporation) Rules, 2014 dated 31 st March, 2014.	The Companies (Incorporation) Amendment Rules, 2015 dated 01 st May, 2015 The Companies (Incorporation) Second Amendment Rules, 2015 dated 29 th May, 2015 The Companies (Incorporation) Amendment Rules, 2016 dated 22 nd January, 2016 The Companies (Incorporation) Second Amendment Rules, 2016 dated 23 rd March 2016 The Companies (Incorporation) Third Amendment Rules, 2016 dated 27 th July, 2016 The Companies (Incorporation) Fourth Amendment Rules, 2016 dated 1 st Oct., 2016 The Companies (Incorporation) Fifth amendment rules dated 29 th Dec, 2016 effective from 01 st January, 2017 The Companies (Incorporation) Amendment Rules, 2017 dated 25 th January, 2017 effective from 30 th Jan., 2017 The Companies (Incorporation) Second Amendment Rules 2017 dated 27 th July, 2017	INC

Structure of Companies Act, 2013

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

Structure of Companies Act, 2013

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

Structure of Companies Act, 2013

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

Structure of Companies Act, 2013

				<p>The Companies (Indian Accounting Standards) Rules, 2015 dated 16.02.2015</p> <p>The Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015 dated 09.09.2015</p>	<p>2014 dated 12/09/2014</p> <p>The Companies (CSR policy) amendment rules, 2015 dated 19/01/2015</p> <p>The Companies (Accounts) Second Amendment Rules, 2015 dated 04th September, 2015</p> <p>The Companies (Accounting Standards) Amendment Rules, 2016 dated 30.03.2016</p> <p>The Companies (Indian Accounting Standards) Amendment Rules, 2016 dated 30.03.2016</p> <p>The Companies (Indian Accounting Standards) (Amendment) Rules, 2017 dated 17th March, 2017</p> <p>The Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2016 dated 04.04.2016</p> <p>The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016 dated 23.05.2016</p> <p>The Companies (Accounts) Amendment Rules, 2016 dated 27.07.2016</p> <p>The Companies (Filing of Documents and Forms in Extensible Business Reporting language) Amendment Rules, 2017 dated 06.11. 2017</p> <p>The Companies (Accounts) Amendment Rules, 2017 dated 07.11.2017</p> <p>Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Second Amendment, Rules, 2017 dated 04.12.2017.</p>	
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Structure of Companies Act, 2013

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

Structure of Companies Act, 2013

					<p>The Companies (Meetings of Board and its powers) Amendment rules, 2015 dated 18/03/2015</p> <p>The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015 dated 14th December, 2015</p> <p>The Companies (Meetings of board and its powers) Amendment Rules, 2017 dated 30th March, 2017</p> <p>The Companies (Meetings of board and its powers) Second Amendment Rules, 2017 dated 13th July , 2017</p>	
13	Chapter – XIII	Appointment and remuneration of managerial personnel	Section 196 to 205	<p>The Companies (Appointment and remuneration of managerial personnel) rules, 2014 dated 31/03/2014</p>	<p>The Companies (Appointment and remuneration of managerial personnel) Amendment rules, 2014 dated 09/06/2014</p> <p>The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016 dated 30.06.2016</p>	
14	Chapter – XIV	Inspection, Inquiry and Investigation	Section 206 to 229	<p>The Companies (Inspection, Inquiry and Investigation) rules, 2014 dated 31/03/2014</p> <p>Arrests in connection with Investigation by serious Fraud Investigation Office) Rules, 2017 dated 24.08.2017</p>		
15	Chapter – XV	Compromises, Arrangements and Amalgamations	Section 230 to 240	<p>The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 dated 14th December, 2016</p>	<p>The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 dated 13th April, 2017</p>	
16	Chapter – XVI	Prevention of Oppression and Mismanagement	Section 241 to 246			
17	Chapter – XVII	Registered Valuers	Section 247 to 247	<p>The Companies (Registered Valuers and Valuation) Rules, 2017 dated 18th October, 2017</p>		

Structure of Companies Act, 2013

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 12 th 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 15 th November, 2016, section 255 of the Insolvency and Bankruptcy Code, 2016 was made effective. w.e.f. 15 th 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 15 th November, 2016, section 255 of the Insolvency and Bankruptcy Code, 2016 was made effective. w.e.f. 15 th 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	

Structure of Companies Act, 2013

					<p>The Companies (Registration Offices and Fees) Second Amendment Rules, 2015 dated 29/05/2015</p> <p>The Companies (Registration Offices and Fees) Amendment Rules 2016 dated 06.05.2016</p> <p>The Companies (Registration Offices and Fees) Second Amendment Rules 2016 dated 07.11.2016</p>	
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	<p>National Company Law Tribunal (Salary, Allowances and other Terms and Conditions of Service of President and other Members) Rules, 2015 dated 21/09/2015</p> <p>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</p> <p>National Company Law Tribunal Rules, 2016 dated 21.07.2016</p> <p>National Company Law Appellate Tribunal Rules, 2016 dated 21.07.2016</p> <p>Companies (Transfer of Pending Proceedings) Rules, 2016 dated the 7th December, 2016</p> <p>The NCLT (Procedure for reduction of share capital of company) Rules, 2016 dated 15th December, 2016</p>	<p>National Company Law Tribunal (Amendment) Rules, 2016 dated 20th December, 2016</p> <p>Companies (Transfer of Pending Proceedings) Amendment Rules, 2017 dated 28/02/2017</p> <p>NCLAT (Amendment) Rules 2017 dated 23.08.2017</p> <p>National Company Law Tribunal (Amendment) Rules, 2017 dated 05.07.2017</p>	

Structure of Companies Act, 2013

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

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 intervening 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 auditor of XYZ Ltd. a listed public company having paid up share capital of ₹ 10 Crores. Advise him as to whether he can render the following 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 company 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 appoint on its board.
- (ii) How many independent directors should be appointed by T Ltd. in 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)

————— o —————

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)*** 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

DIRECTORS

Covering-

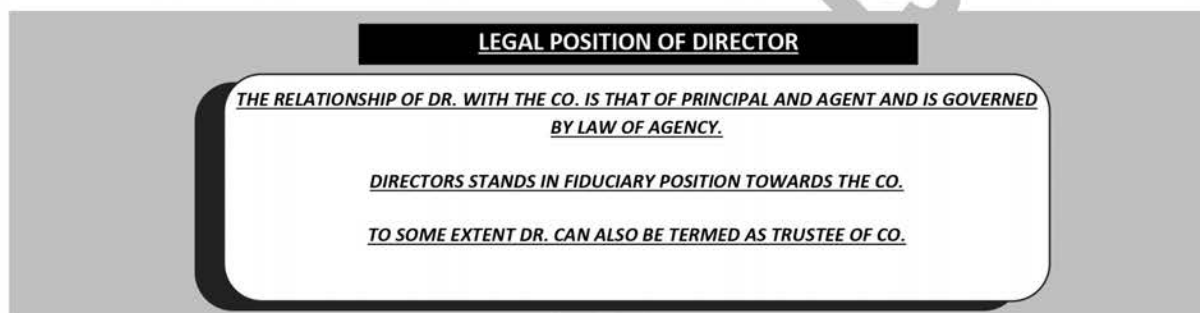
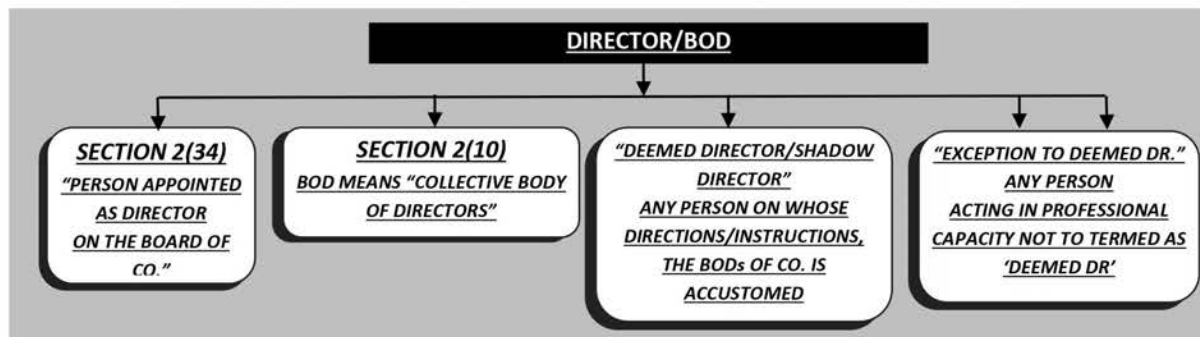
- Director/board of director – definition
- Duties of directors
- Number of directors
- Who can be a director / qualification of director
- Who can not be a director /disqualification of director
- Number of directorships
- Specific type of directors
- Appointment of directors
- Director identification number
- Appointment of person as a director, who is not a retiring director
- Appointment of directors by the board
- Directors appointed through principle of proportional representation
- Resignation of director
- Removal of directors
- Vacation of office of directors
- Self Test Questions
 - From Past CS Exams
 - From ICSI Module

**EXPECTED
MARKS COVERAGE
(10 to 20)**

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DIRECTORS

A company, though a legal entity in the eyes of law, is an artificial person, has no physical existence. It cannot act in its own person. It can do so only through some human agency. *The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board.* The directors are the brain of a company. They occupy a pivotal position in the structure of the company.

DIRECTOR/BOARD OF DIRECTOR - DEFINITION

According to **Section 2(34)** “director” means a director appointment to the Board of a Company.

According to **Section 2(10)** “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

Deemed Director or Shadow Director

A person on whose instructions or directions the Board of Directors of a company is accustomed to act shall be deemed to be a director of the company. However, these provisions are subject to the condition which provides that no such person shall be deemed to be a director of a company, if the Board acts on his advice given by him in his professional capacity such as solicitor, auditor etc.

LEGAL POSITION OF DIRECTOR

DUTIES OF DIRECTORS

SECTION 166

- (a) Subject to the provisions of this Act, a director of company shall act in accordance with the **articles of the company**.
- (b) A director of a company shall act in **good faith** in order to promote the objects of the company for the benefit of its members as whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- (c) A director of a company shall exercise his duties with due and **reasonable care, skill and diligence** and shall exercise independent Judgment.
- (d) A director of company shall not involve in a situation in which he may have a direct or indirect interests those conflicts or possibly may conflict, with the interests of the company.
- (e) A director of a company shall not achieve or attempt to achieve any **undue gain or advantage** either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- (f) A director if a company shall not assign his office and any assignment so made shall be void.

NUMBER OF DIRECTORS

SECTION 149

Every public company shall have at least three directors. Every private company shall have at least two directors. Further, one person company (OPC) shall have at least one director.

A company can appoint **maximum fifteen (15) directors**. A company may appoint **more** than fifteen directors after passing a **special resolution** in general meeting.

However, the aforesaid requirement of maximum 15 Drs. shall not apply to govt. companies and section 8 companies.

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WHO CAN BE A DIRECTOR / QUALIFICATION OF DIRECTOR

The Companies Act makes no attempt to define the qualification of a director. However, Act specifies certain disqualifications of director which is mentioned in section 164.

WHO CAN NOT BE A DIRECTOR /DISQUALIFICATION OF DIRECTOR

SECTION 164

Section 164(1) provides that a person shall not be eligible for appointment as a director or a company, if :-

- (a) He is of unsound mind and stands so declared by a competent court;
- (b) He is an **undischarged** insolvent;
- (c) He has applied to be adjudicated as an insolvent and his application is pending;
- (d) He has been convicted by a court of any offence, whether **involving moral turpitude** or otherwise, and sentenced in respect thereof to imprisonment for not less than **six months** and a period of **five years** has not eligible to be appointment as a director in any company forever.
- (e) An order disqualified him for appointment as director has been passed by a **court or NCLT** and the order is in force;
- (f) He has not paid any **calls** in respect of any shares of the company held by him, whether alone or jointly with other, and **six months have elapsed** from the last day fixed for the payment of the call;
- (g) He has been convicted of the **offence dealing with related party transactions** under section 188 at any time during the last preceding **five years**; or
- (h) He has not got the **DIN**.

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."

SECTION 164(2)

Section 164(2) provides that no who is or has been a director of a company which:-

- (a) Has not filed financial statements or annual returns for any continuous period of three financial years; or
- (b) Has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay redeem continuous for one year or more,

Shall be eligible to be re-appointment as a director of **that company or appointment in other company** for a period of **five years** from the date on which the said company fails to do so.

"Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

However, section 164(2) shall not apply to govt. company.

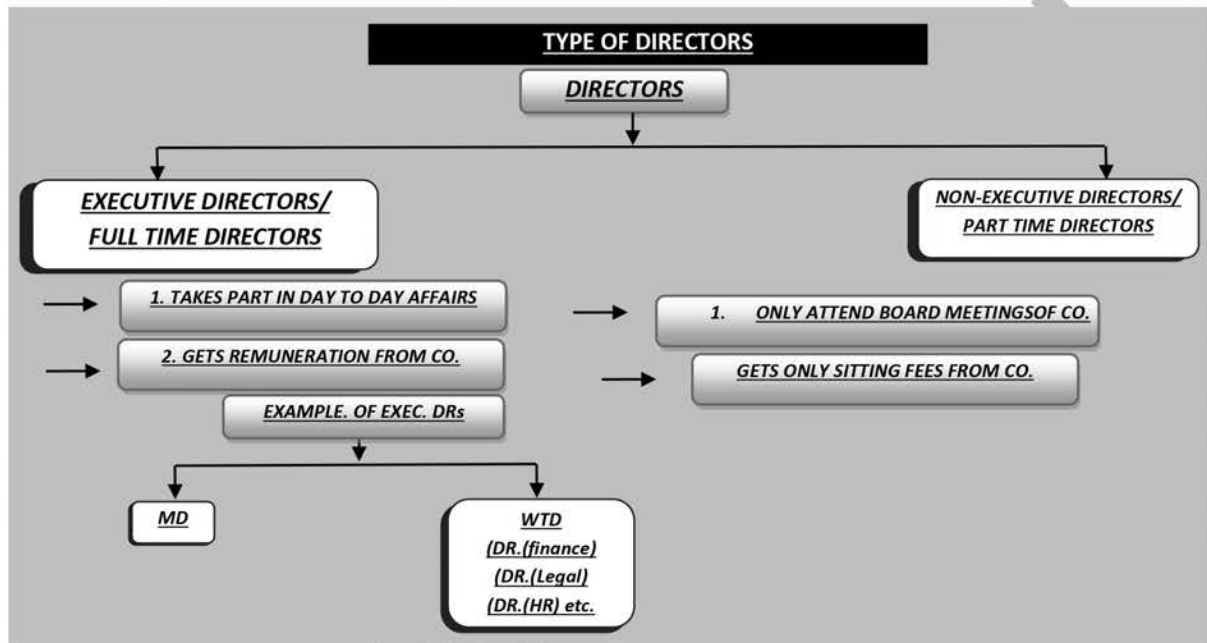
Companies (Appointment and qualification of Directors) Rules, 2014

- (a) **Rule 14** of Companies (Appointment and qualification of Directors) Rules, 2014 provides that every director who is disqualified u/s 164(2), shall inform to the company concerned in form **DIR-8** before he is appointed or re- appointed.

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- (b) Whenever a company fails to file the financial statements/annual returns/fails to repay any deposit, interest, dividend/ fails to redeem its debentures as specified u/s 164(2), the company shall immediately file **Form DIR-9**, furnishing therein the names and address of all the directors of the company during the relevant financial years. But when a company fails to file the form DIR-9 within a period of **30 days** of the failure, **officers of the company as specified u/s 2 (60) shall be the officers in default**. Upon receipt of the DIR-9 the registrar shall immediately register the document and place it in the document file for public inspection.
- (c) Any application for removal of disqualification of directors shall be made in **Form DIR-10**.

Section 164(3) provides that a **private company may, by its articles**, provide that a person shall be disqualified for appointment as a director on any grounds in **addition** to those specified in section 164(1) and (2).

TYPE OF DIRECTOR

NUMBER OF DIRECTORSHIPS

SECTION 165

No person, shall hold office as a director, including any alternate directorship, in more than **twenty companies** at the same time:

Provided that the maximum number of **public companies** in which a person can be appointed as a director shall not exceed **ten**.

For reckoning the limit of **public companies** in which a person can be appointed as a director, directorship **in private companies that are holding or subsidiary company of a public company** shall be included.

For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included."

Subject to the provisions of 165(1), the members of a company may, by **special resolution**, specify any **lesser number** of companies in which a director of the company may act as directors.

However, Section 165 shall not apply to section 8 companies.

SPECIFIC TYPE OF DIRECTORS

1. WOMAN DIRECTORS

SECTION 149

Following class of companies shall appoint at least one woman director:-

- (a) Every **listed company**;
- (b) Every other **public company** having:-
 - (i) Paid – up share capital of one hundred crore rupees or more; or
 - (ii) Turnover of three hundred crore rupees or more.

2. RESIDENT DIRECTOR

SECTION 149(3)

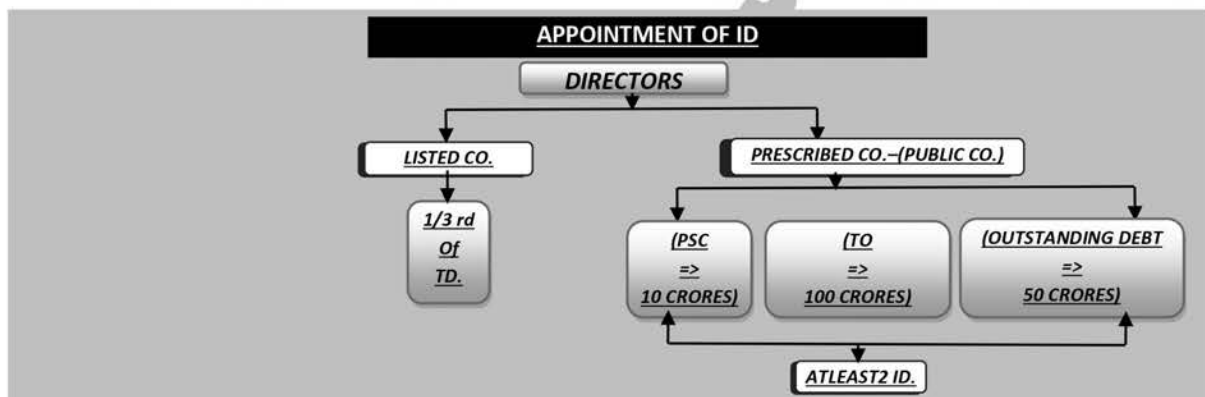
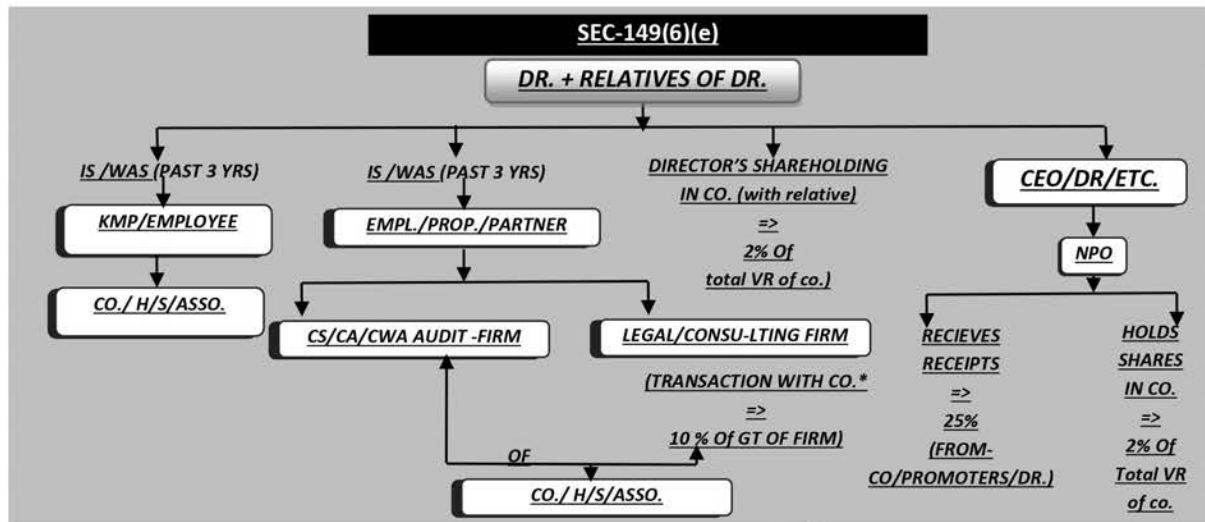
Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year:

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated."

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3. **INDEPENDENT DIRECTORS**

SECTION 149 & 150

Independent directors function as an oversight body in monitoring the performance and should raise red flags whenever suspicion occurs. They are expected to be more aware and question the company on relevant issues in their position as trustees of stakeholders.

The institution of independent directors is a critical instrument for ensuring good corporate Governance and it is necessary that the functioning of the institution is critically analyzed and proper safeguards are made to ensure efficacy.

Companies Act 2013 mandates appointment of independent directors by listed companies and other class of companies.

INDEPENDENT DIRECTOR- DEFINITION

SECTION 149(6)

An independent director in relation to a company, means a director **other than a managing director or a whole- time director or a nominee director**:-

- (a) Who, in the opinion of the Board (*in charge ministry/dept. of c/g or s/g in case of govt. co*), is a **person of integrity** and possesses relevant expertise and experience;
- (b) (i) who **is or was** not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is **not related** to promoters or directors in the company, its holding, subsidiary or associate company;
- (c) Who has or had no pecuniary relationship other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed with the company, its holding, subsidiary or associate company **during 2 financial years** or during the current financial year;
(*This clause doesn't apply to govt. company*)
- (d) none of whose relatives—
 - (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:
Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two percent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;
 - (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;
 - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or
 - (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);"
- (e) Who, neither himself nor any of his relatives:-
 - (i) Holds or has held the position of a key managerial personal or is or has been employee of the company or its holding, subsidiary or associate company in any of the **three financial year** immediately preceding the financial year in which he is proposed to be appointed;
Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years."

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- (ii) Is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of:-
- A firm of **auditors or company secretaries in practice or cost auditors** of the company or its holding, subsidiary or associate company; or
 - Any **legal or a consulting firm** that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten percent or more of the gross turnover of such firm;
- (iii) Holds together with his relatives **two per cent. Or more of the total voting power of company**; or
- (iv) Is a **Chief Executive or director**, by whatever name called, of any **non-profit organization** that receives **twenty five per cent. or more of its receipts** from the company, any of its promoters, directors or that holds two percent or more of the total voting power of the company; or
- (f) Who possesses such other qualifications as may be prescribed.

NUMBER OF INDEPENDENT DIRECTOR

Every **listed** public company shall have at least **one third of the total number of directors** as independent directors and the Central Government may prescribe the minimum number of Independent directors in case of **any class or classes of public companies**.

Rule 4 of companies (Appointment and qualification of Directors) rules 2014, provides that the following class of companies shall have at least two directors as independent directors:-	(a) The public Companies having paid up share capital of ten crore- rupees or more ; or
	(b) The public Companies having turnover of one hundred crore rupees or more ; or
	(c) The Public Companies which have, in aggregate, outstanding loans, debentures and deposits , exceeding fifty crore rupees.

The following classes of **unlisted public company** exempted:-(a) a joint venture; (b) a wholly owned subsidiary; and (c) a dormant company .

QUALIFICATION OF INDEPENDENT DIRECTOR

Rule 5 of Companies (Appointment and qualification of directors) Rules, 2014 provides that an independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

MANNER OF SELECTION OF AN INDEPENDENT DIRECTOR

SECTION 150

According to section 150, independent directors may be selected from a **data bank of eligible and willing persons maintained by the agency** (Any body, institute or association as may be authorized by Central government). Such agency shall put data bank of independent directors on the website of ministry of corporate affairs or any notified website. Company must exercise due diligence before selecting a person from the data bank referred to above, as an independent director.

This section further stipulates that the appointment of independent directors has to be approved by members in a **General meeting**.

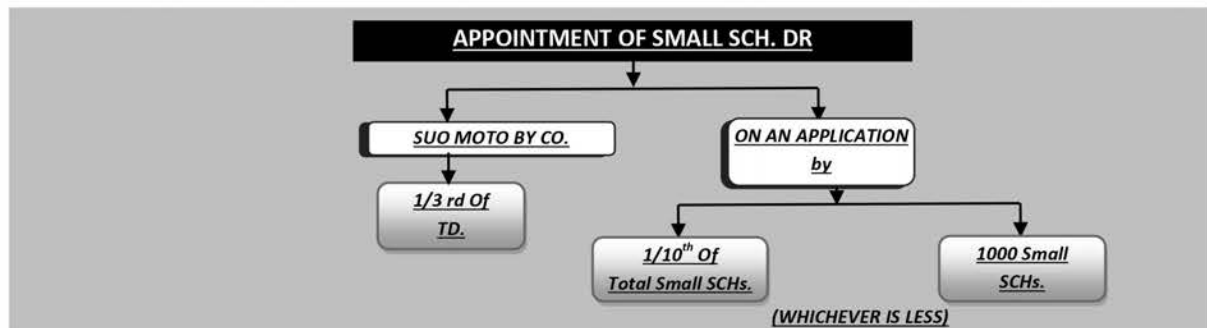
Any person who desires to get his name included in the data bank of independent directors shall make an application to the agency in **Form DIR-1** Application for inclusion of name in the databank of Independent Directors which includes the personal, educational, professional, work experience, other Board details of the appointment.

However, Section 150 shall not apply to section 8 companies.

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CODE FOR INDEPENDENT DIRECTORS

SECTION 149

Section 149(8) of the Act prescribes that the company and independent directors shall abide by the provisions specified in **Schedule IV** regarding code for independent directors. It is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfillment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

TENURE OF INDEPENDENT DIRECTOR

SECTION 149

Section 149(10) provides that subject to the provisions of section 152, an independent director shall hold office for a term up to **five consecutive years** on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Section 149(11) states that without contravening the section 149(10), no independent director shall hold office for **more than two consecutive terms**, but such independent director shall be eligible for appointment after the expiration of **three years of ceasing to become an independent director**, **provided** that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Section 149 (13) states that the provisions of sections 152 in respect of **retirement of directors by rotation shall not be applicable** to appointment of independent directors.

LIABILITY OF INDEPENDENT DIRECTOR

SECTION 149(12)

Section 149(12) provides that, notwithstanding anything contained in this Act:-

- (i) An independent director;
- (ii) A non- executive director not being promoter or key managerial personnel, shall be held liable, **only in respect of such acts of omission or commission** by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or he had not acted diligently.

REMUNERATION OF INDEPENDENT DIRECTOR

Section 149 (9) provides that notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director **shall not be entitled to any stock option and may receive remuneration by way of fee** provided under sub section (5) of section 197, reimbursement of expense for participation in the Board and other meetings and **profit related commission** as may be approved by the members.

4. SMALL SHAREHOLDERS' DIRECTOR

SECTION 151

A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

Small shareholder means a shareholder holding shares of nominal value of not more than ₹20,000/- or such other sum as may be prescribed.

Following are the important **terms and conditions relating to appointment** of small shareholders' Director, as provided in **Companies (Appointment and Qualification of Director) Rules, 2014:-**

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1. A company may act on its **own** to elect a small shareholders' director from amongst small shareholders. Alternatively, a company may act to elect a small shareholders' director, upon the notice of not less than **one-tenth of total small shareholders or 1000 small shareholders**, whichever is **less**.
2. Small shareholders shall give a notice of their intention of proposing a small shareholder as a candidate for the post of small shareholders director to the company **at least 14 days** before the meeting.
3. A person whose name has been proposed for the post of small shareholders' director shall file with the company, **his consent** in writing to act as a director.
4. A person proposed to be appointed as a small shareholders' Director must satisfy the criteria for being called as an **Independent Director**.
5. Small shareholders' director shall be appointed for a maximum period of **three years** at a time. On expiry of his tenure he shall **not be eligible for re-appointment**.
6. He shall directly or indirectly not be appointed or associated in any other capacity with the company for a **period of 3 years from the date of cessation** as a small shareholder's director.
7. He shall directly or indirectly not be appointed or associated in any other capacity with the company for a **period of 3 years from the date of cessation** as a small shareholder's director.
8. Small shareholders' director shall **not be liable to retire by rotation**.
9. A person cannot become a small shareholder's director in more than **two companies** at a time and the business of second company should not be in conflict with business of the first company.
10. Small shareholders director shall be treated as director for all practical purposes, unless expressly provided otherwise.

APPOINTMENT OF DIRECTORS

GENERAL PROVISIONS RELATING TO APPOINTMENT OF DIRECTORS

SECTION 152	1. Except as provided in the Act, every director shall be appointment by the company in general meeting.
	2. Director Identification Number is compulsory for appointment of director of company.
	3. Every person proposed to be appointment as a director shall furnish his director Identification Number and a declaration that he is not disqualified to become a director under the Act.
	4. A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical for DIR-2 i.e. Consent to act as director of a company.
	5. The company shall, within 30 days of the appointment of a director, file such consent with the ROC in form DIR-12 ,

DIRECTOR IDENTIFICATION NUMBER

PROCEDURE FOR APPLICATION FOR ALLOTMENT OF DIN SECTION 153

1. Every individual, who is to be appointment as director of a company shall make an application electronically in **Form DIR-3** to the central government for the allotment of a Director Identification Number (DN).

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2. The central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of corporate Affairs.
3. (a) The applicant shall download Form DIR- 3 from the portal, fill in the required particulars and attaching photograph; proof of identity; proof of residence; and verification by the applicant in form DIR-4, specimen signature duly verified and sign the form digitally.
(b) Form DIR- 3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified by:-
 - (i) A chartered accountant in practice or a company secretary in practice or a cost accountant in practice; or
 - (ii) A company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed a director.
4. On the submission of the Form DIR-3 on the portal and payment of fees of ₹ 500/- through online mode the **provisional DIN** shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.
5. After generation of the provisional DIN, the Central Government shall process the application. It may approve or reject the application and communicate the same to the applicant within a period of **one month** from the receipt of application. The such communication may be sent by post or electronically or in any other mode.
6. If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email. Otherwise, Central Government may also reject the application and may require for filing the fresh application.
7. In case of rejection or invalidation of application, the provisional DIN so allotted by the system shall get lapsed automatically and the fee so paid with the application shall neither be refunded nor adjusted with any other application.
8. The Director Identification Number so allotted under these rules is valid for the life time of the applicant and shall not be allotted to any other person.

"Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act.

CANCELLATION / SURRENDER/ DE-ACTIVATION OF DIN

RULE 11

The competent Authority (Central Government/ RD (North), Noida/ Authorised Officer by the RD) may, upon being satisfied on verification of particular or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case:-

- (a) The DIN found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validity retained number;
- (b) The DIN was obtained in a wrongful manner or by fraudulent means (subject to an opportunity of being heard);
- (c) Of the death of the concerned individual;
- (d) The concerned individual has been declared as a lunatic or of unsound mind by a competent court;
- (e) If the concerned individual has been adjudicated an insolvent.

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- (f) On an application made in **Form DIR-5** by the DIN holder to surrender his to her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the central government may deactivate such DIN but after verification of e- records.

INTIMATION OF CHANGE IN PARTICULARS OF DIRECTOR

RULE 12

Every director having DIN in the event of any change in his particulars as stated in Form DIR-3, shall intimate such change to the Central Government within a period of **30 days** of such change in **form DIR-6**. DIR-6 will be filed along with a copy of the proof of the changed particulars and verification in the Form **DIR-7** all of which shall be scanned, signed digitally by applicant and submitted electronically. Form requires pre-certification by the professional CS/CA/CMA in practice.

APPOINTMENT OF DIRECTORS TO BE VOTED ON INDIVIDUALLY

SECTION 162

The directors are usually elected by shareholders at a general meeting by an ordinary resolution passed by simple majority of votes. **Two or more directors should not be elected en bloc or by a single resolution.**

Section 162 provides that at general meeting of a company, a motion shall not be made for the appointment of two or more persons as directors of the company by a single resolution, unless a resolution that it shall be made has first been agreed to by meeting without any vote being against it. A resolution in contravention section 162 shall be void, whether or not objection was taken at the time of its being so moved.

However Section 162 shall not apply to:-

1. 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.
2. Wholly owned Subsidiary of such govt. companies.
3. Private companies.

1. APPOINTMENT OF FIRST DIRECTORS

SECTION 152

The first directors are usually named in the articles. If not so named in the articles, the articles may authorise the subscribers to the memorandum to appoint the first directors.

In the absence of any such provision in articles of association, the subscribers to the memorandum, who are individuals, shall be deemed to be the first directors of the company until the subsequent directors are duly appointed in accordance with the provisions of section 152.

In case of One Person Company (OPC), an individual's, shall be deemed to be its first director until the directors or directors are duly appointed by the member in accordance with the provisions of section 152.

2. APPOINTMENT OF SUBSEQUENT DIRECTORS

SECTION 152(6)

Rotational/non-rotational directors

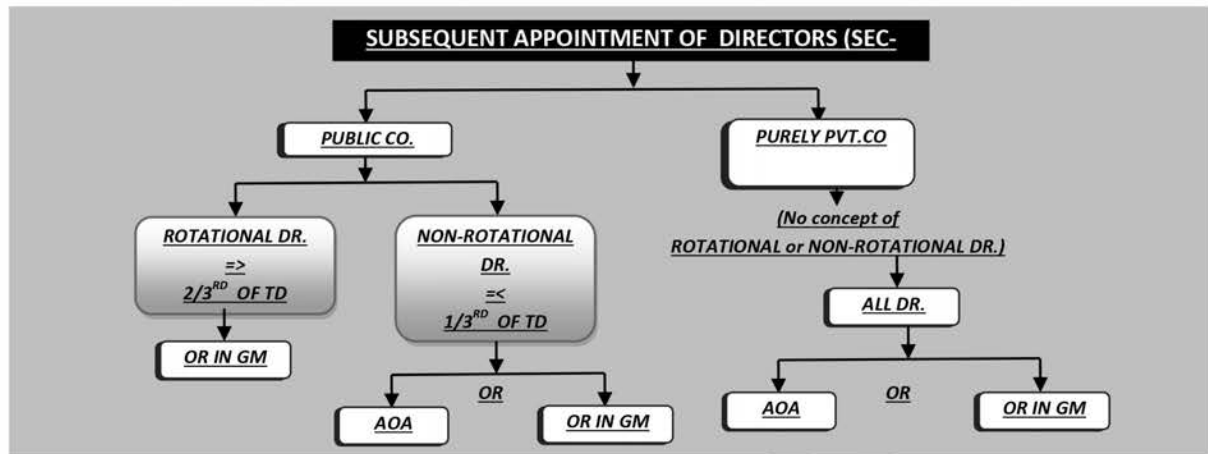
Unless the articles provide for the retirement of all directors at every annual general meeting, not less than **two-thirds (2/3rd)** of the total number of directors (*excluding independent directors, whether appointment under this Act or under any other law*) of a public company shall:-

- (i) be person whose period of office is liable to determination by retirement of directors by rotation (i.e., only one – third can be non- retiring directors); and

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- (ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

The remaining directors (i.e., non-rotational / non-retiring / Permanent directors) in the case of public company shall be appointed as per the provisions contained in the articles of the company. In case there are no such provisions in the articles, these directors shall also be appointed by the company in general meeting.

Illustration

Situation	Solution
Mohan Ltd. has 6 directors.	Minimum 4 directors must be rotational directors.
Ram Ltd. has 6 directors, 4 rotational and 2 non-rotational.	The company has not contravened the provisions of Sec. 152.
Raghuram Ltd. has 6 directors, 5 rotational and 1 non-rotational.	The company has not contravened the provisions of Sec. 152.
Devanand Ltd. 6 directors. The company has appointed all these directors as rotational directors.	The company has not contravened the provisions of Sec. 152.
Sohan Ltd. has 6 directors, 3 rotational and 3 non-rotational.	The company has not contravened the provisions of Sec. 152.
Farookh Ltd. has 6 directors, 4 rotational and 2 non-rotational. The company intends to appoint a non-rotational directors.	The company cannot appoint a director as non-rotational director since it would result in contravention of sec. 152.
Golu Ltd. has 6 directors, 5 rotational and 1 non-rotational. The company intends to appoint a non-rotational directors.	The company can appoint a director as non-rotational director since it would not result in contravention of sec. 152.
Hader Ltd. has 6 directors 4 rotational and 2 non-rotational the company intends to appoint a rotational director.	The company can appoint a director as a rotational director since it would not result in contravention of sec. 152.

Directors Retiring at AGM

At the first AGM held next after the date of general meeting at which the first directors are appointment in accordance with aforesaid provisions and at every subsequent AGM, one third of the rotational directors shall retire at every annual general meeting, or if their number is not three or multiple of three, then the numbers nearest to one- third shall retire from office.

Those directors, who have been longest in office since their last appointment, will retire. As between person who become directors on the same day, retirement, in the absence of an agreement, will be determined by lot.

Where a director retires by rotation at the annual general meeting of a company, the company at the same meeting may appoint: (i) the retiring director; or (ii) some other person in the vacancy.

If the AGM of the company is not held or cannot be held, the directors due to retire by rotation shall retire on the last day on which the AGM should have been held. If AGM is adjourned, then will retire at the adjourned AGM; provided it is within the prescribed time. (In re. Consolidated Nickel Mines Ltd.).

CONSEQUENCES OF NON- APPOINTMENT OF DIRECTORS AT AN AGM U/S 152 SECTION 152(7)

If at the said AGM, the vacancy is not so filled and meeting has not expressly resolved not to fill the vacancy, the meeting though it has disposed of all other matters on the agenda, **shall stand adjourned till the same day in the week**, at the same time and place, or if that day be a national holiday, till the next succeeding day which is not a national holiday, at the same time and place.

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AUTOMATIC RE- APPOINTMENT OF RETIRING DIRECTOR

If at the adjourned meeting also, the vacancy is not so filled and a resolution not to fill the vacancy is not passed, the retiring directors shall be deemed to have been re-appointed. The re-appointment as above shall be effective from the day of the adjourned meeting.

<u>However in the following cases even automatic re- appointment of retiring directors shall not take place:-</u>	(a) If at that meeting or at a previous meeting, a resolution for the re – appointment of such a director has been put to the meeting and lost;
	(b) If the retiring director has by a notice in writing addressed to the company, or to its Board of directors, expressed his unwillingness to be-reappointed;
	(c) If he is not qualified or disqualified for appointment;
	(d) When a resolutions, whether special or ordinary is required for his appointment or re-appointment;
	(e) If section 162 is applicable to the case.

In case the vacancy is not filled at the AGM and also the retiring directors do not get automatically re – appointment, the vacancies may be filled by the Board of Directors.

However Section 152(6) and 152(7) shall not apply to:-

1. 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.
2. Wholly owned Subsidiary of such govt. companies.
3. Government company, which is not a listed company, in which not less than fifty-one per cent. of paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
4. Subsidiary of a Government company, referred to in (3) above.”.

APPOINTMENT OF PERSON AS A DIRECTOR, WHO IS NOT A RETIRING DIRECTOR

SECTION 160

If it is proposed to appoint another person in place of retiring director, a **notice** in writing signifying his intention to stand for directorship in place of the retiring director must be left by him at company’s office **at least 14 days** before the meeting. A member intending to propose the appointment of any person as a director must similarly give a notice in writing of his intention to propose that person as a candidate for the officer of director.

Notice should be accompanied by a deposit of **₹1 lac** or such higher amount as may be prescribed.

Deposit of ₹1 lac or such higher amount as may be prescribed shall be refunded to the proposed director or to the applying member, as the case may be, if the person proposed gets elected as a director or gets more than twenty- five percent of total valid votes cast either on show of hands or on poll on such resolution. Otherwise, the aforesaid deposit shall be foresaid by the company.

“Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.”.

However Section 160 shall not apply to:-

1. 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.
2. Wholly owned Subsidiary of such govt. companies.
3. Private companies.

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The company must inform the member not later than 7 days before meeting either by individual notices (through electronic mode and also by placing on the website of the company, if any) or by advertisement of this fact in at least two newspapers circulating in the place where the registered office of the company is situated, of which one must be in English and the other in regional language of that place.

NKJ-CLASSROOM PRACTICE



Q. 1. 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. **[Dec. 2018; 5 Marks]**

APPOINTMENT OF DIRECTORS BY THE BOARD

1. ADDITIONAL DIRECTORS

SECTION 161(1)

The Board of directors may, if authorized by the articles, appoint additional directors. Such additional shall hold office only up to the date of the annual general meeting.

If the AGM of the company is not held or cannot be held the person appointed as additional director vacates his office on the last day on which AGM should have been held.

However, a person who fails to get appointed as a director in a general meeting cannot be appointed as the Additional Director.

Regularization of additional director

If such a person, while he was the additional director of a company, had been appointed the Managing Director, the latter appointment (i. e that of managing director) also ceases simultaneously with the termination of his directorship at the commencement of the annual general meeting. However, if such a person is elected as full- fledged director, by complying with Sec. 160, at the AGM, he will continue to be a director of the company and also as its Managing Director for the period for which he is so elected a director and for the period for which his appointment as managing director has been made. This is known as regularization of additional director and in this case again **Form No. DIR-12** is required to be filed with ROC.

2. ALTERNATE DIRECTOR

SECTION 161(2)

If the articles or a resolution passed by the company in general meeting so authorizes, the Board of directors of a company can appoint an alternate director to act in place of director during his absence for not less than 3 months from India.

An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

If the term of office of the original director is determined before he so returns to India, any provision for the automatic re- appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

However, no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director.

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3. **NOMINEE DIRECTORS**

SECTION 161(3)

Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provision of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company. Normally, such nominee- directors are non- retiring / non – rotational.

1. **Nominee Directors of Special Financial Institutions:** In case of appointment of nominee directors of financial institutions established under Special Acts of Parliament having non-obstante provisions over the provisions of Companies Act, 2013 and the articles of association of assisted companies, the company has to only take steps to note such appointment at a Board Meeting and file the particulars of the directors in **Form No. DIR-12.** For instance, nominees of IDBI, UTI, IFCI, LIC, SFCs, etc. can be appointed directors on the Boards of assisted companies, even without complying with the provision of articles and / or Companies Act, 2013.
2. **Nominee Directors of Other Financial Institutions:** In case of appointment of nominee directors of other financial institutions which are incorporated under the companies act, 2013, the provisions of the Companies Act, 2013 are to be complied with. such nominee director should come within the one- third of total numbers of directors, the other two- thirds being liable to retire by rotation.

4. **DIRECTOR TO FILL CASUAL VACANCIES**

SECTION 161(4)

If the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting vacancy may be filled by the Board of directors at a Board Meeting which shall be subsequently approved by members in the immediate next general meeting" in accordance with the procedure laid down in the articles.

The person so appointed to fill the casual vacancy will hold office until the expiry of the period for which the outgoing director would have held office; if it had been vacated.

However, Section 161(4) does not apply to private company.

DIRECTORS APPOINTED THROUGH PRINCIPLE OF PROPORTIONAL REPRESENTATION

SECTION 163

Normally, directors are appointment by simple majority on a direct vote of the members of the company by an ordinary resolution. As a result of this method of simple majority, a substantial minority may not be able to succeed in placing even a single director of its choice on the Board. Section 163 of the Companies Act affords an opportunity to the minority shareholders to have their representations on the Board of directors.

According to section 163 a company may provide in its articles for the appointment of not less than 2/3 of the total number of its directors according to the principle of proportional representation.

The directors appointed according to this principle hold office for 3 years and cannot be removed by the company in general meeting under Section 169.

However Section 163 shall not apply to:-

1. 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.
2. Wholly owned Subsidiary of such govt. companies.

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RESIGNATION OF DIRECTOR

SECTION 168

A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice within 30 days intimate the Registrar in **Form.DIR-12** and also place the fact of such resignation in the Directors' Report of subsequent general meeting of the company and post the information on its website.

The director may also forward a copy of resignation along with detailed reasons for the resignation to the Registrar in **Form DIR-11** within 30 days from the date of resignation.

The notice shall become effective from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. A director who has resigned shall be liable even after his resignation for the offence which occurred during his tenure.

In *Dushyant d Anjaria Vs. wall street Finance Ltd* the Bombay High Court had held that the resignation of Director would be **effective from the date it was submitted** because the letter brings out clearly his intentions to resign. However, if there was **delay on the part of the company in intimating the ROC** about the date of the resignation, the resigning Director could not be saddled with responsibility and liability for such delay.

Date of filling of Form DIR -12 is not conclusive as to date resignation of director-date shown in the letter of resignation is to be used (*Pandurang Camotimsacoalcar Vs. Suresh Prabhakar Prabhu*).

If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointment by the company in General meeting.

REMOVAL OF DIRECTORS

SECTION 169

The shareholders of a company may, by passing an ordinary resolution at a general meeting, remove a director the expiry of the period of his office.

Provided that an independent director re - appointed for second term under section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:

However, the following directors cannot be removed by the company unless otherwise stipulated in terms of their appointment:-

- (a) Where the company has availed itself of the option to appoint not less than 2/3 rd directors according to the principle of proportional representation u/s 163;
- (b) A nominee director appointed by a financial institution under the terms of a loan agreement;
- (c) A director appointed by NCLT u/s 242;
- (d) A special director appointed by BIFR under Sec.16 (4) of SICA.

A special notice shall be required of the intention to move any resolution for the removal of a director not less than 14 days before the meeting. On receipt of the notice, the company shall forthwith send a copy of the same to the director concerned and the director concerned, whether or not he is a member of the company, is entitled to be heard on the resolution at the general meeting.

Where the notice is received well in advance, the company can conveniently send the notice of the resolution to the members by including the same in the notice of general meeting. Otherwise, the company has to notify the same by way of two newspapers advertisement, one in English and another in vernacular language, atleast 7 days before the meeting.

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Where the director makes representations in writing to the company and request for circulation of the same to the members, the company is duty bound to do so, unless it is received by it too late. If a copy of the representations is not sent to the members as aforesaid because they were received too late or because of the company's default, the direction may require that the representations shall be **read out** at the meeting. However, a copy of the representations shall not be read out at the meeting, if on the application, either of the company or of the aggrieved party, the national Company Law Tribunal (NCLT) is satisfied that the rights so conferred are being abused to secure needless publicity for defamatory matter.

The company shall, in its general meeting, discuss the proposal and pass the necessary resolution. The vacancy caused by such removal may be filled at the same meeting; provided special notice of the proposed appointment has also been given. If the vacancy is not filled at the meeting, it may be filled by the Board as a casual vacancy. However, the director who has been removed shall not be appointed.

The director so appointed shall hold office till the removed director could have held office, had he not been removed.

VACATION OF OFFICE OF DIRECTORS

SECTION 167

The office of a director shall become vacant in case:-

- (a) He incurs any of the disqualifications specified in section 164;
 Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.";
- (b) He absent himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
- (c) He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- (d) He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184.
- (e) He becomes disqualified by an order of a court or the Tribunal;
- (f) He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:
Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;
- (g) He is removed in pursuance of the provisions of this Act;
- (h) He having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, cease to hold such office or other employment in that company.
"Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—
 (i) for thirty days from the date of conviction or order of disqualification;
 (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
 (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."

Where all the directors of a company vacate their offices under any of the disqualifications, the promoter or, in his absence, the central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

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A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in section 167.

" CASE LAW–CASE BASED " WRITING PRACTICE



Q. 1. Mr. Sunil Goyal, a director of XYZ Limited wants to go on foreign trip. He wants to assign his office to the Vice President of the company. Mr. Sunil Goyal seeks your advice whether he can do so. Referring to the provisions of the Companies Act, 2013 advise him in the matter. [June. 2017; 4 Marks]

Ans. In accordance with the provisions of the **Companies Act, 2013**, as contained in **Section 166(6)**, a director of a company shall not assign his office. Any assignment so made shall be void. Therefore, Mr. Sunil Goyal, the director of the company who wants to go on a foreign trip cannot assign his office to the Vice President. He is advised accordingly not to assign his office.
However, for the purpose of quorum and smooth function of Board, Alternate director may be appointed under the provisions of **Section 161 of Companies Act, 2013**.

" CASE LAW–CASE BASED " WRITING PRACTICE



Q. 1. Five Board meetings were held in Asha Ltd. during the period from January to June in the calendar year 2016. Rajeev, an additional director, attended none of these meetings. For the first two meetings he sought leave of absence from the Board but did not inform the Board for the remaining three meetings. Examining the provisions of the Companies Act, 2013, decide whether he is disqualified to act as a director. [Dec. 2016; 4 Marks]

Ans.

Section 167(1)(b)	<p>Section 167(1)(b) states that the office of a director shall be vacated if he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board.</p> <p>Mr Rajeev absented from all the meetings of the Board for 6 months by seeking leave of absence in first two and not seeking leave of absence in last three. It is not that he did not attend all the meetings for a period of 12 months.</p>
Conclusion	<p>Thus, his office does not become vacant and he can continue to be a director on the Board of the Company. Disqualification of Directors is dealt with under section 164 of the Companies Act, 2013 and is different from vacation of the office of directors under Section 167.</p>

Q. 1. The Board of Directors of Goodwill (India) Ltd. wish to appoint an alternate director on the Company's Board in the absence of Mr. Prince, a director, who proceeded on leave. Referring to the provisions of the Companies Act, 2013, State the conditions to be satisfied before Board appoints such a director. What shall be the tenure of such alternate director in case Mr. Prince a disqualification and ceases to be director ? [Dec. 2017]

Ans. **Condition for appointment of an Alternate Director**

- (i) The Board of Director of a company must be authorized by its articles or by a resolution passed by the company in general meeting for appointment of the alternate director.
- (ii) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.
- (iii) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the company.
- (iv) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria of Independent as per Section 149(6).

Tenure

- (a) Not exceeding the term permissible to original director: An Alternate director shall not hold office for the period longer than that permissible to the director in whose place he has been appointed. If the original director ceases to be a director by reason of death or vacation of office under Section 167, the alternate director shall immediately cease to hold his office.
- (b) On the return of original director: The alternate director shall vacate his office when the original director is whose place he has been appointed returns to India.

On disqualification of original director, alternate director will also cease to be a director.

Q. 2. Mr. Atul Rastogi, the Managing Director of ABC Limited has resigned from the Managing Directorship of the company. He, however, wants to continue as a director in the company. Referring to the provisions of the Companies Act, 2013, state whether Mr. Atul can continue as a director in the company. [June. 2017]

Ans. Yes, According to the provision of the companies Act, 2013, Mr. Atul Rastogi can continue as a director of the company in the given case.

In *G. Subba Rao v. Rasmi Die-Casting Ltd.* [1998] 93 com. Cases. 797, the Andhra Pradesh High court held that from the definition of 'managing director' as per section 2(26) [correspondence to Section 2(54) of the companies Act, 2013], It is clear that the managing director has to act under the superintendence, control and direction of the Board of director. Moreover, power of routine administrative nature like the power to affix common seal, to draw and endorse any negotiable instrument do not fall within the substantial powers conferred upon the managing director. What is to be seen is whether the managing director making any representation for and on behalf of a company had in fact, 'actual authority' either in terms of the provisions of the constitution of that company or by virtue of the delegations by the Board of directors.

A managing directors must hold and continue to hold the office of director. A managing director is first and then a managing director with certain additional powers [*Shantashamsher director Jung Bahadur v. Kamani Brothers P. Ltd.* (1959) 29 com cases 501 (Bom.)] a managing director is an ordinary director entrusted with special powers. If a company wants to appoint a person as managing director, who is not a director of the company, he has first to be appointed as an additional director in accordance with the provisions of section 260 [Correspondence to Section 161 of the companies Act, 2013] of the Act.

Q. 3. Mr. X is a director in Greenfield Industries Limited. He is a man of wide knowledge of commercial matters. The company has not filed financial statements with the Registrar of Companies for the years ended 31st March, 2014, 31st March, 2015 and 31st March, 2016. However, it has filed the annual returns for those years in compliance of the provisions of the Companies Act, 2013. [June. 2017]

Ans. Section 164 of the companies Act, 2013 deals with the disqualification for appointment of Director, clause (a) of sub-section (2) thereof provides that no person who is or been a director of a company which has not filed financial statement or annual returns for any continuous period of 3 financial, shall be eligible to be reappointed as a director of that company or appointed in other company for a period of 5 years from the date on which the said company fails to do so.

In the given case, Greenfield Industries Limited has not filed its financial statement for the financial year ended 31st March, 2014, 31st March, 2015 and 31st March 2016.

Therefore it has not filed such statement for a continuous period of 3 financial year. However, it has filed annual return for those 3 financial years. Non filing of any one of financial year will disqualify such director from being appointed as a director in any other company.

Applying the above provision of section 164(2)(a), in the given case, Mr. X a director of Greenfield industries Limited cannot be appointed as a director in Greenfield Industries Limited till the expiry of five years.

Q. 4. Newly incorporated Abhay Limited has not mentioned names of first directors of the company in the Articles of Association. Referring to the provisions of the Companies Act, 2013, advise the Board of Directors regarding the appointment of first directors of the company. What would be your answer in case the company is a One Person Company? Also state whether provisions of the Act are applicable to a Private Limited Company. [June. 2017]

Ans. First directors of the companies are generally named in the articles of the company regulation 60 of table F provided that the number of directors and the names of the first director shall be determined in writing by the subscribers of the memorandum or a majority of them. If they are not so named in the articles of a company then subscribers to the memorandum who are individuals shall be deemed to be the first director of the company until the director are duly appointed.

In case of a One Person Company, an individual being a member shall be duly deemed to be the company's first director until the director(s) are duly appointed by the members in accordance with the provision of the section 152 of the companies Act, 2013.

Section 152(1) of the Act is applicable to all companies, whether public or private.

Q. 5. Mr. Sunil Goyal, a director of XYZ Limited wants to go on foreign trip. He wants to assign his office to the Vice President of the company. Mr. Sunil Goyal seeks your advice whether he can do so. Referring to the provisions of the Companies Act, 2013 advise him in the matter. [June. 2017]

Ans. In accordance with the provisions of the companies Act, 2013, as contained in section 166(6), a director of a company shall not assign his office. Any assignment so made shall be void. Therefore Mr. Sunil Goyal, the director of the company who wants to go on a foreign trip cannot assign his office to the Vice President. He is advised accordingly not to assign his office.

However, for the purpose of quorum and smooth function of Board, Alternate director may be appointed under the provisions of section 161 of Companies Act, 2013.

Q. 6. Mr. Solid, a young professional of 29 years, has stayed in India for 150 days in the previous financial year. He does not hold any shares in Happy Retails Limited, which is a quoted (listed) company. Small shareholders have decided amongst themselves that he is proposed to be appointed as small shareholders director who shall not be liable to retire by rotation and his tenure shall be for five years from the date of joining the office of director. Examining the provisions of the Companies Act, 2013, state whether Mr. Solid can be so appointed as small shareholders' director. [June. 2017]

Ans. Rule of Companies (Appointment and Qualification of Director) Rules, 2014 contain provision for appointment and qualification of small shareholders' directors. Sub-rule (2) allows a person who is not a shareholder to become shareholder director. Pursuant to sub-rule (5), the appointment of small shareholders' director shall be subject to the provision of section 152 except that-

- (a) Such director shall not be liable to retire by rotation;
- (b) Such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and
- (c) On the expiry of the tenure, such director shall not be eligible for re-appointment.

Thus, in accordance with sub-rule (2) of rule 7, Mr. Solid who does not hold any shares in happy retail Limited can be proposed to be appointed as a small shareholder director. He shall not be liable to retire by rotation but he cannot be appointed for 5 years. Mr. Solid can be appointed as a small shareholder's director only for 3 years.

Q. 7. R Systems Ltd. is holding 40% of ATC Aviation Pvt. Ltd. R System appointed representative director in ATS Aviation Pvt. Ltd. to safeguard its interest. Board of Director of R Systems Ltd. wishes to know whether the director appointed by them shall be treated as nominee director. Advise the Board. [June. 2018]

Ans. Explanation to section 149 of the Companies Act, 2013 provides that a "Nominee Director" means a director

- (i) Nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or
- (ii) Appointed by any Government, or
- (iii) Any other person to represent its interests.

Thus, Director appointed by R Systems Ltd. in ATC Aviation Pvt. Ltd. shall be treated as "Nominee Director".

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Short Notes on the following:
 - (a) Alternate directors
 - (b) Independent directors
2. Is it mandatory for all the directors to obtain DIN? Discuss.
3. What are the modes in which a director of a company can be appointed?
4. The Chairman and Managing Director of progressive Ltd. resigned on 6th May, 2009 as such, but the company filed Form No. DIR -12 with Registrar of companies stating the date of resignation as 15th March , 2010 The company issued various cheques to its investors in repayment of their deposits after 6th May,2009 which were bounced. The investors filed a complaint against the former chairman and managing director. The articles of association of the company provided that the resignation would be effective from the date it was tendered. Will the chairman and managing director be liable in the instant case?
5. Comment on the Directors ought not to misuse the trust entrusted on them.
6. Enumerate the disqualifications of director mentioned in Section 164 of companies Act, 2013.
7. What is meant by the term 'disqualifying company' under the Companies (Disqualification of Directors under Section 164 (2) of companies Act, 2013? State the grounds under which the directors are disqualified under the said rules.
8. The Board of directors of Zest Ltd. appoints Pavan as director under Section 161, of Companies Act, 2013 by passing a resolution by circulation. The appointee now seeks your advice about the tenure of his appointment. Advise him.
9. A person other than retiring director is also eligible for appointment as director .Examine.
10. Explain 'independent director' and 'inside director'. Does inside director and interested director connote the same meaning?

FROM ICSI MODULE



Answer the following

1. Explain the concept and the evolution of the institution of directors.
2. What are the qualifications of a director? When is a person disqualified for appointment as a director of the company? What are the rules as regards disqualification of Directors?
3. Explain the law relating to number of directors.
4. Who may be appointed as director of a company?
5. How can the directors be removed from the office before the expiry of their term?
6. Under what circumstances is a director deemed to have vacated the office of directorship?
7. How can the small shareholder's director be appointed?
8. Write short notes on the followings:-
 - (a) Independent director under Clause 49
 - (b) Code for Independent Directors
 - (c) Tenure of Independent Directors
 - (d) Maximum and Minimum Number of Independent Directors
9. Explain the manner of appointment of Independent directors.
10. Write the liabilities of a Independent Directors.
11. Briefly explain the role & function of an Independent Directors.



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

2

BOARD MEETING

Covering-

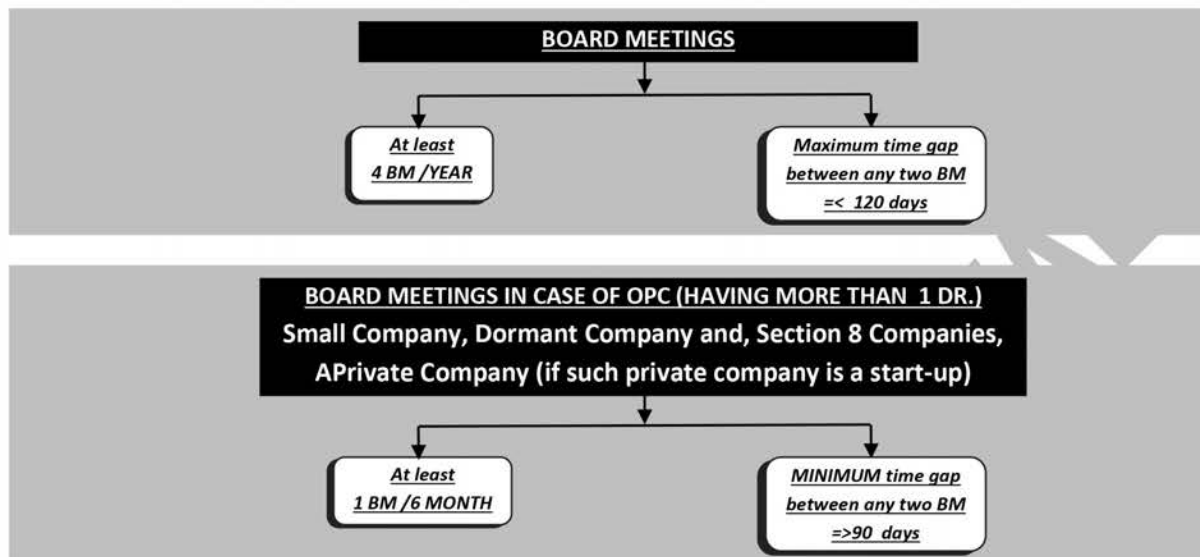
- Frequency/number of board meetings
- Notice of board meetings
- Quorum of board meeting
- Resolution by circulation
- Defects in appointment of directors not to invalidate actions taken
- Appointment of chairman
- Matters not to be dealt in a meeting though video-conferencing or other audio-visual means
- Compliance with secretarial standards relating to board meeting
- Self Test Questions
 - From Past CS Exams
 - From ICSI Module

**EXPECTED
MARKS COVERAGE
(5 to 10)**

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Additional Writing
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BOARD MEETING

The affairs of a company are managed by Board of directors. It is, therefore, necessary that the directors should often meet to discuss various matters regarding the management and administration of the affairs of the company in the best interests of the shareholders and the public interest.

FREQUENCY/NUMBER OF BOARD MEETINGS

SECTION 173

The Act provides that the **first Board meeting** should be held within thirty days of the date of incorporation.

There shall be minimum of **four Board meetings every year** and not more **one hundred and twenty days** shall intervene between two consecutive Board meetings.

However, In case of:-

1. One Person Company (OPC),
2. Small company
3. Dormant company and
4. Section 8 companies
5. a private company (if such private company is a start-up)

at least **one Board meeting** should be conducted in each half of the calendar year and the gap between two meetings should not be less than **Ninety days**.

NOTICE OF BOARD MEETINGS

The Act requires that not less than **seven days' notice** in writing shall be given to every director at the registered address as available with the company. The notice can be given by hand delivery or by post or by electronic means.

Every officer of the company, whose duty is to give notice and who fails to do so, shall be punishable with fine which may extend to ₹25,000/-

QUORUM OF BOARD MEETING

SECTION 174

Quorum is the minimum number of the directors required to be present to validity transact any Business.
In case of board meetings, quorum is required throughout the meeting.

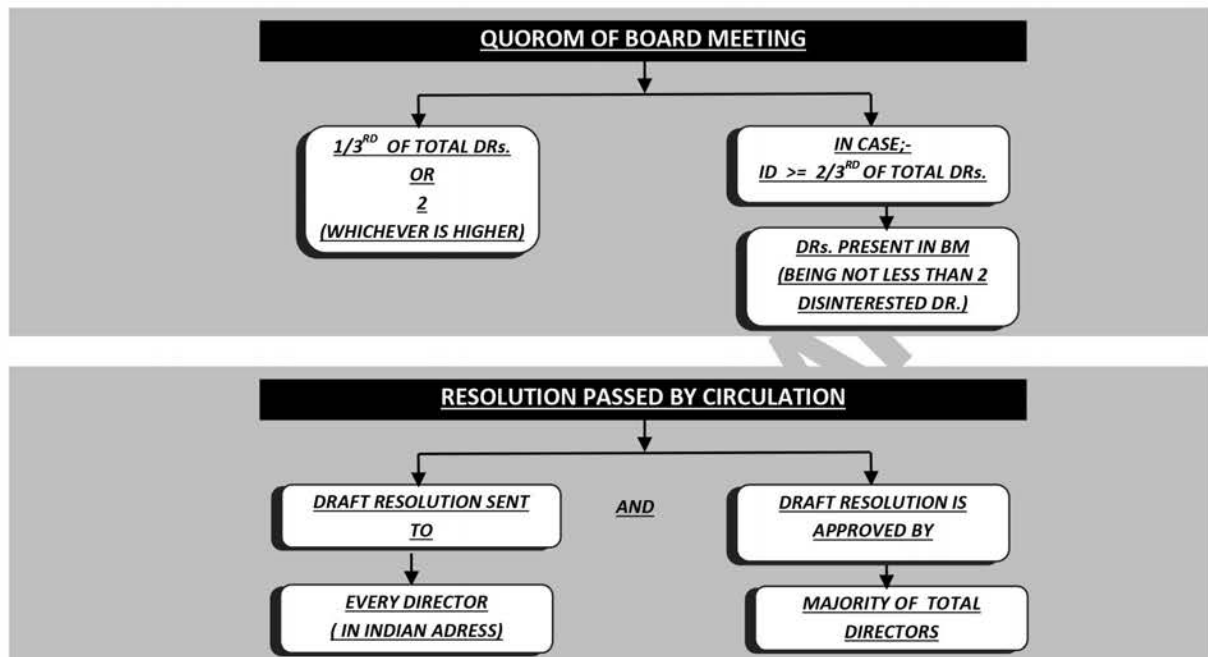
According to Section 174

1. The quorum for meeting of the board of Directors of a company shall be **one-third** (any fraction contained in that one-third being rounded off as one) of its total strength or two directors, whichever is **higher**, and the participation of the directors by video conferencing or by other audio visual means also shall be counted for the purpose of quorum under the sub-section.
2. The continuing directors may act **notwithstanding any vacancy in the Board**; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, **the continuing directors or directors may act** for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and **for no other purpose**.
3. Where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of Board of Directors, the number of directors who are not interested directors and present at the meeting, **being not less than two** shall be the quorum during such time. Thus, it follows that quorum at a board meeting must be a "disinterested quorum".

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Provided that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.”

4. Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically **stand adjourned to the same day at the same time and place in the next week** or if that day is a national holiday, till the next Succeeding day, which is not a national holiday, at the same time at the place.

*However, in case of section 8 companies, the quorum for meeting of the board of Directors of a company shall be **either eight members or twenty five percent of its total strength, whichever is less.***

Provided that quorum shall not be less than two members.

RESOLUTION BY CIRCULATION

SECTION 175

A resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, only if:-

- (a) the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed **and**
- (b) has been approved by a majority of the directors or members, who are entitled to vote on the resolution.

However, where not less than **one-third** of the total number of directors of the company for the time being **require that any resolution under circulation must be decided at a meeting**, the chairperson shall put the resolution to be decided at a **meeting of the Board**.

A resolution passed by circulation shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

DEFECTS IN APPOINTMENT OF DIRECTORS NOT TO INVALIDATE ACTIONS TAKEN

SECTION 176

Acts done by a person, as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles.

However, nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been noticed by a company to be invalid or to have terminated.

APPOINTMENT OF CHAIRMAN

Companies generally name, in their **articles of association**, the chairman of the Board of the directors. However, Certain other companies incorporate in their articles a provision corresponding to the provision of **regulation 70 of Table F** of Schedule I to the Companies Act, 2013, which provides the following:-

- (a) The board may elect a chairperson of its meeting and determine the period for which he is to hold office.
- (b) If no such chairperson is elected or if at any meeting, the chairman is not present within 5 minutes after the time appointed for holding the meeting, the directors present may choose one of their members to be chairperson of the meeting.

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CASTING VOTE OF CHAIRMAN

Regulation 68 of Table F of Schedule I to the Companies Act, 2013 provides that in the case of an equality of votes, the Chairman of the Board shall have a second or casting vote.

MATTERS NOT TO BE DEALT IN A MEETING THROUGH VIDEO-CONFERENCEING OR OTHER AUDIO-VISUAL MEANS

Directors may participate in the meeting either in person or through video conferencing or other audio visual means.

Rule 4 of the Companies (Meeting of Board and its Power) Rules, 2014 , however, provides that the following matters shall not be dealt with any meeting through video conferencing or other audio visual means:-	(a) the approved of the annual financial statements;
	(b) the approval of the Boards, s report;
	(c) the approval of the prospectus;
	(d) the Audit Committee Meetings for consideration of accounts; and
	(e) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.


"Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means."

COMPLIANCE WITH SECRETARIAL STANDARDS RELATING TO BOARD MEETING

According to **Section 118** every company shall observe secretarial standards with respect to **general and Board meetings(SS-1 & SS-2)** specified by the Institute of Company Secretaries of India constituted under section 3 of the company secretaries Act, 1980, and approved as such by the Central Government.

In the light of this provision, observance of Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI) assumes special relevance and companies will have to ensure that there is compliance with these standards on their part.

" CASE LAW-CASE BASED " WRITING PRACTICE

 SCANNER	Q. 1. Out of 9 directors in Rooftop Ltd., 5 are Indian nationals, 3 are foreign residents and one is a person of Indian origin. The articles of the company stipulate that quorum for a Board meeting shall be 5 directors of which at least one director shall be a foreign resident. Referring to the provisions of the Companies Act, 2013, examine the validity of the above provision in the articles. [Dec. 2016; 4 Marks]		
	Ans.		
	1. Section 174	Section 174 states that quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors whichever is higher. Any fraction of a number shall be rounded off as one. Further according to Secretarial Standard on Board Meeting (SS-1), where the Quorum requirement provided in the Articles is higher than one-third of the total strength, the company shall conform to such higher requirement.	
	2. Conclusion	Hence, in the given case of Rooftop Ltd, the quorum as given in the articles of the Company stands valid.	

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" CASE LAW–CASE BASED " WRITING PRACTICE



Q. 1. 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. **[Dec. 2018; 4 Marks]**

Ans. Accordily to Section 173(3) of the Companies Act, 2013 a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

In case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Accordingly, all decisions taken at the meeting needs to be circulated to all the directors and shall be final only on ratification of atleast one independent director.

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Q. 1. XYZ Ltd. has 6 directors on its Board of Directors. Out of 6 directors, 5 are foreigners and they reside in America. The company wants to convene its Boards meeting in Mumbai but all the 5 directors are pre-occupied and are not in a position to travel to India. Advice the company regarding conduct of such a Board meeting as per provisions of the Companies Act, 2013 and relevant Rules. Will the same Rules or provisions be applicable in case the company wants to approve annual financial statements in the Board meeting ?

Ans. The directors of the company may participate in a meeting of Board/Committee of Directors under the Companies Act, 2013 through video conferencing or other audio visual mean. "Video conferencing or other audio visual means" means audio-visual electronic communication facility employed which enables all the persons participating in the meeting to communicate currently with each other without an intermediary and to participate effectively in the meeting.

A director participating in meeting through use of video conferencing shall be counted for the purpose of quorum. The minutes shall also discuss the particulars of the directors who is attending meeting through electronic mode. Therefore, to convene Board meeting, the director present in India shall at Chairman and shall be physically present in Mumbai.

According to rule 4 of the following dealt with in any meeting held through video conferencing or other audiovisual means-

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee meeting for 2consideration of financial statement including considered financial statement if any, to be approved by the board under sub-section (1) of Section 134 of the Act; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover

Therefore, Annual financial statement cannot be approved in a meeting conducted through video conferencing.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

3

BOARD COMMITTEES

Covering-

- Board committees
- Kinds of committee
 - Audit Committee
 - Nomination and Remuneration Committee
 - Stakeholders Relationship Committee
- Self Test Questions
 - From Past CS Exams

**EXPECTED
MARKS COVERAGE
(1 to 5)**

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Additional Writing
Live Lectures

BOARD COMMITTEES

BOARD COMMITTEES

'Committees' or 'Board Committees' or 'Committees of Board of Directors' are usually formed as a means of improving board effectiveness and efficiency in areas where **more focused, specialized and technical discussions** are required board meeting. These committees prepare the groundwork for decision making and report at the subsequent board meeting. Committees enable better management of full board's time and aloe in depth scrutiny and focused attention.

KINDS OF COMMITTEE

1. AUDIT COMMITTEE

SECTION 177

Important provisions pertaining to Audit Committee of Directors:-

(a) Following companies are required to constitute audit committee:-

1. Every listed public Companies; or
2. The following class of companies:-
 - (i) all public companies with a paid up capital of ten crore rupees or more;
 - (ii) all public companies having turnover of one hundred crore rupees or more;
 - (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

The following classes of unlisted public company shall be exempted: - (a) a joint venture; (b) a wholly owned subsidiary; and (c) a dormant company

- (b) The audit committee shall comprise of minimum **3 directors** with majority of the directors being Independent Directors. The majority of members of audit committee including its chairperson shall be person with ability to read and understand the financial statement.

(c) **Function of Audit Committee** inter alia includes:-

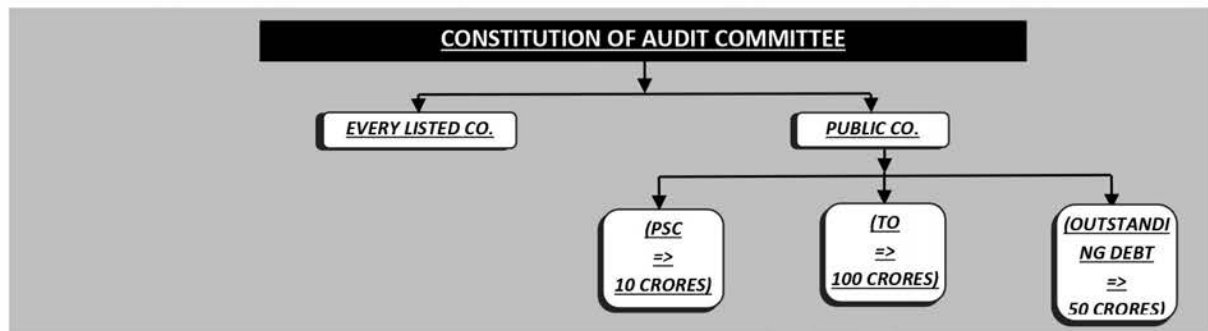
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|--------|---|
| (i) | The recommendation for appointment, remuneration and terms of appointment of auditors of the company; |
| (ii) | Review and monitor the auditor's independence and performance and effectiveness of audit process; |
| (iii) | Examination of the financial statement and the auditors report thereon; |
| (iv) | Approval or any subsequent modification of transactions of the company with related parties;
"Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;"

Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board. |
| (v) | Scrutiny of inter-corporate loans and investments; |
| (vi) | Valuation of undertaking or assets of the company, wherever it is necessary; |
| (vii) | Evaluation of internal financial controls and risk management systems; |
| (viii) | Monitoring the end use of funds raised through public offers and related matters. |

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“Vigil mechanism”

Rule 7

- (d) Every **listed company** and the **companies belonging to the following class** or classes shall establish a vigil mechanism for their directors and employees to report genuine concerns or grievances:-
- (a) The companies which accept deposit from the public;
 - (b) The companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.
- (e) The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflicted of interest in a given case, they should recuse themselves and the other on the committee would deal with the matter on hand.
- (f) In case of other companies, the Board of directors **shall nominate a director** to play the role of audit committee for the purpose of vigil mechanism **to whom other directors and employees may report their concerns.**
- (g) This vigil mechanism shall provide for adequate safeguards against **victimization of employees** and director who avail of the vigil mechanism and also provide for direct access to the chairperson of the Audit committee or the director nominated to play the role of audit committee, as the case may be, in exception cases.
- (h) In case of **repeated frivolous complaints** being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take **suitable action against** the concerned director or employee including reprimand.
- (i) The Vigil Mechanism shall operate for directors and employees to enable them to bring to report genuine concerns. Further the said mechanism shall provide safeguards against victimization and provide for **direct access to the chair person of the audit Committee** in appropriate or exceptional cases.
- (j) The details of establishment of the Vigil Mechanism is required to be disclosed by the company on its **website**, if any and in the **Board’s report**.

2. NOMINATION AND REMUNERATION COMMITTEE

SECTION 178

The Nomination and Remuneration Committee helps the Board of Directors in the preparations relating to the **election of members of the Board of Directors**, and in handling matters within its scope of responsibility that relate to the conditions of **employment and remuneration of senior management**, and to management’s and personnel’s remuneration and incentive schemes.

Important provisions pertaining to Nomination and Remuneration Committee of Directors:-

(a) Following companies are required to constitute audit committee:-

1. Every listed public Companies; or
2. The following class of companies:-
 - (i) all public companies with a paid up capital of ten crore rupees of more;
 - (ii) all public companies having turnover of one hundred crore rupees or more;
 - (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

The following classes of unlisted public company shall be exempted: - (a) a joint venture; (b) a wholly owned subsidiary; and (c) a dormant company

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The committee shall consist of **three or more non-executive directors** out of which not less than one **half shall be independent directors**. The chairperson of the company may be appointed as member, but shall not chair such committee.

The Committee shall identify the person qualified to become directors and may be appointed in senior management and recommend their appointment and removal and also. The Committee shall formulate the criteria, for determining qualifications, positive attributes and independence of a director and "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" and recommend to the Board the policy relating to remuneration for directors, KMPs and other employees.

The Chairperson of the Committee or, in his absence, any other member of the committee authorized by him in this behalf shall attend the general meetings of the company.

However, section 178 shall not apply to section 8 companies.

3. STAKEHOLDERS RELATIONSHIP COMMITTEE

SECTION 178(5)

- (a) The Board of a company that has **more than one thousand** shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year is required to constitute a Stakeholders Relationship Committee **consisting of a chairperson who shall be a non-executive director** and such other members as may be decided by the Board.
- (b) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.
- (c) The Chairperson of the committee or in his absence, any other member of the committee authorized by him in his behalf shall attend the general meetings of the company.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



1. Descriptive Questions:-

- (a) The board of directors of a company met thrice in the year 2012 and the fourth meeting was not held for want of quorum. As a company Secretary, examine the provisions of the Companies Act, 2013 and decide with reasons whether the company has complied with the requirement of minimum number of meetings to be held in a calendar year or violated the requirement thereof?
- (b) "The power to borrow includes the power to give security" comment.
2. State the provisions of the Companies Act, 2013 relating to loans to directors.
3. Can the Board of directors of a company delegate any of its powers to others? Discuss.



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

4

POWERS OF THE BOARD OF DIRECTORS

Covering-

- Board's powers and restrictions thereon
- General powers of the board
- Certain powers to be exercise by board only at a board meeting
- Restricted power of board
- Company to contribute to bonafide and charitable funds
- Prohibitions and restrictions regarding political contributions
- Power of board to make contributions to national defence fund, etc.
- Related party transactions
- Disclosure of interest by director
- Loan to directors, etc.
- Related party transactions
- Omnibus approval for related party transactions on annual basis
- When prior approval of company by resolution required for related party transaction
- Register of contracts or arrangements in which directors are interested
- Payment to director for loss of office, etc. In connection with transfer of undertaking property or shares
- Compensation for loss if office of MD or whole time director or manager
- Self Test Questions
 - From Past CS Exams

**EXPECTED
MARKS COVERAGE
(1 to 5)**

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POWERS OF THE BOARD OF DIRECTORS

BOARD'S POWERS AND RESTRICTIONS THEREON

GENERAL POWERS OF THE BOARD

SECTION 179

Unless otherwise provided by Act, the Board of directors is entitled to exercise all such powers and to do all such acts and things as the company is authorised to exercise and do. The powers which are vested in the Board, can be exercised only by the Board. The shareholders cannot interfere in their exercise.

Thus if the general powers of management are vested in the directors, the shareholders cannot direct them to bring an action against a particular individual or to sell the assets of the company, or to declare a dividend. The true relationship of the Board with the general meeting is “**more of federation than of subordinate and superior.**”

However, in the following **exceptional cases**, the general body of shareholders is competent to act even in matters delegated to the Board, for the inherent residuary and ultimate powers of a company lie with the general body of shareholders:-**Director acting mala fide**:-The general body of shareholders can intervene when it is proved that the directors have acted for improper motive or arbitrarily or capriciously. (*Satya Charan Lal v. Romeshwar Prasad Bajoria*).

- (a) **Incompetent Board**:- The general body of shareholders may exercise the powers vested in the Board when the Board is incompetent to act, for instance, where all the directors are interested in the transaction or the Board is unwilling to act, or when there are no validly appointed directors functioning Here, the shareholders in general meeting appointed a director in casual vacancy, as there was no validity appointed director. (*Vishwnathan v. Tiffins B.A. and P.Ltd.*)
- (b) **Deadlock Board**:-If the directors are unable to act, on account of deadlock, the shareholders have the inherent power to act.

Here, the shareholder in general meeting appointed additional director, as the two existing directors were not on talking terms. (*Barron v. Potter*)

NKJ-CLASSROOM PRACTICE



Q. 1. Comment on Powers of the directors of a company are co-extensive with those of the company. □

[June. 2015; 5 Marks]

CERTAIN POWERS TO BE EXERCISE BY BOARD ONLY AT A BOARD MEETING

SECTION 179 (3)

Section 179(3) of the Companies Act, 2013 provides that the Board of directors of a company shall exercise the following powers only by means of resolution passed at the meetings of the Board and not by circulation:-

- (a) To make calls on shareholders in respect of money unpaid on their shares;
- (b) To authorize buy-back of securities under section 68;

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- (c) To issue securities, including debentures, whether in or outside India;
- (d) To borrow monies;
- (e) To invest the funds of the company;
- (f) To grant loans or given guarantee or provide security in respect of loans;
- (g) To approve financial statement and the Board's report;
- (h) To diversity the business of the company;
- (i) To approve amalgamation, merger or reconstruction;
- (j) To take over a company or acquire a controlling or substantial stake in another company;
- (k) Any other matter which may be prescribed.

Provisions of clauses (d), (e) & (f) are not applicable on a banking company.

The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of branch office of the company, a principal officer of the branch office, the powers specified in clauses (d), (e) and (f) to such an extent and on such conditions as the board may prescribe.

Section 179(4) empowers the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in sub-section(3).

Other Powers to be exercised at Board Meeting:-

In addition to the powers specified under section 179(3), Companies (Meetings of Board and its Powers) Rules, 2014 the following powers shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board:-

- (i) To make political contributions;
- (ii) To appoint or remove key managerial personal (KMP);
- (iii) To appoint internal auditors and secretarial auditor;

RESTRICTED POWER OF BOARD

SECTION 180

The Board of Directors of a company shall exercise the following powers **only with the consent of the company by a special resolution,** namely:-

- (a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking of the whole or substantially the whole of any of such undertakings.

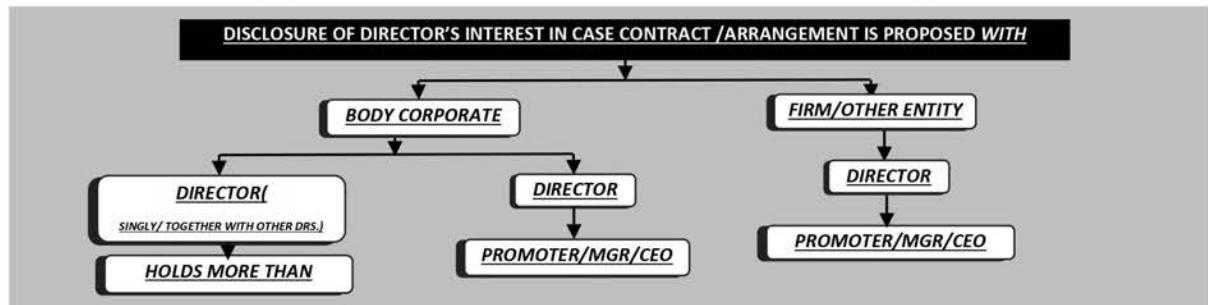
Explanation:- For the purposes of this clause:-

- (i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty percent of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty percent of the total income of the company during the previous financial year;
- (ii) The expression "substantially the whole of the undertaking" in any financial year shall mean twenty percent or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;
- (b) To invest **otherwise in trust securities** the amount of compensation received by it as a result of any merger or amalgamation;

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- (c) To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business:

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be demand to be a borrowing of monies by the banking company within the meaning of this clause.

- (d) or remit, or give time for the repayment of any debt due from a director.

Nothing contained in clause (a) shall affect:-

- (a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or
- (b) the sale or lease of any property of the company where the ordinary business of the company consists of, or companies, such selling or leasing.
- (c) Any special resolution passed by the company consenting to the transaction as is referred to in clause (a) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction.

Provided that this sub-section shall not be deemed to authorize the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.

Clause (c)

No debt incurred by the company in excess of the limit imposed by clause (c) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

However, Section 180 doesn't apply to private company.

COMPANY TO CONTRIBUTE TO BONAFIDE AND CHARITABLE FUNDS

SECTION 181

The Board of Directors of a company may contribute to bona fide charitable and other funds. However, prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent (5%) of its average net profits for the three immediately preceding financial year.

PROHIBITIONS AND RESTRICTIONS REGARDING POLITICAL CONTRIBUTIONS

SECTION 182

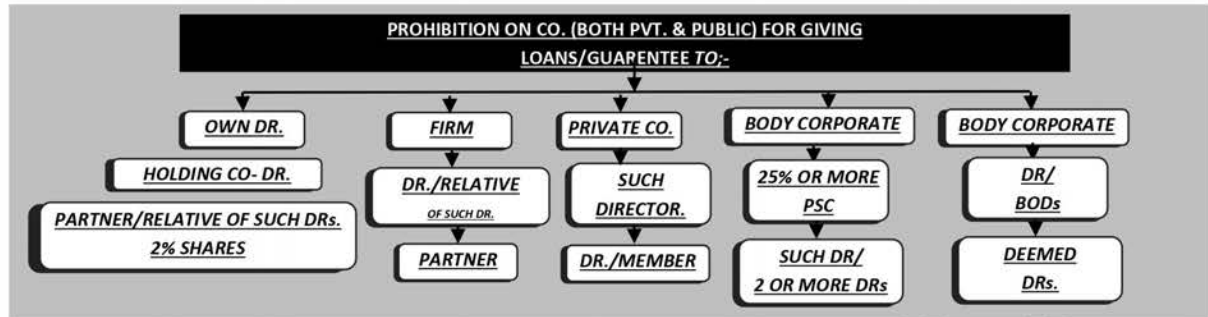
Government companies and other companies, which have been in existence for **less than 3 financial years**, cannot make any contribution to political party.

Other companies may make contributions, directly or indirectly, in any financial year, to any political party, any amount or amounts by passing a resolution authorizing the making of such contribution is passed at a meeting of the Board of directors, and such resolutions shall, subject to other provision of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorized by it.

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Any donation made to a person who is caring on any activity, **which can reasonable be regarded as likely to affect public support for a political party**, is deemed to be contribution under the law for political purpose.

Political contributions include the amount of expenditure incurred by a company, on advertisement in any publication, souvenir, brochure, pamphlet or the like on like on behalf of political party or for its advantage. Such contributions are required to be disclosed by every company in its profit and loss account, giving particulars of the total amount contributed and the name of the party to whom such amount has been contributed.

POWER OF BOARD TO MAKE CONTRIBUTIONS TO NATIONAL DEFENCE FUND, ETC.

SECTION 183

Notwithstanding anything contained in provision of Section 180, 181, and 182, the Board of directors of any company may contribute such amount as it thinks fit to the National Defence fund or any other Fund approved by the Central Government for the purpose of national defence.

The amount of contributions made for this purpose are required to be disclosed by the company in its profit and loss account of the financial year during which the contributions are made.

Prime Minister's Relief Fund, Kargil Relief Fund, etc. are some notified funds u/s 183 of the Act.

RELATED PARTY TRANSACTIONS

DISCLOSURE OF INTEREST BY DIRECTOR

SECTION 184

Every director shall **at the first meeting of the Board** in which he participates as a director as a director and thereafter at the **first meeting of the Board in every financial year** or whenever there is any change in the disclosures already made, then at the **first Board held after such change** disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding in such manner as may be prescribed.

Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into:-

- (a) With a body corporate in which such director or director in association with any other director, holds more than **two percent** Shareholding of that body corporate or is a promoter, manager, Chief Executive Officer of that body corporate; or
- (b) With a firm or other entity in which such director is a partner, owner or member, as the case may be,

Shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:-

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forth with when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

A contract or arrangement entered into by the company without disclosure or with participation by a director who is concerned or interested in any way directly or indirectly in the contract or arrangement shall be **voidable at the option of the company**.

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Rule 9 of Companies (Meeting of Board and its powers) Rules, 2014 provides that every director shall disclose his concern or interest by giving a notice in writing in **Form MBP 1**.

Nothing in this section:-

- (a) Shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
- (b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."

LOAN TO DIRECTORS, ETC.

SECTION 185

- (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—
 - (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
 - (b) any firm in which any such director or relative is a partner.
 - (2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—
 - (a) a special resolution is passed by the company in general meeting:
Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and
 - (b) the loans are utilised by the borrowing company for its principal business activities.
- Explanation.*—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—
- (a) any private company of which any such director is a director or member;
 - (b) anybody corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
 - (c) anybody corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
- (3) Nothing contained in sub-sections (1) and (2) shall apply to—
 - (a) the giving of any loan to a managing or whole-time director—
 - (i) as a part of the conditions of service extended by the company to all its employees; or
 - (ii) pursuant to any scheme approved by the members by a special resolution; or
 - (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or
 - (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

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(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

- (4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—
- (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;
 - (ii) every officer of the company 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 five lakh rupees but which may extend to twenty-five lakh rupees; and
 - (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

<p>The expression “to any other person in whom director is interested” means:-</p>	(a) Any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
	(b) Any firm in which any such director or relative is a partner;
	(c) Any private company of which any such director is a director or member;
	(d) Any body corporate at a general meeting of which not less than twenty five percent of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
	(e) Any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director of the lending company.

Rule 10 of Companies (Meeting of Board and its Powers) Rules, 2014 provides that any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempted from the requirements under this section, subject to the condition that such loans are utilized by the wholly owned subsidiary company for its principal business activities.

Further, any guarantee given or security provided by a holding company in respect of loan made any bank or financial institution to its subsidiary company is exempted from the requirements under this section, subject to the condition that such loans are utilized by the subsidiary company for its principal business activities.

RELATED PARTY TRANSACTIONS

SECTION 188

- (1) **Except with the consent of the Board of directors** given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to:-
- (a) Sale, purchase or supply of any goods or materials;
 - (b) Selling or otherwise disposing of, or buying, property of any kind;
 - (c) Leasing of property of any kind;
 - (d) Availing or rendering of any services;
 - (e) Appointment of any agent for purchase or sale of goods, materials, services or property;

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- (f) Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- (g) Underwriting the subscription of any securities or derivatives thereof, of the company

Provided that no contract or arrangement in, the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by **resolutions**.

Provided further that no member of the company shall vote on such resolutions, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties".

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Explanation:-

(a) *The expression **"office or place of profit"** means any office or place:-*

- (i) *Where such office or place is held by a director, if the holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;*
- (ii) *Where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;*

(b) *The expression **"arm's length transaction"** means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.*

- (2) Every contract or arrangement entered into under sub-section(1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.
- (3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a **resolution** in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting **within three months** from the date on which such contract or arrangement was entered into, such contract or arrangement shall be **voidable at the option of the Board or as the case may be , the shareholders** and if the contract or arrangement is with a related party to any director or is authorized by any other director, **the directors concerned shall indemnify the company against any loss incurred by it.**
- (4) Without prejudice to anything contained in sub-section (3), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for **recovery of any loss sustained by it as a result of such contract or arrangement.**
- (5) Any director or any other employee of a company, who had entered into or authorized the contract or arrangement in violation of the provisions of this section shall:-
 - (1) In case of listed company, be punishable with imprisonment for a term which may extend to **one year** or with fine which shall not be less than **twenty- five thousand rupees** but which may extend to **five lakh rupees**, or with both; and
 - (2) In case of any other company, be punishable with which shall not be less than **twenty-five thousand rupees** but which may extend to **five lakh rupees.**

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OMNIBUS APPROVAL FOR RELATED PARTY TRANSACTIONS ON ANNUAL BASIS

Rule 6A of Companies (Meetings of Board and its Powers) Rules, 2014

All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions namely:-

- (1) The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:-
 - (a) maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
 - (b) the maximum value per transaction which can be allowed;
 - (c) extent and manner of disclosures to be made to the Audit the time of seeking omnibus approval;
 - (d) review, at such intervals as the Audit Committee may deem fit.
- (2) The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely: -
 - (a) repetitiveness of the transactions (in past or in future);
 - (b) justification for the need of omnibus approval.
- (3) The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that and that such approval is in the interest of the company.
- (4) The omnibus approval shall contain or indicate the following: -
 - (a) name of the related parties;
 - (b) nature and duration of the transaction;
 - (c) maximum amount of transaction that can be entered into;
 - (d) the indicative base price or current contracted price and the formula for variation in the price, if any; and
 - (e) any other information relevant or important for the Audit Committee to take a decision on the proposed transaction:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding **rupees one crore per transaction**.
- (5) Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.
- (6) Omnibus approval shall not be made for transactions disposing of the undertaking of the company.
- (7) Any other conditions as the Audit Committee may deem fit.

WHEN PRIOR APPROVAL OF COMPANY BY RESOLUTION REQUIRED FOR RELATED PARTY TRANSACTION

[Rule 15 of companies (Meeting of Board and its Powers) Rules, 2014]:-

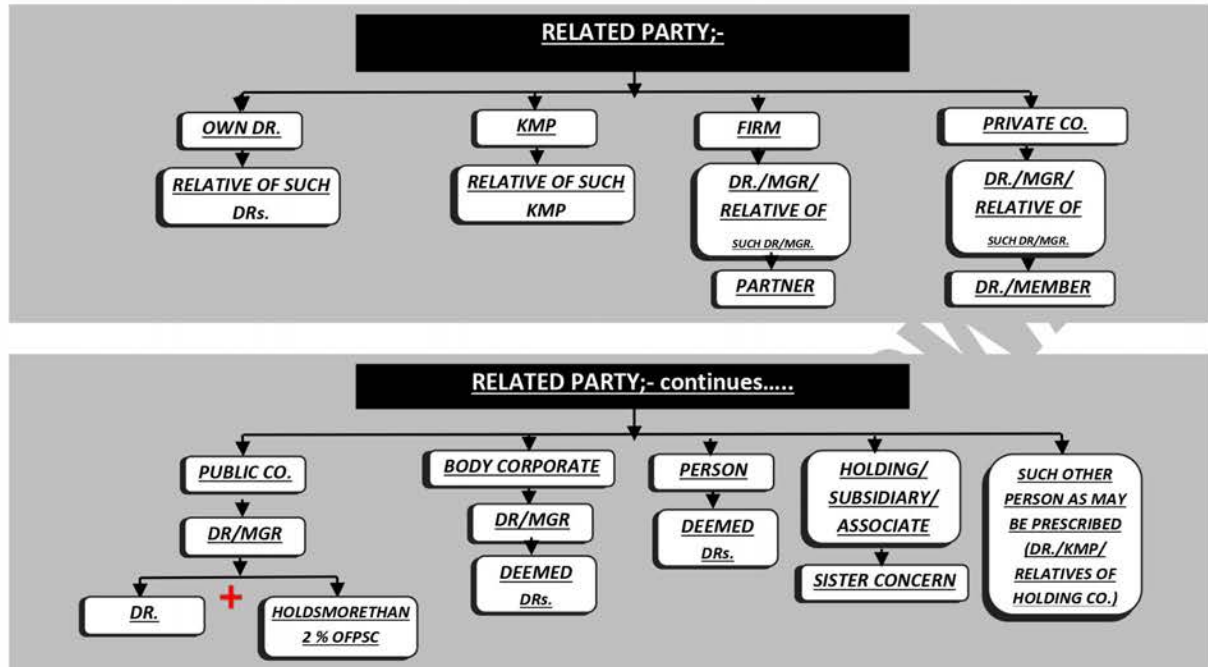
“For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a **resolution**, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into,—

- (a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mentioned below –

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- (i) sale, purchase or supply of any goods or materials, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
 - (ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, exceeding ten per cent. of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
 - (iii) leasing of property of any kind exceeding ten per cent. of the net worth of the company or ten per cent. of turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;
 - (iv) availing or rendering of any services, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees fifty crore, whichever is lower, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:
- Explanation.—It is hereby clarified that the limits specified in sub-clauses (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.
- (b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of subsection (1) of section 188; or
 - (c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one per cent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

Explanation.-

- (1) The Turnover or Net Worth referred in the above sub-rules shall be computed on the basis of the Audited Financial Statement of the preceding Financial year.
- (2) In case of a wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company.
- (3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely:— (a) name of the related party ; (b) name of the director or key managerial personnel who is related, if any; (c) nature of relationship; (d) nature, material terms, monetary value and particulars of the contract or arrangement; (e) any other information relevant or important for the members to take a decision on the proposed resolution.”

However, the aforesaid requirements of Rule shall not apply to:-

- (a) A govt. company in respect of contracts or arrangement entered into by it with any other government company.
- (b) A govt. company, other than a listed company in respect of contract not covered in clause(a)above, if such company obtains approval from incharge ministry/department of c/g or s/g as the case may be.

Meaning of ‘Related Party’:-

According to Section 2(76), “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 **or his relative** is a member or director;

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- (v) A public company in which a director or manager is a director **and** 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-section (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; or
 - (c) an investing company or the venturer of the company.

Explanation—For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate

- (ix) Such other person as may be prescribed.

It may be noted that **for the purpose of sub-clause (ix) of section 2(76)** a director (**other than an independent director**) or key managerial person of the holding company or his relative with reference to a company, shall be deemed to be a related party.

Meaning of ‘Related’/relative:-According to Section 2(77), a person shall be deemed to a relative of another if, and only if:-

- (a) They are the members of HUF;
- (b) They are husband and wife; or
- (c) The one is related to the other in the manner indicated in **Rule 4 of Companies (Specification of definitions details) Rules, 2014.**

<u>As per foresaid Rule 4, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-</u>	(i) Father (includes step-father);
	(ii) Mother (includes step-mother);
	(iii) Son (includes step-son);
	(iv) Son’s wife
	(v) Daughter;
	(vi) Daughter’s husband;
	(vii) Brother (includes step-brother);
	(viii) Sister (includes step-sister);

REGISTER OF CONTRACTS OR ARRANGEMENTS IN WHICH DIRECTORS ARE INTERESTED

SECTION 189

Every company is required to keep one or more registers in **Form MBP 4** giving separately the particulars of all contracts arrangements to which Section 184 or Section 188 applies.

Such register is required to be placed before the next meeting of the Board, whenever a new entry is made in this Register, and shall be signed by all the directors presents at the meeting. Every director within thirty days of his appointment or relinquishment is required to disclose his concern or interest in other associations, which are required to be included in the register.

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Live Lectures

- (i) The register be kept at the company and also open for inspection during business hours. The company shall provide extracts from such register to a member of the company on his request, within seven days from the date on which such request is made upon the payment of such fee as may be specified in the articles of the company but not exceeding ten rupees per page.

PAYMENT TO DIRECTOR FOR LOSS OF OFFICE, ETC. IN CONNECTION WITH TRANSFER OF UNDERTAKING PROPERTY OR SHARES

SECTION 191

No **director** of a company shall receive any payment by way of compensation in case of transfer of the whole or any part any undertaking or property of the company or the transfer to any person of all or any of the shares in a company; unless the certain prescribed particulars are disclosed to the members of the company and they pass a **resolution at a general meeting** approving the payment of such amount.

No **payment** shall be made to the **managing director or whole time director or manager** of the company by way of compensation for the loss of office or as consideration for retirement from office (other than notice pay and statutory payments in accordance with the terms of appointment of such director and manager as applicable) or in connection with such loss retirement **if:-**

- (a) The company is in default in repayment of public deposits or payment of interest thereon;
- (b) The company is in default in redemption of debentures or payment of interest thereon;
- (c) The company is in default in repayment of any liability, secured or unsecured, payable to any bank, public financial institution or any other financial institution;
- (d) The company is in default in payment of any dues towards income tax, VAT, excise duty, service tax or any other tax or duty, by whatever name called;
- (e) There are outstanding statutory dues to the employees or workmen of the company which have not been paid by the company (other than in cases where the company has disputed the liability to pay such dues); and
- (f) The company has not paid dividend on preference share or not redeemed preference shares on due date.

COMPENSATION FOR LOSS IF OFFICE OF MD OR WHOLE TIME DIRECTOR OR MANAGER

SECTION 202

Section 202 states that **no** compensation for loss of office or as consideration for retirement from office, or connection with such loss or retirement, shall be paid by a company to any director **other than Managing Director, Whole- time Director and manager**.

Even in the case of a Managing Director, Whole-time Director and Manager, no such payment shall be made in the following cases:-

- (a) Where the director resigns his office on reconstruction or amalgamation of the company and is appointed as the managing director, manager or other officer of the reconstructed company or the body corporate resulting from the amalgamation;
- (b) Where the director resigns his office other than on reconstruction of the company or its amalgamation thereof;
- (c) Where the office is vacated under Section 167;
- (d) Where the winding up of the company takes place due to his negligence or mismanagement;

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- (e) Where the director has been guilty of fraud or breach of trust or gross negligence or mismanagement of the affairs of the company, or any subsidiary or holding thereof;
- (f) Where the director has instigated or has taken part in bringing about the termination of his office.

" CASE LAW–CASE BASED " WRITING PRACTICE



Q. 1. 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. **[Dec. 2018; 5 Marks]**

Ans. There is no restriction on delegation of powers of the Board of Directors of the company except as provided in first provision to Section 179(3) Companies Act, 2013. It provides that The Board may delegate power to borrow money, to invest the fund of the company and to grant loan or give guarantee or provide security in respect of loans, by way of resolution to any committee of directors, the managing director, manager or any other principal officer, or principal officer of a branch of the company. Apart from this the Board of Directors may delegate all or any of its powers to any person including a person not in employment of the company if the Articles of Association so provides.

Appropriately, in the given case the Board of Directors of XYZ Ltd. may delegate the powers relating to transfer of securities only when the Articles of Association allows delegation of the powers to any of the directors of the company or any person not in employment of the company.

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Q. 1. Charjee Biotech Private Limited is a two year old company. The Board of Directors of the company wants to contribute 2.8% of its average net profits of the last years to the Prime Minister's National Relief Fund. Referring to the provisions of the Companies Act, 2013, advise the board. **[June. 2017]**

Ans. Section 181 of the companies Act, 2013 states that the Board of directors of a company may contribute to bona fide charitable and other funds, provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent of its average net profits for the three immediately preceding financial years.

In the given case, Charjee biotech Private Limited wants to contribute 2.8% of its net profits of the last two years, as it has been in existence for the last two years only.

Prime Minister's national Relief Fund is a bona fide charitable fund. As the rate of contribution does not exceed 5% of the average net profits, prior permission of members in general meeting is not required. A resolution passed by the Board of Directors shall suffice for making the said contribution.

Q. 2. Serious Ltd. is having three factories in Chennai. The company wants to sell one of the factory. Can the company sell its factory? Further, assuming that the company has also borrowed credit facilities from the bank, explain the statutory provisions under the companies Act, 2013. **[June. 2018]**

Ans. According to sub-section (1)(a) of section 180 of Company Act, 2013, the Board of Directors of a company may sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertaking only, with the consent of the company by a special resolution.

Accordingly the company may sell any of its factories with the consent of the company by a special resolution.

Where the company has or edits facility on charge on such undertaking the company may be required to obtain a no-objection-certificate from the bank as per contractual obligation and shall modify the charge accordingly.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



4. Descriptive Questions:-

- (c) The board of directors of a company met thrice in the year 2012 and the fourth meeting was not held for want of quorum. As a company Secretary, examine the provisions of the Companies Act, 2013 and decide with reasons whether the company has complied with the requirement of minimum number of meetings to be held in a calendar year or violated the requirement thereof?
- (d) "The power to borrow includes the power to give security" comment.
5. State the provisions of the Companies Act, 2013 relating to loans to directors.
6. Can the Board of directors of a company delegate any of its powers to others? Discuss.



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

5

TRANSPARENCY AND DISCLOSURES

Covering-

- Disclosures under Section 134 of the Companies Act, 2013
- Other disclosures under the Companies Act, 2013
- Disclosures under various rules made under the companies act
- Disclosures pursuant to the listing agreement of stock exchanges
- Signing and dating of the board's report
- Self Test Questions
 - From Past CS Exams
 - From ICSI Module

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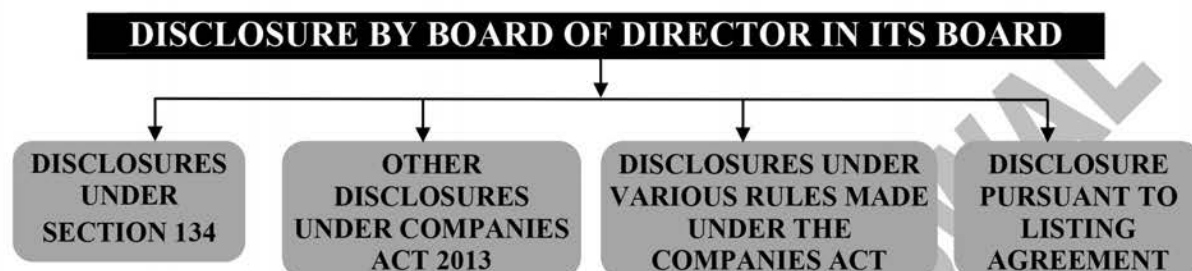


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TRANSPARENCY AND DISCLOSURES

Attaching Board's report to every balance sheet is mandatory. Apart from giving a complete review of performance of company for the year under report, it highlights various disclosures having impact on business. It also highlights the future strategy of the company.

The matters to be included in Board's Report should be under the provisions of Companies Act, Listing Agreements, SEBI Guidelines and RBI directions.



DISCLOSURES UNDER SECTION 134 OF THE COMPANIES ACT, 2013

Section 134(3) Provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

- (a) the extract of the annual return as provided under *Section 92(3)*.
- (b) number of meetings of the Board;
- (c) Directors' Responsibility Statement
- (d) a statement on declaration given by independent directors under section 149(6)
- (e) company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director.
- (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
 - (i) by the auditor in his report; and
 - (ii) by the company secretary in practice in his secretarial audit report.
- (g) particulars of loans, guarantees or investments under section 186.
- (h) particulars of contracts or arrangements with related parties referred.
- (i) the state of the company's affairs.
- (j) the amounts, if any, which it proposes to carry to any reserves.
- (k) the amount, if any, which it recommends should be paid by way of dividend.
- (l) material changes and commitments, if any, affecting the financial position of the company.
- (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed.
- (n) a statement indicating development and implementation of a risk management policy.
- (o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.
- (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;
- (q) such other matters as may be prescribed.

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The Directors' Responsibility Statement

Section 134(5) referred to in clause (c) section 134(3) shall state that—	(a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
	(b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
	(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
	(d) the directors had prepared the annual accounts on a going concern basis; and
	(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
	(f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

OTHER DISCLOSURES UNDER THE COMPANIES ACT, 2013

- Appointment of independent director
- Disclosure about the composition of audit committee under section 177(8) and also the recommendation of audit committee
- Details of establishment of vigil mechanism [section 177(9)]
- Policies by the nomination and remuneration committee
- Secretarial report given by a company secretary in practice.

DISCLOSURES UNDER VARIOUS RULES MADE UNDER THE COMPANIES ACT

I. Matters to be included in Board's report [Rule 8 of Companies (Accounts) Rules 2014].-

As per Rule 8 of Companies(Accounts)Rules 2014 following matters to be disclose in the Board's Report:-

- The Board's Report shall be prepared based on the stand alone financial statements of the company and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.
- 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**.
- The report of the Board shall contain the following information and details, namely:-
 - Conservation of energy-*
 - Technology absorption-*
 - Foreign exchange earnings and Outgo-*
- Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

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- (5) In addition to the information and details specified in sub-rule (4), the report of the Board shall also contain –
- (i) the financial summary or highlights;
 - (ii) the change in the nature of business, if any;
 - (iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;
 - (iv) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;
 - (v) the details relating to deposits.
 - (vi) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;
 - (vii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

II. Disclosure under Companies (Share Capital and Debenture) Rules, 2014

- (a) Disclosure in pursuit to issue of shares with Differential rights
- (b) Disclosure in pursuit to Issue of Sweat Equity Shares
- (c) Disclosure pursuant to Employee Stock Option and Employee Stock Purchase Schemes

III. Rule 5 of Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014:-

Companies (Appointment & Remuneration) Rules, 2014 made under Chapter IV provides the following disclosure by the listed companies in the Board's Report:-

- (i) the ratio of the remuneration of each director
- (ii) the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;
- (iii) the number of permanent employees on the rolls of company;
- (iv) comparison of the remuneration of the Key Managerial Personnel against the performance of the company;
- (v) variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial year and previous financial year;
- (vi) average percentile increase already made in the salaries of employees other than the managerial personnel;
- (i) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year; and
- (ii) the **names of the top ten employees** in terms of remuneration drawn and the name of **every employee, who-**
 - (i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than **one crore and two lakh rupees**;
 - (ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than **eight lakh and fifty thousand rupees per month**;
 - (iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, **is in excess of that drawn by the managing director or whole-time director or manager** and holds by himself or along with his spouse and dependent children, not less than **two percent of the equity shares of the company.**"

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IV. Rule 8 of Companies (Corporate Social Responsibility) Rules, 2014

Section 135(2) provides that the Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

The Board's Report of a company under these rules pertaining to a financial year commencing on or after 1st day of April, 2014 shall include an Annual Report on CSR

DISCLOSURES PURSUANT TO THE LISTING AGREEMENT OF STOCK EXCHANGES

As per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Annual Report of the company shall have the following disclosures in addition to the disclosures specified in Companies Act, 2013:-

I. Management Discussion and Analysis Report

As a part of the directors' report or as an addition thereto, a Management Discussion and Analysis Report (MDAR) should form part of the Annual Report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters with in the limits set by the company's competitive position:

1. Industry structure and developments.
2. Opportunities and Threats.
3. Segment-wise or product-wise performance.
4. Outlook.
5. Risks and concerns.
6. Internal control systems and their adequacy.
7. Discussion on financial performance with respect to operational performance.
8. Material developments in Human Resources / Industrial Relations front, including number of people employed.

II. Corporate Governance Report

There shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted.

III. Code of Conduct

The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company. The clause further provides that all Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO. Unless it is reported elsewhere, this information should be furnished in Board's Report.

IV. Business Responsibility Report

For the top five hundred listed entities based on market capitalization (calculated as on March 31 of every financial year), Business Responsibility Report describing the initiatives taken by them from an environmental, social and governance perspective.

SIGNING AND DATING OF THE BOARD'S REPORT

The Board's report and any annexures thereto under section 134(3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, 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.

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Q. 1. During the financial year 2016-17, the Board of Directors of CARE Automation Services Limited has issued shares to employees under Employees Stock Option Scheme. Ms. Excellent has recently joined the Board of the company and asks you, the Secretary of the company, as to what details are to be disclosed in the Board's Report for the year ending 31st March, 2017 in this regard. Advise her. **[June. 2017]**

Ans. Pursuant to rule 1299) of the Companies (share capital and debentures) Rules, 2014, the Board of directors, shall, inter alia, disclose in the Directors' report for the year, the following details of the Employees Stock Option scheme;

- (a) Option granted;
- (b) Option vested;
- (c) Option exercised;
- (d) The total number of shares arising as a result of exercise of option;
- (e) Option lapsed
- (f) The exercise price;
- (g) Variation of terms of Option;
- (h) Money realized by the exercise of Option;
- (i) Total number of Option in force;
- (j) Employee wise detail of Option granted to-
 - (i) Key managerial personnel;
 - (ii) Any other employee who receives a grant of Option in any one year of value amounting to 5% or more of Option granted during that year.

Identified employees who were granted Option, during any year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant.

Mr. Excellent, who has recently joined the Board of CARE Automation services Limited has to be informed on the above lines based on provisions of the Companies Act, 2013 read with Companies (Share Capital and Debentures) rules, 2014.

Q. 2. Phosphate Ltd. has suffered a major loss of ₹100 Crore in May, 2018 on the dealing of commodity exchange. The annual accounts and Board's report for the year 2017-18 are under finalization. The chief Financial officer (CFO) of the company does not want to disclose this loss in the Board's report for year 2017-18 because this loss does not pertain to said financial year. Is the view of CFO correct? The Board of Directors seeks your advice in this matter. **[June. 2018]**

Ans. According to section 134(3)(k) all material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report should form part of the Board's Report.

The Directors' Report shall, therefore, material changes pertaining to post-financial statement events impacting the operations and performance of the Company. Thus, in present case view of chief Financial Officer is included in the Board's Report for the year 2017-18.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Short Notes:-----
- (a) Directors' Responsibility Statement
 - (b) Signing of the Board's report.

FROM ICSI MODULE



Answer the following:

1. State the disclosures in Board's Report under listing agreement.
2. State the provisions for signing and dating of Board's Report.
3. What is the need and scope of Compliance Certificate.
4. Discuss Management Discussion Analysis Report.
5. Enumerate the liability for mis-statement.



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

6

APPOINTMENT & REMUNERATION OF KEY MANAGERIAL PERSONNEL

Covering-

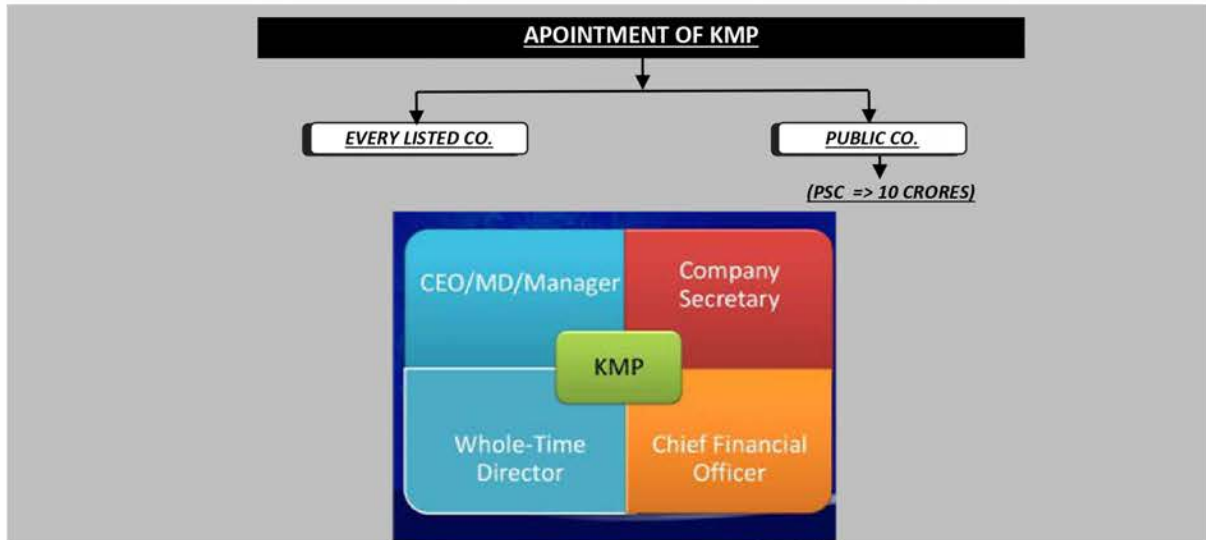
- Appointment of key managerial personnel
- Key managerial personnel (KMP)- definition
- Appointment of managing director, whole-time director or manager
- Remuneration to managerial personnel
- Managerial remuneration under “schedule v (part ii)”
- Self Test Questions
 - From Past CS Exams
 - From ICSI Module

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APPOINTMENT & REMUNERATION OF KEY MANAGERIAL PERSONNEL

The executive management of a company is responsible for the day to day management of a company. The companies Act, 2013 has used the term Key Managerial Personnel (KMP) to define the **executive management**, the key managerial personnel are the **point of first contact between the company and its stakeholders**. While the Board of Directors are responsible for providing the oversight, it is the key managerial personnel who are responsible for not just laying down the strategies as well as its implementation.

Chapter XIII of the Companies Act, 2013 read with **Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014** deal with legal and procedural aspects of appointment of key Managerial Personnel including Managing Director, Whole-time Director or Manager, managerial remuneration, secretarial audit, etc.

APPOINTMENT OF KEY MANAGERIAL PERSONNEL

Section 203 of the Companies Act, 2013 read with Rule 8 mandates the appointment of Key Managerial Personnel and makes it obligatory for a **listed company and every other public company having a paid-up share capital of rupees ten crores or more, to appoint following whole-time key managerial personnel:**

- (i) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
- (ii) company secretary; **and**
- (iii) Chief Financial Officer:

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

KEY MANAGERIAL PERSONNEL (KMP) – DEFINITION

According to Section 2 (51) “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;
	(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
	(vi) Such other officer as may be prescribed.

1. CHIEF EXECUTIVE OFFICER

According to **Section 2(18)** “Chief Executive Officer” means an officer of a company, who has been designated as such by it.

2. MANAGING DIRECTOR

According to **Section 2(54)** ‘Managing Director’ means a director who is entrusted with substantial powers of management. The substantial powers of management can be entrusted to a managing director of a company in any of the following four ways:-

- (i) By way of a an agreement with the company;
- (ii) By board resolution;
- (iii) By general meeting resolutions; and
- (iv) By articles of association.

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The expression Managing Director shall also include a director occupying the position of a managing director, by whatever name called. For instance, president, Chief Executive Officer, Chief Operating Officer, etc. in the case of multinational companies shall be considered as the managing director for the purpose of companies Act, although they are not designed as such.

A person has to be a director before he can be appointed managing director. A company may have more than one managing director.

3. WHOLE-TIME DIRECTOR

According to **Section 2 (94)** a “whole-time director” includes a director in the whole-time employment of a company. A whole-time director is in **whole-time employment of a company**. Whole-time directors devote **their entire time and attention to the business and affairs of the company**. They cannot accept the office of whole-time director in any other company, They may however, accept ordinary directorships within the limits prescribed by Section 165 of the companies Act, 2013. They are designated by various names viz., Executive director, technical Director, finance Director, Whole—time director, etc.

4. MANAGER

According to **Section 2(53)** “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, and whether under a contract of service or not.

Further, manager of a company need not be a director of that company. He may be a director as well as the manager or simply the manager of a company. Since a manager has the management of the whole of the affairs of a company, a company can have only one manager at a time.

However, according to provisions of **section 196**, **a company shall not have both Managing Director and Manager at the same time.**

5. COMPANY SECRETARY

According to **Section 2(24)** “Secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.

6. CHIEF FINANCIAL OFFICER

According to **Section 2(19)** “Chief Financial Officer” means a person appointed as the Chief Financial Officer of a company.

APPOINTMENT OF MANAGING DIRECTOR, WHOLE-TIME DIRECTOR OR MANAGER

SECTION 196

- 1.** No company shall appoint or employ at the same time a managing director and a manager.
- 2.** No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding **five years** at a time:-

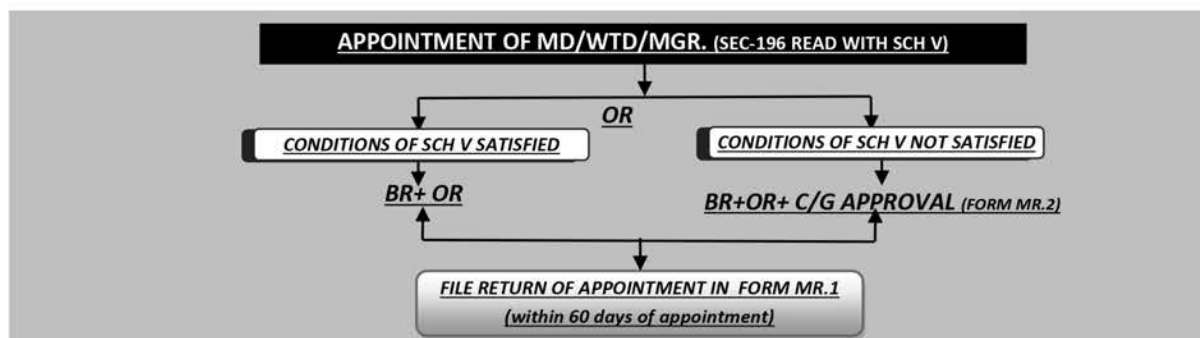
Provided that no re-appointment shall be made earlier than one year before the expiry of his terms.

- 3.** No Company shall appoint or continue the employment of any person as managing director, whole-time director or manager who :-

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- (a) Is below the age of twenty-one years or has attained the age of seventy years.

Provided that appointment of a person who has attained the age of seventy years may be made by passing a **special resolution** in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

“Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made”.

- (b) Is an undischarged insolvent or has at any time been adjudged as an insolvent;
- (c) Has at any time suspended payment to his creditors or makes, or has at any time made, a compositions with them; or
- (d) Has at any time been convicted by a court of an offence and sentenced for a period of more than six months.
4. Subject to provisions of **section 197 and Schedule V**, a managing director, whole- time director or manager shall be appointed by the terms and conditions of such appointment and remuneration payable be approved by the **Board of Directors at a meeting** which shall be subject to approval by a resolutions at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule

Provided that a notice convening Board or general meeting for considering such appointment shall included the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointment, if any:

Provided further that a return in the prescribed form shall be filed within **sixty days** of such appointment with the Registrar.

5. Subject to the provisions of this Act, where an appointment of a managing director, whole- time director or manager is **not approved by the company at a general meeting**, any act done by him before such approval **shall not be deemed to be invalid**.

However, section 196(4) and 196(5) doesn't apply on private companies.

Form No. MR.1

According to **rule 3 of companies (appointment & remuneration of managerial personnel) rules, 2014**, a company shall file a return of appointment of Managing Director, whole Time Director or Manager within **sixty days of the appointment**, with the Registrar in **Form No. MR.1** along with such fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

REMUNERATION TO MANAGERIAL PERSONNEL

Overall managerial remuneration

Section 197 of the Companies Act, 2013 prescribed the maximum ceiling for payment of managerial remuneration by a public company to its managing director whole-time director and manager which shall not exceed **11% of the net profit** of the company in that financial year computed in accordance with section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

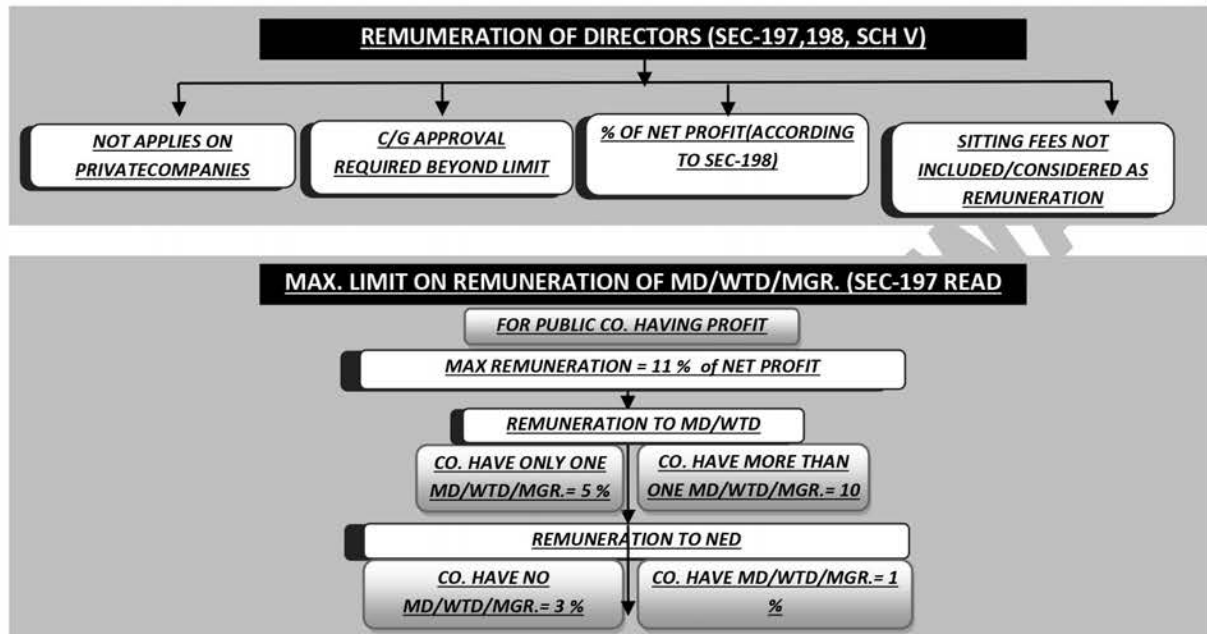
Further, the company in general meeting may, authorise the payment of remuneration exceeding 11% of the net profits of the company, subject to the provisions of **Schedule V**.

The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

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Remuneration payable to exclusive of sitting fees

The percentages aforesaid shall be exclusive of any fees payable to directors for attending the meeting of the board/committees or for such other purposes **as decided by the board.**

REMUNERTION BY A COMPANY HAVING NO PROFIT OR INADEQUATE PROFIT

If, in any financial year, a company has no profits or its profits are inadequate, the company **shall not** pay to its directors, including managing or whole time director or manager, any **Remuneration to Managing Director/whole time Director/Manager**

The remuneration payable to any one managing director or whole- time director or manager shall not exceed **5% of the net profits** of the company and if there are more than one such director remuneration shall not exceed **10% of the net profits** to all such directors and manager taken together.

Remuneration to other directors

Except with the approval of the company in general meeting "by a special resolution", the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

- (a) **1% of the net profits** of the company, if there is a managing or whole-time director or manager;
- (b) **3% of the net profits** in any other case.

"Provided that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."; exclusive of any fees payable to directors **except** in accordance with the provisions of Schedule V

Remuneration to Directors in other Capacity [Section 197(4)]

The remuneration payable to the directors including managing or whole-time director or manager shall be inclusive of the remuneration payable for the services rendered by him in any other capacity except the following:-

- (a) the services rendered are of a professional nature; and
- (b) in the opinion of the Nomination and Remuneration Committee (if applicable) or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

SITTING FEES TO DIRECTORS FOR ATTENDING THE MEETINGS **SECTION 197(5)**

A director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose **as may be decided by the Board.** Provided that the amount of such fees shall not exceed the amount as may be prescribed.

The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which **shall not exceed the sum of rupees 1 lakh** per meeting of the Board or committee thereof.

The Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

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Consequences of Remuneration Drawn in Excess of Prescribed Limit

SECTION 197(9)

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

The company shall not waive the recovery of any sum refundable to it under sub-section 9 mentioned above, unless approved by the company by special resolution within two years from the date the sum becomes refundable. **[Section 197 (10)]**

Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.";

Insurance Premium not part of Remuneration

Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary 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, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel.

However, if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration. **[Section 197(13)]**

However section 197 doesn't apply to govt. Companies.

MANAGERIAL REMUNERATION UNDER "SCHEDULE V (PART II)"

Section I : Remuneration by Companies having Profits

A company having profits in a financial year may pay remuneration to its managerial persons in accordance with Section 197.

Section II: Remuneration by Companies having no profits or inadequate profits without Central Government approval

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it, may, without Central Government approval, pay remuneration to the managerial person **not exceeding the higher of the limits under (A) and (B) below:**

(A):

EFFECTIVE CAPITAL OF COMPANY	MAX YEARLY REMUNERATION
Negative or less than 5 Crore	60 Lakhs
5 Crore and above but less than 100 Crore	84 Lakhs
100 Crore and above but less than 250 Crore	120 Lakhs
250 Crore and above	120 Lakhs plus 0.01% of the effective capital in excess of ₹ 250 Crore

If a special resolution is passed by the shareholders, the above limits shall be doubled.

Explanation:- It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

(B): In the case of managerial person who was not a shareholder, employee or a Director of the company at any time during the **two years** prior to his appointment as managerial person- **2.5% of the current relevant profit.**

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If a special resolution is passed by the shareholders, this limit shall be doubled.

Remuneration in Special Circumstances (Section III)

Section III of Schedule V provides special circumstances under which companies having no profit or inadequate profit can pay remuneration to its managerial personnel in excess of amount provided in Section II of Schedule V above, without Central Government's approval.

" CASE LAW–CASE BASED " WRITING PRACTICE



Q. 1. 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.

[Dec. 2018; 4 Marks]

Ans. Under section 197(13) of Companies Act, 2013, where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary 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, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel.

Further it has been provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration. In accordance with above express provision **in the given case** the company can pay the insurance premium of ₹15.00 lakhs for 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, and such shall not be treated as remuneration.

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Q. 1. Mrs. Beautiful, aged 40 years, is the Managing Director of Beauty Care Products Limited. She has received contribution to superannuation fund and leave encashment during her tenure with the company during the financial year ending 31st March, 2017. The Manager(Accounts) of the company is not very confident, if these perquisites are to be included in the computation of ceiling on remuneration specified in the Companies Act, 2013. Referring to the provisions of the Act, advise the Manager (Accounts). **[June. 2017]**

Ans. The matter given in the question needs to be solved in the light of the provisions as contained in section IV of Part II to Schedule V of the Companies Act, 2013. A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III:-

- (a) Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961;
- (b) Gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
- (c) Encashment of leave at the end of the tenure.

Therefore, applying the provisions as stated above, contribution to superannuation fund received by Mrs. Beautiful, Managing Director shall not be included in the computation of managerial remuneration ceiling. But she has received leave encashment during the tenure of her service and not at the end of her tenure and thus it should be included in the calculation of ceiling of managerial remuneration under the provisions of the Companies Act, 2013.

The Manager (Accounts) is accordingly advised.

Q. 2. Sand Ltd. wants to appoint River as Managing Director of the company for a period of three years with effect from 1st August, 2018. River has given a written statement to the company that he has paid rupees one thousand to the prescribed authorities for a conviction of an offence under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on 30th June 2018. State whether River can be appointed as managing Director of the company under the Companies Act, 2013. **[June. 2018]**

Ans. According to Schedule V of Companies Act, 2013 no person shall be eligible for appointment as a managing or whole-time director or a manager of a company, if he has been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

In the present case Mr. River has only paid fine of ₹1000 to the prescribed authorities for a conviction of an offence under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Since it is only conviction and he was not detained, he can be appointed as Managing Director of the Company.

Q. 3. Distinguish between Chief Executive Officer and Redemption of debentured. **[June. 2018]**

Ans. Section 2 (18) of Companies Act, 2013 has defined "Chief Executive officer" so as to mean an officer of a company, who has been designated as such by it.

Section 2(54) of Companies Act, 2013, "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 occupying the position of managing director by whatever name called.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. **Short Notes:-----**
 - (a) Statutory duties of a Company Secretary under the Companies Act, 2013.
 - (b) Managerial remuneration
2. **Kapil is branch head of a limited company. The company proposes to elevate Kapil to the Board. Enumerate the steps involved in such a proposal.**

Ans. Kapil, the branch head is apparently a whole-time employee of the company. When the company proposes to appoint him as a director, he will be in the position of a whole time director of the company and the appointment would require the approval of the Central Government under Section 196 of the companies Act, 2013 if it is not in accordance with Schedule V to the Act. In that case, an application seeking approval to the appointment of whole-time director shall be made to the Central Government in e-Form No. Mr -2, within a period of 60 days of such appointment.

However, approval of the Central Government is not necessary if the appointment is made in accordance with the conditions specified in schedule V and a return in e-Form No. Mr -1 filed with Registrar within 60 days from the date of such appointment.

FROM ICSI MODULE



Answer the following:

1. Explain the term Key Managerial Personnel under the Companies Act, 2013. Is it necessary for every company to appoint a Key Managerial Personnel?
2. State the provisions of appointing a Key Managerial Personnel According to Companies Act 2013.
3. What are the provisions on punishment for the contravention of Section 203 of the companies Act 2013?



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

7

GENERAL MEETINGS

**EXPECTED
MARKS COVERAGE
(10 to 20)**

Covering-

- Section Chart
- ABC Analysis
- Meeting – Meaning
- Annual General Meeting (AGM)
- Extra-Ordinary General Meeting (EGM)
- Requisites of Valid Meeting
- Notice of Meeting
- Quorum of General Meeting
- Chairman of Meeting
- Appointment of Chairman
- Proxies
- Methods of Ascertaining the Sense of Meeting
- Adjournment of Meeting
- Postponement of Meeting
- Dissolution
- Procedure for passing the Resolution by Postal Ballot
- Resolutions
- Distinguish Between Motion and Resolution
- Resolution Requiring Special Notice
- Registration of Creation Resolutions and Agreements
- Minutes of Proceeding of Meetings
- Inspection of Minute Book of General Meetings
- Amendment to a Government Company; Dated 5th June, 2015
- Amendment to a Private Company; Dated 5th June, 2015
- Amendment to a Section 8 Company; Dated 5th June, 2015
- Self Test Questions
 - From Past CS Exam
 - From ICSI Module

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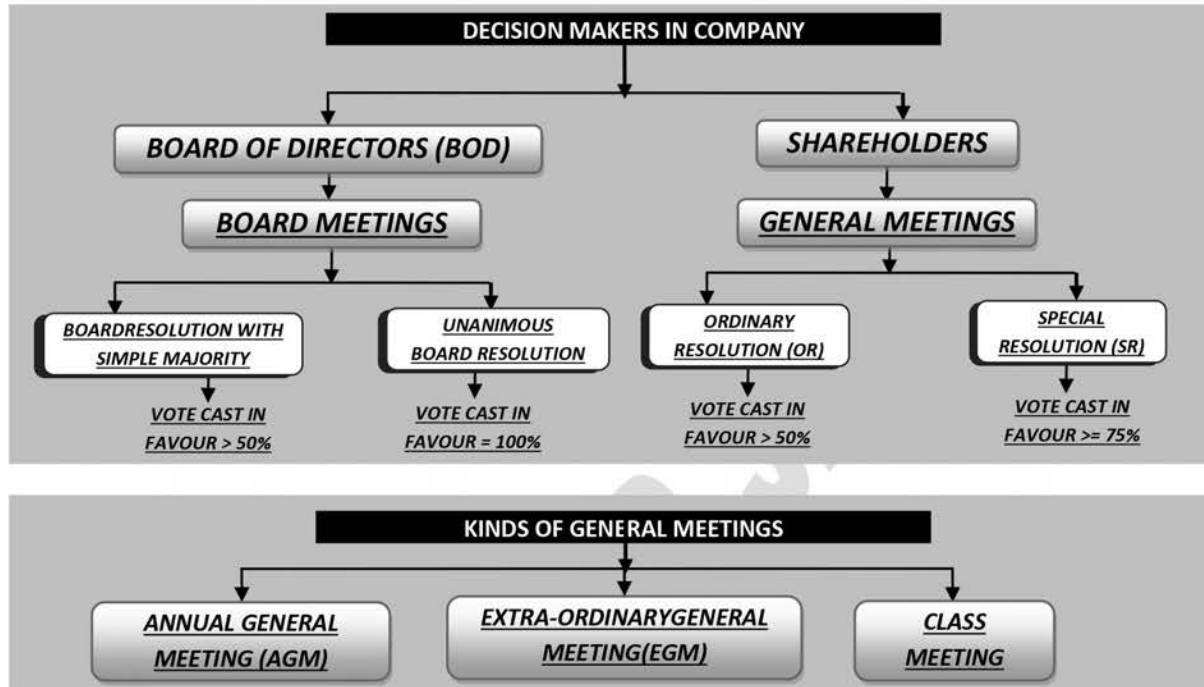
SECTION CHART

Section	Short Description
Section 96	Registers, etc., to be evidence
Section 97	Power of Tribunal to call annual general meeting
Section 98	Power of Tribunal to call meeting of members, etc.
Section 99	Punishment for default in complying with provisions of sections 96 to 98
Section 100	Calling of extraordinary general meeting
Section 101	Notice of meeting
Section 102	Statement to be annexed to notice
Section 103	Quorum for meetings
Section 104	Chairman of meetings
Section 105	Proxies
Section 106	Restriction on voting rights
Section 107	Voting by show of hands
Section 108	Voting through electronic means
Section 109	Demand for poll
Section 110	Postal ballot
Section 111	Circulation of members' resolution
Section 112	Representation of President and Governors in meetings
Section 113	Representation of corporations at meeting of companies and of creditors
Section 114	Ordinary and Special Resolutions
Section 115	Resolutions requiring special notice
Section 116	Resolutions passed at adjourned meeting
Section 117	Resolutions and agreements to be filed
Section 118	Minutes of proceedings of general meeting of Board of Directors and other meeting and resolutions passed by postal ballot
Section 119	Inspection of minute-books of general meeting
Section 121	Report on annual general meeting

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GENERAL MEETINGS

ABC Analysis (10S) -Exam Point of view)

A	1. Notice of Meeting 2. Quorum of General Meeting 3. Chairman of Meeting
B	4. Proxies 5. Methods of Ascertaining the Sense of Meeting
C	6. Resolution Requiring Special Notice. 7. Registration of Creation Resolutions and Agreements

MEETING-MEANING

A Meeting has been defined as *“coming together of two or more persons face to face so as to be in each other’s presence or company”*. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures.

The decision making powers of a company are vested in the Members and the Directors and they exercise their respective powers through Resolutions passed by them.

A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. There must be at least two persons to constitute a meeting. Therefore, one shareholder usually cannot constitute a company meeting even if he holds proxies for other shareholders. However, in certain exceptional circumstances, even one person may constitute a meeting.

Company meeting must be convened and held in perfect compliance with the various provisions of the Companies Act, 2013 and the rules framed there under.

General meeting means meeting of shareholders/members.

1. ANNUAL GENERAL MEETING (AGM)

SECTION 96, 97, 99 & 121

An annual general meeting is an important meeting for safeguarding the shareholders of a company. Since the ultimate control of the company should rest in the hands of the shareholders, it is desirable, and necessary that they should meet at least once every year to review the working of the company during the previous year.

Every company, other than One Person Company (OPC), shall, in each year hold (in addition to any other meetings) a general meeting as its Annual General Meeting.

Holding of an Annual General Meeting, in every calendar year (January to December) is a statutory requirement. The proper authority to call Annual General Meeting is the Board of Directors.

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TIME PERIOD FOR HOLDING AGM (SECTION 96)

ONE AGM IN EVERY CALENDAR YEAR

1ST AGM = WITHIN 9 MONTHS FROM THE DATE OF CLOSURE OF FIN. YEAR

2ND OR SUSEQUENT AGM = WITHIN 9 MONTHS FROM THE DATE OF CLOSURE OF FIN. YEAR

2ND OR SUSEQUENT AGM = WITHIN 15 MONTHS FROM THE DATE OF PRECEEDING AGM

MAX. 3 MTH EXTN. BY ROC

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PERIOD OF HOLDING AN ANNUAL GENERAL MEETING

1. First Annual General Meeting

The first annual general meeting shall be held within a period of **nine months from the closing of first financial year**. If a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.

This Period for holding the first Annual General Meeting cannot be extended by any authority under any circumstances.

2. Subsequent Annual General Meeting

- (a) A company is required to hold an Annual General Meeting in every calendar year.
- (b) The time lag between two successive Annual General Meetings shall not exceed **15 months**.
- (c) Subsequent annual general meeting shall be held within a period of **six months of closure of relevant financial year**.

However, the **Registrar** may, for any special reason shown, grant an extension of time for holding the subsequent AGM by a period **not exceeding 3 months**. While granting the extension, ROC can ignore the requirement of holding an AGM in every calendar year. However in such a case, AGM held in the next year shall be deemed to the AGM of the previous year and for the next year, one more AGM will be required to be held.

An Annual General Meeting must be held even if the company did not function during the year.

The annual general meeting must be called, **whether or not the annual accounts are ready for consideration at the meeting**. "There is a clear statutory duty on the directors to call the meeting whether the accounts, the consideration of which is only one of the matters to be dealt with at an annual general meeting are ready or not".

Where the police has seized the account books of a company, the company is exempted from holding the Annual General Meeting. (In Re. Asia Udyog Pvt. Ltd.)

A meeting held in current year as an adjourned meeting of the A.G.M. of the previous year cannot be considered as the A.G.M for the current year. There should be one meeting per year and as many meetings as there are years. (Sh. Meenakshi Mills Co. Ltd, v. Asstt. Registrar of Companies)

If, at the time the A.G.M. is due to be held, there is only one shareholder (the other having died), no offence is committed when the annual general meeting is not held. (State of Kerala v. West Coast Planners Agencies Pvt. Ltd.)

DAY, TIME AND PLACE FOR HOLDING AN ANNUAL GENERAL MEETING

1. DAY

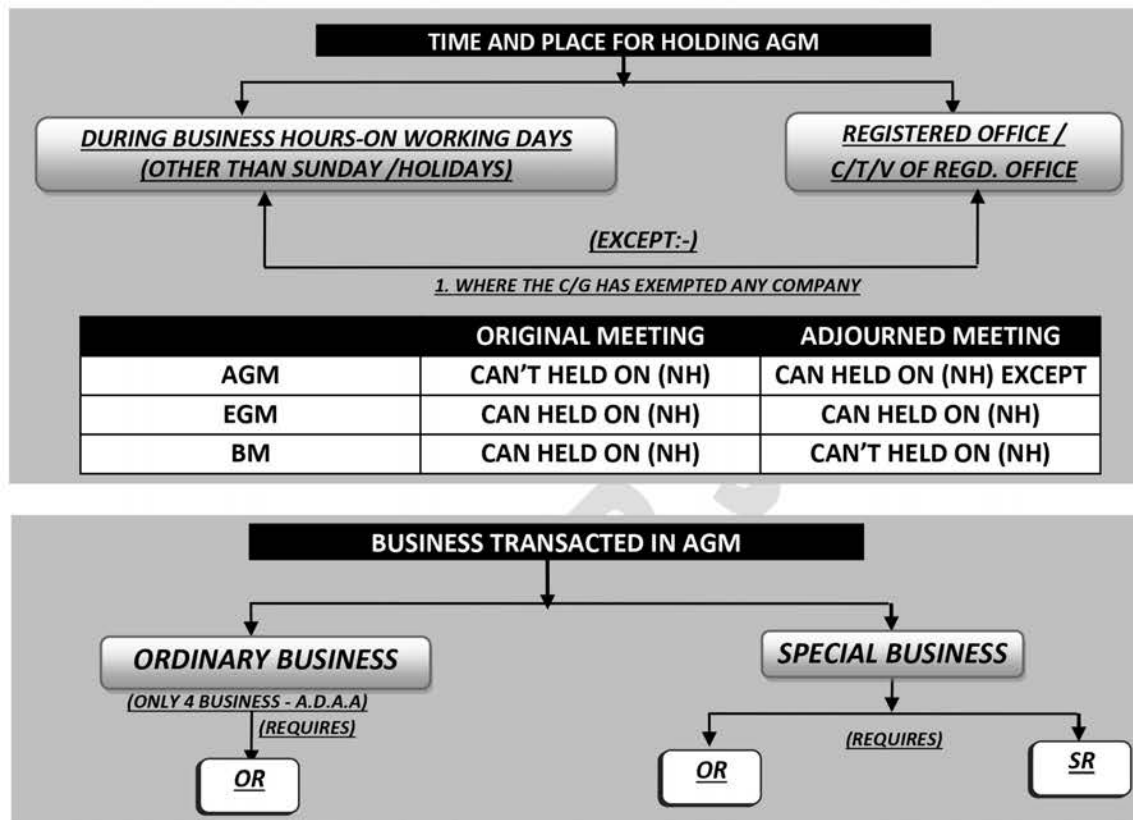
Every Annual General Meeting shall be called on a day, **which is not a National Holiday**. National Holiday means and includes a day declared as National Holiday by the Central Government.

However, Central Government, may exempt any company from the aforesaid provisions subject to such conditions as it may impose.

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Where the Central Government declares a day to be a National Holiday after the company has issued the notice convening the meeting, it shall not be deemed to be a national holiday in relation to that meeting.

2. TIME

Every Annual General Meeting shall be called at a time during the business hours i.e., between 9 a.m. and 6 p.m. It may be noted that Annual General Meeting convened during business hours may continue even after business hours.

However, the Central Government may exempt any company from the aforesaid provisions subject to such conditions as it may impose.

3. PLACE

Every Annual General Meeting shall be held either at the **registered office** of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:

*Provided further that in case of govt. Company every Annual General Meeting shall be held either at the **registered office** of the company or at some other place as the **central govt. may approve in this behalf**.*

However, the Central Government may exempt any company from the aforesaid provisions subject to such conditions as it may impose.

BUSINESS TRANSACTED AT AN ANNUAL GENERAL MEETING

Companies Act, 2013 lays down that all business to be transacted at an annual general meeting shall be deemed Special Business with the exception of the **Ordinary Business**, relating to :-

- (1) the consideration of the accounts, balance sheet and the reports of the Board of directors and auditors;
- (2) the declaration of dividend;
- (3) the appointment of directors in the place of those retiring; and
- (4) the appointment of, and the fixing of remuneration of the auditors.

At the annual general meeting, all other business is special business.

So, **Both Ordinary Business and Special Business can be transacted at an Annual General Meeting**. At an extraordinary general meeting, every business is special business.

REPORT ON ANNUAL GENERAL MEETING

SECTION 121

Every **listed public company** to prepare in the prescribed manner, a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provision of the Act and the Rules made there under. A copy of this report is to be filed with the Registrar within 30 days of the conclusion of the AGM.

DEFAULT IN HOLDING ANNUAL GENERAL MEETING

SECTION 97,99

If a company default in holding an Annual General Meeting, the following are two consequences:-

1. the National Company Law Tribunal (NCLT) may direct the calling of an A.G.M; provided any member of the company approach to it in this regard. The NCLT may even direct that one member of the company presents in person or by proxy shall be deemed to constitute the meeting.

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2. the failure to call this meeting is an offence punishable with fine, which may extend to ₹1,00,000/-, on the company and every-officer of the company, who is in default. In case of continuing default, there can be a further fine, which may extend to ₹5,000/- for every day of default.

2. EXTRA-ORDINARY GENERAL MEETING [EGM]

SECTION 98, 100

Regulation 42 of Table F provides that **all general meetings, other than annual general meetings, shall be called as extra-ordinary general meetings.**

At the Extraordinary General Meeting, only special business which arises between two Annual General Meetings being urgent and cannot be deferred to the next Annual General Meeting, is transacted.

All business which can be transacted at an E.G.M. shall be deemed special.

DAY, TIME AND PLACE FOR HOLDING AN EGM

An Extraordinary General Meeting may be held outside business hours on a public holiday, and at place other than at the registered office of the company or which is not within the same city, town or village.

"Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India."

WHO MAY CALL EXTRAORDINARY GENERAL MEETING

The E.G.M. can be convened by anyone of the following :-	(a) Board of Directors;
	(b) Any director or any two members;
	(c) Requisitionists;
	(d) National Company Law Tribunal (NCLT).

An Extraordinary General Meeting may be held outside business hours on a public holiday, and at place other than at the registered office of the company or which is not within the same city, town or village.

(a) CALLING OF E.G.M. BY BOARD OF DIRECTORS

(Section 100(1) and Regulation 43(i) of Table F)

The Board of Directors may, whenever it thinks fit, call an extra-ordinary general meeting. For this purpose, a resolution of the Board is required.

If the managing director, manager, secretary or other officer calls a meeting without the authority of the Board of Directors, it will not be effectual unless the Board ratifies the convening of the general meeting before it is held. (In Re. Haycraft Gold Reduction and Mining Co.)

(b) CALLING OF E.G.M. BY ANY DIRECTOR OR ANY TWO MEMBERS

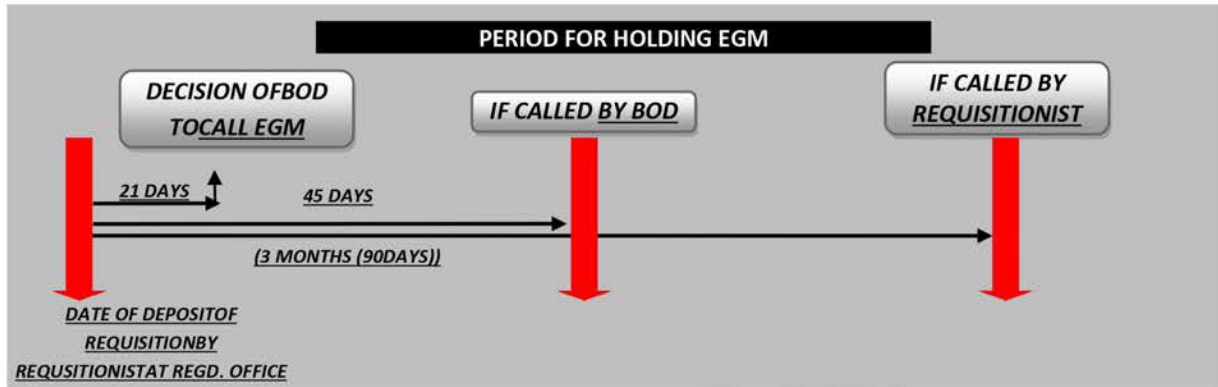
(Regulation 43(ii) of Table F)

If at any time, there are not within India directors capable of acting who are sufficient in number to form a quorum, any one director or any two members of the company may call an extra-ordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

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(c) **CALLING OF E.G.M. ON REQUISITION**
(Section 100)

The demand of members to convene a meeting is called requisition. The requisition must be in plenty. It shall set out the matters for the consideration of which the meeting is to be called. It shall be signed by the requisitionists. It must be deposited at the registered office of the company.

The number of members entitled to requisition a meeting in regard to <u>any</u> matter shall be:-	(i) In the case of a company having a share capital, members holding at least one - tenth of such paid - up capital of the company which carries a right of voting in regard to that matter;
	(ii) In the case of a company not having a share capital, members holding at least one - tenth of total voting power of all the members who have a right to vote in regard to that matter.

Period

The Board of Directors shall, on receipt of requisition, immediately proceed to call E.G.M. within 21 days from the date of the deposit of requisition, on a date, which shall not be later than **45 days of the date of deposit of requisition.**

The BOD shall be said to have failed in calling the <u>meeting</u> if :-	(i) it does not call the meeting within 21 days of the deposit of requisition;
	(ii) it calls the meeting on a day which is later than 45 days from the date of deposit of requisition; or
	(iii) it convenes a meeting to transact only a part of the business specified in the requisition.

It has been held in ***(A.D. Chaudhary v. Mysore Paper Mills Ltd.)***, that the Board of directors is right in refusing to call and hold an extraordinary general meeting on the requisition of members where an order of **injunction restraining the company from holding any meeting is in force.**

CALLING OF EGM BY REQUISITIONISTS THEMSELVES

Where the Board fails to call a meeting, the meeting may be called by the **requisitionists themselves** within a period of **three months from the date of the deposit of requisition.** A meeting called by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

However, requisitionists shall convene the meeting at the Registered Office of the Company or at some other place within the city, town or village in which the registered office of the company is situated. Further, the EGM shall be held on a working day.

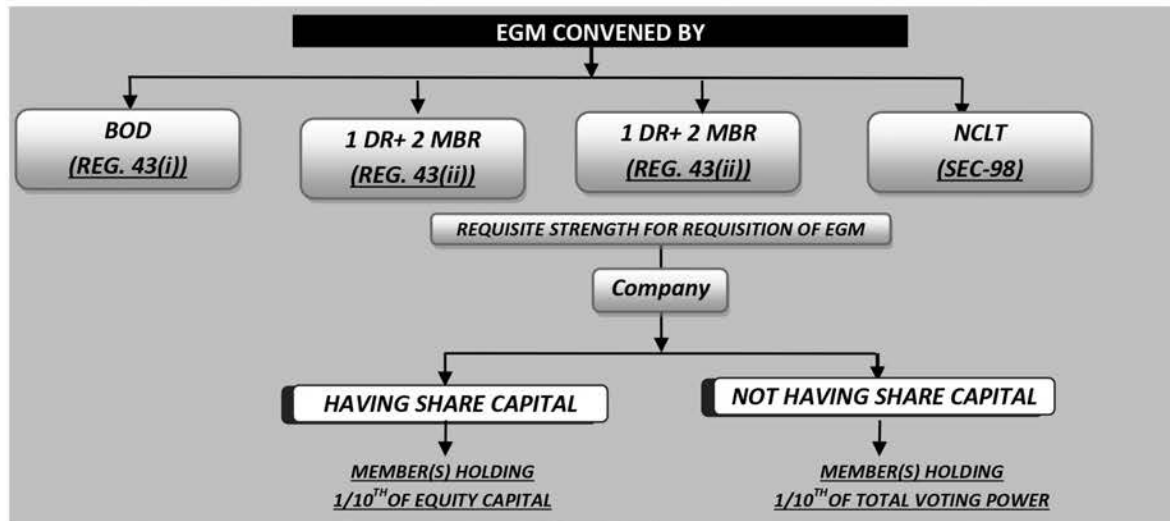
Any reasonable expenses incurred by the requisitionists in calling a meeting shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration payable to such of the directors who were in default in calling the meeting.

Every shareholder of a company has a right to requisition an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from requisitioning an extraordinary general meeting and he is **not bound to disclose the reasons** for the resolutions proposed to be moved at the meeting.

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(A) **CALLING OF E.G.M. BY NATIONAL COMPANY LAW TRIBUNAL** (Section 98)

If for any reason it is impracticable to call, hold or conduct meeting of a company, the National Company Law Tribunal may order a meeting of the company to be called, held or conducted in such manner as it thinks fit. The National Company Law Tribunal may do so either on its **own motion** or **on the application** of any director of the company or on the application of any member of the company who would be entitled to vote at the meeting.

It may also give such ancillary direction as it thinks fit. The directions given under this section may also include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.



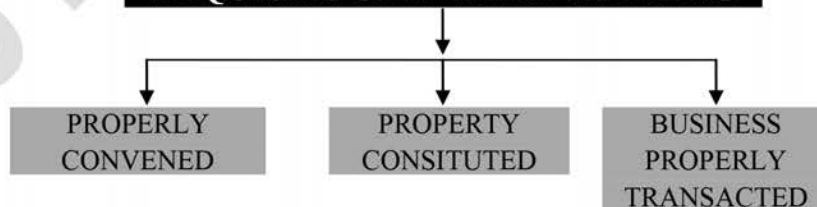
CASE LAW

<i>M.R.S. Rathnavelusami Chettiar</i> v. <i>M.R.S. Manickavelu Chettiar</i>	Impracticability of conducting a meeting also includes impracticability of holding a meeting; holding of a meeting is impracticable where registered office of a company is locked and is not available
<i>in Re. El. Sombrero Ltd.</i>	The Tribunal may exercise the power to order a meeting to be convened even though it is opposed by some of the shareholders.

REQUISITES OF VALID MEETING

For a meeting to be valid the following conditions must be satisfied:-	(a) <u>It must be duly convened.</u> This means that (i) the person entitled to attend it must have been summoned by the proper authority, i.e., normally the chairman of the Board of directors, and (ii) proper and adequate notice must have been given to all those entitled to attend.
	(b) <u>It must be properly constituted.</u> This means that (i) the proper person must be in the chair, (ii) the rules as to quorum must be observed, and (iii) the provisions of the Act and the articles must be complied with.
	(c) <u>The business at the meeting must be validity transacted</u> and sense of the meeting ascertained on matter before it.

REQUISITS OF A VALID MEETING



NOTICE OF MEETING

SECTION 101,102

A meeting cannot be validly held unless a proper notice of it has been given. Three things in connection with the notice have to be considered, namely (s) length of notice, (b) to whom it must be given, (c) What should be its contents.

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LENGTH OF NOTICE

SECTION 101

A general meeting of a company can be called by giving not less than 21 days notice either in writing or through electronic mode in such manner as may be prescribed. However, a company may, by its Articles, provide a period longer than 21 days for convening a meeting.

The expression “not less than 21 days” has been construed as **twenty-one clear days**, meaning thereby that the date of posting and the date of the meeting are excluded when calculating the period of twenty-one days.

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

In case of Section 8 company, a general meeting of a company can be called by giving not less than 14 days notice.

GENERAL MEETING CALLED AT SHORTER NOTICE

A general meeting may be called after giving shorter notice if consent, in writing or by electronic mode, is accorded thereto—

- (i) in the case of an annual general meeting, by not less than ninety five per cent. of the members entitled to vote thereat; and
- (ii) in the case of any other general meeting, by members of the company—
 - (a) holding, if the company has a share capital, majority in number of members 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 that meeting;

ENTITLEMENT OF NOTICE

SECTION 101(3)

Notice of every general meeting of the company shall be given :-	(i) to every member of the company;
	(ii) to the persons (legal representative or receiver) entitled to share in consequence of the death or insolvency of a member;
	(iii) to the auditor or auditors of the company; and
	(iv) every director of the company.

Preference shareholders are also entitled to notice. It is noted that unless the meeting is to be consider any matter, which affects the rights of the preference shareholders, they cannot take part in the proceedings or vote in any resolution, nevertheless, they have the right to attend the general meeting.

An accidental omission to give notice to, or the non - receipt of notice by, any member or other person to whom it should be given, shall not invalidate the proceedings at the meeting. But where the omission to send the notice is not accidental, the whole proceedings at the meeting become invalid.

CONTENTS OF THE NOTICE

Section 101(2), 102

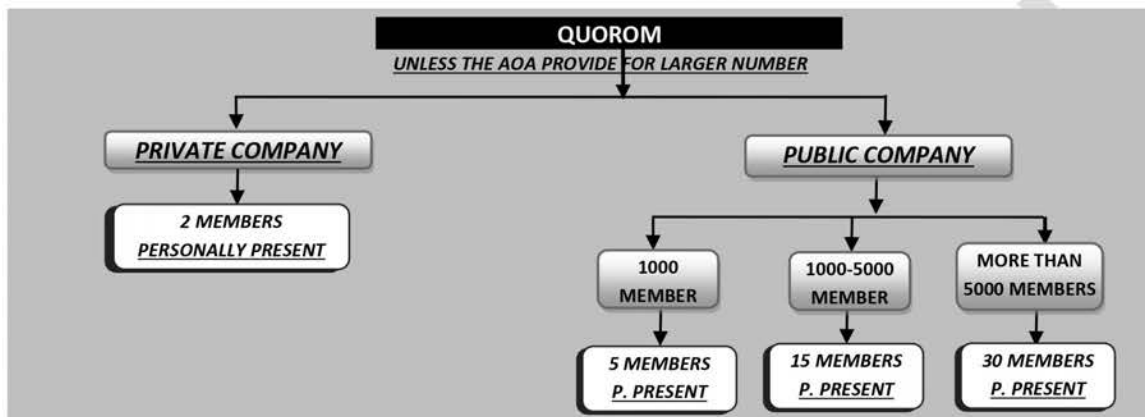
Every notice of the meeting of a company shall specify the place, day, date and hour of the meeting. It should also contain the statement of business to be transacted thereat. This is done by grouping the items of business under two heads, namely Ordinary Business & Special Business.

Special Business means all business to be transacted at a meeting except Ordinary Business.

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Explanatory Statement

Section 102 provides that where any Special Business is to be transacted at the meeting, there shall be annexed to the notice of the meeting an Explanatory Statement setting out following material facts concerning each such item of business :-

- | | |
|-----|---|
| (a) | the nature of concern or interest, financial or otherwise, if any, in respect of each items of every director and the manager and every other key managerial personnel and relatives of such persons; |
| (b) | any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon; |
| (c) | where any business relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is atleast 2% of the paid-up share capital of that company; and |
| (d) | where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected, Section 101(2), 102. |

QUORUM OF GENERAL MEETING

SECTION 103

Quorum is the presence of requisite number of members when a meeting can validly commence its business. It is the minimum number of members of a company whose presence is necessary for the transaction of business. In the case of a company, the quorum is usually fixed by the articles.

Generally, preference shareholders are not counted in quorum, unless there is some matter affecting their rights. In the case of joint shareholders, only one shareholder, as per the order in which their name appears in the Register of Members, shall be counted towards quorum.

REQUISITE NUMBER OF QUORUM

According to Section 103(1) of the Companies Act, 2013, unless the **articles of a company provide for a larger number**,:-

(a) in case of a public company:-

- (i) **five members personally present** if the number of members as on the date of meeting is not more than one thousand;
- (ii) **fifteen members** personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;
- (iii) **thirty members** personally present if the number of members as on the date of the meeting exceeds five thousand;

(b) in the case of a private company:-

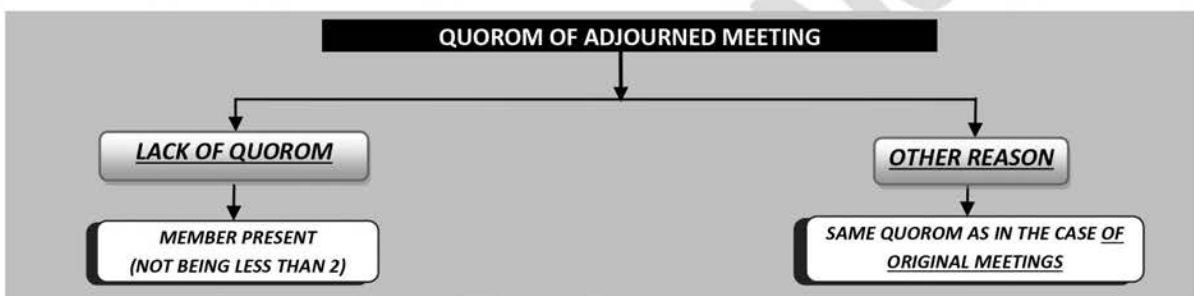
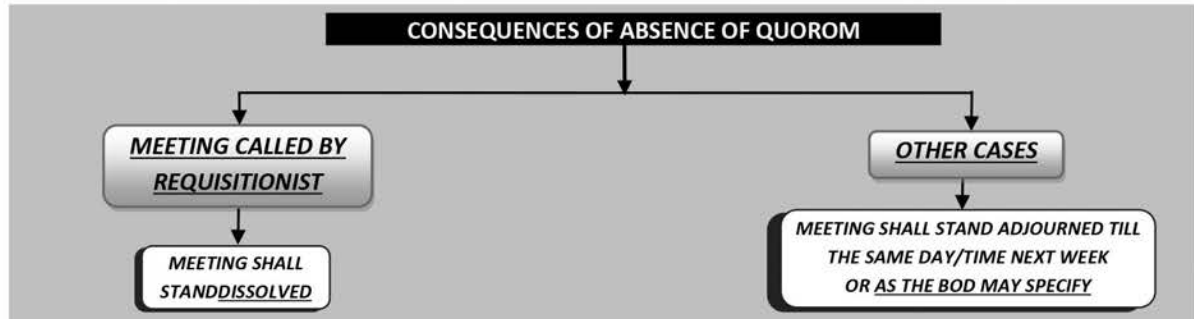
two members personally present, shall be the quorum for a meeting of the company.

If there are several members of a company, but only one member attends the meeting and holds proxies for all other members, it cannot be said to constitute a valid quorum as Section 103 speaks of personal presence of members.

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REPRESENTATIVE OF PRESIDENT/ GOVERNOR

Section 112 provides that where **President of India or Governor of a State**, is a member of a company, he may appoint anyone to represent him at any meeting of the company or at a meeting of any class of members of the company. A person appointed to act as aforesaid shall, for the purposes of this Act be deemed to be a member of such a company and shall be entitled to exercise the same rights and power (including the right to vote by proxy) as the President or, the Governor as the case may be, could exercise as a member of the company.

REPRESENTATIVE OF BODY CORPORATE

Section 113 provides that If a **company is a member of another company**, it may by resolution of its Board of Directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of the company, or at any general meeting or at a meeting of any class of members of the company.

CONSEQUENCES OF ABSENCE OF QUORUM

Section 103(2) states that, if within half an hour from the time appointed for holding a meeting of the company, a quorum is not present, the meeting, if called upon the requisition of members u/s 100, shall stand cancelled.

Section 103(2) further states that, if within half an hour from the time appointed for holding a meeting of the company, a quorum is not present, the meeting, in any other case, shall stand adjourned to the **same day in the next week, at the same time and place, or** to such other day and at such other time and place, as the **Board may determine**.

Where there is **adjournment or of change of day, time and place of meeting**, the company is required to give **not less than three days' notice** to the members either **individually or by publishing** and advertisement in the newspapers (one In English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Any resolution passed without a quorum is Invalid. In fact, if no quorum is present there is no meeting and the proceedings are invalid.

If **all the members of a company are present in person**, the proceedings will be valid even if the quorum required is more than the total number of shareholders.

Quorum of an adjourned general meeting

Section 103(3) lays down that if at the adjourned meeting also, quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall constitute quorum.

Quorum of an adjourned general meeting:-	(i) Adjournment because of lack of quorum-If at the adjourned meeting also, quorum is not present, the members present being not less than two.
	(ii) Adjournment because of some other reason - Same as in the case of original meeting.

Can a single member constitute quorum for a meeting/constitute a meeting ?

The word 'meeting' prima facie means coming together of more than one person and thus a single shareholder cannot constitute quorum for a meeting.

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Following are the exceptions to the general rule where one person can constitute quorum for a meeting :-	(i) Where default is made by a company in holding an annual general meeting, the NCLT may give direction that one member of the company presents in person or by proxy shall be deemed to constitute the meeting. (Sec. 97)
	(ii) Where or any reason, it is impracticable to hold or conduct extraordinary general meeting, the NCLT may give direction that one member of the company present in person or by proxy shall be deemed to constitute the meeting. (Sec. 98)
	(iii) Where a person holds all the shares of a class, he alone may constitute a class meeting.

CHAIRMAN OF MEETING

SECTION 104

One of the essentials of a valid meeting is that it must have a presiding officer endowed with authority to conduct its affairs in an orderly fashion. The provisions of the articles in respect of appointment of chairman are to be followed **in preference to the provisions of Section 104.**

APPOINTMENT OF CHAIRMAN

SECTION 104

1. UNDER ARTICLES

Regulation 45 of Table F:-It provides that the Chairman, if any, of the Board shall preside as Chairman at every general meeting of the company.

Regulation 46 of Table F:-If there is no Chairman or he is not present within 15 minutes after the appointed time of the meeting or is unwilling to act as Chairman of the meeting, the directors present shall elect one among themselves to be chairman of the meeting.

Regulation 47 of Table F:-If at any meeting, no director is willing to act as chairman or if no director is present within 15 minutes after the appointed time of the meeting, the members present should choose one among themselves to be chairman of the meeting.

Regulation 47 of Table F:-If at any meeting, no director is willing to act as chairman or if no director is present within 15 minutes after the appointed time of the meeting, the members present should choose one among themselves to be chairman of the meeting.

2. UNDER SECTION 104

If the articles of association of a company do not contain any provision for the appointment of chairman, such appointments shall be made by the members personally present at the meeting who shall elect one of themselves to be the chairman thereof on a show of hands.

If a poll is demanded on the election of the Chairman, it shall be taken immediately. If some other person is elected as a result of poll, he shall be the Chairman for the rest of the meeting.

3. BY NATIONAL COMPANY LAW TRIBUNAL

Where the NCLT under Section 97 or Section 98 directs the calling of general meeting of a company, it may give directions regarding its calling, holding and conducting. It may appoint any person as its Chairman.

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CASTING VOTE OF CHAIRMAN

In the case of an equality of votes on a matter requiring ordinary resolution, the Chairman of general meeting shall be entitled to a second or casting vote. It may be noted this provision can be used by a company only if the AOA of a company so provides.

PROXIES

SECTION 105

The word “proxy” has **two** different meanings. **Firstly**, it means the agent appointed by the members of a company to attend and vote on his behalf at a meeting of members and **secondly**, it means the document by which such an agent is appointed.

The relation between the member appointing proxy and the proxy so appointed is that of principal and agent and thus this relationship is governed by the relevant provisions of Indian Contract Act, 1872.

WHO HAS RIGHT TO APPOINT PROXY

In the case of a company having a share capital **every members of the company who is entitled to attend and vote at the meeting can appoint a proxy.**

In the case of a company not having a share capital, this right is available only if the **articles** make a specific provision for it.

A proxy need not to be member of the company. However, a member of a company registered under section 8 (Non-Profit Company) shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

Generally, the preference shareholders are not entitled to appoint a proxy as they are not entitled to vote at the meeting.

NOTICE FOR GENERAL MEETINGS SHOULD MENTION RIGHT TO APPOINT PROXY

In every notice calling a general meeting of the company, there should appear with reasonable prominence a statement that ***a member, entitled to attend and vote, is entitled to appoint a proxy to attend and vote instead of himself and a proxy need not be a member of the company.***(Sec.105(2)).

In case of default of Sec. 105(2), every officer of the company, **who is in default, shall be liable to penalty**, which may extend to ₹ 5,000/-.

LIMITATIONS OF PROXY

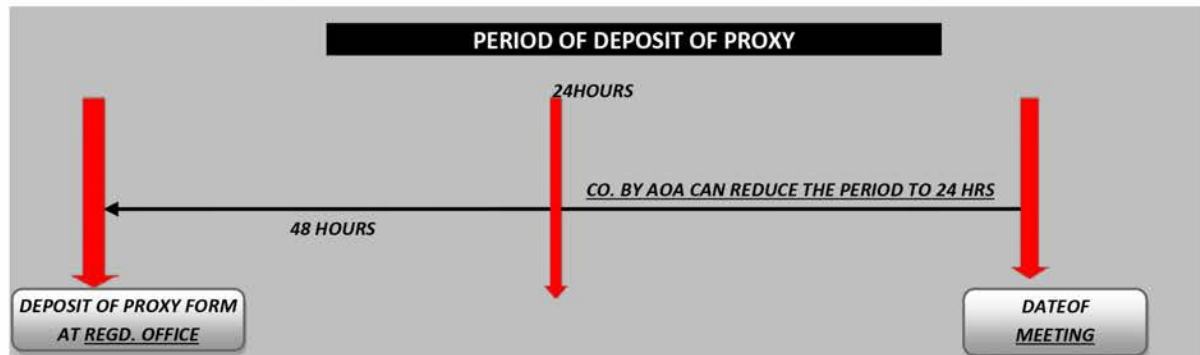
A person can act as proxy on behalf of members **not exceeding fifty** and holding in the aggregate not more than **ten percent** of the total share capital of the company carrying voting rights. A member holding more than ten percent, of the total share capital of the Company carrying voting rights may appoint a single person as proxy and such person shall **not** act as proxy for any other person or shareholder.

A proxy has no right to speak at the meeting. A proxy shall not be entitled to vote **except on poll**. As proxy has no right to speak at the meeting, he cannot take part in any discussion. A proxy is not counted in the quorum. Further, a proxy cannot inspect the proxies list with the company and the minutes book of the general meeting.

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PERIOD FOR DEPOSIT OF PROXY

A proxy should be deposited at registered office atleast **48 hours** before the time fixed for a meeting. However, a company may, by its **articles**, provide for lesser than 48 hours for depositing the proxy. A company cannot provide for a period more than 48 hours for deposit of proxy because such a provision in their articles shall have effect as if a period of 48 hours had been specified in such provision. **Sunday is included in computation of 48 hours.**

REQUIREMENTS OF INSTRUMENT OF PROXY

The instrument appointing a proxy should be in writing and be signed by the appointer or his attorney duly authorized in writing. Where the appointer is a body corporate, it shall be under its seal or be signed by an officer or an attorney duly authorised by it. In case of joint shareholders, it must be signed by all the shareholders. A proxy form shall be in **Form No. MGT.11**.

Section 105(7) stipulates that if any instrument of proxy is furnished in the prescribed form, the same cannot be questioned on the ground that it fails to comply with the special requirements in the articles.

A proxy must put revenue stamp of appropriate value and stamp should be cancelled either by signature or by some other means. Proxies, which are unstamped or on which stamps are not cancelled, are invalid.

CANVASSING FOR APPOINTMENT OF PROXY

A company shall not issue any invitation at its expense to a member who is entitled to have the notice of a meeting to appoint numbers of persons specified therein as his proxy. In the case of default, every officer of the company who knowingly issued the invitation shall be punishable with fine, which may extend to ₹1,00,000/-.

However, an officer shall not be so punishable if the following two conditions are fulfilled:-	(i) that officer issued a list of persons willing to act as proxies to a member at his written request; and
	(ii) that the said list is available on request in writing to every member entitled to vote at the meeting by proxy.

INSPECTION OF LIST OF PROXIES

Every member, entitled to vote, is entitled to inspect the proxies lodged with it. He may do so at any time during the period beginning from **24 hours before the time fixed for the commencement of the meeting** and ending with the conclusion of the meeting, However, such inspection can be done only during the business hours of the company; **provided at least 3 days notice in writing** of intention to do so has been given to the company.

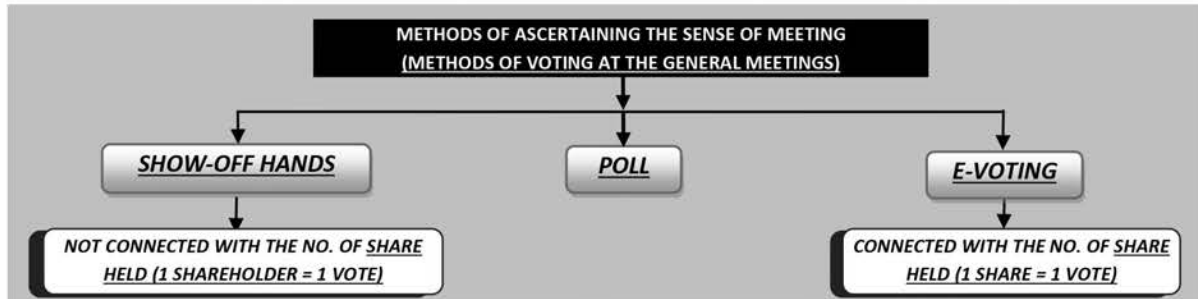
REVOCATION OF PROXIES

A proxy can be revoked in any of the following ways :-	(i) by deposit of a new proxy within the time stipulated for deposit of proxies;
	(ii) by the member himself attending and voting before the proxy has voted; and
	(iii) by the death or insanity of the appointer or by revocation of proxy or transfer of shares by the appointer, provided that the company has received intimation in writing of such death, insanity, revocation or transfer before the commencement of the meeting.

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METHODS OF ASCERTAINING THE SENSE OF MEETING/ VOTING AT THE MEETING

SECTION 106 TO 109

The Companies Act, 2013 prescribes 3 methods of ascertaining the sense of a meeting, namely:-	(a) Show of hands;
	(b) Voting through electronic means; and
	(c) Poll.

1. SHOW OF HANDS

SECTION 107

At any general meeting all resolutions are decided in the **first** instance by a **show of hands** and each member has one vote.

A declaration by the Chairman of the resolution of the voting by show of hands and an entry to this effect in the minutes book of the proceedings of the meeting shall be a conclusive evidence of such a declaration.

2. VOTING THROUGH ELECTRONIC MEANS/E-VOTING

SECTION 108

The expressions "voting by electronic means" or "electronic voting system" means a '**secured system' based process of display of electronic ballots, recording of votes of the members** and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate 'cyber security'.

The Central Government has prescribed that **every listed company or a company having not less than one thousand shareholders**, shall provide to its members facility to exercise their right to vote at general meetings by electronic means.

A company which provides the facility to its members to exercise voting by electronic means shall comply with the following procedure, namely:-

- (a) the notice of the meeting shall be sent to all the members, directors and auditors of the company
- (b) the notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;
- (c) the notice of the meeting shall clearly state-

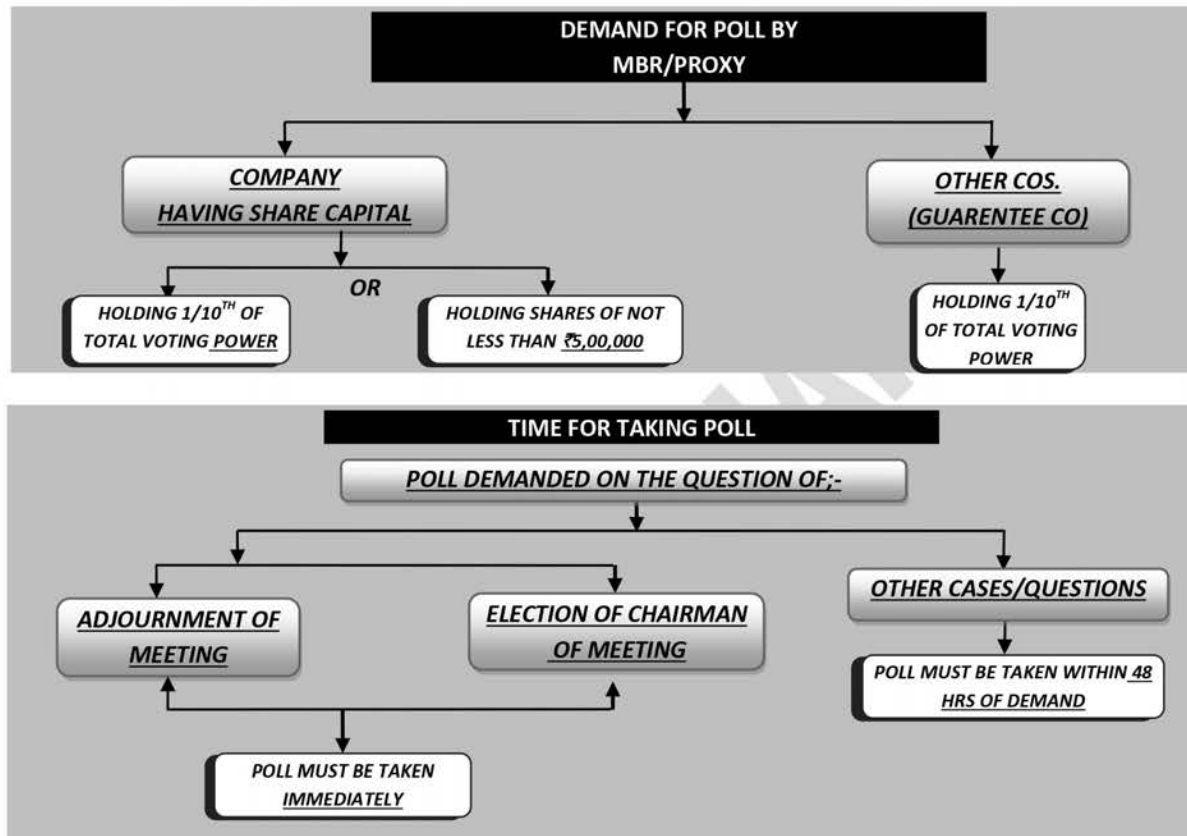
a.	that the company is providing facility for voting by electronic means and the business may be transacted through such voting;
b.	that the facility for voting, either through electronic voting system or ballot or polling paper' shall also be made available at the meeting .
c.	that the members who have cast their vote by e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;
d.	the process and manner for voting by electronic means ;
e.	the time schedule including the time period during which the votes may be cast by e-voting; and the details about the login ID
f.	the process and manner for generating or receiving the password and for casting of vote in a secure manner

- (d) the company shall cause a public notice by way of an advertisement to be published immediately after completion of dispatch of notices for the meetings at least twenty one days before the date of general meeting, at least once in a vernacular newspaper and at least once in English language in an English newspaper having country-wide circulation,

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3. POLL

SECTION 109

Demand for Poll:-

A poll can be ordered at any time before or after the declaration of the result on the voting of any resolution by show of hands.

A poll can be demanded by any of the following persons :-	(a) Chairman himself;
	(b) Members and proxies.

The Chairman shall order a poll to be taken, **if any demand** is made in this behalf :-

- (a) in the case of a company having a share capital, by any member or members present in person or by proxy and holding shares in the company:-
- (i) which confer a power to vote on the resolution not being less than **1/10th** of the total voting power in respect of the resolution; or
 - (ii) on which an aggregate sum of not less than **₹ 5,00,000** has been paid up;
- (b) in the case of any other company,

by any member or members present in person or by proxy and having **not less than one - tenth of the total voting power** in respect of the resolution.

The demand for a poll may be **withdrawn** at any time by the person or persons who made the demand.

Time of taking poll:-

A poll demanded on the question of adjournment of the meeting and on the election of Chairman under Section 104 must be taken **immediately**. A poll demanded on any other question shall be taken at any time within **48 hours** of the time of making a demand.

Scrutineers at poll:-Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

Subject to the provisions of this section, the Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

RESTRICTIONS ON EXERCISE OF VOTING RIGHTS

SECTION 106

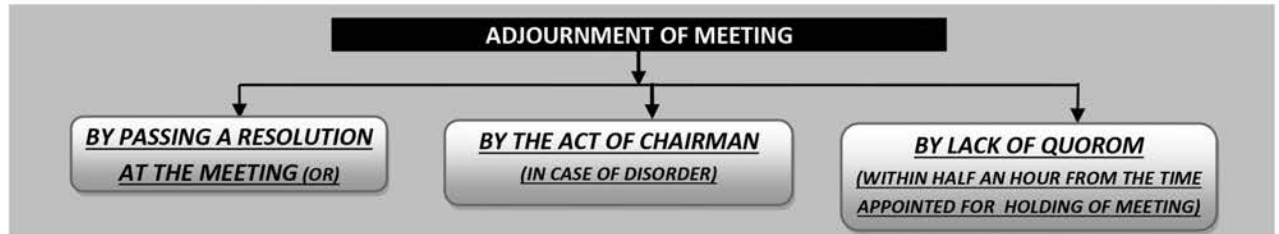
The articles of a company may provide that no member shall exercise any voting right in respect of any shares on which any calls have not been paid, or in regard to which the company has exercised any right of lien. A company shall not prohibit any member from exercising his voting right on the ground that he has not held its shares for any specified period preceding the date on which the vote is taken or any other ground, not being a ground set out above.

Right of Member to use his votes differently:-When a poll is taken at a meeting, a member entitled to more than one vote, or his proxy can split his votes in favour or against the resolution.

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ADJOURNMENT OF MEETING

Adjournment means suspending a meeting after it has been duly commenced to be resumed at a later date and time fixed in that meeting itself at the time of adjournment or to be decided later on.

A meeting may be adjourned in anyone of the following ways :-	(i) By passing a resolution at the meeting;
	(ii) By the act of chairman;
	(iii) By lack of quorum at the meeting.

- (I) By passing a resolution at the meeting:-** According to common law, the power to adjourn a meeting lies in the hands of those constituting it. As such in the absence of provisions to the contrary in the articles of a company, the Chairman is authorized to adjourn the meeting only with the wishes of the majority present thereof.
- (II) By the act of Chairman:-** In case of disorder, etc. at the meeting, the Chairman is authorized to adjourn the meeting for a short period say an hour or so with a view to restore the order.
- (III) By lack of quorum at the meeting:-** If within half an hour from the time appointed for holding a meeting of the company, a quorum is not present, the meeting (other than called upon at the request of the members u/s 100) shall adjourn to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board may determine.

BUSINESS TO BE TRANSACTED:-

No business shall be transacted at an adjourned meeting other than the business left uncompleted of the meeting at which the adjournment took place.

NOTICE OF ADJOURNED MEETING:-

Where there is adjournment of meeting, the company is required to give not less than three days' notice to the members either individually or by publishing and advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated. (Sec. 103(2) proviso)

Date OF PASSING RESOLUTION:-

When a resolution is passed at an adjourned meeting, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed at an earlier date. (Sec. 116)

POSTPONEMENT OF A MEETING

Postponement of a meeting implies **putting off commencement** of the properly convened meeting. Such postponement takes place before the time fixed for the commencement of the meeting. On many occasions, it becomes necessary not to have the scheduled meeting for which a notice has already been issued. This may be for various reasons, which are beyond the control of management.

Where there is change of day, time and place of meeting, the company is required to give not less than three days' notice to the members either individually or by publishing and advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated. [Sec. 103(2) proviso]

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DISSOLUTION/ CANCELLATION OF A MEETING

Dissolution of a meeting refers to the situation where meeting no longer exists as such. Its proceedings are not merely suspended but exhausted.

As per Section 103(2) of the Companies Act, if within half an hour after the time appointed for holding a general meeting; the quorum is not present; the meeting shall stand dissolved/cancelled if it was called on requisition of members.

SPECIFIC EXEMPTION TO PRIVATE COMPANY/AOA OF PRIVATE COMPANY TO OVERRIDE

The AOA of private company shall have the **overriding effect** over the following sections, **i.e following sections shall not apply to private companies if the AOA provide otherwise;-**

1. **Section 101.** Length of notice
2. **Section 102.** Content of notice
3. **Section 103.** Quorum for meetings.
4. **Section 104.** Chairman of meetings.
5. **Section 105.** Proxies.
6. **Section 106.** Restriction on voting rights.
7. **Section 107.** Voting by show of hands.
8. **Section 109.** Demand for poll.

PASSING OF RESOLUTION BY POSTAL BALLOT

SECTION 110

'Postal Ballot' means voting by post or through any electronic mode.

It is **mandatory** for a company to pass resolution by postal ballot in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot.

It is, however, discretionary for a company to pass any resolution by way of postal ballot other than:-	(i) Ordinary business items; and;
	(ii) Any business in respect of which directors or auditors have a right to be heard at any meeting.

However, **One Person Company (OPC)** and other companies having members **upto two hundred** are **not** required to transact any business through postal ballot.

If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

LIST OF BUSINESSES SPECIFIED BY THE CENTRAL GOVERNMENT TO BE PASSED BY POSTAL BALLOT ONLY

Following is the list of businesses specified by the Central Government, in respect of which the resolutions shall be passed by means of postal ballot **only** :-

SECTION	RESOLUTIONS
2	alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;
12	change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;

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13	alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
13(8)	change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13 ;
43	issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;
48	variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;
68	buy-back of shares by a company under sub-section (1) of section 68;
151	election of a director under section 151 of the Act;
180	sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180;
186	giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186;

However, Central Government can, at any time, include or delete the items to be transacted through postal ballot only.

"Provided that any item of business required to be transacted by means of postal ballot may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section."

PROCEDURE FOR PASSING THE RESOLUTION BY POSTAL BALLOT

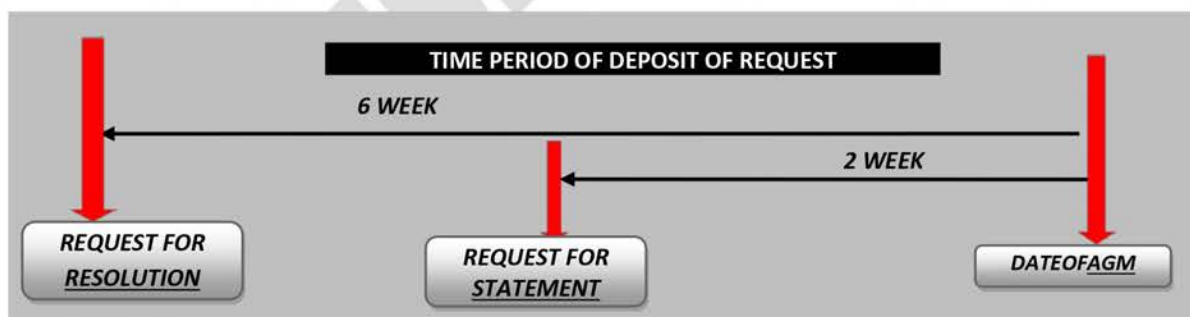
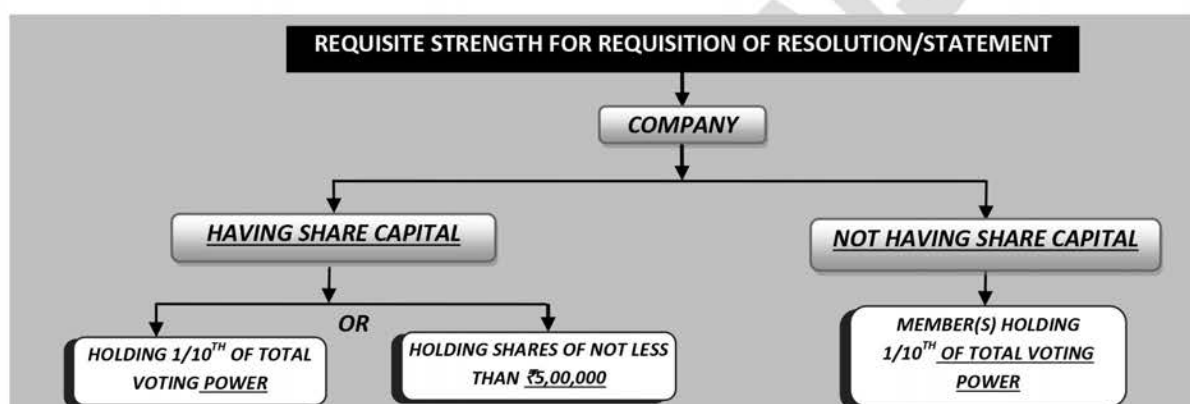
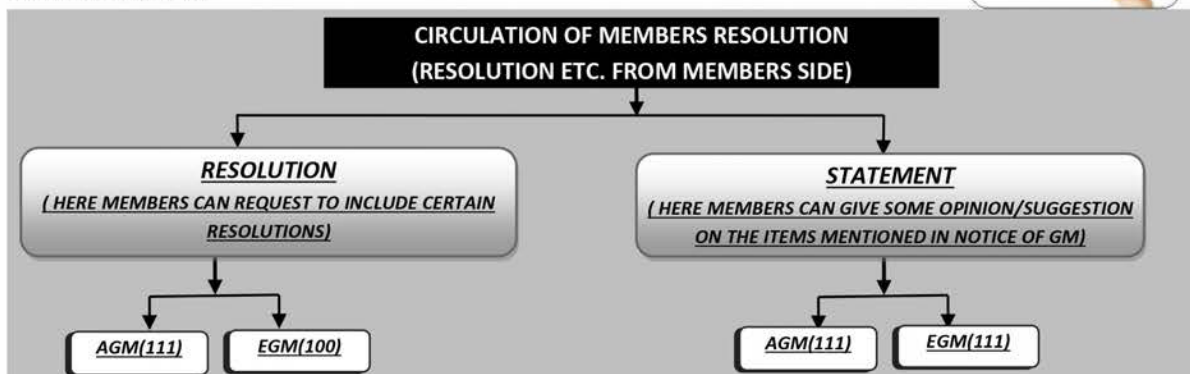
Following is the procedure for passing of resolution by postal ballot :-

- (a) Convene a Board Meeting to pass the resolutions for the following purposes:-
 - (i) To approve the notice of the resolution to be sent to the shareholders;
 - (ii) To approve the Postal Ballot Form; and
 - (iii) To fix the responsibility for the entire postal ballot process on the Company Secretary and a Functional Director.
- (b) A notice setting out the draft of resolution to be passed together with the reasons for passing the resolution should be sent to all the shareholders.
- (c) The Company may issue notices either:-
 - (i) under 'Registered Post' or 'Speed Post'; or
 - (ii) through Courier Service; or
 - (iii) through registered e-mail of the member provided to the company,
 - (iv) Further, an advertisement shall also be published in a leading English Newspaper and in one vernacular language Newspaper circulating in the State in which registered office of the company is situated, about having dispatched the ballot papers.
- (d) The Company may make a note below the notice of the General Meeting for understanding of members that the transaction(s) at Sl. No. requires consent of the shareholders through postal ballot.
- (e) The Board of Directors shall appoint one scrutinizer (not being an employee) who, in the opinion of the Board, can conduct the postal ballot voting process in a fair and transparent manner.
- (f) The assent or dissent of the shareholder should be sent within 30 days from the date of posting the notice. The assent or dissent otherwise received after 30 days from the date of issue of notice shall be treated as if reply from the member has not been received.

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- (g) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots, but not later than 7 days thereof.
- (h) The result shall be declared at the general meeting by the Chairman of the meeting. It may be noted that the date of passing of the resolution by postal ballot will be the date of declaration of results of postal ballot by the Chairman at the General Meeting.
- (i) The resolution should be approved by requisite majority of shareholders, i.e., in the case of ordinary resolution, votes cast in favour is more than the votes cast against it; and in the case of special resolution; votes cast in favour is three times or more than the votes cast against.

CIRCULATION OF MEMBER'S RESOLUTION

SECTION 111

Section 111 of the Act makes available to members the administrative machinery of the company to introduce resolutions at the annual general meetings. Further, members may also make a requisition for circulating the statement (expression of opinion) in respect of some matter to be transacted at the forthcoming general meeting.

It provides that if the requisite number of members require the company to circulate a resolution/statement, the company must, at the expense of the requisitionists :-

- (a) give to the members entitled to receive notice of the next annual general meeting, notice of any resolution which is intended to be moved at that meeting;
- (b) circulate to the members any statement with respect to any business to be dealt with at that meeting.

Requisite Strength

The requisite number of members for requisitioning a resolution/statement is as follows :-

- (a) In the case of a company having a share capital, members holding at least **one - tenth** of such paid - up capital of the company which carries a **right of voting** in regard to that matter;
- (b) In the case of a company not having a share capital, members holding at least **one - tenth** of total **voting power** of all the members who have a right to vote in regard to that matter.

Time Period

The requisition, signed by all the requisitionists, must be deposited at the registered office of the company **at least 6 weeks** before the meeting in the case of resolution requiring notice of resolution and not less than **2 weeks** before the meeting in case of any other question together with a reasonable sum to meet the expenses.

Where a copy of the requisition requiring notice of resolution has been deposited and an A.G.M. is called **for a date 6 weeks or less after the requisition is deposited**, the copy though not deposited within time required by Section 111, is deemed to have been properly deposited.

A company need not circulate a statement if the Central Government (Power delegated to RD) is satisfied that the rights so conferred on the members are being abused to secure needless publicity for defamatory matters.

RESOLUTIONS

SECTION 114 TO 118

The resolutions passed at a general meeting of a company can be of two types, namely:-

- (i) Ordinary Resolution; and
- (ii) Special Resolution.

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1. **Ordinary Resolution:-**A resolution shall be ordinary one when the notice required under the Companies Act has been duly given and the **votes cast in favour of the resolution exceed the votes cast against it**. Casting vote of the Chairman of the meeting, if any, shall also be included while counting votes provided it has been exercised by him.
2. **Special Resolution:-**A resolution shall be special resolution^ the following conditions are fulfilled:-
 - (i) the intention to propose it as a special resolution has been duly specified in the notice calling the general meeting;
 - (ii) the notice of the meeting has been duly given; and
 - (iii) **votes cast in favour of the resolution are not less than 3 times the votes cast against the resolution.**

DISTINGUISH BETWEEN MOTION AND RESOLUTION

- (a) The question which generally comes for consideration at the general meeting of a company are presented in the form of proposals called **motion**.
A **resolution** is the formal expression of the decision of a meeting when a motion has been duly voted upon and passed by the requisite majority.
- (b) A **motion** should be in writing and signed by the mover and put to vote at the meeting by chairman.
A **resolution** once adopted and recorded in the minutes becomes the official decision of the meeting.

SECTION	MATTERS WHICH MAY BE APPROVED BY SPECIAL RESOLUTION
5(4)	To make entrenchment provisions in the articles of association of a public company
12(5)	Change of the registered office outside the limit of the city/place where the registered office of a company is situated.
13	Alteration of Memorandum of Association
13(8)	Change in Object for which the company raised the money through prospectus.
14(1)	Change of name by deletion of "limited" or "Private Limited".
14(1)	Alteration to the provisions of Articles including conversion of a public company into private limited which also requires approval of the Tribunal.
27(1)	Variation in terms of contract or objects in prospectus.
41	Issue of Global Depository receipt
48(1)	Variation in right of shareholders.
54(1)	Issue of sweat equity shares.
62(1)62(1)(b)	Issue of shares to employees under a employees' stock option
62(1) (c)	Issue of further shares to persons other than existing members (including issue to some members).
66(1)	Reduction of shares capital
67(3) (b)	Approval of scheme for the purchase of , or subscription for , fully paid-up shares in the company or its holding company, if the purchase of ,or the subscription for, the shares held by trustees for the benefit of the employee of the company
68 (2)	Buyback of shares
71(1)	Issue of debentures with an option to convert such debentures into shares
94(1)	Keeping of registered of members, register of debentureholders, the indexes and copies of annual return at a place in the same city/town/village of registered office other than the place of the registered office.
139(9)	Appointment of author with the approval of the Central Government
140(1)	Removal of auditor with the approval of the Central Government
149(1)	Appointment of more than 15 directors
149(10)	Re-appointment of independent director after completion 5 years term.
165(2)	Approval for lesser number of companies in which a director of the company may act as directors

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180(1)	Exercise of powers of Board on special resolution
185(1)	Loan to directors etc pursuant to scheme approved by members
186(3)	Giving of any loan or guarantee or providing any security or the acquisition
196(3)	Related Party transactions approval for certain class of companies
196(3)	Appointment of managing director, whole –time director or manager who is below the age of 21 years or age of 70 years
197 (4)	Remuneration to managerial personnel
210 (1) (b)	Investigation into affairs of company
212	To resolve that the affairs of the company are required to be investigated by the Serious Fraud Investigation Office.

RESOLUTION REQUIRING SPECIAL NOTICE

SECTION 115

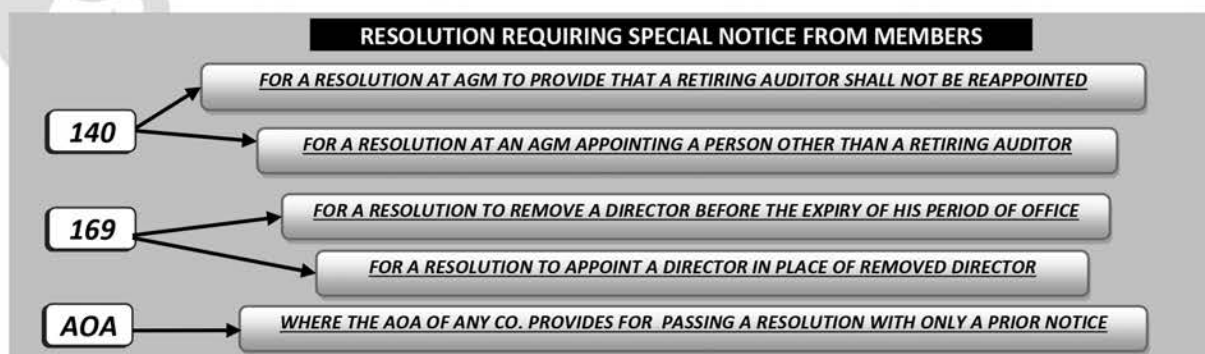
These are the resolutions, which can be moved at a meeting **only if its proposers have given a prior notice to the company in this regard**. Such resolutions are deemed as resolutions requiring special notice.

A special notice required to be given to the company shall be signed, either individually or collectively by such member of members holding not less than **one percent of total voting power or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up** on the date of the notice.

The proposers should give prior notice to the company, **not earlier than three months but at least 14 days before the meeting** at which it is to be moved, exclusive of the day on which the notice is served and the day of the meeting. On receipt of such a notice, the company must give to its members, **minimum seven clear days' notice** of the resolution in the manner in which it gives notice of the meeting. In case it is not practicable, the company must give a minimum of seven clear days' notice to members through an **advertisement in an English and Vernacular Language** Newspapers having a wide circulation in the state of the registered office of the company.

The Companies Act, 2013 requires a special notice to be given in respect of the following resolutions:-

SECTION	RESOLUTION REQUIRING SPECIAL NOTICE
Sec. 140	For a resolution at an A.G.M. to provide that a retiring auditor shall not be re-appointed.
Sec. 140	For a resolution at an A.G.M. appointing an auditor person other than a retiring auditor.
Sec. 169	For a resolution to remove a director before the expiry of his period of office.
Sec. 169	For a resolution to appoint another director in place of the removed director
AOA	Where the articles of a company provided for the giving of a special notice for a resolution in respect of any specified matter or matters



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REGISTRATION OF CERTAIN RESOLUTIONS AND AGREEMENTS

SECTION 117

Following resolutions and agreements are required to be filed with Registrar of Companies :-

- (a) **all special resolutions;**
- (b) resolutions which have been **agreed to by all the members** of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- (c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a **managing director**;
- (d) resolutions or agreements which have been agreed to by any **class of members** but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;
- (e) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under **clause (a) and clause (c) of sub-section (1) of section 180**;
- (f) resolutions requiring a company to be **wound up voluntarily passed** in pursuance of section 304;
- (g) resolutions passed in pursuance of **sub-section (3) of section 179**;
“Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions;
- (h) any other resolution or agreement as may be prescribed and placed in the public domain.

A copy of every resolution/agreement mentioned above together with a copy of explanatory statement, if any, printed or typewritten and duly certified under the signatures of the officer of the company shall be filed with the **Registrar within 30 days** of date of passing the resolution or executing the agreement, as the case may be, in **Form No. MGT.14**.

If a company fails to file the resolution or the agreement, the company shall be punishable with fine which shall not be less than **one lakh rupees** but which may extend to **twenty-five lakh rupees** and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than **fifty thousand rupees** but which may extend to **five lakh rupees**.

If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

MINUTES OF PROCEEDINGS OF MEETINGS

Section 118, 119

The **minutes are a record of business transacted at meetings**.

Every company must keep minutes containing a fair and correct summary of all proceedings of general meetings (including the resolutions passed by postal ballot) and those of Board meetings or those of meetings of Committee of the Board or meeting of the Creditors, in books kept for that purpose.

The minutes books must have their pages consecutively numbered, and the minutes **must be recorded therein within 30 days of the meeting**, along with the date of such recording. They have to be written directly on the numbered pages. Pasting or attaching of papers is not allowed.

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However, a company may maintain the minutes in the **loose-leaf form** provided all other procedural requirements are complied with and all possible safeguards against manipulation or interpolation of the minutes are ensured. The loose leaves can be **got bound at some reasonable intervals**.

SIGNING OF MINUTES

Each page of every such minutes book must be initialled or signed and last page of the record of proceedings of each meeting in such books must be dated and signed:-

- | | |
|-----|---|
| (a) | in the case of Board meetings, by the Chairman of the said meeting or that of the next succeeding meeting; |
| (b) | in the case of a general meeting, by the chairman of the same meeting within the aforesaid 30 days or in the event of the death or inability of that Chairman within that period, by a director duly authorised by the Board of Directors for the purpose; and |
| (c) | in case of every resolution passed by postal ballot, by the chairman of the Board within the aforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose. |

IMPORTANT CONTENTS OF MINUTES

All appointments of officers made at any of the meetings must be included in the minutes of the meeting.

In the case of Board Meetings, the minutes must also state the names of directors, if any, dissenting from, or not concurring in a resolution passed at the meeting. The chairman may exclude from the minutes any matters, which are defamatory, irrelevant or immaterial or which are detrimental to the interests of the company and has absolute discretion in this regard.

PRESERVATION OF MINUTES

The minute books of general meetings, shall be kept at the registered office of the company and shall be preserved **permanently** and **kept in the custody of the company secretary or any director duly authorised** by the board or at such other place as may be approved by the Board.

The minutes books of the Board and committee meetings shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

PRESUMPTIONS TO BE DRAWN WHERE MINUTES DULY DRAWN AND SIGNED

The minutes of meetings shall be evidence of the proceedings recorded therein. They are, however, only prima facie evidence and as such are rebuttable.

The minutes of the proceedings of any meeting are, unless the contrary is proved, presumed to be correct and show presumptive evidence that the meeting was duly called and held and all proceedings thereat to have duly taken place, and in particular, all appointment of directors, key managerial persons, auditors or company secretary in practice made at the meeting, shall be deemed to be valid.

The aforesaid presumption is not available to the minutes of the EGM called u/s 100. (*Bhankerpur Simbhaoli Beverages (P.) Ltd. v. Sarabjit Singh*)

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PUBLICATION OF REPORTS OF PROCEEDINGS OF GENERAL MEETINGS

No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by Section 118 to be contained in the minutes of the proceedings of such meeting.

COMPLIANCE OF SECRETARIAL STANDARDS

It is now mandatory for every company to observe secretarial standards with respect to General Meetings and Board Meetings specified by the Institute of Company Secretaries of India.

SS-1, SS-2, SS-5 and SS-7 deals with different procedural aspects of board and general meetings.

PENALTIES FOR CONTRAVENTING THE PROVISIONS REGARDING MINUTES

If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of **twenty-five thousand rupees** and every officer of the company who is in default shall be liable to a penalty of **five thousand rupees**.

If a person is found guilty of **tampering with the minutes of the proceedings** of meeting, he shall be punishable with imprisonment for a term which may extend to **two years** and with fine which shall not be less than **twenty-five thousand rupees** but which may extend to **one lakh rupees**.

NKJ-CLASSROOM PRACTICE



Q. 1. Comment with reasons on Minutes of the company can be maintained in loose leaf form.

[Dec. 2014; 5 Marks]

INSPECTION OF MINUTE BOOKS OF GENERAL MEETINGS **SECTION 119**

The minutes book must be kept at the registered office of the company. Any **member** has a right to inspect, **free of cost** during business hours at the registered office of the company, the minutes book containing the proceedings of the general meetings of the company.

Further, any member is entitled to get a copy of any minutes on payment of such "sum as may be specified in the articles of association of the company, but not exceeding a sum of **ten rupees for each page** or part of any page, within **7 days after he has made a request to the company**.

A member who has made a request for provision of **soft copy** in respect of minutes of any previous general meetings held during a **period immediately preceding three financial years** shall be entitled to be furnished, with the same **free of cost**.

If any inspection is refused or copy not furnished within the time specified, the company shall be liable to a penalty of **twenty-five thousand rupees** and every officer of the company who is in default shall be liable to a penalty of **five thousand rupees** for each such refusal or default, as the case may be.

Further, **National Company Law Tribunal can also by order compel** an immediate inspection or furnishing of a copy therewith.

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" CASE LAW–CASE BASED " WRITING PRACTICE



Q. 1. 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. **[Dec. 2018; 4 Marks]**

Ans. Under section 107 of Companies Act, 2013, provides that any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands. A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise. Therefore, the demand of members is not tenable.

" CASE LAW–CASE BASED " WRITING PRACTICE



Q. 1. At the annual general meeting of Soya Ltd., a matter was to be transacted by passing a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. Referring to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration. **[Dec. 2016; 4 Marks]**

Ans.

1.	Provisions of Section 114(2)(c) of Companies Act, 2013	According to Section 114(2)(c) in case of passing a special resolution, the votes cast in favour of the resolution, whether on a show of hands or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.
2.	Conclusion	In the given case of Soya Ltd. the votes casted in favour of special resolution is 20 in number, being more than 3 times of the number of votes cast against i.e., if other conditions of Section 114 are, satisfied, the decision of the chairman is in order.

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CIN:U24110MH1993PLC070713

Regd. Office: Kalpataru Square, 4th floor, Kondivita Road,
Off. Andheri Kurla Road, Andheri (East), Mumbai 400 059
Tel : +91 22 6663 7373, Fax : +91 22 2832 2272
Website : www.indofilcc.com

NOTICE OF ANNUAL GENERAL MEETING

NOTICE is hereby given that the 24th Annual General Meeting of Indofil Industries Limited will be held on Friday, the 15th September 2017 at 11.00 a.m. at Rama & Sundri Watumull Auditorium, K.C. College, Dinshaw Wachha Road, Churchgate, Mumbai - 400020. The Notice setting out the business to be transacted at the meeting together with the copy of the Annual Report of the Company for the Financial Year 2016-17 has been dispatched to all members at their registered address by courier and the same is also available on our website indofilcc.com.

A member entitled to attend and vote at the AGM is entitled to appoint a proxy to attend and vote on behalf of member. Such a proxy need not be a member of the company. A person can act as proxy on behalf of members not exceeding fifty (50) and holding in the aggregate not more than ten percent of the total share capital of the Company. Proxies, in order to be effective, should be duly completed and deposited at the Registered Office of the company not less than 48 hours before the commencement of the meeting.

NOTICE is also given that pursuant to Section 91 of the Companies Act, 2013 and Rule 10 of the Companies (Management and Administration) Rules 2014, the Register of Members and Share Transfer Books of the company will remain closed from Saturday, 9th September, 2017 to Friday, 15th September, 2017 (both days inclusive) for facilitating the payment of dividend.

In terms of Section 108 of the Companies Act, 2013, read with Rule 20 of the Companies (Management and Administration) Rules 2014 as amended, the company is offering remote e-voting facility to its members and the business as set out in the Notice of AGM may be transacted through remote e-voting services provided by National Securities Depository Limited (NSDL).

The details regarding remote e-voting facility are as under:

1. The company has fixed 8th September, 2017 as the "Cut Off" date to ascertain the eligibility of members for remote e-voting.
2. Any person, who becomes a member of the Company after dispatch of Annual Report and holds shares as on the cut-off date can attend the meeting in person or through proxy and send a requisition quoting Folio No/DP-ID-Client ID for obtaining copy of the Notice and Annual Report, to the Registered Office of the Company or RTA, MAS Services Limited. These shareholders are requested to follow the instructions given in the Notice of AGM to obtain login ID & password for remote e-voting.
3. If the member is already registered with NSDL, then he is requested to use his existing user ID & Password for casting the vote through remote e-voting.
4. The remote e-voting will commence on 12th September 2017 (9.00 a.m.) and end on 14th September 2017 (5.00 p.m.) during which period the members may cast their vote electronically. Thereafter, the remote e-voting module shall be disabled by NSDL.
5. Voting through ballot paper shall also be made available to those members who attend the AGM and have not already cast their vote by remote e-voting.
6. Members who cast their votes electronically shall not be allowed to vote again at the AGM. However, in case a member, who has cast his vote electronically as well as through ballot paper, the vote cast through ballot paper will be ignored.
7. Any queries / grievance relating to remote e-voting, shall be addressed to: Mr. Sharwan Mangla General Manager, MAS Services Limited, T-34, 2nd Floor, Okhla Industrial Area, Phase II, New Delhi - 110 020. Tel No. 011-26387281/82/83. Fax 011-26387384. E-mail: info@masserv.com.

The Results on resolutions shall be declared within 3 days of the conclusion of the AGM. The results declared along with the scrutinizer's report shall be placed on the Company's website (www.indofilcc.com) and on the website of NSDL for information of the members.

For Indofil Industries Limited

Chintamani D. Thatte

Head Compliance and Company Secretary

Mumbai, 31st August, 2017

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NESTLÉ INDIA LIMITED

(CIN : L15202DL1959PLC003786)

Registered Office: M-5A, Connaught Circus, New Delhi-110 001

Email: investor@in.nestle.com, Website: www.nestle.in

Phone: 011-23418891, Fax: 011-23415130

NOTICE

NOTICE IS HEREBY GIVEN THAT THE FIFTY SIXTH ANNUAL GENERAL MEETING OF NESTLÉ INDIA LIMITED will be held at Air Force Auditorium, Subroto Park, New Delhi – 110 010 on Friday, 15th May, 2015 at 10:00 a.m. to transact the following business:

ORDINARY BUSINESS:

1. To receive, consider and adopt the Financial Statements of the Company for the year ended 31st December, 2014 including audited Balance Sheet as at 31st December, 2014 and the Statement of Profit and Loss for the year ended on that date and the Reports of the Board of Directors and Auditors thereon.
2. To confirm the three interim dividends aggregating to ₹ 50.50 per equity share, already paid for the year ended 31st December, 2014 and declare final dividend.
3. To appoint a Director in place of Mr. Aristides Protonotarios (DIN 06546858), who retires by rotation and being eligible offers himself for re-appointment.
4. To appoint M/s. A.F. Ferguson & Co., Chartered Accountants (ICAI Registration No. 112066W) as statutory auditors of the Company and fix their remuneration.

SPECIAL BUSINESS:

5. To consider and if thought fit, to pass with or without modification(s), the following resolution as an Ordinary Resolution:
"RESOLVED that pursuant to the provisions of Sections 149, 150, 152 and any other applicable provisions of the Companies Act, 2013 (the "Act") and the Companies (Appointment and Qualification of Directors) Rules, 2014 (including any statutory modification(s) or re-enactment thereof for the time being in force) read with Schedule IV to the Act and Clause 49 of the Listing Agreement, Mr. Rajya Vardhan Kanoria (DIN 00003792), who was appointed as an Additional Director of the Company by the Board of Directors with effect from 13th May, 2014, in terms of Section 161(1) of the Act and Article 127 of the Articles of Association of the Company and whose term of office expires at the Annual General Meeting and in respect of whom the Company has received a notice in writing from a member proposing his candidature for the office of Director, be and is hereby appointed as an Independent Director of the Company to hold office for five consecutive years for a term up to 12th May, 2019."

By Order of the Board

B. Murli

Senior Vice President – Legal
& Company Secretary

Date : 26th March, 2015

Place : Gurgaon

IMPORTANT NOTES:

1. The Register of Members and the Share Transfer books of the Company will remain closed from Thursday, 21st May, 2015 to Friday, 22nd May, 2015 (both days inclusive) for annual closing and determining the entitlement of the shareholders to the final dividend for 2014.
2. The Explanatory Statement pursuant to Section 102 of the Companies Act, 2013, which sets out details relating to Special Business at the meeting, is annexed hereto.
3. **A MEMBER ENTITLED TO ATTEND AND VOTE AT THE MEETING IS ENTITLED TO APPOINT A PROXY/ PROXIES TO ATTEND AND VOTE INSTEAD OF HIMSELF/HERSELF. SUCH A PROXY/ PROXIES NEED NOT BE A MEMBER OF THE COMPANY.** A person can act as proxy on behalf of members not exceeding fifty (50) and holding in the aggregate not more than ten percent of the total share capital of the Company.
The instrument of Proxy in order to be effective, should be deposited at the Registered Office of the Company, duly completed and signed, not less than 48 hours before the commencement of the meeting. A Proxy Form is sent herewith. Proxies submitted on behalf of the companies, societies etc., must be supported by an appropriate resolution/authority, as applicable.
4. Final dividend of ₹ 12.50 per share has been recommended by the Board of Directors for the year ended 31st December, 2014 and subject to the approval of the shareholders at the ensuing Annual General Meeting, is proposed to be paid on and from 2nd June, 2015. First, Second and Third interim dividends for the year 2014, at the rate of ₹ 12.50, ₹ 30.00 and ₹ 8.00 per equity share, were paid on 29th May, 2014, 26th September, 2014 and 22nd December, 2014, respectively. The Second Interim Dividend of ₹ 30.00 includes an additional interim dividend of ₹ 10/- per equity share upon the Company completing the major capital expenditure programme announced in 2010 and full repayment of the borrowings made for capital expenditure.
5. Members holding shares in electronic form are hereby informed that bank particulars registered against their respective depository accounts will be used by the Company for payment of dividend. The Company or its Registrars cannot act on any request received directly from the Members holding shares in electronic form for any change of bank particulars or bank mandates. Such changes are to be advised only to the Depository Participant of the Members. Members holding shares in physical form and desirous of either registering bank particulars or changing bank particulars already registered against their respective folios for payment of dividend are requested to write to the Company.
6. Under Section 205A of the Companies Act, 1956, the amount of dividend remaining unpaid or unclaimed for a period of seven years from the due date is required to be transferred to the Investor Education and Protection Fund (IEPF), constituted by the Central Government. The Company had, accordingly, transferred ₹ 1,671,120/- and ₹ 4,655,656/- being the unpaid and unclaimed dividend amount pertaining to Third Interim Dividend, 2006 and Interim Dividend 2007; and Second Interim Dividend 2007 on 7th May, 2014 and 13th January, 2015, respectively, to the Investor Education and Protection Fund of the Central Government.

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The Ministry of Corporate Affairs (MCA) on 10th May, 2012 notified the IEPF (Uploading of information regarding unpaid and unclaimed amounts lying with companies) Rules, 2012 (IEPF Rules), which is applicable to the Company. The objective of the IEPF Rules is to help the shareholders ascertain status of the unclaimed amounts and overcome the problems due to misplacement of intimation thereof by post etc. In terms of the said IEPF Rules, the Company has uploaded the information in respect of the Unclaimed Dividends in respect of the financial years from 2007, as on the date of the 55th Annual General Meeting (AGM) held on 12th May, 2014, on the website of the IEPF viz. www.iepf.gov.in and under "Investors Section" on the Website of the Company viz. www.nestle.in.

A separate reminder was also sent to those members having unclaimed dividends pertaining to Final Dividend, 2007 and Interim Dividend 2008 paid on 9th May, 2008 or any subsequent dividend payment(s). Members who have not encashed their dividend warrants are advised to write to the Company immediately claiming dividends declared by the Company.

7. To prevent fraudulent transactions, members are advised to exercise due diligence and notify the Company of any change in address or demise of any member as soon as possible. Members are also advised not to leave their demat account(s) dormant for long. Periodic statement of holdings should be obtained from the concerned Depository Participant and holdings should be verified.
8. The Securities and Exchange Board of India (SEBI) has mandated the submission of Permanent Account Number (PAN) by every participant in securities market. Members holding shares in electronic form are, therefore, requested to submit the PAN to their Depository Participants with whom they are maintaining their demat accounts. Members holding shares in physical form can submit their PAN details to the Company.
9. Details under Clause 49 of the Listing Agreement with the Stock Exchange in respect of the Directors seeking appointment/re-appointment at the Annual General Meeting, forms integral part of the notice. The Directors have furnished the requisite declarations for their appointment/re-appointment.
10. Electronic copy of the Annual Report for 2014 is being sent to all the members whose email IDs are registered with the Company/Depository Participant(s) for communication purposes unless any member has requested for a hard copy of the same. For members who have not registered their email address, physical copy of the Annual Report for 2014 is being sent in the permitted mode.
11. Electronic copy of the Notice of the 56th Annual General Meeting of the Company *inter alia* indicating the process and manner of e-Voting along with Attendance Slip and Proxy Form is being sent to all the members whose email IDs are registered with the Company/Depository Participant(s) for communication purposes unless any member has requested for a hard copy of the same. For members who have not registered their email address, physical copy of the Notice of the 56th Annual General Meeting of the Company *inter alia* indicating the process and manner of e-voting along with Attendance Slip and Proxy Form is being sent in the permitted mode.
12. Members may note that the Notice of the 56th Annual General Meeting and the Annual Report for 2014 will also be available on the Company's website www.nestle.in for their download. The physical copies of the aforesaid documents will also be available at the Company's Registered Office in New Delhi for inspection during normal business hours on working days. Even after registering for e-communication, members are entitled to receive such communication in physical form, upon making a request for the same, by post free of cost. For any communication, the shareholders may also send requests to the Company's investor email id: investor@in.nestle.com.
13. **Voting through electronic means**
 - I. In compliance with provisions of Section 108 of the Companies Act, 2013, Rule 20 of the Companies (Management and Administration) Rules, 2014 as substituted by the Companies (Management and Administration) Amendment Rules, 2015 ('Amended Rules 2015') and Clause 35B of the Listing Agreement, the Company is pleased to provide members facility to exercise their right to vote on resolutions proposed to be considered at the 56th Annual General Meeting (AGM) by electronic means and the business may be transacted through e-Voting Services. The facility of casting the votes by the members using an electronic voting system from a place other than venue of the AGM ("remote e-voting") will be provided by National Securities Depository Limited (NSDL).
 - II. The facility for voting through ballot paper shall be made available at the AGM and the members attending the meeting who have not cast their vote by remote e-voting shall be able to exercise their right at the meeting through ballot paper.
 - III. The members who have cast their vote by remote e-voting prior to the AGM may also attend the AGM but shall not be entitled to cast their vote again.
 - IV. The remote e-voting period commences on 12th May, 2015 (9:00 am) and ends on 14th May, 2015 (5:00 pm). During this period members of the Company, holding shares either in physical form or in dematerialized form, as on the cut-off date of 8th May, 2015, may cast their vote by remote e-voting. The remote e-voting module shall be disabled by NSDL for voting thereafter. Once the vote on a resolution is cast by the member, the member shall not be allowed to change it subsequently.
 - V. The process and manner for remote e-voting are as under:
 - A. In case a Member receives an email from NSDL [for members whose email IDs are registered with the Company/Depository Participant(s)]:
 - (i) Open email and open PDF file viz: "Nestlé India remote e-voting.pdf" with your Client ID or Folio No. as password. The said PDF file contains your user ID and password/PIN for remote e-voting. Please note that the password is an initial password.
 - (ii) Launch internet browser by typing the following URL: <https://www.evoting.nsdl.com>
 - (iii) Click on Shareholder - Login
 - (iv) Put user ID and password as initial password/PIN noted in step (i) above. Click Login.
 - (v) Password change menu appears. Change the password/PIN with new password of your choice with minimum 8 digits/characters or combination thereof. Note new password. It is strongly recommended not to share your password with any other person and take utmost care to keep your password confidential.
 - (vi) Home page of remote e-voting opens. Click on remote e-voting: Active Voting Cycles.
 - (vii) Select "REVEN" of Nestlé India Limited.
 - (viii) Now you are ready for remote e-voting as Cast Vote page opens.

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- (ix) Cast your vote by selecting appropriate option and click on "Submit" and also "Confirm" when prompted.
 - (x) Upon confirmation, the message "Vote cast successfully" will be displayed.
 - (xi) Once you have voted on the resolution, you will not be allowed to modify your vote.
 - (xii) Institutional shareholders (i.e. other than individuals, HUF, NRI etc.) are required to send scanned copy (PDF/JPG Format) of the relevant Board Resolution/ Authority letter etc. together with attested specimen signature of the duly authorized signatory(ies) who are authorized to vote, to the Scrutinizer through e-mail to nestlescrutinizer@gmail.com or evoting@in.nestle.com with a copy marked to evoting@nsdl.co.in
- B. In case a Member receives physical copy of the Notice of AGM [for members whose email IDs are not registered with the Company/ Depository Participants(s) or requesting physical copy] :
- (i) Initial password is provided as below/at the bottom of the Attendance Slip for the AGM :
- | REVEN (Remote e-voting Event Number) | USER ID | PASSWORD/PIN |
|--|---------|--------------|
| (ii) Please follow all steps from Sl. No. (ii) to Sl. No. (xii) above, to cast vote. | | |
- VI. In case of any queries, you may refer the Frequently Asked Questions (FAQs) for Members and remote e-voting user manual for Members available at the download section of www.evoting.nsdl.com or call on toll free no.: 1800-222-990.
 - VII. If you are already registered with NSDL for remote e-voting then you can use your existing user ID and password/PIN for casting your vote.
 - VIII. You can also update your mobile number and e-mail id in the user profile details of the folio which may be used for sending future communication(s).
 - IX. The voting rights of members shall be in proportion to their shares of the paid up equity share capital of the Company as on the cut-off date of 8th May, 2015.
 - X. Any person, who acquires shares of the Company and become member of the Company after dispatch of the Notice of AGM and holding shares as of the cut-off date i.e. 8th May, 2015, may obtain the login ID and password by sending a request at evoting@nsdl.co.in or evoting@in.nestle.com. However, if you are already registered with NSDL for remote e-voting then you can use your existing user ID and password for casting your vote. If you forgot your password, you can reset your password by using "Forgot User Details/Password" option available on www.evoting.nsdl.com.
 - XI. A person, whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting at the AGM through ballot paper.
 - XII. Mr. Abhinav Khosla, Chartered Accountant (Membership No. 087010), Partner M/s. S.C. Vasudeva & Co., Chartered Accountants has been appointed as the Scrutinizer to scrutinize the voting and remote e-voting process in a fair and transparent manner.
 - XIII. The Chairman shall, at the AGM, at the end of discussion on the resolutions on which voting is to be held, allow voting with the assistance of scrutinizer, by use of ballot paper for all those members who are present at the AGM but have not cast their votes by availing the remote e-voting facility.
 - XIV. The Scrutinizer shall after the conclusion of voting at the AGM, will first count the votes cast at the meeting and thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the Company and shall make, not later than three days of the conclusion of the AGM, a consolidated scrutinizer's report of the total votes cast in favour or against, if any, to the Chairman or a person authorized by him in writing, who shall countersign the same and declare the result of the voting forthwith.
 - XV. The Results declared alongwith the report of the Scrutinizer shall be placed on the website of the Company www.nestle.in and on the website of NSDL immediately after the declaration of result by the Chairman or a person authorized by him in writing. The results shall also be immediately forwarded to the BSE Limited, Mumbai.
14. All documents referred to in the accompanying Notice and the Explanatory Statement shall be open for inspection at the Registered Office of the Company during normal business hours (9.00 am to 5.00 pm) on all working days except Saturdays, up to and including the date of the Annual General Meeting of the Company.
15. This Notice has been updated with the instructions for voting through electronic means as per the Amended Rules 2015.
- I. **EXPLANATORY STATEMENT IN RESPECT OF THE SPECIAL BUSINESS PURSUANT TO SECTION 102 OF THE COMPANIES ACT, 2013**

Item No. 5

The Board of Directors at their meeting held on 13th May, 2014, on the recommendation of Nomination and Remuneration Committee, appointed Mr. Rajya Vardhan Kanoria as an Additional Director under Section 161(1) of the Companies Act, 2013 and Article 127 of the Articles of Association of the Company and as an Independent Non-executive Director of the Company for five consecutive years under Section 149 of the Companies Act, 2013 with effect from 13th May, 2014. His appointment is subject to the approval of the shareholders. The Company has received a notice from a member proposing Mr. Kanoria as a candidate for the office of Director of the Company, copy of which is available on the website of the Company www.nestle.in. Mr. Kanoria is also a member of the Audit Committee; Stakeholders Relationship Committee; and Nomination and Remuneration Committee of the Board of Directors of the Company.

Mr. Kanoria is one of India's leading Industrialists. He is Promoter and Chairman & Managing Director of Kanoria Chemicals & Industries Limited. He is MBA (Hons.) from IMD, Switzerland. He has been instrumental in influencing trade policy both at the national and global level and has over four decades of experience in the chemicals, textiles and jute industries. He has contributed to industry and society immensely. He has occupied various offices in Industry Associations including the office of President of Federation of Indian Chambers of Commerce and Industry (FICCI) in 2011-12. He has also Chaired Commission on Trade and Investment Policy of the International Chamber of Commerce, Paris during 2008 - 2011. He has been Chairman of Confederation of Indian Textile Industry and Chairman of Indian Jute Mills' Association. He has served on various Government Committees particularly on trade and investment. He has been awarded with "Swiss Ambassador's Award for Leadership and Business Ethics, 2013" and bestowed with the

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Distinction of Commander of the Order of Leopold II by the King of Belgium for his contribution to the development of business ties between India and Belgium.

Mr. Kanoria holds directorships and membership of the Committees of the Board of Directors of the under stated other companies in India:

- Director of Kanoria Chemicals & Industries Limited, Kirtivardhan Finvest Services Limited, KPL International Limited, Ludlow Jute & Specialties Limited, R V Investment & Dealers Limited, JK Paper Limited, National Skill Development Corporation and Vardhan Limited.
- Member of Audit Committee of Kanoria Chemicals & Industries Limited, JK Paper Limited and National Skill Development Corporation; Member of Stakeholders Relationship Committee of R V Investment & Dealers Limited and JK Paper Limited.

Mr. Kanoria does not hold by himself or for any other person on a beneficial basis, any shares in the Company.

Mr. Kanoria has given a declaration that he meets the criteria of independence as provided in Section 149(6) of the Companies Act, 2013.

In the opinion of the Board, Mr. Kanoria fulfils the conditions specified in the Companies Act, 2013, the Companies (Appointment and Qualification of Directors) Rules, 2014 and Clause 49 of the Listing Agreement for his appointment as an Independent Director of the Company and is independent of the management. Copy of the letter for appointment of Mr. Kanoria as an Independent Director is available for inspection without any fee by the members at the Registered Office of the Company during normal business hours on any working day, excluding Saturday. The same is also available on the website of the Company www.nestle.in.

The Board considers that his association would be of immense benefit to the Company and it is desirable to avail services of Mr. Kanoria as an Independent Director. Mr. Kanoria would bring with him immense experience to the Board as an Industrialist and having held important offices such as that of President of the Federation of Indian Chambers of Commerce and Industry during 2011-2012, inter alia in the areas of management, administration and corporate governance. Accordingly, the Board recommends the resolution in relation to appointment of Mr. Kanoria as an Independent Director for five consecutive years for a term upto 12th May, 2019, for the approval by the shareholders of the Company.

Except Mr. Kanoria, being an appointee, none of the Directors and Key Managerial Personnel of the Company and their relatives is concerned or interested, financial or otherwise, in the resolution set out at Item No. 5. This Explanatory Statement may also be regarded as a disclosure under Clause 49 of the Listing agreement with the Stock Exchange.

II. DETAILS OF DIRECTORS SEEKING APPOINTMENT/ RE-APPOINTMENT AS REQUIRED UNDER CLAUSE 49 OF THE LISTING AGREEMENT WITH THE STOCK EXCHANGE:

Re-appointment of Mr. Aristides Protonotarios (Item No. 3)

Under Section 152(6) of the Companies Act, 2013 at every AGM one third of the directors as are liable to retire by rotation shall retire from office. The directors to retire by rotation at every AGM shall be those who have been longest in office and between those who became directors on the same day by mutual agreement or lot.

M/s Antonio Helio Waszyk, Shobinder Duggal and Aristides Protonotarios, Directors liable to retire by rotation, have all been appointed at the last AGM on 12th May, 2014. In compliance with Section 152 of the Companies Act, 2013, Mr. Aristides Protonotarios shall, by mutual agreement, retire at the forthcoming Annual General Meeting and being eligible offers himself for re-appointment.

Mr. Aristides Protonotarios joined the Board of Directors as a Whole-time Director designated as "Director- Technical" of the Company for a period of five years with effect from 1st April, 2013. As per the terms of his appointment, re-appointment at the AGM as a director retiring by rotation would not constitute break in his appointment as a Whole-time Director designated as Director-Technical.

Mr. Protonotarios holds Bachelor's degree of Engineering in Nature and Agriculture from Newcastle Upon Tyne University, United Kingdom (UK) and Master's Degree of Engineering in Foods from Reading University, UK. Before joining the Company he served as R&D Manager for the Beverages Strategic Business Unit (SBU) at Nestec S.A., Switzerland. He joined Nestlé UK in 1991 and was appointed as Manufacturing Specialist at Hayes. In 1996, he moved to Estcourt Factory, South Africa, as Manufacturing Specialist and progressed through a number of positions until he became Production Manager in 1999. He joined PTC Orbe as Manufacturing Specialist Coffee and later as Technical Advisor in 2003. In 2004, he was appointed as Factory Manager in Hayes and in 2007 he became Head of Manufacturing Services for Beverages in the UK. In 2009, he was appointed as Head of Technical and Production for Indonesia. In 2011, he moved to Nestec S.A., Switzerland, where he established the R&D function in the Beverages SBU. Mr. Protonotarios is not a Director in any other Company in India. He does not hold by himself or for any other person on a beneficial basis, any shares in the Company.

Upon his re-appointment as a director, Mr. Protonotarios shall continue to hold office as a Whole-time Director designated as "Director-Technical". Accordingly, the Board recommends his re-appointment.

Except Mr. Protonotarios, none of the Directors and Key Managerial Personnel of the Company and their relatives is concerned or interested, financial or otherwise, in Agenda Item No. 3.

Appointment of other Director (Item No. 5)

For the details of Mr. Rajya Vardhan Kanoria, please refer to the above Explanatory Statement in respect of the Special Business set out at Item No. 5 of the Notice of Annual General Meeting pursuant to Section 102 of the Companies Act, 2013.

By Order of the Board

Date : 26th March, 2015
Place : Gurgaon

B. Murli
Senior Vice President – Legal &
Company Secretary

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NESTLÉ INDIA LIMITED

(CIN : L15202DL1959PLC003786)
Regd. Office : M-5A, Connaught Circus, New Delhi - 110 001

56th ANNUAL GENERAL MEETING**ATTENDANCE SLIP****2015**

I/We hereby record my/our presence at the 56th Annual General Meeting of the Company at **Air Force Auditorium, Subroto Park, New Delhi-110010** on **Friday, 15th May, 2015 at 10.00 a.m.**

Member's Folio/DP ID-Client ID No.

Member's/Proxy's name in Block Letters

Member's/Proxy's Signature

Note: Please complete the Folio / DP ID-Client ID No. and name, sign this Attendance Slip and hand it over at the Attendance Verification Counter at the ENTRANCE OF THE MEETING HALL.

ELECTRONIC VOTING PARTICULARS

REVEN (Remote E-Voting Event Number)	USER ID	PASSWORD / PIN

NOTE : Please read instructions given at Note No. 13 of the Notice of the 56th Annual General Meeting carefully before voting electronically.

NESTLÉ INDIA LIMITED

(CIN : L15202DL1959PLC003786)
Regd. Office : M-5A, Connaught Circus, New Delhi - 110 001

PROXY FORM

Name of the Member(s):

Registered Address :

Folio No./Client ID:

E-mail ID :

DP ID :

I/We being the member(s) of shares of the above named Company hereby appoint :

- Name : Address :
E-mail Id : Signature: or failing him;
- Name : Address :
E-mail Id : Signature: or failing him;
- Name : Address :
E-mail Id : Signature: ;

as my/our proxy to attend and vote (on a poll) for me/us and on my/our behalf at the 56th Annual General Meeting of the Company, to be held on Friday, 15th May, 2015 at 10.00 a.m. at Air Force Auditorium, Subroto Park, New Delhi - 110 010 and at any adjournment thereof in respect of such resolutions as are indicated below:

Resolution No.	Optional*	
Ordinary Business	For	Against
1. Adoption of Financial Statements for the year ended 31 st December, 2014.		
2. Confirm three interim dividends already paid during the year 2014 and declare final dividend.		
3. Re-appointment of Mr. Aristides Protonotarios (DIN : 06546858) who retires by rotation.		
4. Appointment of M/s. A.F. Ferguson & Co., Chartered Accountants (ICAI Registration No. 112066W) as Auditors and fixing their remuneration.		
Special Business		
5. Appointment of Mr. Rajya Vardhan Kanoria (DIN : 00003792) as an Independent director.		

Signed this day of 2015.

Signature of shareholder

Signature of Proxy holder(s)

Affix
Revenue
Stamp

Note:

- This form of proxy in order to be effective should be duly completed and deposited at the Registered Office of the Company, not less than 48 hours before the commencement of the Meeting.
- For the Resolutions, Explanatory Statement and Notes, please refer to the Notice of the 56th Annual General Meeting.
- It is optional to put a 'X' in the appropriate column against the Resolutions indicated in the Box. If you leave the 'For' or 'Against' column blank against any or all Resolutions, your Proxy will be entitled to vote in the manner as he/she thinks appropriate.

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Q. 1. The minutes of the 24th Annual General Meeting of Poly Bank Ltd. are to be signed by the chairman. However, the chairman of Poly Bank Ltd. met with an accident 2 days after the AGM was held. Minutes of AGM are, therefore, pending for signatures. Advise the company secretary of Poly Bank Ltd. about the procedure for signing of minutes in such a case as if the chairman has become permanently incapable of signing. Will your answer be different if chairman suffers only minor injury and gets back to his office in one week? **[Dec. 2017]**

Ans. As per Section 118 read with rule 25 of the Companies (Management and Administration) Rules, 2014 and Secretarial Standards on General Meetings, every company shall cause minutes of the proceedings of every General Meeting to be prepared and signed as may be described under the provisions of law. Minutes shall be recorded in books maintained for that purpose. The page of the Minutes Books shall be consequently numbered. This shall be followed irrespective of a break in the Book arising out of periodically binding in case the Minutes are maintained in physical form. Such minutes shall be kept within 30 days of the conclusion of every such meeting. Each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by the Chairman of the same meeting within the aforesaid period of 30 days or in the event of the death of or liability of that Chairman within that period, by a director duly authorised by the Board of the purpose.

Therefore, in this case, convey a Board meeting and authorise one of the remaining directors to sign the minutes of AGM.

Where Chairman is suffered with minor injury and get back to office in one week, the Chairman should sign the minute.

Q. 2. Robert, a member of MLM Ltd. submitted his proxy to the company before the scheduled time of the Annual General Meeting. The articles of the company provided that proxy can be submitted to the company 70 hours before the scheduled time of the meeting. The chairman of the company rejects the proxy on the ground that it is in violation of the Articles. Referring to the provisions of the Companies Act, examine the validity of the chairman's decision to reject the proxy. **[Dec. 2017]**

Ans. In accordance with the provisions of Companies Act, 2013, as contained in Section 105(4), any provision contained in the articles of the company which specifies or requires a longer period than forty-eight hours before the meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

Therefore, a Chairman's decision to reject the proxy is not valid and contention of the member shall prevail. Provision in the Articles for a longer period than 48 hours is void.

Q. 3. Innovative Energies Limited has 2,505 members as on the date of the company's extraordinary general meeting. The Executive Director, Mr. Avinash has asked you, the Secretary of the Company, what is the required quorum for the meeting. Referring to the provisions of the Companies Act, 2013, inform the Executive Director, Mr. Avinash, the quorum that must be present for holding the Extra-Ordinary General Meeting of the company. State whether the required quorum must be present throughout the meeting. **[June. 2017]**

Ans. Quorum for general meeting of a company is regulated by section 103 of the Companies Act, 2013. Accordingly, as per section 103(1), unless the articles of the company provide for a larger number, in case of a public company,-

- 5 members personally present if the number of member as on the date of meeting is not more than 1000;
- 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;
- 30 members personally present if the number of member as on the date of meeting exceed 5000.

In the given case, Innovative Energies Limited has 2505 members as on date of its extra-ordinary general meeting. Hence, the required number of quorum, if the articles do not provide for a larger number, will be 15 members personally present. The company Secretary shall inform the Executive Director, MR. Avinash accordingly.

Q. 4. Shaky Commodities Private Limited could not hold its 10th annual general meeting for the year 2016 by 30th September, 2016. The company sought extension of time for holding the AGM from the Registrar of Companies but failed to hold the meeting within the extended time too. Instead, it held the meeting on 31st March, 2017 and passed resolutions thereat. Certain shareholders have challenged the validity of these resolutions. Referring to the provisions of the Companies Act, 2013, examine whether the contention of the shareholders shall be tenable. **[June. 2017]**

Ans. According to section 99 of the Companies Act, 2013, if any default is made in holding a meeting of the company in complying with any direction of the tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

Further, any member of the company in such a case may make an application to the tribunal to call of an AGM of the company and give such ancillary or consequential direction as the tribunal think expedient, including direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.(Section 97).

In *turner Morrison and co. Ltd. V. Hungerford Investment Trust Ltd.* ILR(1972), cal , the court held that a meeting (AGM) held beyond the time cannot be said to be void or illegal, if the central Government (Tribunal) does not extend the date of holding AGM u/s 167(Section 97).

Therefore, the resolution passed at the meeting held on 31st march, 2017 is valid and enforceable. The directors shall, however, be liable to penalties in accordance with the provision of section 99, as stated above. Contention of the shareholder shall not be tenable.

Q. 5. Board of Directors of Day Night Prakashani Limited decide to shift its registered office of the company from Mumbai to National Capital Region (NCR). The Board has approved the change. The Board has to seek the approval of the members of the company forgoing ahead with the legal formalities as required under the Companies Act, 2013, for which the extra-ordinary general meeting of the members is scheduled to be held on 17th June, 2017. In this connection you are required to draft notice of the EGM for shifting of office outside the state and give explanatory statement in this regard. **[June. 2017]**

Ans.

DAY NIGHT PRAKASHANI LIMITED
123, SUMAN SUMANA STREET, MUMBAI-700015
(CIN: XXXXXXXXXXXXXXXXXXXX)

Notice is hereby given that an extra-ordinary General Meeting of the company will be held on 17th June, 2017 at 11:00 A.M at the registered office of the company to transact the following special business:

1. To consider, and if thought fit , to pass, with or without modification in the following as a special resolution;
“**RESOLVED** that subject to the confirmation to the tribunal, clause II of the memorandum of association be substituted by the following clause:
2. The registered office of the company shall be situated in the NCR.”
“**RESOLVED FURTHER** that the Board of Directors of the company is authorized to take necessary step in this regard “.

Place: Mumbai

Date: 10th April, 2017

Notes:

1. A member entitled to attend and votes is entitled to appoint one or more proxies to attend and vote instead of himself and the proxy need not to be a member of the company. Proxies in order to be effective must be lodge with the company at least 48 hours before the meeting.
2. Explanatory statement under section 102 of the companies Act, 2013 is annexed.
Clause II of the memorandum of association of the company provides that the registered office of the company should be situated in New Delhi. As manufacturing operation of the company at one time were limited to the Mumbai the registered office has been located in Mumbai. The company has no factories also in Delhi had NCR and it is more convenient and economical to manage the operation of New Delhi. The head office, for this reason, already been transferred to New Delhi and the direction consider that the registered office should also be similarly transferred.

After obtaining shareholders approval, the proposal shall be submitted to the Tribunal for approval under Section 17(2) of the Companies Act, 2013.

The Board places this proposal before you for approval. None of the directors is interested or concerned in the resolution.

Q. 6. In the 25th Annual General Meeting (AGM) of Lazy Ltd. some shareholders demanded that a poll be taken in respect of one of the resolution proposed in the notice of AGM on which voting was yet to be taken on a show hands. Prepare the announcement to be made by the Chairman of the meeting in connection with the poll. **[June. 2018]**

Ans. Announcements by the Chairman of the Meeting in connection with a poll

1. *Immediately after a poll is demanded:*

“request you to make your demand on the Poll Demand on the Poll Demand Shell so that the same can be verified to ascertain the validity of the demand in terms of the Companies Act, 2013, and the Articles of Association of the Company “.

2. *After verification of the demand and if the demand is found to be validly made:*

“I now order that the Poll on the Resolution in respect of item No. of the Notice, on the subject of be taken and I appoint Mr. and Mr. as the Scrutinizers.

The Poll will commence half an hour after the transaction of all the items on the Agenda for the Meeting. The Poll will be held in a part of this Hall and will continue for half an hour or till all the Members or their valid Proxies or Authorized Representatives present and willing to cast their votes, have cast their votes, whichever is earlier,

I authorize the Scrutinizers to issue the Poll papers to Members/Proxies/Authorized Representatives and to advise them about the procedure to be followed; and to declare the Poll as closed on conclusion thereof, after ensuring that all the Members/Proxies/Authorized Representatives present have been provided the opportunity to vote. In terms of the provisions of the articles of association of the company, a Member who is in arrears of moneys payable on the shares allotted to him is not entitled to vote. The Scrutinizers can take the assistance as may be required of the officers or employees of the company in the conducts of the poll.

The details of the result of the poll would be displayed on the company in the contact of the poll. I request you all to extend your co operation in the conducts of the poll.

The details of the result of the poll would be displayed on the notices board at the Registration Office of the Company not later than 11:00 am on..... It would also be put up on the website of the company..... under the head.....

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Descriptive Questions:-----
 - a) Every annual general meeting of the company must be held in each calendar year.
2. Write note on following:-----
 - a) Passing of resolution by postal ballot
 - b) Voting by show of hands
 - c) Class meetings
3. Distinguish Between:-----
 - a) 'Motion' and 'resolution'.
 - b) 'Special resolution' and 'resolution requiring special notice'.
 - c) 'Postponement of meeting' and 'adjournment of meeting'.
 - d) 'Ordinary resolution' and 'special resolution'.
4. Comment on the following :-----
 - a) It is not necessary to have the minutes of the meeting confirmed in the next meeting.
 - b) Postal ballot mechanism improves shareholders' participation in corporate decision- making.
5. Attempt the following :-----
 - a) "A limited company will have to get certain resolutions passed only through postal ballot instead of transacting the business in the general meeting of the Company." Discuss.
6. "A new business cannot be dealt with in an adjourned meeting without permission of the chair." Do you agree with the statement? Give reasons.
7. Enumerate different types of meeting under the Companies Act, 2013
8. What do you understand by the expression 'resolution by circulation'? List out four matters which cannot be passed by the directors by resolution by circulation.
9. The required quorum is not present within thirty minutes of the scheduled time for holding of annual general meeting. Advise with the help of relevant provisions of the Companies Act, 2013.
10. Yogesh, the company Secretary of Bigleap Ltd. Convened a general meeting of the company after discussing the matter with some of the directors even though there was no express approval of the Board for convening such a meeting. Discuss the validity of such a meeting.
11. Discuss briefly the voting rights of a proxy.

FROM ICSI MODULE



Answer the Following:-

1. What are the items that constitute Ordinary Business in an Annual General Meeting of a company?
2. Who shall be chairman of a general meeting of a company? What are the provisions of the Companies Act, 2013 regarding his election?
3. Every Annual General Meeting of a company shall be called on a day which is not a public holiday. Can an adjourned Annual General Meeting of a company be called on a public holiday?
4. A shareholder having given proxy, personally attends and votes at the meeting. Comment, illustrating a case law.
5. A valid demand of a poll was received at a general meeting. Thereafter, those who made it, can withdraw it. Examine the same in the light of the provisions of the Companies Act.
6. At a general meeting, two joint holders voted on a resolution. Will the votes of both the joint holders be accepted?
7. Discuss Postal Ballot.
8. What are the provisions of the Companies Act, in regard to the holding of a Extra Ordinary General Meeting?
9. Write short notes on:
(i) Proxy; (ii) Special Business; (iii) Quorum; (vi) 'Material Facts'.
10. Can any company pass some resolutions through postal ballot? If yes, what are the Rules in connection to it.



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

8

VIRTUAL MEETING

Covering-

- Virtual Meeting - Definition
- Virtual Meeting - Advantages
- Types of Meeting
- Brief Requirements for Virtual Meeting
- Virtual Meeting - Legal Provisions
- Role of Chairperson and Company Secretary
- Virtual AGG/EGMS
- Self Test Questions
 - From ICSI Module

**EXPECTED
MARKS COVERAGE
(1 to 5)**

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Additional Writing
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VIRTUAL MEETING

Present day Directors' who are professional have busy schedules which makes it difficult for them to attend board meetings of the companies in which they are directors especially for those who are living and working in different cities and countries. Teleconferencing, videoconferencing, and meeting online benefit boards and directors to enable them to attend the meetings from any location. Virtual meetings help the directors to participate in meetings where ever they are despite their busy schedule and make valuable contributions by their participation.

VIRTUAL MEETING - DEFINITION

A meeting held totally by means of either Video conferencing or other audio-visual means is known as Virtual Meeting. A virtual meeting is when people around the world, regardless of their location, use video, audio, and text to link up online.

The meetings are mainly:-

- (1) audio- and/or video based, such as audio conferencing, video conferencing, and on-line meetings or webinars, often they are supported by other forms like chat, white boards, document sharing, etc.
- (2) Audio conferencing means conference calls with three or more participants, either by connecting the different participants by using a conference phone, or both.
- (3) Video conferencing, a technology now a day commonly used in board meetings.

VIRTUAL MEETING - ADVANTAGES

- (a) Virtual meetings allow people to share information and data in real-time without being physically located together.
- (b) In virtual meeting there is no physical presence of participants and there is no designated venue for the purpose of meetings.
- (c) Participants located at different places participate in the meeting either by teleconference or video conference or combination of them at predetermined time.
- (d) By using Virtual technology, it is possible to replace physical meetings which require the presence of people at the designated place and time.
- (e) The potential gains are in terms of reduced travel costs, timesaving, efficiency improvements, and less environmental impact in terms of savings on fuel and transport.

TYPES OF MEETING

Same Time, Same Place	Conventional Meetings
Different Time, Same Place	Project Meetings Organizational Meetings
Same Time, Difference Place	Conference Calls Video Conferences Online Meetings Web Conferences
Different Time, Difference Place	Email Recordings Discussion Forum Social Media

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BRIEF REQUIREMENTS FOR VIRTUAL MEETING

- (a) Meeting rooms
- (b) Software, which can be either purchased or can be provided by vendor for a fee on yearly rental basis.
- (c) Hardware equipment like Monitor or LED screen, Webcams.
- (d) High quality mike system.
- (e) Projectors.
- (f) Document scanners.
- (g) Leased Lines.
- (h) High speed wireless internet.
- (i) Recording & Storage Equipment for recording the proceeding and Proper storage for future reference as many be required under law.
- (j) Have trial run before the meeting to ensure all the systems are working properly.
- (k) Ensure that the proper arrangements are made in the Meeting room.

VIRTUAL MEETING –LEGAL PROVISIONS

1. The Section 173 of Companies Act, 2013 read with Rule 3 & 4 of Companies (Meetings of Board its Powers) Rules, 2014 and
2. Secretarial Standards on Board meetings

1. PROCEDURES FOR CONVENING AND CONDUCTING BOARD'S MEETINGS THROUGH VIDEO OR AUDIO VISUAL MEANS

(Rule 3 of Companies (Meetings of Board and its powers) rules, 2014 :

- (1) Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
- (2) The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care, the same has been discussed above.
- (3) (a) The notices of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.
(b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.
(c) A director intending to participate through video conferencing mode or audio visual means shall communicate his intention to the Chairman or the company secretary of the company.
(d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangement in this behalf.
- (4) At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means.
The roll call shall also be made at the conclusion of the meeting and at the re-commencement of the meeting after every break to confirm the presence of a quorum throughout the meeting.
- (5) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.
(b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or company secretary shall request for a repeat or reiteration by the director.
- (6) From the commencement of the meeting until the conclusion of such meeting, no person other than the Chairperson, directors, Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.
- (7) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.

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- (b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.
- (c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Matters not to be dealt with in a Meeting through Video Conferencing or other Audio Visual Means

Rule 4 prescribe restriction on the following matters, which shall not be dealt with in any meeting held through video conferencing or other audio visual means:

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of Section 134 of the Act; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

2. SECRETARIAL STANDARDS-1 ON BOARD MEETINGS

SS-1 defines electronic mode as “Electronic Mode” in relation to Meetings means Meetings through video conferencing or other audio-visual means. “Video conferencing or other audiovisual means” means audio visual electronic communication facility employed which enables all the persons participating in a Meeting to communicate concurrently with each other without an intermediary and to participate effectively in the Meeting.

1. Any Director may participate through Electronic Mode in a Meeting unless the Act or any other law specifically prohibits such participation through Electronic Mode in respect of any item of business.

It means that directors can participate in a board meeting through video conference or by teleconference and can be counted for the purpose of quorum except for those items which are under law, Audit Committee meetings and their presence shall not be counted for the purpose of quorum.

2. Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means.
3. 3.The Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information.

If a Director intends to participate through Electronic Mode, he shall give sufficient prior intimation to the Chairman or the Company Secretary to enable them to make suitable arrangements in this behalf.

The Director may intimate his intention of participation through Electronic Mode at the beginning of the Calendar Year also, which shall be valid for such Calendar Year.

4. The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman or by any other Director present at the Meeting, if so authorized by the Chairman and the fact of such participation is also recorded in the Minutes.
5. Venue of the meeting With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

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ROLE OF CHAIRPERSON AND COMPANY SECRETARY

The Chairperson of the meeting and the company secretary shall take due and reasonable care with respect to the following:

- (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
- (b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
- (c) to record proceedings and prepare the minutes of the meeting;
- (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.
- (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
- (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting. The persons, who are differently abled, may be facilitated by the Board to allow a person to accompany him.

VIRTUAL AGM/EGMS

Section-108 of the Companies Act, 2013 provides for Voting through electronic means. —The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means General meetings, particularly when large numbers of shareholders are involved, can be very expensive and are not considered to be a cost-effective.

As of today, holding of total virtual shareholder meeting is not allowed, at present Hybrid meeting are permitted. “hybrid” to refer to those meetings are combination of online participation as well as option of attending the meeting in-person. “virtual meetings” are those conducted wholly online with no physical meeting of shareholders.

Advantages of Virtual AGM/EGMs

- (a) Increase shareholder participation in meetings,
- (b) Save time on travel and cost because of remote voting.
- (c) Encourages more participation by investors across the world.
- (d) Provides greater accessibility to shareholders who cannot be physically present due to distance.
- (e) Enables institutional investors to attend more than one meeting in a day and protect shareholders interest.
- (f) Reduce the cost of holding and conducting shareholder meeting, including the costs of the venue, stationary, transport and refreshments.
- (g) Saves time of the Company’s personal.

Difficulties in holding Virtual Meetings of Members:

- (a) Security of the systems used.
- (b) Streaming with quality without interruption.
- (c) Providing with secure login and shareholder authentication for attendance, with ease of access for shareholders, and remote voting.
- (d) Combined registration, voting and reporting software.
- (e) Customized instant results screen and detailed audit reporting.
- (f) Data Security of Logins and Passwords.

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Additional Writing
Live Lectures



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

9

MAJORITY POWERS AND MINORITY RIGHTS

Covering-

- Powers of majority
- Protection of minority rights and shareholders remedies
- Self Test Questions
 - From Past CS Exams
 - From ICSI Module

**EXPECTED
MARKS COVERAGE
(0 to 5)**

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MAJORITY POWERS AND MINORITY RIGHTS

SHAREHOLDERS' DEMOCRACY

Democracy means the rule of people, by people and for people.

The shareholders democracy means the **rule of shareholders, by the shareholders, and for the shareholders** in the corporate enterprise, to which the shareholders belong. The concept of shareholders' democracy in the present day corporate world denotes the **shareholders' supremacy** in the governance of the business and affairs of corporate sector either directly or through their elected representatives. Precisely it is a **right to speak, communicate** with co-shareholders and to **learn about what is going on** in the company.

POWERS OF MAJORITY

It is a cardinal rule of company law that prima facie a majority of members of a company are entitled to exercise the powers of the company and generally to control its affairs. The resolution of a majority of shareholders, passed at a duly convened and held general meeting, upon any question with which the company is legally competent to deal, is binding upon the minority and consequently upon the company.

'THE PRINCIPLE OF NON-INTERFERENCE'

(Rule in *Foss v. Harbottle*)

The court will not usually intervene at the instance of shareholders in matters of internal administration, and will not interfere with the management of a company by its directors so long they are acting within the powers conferred on them under the articles of the company. The basic principle of non-interference with the internal management of company by the court is laid down in the case of *Foss v. Harbottle*.

The justification for the rule laid down in *Foss v. Harbottle* is that the will of the majority prevails. The rule really preserves the right of the majority to decide how the company's affairs shall be conducted. If any wrong is done to the company, it is only the company itself, acting, as it must always act, through its majority, that can seek to redress and not an individual shareholder.

PROTECTION OF MINORITY RIGHTS AND SHAREHOLDERS REMEDIES

Exceptions to the Rule in *Foss v. Harbottle*

The cases in which the majority rule does not prevail are commonly known as exceptions to the rule in *Foss v. Harbottle* and are available to the minority. In all these cases an individual member may sue for declaration that the resolution complained of is void, or for an injunction to restrain the company from passing it. The said rule will not apply in the following cases:-

➤ Exceptions under case laws:-

1. Ultra Vires Acts

Where the directors representing the majority of shareholders perform an illegal or ultra vires act for the company. The majority of shareholders have no right to confirm an illegal or ultra vires transaction of the company.

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2. Fraud on Minority

Where an act done by the majority amounts to a fraud on the minority, an action can be brought by an individual shareholder.

3. Resolution requiring Special Majority

A shareholder can sue if an act requires a special majority but is passed by a simple majority.

4. Breach of Duty

The minority shareholder may bring an action against the company, where although there is no fraud, there is a breach of duty by directors and majority shareholders to the detriment of the company.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Descriptive Questions:-----
Explain the following:
 - (a) Mere lack of confidence between the majority shareholders and minority shareholders would not be enough to order for relief under section 397.
 - (b) What reliefs are available to the minority shareholders against wrongful conduct of the majority?
2. Attempt the following :
 - (a) "Oppression need not be continuous." Discuss.
3. Define 'oppression and mismanagement' what are the powers of the Government of India to prevent oppression and mismanagement?
4. Comment on the following:-----
 - (a) The Court / Tribunal of law will not interfere with the internal management of companies acting within their powers.

FROM ICSI MODULE



Answer the following:

1. "A company is a democratic institution in which the majority have a right to control the company." Do you support this statement? Give your comments in the rule laid down in *Foss v. Harbottle*.
2. Explain clearly the meaning of 'majority rule' as applied in managing a company registered under the Companies Act 1956. Are there any exceptions to this rule? If so, explain in the light of the statutory law and case law.
3. "The rule in *Foss v. Harbottle* presently has lost its importance because of adequate statutory provisions made in the Companies Act, 1956". Discuss the adequacy of these provisions.
4. The articles of a company provided for the taking of a poll at a general meeting of the company if so demanded by five shareholders. At a general meeting the Chairman, in breach of the articles, declined to take a poll. One of the shareholders brought an action on behalf of himself and other shareholders against the directors and company, seeking a declaration that decisions taken at the meeting were invalid and seeking an injunction to restrain their implementation. Are the shareholders competent to file the suit?
5. "Majority will have its way but minority must be allowed to have its say." Discuss the above proposition with reference to prevention of oppression and mismanagement?
6. Enumerate the powers of the Company Law Board to prevent oppression and mismanagement. What are the powers of the Central Government to prevent oppression and mismanagement?
7. "Section 397 and 398 are intended to avoid winding up, if possible, and keep the company going, while at the same time saving the minority shareholders from oppression and mismanagement". Explain.



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

10

PREVENTION OF OPPRESSION AND MISMANAGEMENT

Covering-

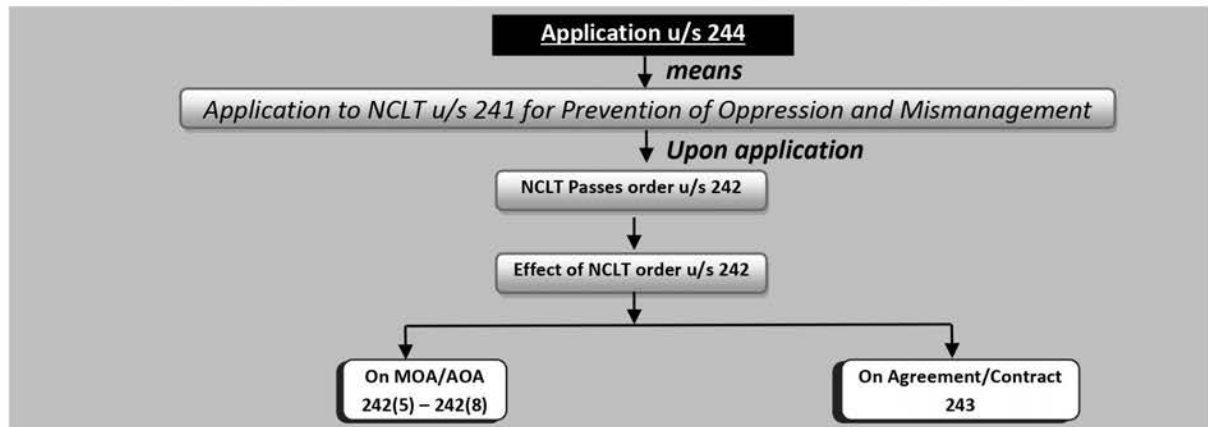
- Oppression and mismanagement- meaning
- Prevention of oppression
- Powers of NCLT on application under section 241
- Consequences of order of NCLT passed u/s 242
- Persons entitled to apply under Section 241
- Class Action

**EXPECTED
MARKS COVERAGE**
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PREVENTION OF OPPRESSION AND MISMANAGEMENT

The minority shareholders are empowered to bring action with a view to preventing the majority from oppression and mismanagement. These are the statutory rights of the minority shareholder.

OPPRESSION AND MISMANAGEMENT- MEANING

The words “oppression” and “mismanagement” are not defined in the Act. The meaning of these words for the purpose of Company Law should be used in a broad generic sense and not in any strict literal sense.

In general, **oppression** refers to *an act of majority which is harsh and burdensome on minority*.

Mismanagement refers to *gross negligence. Mere un-wise conduct of business cannot be considered as mismanagement*.

- Minor acts of mismanagement, however, are not to be regarded as oppression. As far as possible shareholders should try to resolve their differences by mutual readjustment. (Lalita Rajya Lakshmi v. Indian Motor Co.)
- There must be an **unfair abuse of powers** and **impairment of confidence in the probity** with which the company's affairs are being conducted. (Shanti Prasad Jain v. Kalinga Tubes Ltd.)
- A member can complain of oppression only in his capacity as a member and not in his capacity as director or creditor (In Re. Bellador Silk Ltd)
- The legal representatives of a deceased member whose name is still on the register of members are entitled to file a petition under Section 241 for relief against oppression or mismanagement. (Worldwide Agencies Pvt. Ltd. v. Mrs. Margaret T. Depositor)

PREVENTION OF OPPRESSION

SECTION- 241

(1) Any member of a company who complains that :—

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company;

or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, **may apply to the Tribunal, provided such member has a right to apply under section 244.**

(2) The **Central Government**, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal.

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POWERS OF NCLT ON APPLICATION UNDER SECTION 241

SECTION 242

- (1) If, on any application made under section 241, the Tribunal is of the opinion—
- (a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and
 - (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, **make such order as it thinks fit.**

- (2) **Without prejudice to the generality of the powers** under section 242(1), an order under 242(1) may provide for—

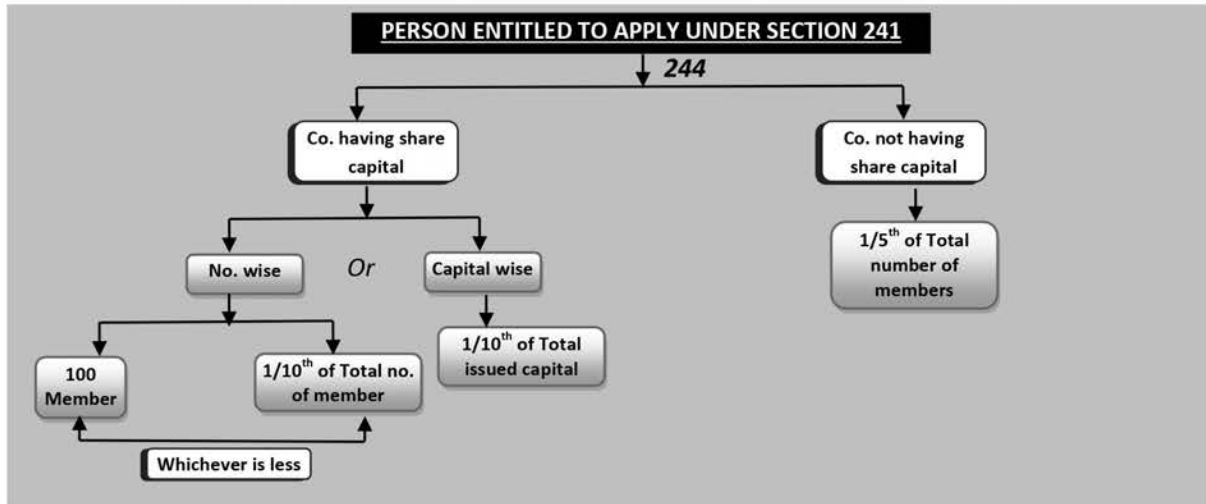
(a)	the regulation of conduct of affairs of the company in future;
(b)	the purchase of shares or interests of any members of the company by other members thereof or by the company;
(c)	in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
(d)	restrictions on the transfer or allotment of the shares of the company;
(e)	the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;
(f)	the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e): Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;
(g)	the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;
(h)	removal of the managing director, manager or any of the directors of the company;
(i)	recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;
(j)	the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);
(k)	appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;
(l)	imposition of costs as may be deemed fit by the Tribunal;
(m)	any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

- (3) A certified copy of the order of the Tribunal under 242(1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

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CONSEQUENCES OF ORDER OF NCLT PASSED U/S 242

➤ ON MOA/AOA

SECTION 242(5)-(8)

Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles. Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company 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, or with both.

➤ ON CERTAIN AGREEMENTS.

SECTION 243

Where an order made under section 242 terminates, sets aside or modifies an agreement,—

- | |
|---|
| (a) such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise; |
| (b) no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company: |

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

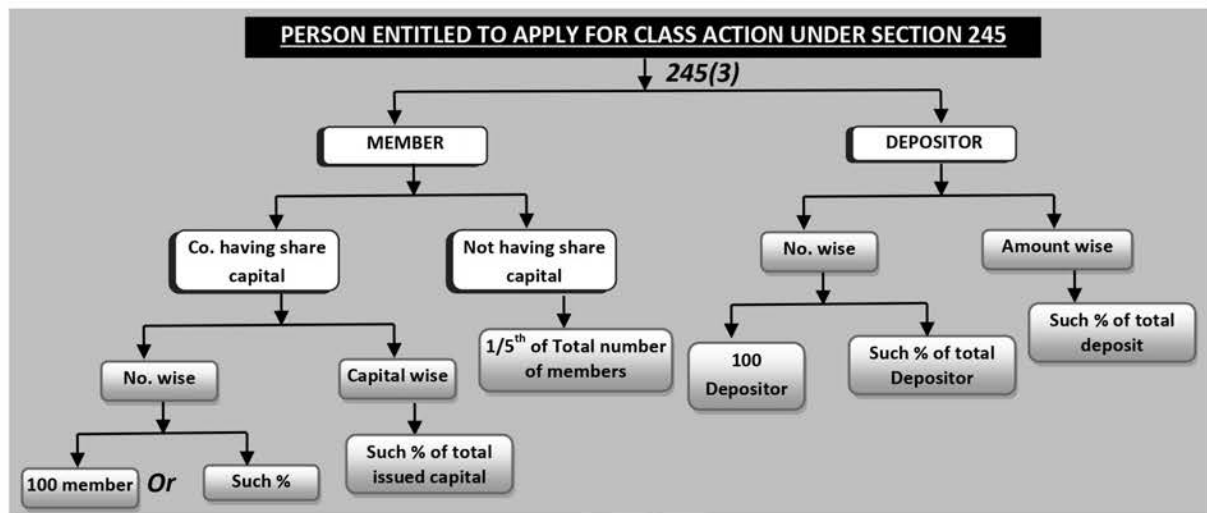
Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

Any person who knowingly acts as a managing director or other director or manager of a company in contravention of section 243, and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.

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PERSONS ENTITLED TO APPLY UNDER SECTION 241

SECTION- 244

(1) The following members of a company shall have the right to apply under section 241, namely:—

- (a) **in the case of a company having a share capital**, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
- (b) **in the case of a company not having a share capital**, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.—For the purposes of this section,

- 1.** where any share or shares are held by two or more persons jointly, they shall be counted only as one member.
- 2.** Where any members of a company are entitled to make an application any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

CLASS ACTION

SECTION 245

(1) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:—

- (a) to restrain the company from committing an act which is *ultra vires* the articles or memorandum of the company;
- (b) to restrain the company from committing breach of any provision of the company's memorandum or articles;
- (c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- (d) to restrain the company and its directors from acting on such resolution;
- (e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- (f) to restrain the company from taking action contrary to any resolution passed by the members;
- (g) **to claim damages or compensation or demand any other suitable action from or against—**
 - (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
 - (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
 - (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
- (h) to seek any other remedy as the Tribunal may deem fit.

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- (2) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.
- (3) (i) **The requisite number of members provided in sub-section (1) shall be as under:—**
- (a) **in the case of a company having a share capital**, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
- (b) **in the case of a company not having a share capital**, not less than one-fifth of the total number of its members.
- (ii) The **requisite number of depositors** provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.
- (4) **In considering an application under sub-section (1), the Tribunal shall take into account, in particular—**
- (a) whether the member or depositor is acting in good faith in making the application for seeking an order;
- (b) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of subsection (1);
- (c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;
- (d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;
- (e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—
- | |
|--|
| (i) authorised by the company before it occurs; or |
| (ii) ratified by the company after it occurs; |
- (f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.
- (5) **If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely:—**
- (a) public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;
- (b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;
- (c) two class action applications for the same cause of action shall not be allowed;
- (d) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.

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- (6) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.
- (7) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five 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 and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
- (8) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.
- (9) Nothing contained in this section shall apply to a banking company.

Q. 1. Oppression and mismanagement application and class action suits.

[June. 2018]

Ans. Oppression and mismanagement application

Section 244 of Company Act, 2013 provides that the following members of a company have the right to apply in case of oppression and management referred to under section 241 to the tribunal :-

- (a) In the case of a company having a share capital, not less than one hundred, members of the company or not less than one-tenth of the total number of its members, holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all other sums due on his or their shares;
- (b) In the case of a company not having a share capital, not less than one-fifth of the total number of its members:

The Tribunal has the power that on an application made to it in this behalf; waive all or any of the above-mentioned requirements so as to enable the members to under section 241.

Class action suits

Section 245 of Companies Act, 2013 deal with Class action suits .It is provided that members, depositors or any class of them, may if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors file an application before the Tribunal on behalf of the members or depositors.

The requisite number of members is as under:

- (a) In the case of a company having a share capital not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any less, or any member or members holding not less than such prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
- (b) In the case of a company not having a share capital, not less than one-fifth of the total number of its members.

Further the requisite number or depositors shall not be than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

11

COMPANY SECRETARY

**EXPECTED
MARKS COVERAGE
(5 to 10)**

Covering-

- Company Secretary in Employment
 - Company secretary – definition
 - Importance of company secretary
 - Legal position of company secretary under various laws
 - Appointment of company secretary
 - Qualification of secretary
 - Manner of appointment of company secretary
 - Functions of company secretary
 - Powers of secretary
 - Duties of a secretary
 - Role of secretary in a company
 - Dismissal of a secretary
- Company Secretary in Practice
- Company Secretary In Practice/Practicing Company Secretary/PCS
- Who can practice
- Certificate of Practice (COP)
- Areas of Practice
- Company Secretaries in Practice not to Engage in any other business or occupation
- Trade or Firm name to require Council's Approval
- Procedure for making enquiry into professional or other misconduct, consequences thereof and appeals
- Quality review board
- Secretarial standards
- Self Test Questions
 - From ICSI Module

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COMPANY SECRETARY



The word 'secretary' is derived from the word 'secret' implying that there is something confidential and secretive about his job.

COMPANY SECRETARY IN EMPLOYMENT

COMPANY SECRETARY - DEFINITION

SECTION-2(24)

According to **Section 2(24)** of the Companies Act, 2013 "*Secretary means a 'company secretary' within the meaning of section 2(1)(c) of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under Companies Act, 2013.*

Section 2(1)(c) of the Company Secretaries Act, 1980 defines a company secretary as a person who is a member of the Institute of Company Secretaries of India.

IMPORTANCE OF COMPANY SECRETARY

The importance of secretary is specially felt in the business world since the business organizations have to abide by certain legal requirement. The secretary is entrusted with the responsibility for due compliance with all such legal formalities. The secretary also acts as a liaison officer between the management and the staff as well as the outsiders.

LEGAL POSITION OF COMPANY SECRETARY UNDER VARIOUS LAWS

(a) Position under Companies Act, 2013

Under **Section 2(59)** the position of company secretary is that he is an **Officer** of the company. The term 'Officer' includes, inter-alia, a company secretary.

Under **Section 2(51)**, a company Secretary has been included in the definition of **managerial personnel** such as managing director, whole-time director and manager.

(b) Position under other Laws

Various laws recognize a company secretary as an **Officer** of a company. For instance, under Income tax Act, MRTP Act, Indian Stamps Act he is regarded as '**Principal Officer**' of a company.

APPOINTMENT OF COMPANY SECRETARY

Rule 8 and 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Rule 8. Appointment of Key Managerial Personnel.-

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Every listed company and every other **public company having a paid-up share capital of ten crore rupees or more** shall have whole-time key managerial personnel. (KMP includes a whole-time Company Secretary).

Rule 8A Appointment of Company Secretaries in companies not covered under rule 8.—

A company other than a company covered under rule 8 which has a paid up share capital of **five crore rupees or more** shall have a whole-time company secretary.

QUALIFICATION OF SECRETARY

(a) For companies having a paid-up share capital of ₹5 crores or more:

Section 203 provides that every listed company and other Companies having paid-up share capital of ₹ 5 crores or more **shall** have a whole-time secretary and where the Board of directors of any such company comprises of only two directors, neither of them shall be the secretary of the company.

In the case of a every **listed company and other companies having paid-up share capital of ₹5 crores or more**, the prescribed qualification of a secretary is membership of the Institute of Company Secretaries of India (ICSI).

(b) For companies having a paid-up share capital of ₹2 crores or more but less than 5 crores: In the case of an unlisted company having paid-up share capital of ₹ 2 crores or more but less than 5 crores, the prescribed qualification of a secretary is membership of the Institute of Company Secretaries of India (ICSI). Every company having paid-up share capital of ₹ 2 crores or more but less than 5 crores **may** have a whole-time secretary.

(c) For companies having a paid-up share capital of less than ₹ 2 crores:

A person in order to be eligible for appointment as a secretary in an unlisted company whose paid-up share capital in less than ₹2 crores must possess any of the following qualifications:-

(a) Chartered Accountant (CA);
(b) Costs and Works Accountant (CWA);
(c) Bachelor of Law (LL.B.);
(d) Post graduate degree or diploma in management sciences, granted by any University, or the Institutes of Management, Ahmadabad, Calcutta, Bangalore or Lucknow;
(e) A member of ICSI;
(f) Passed intermediate examination of ICSI;
(g) Post graduate diploma in company law and secretarial practice granted by the University of Udaipur;
(h) Master of Commerce (M.Com);
(i) Diploma in corporate law granted by Indian Law Institute;
(j) Post diploma in company secretary ship granted Institute of Commercial Practice;
(k) Membership of the Association of Secretaries and Managers, Calcutta;

Provided that where the paid-up share capital of such company is raised to ₹ 5 crores or more, the company shall, within a period of **one year** from the date of such increase, appoint a qualified company secretary.

MANNER OF APPOINTMENT OF COMPANY SECRETARY

Regulation 77 of Table F provides that a secretary may be appointed by **Board of directors** for such term, at such remuneration and upon such conditions as it may think fit. Normally the Board of directors appoints a company secretary soon after the incorporation. In addition to Board resolution, **service agreement** is also executed between the company and the secretary so appointed.

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A secretary employed by the promoters before incorporation of the company is often termed as a '**protem secretary**' or a secretary for the time being.

Any contract of an appointment of an individual as company secretary, of a company prior to its incorporation, would not empower the person so appointed to work as secretary after the formation of the company. Such an appointment cannot even be ratified by the company after its incorporation.

The **procedure for appointment of a company secretary** is as follows:

- (a) Resolution should be passed by Board of directors.
- (b) Agreement of service should be executed.
- (c) Details of company secretary must be recorded in the Register of KMP.
- (d) Within 30 days of such appointment, a return in **Form No. DIR.12** shall be filed with the Registrar of Companies.
- (e) In the case of listed companies, give intimation to all the Stock Exchanges where the securities of the company are listed.

FUNCTIONS OF COMPANY SECRETARY

According to **Section 205** the functions of the company secretary shall include,—

- (a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
- (b) to ensure that the company complies with the applicable secretarial standards;
- (c) to discharge such other duties as may be prescribed.

Explanation.—For the purpose of this section, the expression “secretarial standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

For the purposes of **clause (c)** of sub-section (1) of section 205, the Central Government has prescribed that **the duties of Company Secretary shall also include—**

- (1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
- (2) to facilitate the convening of meetings and attend Board, committee and general meetings, and maintain the minutes of these meetings;
- (3) to obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of the Act;
- (4) to represent before various regulators, Tribunal and other authorities under the Act in connection with discharge of various functions under the Act;
- (5) to assist the Board in the conduct of the affairs of the company;
- (6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- (7) to discharge such other duties as may be assigned by the Board from time to time;
- (8) such other duties as have been prescribed under the Act and Rules.

POWERS OF SECRETARY

The secretary of a company is empowered to perform the following:-

- (a) All acts which he is required to perform under enactments like the Companies Act, the Income Tax Act, etc.

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- (b) All acts which the Board of directors specifically direct him to perform.
- (c) All acts which are essential to enable him to discharge his duties smoothly as the administrative head in his Department.

The powers of the secretary above are conferred on him either under the Act or by the Board or out of his service agreement with the company. At times, the general meetings also authorise him to perform an act.

DUTIES OF A SECRETARY

➤ **THE CONTRACTUAL**

A company secretary if appointed by an agreement of service, which defines his duties as well as powers, is under a duty to act within the scope of his authority. He must abstain from disclosing any confidential or secret information relating to the affairs of the company which comes to his notice during his employment and also not to make any secret profits by virtue of his position as a secretary of the company.

➤ **STATUTORY DUTIES**

UNDER VARIOUS LAWS:-

1. UNDER THE COMPANIES ACT

The Secretary is required to perform the various duties specified in various sections of Companies Act. for eg:-

- (a) To sign any document or proceedings requiring authentication by the company.
- (b) To get painted or get affixed the name plate of the Company outside every office or the place of its business, to get it printed on documents of the company and to get it engraved on the seal of the company.
- (c) To sign the Annual Return.
- (d) To send notices of general meetings to every member of the company.
- (e) To file resolutions and agreements requiring registration with the Registrar.
- (f) To prepare and record minutes of every general meeting and of every meeting of Board of directors or of every committee of the Board within 30 days of the conclusion of every such meeting.
- (g) To send notices of the Meetings of Directors.
- (h) To maintain various statutory books, etc.

2. UNDER THE INCOME-TAX ACT

A company secretary is a 'Principal Officer' of the company under Section 2(35) of the Income-tax Act, 1961. The Act imposes certain obligations upon him. For eg.-To ensure that proper income-tax is deducted at source from the salaries paid to the employees, or interest paid/payable to debentureholders or depositors. To ensure that the tax so deducted has been deposited in Government treasury, etc.

3. UNDER THE INDIAN STAMP ACT

It is the duty of the secretary to see that documents like letters of allotment, share certificates, share warrants, debenture certificates and transfer forms, etc., are properly stamped as per the requirements of the Indian Stamp Act.

4. UNDER OTHER ACTS

In addition to the above, the Secretary is also required to perform the various duties specified under various Economic, Labour, Industrial and Securities laws.

NKJ-CLASSROOM PRACTICE



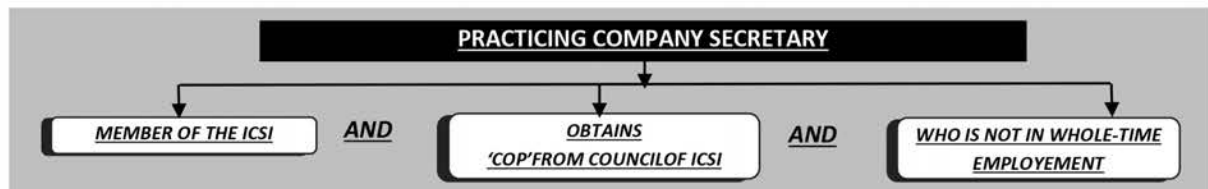
Q.1. Write notes on Statutory duties of a Company Secretary under the Companies Act, 2013.

[June, 2014; 4 Marks]

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ROLE OF SECRETARY IN A COMPANY

The role of a secretary is threefold, viz., as a Statutory officer, as a Co-ordinator and as an Administrative officer. Similarly, the responsibility of a company secretary extends not only to the company, but also to its shareholders, depositors, creditors, employees, consumers, society and the Government.

➤ AS A STATUTORY OFFICER

The Secretary is required to ensure with statutory requirements as prescribed under various laws. For eg:- Company secretary is an officer u/s 2(59) of Companies Act, 2013 responsible for compliance with numerous legal requirements under the Companies Act, 2013. A company secretary is a 'Principal Officer' of the company under Section 2(35) of the Income-tax Act, 1961.

➤ AS A COORDINATOR

The role of a company secretary as a co-ordinator has two aspects, namely internal and external:-

The internal role of a co-ordinator extends to the Board including the Chairman and Managing Director, various line and staff functions, the trade unions and the auditors of the company.

External role extends to the relationship of the company with shareholders, Government and Society.

➤ AS AN ADMINISTRATIVE OFFICER

The principal duty of a secretary as an administrator is to ensure that the activities of a company are in conformity with the company's policy. In his role as an administrator, the secretary provides the very foundation on which the entire structure of company administration is constructed.

DISMISSAL OF A SECRETARY

The appointment of a company secretary is generally done by means of a resolution of the Board and his dismissal, therefore, can be done by the Board of directors or by the Managing Director, if he is so authorised by the Board.

The secretary must be given notice of termination of his employment in accordance with the terms of his contract of appointment.

COMPANY SECRETARY IN PRACTICE

COMPANY SECRETARY IN PRACTICE/PRACTICING COMPANY SECRETARY/PCS

According to **section 2(25)** "Company Secretary in practice" means a secretary who is deemed to be in practice within the meaning of **sub-section (2) of Section 2** of the Company Secretary Act, 1980. Thus, a member of ICSI in practice and not in full time employment becomes a secretary in whole-time practice.

WHO CAN PRACTICE

According to Section 6 of the Companies Secretaries Act, 1980 only a member of the Institute whether in India or elsewhere shall be entitled to provided he has obtained from the Council a Certificate of Practice.

Any company, whether incorporated in India or elsewhere, is prohibited from practicing as company secretary. Further, any person other than a member of this Institute is prohibited from signing any document on behalf of a company secretary in practice or a firm of such company secretaries in his or its professional capacities.

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CERTIFICATE OF PRACTICE (COP)

1. Issue and Renewal of COP

Every member of the Institute who intends to perform the function of a secretary in whole-time practice cannot practice unless he obtains from the Council, a certificate of practice.

A member who desires to be entitled to practice should make an application in Form 'D' prescribed under Company Secretary Regulations, 1982 and pay such annual fees for the certificate as may be prescribed. Presently, the prescribed fee is ₹ 1,000. The council shall, in acceptance of application for issue of certificate, issue a certificate, issue a certificate in Form 'E' prescribed under Company secretaries Regulations, 1982, which shall be valid it is cancelled.

The certificate of practice is ought to be renewed on or before first day of April in each year.

2. Cancellation of COP

A certificate of practice shall be cancelled when:-

- (a) The name of the holder of the certificate is removed from the Register of Members; or
- (b) The Council is satisfied that such certificate was issued on the basis of incorrect, misleading or false information provided by the applicant or by mistake or inadvertence or the part of the Council; or
- (c) The member has ceased to be in practice; or
- (d) The member has not paid the annual certificate fee on or before 30th June of that year. [Regulation 11 of the Company Secretaries Regulations, 1982]

3. Restoration of COP

A member, whose certificate of practice has been cancelled, may apply for its restoration, if he is otherwise eligible for such restoration, by paying the arrears of the annual certificate fees for the year in which the certificate of practice is required to be restored subject to a maximum of ₹ 1000 and a **restoration fee of ₹ 250.**

The Council may, on receipt of such application along with dues, if any, restore the certificate of practice. The person concerned shall be communicated in writing of the restoration of the [Regulation 14 of the Company Secretary Regulations, 1982]

AREAS OF PRACTICE

General Areas

- (a) To undertake retainer-ship of the companies
- (b) To perform services in relation to the promotion, formation and incorporation of the Companies
- (c) To perform services in relation to the amalgamation, reconstruction, reorganization or winding up of companies; or
- (d) To perform such services as may be performed by Share Transfer Agent
- (e) To perform such services as may be performed by Issue House
- (f) To perform such services as may be performed by stock Broker
- (g) To act as an adviser to a company on management, including any legal or procedural matter falling under Companies Act, MRTP Act, FEMA, SCRA, etc.
- (h) To act as an authorized representative of a company with respect to filing, registering, presenting, attesting or verifying any documents by or on behalf of the company
- (i) To issue certificates on behalf of or for the purposes of a company
- (j) To appear before the various quasi-judicial authorities.

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Areas under Companies Act, 2013

- (a) For the registration of a company, a company secretary in practice can make a statutory declaration that all the legal formalities have been complied with [sec.7]
- (b) A company secretary in practice can sign the annual return of listed and certain other prescribed companies. [Sec.92]
- (c) A practicing company secretary can certify that a managerial person has been appointed in accordance with the requirements of Schedule V to the Companies Act, 2013 [Para 2 of Part III of Schedule V].
- (d) A practicing company secretary can do the Secretarial audit of certain prescribed companies [Section 204].
- (e) Pre-certification of Documents.

Areas under Other Laws

- (a) The Company shall obtain certificate from a practicing Company Secretary, within one month of the end of each half of financial year, certifying that all certificates have been issued within one month of the date of lodgment for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies [Clause 47(c) of the Listing Agreement]
- (b) The Company shall obtain a certificate from the Auditors/ Practicing Company Secretary of the company regarding compliance of mandatory requirements of Clause 49 of the Listing Agreement [Clause 49 of the Listing Agreement]
- (c) Every listed company is required to obtain a Certificate from a practicing Company Secretary/Practicing Chartered Accountant reconciling total of the shares held in electronic form and in physical from with the issued and listed capital of the company [Shares Audit as per SEBI Circular]
- (d) The NSDL and CDSL have allowed practicing company secretaries to undertake internal audit of the operations of Depository Participants
- (e) Banks and Financial Institutions have recognized the practicing company secretaries for the purpose of preparing Search/Status Report, while granting financial assistance to corporate
- (f) A company secretary in practice can do the following under the Central Excises Act, 1944 :-
 - (i) Act as an authorized representative before the Central Excise Authorities, Adjudicating Officers or Appellate Tribunal
 - (ii) Assisting the company in classification and valuation of goods; correct assessment of duty; and obtaining refunds
 - (iii) Providing Consultancy on various issues.
- (g) A company secretary in practice can do the following under the Customs Act, 1962:-
 - (i) Act as an authorized representative before the Customs Officer and Appellate Tribunal
 - (ii) Assisting the company in classification of goods; valuation of goods; and correct assessment of Custom Duty
 - (iii) Assisting the company in clearance of import/export of goods
 - (iv) Assisting the company in preparation of import/export documents.
- (h) Under FEMA, a practicing company secretary can issue the following certificates:-
 - (i) A certificate regarding the allotment of securities as per the provisions of Companies Act, 2013 and the relevant Rules and Regulations made under FEMA
 - (ii) A certificate regarding the correct computation of dividend/ interest
- (i) Under the EXIM Policy, a practicing company secretary can issue a certificate in respect of application for grant of various status such as Export House/ Trading House/Star Trading House/Super Star Trading House and services Export House/International Service Export House/International Star Service Export House/International Super Star Service Export House
- (j) Under the Alternative Dispute Redressed System (ADRS), a practicing company secretary can act as an arbitrator or be a member of Arbitral Tribunal or represent a company in arbitration proceedings.

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COMPANY SECRETARIES IN PRACTICE NOT TO ENGAGE IN ANY OTHER BUSINESS OR OCCUPATION

A company secretary in practice shall not engage in any business or profession other than the profession of company secretary, unless it is permitted by a general or specific resolution of the Council to that effect. [Regulation 168]

Following are some of the business/profession which the Council has permitted generally:-

(a)	Private tutorship.
(b)	Teaching Assignment under the Coaching Organization of the Institute or any other organization, provided that the teaching hours do not exceed average four hours in a day.
(c)	Valuation of papers, acting as a paper-setter, etc.
(d)	Editorship of professional journals.
(e)	Authorship of books and articles.
(f)	Honorary office bearer ship of charitable and educational organizations.
(g)	Holding of public elective such as M.P., M.L.A., and M.L.C.
(h)	Holding of Life Insurance Agency License for the limited purpose of getting renewal commission.
(i)	Providing Risk management Services for non-life insurance policies procuring or marketing of policies.
(j)	Becoming non-executive director/promoter/promoter director/ subscriber to the memorandum and articles of Association of a company, the objects of which include areas, within fall within the scope of the profession of Company Secretaries, irrespective 'substantial interest' means holding at least 25% of the total voting power.
(k)	Becoming non-executive director/promoter promoter director/ subscriber to the memorandum and articles of Association of a company which is engaged in any other business or occupation, provided that the practicing member does not hold substantial interest in that company.
(l)	Acting as ISO Lead Auditor.

Following are some of the business/profession for which the Council's specific and prior approval is required:-

(i)	Interest or association in family business concerns provided that the member does not hold substantial interest in such concerns. Here 'substantial interest' means entitlement of at least 25% of the total profits of such concern.
(ii)	Editorship of journals other than professional journals.
(iii)	Interest in agricultural and allied activities carried on with the help, if required, of hired labour.

TRADE OR FIRM NAME TO REQUIRE COUNCIL'S APPROVAL

No company secretary in practice shall practice under any name or style other than his own name except with the prior approval of the Council.

No firm of company secretaries shall practice under any name or style except with the previous approval of the Council.

The council may, at its discretion, refuse to approve the particular name:-	(i) If the same or similar name has already been entered in the Register of Offices and Firms; or
	(ii) If that name, in the opinion of the Council, is undesirable.

A firm name may be considered undesirable if it does not bear the name of its partners, present or past, except when the firm name been acquired by payment of goodwill or otherwise [Regulation 169]

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MAINTENANCE OF REGISTER BY THE PRACTICING COMPANY SECRETARY

Every Practicing Company Secretary is required to maintain a register in the prescribed format regarding attestation of certain services provided by him. This Register shall be open for inspection by the authorized representatives of the ICSI.

For the purpose of this register, the various attestation services include:-

- (a) Signing of annual Return of Listed Companies;
- (b) Issuing Compliance Certificate;
- (c) Certificate pursuant to Clause 47(a) of the Listing agreement;
- (d) Audit regarding the Reconciliation of Capital;
- (e) Interest Audit of Depository Participants;
- (f) Any other services as may be notified by Council from time to time.

PROFESSIONAL MISCONDUCT AND OTHER MISCONDUCT

According to Section 22 of the Company Secretaries Act, 1980, the expression “Professional Misconduct or Other Misconduct” shall be deemed to include any act or omission specified in any of the schedules to that Act. Thus, Section 22 of the Company Secretaries Act, 1980, read with the schedules to that Act contains an illustrative definition of Professional Misconduct or Other Misconduct.

Professional Misconduct and Other Misconduct in relation to members if the Institute is broadly structured as under:-

- (a) Professional misconduct in relation to members of the Institute in practice. (Part I of the First Schedule, containing 11 clauses)
- (b) Professional misconduct in relation to members of the Institute in service. (Part II of the First Schedule, containing 2 clauses)
- (c) Professional misconduct in relation to members of the Institute generally. (Part III of the Other Schedule, containing 3 clauses)
- (d) Other misconduct in relation to the members of the Institute generally. (Part IV of First Schedule, containing 2 clauses)
- (e) Professional misconduct in relation to members of the Institute in practice. (Part I of Second Schedule, containing 10 clauses)
- (f) Professional misconduct in relation to members of the Institute generally. (Part II of Second Schedule, containing 4 clauses)
- (g) Other misconduct in relation to members of the Institute generally. (Part III of Second Schedule containing 1 clause)

PROCEDURE FOR MAKING ENQUIRY INTO PROFESSIONAL OR OTHER MISCONDUCT, CONSEQUENCES THEREOF AND APPEALS

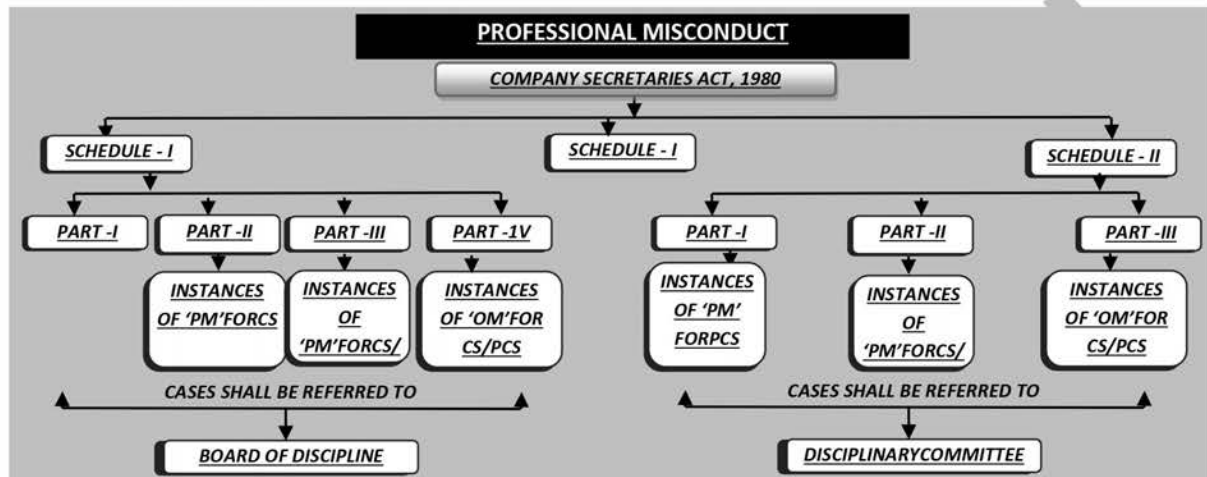
The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the **First Schedule**, he shall place the matter before the **Board of Discipline** and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the **Second Schedule** or in both the Schedules, he shall place the matter before the **Disciplinary Committee**.

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CONSEQUENCES OF MISCONDUCT

1. Where the **Board of Discipline** is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—
 - (a) reprimand the member;
 - (b) remove the name of the member from the Register up to a period of **three months**;
 - (c) impose such fine as it may think fit which may extend to rupees **one lakh**.
2. Where the **Disciplinary Committee** is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—
 - (a) reprimand the member;
 - (b) remove the name of the member from the Register **permanently** or for such period, as it thinks fit;
 - (c) impose such fine as it may think fit, which may extend to rupees **five lakhs**.

APPEAL

Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Appellate Authority.

The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949 shall be deemed to be the Appellate Authority for the purposes of this Act subject to the certain modification.

QUALITY REVIEW BOARD

The Central Government shall, by notification, constitute a Quality Review Board consisting of a chairperson and four other members, who shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy. Two members shall be nominated by the Council and the other two by the Central Government.

<u>Functions to be performed by the Board:-</u>	(a) to make recommendations to the Council with regard to the quality of services provided by the members of the Institute.
	(b) to review the quality of services provided by the members of the Institute including secretarial services.
	(c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements. The expenditure of the Board shall be borne by the Council.

SECRETARIAL STANDARDS

The **Institute of Company Secretaries of India**, (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the **Secretarial Standards Board (SSB)** with the objective of formulating Secretarial Standards.

NEED FOR SECRETARIAL STANDARDS

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency. **Presently SS – 1 and SS – 2 after being approved by Central Government has been made mandatory for compliance by all the companies in terms of Section 118(10).**

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Till now, ICSI has issued **ten** Secretarial Standards, which are as follows:-

1. **SS-1** (Board meetings)
2. **SS-2** (General meetings)
3. **SS-3** (Dividend)
4. **SS-4** (Registers and records)
5. **SS-5** (Minutes)
6. **SS-6** (Transmission of shares & debentures)
7. **SS-7** (Passing of resolution by circulation)
8. **SS-8** (affixing of common seal)
9. **SS-9** (Forfeiture of shares)
10. **SS-10** (Board report)

SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



Answer the following:

1. Discuss the role of Company Secretary.
2. Enumerate the duties and liabilities of a Secretary.
3. Discuss the role of company secretary as a statutory officer, as co-ordinator and as an administrative officer.
4. State the areas of practice specified for a company secretary in practice under Section 2(2) of the Company Secretaries Act, 1980.
5. Define Secretary in whole-time practice.



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

12

SECRETARIAL STANDARDS – AN INTRODUCTION

Covering-

- Secretarial Standard- Meaning
- Secretarial Standard Board (SSB) and its objectives
- Scope and functions of Secretarial Standard board (SSB)
- Scope of Secretarial Standard
- Needs for Secretarial Standard
- Procedure for issuing Secretarial Standard
- Compliance of Secretarial Standards for good governance
- Secretarial Standards and the Companies Act, 2013

**EXPECTED
MARKS COVERAGE
(1 to 5)**

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SECRETARIAL STANDARDS - AN INTRODUCTION



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

SECRETARIAL STANDARD- MEANING

Secretarial standard are the policy documents relating to various aspects of **secretarial practices** in the corporate sector. These standards lay down a set of principles which companies are expected to adopt and adhere to, in discharging their responsibilities.

The term 'secretarial standard' is defined as an explanation to section 205 of the companies act, 2013 to mean *secretarial standards issued by the institute of company secretaries of India constituted under section 3 of the company secretaries act, 1980 and approved by the central government.*

SECRETARIAL STANDARD BOARD (SSB) AND ITS OBJECTIVES

The institute of company secretaries of India, (ICSI), **recognizing the need for integration, harmonization and standardisation of diverse secretarial practices**, has constituted the secretarial standards board (SSB) formulates secretarial standards. The establishment of secretarial standards board by ICSI took place in the year 2000.

The SSB comprises of eminent members of the profession holding responsible positions in well known companies and as senior members in practice, as well as representatives of regulatory authorities such as the ministry of corporate affairs, the securities and exchange board of India and the sister professional bodies viz. the institute of chartered accountants of India and the institute of cost accountants of India.

The secretarial standards board (SSB) formulates secretarial standards taking **into consideration the applicable laws, business environment and the best secretarial practices prevalent**. Secretarial standards are developed:-

- | |
|---|
| (a) In a transparent manner |
| (b) After expensive deliberations, analysis, research; and |
| (c) After taking views of corporate, regulators and the public at large |

SCOPE AND FUNCTIONS OF SECRETARIAL STANDARD BOARD (SSB)

The scope of SSB is to **identify the areas** in which secretarial standards need to be issued by the council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices.

SSB will also clarify issues arising out of such standards and issue guidance notes for the benefit of members of ICSI, corporate and other the **main functions of SSB are:-**

- | |
|--|
| a) Formulating secretarial standards |
| b) Clarifying issues arising out of the secretarial standards |
| c) Issuing guidance notes, and |
| d) Reviewing and updating the secretarial standards/ guidance notes at periodic intervals. |

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SCOPE OF SECRETARIAL STANDARD

The secretarial standards do not seek to substitute or supplement any existing laws or the rules and regulations framed there under but, in fact, seek to supplement such laws, rules and regulations.

Secretarial standards that are issued will be in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular standard or any part thereof becomes inconsistent with such law, the provisions of the said **law shall prevail**.

NEEDS FOR SECRETARIAL STANDARD

Companies follow diverse secretarial practices. These practices have evolved over a period of time through varied usages and as a response to differing business cultures. These divergent practices need to be harmonized by laying down the best practices in this regard.

A need was, therefore, felt to integrate, consolidate, harmonise and standardize all the prevalent diverse secretarial practices, so as to ensure that uniform practices are followed by the companies throughout the country. Such uniformity of practices, consistently applied, would result in the establishment of sound corporate governance principles.

PROCEDURE FOR ISSUING SECRETARIAL STANDARD

The following procedure shall be adopted for formulating and issuing secretarial standards:-

- (1) SSB, in consultation with the council, shall **determine the areas** in which secretarial standards need to be formulated and the priority in regard to the selection thereof.
- (2) In the preparation of secretarial standards, SSB may constitute **working groups** to formulate preliminary draft of the proposed standards.
- (3) The **preliminary draft** of the secretarial standard prepared by the working group shall be **circulated amongst the members of SSB** for discussion and shall be modified appropriately, if so required.
- (4) The preliminary draft will then be circulated to the members of the central council as well as to chairmen of regional councils/chapters of ICSI, various professional bodies, chambers of commerce, regulatory authorities such as the ministry of corporate affairs, the department of economic affairs, the securities and exchange board of India, reserve bank of India, department of public enterprises and to such other bodies/organizations as may be decided by SSB, for ascertaining their views, specifying a time frame within which such views, comments and suggestions are to be received.

A meeting of SSB with the representatives of such bodies/organizations may then be held, if considered necessary, to examine and deliberate on their suggestions.

- (5) On the basis of the preliminary draft and the discussion with the bodies/organizations referred to in 4 above an **exposure draft** will be prepared and published in the “**chartered secretary**”, the journal of ICSI, and also put on the **website of ICSI** to elicit comments from members and the public at large.
- (6) The draft of the proposed secretarial standard will generally include the following basic points:-

(a)	Concepts and fundamental principles relating to the subject of the standard
(b)	Definitions and explanations of term use in the standard
(c)	Objectives of issuing the standard
(d)	Disclosure requirements
(e)	Date from which the standard will be effective

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- (7) After taking into consideration the comments received, the draft of the proposed secretarial standard will be **finalized by SSB and submitted to the council of ICSI.**
- (8) The council will consider the final draft of the proposed secretarial standard and finalize the same in consultation with SSB. The secretarial standard on the relevant subject will then be **issued under the authority of the council.**

COMPLIANCE OF SECRETARIAL STANDARDS FOR GOOD GOVERNANCE

The ultimate **goal of the secretarial standards is to promote good corporate practices** leading to better corporate governance. The standards are for good secretarial practices and desirable corporate governance with a view to ensuring shareholders democracy and utmost transparency, integrity and fair play, going beyond the minimum requirements of law.

The adoption of the secretarial standards by the corporate sector will over the years have a substantial impact on the improvement of quality of secretarial practices being followed by companies, making them comparable with the best practices in the world.

By following the secretarial standards in true letter and spirit, companies will be able to ensure **adoption of uniform, consistent and best secretarial practices** in the corporate sector. Such uniformity of best practices, consistently applied, will result in furthering the shareholders democracy by laying down principles for better corporate disclosures thus adding value to the general endeavour to strive for good governance.

SECRETARIAL STANDARDS AND THE COMPANIES ACT, 2013

Section 118(10) of the Companies Act, 2013 requires every company to observe secretarial standards with respect to general and board meetings.

Also, as per **Section 205(1) (b)**, it is the duty of the company secretary to ensure that the company complies with the applicable secretarial standards.

Therefore, the companies are required to ensure the observance of all the secretarial standards issued by the institute of company secretaries of India and approved by the central government.

So far, the ICSI has issued ten secretarial standards, viz:-

1.	SS-1:- Secretarial standard on meetings of the board of directors
2.	SS-2:- Secretarial standard on general meetings.
3.	SS-3:- Secretarial standard on dividend
4.	SS-4:- Secretarial standard on registers and records
5.	SS-5:- Secretarial standard on minutes
6.	SS-6:- Secretarial standard on transmission of shares and debentures
7.	SS-7:- Secretarial standard on passing of resolutions by circulation
8.	S-8:- Secretarial standard on affixing of common seal
9.	SS-9:- Secretarial standard on forfeiture of shares
10.	SS-10:- Secretarial standard on board's report

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Right now, SS-1 and SS-2 issued by ICSI and been approved by central government is effective from July, 2015.

However, the Secretarial Standards have been **revised by the ICSI** and approval of the Central Government, as required, under section 118(10) of the Companies Act, 2013 has been obtained for the revised SS-1 and SS-2. The revised SS-1 and SS-2 shall be applicable for compliance by all the companies (except the exempted class of companies) w.e.f. **1st October, 2017.**

CS NITESH KR. JAISWAL

Q. 1. Secretarial Standard does not empower Company Secretary of a company to call a meeting of board of Directors on its own. **[June. 2018]**

Ans. Secretarial Standard does not empower Company Secretary of a company to call a meeting of Board of Directors on its own.

Any Director of a company may at any time, summon a meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorized by the Board in this behalf, on the requisition of a Director, shall convene a meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the whole-time Director, where there is any, unless otherwise provided in the Articles.

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

13

MEGA FIRMS

Covering-

- Introduction
- Adoption of Mode of Practice
- Comparison Mode
- Benefits of MDF
- Risks
- Process of Constitution of MDF
- Frequently Asked Questions

**EXPECTED
MARKS COVERAGE
(1 to 5)**

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MEGA FIRMS

INTRODUCTION

In a rapidly changing economy, industrial environment and emergence of the need for corporate governance and ethical business practices of voluntary disclosures, role of a practicing company secretary has also changed substantially over last three decades. Company Secretary in Practice has become a crucial player.

The Companies Act, 2013, so also Insolvency and Bankruptcy Code 2016, has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice.

ADOPTION OF MODE OF PRACTICE

To meet the expectation and to survive competition, moulding, changing and upgrading oneself is a must. For stability as well as growth one needs to join hands with professional fraternity and have synergy.

COMPARISON MODE

Lets now discuss certain features of the two forms of enterprise a practicing professional may choose i.e. Partnership Firm (including LLP) & Sole Proprietor:

No.	Firm with several partners	Proprietor
1.	Various avenues of practice, un-trodden areas can be explored.	Likely to get restricted to the "Routine" procedural matters.
2.	Knowledge management becomes easier as partners can help each other in their respective areas of expertise.	Knowledge management becomes difficult being the only person. No other person is available to support /guide. Keeping track of latest developments, case law, notifications, circulars becomes a daunting task.
3.	Inherent risks associated with the practice are shared with others.	Risk bearing has to be shouldered by one person. No one available to share the risks.
4.	Several partners can render multi-dimensional services.	Difficult for a single individual to provide multiple services say under GST, Income Taxes, FEMA along with Company Law.
5.	Freedom of decision making gets restricted.	Not required Proprietor is his own master. No need to consult others.

Applicable Rules, Regulations and Guidelines for PCS or Firm of PCS

Whether a Company Secretary in Practice or a Firm of Company Secretaries they are subject to Rules, Regulations and Guidelines enumerated as under:

- (i) Company Secretaries Regulations, 1982
- (ii) Schedule I and III of Company Secretaries Act, 1980 in relation to Professional misconduct
- (iii) Guidelines for requirement of maintenance of a register of attestation certification services rendered by practicing company secretary/firm of practicing company secretaries
- (iv) Guidelines for issuing compliance certificate and signing of annual return
- (v) Guidelines framed by the council relating to approval of proprietorship concern/firm's name under regulation 169 of the company secretaries Regulations, 1982
- (vi) Guidelines for advertisement by Company Secretary in Practice
- (vii) Guidelines for compulsory attendance of Professional development programmes by the members

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WHAT IS MULTIDISCIPLINARY/MEGA FIRM?

Mega Firm can be described as a Partnership firm with more than twenty five partners. A firm which provides core professional service of a particular profession along with the allied and ancillary service with equal competence under one roof is a multidisciplinary firm.

For example, company and corporate law is core knowledge for company secretaries, however, they can acquire expertise in any other area like direct indirect taxation, labour laws, economic laws, finance, accounting, insurance, international business and IPRs and they may be in position to provide single window business solutions.

Regulation 168B of Company Secretaries Regulations, 1982 determines the membership of professional body for partnership, accordingly For the purposes of entering into partnership under clauses (4) and (5) of Part I of the First Schedule to the Act, a person shall be a member of any of the following professional bodies, namely:-

- (a) The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949 (No. 38 of 1949);
- (b) The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959 (No.23 of 1959);
- (c) Bar Council of India established under the Advocates Act, 1961 (No. 25 of 1961);
- (d) The Institute of Engineers or Engineering from a University established by law or an institution recognized by law;
- (e) The Indian Institute of Architects established under the Architects Act, 1972 (No. 20 of 1972);
- (f) The Institute of Actuaries of India established, under the Actuaries Act, 2006 (No. 35 of 2006);
- (g) Professional bodies or institutions outside India whose qualifications relating to Company Secretary recognized by the Council under Sub-section (2) of Section 38 of the Act This actually introduces the concept of multi disciplinary firms or mega firms.

Why such firms?

Keeping in view of the present needs of the corporate and multi dimensional growth of CS profession especially in the areas of practicing in the areas of Corporate Laws, Labour laws, RBI/ FEMA, acting as Secretarial Audit, Resolution Professional Insolvency Bankruptcy Code, GST Practitioner there is a need to structure and build the Multidisciplinary(MDF)/mega firms. There is a huge demand and scope for a multifunctional firm, where several services are provided under one roof. Clients always have a comfort level in dealing with such firms.

Pre Requisites

MDF is a joint or collaborative venture amongst independent individuals. Therefore, every one wishing to join hands should understand that:

1. All minds should work together and in unison;
2. Say go to ego;
3. Mutual faith and respect lays strong foundation;
4. Unanimity shall be the rule on important policy decisions;
5. Financial discipline is a must;
6. Founder partners shall be given equal status;
7. Income of the firm shall be distributed at short regular intervals;
8. One shall not put undue influence on the others or show that he is king pin of the association.

Even the small crack in the above stated pre requisites ruin the things.

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BENEFITS OF MDF

- (a) Working in a team environment: The concept of MDF will have an opportunity to work with team members who share interests, expertise, ideas, and work ethically.
- (b) Exposure to various and different works
- (c) Cost effective: The overheads and the risks get distributed amongst the partners.
- (d) Continuous learning: The partners of MDF having multi dimensional experience they can impart continuous training by adapting to new trends in the Profession.
- (e) Big growth opportunities: MDF may attract big multinationals. They get comfort about availability of at least one of the partners, if they are dealing with a firm rather than an individual.
- (f) Revenue sharing: By appropriate revenue sharing model a PCS who himself may not have subject expertise can get a share from the assignments of that subject being executed by others.
- (g) Reputation & risk-adjusted value: Many of the bigger client's organizations may prefer that "you never go wrong when hiring one of the MDF", Credibility of the firm and brand gets established in long term.

RISKS

1. More cost on infrastructure and technology.
2. Dominance of senior partners over the younger partners.
3. Defining exit route is difficult.
4. Lack of transparency may lead to disputes.
5. If crack develops in mutual faith & trust, very difficult to cure.
6. Communication gap between partners

PROCESS OF CONSTITUTION OF MDF

1. Agreement between partners

Partners must enter into a partnership agreement defining *inter alia* the process of decision making, allocation of duties, responsibilities, delegation of authorities, revenue sharing and exit route.

2. Management of Firms

The mega firm requires effective management skills including skills for handling finance, dealing with human resources and day to day administration of the office. The management of a MDF is in itself a major challenge.

- (a) Operational functions
- (b) Administrative functions
- (c) Human resources
- (d) Client relationship
- (e) Public Relationship and Brand building.

3. Revenue Sharing Models

In the long term success of the MDF the revenue sharing model has to be designed to suit the given situation

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FREQUENTLY ASKED QUESTIONS

Q. 1. Can there be a Partnership firm in between CA, CS, CWA, Advocate?

Ans. CA/CWA may become partners of PCS only for non attestation services and CA / CWA cannot become full fledged partners. That is to say a PCS even if he is allowed to be a partner of a Chartered Accountant, will not be able to sign the Auditors report on behalf of the multidisciplinary firm.

Q. 2. How many Partners a PCS Partnership Firm can have ?

Ans. According to section 464(1) of the Companies Act, 2013, 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. Further, the Companies (Miscellaneous) Rules, 2014, provides that no association or partnership shall be formed, consisting of more than 50 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.

Q. 3. Can there be a PCS LLP in between CA, CS, CWA, Advocate?

Ans. Yes, there can be a PCS LLP in between CA, CS, CWA, Advocate.

Q. 4. How many Partners LLP of Practicing professional can have ?

Ans. The minimum number of members of LLP under LLP Act, 2008 is two, there is no restriction on a maximum number of members.

Q. 5. Can MEGA firm charge fees to the clients based on the result of the matter/ success of the litigation?

Ans. Fees shall be charged for the professional work done.

Q. 6. Can a Mega Firm have branches within / outside India? What regulations guide operations of such Branch office?

Ans. As per Section 37(1) of the Company Secretaries Act, 1980 where a Company Secretary in Practice or a firm of such Company Secretaries has more than one office in India, each one of such offices must be in the separate charge of a member of the Institute.

The branch office shall be an independent office and not in the office of some other professional. One of the partners of the firm shall attend the branch office atleast 100 days in a financial year.

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Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

14

DRAFTING & NOTICE/ RESOLUTION/ PROCEDURE ETC.

Covering-

- Drafting Resolution
- Notice of Annual General Meeting
- Procedure

**EXPECTED
MARKS COVERAGE
(5 to 10)**

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DRAFTING & NOTICE/ RESOLUTION/ PROCEDURE ETC.

DRAFTING OF RESOLUTIONS

1. SPECIMEN RESOLUTION FOR ALTERATION OF OBJECTS CLAUSE.

And the kind of meeting at which resolution is to be passed and the type of resolution required

Type of Resolution	Special Resolution
Kind of Meeting	General Meeting

"RESOLVED THAT pursuant to the provisions of **Section 13** of the Companies Act, 2013, Clause 3 being the objects clause of the Memorandum of Association of the company be altered as follows:

(i) To substitute the following sub-clause in place of the existing sub-clause (h):

- (h) to borrow or raise money or to invite, receive or accept money on deposit for the purposes of the company (not amounting to the business of banking as defined under the Banking Regulation Act, 1949) in such manner and upon such terms and conditions as may seem expedient and to secure or arrange the repayment thereof by the company and create, issue and allot redeemable or irredeemable bonds, mortgages or other instruments, mortgage debentures, secured or unsecured debentures issuable or payable either at par or at premium or discount or as partly or fully paid and for any such purposes to charge all or any part of the property and profits of the company both present and future including its uncalled capital".

2. SPECIMEN RESOLUTION FOR SHIFTING OF REGISTERED OFFICE FROM ONE STATE TO ANOTHER STATE

And the kind of meeting at which resolution is to be passed and the type of resolution

Type of Resolution	Special Resolution
Kind of Meeting	General Meeting

"RESOLVED THAT-

- (i) pursuant to Section 13 and other applicable provisions, if any, of the companies Act, 2013 and subject to confirmation by the Central government, the memorandum of association of the company be altered so as to change the place of the company's registered office from its present situation at Nariman Point, Mumbai in the State of Maharashtra to Laxmi Nagar, New Delhi, by substituting the words 'in the State of Maharashtra' for the words "New Delhi" in Clause II of the memorandum of association of the company."
- (ii) the Company Secretary, Shri..... be and is hereby authorized – to make, on behalf of the company, the application under Section 13 of the Act to the Central government for securing confirmation to the alteration to the memorandum of association of the company so as to change the place of the Registered office of the company from the State of Maharashtra to New Delhi.

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3. SPECIMEN RESOLUTIONS FOR TRANSACTING VARIATION IN THE RIGHTS OF PREFERENCE SHAREHOLDERS

And the kind of meeting at which each resolution is to be passed and the type of resolution required

Kind of Meeting	General Meeting
Type of Resolution	Special (Postal Ballot)

"**RESOLVED THAT** consent of shareholders be and is hereby accorded to the variation in the rights of Preference Shares of the Company deemed to have been affected by reason of extension of the date of redemption and increase in the rate of dividend from 9% to 11% Redeemable Cumulative Preference Shares of ₹ 100/- each, fully paid up, agreed to by the holders of the said Preference Shares."

4. SPECIMEN RESOLUTIONS FOR APPOINTMENT OF A DIRECTOR RETIRING BY ROTATION

And the kind of meeting at which each resolution is to be passed and the type of resolution required

Kind of Meeting	Annual General Meeting
Type of Resolution	Ordinary Resolution

"**RESOLVED that** Shri who retires by rotation under articles of the articles of association of the company and being eligible offers himself for re-appointment, be and he is, hereby re-appointed as a director of the company."

5. SPECIMEN RESOLUTIONS FOR APPOINTMENT OF A DIRECTOR OTHER THAN A RETIRING DIRECTOR

And the kind of meeting at which each resolution is to be passed and the type of resolution required

Kind of Meeting	General Meeting
Type of Resolution	Ordinary Resolution

"**RESOLVED THAT**" Shri A in respect of whom the company has received notice in writing under Section 160 of the Act, from a member signifying his intention to propose him as a candidate for the office of Director of the Company be and is hereby appointed as director of the company."

6. SPECIMEN RESOLUTIONS FOR APPOINTMENT OF A PERSON AS A DIRECTOR WHO IS AN ADDITIONAL DIRECTOR

And the kind of meeting at which resolution is to be passed and the type of resolution required

Type of Meeting	Annual General Meeting
Type of Resolution	Ordinary Resolution

"**RESOLVED THAT,** the Company appoints Mr./Ms. whose term of office as an additional director of the company expires at this annual general meeting and in respect of whom the Company has received a notice under Section 160 of the Companies Act, 2013, from a member proposing the candidature of Mr./Ms. for the office of Director, as a Director of the company whose period of office will be liable to determination by retirement by rotation be and is hereby appointed."

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7. SPECIMEN RESOLUTIONS FOR APPOINTMENT OF A WHOLE-TIME COMPANY SECRETARY

Kind of Meeting	Board Meeting
Type of Resolution	Resolution by Simple Majority

"RESOLVED that Mr. who possesses the requisite qualification under the Companies Act, be and is hereby appointed as a secretary on the terms and conditions contained in the draft letter of appointment, a copy of which, duly initialed by the Chairman for the purpose of identification was tabled and approved at the Meeting."

8. SPECIMEN RESOLUTION APPROVING RE-ISSUE OF FORFEITED SHARES.

And the type of meeting and the nature of resolution

Type of Meeting	Board Meeting
Nature of Resolution	Board Resolution

"RESOLVED THAT Equity shares of ₹ each bearing Distinctive Nos. to both inclusive, previously registered in the name of Shri..... and forfeited on as per declaration duly signed by Company Secretary placed on the table, be sold re-issued to Shri for ₹ per share."

"RESOLVED FURTHER that the Secretary of the Company be and is hereby authorized to obtain the necessary permission from the Stock Exchange for the reissue."

9. SPECIMEN RESOLUTION ADOPTION OF ANNUAL ACCOUNTS

Type of Meeting	Annual General Meeting
Type of Resolution	Ordinary Resolution

"RESOLVED THAT the Balance Sheet of the Company as on 31st March, 2014, the Profit and Loss Account of the Company for the period 1st April, 2013 to 31st March, 2014, together with the Schedules and Notes, as attached thereto; the Directors' Report dated 1st September, 2014, annexed thereto; and the Auditors' Report to the Members dated 1st September, 2014 be and are hereby adopted."

10. DRAFT A RESOLUTION WITH ASSOCIATED REQUIREMENTS ALTERING ARTICLES OF ASSOCIATION OF THE COMPANY TO INCLUDE RESTRICTIONS AS SPECIFIED IN SECTION 2(68) CONVERTING DJA LIMITED TO DJA PRIVATE LIMITED.

Body to consider the resolution	General Meeting
Type of resolution	Special Resolution

"RESOLVED THAT –

- (i) Pursuant to proviso to Section 14 of the Companies Act, 2013 and subject to the approval of the Central Government, the company be and is hereby converted into a private company.
- (ii) The articles of association of the company be and are hereby altered by inserting the following new article as articles no..... after article No.....
"Articles No....."

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The company is a private company and accordingly-

- (a) Restricts the right to transfer its shares,
- (b) Limit the number of its members to two hundred not including-
 - (i) Persons who are in the employment of the company; and
 - (ii) 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;

provided that where two or more person hold one or more shares in the company jointly, they shall, for the purposes of this article, treated as a single member; and
- (c) Prohibits any invitation to the public to subscribe for any shares in, or debentures of the company;

RESOLVED FURTHER THAT the name of the company be and is hereby accordingly changed from DJA Limited to DJA Private Limited.

11. DRAFT A RESOLUTION TO GIVE EFFECT TO CONSOLIDATION OF SHARES MADE BY THE COMPANY IN ITS MEMORANDUM OF ASSOCIATION.

Answer

Type of Meeting	General Meeting
Type of Resolution	Ordinary Resolution

“RESOLVED THAT –

- (i) Pursuant to proviso to Section 61(1)(b) and other applicable provisions, if any, of the Companies Act, 2013 and Articles of Association of the company, all the 5,00,00,000 (Five Crores) equity shares of ₹5 (Rupees Five) each of the company be and are hereby consolidated into two crores and fifty lakhs (2,50,00,000) equity shares of ₹10/- (Rupees 10) each;
- (ii) All the present shareholders holding in all 5,00,00,000 (5 crore) issued, subscribed and fully paid equity shares of ₹5 (Rupees Five) each be issued, in lieu of their present shareholding, the number of fully paid consolidated equity shares of ₹10 (Rupees Ten) each;
- (iii) The Board of Directors of the company be and is hereby authorized to take all the necessary steps for giving effect to the foregoing resolution, including recall of the existing share certificates, issue of new share certificates in lieu of the existing issued share certificates in terms of the foregoing resolutions and in accordance with the applicable provisions of the Companies Act, 2013.

12. DRAFT A RESOLUTION FOR CANCELLATION OF AUTHORIZED SHARE CAPITAL OF A PUBLIC COMPANY LIMITED BY SHARES AND CONSEQUENTIAL CHARGE IN THE MEMORANDUM OF ASSOCIATION OF THE COMPANY. (MENTION THE BODY TO PASS THE RESOLUTION AND THE NATURE OF THE RESOLUTION.)

Answer

Body to pass the resolution	General Meeting
Nature of the Resolution	Ordinary Resolution

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“RESOLVED THAT –

Pursuant to proviso to Section 61(1)(e) of Companies Act, 2013 and other applicable provisions, if any, of the Companies Act, 1956 and article Of the articles of association of the company, the authorized share capital of the company be and is hereby reduced from ₹20,00,00,000 (Rupees Twenty Crores) divided into 2,00,00,000 (Two crore) equity shares of ₹10/- each to ₹10,00,00,000 (Rupees Ten Crore) divided into one crore (1,00,00,000) equity shares of ₹10/- each by cancelling one crore (1,00,00,000) equity shares of ₹10/- each which have not been taken or agreed to be taken by any person and consequently Clause V (Share Capital Clause) of the memorandum of association of the company be and is hereby substituted with the following:

The authorized share capital of the company is ₹10,00,00,000 (Rupees Ten Crore) divide into one crore (1,00,00,000) equity shares of ₹10/- (Rupees ten) each.”

13. SPECIMEN RESOLUTION FOR TRANSMISSION OF SHARES

Passing Authority	Board of Directors at BOARD MEETING
Nature of Resolution	Resolution with the simple majority

“Resolved that the share transmission application(s) as described in the share transfer register being transmission nos ... to for transmission of equity shares of the company be and hereby approved and the persons mentioned in the column transferee in the share transfer register to registered members of the company in the place of respective deceased shareholders.”

14. SPECIMEN RESOLUTIONS FOR APPOINTMENT OF COMPANY SECRETARY IN PRACTICE FOR SECRETARIAL AUDIT

Type Of Meeting	BOARD MEETING
Nature of Resolution	Board Resolution

"RESOLVED THAT M/s ABC & Co., Company Secretaries be and is hereby appointed as secretarial auditor of the company in terms of the provisions of Section 204 of the Companies Act, 2013 and to hold the office till the conclusion of the next Annual General Meeting on such remuneration as may be determined by the Board and agreeable to them.”

15. RESOLUTION FOR KEEPING AND MAINTAINING BOOKS OF ACCOUNTS AT A PLACE OTHER THAN THE REGISTERED OFFICE

Type Of Meeting	BOARD MEETING
Nature of Resolution	Board Resolution

"RESOLVED THAT pursuant to the proviso to Section 128(1) of the Companies Act, 2013, the books of accounts of the company be kept and maintained at the company's head office at.....with effect from.....and that Mr.secretary of the company, be and is hereby authorised to file electronically e-Form No AOC-5 with the Registrar of Companies.....at.....by affixing his digital signature thereon and with the requisite filing fees within the prescribed time of seven days hereof and to take all necessary actions in this respect.”

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16. SPECIMEN BOARD RESOLUTION FOR APPROVAL OF THE DIRECTORS' REPORT

Type Of Meeting	BOARD MEETING
Nature of Resolution	Board Resolution

"RESOLVED THAT the draft Directors' Report to the Shareholders of the company for the year ended 31st March 2013 prepared in accordance with the provisions of Section 134 of the Companies Act, 2013 together with its Annexures and also containing suitable explanation and fullest information on every reservation, qualification or adverse remarks contained in Auditors reports, as submitted to the meeting, be and is hereby approved and the same be signed by Shri.....Chairman of the company, by Shri.....Managing Director and ShriDirector for and on behalf the Board of Directors of the company.

17. SPECIMEN OF BOARD RESOLUTION FOR DECLARATION OF INTERIM DIVIDEND ON EQUITY SHARES

Type Of Meeting	BOARD MEETING
Nature of Resolution	Board Resolution

"RESOLVED THAT"

- A. An interim dividend of ₹ 2 (Rupees two) only on each fully paid.....no. of equity shares of ₹ 10 (Rupees ten) each of the company amounting to Rs..... be paid out of the profits of the company for the half year ended..... 2016 to those members of the company whose names would appear on the register of members of the company on the.....day of.....,2016
- B. A bank account to be designated as "Interim Equity Dividend (2016) Account ofLimited" be opened in the name of the company withBank at its Branch atand a sum of Rs..... being the total interim dividend amount, be deposited in the said account within five days.
- C. Shri..... Managing Director and Shri.....the Company Secretary be and are hereby authorised to open the bank account by signing the account opening form and by furnishing to the said bank the required papers, documents, information etc. and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the interim dividend within thirty days from the date of this resolution.
- D. Shri.....Managing director and Shri.....Company Secretary of the company for the time being, be and are hereby authorised to jointly sign the dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the interim dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment.

18. SPECIMEN OF BOARD RESOLUTION TO ACQUIRE SHARES OF ANOTHER COMPANY

Type Of Meeting	BOARD MEETING
Nature of Resolution	Board Resolution

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"RESOLVED THAT pursuant to Section 186 of the Companies Act, 2013, the consent of the Board of Directors of the company be and is hereby accorded to make investments of ₹ 50,00,00,000/- (Rupees Fifty Crore only) for acquisition of 5,00,000 equity shares of ₹100/- each fully paid up in M/s XYZ Ltd. from various existing shareholders of M/s XYZ Ltd.

RESOLVED FURTHER THAT Mr. MD, Managing Director of the company be and is hereby authorised to make payment of consideration to the transferors and to do all such necessary act as may be necessary for this act."

19. Buoyant Ltd. A loss incurring company, wants to appoint Jolly as Managing Director w.e.f. 15 march, 2009 on a total remuneration of ₹ 10 lakh per month (all inclusive). Its paid up capital is ₹ 5 crore, reserves ₹ 3 crore and term loans ₹ 10 crore. The company has accounting year ending on 31st march every year.

Type Of Meeting	BOARD MEETING
Nature of Resolution	Board Resolution

"RESOLVED THAT, as per the provisions of section 197 and 203 and subject to the approvals of shareholders and the Central Government and' subject to the compliance of the requirement of Schedule V of the Companies Act, 2013, Mr. Jolly be and is hereby appointed the managing director of the company with effect from 15th march, 2009 on a remuneration of ₹ 10(ten) lakhs per month or ₹120 lakhs per annum inclusive all benefits and perquisites for a period of 3 year or lesser as may be approved by the Central Government and he shall not be liable to retire by rotation".

20. Draft the specimen resolutions with requisite explanatory statement, if necessary, for transacting the following items of business indicating the kind of meeting at which each resolution to be passed and the types of resolution required for Donating a sum of ₹ 2,00,000 (rupees two lakhs) to the Navrozji Tata Education Fund.

Type Of Meeting	GENERAL MEETING
Nature of Resolution	Ordinary Resolution

"RESOLVED THAT pursuant to the other applicable provisions, if any, of the Companies Act, 2013, approval be and is hereby accorded to the Board of Directors of the Company for donating a sum of ₹2,00,000 (rupees two lakhs only) to the Navrozji Tata Education Fund".

Explanatory Statement:

As a part of the Company social uplift programme, the Board of Directors intend donating a sum of ₹2,00,000/- to the Navrozji Data Education Fund set up by Tata Sons Ltd. to promote higher education in the field of engineering and medical sciences. The Fund has a panel comprising eminent industrialists, scientists and doctors to select and award merit scholarships to deserving, capable students desiring to pursue advanced studies in engineering and medicine. The Board recommends in the accompanying resolution for the shareholder's approval. No director is interested in this item of business.

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NKJ-CLASSROOM PRACTICE

Q. 1. 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. [Dec.. 2018; 5 Marks]

Ans. Special Business

To consider and if thought fit, to pass with or without modification(s), the following resolution as Special Resolution:

"RESOLVED THAT pursuant to the provisions of Section 180(3)(c) and other applicable provisions, if any, of the Companies Act, 2013, and subject to such approval as may be necessary, consent of the company be and is hereby accorded to the Board of directors of the company for borrowing, from time to time, such sum of money as may not exceed Rs. (Rupees.....), for the purpose of the business of the company, notwithstanding that the moneys to be borrowed together with the monies already borrowed (apart from temporary loans obtained from the company's bankers in the ordinary course of business) will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, the reserves not set apart for any specific purpose, provided that the total amount upto which the monies may be borrowed by the Board of directors of the company shall not exceed the aggregate of the paid-up capital and free reserves of the company by more than the sum of Rs. (Rupees.....) at any one time. Resolved further that the Board be and is hereby authorized to do all the acts, deed and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above resolution".

Explanatory Statement

The shareholders of the company had, at the extraordinary general meeting of the company held on..... passed a special resolution under Section 180(3)(c) for borrowing the maximum amount of Rupees....., upto which the Board of directors of the company could, borrow funds from financial institutions and banks in excess of the company's paid-up capital and free reserves. However, in view of the increased business activities of the company, the said ceiling of Rupees(.....) has been found to be inadequate. Your directors are of the opinion that the ceiling of borrowings by the Board be raised to rupees _____

Therefore, the proposed resolution for consideration and approval by the members of the company. None of the directors is concerned or interested in the proposed resolution



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NOTICE OF ANNUAL GENERAL MEETING

NAME OF THE COMPANY

REGD. OFFICE ADDRESS.....

CIN No.

Phone No.

Fax No.; Email-ID.....; Website:-.....

NOTICE

Notice is hereby given that the 18th annual general meeting of the company will be held on Thursday the 30th day of September, 2014 at (Address of Registered Office) at 10AM to transact the following business :

ORDINARY BUSINESS

1. To receive, consider and adopt the audited Profit and loss Account for the year ended 31st March, 2014, the Balance Sheet as at that date and the Reports of Directors and auditors thereon.
2. To appoint a Director in place of Mr. D, who retires by rotation and being eligible, offers himself for re-appointment.
3. To appoint Auditors of the Company and fix their remuneration.
4. To declare dividend, if any.

SPECIAL BUSINESS

5. To consider and, if thought fit, to pass, with or without modification(s), the following resolution as Special Resolution :

"RESOLVED THAT pursuant to section 13 and other applicable provisions, if any, of the Companies Act, 2013, the registered office of the company be shifted from Delhi to Patna."

6. To consider and, if thought fit, to pass, with or without modification(s), the following resolution as Ordinary Resolution :

"RESOLVED THAT pursuant to Section 61 other applicable provisions, if any, of the Companies Act, 2013, the authorised share capital of the company be and is hereby increased from ₹..... (Rupeesonly) divided into equity shares of ₹ (Rupeesonly) divided into equity shares of ₹each.

RESOLVED FURTHER THAT the existing clause V of the Memorandum of Association of the Company be and is hereby substituted by the following:

Clause V. The authorised share capital of the company is ₹ (Rupees only) divided into equity shares of ₹ each."

By Order of the Board

CS

COMPANY SECRETARY

Place: New Delhi.

Date: 1st September, 2014.

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NOTES:

1. **A MEMBER ENTITLED TO ATTEND AND VOTE AT THE MEETING IS ENTITLED TO APPOINT A PROXY TO ATTEND AND VOTE INSTEAD OF HIMSELF AND SUCH A PROXY NEED NOT BE A MEMBER.** Proxies in order to be effective must be received by the Company not less than 48 hours before the time for holding the Meeting.
2. Explanatory Statement pursuant to Section 102 of the Companies Act, 2013 is annexed hereto.

EXPLANATORY STATEMENT PURSUANT TO SECTION 102 OF THE COMPANIES ACT, 2013.

ITEM NO. 5

Section 13 provides the procedure to be followed by a company to change the place of its registered office from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies after passing special resolution in the general meeting of the company.

The registered office of your company is presently situated at and due to (reasons).

your company wishes to change its registered office to (place)

Since the change in registered office is from the jurisdiction of one ROC office to the jurisdiction of another ROC office approval of shareholders by way of Special Resolution is necessary.

Accordingly, the directors recommend the resolution for members' approval.

None of the directors of the company is in any way concerned or interested in the proposed resolution.

ITEM No. 6

The present authorized share capital of the company is ₹..... (Rupees only) divided into equity shares of ₹ each.

The growth of the company's operations require augmentation of resources. Accordingly, increase in authorized share capital of the company by creation of Equity Shares of ₹..... each is recommended.

As per section 61, of the Companies Act, 1956, the power to increase the authorised share capital has to be exercised by the company in general meeting.

Accordingly, the directors recommend the resolution for members' approval.

None of the directors of the company is in any way concerned or interested in the proposed resolution.

INSPECTION OF DOCUMENTS

The material documents referred to hereinabove will be open for inspection by the Members at the Registered Office of the Company from the date hereof up to date of the meeting during business hours.

By Order of the Board

Place: New Delhi.

CS

Date: 1st September, 2014.

COMPANY SECRETARY

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PROCEDURE

PROCEDURE FOR CHANGE OF NAME/ALTERATION OF NAME

1. Issue notice of board meeting in writing to every director of the company.
2. Hold the Board meeting to –
 - (i) consider and approve the proposed name by passing a resolution.
 - (ii) authorise the Company Secretary/Director to make the required application to the Registrar of Companies for seeking availability of the proposed name.
3. On receipt of approval of name, hold another Board meeting for transacting the following Business:

(i) To take note of the approval received from the ROC.
(ii) To fix time, date and venue for holding a general meeting.
(iii) To approve notice of the general meeting.
(iv) to authorise the Company Secretary/ Director to issue the notice on behalf of the Board.
4. Issue notice of the general meeting to all the members of the company, its directors and the auditors.
6. A general notice of the proposed general meeting may also be published in newspapers.
7. Hold the general meeting and pass the special resolution for change of name.
8. *Send to each stock exchanges, a copy of the proceedings of the general meeting in case of a listed company within 24 hour of the occurrence of event [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]*
9. File with the ROC Form No. MGT-14 with a certified true copy of each special resolution passed at the General meeting along altered copy of Memorandum of Association and Articles of Association.
10. Make an application in **Form No. INC-24** to the Central Government (delegated to Registrar of Companies) Along with a copy of resolution and other necessary attachment.
11. After scrutiny of the documents filed, the ROC shall issue a fresh certificate of incorporation digitally signed.
12. Issue, if necessary, a general notice in newspapers informing all concerned, about the change of name of the company.
13. Intimate all concerned persons/authorities about the changed name of the Company, particularly the Stock Exchanges, National Securities Depository Ltd., Central Depository Services (India) Ltd., Income Tax Authorities, Central Excise Authorities, Sales-tax Authorities in various States, Customs Authorities, Chief Inspector of Factories, Regional Provident Fund Commissioner, suppliers of raw materials, customers, Banks etc.
14. Arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors.
15. Get stationery printed with the new name and/or affix rubber stamp of the new name on all the existing Stationery including the blank share certificates.
16. Get the new name of the Company painted on all the signboards or name boards wherever they are displayed.
17. Correct all records, registers including the Register of Members, Charges registered with ROC, share Certificates, debenture certificates, bonds and other securities, every copy of Memorandum and Articles of Association, other books and documents pertaining to the company's business and affairs.

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RECTIFICATION OF THE NAME OF THE COMPANY

SECTION 16

Under Section 16 of the Act, rectification of the name of the company is required to be carried out if, through inadvertence or otherwise, a company (whether on its first registration or on its registration by a new name) is registered by a name which is identical to or too nearly resembles the name of a company already in existence.

The rectification of the name must also be carried out if the Central Government so directs at any point of time after the registration of the company. The direction of the Central Government is required to be complied with by the company within a period of 3 months from the date of issue thereof.

Further where a company changes its name or obtains a new name under section 16, it shall within a period of **fifteen days** from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

EFFECT OF CHANGE OF NAME

1. Continue Existence of Company:

The Companies Act, 2013 does not talk about effect of the change of name as this is well settled that change of name: –

- (a) Shall not affect any rights or obligations of the company; –
- (b) Shall not render defective any legal proceedings by or against the company; and –
- (c) Shall not affect any legal proceedings continued or commenced by or against the company pending in its old name; they may continue in its new name.

(Economic Investment Corporation Ltd. v. CIT)

2. Right to sue:

A change of name under section 13 does not affect the rights and obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings, which might have been continued or commenced by or against the company by its former name, may be continued by or against the company by its new name.

(Solvex Oils & Fertilizers v. Bhandari Cross-Fields (P) Ltd.)

3. Tax liability:

There is no substitution or succession of one legal person by another legal person in the instant case. It is only a change in name. Even in the absence of any special provision in the Income-Tax Act, the change does not affect the liability of the company to pay income tax arrears.

(Economic Investment Corporation Ltd. v. CIT)

4. Execution of decree:

A decree obtained by a company in its former name can be executed by it in the new name after it has obtained a certificate for the altered name. The change of the name does not affect the rights of the company. It is not necessary that the new name should have been entered in the decree.

(Abdul Qayum v. Manindra Land & Building Corporation Ltd)

5. Shareholding by company:

The company which has changed its name would be entitled to ask those companies in which it is holding shares, to substitute its old certificates by new ones.

(Sulphur Dyes Ltd. v. Hickson & Dadajee Ltd.)

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ALTERATION OF REGISTERED OFFICE/SITUATION CLAUSE

SECTION 12

(a) Change within the local limits of same town

According to Section 12(5), a company can change its registered office from one place to another within the local limits of the city, town or village, where it is situated, by merely passing a **Board resolution**. This does not involve alteration of memorandum.

A notice of the change is required to be given to the Registrar in **Form no INC 22**, within 15 days of such change.

(b) Change from one city to another within the same State

If the registered office is to be shifted from one city, town or village to another city, town or village within the same State, a **special resolution** has to be passed in the general meeting of the company.

A notice of the change is required to be given to the Registrar in Form no INC 22, within 15 days of such change along with **Form no MGT 14**.

(c) Change within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies

Proviso to Section 12(5) provides that **confirmation by the Regional Director** after passing special resolution in general meeting will be necessary for changing registered office of a company from one place to another if the change of registered office is from the jurisdiction of one Registrar to the jurisdiction of another within the same State.

Section 12(6) states that the Regional Director, after hearing the parties shall pass necessary orders within a period of **thirty days** from the date of the receipt of the application. Thereafter, the company concerned shall file a **copy of the said order with the Registrar of Companies (ROC) within a period of sixty days** from the date of the confirmation order by Regional Director. The said ROC shall record the ordered changes in its records.

The ROC of the state where the registered office of the company was previously situated, shall transfer all the documents and papers to the new ROC.

Rule 28 of Companies(Incorporation) Rules 2014 states that;-

- (a) An application seeking confirmation from the Regional Director shall be filed by the company with the Regional Director in **Form no. INC. 23** along with the fee.
- (b) The company shall, not less than one month before filing any application with the Regional Director for the change of registered office.-
 - (i) publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district; and
 - (ii) serve individual notice on each debenture holder, depositor and creditor of the company, clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice:
- (c) A notice of the change is required to be given to the Registrar in Form no INC 22, within 15 days of such change along with **Form no MGT 14**.

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PROCEDURE FOR SHIFTING

1. Hold a Board meeting –

(i)	to pass a resolution, for shifting the registered office.
(ii)	to pass a resolution for fixing time, date and venue for holding general meeting of the company for passing a special resolution .
(iii)	to pass a resolution approving notice of the general meeting.
(iv)	to pass a resolution authorising the Company Secretary/Director to issue the notice of the general meeting.

2. Issue notice along with the explanatory statement of the general meeting to each member, each director and the auditors of the company.
3. *Send copies of the notice to each stock exchange where the securities of the company are listed within 24 hour of the occurrence of event* [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].
4. If necessary, public notice of the general meeting may also be published in news papers.
5. Hold the general meeting and pass the special resolution as per notice of the general meeting.
6. *Send to each stock exchanges, a copy of the proceedings of the general meeting in case of a listed company within 24 hour of the occurrence of event* [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].
7. File with ROC within thirty days of passing of the special resolution-
 - (a) **Form MGT – 14** along with a certified true copy of the special resolution passed at the general Meeting.
 - (b) **Form INC – 22**, containing notice of change of registered office, along with the filing fee and copy of the special resolution.
8. After special resolution passed for shifting of registered office from the jurisdiction of one Registrar to another Registrar within same state, the company should make application to the Regional Director in the prescribed **Form INC – 23**.
9. The company shall, not less than one month before filing application in Form INC – 23 with RD:-
 - (a) publish a notice in newspaper.
 - (b) serve individual notice on each debenture holders, depositors and creditors of the company clearly indicating the matter of application and stating that any affected person may oppose the application before RD within 21 days of publication of notice.
10. **Form INC – 23**, Shall be filed with following attachments:-

(a)	Copy of Memorandum of Association and articles of association;
(b)	Copy of notice of the general meeting along with relevant explanatory statement;
(c)	Copy of special resolution sanctioning alteration;
(d)	Copy of the minutes of the general meeting authorizing such alteration;
(e)	List of creditors and debenture holders;
(f)	Affidavit from Directors and company secretary in regards to the correctness of list of creditors and affairs of the company;
(g)	Copy of newspaper advertisement for notice of shifting the registered office;
(h)	Copy of objections (if received any);

11. The confirmation by Regional Director shall come within a period of 30 days from the date of receipt of application by the Regional Director.

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12. The company shall file the confirmation with the Registrar within a period of 60 days of the date of confirmation.
13. File **Form INC-22** with both ROC within 15 days of shifting.

(d) Change of Registered office from one State to another

The change of registered office from one State to another State involves alteration of memorandum, and the change can be effected by a **special resolution of the company which must be confirmed by the Central Government** on an application made to it [Section 13(4)].

The Central Government **shall dispose** of the application under sub-section (4) within a period of **sixty days** and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture- holders and other persons concerned with the company or that a sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge. [Section 13(5)].

A certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration. [Section 13(7)].

Rule 30 of Companies(Incorporation) Rules 2014 states that:-

An application for the purpose of seeking approval for change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in **Form No. INC.23**.

Rule 31 of Companies(Incorporation) Rules 2014 states that:-

The certified copy of the order of the Central Government shall be filed in **Form No. INC.28** along with the fee as with the Registrar of the State within **thirty days** from the date of receipt of certified copy of the order.

PROCEDURE FOR SHIFTING

1. Hold a Board meeting –

(i)	to decide about the proposal to shift the registered office of the company to another State.
(ii)	to fix time, date and venue for holding general meeting of the company for passing a special resolution
(iii)	to approve notice of the general meeting
(iv)	to authorise the Company Secretary/Director to issue notice of the general meeting
(v)	for authorising the company secretary to make a petition under Section 13 of the Act to the Central Government seeking confirmation

2. Issue notice of the general meeting to all members, directors and the auditors of the company.
3. *Send copies of the notice to each stock exchange where the securities of the company are listed within 24 hour of the occurrence of event* [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].
4. A general notice of the general meeting may also be published in newspapers.
5. Hold the general meeting and pass the special resolution for altering the memorandum of association of the company so as to change the situation of its registered office to another State.
6. *Send to each stock exchanges, a copy of the proceedings of the general meeting in case of a listed company within 24 hour of the occurrence of event* [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]

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7. In case of listed company send to each stock exchange, immediately after the conclusion of the general meeting, six copies of the amendments to the memorandum of association of the company.
8. File with the ROC within thirty days of passing of the resolution, Form **MGT – 14** along with a certified true copy of the special resolution passed at the general meeting.
9. The application for seeking approval for alteration shall be filed with the Central government in **Form INC - 23** and shall be accompanied by the following documents:

(i)	a copy of the memorandum and articles of association;
(ii)	a copy of the notice convening the general meeting along with relevant Explanatory Statement;
(iii)	a copy of the special resolution
(iv)	a copy of the minutes of the general meeting
(v)	an affidavit verifying the application;
(vi)	the list of creditors and debenture holders
(vii)	an affidavit verifying the list of creditors;
(viii)	a copy of the acknowledgment of service of a copy of the application to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

10. The company shall at least fourteen days before the date of hearing-
 - (i) **Advertise the application in the Form INC – 26** in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district;
 - (ii) Serve, by registered post with acknowledgement due, individual notice(s), on each debenture-holder and creditor of the company; and
 - (iii) Serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.
11. Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government on or before the date of hearing.
12. Where no objection has been received from any of the parties, who have been duly served, the application may be put up for orders without hearing.
13. Before confirming the alteration, the Central Government shall ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.
14. The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper.
15. The shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.
16. The certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in **Form INC - 28** along with the fee with the Registrar of each of the States within thirty days from the date of receipt of certified copy of the order.

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17. The change of address of the registered office shall be effective from the date of issue of registration certificate by the Registrar of Companies of the State to which the registered office is shifted.
18. **Form INC – 22**, containing Verification of registered office, along with the filing fee and copy of the special resolution.
19. Issue a general notice by way of an advertisement in newspaper(s) informing the members of the company all other concerned persons about the change of place of the registered office of the company so that they may address all future communications to the company at its new address.
20. The address of the registered office of the company must also be changed on all items of stationery, letter heads, bills forms, invoice forms, sign boards and at all other places wherever it occurs.
21. The stock exchanges, where the securities of the company are listed, should also be promptly informed about the change of place of the registered office of the company.
22. Correct the address of the registered office of the company on all records, registers including the register of members, share certificates, sign board, name plate etc.

AFFIDAVIT

Q. 1. Spectacular Ltd. wants to make an application to Registrar of companies (ROS) for removal of its name under section 248(2) of the Companies Act, 2013 from register. It is understood that the application, inter-alia, shall be accompanied by an 'affidavit' by every Director of the company. You are a practicing Company Secretary. The company has approached you to draft such an affidavit. Help the Company.

Ans.

**FORM NO. STK-4
AFFIDAVIT**

(To be given individually by every director)

[Pursuant to sub section (2) of section 248 read with clause (iii) of sub-rule (3) of Rule4]

1. I/We Director of hereinafter called "the company"). Incorporated on under the companies Act, 2013 or the Companies Act, 1956 having its registered office atand having CIN..... do solemnly affirm and state as under:
 - (i) I/WeS/o D/o Shri/Smt..... Holder of DIN/ Income Tax PAN/ Passport number (copy of income Tax PAN/ Passport duly attested by a Gazettes officer or a whole time practicing professional viz Chartered Accountant/ Company Secretary/ Cost Accountant) am Director of the Company stated above since(mention date of appointment).
 - (ii) My present residential address is(copy of documentary evidence duly attested by a Gazettes Officer or a whole time practicing professional viz Chartered Accountant/ Company Secretary/ Cost Accountant) is enclosed (Alternatively, an affidavit sworn before Magistrate may be enclosed).

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- (iii) My permanent address is (copy of documentary evidence duly attested by a Gazetted Officer or a whole time practicing professional viz Chartered Accountant/ Company Secretary/ Cost Accountant) is enclosed (Alternatively, an affidavit sworn before Magistrate may be enclosed).
- (iv) The Company does not maintain any bank account as on date.
- (v) The Company (mention name of the Company) does not have any assets and liabilities as on date.
- (vi) The Company has been inoperative from the date of its incorporation/ The Company commenced business/ operations/ commercial activity after incorporation but has been inoperative for the past year (s) due to following reasons (give the reasons here).
- (vii) As on date, the Company does not have any dues towards Income Tax/ Sales Tax/ Central Excises/ Banks and Financial institutions; and other Central and State Government Departments/ Authorities or any Local Authorities.

2. I further affirm that –

- (i) No inquiry, technical scrutiny, inspection or investigation is ordered or pending against the company;
- (ii) No prosecution or any compounding application for any offence under the Act or under any of the other Acts is pending against the company or against the undersigned;
- (iii) The company is neither listed nor delisted for non-compliance of against agreement;
- (iv) The company is not a company incorporated for charitable purposes under section 8 of the Companies Act, 2013 or section 25 of the Companies Act, 1956;
- (v) The company does not have any management disputes or there is no litigation pending with regard to management or shareholding of the company;
- (vi) No order is in operation staying filing of the documents by a court or tribunal or any other competent authority;
- (vii) The company is not prevented from making the applications for strike off as mentioned in section 249 of the Act.

I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Signature----- (Deponent)

Verification :- I verify that the contents of this affidavit are true to the best of my knowledge and belief.

Place:

Signature----- (Deponent)

Date:

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Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

15

INSPECTION, INQUIRY AND INVESTIGATION

Covering-

- ABC Analysis
- Inspection
- Inspection-purpose/objective
- Power to call for information, inspect books and conduct inquiries
- Report on inspection made
- Search and seizure
- Investigation
- Kind of investigation
- Investigation into affairs of company
- Establishment of serious fraud investigation office/ SFIO
- Investigation into company's affairs in other cases on the order of tribunal
- Investigation of ownership of company
- Protection of employees during investigation
- Investigation into affairs of related companies, etc.
- Inspector's report
- Actions to be taken in pursuance of inspector's report
- Expenses of investigation
- Voluntary winding up not to stop investigation proceedings
- Investigation of foreign companies
- Preparation by a company secretary to face investigation
- Self Test Questions
 - From Past CS Exams
 - From ICSI Module

**EXPECTED
MARKS COVERAGE
(1 to 5)**

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INSPECTION, INQUIRY AND INVESTIGATION

ABC Analysis (IOSI -Exam Point of view)	
A	1. Kind of investigation 2. Establishment of serious fraud investigation office/ SFIO 3. Preparation by a company secretary to face investigation
B	4. Inspection-purpose/objective 5. Actions to be taken in pursuance of inspector's report
C	6. Power to call for information, inspect books and conduct inquiries 7. Search and seizure

INSPECTION

Sections 206 to 209 contains provisions in respect of inspection of books of accounts and other books and papers of every company. Inspection is neither audit of books of accounts, nor investigation into the affairs of a company. It can only be an appraisal of the overall activities of a company, except in complaint cases. Such appraisal cannot be done merely by inspecting the records on 'as is where is' basis but certain amount of verification and cross verification, is necessary.

INSPECTION-PURPOSE/OBJECTIVE

Inspection can be carried out for the following purposes:-

- (a) To determine concealment of income by falsification of accounts.
- (b) To secure knowledge about the mismanagement of the business of a company.
- (c) To ascertain whether statutory auditors have discharged their functions and duties.
- (d) To detect misapplication of funds.
- (e) To detect misuse of position by company's management for their personal advantage.

POWER TO CALL FOR INFORMATION, INSPECT BOOKS AND CONDUCT INQUIRIES

SECTION 206

Section 206 empowers the Registrar of Companies (ROC) to call for any information, Explanation or documents and to inspect books of account of the company, etc. The company and its officers shall furnish the information or explanation in documents within the specific time. Where the Registrar is satisfied on the basis of information in documents that the business of the company is conducted in a fraudulent manner, he may order an inquiry.

The Central Government may direct inspection of books and papers of a company by an inspector appointed by it for the purpose. Further the Central Government may, by general or special order, authorize any statutory authority to carry out the inspection of books of account of a company or class of companies.

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REPORT ON INSPECTION MADE

SECTION 208

Section 208 requires the Registrar or Inspector to submit a report to the Central Government after inspection of books of accounts such report may include recommendations that further investigation into the affairs of the company is necessary giving reasons in support.

SEARCH AND SEIZURE

SECTION 209

Section 209 empowers the Registrar or Inspector appointed by the Central Government to enter and search the place or place where books of account are kept if he has reasonable ground to believe that the books and papers of a company, or relating to the key managerial personal or any director or auditor or company secretary in practice (if the company has not appointed a company secretary) are likely to be destroyed, mutilated, altered, falsified or secreted. He may search the place after having obtained an order from the special court for the seizure of such books and papers.

However, for search and seizure of documents, Registrar /Inspector shall be required to seek permission of Special Court. The Registrar or inspector shall return the books and papers seized not later than 180 days after such seizure, to the company from whose custody or power such books or papers were seized. The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, mutatis mutandis, to every search and seizure made under this section.

INVESTIGATION

Investigation, within the relevant provisions of the Companies Act, 2013 is a form of probe; a deeper probe; into the affairs of a company. It is a fact-finding exercise. The main object of the investigation is to collect evidence and to see if any illegal acts or offences are disclosed and then decide to action to be taken. The said expression also includes investigation of all its business affairs profits and losses, assets including goodwill, contracts in transaction, investment and other property interests and control of subsidiary companies too.

KIND OF INVESTIGATION

<u>The Companies Act, 2013 provides for carrying out the following kinds of investigation:-</u>	(a) Investigation of the affairs of the company if its necessary to investigate into the affairs of the company in public interest [Section 210] ;
	(b) Investigation by Serious Fraud Investigation office directed by central government under [Section 212];
	(c) Investigation on the order of Tribunal [Section 213 – Not yet enforced] ;
	(d) Investigation about the ownership of a Company [Section 216] ;
	(e) Investigation of the affairs of related companies [Section 219] ; and
	(f) Investigation of foreign companies [Section 228]

INVESTIGATION INTO AFFAIRS OF COMPANY

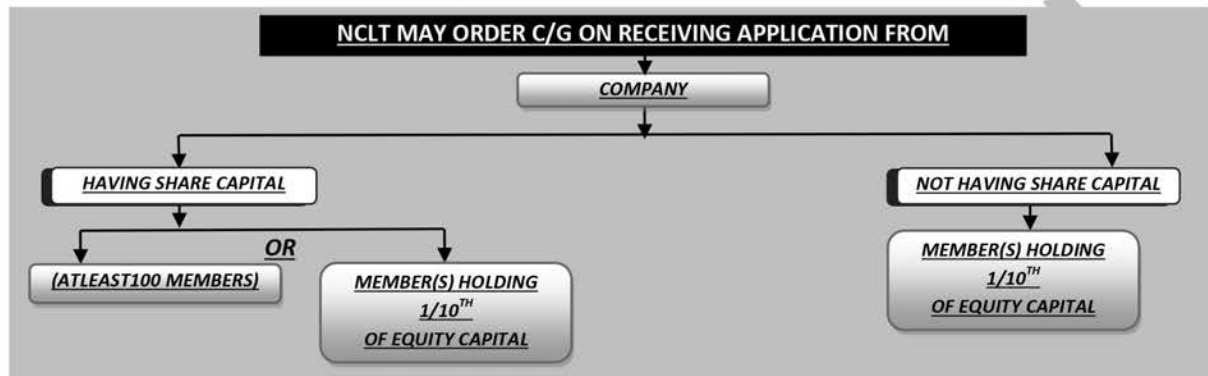
SECTION 210

Section 210 empowers the Central Government to order an investigation into the affairs of a company either on the report of Registrar or on special resolution passed by a company or in public interest. Further section 210 also empowers Court or the National Company Law Tribunal (NCLT) to order that the affairs of a company ought to be investigated, upon which Central Government shall order investigation.

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For the purpose of investigation, to Central Government has the power to appoint inspector (s) and seek report.

ESTABLISHMENT OF SERIOUS FRAUD INVESTIGATION OFFICE/ SFIO

SECTION 211 & 212

Section 211 mandates the Central Government to constitute Serious Fraud investigation Office ('SFIO') through notification, to investigate frauds relating to a company.

The **SFIO** will be headed by a director and will consist of experts from various disciplines. The Central Government shall also appoint a Director in the **SFIO** not below the rank of Joint Secretary and may also appoint such experts and other officers as it considers necessary for efficient discharge of functions.

The Central Government may refer any matter for investigation into affairs of the company to the SFIO, if it is of the opinion that it is necessary to investigate, on the basis of:-

- (a) Receipt of a report of the Registrar or inspector;
- (b) Intimation of special resolution passed by a company that its affairs are required to be investigate;
- (c) In the public interest; or
- (d) A request from any department of the Central Government or a State Government

Where any case has been assigned by the Central Government to the **SFIO** for Investigation, no their investigation agency of Central Government or any State Government shall precede with investigation.

To check fraud, power has been entrusted in Serious Fraud investigation office, making such offences cognizable and giving such authorities power to arrest. The person accused of any such offence shall be released on bail subject to certain conditions provided under section 212.

INVESTIGATION INTO COMPANY'S AFFAIRS IN OTHER CASES ON THE ORDER OF TRIBUNAL

SECTION 213

Section 213 empowers the Tribunal to order an investigation by the Central Government in case an application is made **by at least 100 members** or by member having **one-tenth of total voting power**; in the case of a company having a share capital and in case an application is made by at least **one – fifth** of the total number of members; in case of company with no share capital, seeking an investigation into the affairs of the company or on an application suggesting fraud, misfeasance or misconduct or when any information is withheld.

INVESTIGATION OF OWNERSHIP OF COMPANY

SECTION 216

Section 216 empowers the Central Government to appoint one or more Inspectors to investigate and report on matters relating to the company, **or** its membership for the purpose of determining the true persons who are or have been financially interested in the success or failure, of the company or who are or have been able to control or to materially influence the policy of the company **or who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company**".

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PROTECTION OF EMPLOYEES DURING INVESTIGATION

SECTION 218

Section 218 provides protection to the employees of the company during investigation. The company shall obtain approval of Tribunal if, during the pendency of any investigation into the affairs of the company or during the pendency of any proceeding against the company, the company proposes to discharge or suspend, terminate, change the terms of employment, dismiss or reduce in rank any employee.

If the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned. If the company does not receive within thirty days any notice of objection from the Tribunal, it may proceed to take against the employee the action proposed.

INVESTIGATION INTO AFFAIRS OF RELATED COMPANIES, ETC.

SECTION 219

Section 219 empowers the inspector to investigate the affairs of a related company, etc, subject to the approval of Central Government.

Thus, an inspector can also investigate into the affairs of any other body corporate where such corporate body is a holding company or subsidiary company or has the same managing director or manager or where Board of directors act on the direction of such company. He can investigate into the affairs of such body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

INSPECTOR'S REPORT

SECTION 223

Section 223 provides for submission of the interim and final report of investigation to the Central Government. Such a report shall be in writing or printed. A copy of the report may be obtained "by members, creditors or any other person whose interest is likely to be affected" by making application in this regard to the Central Government. Such report shall be authenticated by the seal of the company or by public officer having custody of the report in accordance with Indian Evidence Act, 1872. Such report can be submitted as evidence in any legal proceedings.

However, provisions of this section shall not apply to the report of investigation carried out by SFIO under section 212.

ACTIONS TO BE TAKEN IN PURSUANCE OF INSPECTOR'S REPORT

SECTION 224

If, from an inspector's report, it appears to the Central Government that any person is guilty to any offence for which he is criminally liable, the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution.

Section 224 further deals with action to be taken on the investigation report which includes winding up, misfeasance, recovery proceeding, etc.

Where a investigation report states that a fraud has taken place and any director, key managerial personnel or officer has taken undue advantage or benefit, the Central Government may file an application before the Tribunal with regard to disgorgement and such director, key managerial personnel or officer may be held personally liable without any limitation of liability.

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SECURITY FOR PAYMENT OF COSTS AND EXPENSES OF INVESTIGATION

SECTION 214

Where an investigation is ordered by the Central Government under section 210 or pursuant to Tribunal's order under section 213, then before appointing an Inspector, the Central Government may require the applicants to give a security not exceeding ₹25,000 towards the costs and expenses of investigation as per the following criteria:-

<u>Turnover as per previous year</u>	<u>Amount of security</u>
Turnover up to ₹50 crore	₹ 10,000
Turnover more than ₹ 50 crore and up to 200 crore	₹ 15,000
Turnover more than ₹ 200 crore	₹ 25,000

The security shall be refunded to the applicant of investigation results in prosecution.

EXPENSES OF INVESTIGATION

SECTION 225

Section 225 provides that the expenses of investigation by an inspector appointed by the Central Government shall be borne, in the first instance, by the Central Government but shall be reimbursed by person to convicted on a prosecution instituted or who is ordered to pay damages or restore the property to the extent he may be ordered to pay the said expenses as specified by the court.

Any amount, which company is liable to pay, shall be the first charge on the property of the company.

VOLUNTARY WINDING UP NOT TO STOP INVESTIGATION PROCEEDINGS

SECTION 226

Section 226 enables continuation of investigation even after voluntary winding up or application is pending before the Tribunal. Winding up order shall not absolve director or employee from participating in the proceeding before the Inspector or any liability as a result of finding by inspector.

INVESTIGATION OF FOREIGN COMPANIES

SECTION 228

The aforesaid provisions of inspection and investigation shall also apply, **mutatis mutandis**, to inspection and investigation in relation to foreign companies.

PREPARATION BY A COMPANY SECRETARY TO FACE INVESTIGATION

Before an inspector commences investigation into the affairs of a company, it is advisable for the Secretary to prepare a report touching upon various aspects of the activities of his company particularly those transactions in respect of which fraud or misfeasance or mismanagement is alleged.

The aspects which should be considered by the secretary include:

1. Basic information about the company.
2. Business activities
3. Debentures, bank finance and deposits.

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4.	Foreign collaboration agreements.
5.	Management
6.	Whether all the statutory registers including minute's books are being maintained up-to-date?
7.	Whether the internal checks and internal control system is being properly followed?
8.	Working results and financial position
9.	Compliance by the company and its officers with the provisions of the Companies Act, 2013.
10.	Compliance with the provisions of other Acts applicable to the company.
11.	Whether the loans taken and loans advanced to Directors, the firms in which they are partners or companies in which they are Directors are in accordance with the provisions of the Act.
12.	The investments made by the company.
13.	Instance of mismanagement and other irregularities.
14.	Acquisition/disposal of substantial assets.
15.	A scrutiny of abnormal/heavy expenditure items.
16.	Complaints, if any, against the company and its management and steps taken to redress them.
17.	Brief particulars of the litigations against the company and the reasons thereof.
18.	Management's relations with the employees and labour.

Q. 1. An investigation was ordered into affairs of RST Ltd. by the Central Government under Section 210 of the Companies Act, 2013. After carrying out investigation, a report was submitted by the inspector under Section 223 of the Companies Act, 2013. In such a case, what should be done by the Board of Directors of the Company? Please also inform the Board why such investigation might have been ordered. [Dec. 2017]

Ans. Section 224 deals with actions to be taken in pursuance of inspector's report

If from and inspector's report made under section 223, it appears to the Central Government that any person is guilty of any offence of which he is criminally liable, the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution.

Action also includes winding up misfeasance, recovery proceedings, etc. if states in the investigation report.

Where investigation report states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any assets, property or cash or in any other manner, of the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such assets, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.

In light of a work of above provision, the Board of directors should keep ready point wise reply of all the matters raised by the inspector.

Investigation

The investigation may be ordered under Section 210, 212 and 213:

210(1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company –

- (a) on the receipt of a report of the Registrar or Inspector under Section 208;
- (b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or
- (c) in public interest, it may order an investigation into the affairs of the company.

212(1) without prejudice to the provisions of Section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office–

- (a) on receipt of a report of Registrar or inspector under Section 208;
- (b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;
- (c) in the public interest; or
- (d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

213. The Tribunal may, —

- (a) on an application made by —
 - (i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or
 - (ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

- (b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—
- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;
 - (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or
 - (iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Practical Questions:-----
 - (a) Answer the following citing the relevant provisions of Law/case law , if any:
One of the major creations of joy Ltd. is of the opinion that an investigation in the affairs of the company needs to be undertaken in the interest of the company and the Creditors. Can he make an application for investigation of joy Ltd. to the Company Law board / Tribunal?
2. Descriptive Questions:-----
 - (a) List out the kind of investigations carried out under the Companies Act, 2013
3. Can the Registrar of companies seize the books and documents of a company? Explain.

FROM ICSI MODULE



Answer the following:

1. Discuss the provisions of Companies Act, 2013 with respect to investigation of the affairs of company by the Central Government.
2. What are the powers of Registrar or inspector under Section 207(3) of the Companies Act, 2013?
3. As a company secretary what steps would you take in order to face Investigation?
4. Draft a resolution for the investigation of the affairs of company.
5. State the various grounds on which the investigation is assigned to Serious Fraud Investigation Office?
6. Discuss the provisions of Companies Act 2013 with respect to investigation of ownership of a company and its scope.
7. Discuss the provisions of Companies Act, 2013 which protects the employees of company during investigation.
8. Discuss the powers of Registrar to call for information or explanation.



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL

CHAPTER

16

OFFENCES, PENALTIES AND THEIR COMPOUNDING

Covering-

- Meaning of officer who is in default
- Establishment of special courts
- Power of special court
- Compounding of offences
- Penalty where there is no specific penalty
- Punishment for wrongful withholding of company's property
- Self Test Questions
 - From Past CS Exams
 - From ICSI Module

**EXPECTED
MARKS COVERAGE
(1 to 5)**

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OFFENCES, PENALTIES AND THEIR COMPOUNDING

The companies Act 2013 provides for stricter enforcement of penalties in time bound manner by establishing necessary mechanism for enforcement of penalties. Further the Act bifurcates offences into compoundable and non- compoundable offences. Based on the quantity of penalty the compoundable offences are compounded either by the Tribunal or the Regional Director as the case may be.

MEANING OF OFFICER WHO IS IN DEFAULT

SECTION 2 (60)

As per Section 2(60) "Officer who is in default", means any of the following officers of a company, namely:-

- (a) Whole-time director;
- (b) Key managerial personnel;
- (c) 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;
- (d) 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, authorizes, actively participates in knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (e) 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;
- (f) 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;
- (g) 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.

ESTABLISHMENT OF SPECIAL COURTS

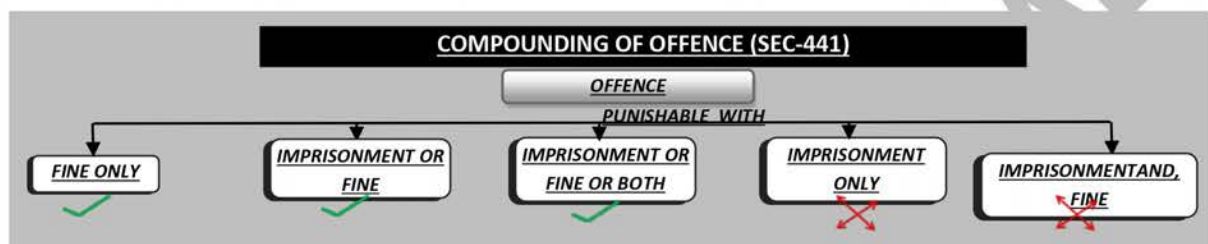
SECTION 435

- (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.
- (2) A Special Court shall consist of—
 - (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and
 - (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working”.

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POWER OF SPECIAL COURT

SECTION 436

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

- (a) all offences specified under section 435" under this Act shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;
 - (b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate: Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;
 - (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section; and
 - (d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.
- (2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.
- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years: Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed:

It is important to note that all the offences pertaining to Companies Act, 2013 are non-cognizable, except referred to Serious Fraud Investigation Office (SFIO).

COMPOUNDING OF OFFENCES

SECTION 441

Offences may be compounded by Regional Director, National Company Law Tribunal and Special Courts. Any Offence punishable (whether committed by a company or any officer thereof) **not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine"** and where the maximum amount of fine which may be imposed for such offence exceeds five lakh rupees, may, be compounded by the National Company Law Tribunal.

The offences which are punishable with Fine or Imprisonment; Fine or Imprisonment or with both may be compoundable with the permission of Special Court.

Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

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PENALTY WHERE THERE IS NO SPECIFIC PENALTY

SECTION 450

If a company or any officer of the company or any other person contravenes any of the provisions of proposed Act or the rules there-under or any condition, limitation, or restriction subject to which any approval is given or granted for which no penalty or punishment is provided elsewhere, then the company and every officer thereof who is in default or such other person is punishable with fine extending it to rupees ten thousand and where the contravention is a continuing offence, with a further fine extending it to rupees one thousand for every day during which the contravention continues.

PUNISHMENT FOR WRONGFUL WITHHOLDING OF COMPANY'S PROPERTY

SECTION 452

If any officer or employee of a company wrongfully obtains possession of any property including cash or having such property wrongfully withholding it or knowingly applies it for the purpose other than expressed or directed in the articles and authorized by this Act, then he shall, on the complaint of the company or any member or creditor or contributory thereof, be punishable with fine of not less than rupees one lakh but it may extend to rupees five lakh.

The court trying an offence may also order restoration of property and in default thereof, the person is punishable with imprisonment for a period of two years.

FACTORS FOR DETERMINING LEVEL OF PUNISHMENT

[Section 446A]

The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:—

- (a) size of the company;
- (b) nature of business carried on by the company;
- (c) injury to public interest;
- (d) nature of the default; and
- (e) repetition of the default.

LESSER PENALTIES FOR ONE PERSON COMPANIES OR SMALL COMPANIES

Section 446B

Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections."

SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Short Notes :-----
 - (a) Compounding Of offence under the Companies Act, 2013
2. Descriptive Questions-----
 - (a) What is 'compounding of offences' under the companies Act, 2013 and has got such powers? State the procedure for compounding of offences.

FROM ICSI MODULE



Answer the following :

1. Explain the term 'Officer in default'? State the types of punishment prescribed under the Act?
2. What do you mean by 'Compounding of offences'?
3. Write a short notes on the following:-
 - (a) Punishment for fraud.
 - (b) Establishment of special court
 - (c) Non-cognizable offence.



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

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