GROUP - 1

PAPER 5 – PART C [40 M]

COMPANY LAW

"APPLICABLE FROM JULY 2023 EXAM ONWARDS"

1. PRELIMINARY

PART – I – SCOPE AND APPLICABILITY

OVERVIEW TO COMPANY:

1. The role of companies is multifarious and each of us encounter the work of a company in almost every aspect of our lives.
2. Company is a business form that is arguably one of the most convenient to conduct operations in and with the continuous amendments, incorporation of companies and doing business through these companies have been made easier.
3. The Companies Act, 2013 refers to a company as an association of persons for economic purpose of carrying on of a business which could be for the purposes of gain or otherwise.
4. The Companies Act, 2013 defines a company as a company incorporated or registered under the Companies Act, 2013, or any previous laws.
5. In its legal form a company is an artificial entity where the identity of the members of the company is independent from the company itself.
6. Therefore, like any other natural person, a company too has many rights and liabilities that it can incur in its course of operations.
7. The Companies Act, 2013 is a comprehensive piece of legislation that covers incorporation, dissolution and running of companies in India.
8. It is the first piece of legislation in India that introduced concepts like one person company and has made compliances less cumbersome while incorporating a company.
9. The various features of a company are that a company is a separate legal entity, it has perpetual succession, it may have common seal, the members of a company may limit their liability, it is an artificial legal person.

OVERVIEW TO COMPANIES ACT:

1. The Companies Act, 2013 has been enacted to consolidate and amend the law relating to the companies which used to exist under Companies Act, 1956. This has helped in expansion and growth of economy of our country, by making it easier to set up companies.
2. The Companies Act, 2013 received the assent of the Hon'ble President of India on 29th August 2013 and was notified in the Official Gazette on 30th August 2013. Later It is implemented in a phased manner.
3. The Companies Act, 2013 is rule based legislation with 470 sections and SEVEN schedules.
4. The entire Act has been divided into 29 chapters. Each chapter has at least one set of Rules.
5. The Companies Act, 2013 aims to improve corporate governance, simplify regulations and strengthens minority investors.

Q.NO.1 WRITE A SHORT NOTE ON DEFINITION OF A COMPANY AND CHARACTERISTICS OF COMPANY?

ANSWER: (Sec. 1)

A. MEANING OF COMPANY:

1. In popular parlance, a company denotes an association of persons formed for the purpose of carrying on some business or undertaking.
2. A company is a corporate body and a legal person having status and personality distinct and separate from the members constituting it.

B. DEFINITION OF A COMPANY [(SEC. 2(20))]:

1. "Company" means - a company incorporated under this Act or under any previous company law.
2. Previous Company Law under section 2(67) mean any previous company law specified in the section.

C. CHARACTERISTICS OF A 'COMPANY'-

1. **Separate legal entity** – Company is a separate legal person and artificial person. It is distinguished from the shareholders of the company. It has its own independent corporate existence.
2. **Limited liability** – The liability of the members of a limited company having share capital is limited to the extent of the nominal value of the shares held by them. The shareholders cannot be called upon to pay more than the unpaid value of his shares, whatever may be the indebtedness of the company.
3. **Perpetual succession**- The Company has its existence from the time of incorporation to winding up. Members may come and members may go but the company survives up to the winding up;
4. **Separate property** – The company is having right to acquire and transfer properties in its own name.
5. **Common seal** – The common seal is used by the company for affixing it in the documents such as contract etc., since it is an artificial person and cannot sign on its own in the documents.

   Note: *Now the use of common seal has been made optional as per the 2015 Amendment to Companies Act, 2013. The Companies Act, 2013 required common seal to be affixed on certain documents (such as bill of exchange, share certificates, etc.) All such documents which required affixing the common seal may now instead be signed by two directors or one director and a company secretary of the company.*

6. **Transferability of shares** – The shares of the members, except in the private company, may be freely transferable.
7. **Capacity to sue and be sued** – Being a separate legal entity the company is having capacity to sue others and it can be sued by others.

Q.NO.2 DEFINE PIERCING THE CORPORATE VEIL? EXPLAIN IT'S NECESSITY?

ANSWER:

A. LIFTING OF THE CORPORATE VEIL

1. The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only.
2. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality.
3. The Court will break through the corporate shell and apply the principle/doctrine of what is called as "lifting of or piercing the corporate veil".
4. The Court will look behind the corporate entity and take action as though no entity separates from the members existed and make the members or the controlling persons liable for debts and obligations of the company.

B. In the following circumstances, different courts found it necessary to lift the corporate veil and punish the actual persons who did wrong or unlawful acts under the name of the company.

Protection of Revenue	The Court may ignore the Separate Legal Entity status of a Company, where it is used for tax invasion or circumventing tax obligation.
Determination of enemy character of the Company	Company being an artificial person cannot be enemy or friend. But during war, it may become necessary to lift the corporate veil and see the persons behind it to determine whether they are friends or enemy. This is due to the reason that though a company enjoys Separate Legal Entity but its affairs are run by individuals. (Daimler Co. Ltd. Vs Continental Tyre & Rubber Co. Ltd.)
Prevention of fraud	Where a Company is used for committing frauds or improper conduct, the Court may lift the corporate veil and look at the realities of the situation. (Jones vs Lipman)
Protection of public policy	The Court shall lift the Corporate Veil without any hesitation to protect the public policy and prevent transaction opposed to public policy.
Company mere sham or cloak	Where the Company is a mere sham and was really a ploy used for committing illegalities and to defraud people, the Court shall lift the Corporate Veil. (Gilford Motor Company vs Horne)
Where a Company acts as an agent of its shareholders	If there is an arrangement between the shareholders and a Company to the effect that the Company will act as agent of shareholders for the purpose of carrying on the business, the business is essentially of that of the shareholders and will have unlimited liability.
Avoidance of Welfare Legislation	Where a Company tries to avoid its legal obligations, the corporate veil shall be lifted to look at the real picture. (Workmen of Associated Rubber Industry Ltd. Vs Associated Rubber Industry Ltd.)
To punish for contempt of Court	Company being an artificial person cannot disobey the orders of the Court. Therefore, the persons at fault should be identified.

PART – II – DIFFERENT TYPES OF COMPANIES:

There can be many business forms that can be used to manifest ideas in order to make economic gains. For the benefit of those who want to form a company to carry forward their business ideas and objectives, the Companies Act, 2013 has provided for various kinds of companies that have varying compliances and advantages. The most commonplace are public companies and private companies. Private companies can be further classified into one person companies (OPC) and small companies.

Q.NO.1 WRITE ABOUT DIFFERENT CLASSES OF COMPANIES UNDER COMPANIES ACT, 2013?

ANSWER:

A. PRIVATE COMPANY [SEC. 2(68)]: Private Company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

1) Restricts the right to transfer its shares.
2) Limits the number of its members TO 200 (In case of OPC company – Only one member)
3) Prohibits any invitation to the public to subscribe for any securities of the company.
4) **COUNTING OF NUMBER:**
    a. Where 2 or more persons hold one or more shares in a company jointly, they shall be treated as a single member.
    b. Persons who are in the employment of the company – **SHALL NOT BE COUNTED**
    c. Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased - **SHALL NOT BE COUNTED (Past Employees shall not be counted.)**
    d. An Existing Member joined as an employee – Counted.

NOTE ON MINIMUM PAID-UP CAPITAL REQUIREMENT:

1. **NOT PRESCRIBED:** For Private Limited Companies, The Minimum Paid up Capital requirement is Not Prescribed Yet.
2. **SHALL NOT APPLY – SEC 8 CO's:** Further a company incorporated under Sec. 8 [Charitable Objects] – Minimum capital requirements Shall Not apply provided it has NOT Defaulted u/s 137 [Filing of F/S] and U/s 92 [Annual Return]

SPECIAL POINTS

1. Restrictions on transfer of shares in a private company are usually included in the Articles of Association so as to be applicable to all members alike.
2. This restriction is not a ban on any transfer of shares. Transfer in circumstances not covered by specific restrictions is possible.
3. These specific restrictions prevent anybody or everybody from acquiring the shares of the company by transfer.
4. Accordingly, the articles of association empower directors to decline registration of transfer of any share, whether fully paid up or partly paid up, by exercising their absolute discretion over such matters.

5. An additional restriction not contained in the articles of association but in a private agreement between two shareholders which places further obstacles in the way of transferability is not binding either on the company or on the shareholders.
6. The cap on the number of members do not affect the number of debenture holders that a private company can have. A private company cannot make a public offer of its securities, which essentially means that a private company can collect its capital through a "private approach" by giving opportunity of investment to the persons approached and not to others.

B. PUBLIC COMPANY [SEC. 2(71)]: Public Company means a company which –

1) Is not a private company; and
2) Has a minimum paid-up share capital as may be prescribed.
3) A Private Company which is a subsidiary company of a public company shall be deemed to be a public company.

EXAMPLE: A Private Ltd. is wholly owned subsidiary of AB Ltd., a public company incorporated under the Companies Act, 2013. A Private Ltd. wanted to avail exemptions as provided to private companies. In this case, since A Private Ltd. is subsidiary of AB Ltd., which is a public company, therefore A Private Ltd. will be deemed to be a public company and will be not allowed to avail exemptions provided to a private company.

C. ONE PERSON COMPANY (OPC) [SEC. 2(62)]: Means a Company which has only one person as Member. The Benefits of Being OPC are same as benefits for a Small Company.

POINTS TO BE NOTED:

1) Only RESIDENT INDIVIDUALS can form OPC and the same person cannot form more than one OPC.
2) Shall have Minimum ONE Director. Member itself can act as Director.
3) Shall have one Nominee. Who cannot act as nominee for more than one OPC.
4) It is treated as Private Company.
5) OPC which is satisfying criteria given u/s 2(85), then it will be regarded as small company.
6) OPC cannot be converted into a Private Company or Public Company for a period of 2 years from the date of Incorporation Except in a case of PUC or Turnover exceeded 50 LAKHS OR 2 CRORES, respectively.
7) OPC cannot undertake financial activities or investment activities.

Note: Detailed Discussion about Conversion of OPC in to private or public companies will be covered in the chapter "Incorporation of Companies"

D. SMALL COMPANY [SEC. 2(85)]: Small Company means a company, other than a public company with:

1) Paid-up share capital not exceeding 50 LAKHS rupees, or such higher amount as may be prescribed - which shall not be more than 10 CRORES rupees **AND**

2) Turnover as per profit and loss account for the immediately preceding financial year does not exceed 2 CRORE rupees or such higher amount as may be prescribed - which shall not be more than 100 CRORE rupees.
3) The following companies SHALL NOT BE REGARDED as Small Companies:
    a. A holding company of another company.
    b. A subsidiary company of another company.
    c. Section – 8 Companies.
    d. A company or body corporate governed by any special Act.
    e. Of course, a public Company.

REVISED LIMITS FOR SMALL COMPANY: As per the Companies (Specification of Definitions Details) Amendment Rules, 2021, for the purposes of Section 2(85) of the Act:

1. Paid up capital of the small company shall not exceed rupees 2 CRORES **AND**
2. Turnover of such small company shall not exceed rupees 20 CRORES.

EXAMPLE: P Ltd. is a company registered under the Companies Act, 2013 with paid up capital of Rs. 10 Lakhs and turnover 2 crore rupees. Since, P Ltd. is a public company though complying with other requirements, it cannot avail the status of a small company.

EXAMPLE: H Ltd. is the holding company of S Private Ltd. As per the last profit and loss account for the year ending 31st March, 2019 of S Private Ltd., its turnover was to the extent of Rs.1.50 crores; and paid-up share capital was Rs.40 lacs. Since S Private Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' it wants to be categorized as 'small company'. S Private Ltd. cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.).

4) **BENEFITS OF SMALL COMPANY: (ACADEMIC INTEREST)**
    a. Small companies may hold **only 2 board meetings** in a calendar year
    b. Rotation of auditors u/s. 139(2) Shall Not Apply.
    c. Annual return of small company can be signed by company secretary and if there is no CS, then single director can sign.
    d. A small company need not prepare Cash Flow Statements.
    e. Auditors of Small Companies need not report on operating effectiveness of Internal Financial Controls W.r.t Financial statements as required u/s 143(3)(i).
    f. Relaxation in Penalties leviable.
    g. Will not be Counted in audit ceiling limit of 20.
5) Only Private Limited Companies can be regarded as small companies subject to satisfaction of above provisions.

Q.NO.2 WRITE ABOUT DIFFERENT CLASSES OF COMPANIES BASED ON INCORPORATION UNDER COMPANIES ACT, 2013?

ANSWER:

A. STATUTORY COMPANY

1. Bodies with special types of objects found desirable for encouragement may be formed under certain pieces of legislations passed by the Parliament.
   Ex: Life Insurance Corporation Act, Reserve Bank of India, Insurance Act.
2. These bodies or bodies covered by these Acts do not necessarily require to have a memorandum of association.
3. Each statutory company is governed by the provisions of its special Act. However, as per Section 1(4), the provisions of the Companies Act, 2013 apply to them to the extent that the same are not inconsistent with the special Acts under which these companies are formed.

B. REGISTERED COMPANY

1. A company registered under the Companies Act, 2013 or previous company laws, is known as a registered company.
2. They can be incorporated as limited liability companies or as unlimited liability companies.
3. Further, they may be incorporated as public companies or as private companies. Registration is an essential feature of companies.
4. Therefore, a registered company is an organization which is formed and registered with the appropriate statutory authority of the country as a company. Companies that do not fall under the aforementioned category are called unregistered entities.

Q.NO.3 WRITE ABOUT DIFFERENT CLASSES OF COMPANIES BASED ON LIABILITY OF MEMBERS UNDER COMPANIES ACT, 2013?

ANSWER:

A. COMPANY – LIMITED BY SHARES [SEC. 2(22)]:

1) The Liability of Members is Limited to the extent of UNPAID Value of shares. The Benefit of Limited Liability is only for Shareholder and not applicable to company.

2) A company's liability is never limited. It is the liability of shareholders/members of a company that is limited. The liability of members can be enforced at any time during the existence and also during the winding-up of the company.

3) Such a company must have share capital as the extent of liability is determined by the face value of shares.

4) However, except where the articles otherwise provide, there is no liability to pay any balance amount due on the shares, except in pursuance of calls duly made in accordance with law and the articles while the company is a going concern or of calls made in the event of winding-up of the company.

B. COMPANY – LIMITED BY GUARANTEE [SEC. 2(22)]:

1. Here a member gives a guarantee to the company and the liability arises only in the event of windup. The liability is limited to the amount mentioned under Memorandum (MOA).
2. This contribution could be to the assets of the company in the event of it being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be.

3. Moreover, this contribution could be to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves according to Section 4(1) (d) (ii).
4. Companies may sometimes choose to be limited by guarantee despite having share capital. the liability of a member of a guarantee company having share capital is not merely limited to the amount as stated above in respect of guarantee companies not having share capital; he may be called upon to also contribute to the extent of any sums remaining unpaid on the shares held by him as per Section 285.

C. UNLIMITED COMPANY [SEC. 2(92)]:

1. A Company not having any limit on the liability of its members. Typically, these are private limited companies with unlimited liabilities.
2. It may be seen that the liability of members of an unlimited company is similar to that of the partners but unlike the liability of partners, the members of the company cannot be directly proceeded against.
3. Company being a separate legal entity, the claims can be enforced only against the company. Thus, creditors shall have to institute proceedings for winding-up of the company for their claims.
4. But the Official Liquidator may call upon the members to discharge the debts and liabilities without limit.
5. Such companies may or may not have a share capital and is not subjected to any restrictions regarding purchase of its own shares as per Section 67. Accordingly, such a company may purchase its own shares or advance monies to any person to purchase its shares.

Q.NO.4 WRITE ABOUT ASSOCIATE, HOLDING AND SUBSIDIARY COMPANIES UNDER COMPANIES ACT, 2013?

ANSWER:

A. HOLDING COMPANY [SEC. 2(46)]:

1) Holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.
2) For the purposes of this clause, the expression "company" includes body corporate.

E.g., TATA SONS PRIVATE LIMITED which is a Holding Company for More than 25 Subsidiary Companies.

B. SUBSIDIARY COMPANY [SEC. 2(87)]:

1) **Subsidiary company** or **Subsidiary**, in relation to a Holding Company, means a company in which the holding company—
    a. **Control of BOD:** Controls the composition of the Board of Directors or
    b. **Control of Voting Power:** Exercises or controls more than one-half of the total voting power either:
        i. at its own or
        ii. together with one or more of its subsidiary companies.

2) **Deemed Subsidiary:** A company shall be deemed to be a subsidiary company of the holding company even if the control referred as above is of another subsidiary company of the holding company. (E.g., C Ltd – Sub of B Ltd – Sub of A Ltd, then C Ltd – Sub of A Ltd)
3) **CONTROL OF COMPOSITION OF BOD:** If all or Majority of Directors can be appointed or removed by a company at its discretion, then such company is deemed to be controlling composition of BOD.
4) **HELD IN FIDUCIARY CAPACITY – Not a Subsidiary:** Shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be considered for determining the holding – subsidiary relationship. (Shareholding in the capacity of trustee i.e., shares held on behalf of others.) (E.g., Shares kept as security to a banker) (Not Accurate but a similar one.)
5) The expression "Company" includes Body Corporate.

Note: A company cannot have more than 2 Layers of subsidiary companies. Further an Immediate wholly owned subsidiary company will not be counted as a Layer.

C. ASSOCIATE COMPANY [SEC. 2(6)]:

1) Associate Company in relation to another company means a company in which that other company has a significant influence, but which is not a subsidiary company.
2) The Term Associate Company Includes Joint Venture. (Contrary from AS 23 / Ind AS 28)
3) "Significant influence" means:
    a) Control of **AT LEAST 20%** OF TOTAL VOTING POWER, or
    b) Control of or Participation in business decisions under an agreement.
4) "Joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

E.g., Taj Hotels, Voltas LTD are associate companies for TATA Motors LTD.

SHARES HELD IN FIDUCIARY CAPACITY – NOT AN ASSOCIATE: Shares held by a company in another company in a fiduciary capacity (a fiduciary is a person who holds a legal or ethical relationship of trust with one of more parties (persons or group of persons. Typically, a fiduciary prudently takes care of money or other assets for another person) shall not be counted for the purpose of determining the relationship of associate company.

Q.NO.5 WRITE A SHORT NOTE ON PUBLIC FINANCIAL INSTITUTION?

ANSWER:

PUBLIC FINANCIAL INSTITUTIONS [Sec 2(72)]: Public financial institution has been meant to be:

i. the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

ii. the Infrastructure Development Finance Company Limited, referred to in clause (vi) of subsection (1) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;
iii. specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);
iv. institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;
v. such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless:

a. it has been established or constituted by or under any Central or State Act; or
b. not less than 51% of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

Q.NO.6 WRITE A SHORT NOTE ON PRODUCER COMPANY?

ANSWER:

Producer Companies

1. The concept of Producer Company in India was introduced to allow cooperatives to function as a corporate entity under the Ministry of Corporate Affairs.
2. A producer company can be defined as a legally recognized body of farmers/ agriculturists with the aim to improve the standard of their living and ensure a good status of their available support, incomes and profitability.
3. Under Companies Act 1956, a Producer Company can be formed by 10 individuals (or more) or 2 institutions (or more) or by a combination of both (10 individuals and 2 institutions) having their business objective as one of the following:
- Procurement
- Production
- Harvesting
- Grading
- Pooling
- Handling
- Marketing
- Selling, or
- Export

Of the primary produce of the Members or import of goods or services for their benefit.

4. The main objective of the producer company is to facilitate the formation of co-operative business as companies and to make it possible to convert the existing co-operative business into companies.
5. The objects given under Section 581B of the Companies Act, 1956 are as follows:

a) The objects of the Producer Company shall relate to all or any of the following matters, namely: Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary production of the Members or import of goods or services for their benefit, provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution.
b) Primary produce has been defined under the Companies Act 1956 as produce arising from agriculture by a farmer which includes animal husbandry, floriculture, horticulture, viticulture, pisciculture, re-vegetation, bee raising, forestry, forest products and farming plantation products, produce of hand-loom, handicraft and other cottage industries.

Q.NO.7 WHAT IS A FOREIGN COMPANY AND GOVERNMENT COMPANY UNDER COMPANIES ACT?

ANSWER:

A. GOVERNMENT COMPANY [SEC. 2(45)]: Government Company means any company in which **not less than 51%** of the paid-up share capital is held by:
1) The Central Government, or
2) By any State Government or Governments, or
3) Partly by the Central Government and partly by one or more State Governments, and
4) Includes a company which is a subsidiary company of such a Government company.

Note: Where a government company has issued any shares with Differential Voting Rights (DVR) then "50% of Total Voting Power" will be considered instead of Paid-Up Capital.
E.g., BPCL, IOCL, HPCL, ITCL, BHEL, BDL, NLCL.

SPECIAL POINTS:

1. **Employee of Government Company gets Status of Government Employee. Comment?** Government companies are different from statutory companies under the Companies Act, 2013, which are formed under separate Acts of Parliament. Since every company has a separate legal personality, employees of a Government company are not the employees of the Central Government or the State Government.
2. When the Government engages itself in trading ventures, particularly as Government companies under the company law, it does not do so as a political State or political Government, but it does so as a company.
3. A Government company is not a department of the Government. The rights and obligations of a company are distinct from those of its shareholders.
4. Therefore, the legal status of a Government company is not affected just because the share capital of the company has been contributed by the Central Government and all its shares are held by the President of India or the Governor of the State and certain nominated officers of the Government.
   In the case of Heavy Engineering Mazdoor Union vs. State of Bihar [1969] 39 Comp. Cas. 905 (SC). Government companies, just like any other company, can be incorporated either as a private or a public company. Since majority of shareholding of such companies is in the hands

of the Central Government, they control majority of decisions within government companies such as place for conduction annual general meetings, managerial remuneration, appointment and rotation of directors, dividends, and so on.

B. FOREIGN COMPANY [SEC. 2(42)]: A Body Corporate including a Company incorporated outside India and which has a:

1) Place of Business in India whether by itself or through agent, Physically or electronic mode AND
2) Conducts any business activity in India in any other manner.

E.g., Germany ADIDAS. (Submitted its application to Director of Industry in Policy and Promotion and got 100% retail trading approval)

SPECIAL POINTS:

1. Having a share transfer office or share registration office will constitute a place of business.

2. Provisions of Section 92 of the Companies Act, 2013, relating to filing of the annual return with the Registrar of Companies are also applicable to a foreign company.
In the case of Tovarishestvo Manufacture Liudvig Rabenek, Re [1944] Ch. 404 it was held that where representatives of a company incorporated outside the country frequently visited and stayed in a hotel for looking after purchase of machinery and other articles, it was held that the company had a place of business in the hotel. But, mere holding of property cannot amount to having a place of business.

3. If the company is established outside India and has a place of business in India, then only it will be a foreign company under the section. Accordingly, a company incorporated outside India having shareholders who are all Indian citizens and having its business outside India is not covered. Contrarily, a company incorporated in India but having all foreign shareholders shall be an Indian company and not a foreign company as contemplated under Section 2 (42).

4. Applicability of Companies Act, 2013

a. Sections 380, 381 and 382 of the Companies Act, 2013 are applicable to such foreign companies in India.

b. Section 379 of the Companies Act specifically mentions that where not less than 50% of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company will have to comply with the provisions of Chapter XXII of the Companies Act, 2013 along with all incidental provisions as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

c. In furtherance of the same, Section 380 lays down the documents that a foreign company has to deliver to the Registrar of Companies and Section 381 lays down provisions relating to compliances that a foreign company needs to follow with regards to maintenance of accounts.

2. INCORPORATION OF COMPANY

Q.NO.1 WRITE ABOUT MINIMUM NUMBER OF MEMBERS IN CASE OF A COMPANY?

ANSWER:

A. MINIMUM NUMBER OF MEMBERS (SEC. 3(1)):

1) **PUBLIC COMPANY:** In the case of a public company with or without limited liability, 7 OR MORE persons can form a company for any lawful purpose by subscribing their names to memorandum.
2) **PRIVATE COMPANY:** 2 OR MORE persons can form a private company and
3) **ONE PERSON COMPANY:**
    a. 1 PERSON where company to be formed is one person company.
    b. However, that one person company need to specify the name of one nominee in the Memorandum of Association (MOA) who would take his place in case of his death or his incapacity to contract. The nominee could be changed as per the process, and this will not attract process for alteration of the Memorandum of Association.
4) Further the company being formed **u/s. 3(1),** may be a company limited by shares or limited by guarantee or an unlimited company.

B. 'BREACH' OF MIMIMUM NUMBER OF MEMBERS – SEVERALLY LIABLE: (SEC. 3A)

1) If at any time the number of members of a company is reduced:
    a. BELOW 7 or BELOW 2 AND
    b. The company carries on business for more than 6 months while the number of members is so reduced AND
    c. Every person who is a member of the company during the time that it so carries on business AFTER those six months AND
    d. Is AWARE of the fact that it is carrying on business with less than 7 members or 2 members.
2) Shall be **severally liable** for the payment of the whole debts of the company contracted during that time (after six months), and may be severally sued, therefore.

Q.NO.2 WRITE ABOUT PROCEDURE FOR INCORPORATION OF A COMPANY?

ANSWER: (SEC. 7)

A. SELECTION OF NAME FOR THE COMPANY

1. Before incorporation of a company, the promoter has to select a name for the company.
    a. While selecting the name of the company the promoter has to comply with the provisions of Rule 8 which gives the list of undesirable name that cannot be adopted. Rule 9 provides for the reservation of name.
    b. An application for the reservation of name shall be made in Form – INC1 along with the fee.

2. If the articles contain entrenchment,
   a. the company shall give notice to the Registrar of such provisions in Form No. INC-2 or Form No. INC-7 along with fee at the time of incorporation of the company.
   b. In case of existing company, the same shall be filed in Form No. MGT-14 within 30 days from the date of entrenchment of the articles, along with the fee.

B. FILING OF THE DOCUMENTS AND INFORMATION WITH THE REGISTRAR:

The following documents and information are required to be filed with the registrar within whose jurisdiction the registered office of the company is proposed to be situated:

1) **SIGNING:** The MOA and AOA duly signed by all the subscribers to the memorandum.
2) **DECLARATION OF COMPLIANCE:** A declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), AND by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules in respect of registration, have been complied with.
3) **DECLARATION OF SUBSCRIPTION TO SHARES:** New requirement of submitting declaration that all subscribers have paid the value of shares agreed to be taken by him and verification of Registered office has been filed. This requirement is needed to be complied with before the commencement of business.
4) **DECLARATION OF NON – GUILTY:** A declaration from each of the subscribers to the memorandum AND from persons named as the first directors in the articles stating that:
   a. He is not convicted of any offence in connection with the promotion, formation or management of any company, or
   b. He has not been found guilty of any fraud or misfeasance or of any breach of duty to any company during the last five years AND
   c. That all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.
5) The correspondence address till its registration of Registered office.
6) **SUBSCRIBER DETAILS:** The particulars (*names, including surnames or family names, residential address, nationality*) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particular as may be prescribed.
7) **DIRECTOR DETAILS:** The particulars of FIRST DIRECTORS, namely:
   a. Names, including surnames or family names,
   b. The Director Identification Number (DIN),
   c. Residential address, nationality of the persons and
   d. Such other particulars including proof of identity as may be prescribed and
   e. The particulars of the interests of first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company.

C. ISSUE OF CERTIFICATE OF INCORPORATION ON REGISTRATION:

The Registrar on the basis of documents and information filed, shall register all the documents and information in the register and ISSUE A CERTIFICATE OF INCORPORATION in the prescribed form to the effect that the proposed company is incorporated under this Act.

D. ALLOTMENT OF CORPORATE IDENTITY NUMBER (CIN):

On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

E. MAINTENANCE OF COPIES OF ALL DOCUMENTS AND INFORMATION: The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its liquidation under this Act.

The Ministry of Corporate Affairs has taken various initiatives for ease of business. In a step towards easy setting up of business, MCA has simplified the process of filing of forms for incorporation of a company through Simplified Proforma for incorporating company electronically. (SPICe)

Q.NO.3 WRITE ABOUT CONSEQUENCES OF FURNISHING FALSE INFORMATION OR SUPRESSION OF MATERIAL FACT, AT THE TIME OF INCORPORATION?

ANSWER:

A. FURNISHING OF FALSE OR INCORRECT INFORMATION OR SUPPRESSION OF MATERIAL FACT AT THE TIME OF INCORPORATION (I.E. DURING INCORPORATION PROCESS):

If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is **AWARE** in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action for fraud under section 447**.**

B. COMPANY ALREADY INCORPORATED BY FURNISHING ANY FALSE OR INCORRECT INFORMATION OR REPRESENTATION OR BY SUPPRESSING ANY MATERIAL FACT (I.E. POST INCORPORATION):

1) Where, at any time after the incorporation of a company, it is proved that the company has been got incorporated:
    a. by furnishing any false or incorrect information or representation or
    b. by suppressing any material fact or information
2) In any of the documents or declaration filed or made for incorporating such company then the promoters and the first directors of the company and the persons making declaration (E.g., CA) under this section shall each be liable for action for fraud under section 447.

C. ORDER OF THE TRIBUNAL: (IF APPLICATION IS MADE TO TRIBUNAL)

1) Where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants:
   a. **CHANGES IN MOA AND AOA:** Pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors or
   b. **DECLARE UNLIMITED LIABILITY**: Direct that liability of the members shall be unlimited or
   c. **REMOVAL OF NAME:** Direct removal of the name of the company from the register of companies or
   d. **WIND UP:** Pass an order for the winding up of the company; or
   e. **ANY OTHER ORDER:** Pass such other orders as it may deem fit.
2) **OPPUTUNITY OF BEING HEARD:** The company shall be given a reasonable opportunity of being heard in the matter; and
3) **TRASACTIONS:** The Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Q.NO.4 WRITE ABOUT COMMENCEMENT OF BUSINESS BY A COMPANY?

ANSWER:

COMMENCEMENT OF BUSINESS (SEC .10A): (FORM 20A)

A company incorporated after the commencement of the Companies Amendment Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless—

1. **DECLARATION – PAID UP VALUE:** a declaration is filed by a director within a period of 180 DAYS of the date of incorporation of the company with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
2. **REGISTERED OFFICE:** The company has filed with the Registrar a verification of its registered office as provided section 12.
3. **PENALTY IN CASE OF DEFAULT:** If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.
4. **FAILURE TO SUBMIT DECLARATION:** Where no declaration has been filed with the Registrar within a period of 180 DAYS of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

Q.NO.5 WRITE ABOUT EFFECT OF REGISTRATION?

ANSWER: (SEC. 9)

A. EFFECT OF REGISTRATION: From the date of incorporation (mentioned in the certificate of incorporation):

1) **SHALL BE A BODY CORPORATE:** The subscribers to the memorandum and all other persons, who may from time to time become members of the company and the entity shall be a body corporate by the name contained in the memorandum.
2) **EXERCISE FUNCTIONS:** Such company shall be capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power:
    a. To acquire, hold and dispose of property, both movable and immovable, tangible and intangible,
    b. To contract and to sue and be sued, by the said name.

Q.NO.6 EXPLAIN SPECIFIC POINTS RELATING TO INCORPORATION OF ONE PERSON COMPANY (OPC)?

ANSWER:

A. ONLY RESIDENT INDIVIDUAL:

Only a natural person who is an Indian citizen ***whether resident in India or otherwise***-

1) Shall be eligible to incorporate a One Person Company.
2) Shall be a nominee for the sole member of a One Person Company.
3) The term "resident in India" means a person who has stayed in India for a period of not less than ***120 days*** during the immediately preceding financial year.

B. ONLY FOR ONE "OPC":

1) A natural person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC.
2) Where a natural person being member in OPC becomes member in another such company by virtue of his being a nominee in that OPC, such person shall meet eligibility criteria within a period of 180 days. (i.e., withdraw membership of one OPC within 180 days) (Note: Same Person can be Member of one OPC and Nominee for another OPC)

C. PROHIBITION ON MINOR: No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

D. PROHIBITION ON CONVERSION TO SEC. 8 COMPANY:

Such Company cannot be incorporated or converted into a company under section 8 of the Act. However, it may be converted to private or public companies, **AT ANY TIME** in certain cases.

E. PROHIBITION ON CERTAIN ACTIVITIES:

Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate. [OPC Cannot Buy Securities of any Body corporate]

F. CONCEPT OF NOMINEE:

1) **CONSNET OF NOMINEE:**
   a. The proviso to Section 3(1) provides that the memorandum of OPC shall indicate the name of the other person as nominee in Form No. INC.-32 (SPICe).
   b. The prior written consent of the other person shall be obtained in the Form No. INC.3.
   c. The other person in the event of the subscriber's death or his incapacity to contract shall become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of OPC along with Memorandum and Articles of the Company.

2) **WITHDRAWAL OF CONSENT:**
   a. The other person may withdraw his consent by giving a notice in writing to such sole member and to the One Person Company. The sole member shall nominate another person as nominee within 15 days of the notice of the withdrawal.
   b. He shall send an intimation of such nomination in writing to the company, along with the written consent of such other person so nominated in Form No. INC.3.
   c. The company shall within 30 days of receipt of the notice of the withdrawal of consent file with the Registrar, a notice of such withdrawal of consent and the intimation of the name another person nominated by the sole member in Form No. INC.4 along with the fee prescribed and the written consent of such another person so nominated in Form No. INC-3.

3) **REMOVAL OF NOMINEE:**
   a. The subscriber or member of OPC may change the name of such other person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee.
   b. He may nominate another person after obtaining the prior consent of such another person in Form No. INC-3.
   c. The company shall, on receipt of such intimation, file with the Registrar, a notice of such change in Form No. INC-4 along with the fee and with the written consent of new nominee in Form No. INC-3 within 30 days of such receipt of intimation of change.

4) NOMINEE BECOMING MEMBER:
   a. Where the shareholder of OPC ceases to be the member in the event of death of incapacity to contract, his nominee becomes the member of such OPC.
   b. Such new member shall nominate within 15 days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company.
   c. The company shall file with the Registrar an intimation of such cessation and nomination in Form No. INC-4 along with the fee within 30 days of the change in membership with the prior written consent of the person so nominated in INC-3.

G. PENALTY [Rule 7A (with effect from 01.05.2015)]

If a OPC or any Officer of such company contravenes any of the provisions of these rules, the OPC or any other officer of such company shall be punishable with fine which may extend to Rs. 5,000

and with a further fine which may extend to Rs. 500 for every day after the first offence during which such contravention continues.

H. BENEFITS OF ONE PERSON COMPANY

1. The concept of One Person Company is quite revolutionary. It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, and access to market, limited liability, and legal protection available to companies.
2. Prior to the new Companies Act, 2013 coming into effect, at least two shareholders were required to start a company. But now the concept of One Person Company would provide tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery.
3. Earlier they were working as artisans and weavers on their own, so they did not have a legal entity of a company. But now the OPC would help them do business as an enterprise and give them an opportunity to start their own ventures with a formal business structure.
4. Further, the amount of compliance by a one person company is much lesser in terms of filing returns, balance sheets, audit etc. Also, rather than the middlemen usurping profits, the one person company will have direct access to the market and the wholesale retailers. The new concept would also boost the confidence of small entrepreneurs.

I. ANNUAL RETURN

The proviso to Section 92(1) provides that the Annual return of an OPC shall be signed by the Company Secretary or where there is no company secretary, by the director of the company.

J. POSTAL BALLOT [Rule 22(16) of the Companies (Management and Administration) Rules, 2014]

OPC is not required to transact any business through postal ballot.

K. CONVERSION OPC INTO A PUBLIC COMPANY OR A PRIVATE COMPANY (Rule 6)

1. If the paid up share capital of an OPC exceeds Rs. 50 lakhs and its average annual turnover during the relevant period exceeds Rs. 2 crores, it shall cease to be entitled to continue as OPC.
2. Such company is mandatorily to be required to convert within 6 months into either a public limited company with at least 7 members or a private company with minimum two members.
3. The OPC has to alter its memorandum and articles by passing a resolution according to Section 122(3) to give effect to the conversion and to make necessary changes incidental thereto.
4. The OPC shall within a period of 60 days from the date of the applicability give a notice to the Registrar in Form No. INC-5 informing that it has ceased to be a OPC and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover having exceeded the threshold limit laid down for OPC.

L. PUNISHMENT (RULE 6(5))

If OPC or any officer of the OPC contravenes the provisions of these rules, OPC or any officer of the OPC shall be punishable with fine which may extend to Rs. 10,000 and with a further fine

which may extend to Rs. 1000 for every day after the first during which such contravention continues.

Q.NO.7 DISCUSS THE PROVISIONS RELATING TO CONVERSION OF A PRIVATE COMPANY INTO OPC?

ANSWER:

CONVERSION OF PRIVATE COMPANY INTO A OPC

A. Rule 7 provides the procedure for conversion of private company into OPC. Rule 7(1) provides that a private company other than Section 8 company, having paid up share capital of Rs. 50 lakh or less and average annual turnover during the relevant period is Rs. 2 crores or less may convert itself into OPC by passing a special resolution in the general meeting.

B. Before passing such resolution, the company shall obtain 'No Objection Certificate' in writing from the members and creditors.

C. The OPC shall file copy of the resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT-14.

D. The company shall file an application in Form No. INC-6 for its conversion into OPC along with fees. The following documents are to be attached:

1. the directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid-up share capital of the company is Rs. 50 lakhs or less or average annual turnover is less than Rs. 2 crores, as the case may be;
2. the list of members and creditors;
3. the latest Audited Balance sheet and the Profit and Loss Account;
4. the copy of No objection letter of secured creditors.

On being satisfied and complied with the requirements the Registrar shall issue the certificate.

Q.NO.8 EXPLAIN ABOUT FORMATION OF COMPANIES WITH CHARITABLE OBJECTIVES?

ANSWER: (SEC. 8 COMPANY)

Section 8 of the Companies Act, 2013 lays down provisions relating to companies that do not have a share capital. the section talks about the formulation of companies with charitable objects, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company -

1) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
2) intends to apply its profit in promoting its objects and prohibiting the payment of any dividend to its members.
3) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit

A. POWER OF CG TO GRANT - SEC.8 LICENSE:

1) The CG is permitted to register an AOP as Sec. 8 Company without the words 'Limited or Private Limited' subject to certain conditions as may be prescribed.
2) The registrar (ROC) shall on application, register such person or association of persons as a company under this section. (ROC is also granted permission to register Sec.8 License)
3) Further Sec.8 Company can enjoy all privileges as of a Limited Company.

B. PRIVILEGES OF LIMITED COMPANY: On registration, the company shall enjoy same privileges and obligations as of a limited company.

C. FIRMS - MEMBER: A firm may be a member of the company registered under section 8.

D. ALTERATION OF MOA AND AOA: A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. (Now delegated to ROC and Regional Director). Further alteration of MOA requires CG Permission.

E. CONVERSION INTO OTHER KIND OF COMPANY: A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.

F. BENEFITS OF SEC.8:

1) Can call its general meeting by giving a clear 14 days - Notice instead of 21 days.
2) Requirement of minimum number of directors, independent directors etc. DOES NOT APPLY.
3) Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.

Q.NO.9 DISCUSS THE PROCEDURE FOR OBTAINING A LICENCE FROM THE GOVERNMENT BY SECTION 8 COMPANIES.

ANSWER: (Rule 19 of Companies (Incorporation) Rules, 2014)

A. Rule 19 of Companies (Incorporation) Rules, 2014 provides that a person or an association of persons desirous of incorporating a company with limited liability without the addition to its name of the word.
B. 'Limited' or as the case may be 'Private Limited' shall make an application in Form No. INC-12 along with the fee. The memorandum of association of the proposed company shall be in Form No. INC-13.
C. The application shall be accompanied by the following documents:
   1. the draft memorandum and articles of association of the proposed company;
   2. the declaration in Form No. INC – 14 by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of Section 8 and rules

made there under and that all the requirements of the Act and the rules made there under relating to registration of the company under Section 8 and matter incidental or supplemental thereto have been complied with;

3. an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and objects of the expenditure;
4. the declaration by each of the persons making the application in Form No. INC-15.

D. If it is proved to the satisfaction of the Central Government that the proposed company has its objects as enshrined in Section 8 may, by licence issued in the prescribed form on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company without the addition to its name of the word 'Limited' or 'private limited'. Thereupon the Registrar shall, on application in the prescribed form register such person or association of persons as a company under Section 8.

E. LICENCE FOR EXISTING COMPANIES

1. Rule 20 provides for giving licence for the existing companies under Section 8 of the Act. A limited company registered under this Act or under any previous company law, with any of the objects meant for Section 8 companies and the restrictions and prohibitions and which is desirous of being registered under Section 8 shall make an application in Form No. INC – 12 along with the prescribed fee.
2. The application shall be accompanied by the following documents:
   a. the memorandum and articles of association of the company;
   b. the declaration as given in Form No. INC-14 by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of Section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under Section 8 and matters incidental or supplemental thereto have been complied with;
   c. the financial statements, the Board's Reports and audit reports of the previous two financial years;
   d. a statement showing in detail the assets with the values and the liabilities of the company as on the date of the application or within 30 days preceding that date
   e. an estimate of the future annual income and expenditure of the company for next three years specifying the sources of the income and the objects of the expenditure;
   f. the certified copy of the resolutions passed in general/board meetings approving registration of the company under Section 8; and
   g. a declaration by each of the persons making the application in Form No. INC-15.
3. The company shall, within a week from the date of making the application to the Registrar, publish a notice at his own expense, and a copy of the published notice shall be sent to the Registrar in the Form No. INC-26 and shall be published-
   a. at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated and circulating in that district and at least once in English language in an English newspaper circulating in that district; and

b. on the websites as may be notified by the Central Government.

4. The Registrar may require the applicant to furnish the approval or concurrence of the appropriate authority, regulatory body, department or Ministry of Central Government or the State Government(s).
5. The Registrar shall, after considering the objections, if any, received by it within 30 days from the date of publication of the notice, and after consulting any authority, regulatory body, Department or Ministry of the Central Government or the State Government(s) as it may, in its discretion, decide whether the licence should or should not be granted.

F. The licence shall be in Form No. INC-16 or Form No. INC-17, as the case may be. The Registrar shall have the power to include in the licence such other conditions as may be deemed necessary by him.

G. The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be prescribed by the Registrar in this behalf.

Q.NO.10 WHAT ACTION MAY BE TAKEN BY THE CENTRAL GOVERNMENT ON REVOCATION OF LICENCE OF SECTION 8 COMPANIES?

ANSWER:

A. REVOCATION OF LICENSE:

1) The Central Government [Delegated to R.D] may by order revoke the licence of the company:
   a. Where the company contravenes any of the requirements or the conditions subject to which the licence is issued or
   b. Where the affairs of the company are conducted fraudulently, or
   c. Violation of the objects of the company or prejudicial to public interest.

2) **LIMITED/PRIVATE LIMITED:** On revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register.

B. OPPURTUNITY OF BEING HEARD:

Before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

C. WINDUP / AMALGAMATE:

Where a licence is revoked, the Central Government, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. (Guidelines for Amalgamation and windup will be given by CG by order).

Note:

1. A Sec. 8 Company can only amalgamate with another Sec. 8 company having similar objectives.
2. After Dissolution or winding up, Any amount left after settling existing debts, then such leftover money shall be transferred to Rehabilitation and Insolvency Fund formed under Section 269.

D. PUNISHMENT FOR CONTRAVENTION WITH SEC. 8:

If a Sec. 8 company makes any default in complying with any of the requirements laid down in this section:

1) **COMPANY:** The company shall, be punishable with fine varying from Rs. 10 Lakhs to 1 Crore rupees and
2) **DIRECTORS and OFFICER IN DEFAULT:** The directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with FINE varying from Rs.25,000/- to Rs.25,00,000/-.
3) When it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under Section 447.

Q.NO.11 WRITE ABOUT CONVERSION OF SEC.8 COMPANY INTO OTHER COMPANY?

ANSWER:

A. CONVERSION OF SECTION 8 COMPANY

Section 8(4)(ii) provides that a company registered under Section 8 may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

B. CONDITIONS FOR CONVERSION: Rule 21 provides conditions for conversion of a company registered under Section 8 into a company of any other kind.

1. Company registered under Section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion [Rule 21(1)].
2. Rule 21(2) provides that the explanatory statement annexed to the notice, convening the general meeting shall set out in detail the reasons for opting for such conversion including the following;
   - the date of incorporation of the company;
   - the principal objects of the company as set out in the memorandum of association;
   - the reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e., as a Section 8 company;

   if the principal or main objects are proposed to be altered, then what would be the altered objects and the reasons for the alteration;
   - what are the privileges or concessions currently enjoyed by the company, such as tax exemption, bond and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donation or bequests received by the company with conditions attached to their utilization etc.,
   - details of impact of the proposed conversion on the members of the company including the details of any benefits that may accrue to the members as a result of the conversion.

3. Certified true copy of the special resolution along with a copy of the notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No. MGT-14 along with the fee [Rule 21(3)].

4. Company shall also file an application in Form No. INC-18 with the Regional Director along with the fee and a certified copy of special resolution and a copy of the notice convening the meeting including the explanatory statement. The company shall also attach, the proof of serving the notice served to all the authorities under Rule 22(2) [Rule 21(4)].

5. Copy of the application with annexures as filed with Regional Director shall also be filed with the Registrar [Rule 21(5)].

C. Other conditions

1. Rule 22 (1) provides that the company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense. A copy of the notice as published shall be sent to the Regional Director in Form No. INC-19. The notice shall be published-
   - at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district, and at least once in English language in any English newspaper having a wide circulation in that district; and
   - on the web site of the company, if any, and as may be notified or directed by the Central Government.
2. Rule 22(2) provides that the company shall send a copy of the notice, simultaneously with the publication, together with a copy of the application and all attachments by registered post or hand delivery to-
   - The Chief Commissioner of Income Tax;
   - The Charity Commissioner;
   - The Chief Secretary of the State;
   - Any other Department of the Central/State Government under whose jurisdiction the company has been operating.

   If any of these authorities wish to make any representation to the Regional Director, it shall do so within 60 days of the receipt of the notice, after giving an opportunity to the company.

3. Rule 22(3) provides that the copy of proof of serving such notice shall be attached to the application. Rule 22(4) provides that the Board of Directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise to persons who are or have been members of the company or to any one or more of them or to any person claiming through any one or more of them.
4. Rule 22(5) provides that where the company has obtained special status, privilege, exemption, benefit or grant from any authority, the company has to obtain 'No Objection Certificate' from such authority if the terms and conditions of the said special status etc., so require. The said NOC shall be filed with the Regional Director along with the application.
5. Rule 22(6) provides that the company should have filed all its financial statements and Annual Returns up to the financial year preceding the submission of the application and all other returns required to be filed under the Act up to the date of submitting the application

to the Regional Director. In the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by a Chartered Accountant made up to a date not preceding 30 days of filing of the application shall be attached.

6. Rule 22(7) provides that the company shall attach with the application a certificate from practicing Chartered Accountant or Company Secretary in practice or Cost Accountant in practice, certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under Section 8 into any other kind of company, have been complied with.
7. Rule 22 (8) provides that the Regional Director may require the applicant to furnish approval or concurrence of any particular authority for grant of his approval for the conversion. He may also obtain the report from the Registrar.

D. ORDER FOR CONVERSION

1. Rule 22 (9) provides that the Regional Director, on receipt of the application and being satisfied, shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case. The terms and conditions also include the following:
   - The company shall give up and shall not claim any special status, exemptions or privileges that it enjoyed with effect from the date of its conversion;
   - If the company had acquired any immovable property free of cost or at a concessional rate from any government or authority, it may be required to pay the difference between the cost at which it acquired such property and the market price of such property at the time of conversion either to the Government or to the authority that provided the immovable property;
   - Any accumulated profit or utilized income of the company brought forward from previous years shall be first utilized to settle all outstanding statutory dues, amounts due to lenders claims of creditors, suppliers, service providers and others including employees and lastly any loans advanced by the promoters or members or any other amounts due to them and the balance, if any, shall be transferred to the Investor Education and Protection Fund within 30 days of receiving the approval for conversion.
2. Rule 22(10) provides that before imposing the conditions or rejecting the application the company shall be given a reasonable opportunity of being heard by the Regional Director.

E. Filing with Registrar:

1. Rule 22(11) provides that the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of Section 8 company into a company of any other kind. The company shall thereafter file with the Registrar-
   - a certified copy of the approval of the Regional Director within 30 days from the date of receipt of the order in Form No. INC-20 along with the fee;
   - amended memorandum of association and articles of association of the company;

2. A declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with Rule 22(12) provides that on receipt of the documents the Registrar shall register the documents and issue fresh certificate of incorporation.

Q.NO.12 WRITE ABOUT DEFINITION OF MEMORANDUM AND ITS SIGNIFICANCE?

ANSWER:

A. DEFINITION OF MEMORANDUM [SEC.2(56)]: Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

B. REQUIREMENTS REALTED TO MOA (SEC. 4): Section 4 of the Companies Act, 2013 provides the requirements with respect to memorandum of a company which signifies the following:

PURPOSE OF MOA:

1) It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.
2) It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in.
3) **PUBLIC DOCUMENT:** A memorandum is a public document under Section 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein. **(DOCTRINE OF CONSTRUCTIVE NOTICE)**
4) The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

Q.NO.13 WRITE ABOUT CLAUSES IN MEMORANDUM OF ASSOCIATION?

ANSWER:

MOA SHALL STATE:

A. NAME CLAUSE:

1. The name of the company with "Limited" as its last word in the case of a public limited company; and "Private Limited" as its last words in the case of a private limited company;
2. This shall not apply in case of companies registered under section 8.
3. Similarly, in case of Government companies the name of the company shall end with the words "Limited".

Note: This is as per the exemptions to Government Companies under Section 462 of Companies Act, 2013 vide notification dated June 5, 2013.

B. DOMICILE CLAUSE or SITUATION CLAUSE: The State in which the registered office of the company is to be situated.

C. OBJECTS CLAUSE: Covers the **objects** for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.
Note: Provided that nothing in this clause shall apply to a company registered under section 8;

D. LIABILITY CLAUSE: This clause covers details on the **liability of members** of the company, whether limited or unlimited, and also state—

1) **COMPANY LIMITED BY SHARES:** That the liability of its members is limited to the amount unpaid, if any, on the shares held by them and
2) **COMPANY LIMITED BY GUARANTEE:** The amount up to which each member undertakes to contribute:
   a. To the assets of the company in the event of its being wound up – While he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be and
   b. To the costs, charges and expenses of winding-up and
   c. For adjustment of the rights of the contributories among themselves.

E. CAPITAL CLAUSE

1) The amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share (I.e., Authorised and subscribed capital shall be disclosed) and
2) The number of shares each subscriber to the memorandum intends to take, indicated opposite his name.

F. SUBSCRIPTION CLAUSE:

The memorandum and articles of the company shall be duly signed by all the subscribers to the memorandum in such manner as may be prescribed in Rule 13 of *the Companies (Incorporation) Rules, 2014.*

G. NOMINEE CLAUSE: In the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

FORMS AND SCHEDULE RELATED TO MEMORANDUM:

The memorandum of a company shall be in respective forms specified in **Tables A, B, C, D and E** in Schedule I as may be applicable to such company.

The MOA and AOA shall be in respective forms as provided in **Schedule I** to the Companies Act, 2013:

	TABLE	CONTAINS
MOA	**A**	MEMORANDUM OF ASSOCIATION OF A COMPANY **LIMITED BY SHARES**
	B	MEMORANDUM OF ASSOCIATION OF A COMPANY **LIMITED BY GUARANTEE** AND **NOT HAVING** A SHARE CAPITAL
	C	MEMORANDUM OF ASSOCIATION OF A COMPANY **LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL**
	D	MEMORANDUM OF ASSOCIATION OF AN **UNLIMITED** COMPANY AND **NOT HAVING SHARE CAPITAL**
	E	MEMORANDUM OF ASSOCIATION OF AN **UNLIMITED** COMPANY AND **HAVING SHARE CAPITAL**

Q.NO.14 WRITE ABOUT DOCTRINE OF ULTRAVIRES?

ANSWER:

DOCTRINE OF ULTRA VIRES:

A. MEANING:

1. The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers are in their nature limited.
2. To an ordinary citizen, the law permits whatever does the law not expressly forbid. It is only when the law has called into existence a person for a particular purpose or has recognised its existence such as
   a. In the case of a limited company - that the power is limited to the authority delegated expressly or by implication and to the objects for which it was created.
   b. In the case of such a creation, the ordinary law applicable to an individual is somewhat reversed, whatever is not permitted expressly or by implication, by the constituting instrument, is prohibited not by any express prohibition of the legislature, but by the doctrine of ultra vires.

3. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act - thus far and no further [Ashbury Railway Company Ltd. vs. Riche].

B. VOID:

1. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.
2. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.
3. The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it.
4. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company, one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.
   Example: If you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the company from parting with it by means of an injunction; this is because the company does not become the owner of the money, which is ultra vires the company. As the lender remains the owner, he can take back the property in specie. If the ultra vires loan has been utilised in meeting lawful debt of the company then the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.

C. PRINCIPLE OF RATIFICATION:

1. **CANNOT RATIFY:** The general rule is that an act which is ultra vires the company is incapable of ratification.
2. **CAN RATIFY:**
   a. An act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form
   b. If the act is ultra vires (beyond the powers of) the directors only, the shareholders can ratify it
   c. If it is ultra vires the articles of association, the company can alter its articles in the proper way.

D. PROTECTION TO STAKE HOLDERS: The rule is meant to protect shareholders and the creditors of the company.

Q.NO.15 WRITE ABOUT OVERVIEW OF ARTICLES OF ASSOCIATION?

ANSWER:

A. MEANING OF ARTICLES: Means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. Article of association of a company contains internal rules and regulation of the company.

CONTENT AND MODEL OF AOA (SEC .5): The section lays the following law—

B. CONTAINS REGULATIONS:

1. The articles of a company shall contain the regulations for management of the company. Also, the company may also include additional matters in addition to rules prescribed under the law. E.g., Entrenchment Provisions.
2. Table F in Schedule I provides the matters that shall be contained in the Articles of a company limited by shares. These are as follows:
   Interpretation; Share capital and variation of rights; Lien; Calls on shares; Transfer of shares; Transmission of shares; Forfeiture of shares; Alteration of capital; Capitalization of profits; Buy-back of shares; General meetings; Proceedings at general meetings; Adjournment of meeting; Voting rights; Proxy; Board of directors; Proceedings of the Board; Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer; The Seal (now it is optional); Dividends and reserve; Accounts; Winding up; Indemnity;

C. ENTRENCHMENT OF AOA:

1. **MEANING:** Usually an article of association may be altered by passing special resolution but entrenchment makes it more difficult to change it. So, entrenchment means making something more protective.

2. **CONTAINS PROVISIONS OF ENTRENCHMENT:**
   a. The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.
   b. **MANNER OF INCLUSION:** The provisions for entrenchment shall only be made:
      i. Either on formation of a company, or
      ii. By an amendment in the articles agreed to by
         1. ALL THE MEMBERS of the company in the case of a private company and Z
         2. by a special resolution in the case of a public company.
   c. **NOTICE TO THE REGISTRAR:** Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions.

EXAMPLE: Mr. Tarun promoted an education start up and got it registered as a private limited company. Initially he and his family are holding all shares in the company. In the article of association of company, it is written that Mr. Tarun will remain director of the company for lifetime. But he has a fear that tomorrow if 75% or more shares in the company are held by non-family members then by passing a special resolution article may be changed and he may be removed from the post of director.
Therefore, it was also written in the article that he can be removed from the post of director only if 95% votes are cast in favour of the resolution. This is entrenchment.

D. FORMS OF ARTICLES: The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company. [Refer above]

E. MODEL ARTICLES: A company may adopt all or any of the regulations contained in the model articles applicable to such company.

Q.NO.16 WRITE ABOUT SIGNING OF MOA AND AOA UNDER COMPANY INCORPORATION OF RULES 2014?

ANSWER:

A. SIGNING OF MEMORANDUM AND ARTICLES

Rule 13 provides for signing of memorandum and articles. The Memorandum and articles shall be signed in the following manner:

1. The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum. The name, address, description and occupation, if any, are to be added. One witness shall attest the signature of the subscriber. The witness also is to sign and furnish his full details.
2. The witness shall state that –"I witness to subscriber/subscriber(s) who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details for their identification and satisfied myself of his/her/their identification particulars filled in".
3. Where a subscriber to the memorandum is illiterate,
   a. he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him;
   b. Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of the association;
4. Where the subscriber is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate.
5. Where the subscriber is an LLP, it shall be signed by a partner of the LLP, duly authorized by a resolution approved by all the partners of the LLP.

   Note: In either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of association;

6. Where the subscriber is a foreign national residing outside India-
   a. In a country in any part of the Commonwealth,
      i. his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary Public in that part of the Commonwealth;
   b. In a country which is a party to the Hague Apostille Convention, 1961,

i. his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary Public of the Country of his origin and be duly apostillised in accordance with the Hague Convention;

c. In a country outside the commonwealth and not a party to the Hague Apostille Convention, 1961,
   i. his signatures and address shall be notarized before the Notary Public of that country and the certificate of the Notary Public shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf

d. Visited in India and intended to incorporate a company,
   i. in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

B. Particulars of every subscriber

1. Rule 16(1) provides that the full details of the every subscriber such as his personal data, address, communication details, identity proof, residential proof, and proof for nationality are to be furnished.

2. If the subscriber is already a director or promoter of a company, the particulars relating to his name of the company, CIN number etc., are to be furnished. The promoter or first director shall self-attest his signature and latest photograph in Form No. INC-10.

3. Where the subscriber to the memorandum is a body corporate the details such as:
   a. name of the body corporate,
   b. address of the registered office,
   c. place of business,
   d. CIN number,
   e. certified true copy of the board resolution specifying the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company,
   f. the number of shares proposed to be subscribed by the body corporate, and
   g. the name and designation of the person authorized to subscribe to the Memorandum are to be furnished.

4. If the body corporate is a LLP or partnership firm:
   a. certified true copy of the resolution agreed to by all the partners specifying the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company,
   b. the number of shares proposed to be subscribed in the body corporate and the name of the partner authorized to subscribe to the memorandum are to be furnished.

5. In case of a foreign body corporate the details relating to the copy of certificate of incorporation of the foreign body corporate and the address of the registered office are to be furnished.

Q.NO.17 MOA AND AOA CANNOT OVERRIDE THE ACT. COMMENT.

ANSWER:

ACT OVERRIDES MOA AND AOA (SEC .6)

1. The provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
2. Any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant (in conflict) to the provisions of this Act, become or be void, as the case may be.'

E.g., Sec. 139(2) says Rotation of auditors is not applicable to private company. Suppose if AOA of the company voluntarily adopted rotation of auditors through its articles then AOA will be overriding Sec. 139(2) of companies act, 2013.

Q.NO.18 WRITE ABOUT EFFECT OF MOA AND AOA?

ANSWER:

EFFECT OF MOA AND AOA:

1. The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member. and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.
2. All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company. [For example, a company can recover call in arrear from a member as forcefully as it is recovering loan due].

Q.NO.19 WRITE ABOUT ALTERATION OF MEMORANDUM OF ASSOCIATION?

ANSWER:

DEFINITION OF ALTER OR ALTERATION [Sec 2(3)]: Alter or Alteration includes the making of additions, omissions and substitutions.

PROCEDURE FOR ALTERATION OF MEMORANDUM [SEC 13]:

A. **SPECIAL RESOLUTION:** Company may alter the provisions of its memorandum with the approval of the members by a special resolution.
B. **NAME CHANGE OF THE COMPANY:**
    1. Any change in the name of a company shall be affected only with the approval of the Central Government (Now Delegated to ROC).

2. **CHANGE IN CONSTITION – NOT A CHANGE IN NAME:** However, no such approval shall be necessary where the change in the name of the company is only the addition/deletion of the word "Private", on the conversion of any one class of companies to another class in accordance with the provisions of the Act.

3. **Restriction in alteration of memorandum:**
   a. **NON-FILER – NOT ALLOWED:** The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon.
   b. Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be.

4. **ENTRY IN REGISTER:** On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the newname and the change in the name shall be complete and effective only on the issue of such a certificate.

5. **RECTIFICATION OF NAME BY CG (SEC. 16):**
   According to Section 16
   1) If, through inadvertence (not deliberate) or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which
      a) In the opinion of the Central Government (Now Delegated to Regional Director), is identical with or too nearly resembles the name by which a company in existence had been previously registered, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of **3 MONTHS** from the issue of such direction, after adopting an **ORDINARY RESOLUTION.**
      b) On an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within 3 years of incorporation or registration or change of name of the company, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of **6 MONTHS** from the issue of such direction, after adopting an **ORDINARY RESOLUTION**.
   2) Where a company changes its name or obtains a new name as above, it shall within a period of 15 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. [Section 16(2)]
   3) In case of Default [Section 16(3)]
      a) **COMPANY:** Shall be leviable with a Fine of 1,000 rupees for every day during which the default continues and
      b) **EVERY OFFICER WHO IS IN DEFAULT:** Fine varying from 5,000 rupees to 1 lakh rupees.

6. **FILING WITH REGISTRAR:** A company shall, in relation to any alteration of its memorandum, file with the Registrar–
    a) the special resolution passed by the company under sub-section (1) of Section 13;
    b) the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.
7. **Change of name of company**
   The first proviso to Section 12 provides that where a company has changed its name or names during the last two years, it shall paint or affix or print along with the name, the former name or names so changed during the last two years.

C. CHANGE IN THE REGISTERED OFFICE:

1. **APPROVAL OF CG:** The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government (Now Delegated to Regional Director) on an application in such form and manner as may be prescribed.
2. **60 DAYS TIME LIMIT:** The Regional Director shall dispose of the application of change of place of the registered office within a period of 60 days.
3. Before passing of order, Central Government may satisfy itself that-
    a. **CONSENT OF CREDITORS:** The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
    b. **PROVISIONS AND SECURITY:** Sufficient provision has been made by the company either for the due discharge of all its debts and obligations, or
    c. Adequate security has been provided for such discharge.
4. **FILING WITH REGISTRAR:** A company shall, in relation to any alteration of its memorandum, file with the Registrar—
    a. The special resolution passed by the company.
    b. The approval of the Central Government, if the alteration involves any change in the name of the company or Change in R.O from one state to another state.
5. **ISSUE OF FRESH CERTIFICATE OF INCORPORATION:** The Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

D. CHANGE IN THE OBJECT OF THE COMPANY:

1. **PROHIBITION ON A COMPANY WHICH RAISED FUNDS:** A company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and
2. **PUBLISH IN NEWS PAPERS:** The details, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change.

3. **ABOUT DISSENTING SHARE HOLDERS:** The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
4. **REGISTRAR TO CERTIFY THE REGISTRATION ON THE ALTERATION OF THE OBJECTS:** The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of 30 days from the date of filing of the special resolution.

ALTERATION TO BE REGISTERED: No alteration made under this section shall have any effect until it has been registered.

NOTE: ONLY MEMBER HAVE A RIGHT TO PARTICIPATE IN THE DIVISIBLE PROFITS OF THE COMPANY: Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be **VOID**.

Q.NO.20 WRITE ABOUT ALTERATION OF ARTICELS OF ASSOCIATION?

ANSWER:

1. Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles.
2. **[ANDREWS VS. GAS METER CO. [1897] 1 CH. 161]:** A company cannot divest itself of these powers.
3. Matters as to which the memorandum is silent can be dealt with by the alteration of article.

PROCEDURE FOR ALTERATION OF ARTICLES [SEC. 14]:

1. **SPECIAL RESOLUTION:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.

2. **ALTERATION TO INCLUDE CONVERSION OF COMPANIES:**
   Alteration of articles include alterations having the effect of conversion of—
   a. A private company into a public company; or
   b. A public company into a private company:
   c. Even where a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, then such company shall, as from the date of such alteration, cease to be a private company.
   d. Provided further that any alteration having the effect of conversion of a public company into a private company shall NOT BE VALID unless it is approved by an order of the Central Government on an application.

3. **FILING WITH THE REGISTRAR:** Every alteration of the articles and a copy of the order of the Central Government approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of 15 DAYS.

4. **ANY ALTERATION MADE SHALL BE VALID:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.

5. **ALTERATION NOTED IN EVERY COPY:**
    a. Every alteration made in memorandum or articles of a company shall be noted in every copy of the articles, as the case may be.
    b. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. [Section 15].

Q.NO.21 WRITE ABOUT DISTRIBUTION OF MOA AND AOA TO MEMBERS?

ANSWER:

DISTRIBUTION OF MOA AND AOA [SEC .17]:

1. **AT REQUEST OF MEMBERS:** Every company on being so requested by a member, shall send copies of the following documents within seven days of the request on the payment of fees—
    a. The memorandum.
    b. The articles.
    c. Every agreement and every resolution referred in section 117 (Resolutions and agreements to be filed), if and in so far as they have not been embodied in the memorandum and articles.
2. **DEFAULT:** In case of default, the company and every officer who is in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Q.NO.22 WRITE ABOUT REGISTERED OFFICE OF THE COMPANY?

ANSWER:

A. REGISTERED OFFICE OF COMPANY [SECTION 12]:

A company is considered to be a separate legal entity from the members. Once a company gets incorporated, it is required to maintain a registered office. This is a physical office where the corporation will receive service of legal documents from ROC or in case of a lawsuit, etc. This address cannot be a P.O. box but must be a physical location where someone is present, to receive service of legal documents during normal business hours.

The domicile and the nationality of a company is determined by the place of its registered officer.

This is also important for determining the jurisdiction of the court.

B. 30 DAYS TIME LIMIT: A company shall, within 30 days of its incorporation and at all times, thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

C. VERIFICATION OF REGISTERED OFFICE: The company shall furnish to the Registrar verification of its registered office within a period of 30 DAYS of its incorporation in Form No. INC-22 along with the fee. The following documents, according to Rule 25, of the Companies (Incorporation) Rules, 2014 shall be attached to the form:

1. the registered document of the title of the premises of the registered office in the name of the company; **or**
   the notarized copy of lease or rent authorized in the name of the company along with a copy of rent paid receipt not older than one month;
2. the authorization from the owner or authorized occupant of the premises along with the proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
3. the proof of evidence of any utility service like telephone, gas, electricity, etc., depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

D. PUBLICATION OF COMPANY: Every company shall—

1. **NAME BOARD:** Paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and in Local language. (i.e., Both English and Vernacular language)
2. **COMMON SEAL:** Have its name engraved in legible characters on its seal, if any.
3. **OFFICIAL DOCUMENTS:** Get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
4. **INSTRUMENTS:** Have its name printed on hundis', promissory notes, bills of exchange and such other documents.
5. **NAME CHANGE BY THE COMPANY:** Where a company has changed its name/s during the last two years, it shall paint or affix or print, along with its name, the former name or names so changed during the last two years.
6. **IN CASE OF OPC:** The words ''One Person Company'' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

E. NOTICE OF CHANGE TO REGISTRAR:

1. Notice of every change of the situation of the registered office, after the date of incorporation of the company, shall be given to the Registrar within 15 days of the change.
2. The Registrar shall record the same. The notice of change of situation of the registered office shall be filed in the Form No. INC-22 along with fee and the required documents.
3. The company may change its registered office from –
   a. one place to another place within the jurisdiction of the same Registrar or
   b. one place coming under the jurisdiction of the Registrar to the place coming under the jurisdiction of another Registrar or

c. one State to another State.

F. CHANGE BY PASSING OF SPECIAL RESOLUTION: The registered office of the company shall be changed only by passing of special resolution by a company, outside the local limits of any city, town or village where such office is situated. (within City – Board Resolution is Sufficient)

G. CHANGE OF REGISTERED OFFICE OUTSIDE THE JURISDICTION OF REGISTRAR: Where a company changes the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, there such change is to confirmed by the Regional Director on an application made by the company.

1. **COMMUNICATION AND FILING OF CONFIRMATION:** The confirmation of change of registered office from jurisdiction of one registrar to another registrar within the same state, shall be–
    a. File an Application to Regional Director.
    b. The Regional Director Shall send confirmation within 30 days from the date of receipt of application to the company, and
    c. The company shall file the confirmation with the Registrar within a period of 60 days of the date of confirmation who shall register the same, and
    d. Certify the registration within a period of 30 DAYS from the date of filing of such confirmation. (ISSUE CERTIFICATE)
2. **CERTIFICATE** is conclusive evidence that all the requirements of this Act with respect to change of registered office have been complied with and the change shall take effect from the date of the certificate.
3. **IN CASE OF DEFAULT:** If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of Rs. 1,000/- for every day during which the default continues but not exceeding 1 Lakh rupees.

H. SHIFTING OF REGISTERED OFFICE FROM ONE STATE OR UNION TERRITORY TO ANOTHER STATE

Rule 30 provides the procedure for shifting of registered office of a company from one State or Union Territory to another State, as under.

1. **APPLICATION TO CG:** An application for the purpose of seeking approval for alteration of memorandum with regard to the 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. lNC.23 along with the fee and shall be accompanied by the following documents, namely:-
    a. a copy of Memorandum of Association, with proposed alterations;
    b. a copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;
    c. a copy of Board Resolution or Power of Attorney or the executed vakalatnama, as the case may be.

2. **ATTACHMENTS:** There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-
   a. the names and address of every creditor and debenture holder of the company;
   b. the nature and respective amounts due to them in respect of debts, claims or liabilities

   Provided that the list of creditors and debenture holders, accompanied by declaration signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that
      i. they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and
      ii. no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.
3. **INSPECTION:** A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.
4. **FILINGS WITH ROC:** There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures 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.
5. **PUBLICATION OF NOTICE:** The company shall, not more than thirty days before the date of filing the application in Form No. INC.23-
   a. **Advertise** in the Form No. INC.26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with the widest circulation in the State in which the registered office of the company is situated:
      Note: A copy of advertisement shall be served on the Central Government immediately on its publication.
   b. serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and
   c. 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.
6. There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), a copy each of the objection received by the applicant, and tabulated details of responses along with the counter response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule (5).

7. Where no objection has been received from any person in response to the advertisement or notice under sub-rule (5) or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.
8. Where an objection has been received,
    i. the Central Government shall hold a hearing or hearings, as required, and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within 60 days of filing the application.
    ii. where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within 60 days of the filing of application.
9. The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit, and may include such order as to costs as it thinks proper.
   Note: 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.
10. On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.
11. **FILINGS WITH ROC:** Certified copy of the order of the Central Government, approving the alteration of memorandum for transfer of registered office of the company from one State to another State, shall be filed in Form No. INC – 28 along with the fee as with the Registrar of State within 30 days from the date of receipt of certified copy of the order.

I. NOT CARRYING BUSINESS IN THE R.O: If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company.
If any default is found, Initiate action for the removal of the name of the company from the register of companies under **Chapter XVIII (DEALS WITH REMOVAL OF NAMES)**.

Q.NO.23 A SUBSIDIARY COMPANY IS PROHIBITED TO HOLD SHARES IN ITS HOLDING COMPANY COMMENT.

ANSWER:

A. SC NOT TO HOLD SHARES IN ITS HC (SEC. 19):

No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary

companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

B. EXCEPTIONS:

1. where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company (Can Participate in Voting) or
2. where the subsidiary company holds such shares as a trustee (Can Participate in Voting) or
3. where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. (No Voting rights)

C. The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

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

Q.NO.24 WRITE ABOUT SERVING OF DOCUMENTS?

ANSWER:

A. SERVING OF DOCUMENT TO REGISTRAR OR MEMBER: A DOCUMENT MAY BE SERVED ON REGISTRAR OR ANY MEMBER BY SENDING it to him by—

1. Post, or
2. registered post, or
3. speed post, or
4. courier, or
5. by delivering at his office or address, or
6. by such electronic or other mode as may be prescribed. (DEMAT SECURITIES)

SPECIFIC REQUEST BY MEMBER: However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

B. A document may be served on the Registrar or any member through electronic transmission. The term 'electronic transmission' means a communication-

a. delivered by-
   1. facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the Registrar or the member has provided from time to time for sending communications to the Registrar or the number respectively;
   2. posting of an electronic message board or network that the Registrar or the member has designated for such communications, and which transmission shall be validly delivered upon the posting; or
   3. other means of electronic communication in respect of which the Registrar or the member has put in place reasonable systems to verify that the sender is the person purporting to send the transmission; and

b. that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.

C. Effect of service of documents by post:

a. In case of a Notice of a meeting – Expiration of 48 Hours after the letter is posted.

b. In any other case – At the time of delivery in ordinary course of post.

Q.NO.25 WRITE ABOUT AUTHENTICATION OF DOCUMENTS, PROCEEDINGS AND CONTRACTS?

ANSWER:

As per section 21 of the Companies Act, 2013, a document or proceeding requiring authentication by a company or contracts made by or on behalf of a company may be signed by–

1. Any key managerial personnel, or
2. An officer or employee of the company duly authorized by the Board in this behalf.

DEFINITION OF KMP [SEC. 2(51)]: *In relation to a company, means—*

i. The CEO or the MD or the manager.
ii. The company secretary.
iii. The whole-time director.
iv. The CFO.
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.

Q.NO.26 WRITE ABOUT AUTHORISATION OF A PERSON TO ACT AS ATTORNEY OF THE COMPANY TO EXECUTE HUNDI, BILLS, PROMISSORY NOTES AND OTHER DOCUMENTS. [SEC. 22]

ANSWER:

1. A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company **IF** made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.
2. **COMMON SEAL:** A company may, by writing under its common seal, if any, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.
3. **NO COMMON SEAL:** However, in case a company does not have a common seal, the above authorisation shall be made by 2 directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.
4. **BIND – COMPANY:** A deed signed by such an attorney on behalf of the company and under his seal shall bind the company.

NOTE: It can be observed from above that a company may or may not have a common seal. If company decides to have a common seal then it has to affix the same for specified matters, execution of deeds on behalf of the company.

DESCRIPTION	FORM NO.
One Person Company- Nominee consent form	INC-3
One Person Company- Change in Member/Nominee	INC-4
One Person Company- Intimation of exceeding threshold	INC-5
Conversion of Private Company to OPC	INC-6
Compliance Declaration	INC-8
Declaration as to No offence	INC-9
Certificate of Incorporation	INC-11
Application for grant of License under section 8	INC-12
MOA & AOA of Section 8 Company	INC-13
Compliance Declaration by Professionals in case of Section 8 Company	INC-14
Declaration by person making application for section 8 company	INC-15
Application to Regional director for conversion of section 8 company into company of any other kind	INC-18
Intimation to Registrar of revocation/surrender of license issued under section 8	INC-20
Notice of situation or change of situation of registered office	INC-22
Application to Regional Director for approval to shift the Registered Office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State	INC-23
Conversion of public company into private company or private company into public company	ÌNC-27
Reservation of Name	RUN
Consent of Directors	DIR-2
Particulars of Directors	DIR-12

3. PROSPECTUS

PART – I (BASICS OF PROSPECTUS)

Q.NO.1 WRITE ABOUT ISSUE OF SECURITIES BY PUBLIC AND PRIVATE COMPANIES?

ANSWER:

BY PUBLIC COMPANY [SEC. 23(1)]:

A public company may issue securities:

a) To public through prospectus (herein referred to as "public offer") by complying with the relevant provisions. or
b) Through private placement by complying with relevant provisions. or
c) Through a rights issue or a bonus issue in accordance with the provisions of this Act and SEBI Regulations in case of Listed Companies or a company which intends to get its securities listed also with the provisions of the SEBI Act, 1992 and the rules and regulations made there under.

BY PRIVATE COMPANY [SEC. 23(2)]:

A private company may issue securities—

a) By way of rights issue or bonus issue in accordance with the provisions of this Act; or
b) Through private placement by complying with the relevant provisions.

DEFINITION OF PUBLIC OFFER: "Public offer" includes initial public offer (IPO) or further public offer (FPO) of securities to the public by a company, or an offer for sale of securities (OFS) to the public by an existing shareholder, through issue of a prospectus.

DEFINITION OF SECURITIES [SEC. 2(81)]:

Securities means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

Q.NO.2 DEFINE THE TERM PROSPECTUS. WHAT ARE THE MATTERS TO BE STATED IN PROSPECTUS?

ANSWER:

A. DEFINITION OF PROSPECTUS [SEC. 2(70)]: Prospectus means any document described or issued as a prospectus and includes:
   a. a red herring prospectus referred to in section 32 or
   b. shelf prospectus referred to in section 31 or
   c. (deemed prospectus) any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of body corporate.

B. MATTERS TO BE STATED IN PROSPECTUS [SEC. 26(1)]:

1. Every prospectus issued shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government.
2. Every Prospectus shall have a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to: (Declaration)
    a. The provisions of Companies Act, 2013.
    b. The Securities Contracts (Regulation) Act, 1956 and
    c. The Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

C. PROSPECTUS NEED NOT BE ISSUED [SEC. 26(2)]:

1. Offer or Invitation is made to Existing members or debenture holders of the company.
2. Offer is made to subscribe for shares or debentures which are
    a. Uniform in all respects with shares or debentures previously issued and
    b. Dealt in or quoted in recognised stock exchange.
3. No offer or invitation is made to public. (E.g., Private Placements)
4. Also, when the shares and debentures are issued by a private company.

D. DATE OF PUBLICATION [SEC. 26(3)]: The date indicated in the prospectus shall be deemed to be the date of its publication.

E. VALIDITY OF PROSPECTUS: No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar.

F. FILE WITH THE ROC BEFORE PUBLICATION:

1. Every prospectus of the company shall be filed with ROC before its publication i.e., date of prospectus [SEC. 26(4)].
2. Every prospectus shall, on the face of it state that a copy has been delivered for registration to the Registrar [SEC. 26(6)].
3. The Registrar shall not register a prospectus unless:
    a. The requirements of this section with respect to its registration are complied with and
    b. The prospectus is accompanied by the consent in writing of all the persons named in the prospectus. [SEC. 26(7)]

G. PUNISHMENT IN CASE OF CONTRAVENTION [SEC .26(9)]: If a prospectus is issued in contravention of the provisions of this section:

a. The company shall be punishable with fine which shall not be less than Rs.50,000/- but which may extend to Rs.3,00,000/- and
b. Every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than Rs.50,000/- but which may extend to Rs.3,00,000/- or both.

Q.NO.3 WRITE ABOUT ISSUE OF SECURITIES IN DEMATERIALISED FORMAT?

ANSWER:

A. **ISSUE OF SHARES IN DEMATERIALISED FORM:** As per Section 29,
   1. Every company making public offer; and
   2. Such other class or classes of public companies as may be prescribed,

   shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

B. The promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialized form.
C. The entire holding of convertible securities of the company by the promoter held in physical form up to the date of the initial public offer shall be converted into dematerialized form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.
D. From December, 2018, MCA has ordered that no transfer of shares, even in case of unlisted shares can be effected other than dematerialised mode.

Q.NO.4 ADVERTISEMENT OF PROSPECTUS SHALL CONTAIN CONTENTS OF MOA. EXPLAIN? [SEC. 30]?

ANSWER:

Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum (MOA) as regards the following:

1. The objects,
2. The liability of members and the amount of share capital of the company,
3. The names of the signatories to the memorandum,
4. The number of shares subscribed for by the signatories, and
5. The capital structure of the company.

PART – II (TYPES OF PROSPECTUS AND ALLOTMENT)

Q.NO.5 WRITE ABOUT SHELF PROSPECTUS, RED HERRING PROSPECTUS AND ABRIDGED PROSPECTUS?

ANSWER:

A. SHELF PROSPECTUS [SEC. 31]:

1. **MEANING OF SHELF PROSPECTUS:** Shelf Prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues OVER A CERTAIN PERIOD without the issue of a further prospectus.

2. **FILING WITH ROC:** The permitted class of companies, may file a shelf prospectus with the Registrar:
    a. At the time of first offer of securities and the validity period of shelf prospectus shall not exceed **ONE YEAR** from the date of opening of the first offer of securities under that prospectus, and
    b. For second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

3. **FILING OF INFORMATION MEMORANDUM:** A company filing a shelf prospectus shall be required to file an information memorandum with the ROC prior to subsequent offer containing:
    a. all material facts relating to new charges created,
    b. changes in the financial position of the company as have occurred between the first offer of securities and the succeeding offer of securities

    NOTE: Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

4. **INFORMATION MEMORANDUM TOGETHER WITH THE SHELF PROSPECTUS SHALL BE DEEMED TO BE A PROSPECTUS:** Where an information memorandum is filed, every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

B. RED HERRING PROSPECTUS [SEC. 32]: [BOOK BUILDING PROCESS / PRICE DISCOVERY MECHANISM]

1. **MEANING OF RED HERRING PROSPECTUS:** "Red Herring Prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

2. **ISSUE A RED HERRING PROSPECTUS PRIOR TO THE ISSUE OF A PROSPECTUS:** A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

3. **FILING WITH THE REGISTRAR:** A company proposing to issue a red herring prospectus shall file it with the Registrar at least THREE DAYS prior to the opening of the subscription list and the offer.

4. **SAME OBLIGATION:** A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

5. **FILING OF FINAL PROSPECTUS WITH REGISTRAR AND SEBI UPON CLOSING OF OFFER:** Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

C. ABRIDGED PROSPECTUS:

1. Section 33(1) provides that no form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus: Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—
   a. in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
   b. in relation to securities which were not offered to the public.
2. Section 33(2) provides that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.
3. Section 33(3) provides that if a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of Rs. 50,000 for each default.

Q.NO.6 WRITE ABOUT OFFER FOR SALE BY MEMBERS OF THE COMPANY TO PUBLIC?

ANSWER:

OFFER FOR SALE TO PUBLIC [SEC. 28]: [Generally Listed Companies follow to adhere the minimum public shareholding norms] [Promoter stake dilution]

1) **APPROVAL OF BOD / COMPANY:** Where certain members of a company propose to offer whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed. (i.e., Approval of BOD or Company at GM)

2) **DEEMED PROSPECTUS:** Any document by which the offer of sale to the public is made shall be deemed to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus shall apply.

3) **AUTHORISATION OF COMPANY:** The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively:
    a. Authorise the company, to take all actions in respect of offer of sale and
    b. They shall reimburse the company all expenses incurred by it on this matter.

4) ALL PROVISIONS APPLICABLE EXCEPT:
    a. Provisions relating to minimum subscription
    b. Provisions for minimum application value
    c. Provisions requiring any statement to be made by the Board of directors in respect of the utilization of money.
    d. any other provision or information which cannot be compiled or gathered by the offeror, with detailed justifications for not being able to comply with such provisions.

5) **DISCLOSURES:** Disclose the name of the person or persons or entity bearing the cost of making the offer of sale along with reasons.

Q.NO.7 WRITE ABOUT VARIATION OF TERMS OF CONTRACT, OBJECTS IN PROSPECTUS?

ANSWER:

VARIATION OF TERMS OF PROSEPCTUS [SEC. 27]:

Once funds are raised through a given prospectus, the principles of "doctrine of ultra vires" (mutatis mutandis) comes into play i.e., the company has to use the funds strictly in accordance with the prospectus. Deviations are required to be pre-approved by the investors and recall option to be given to dissenting investors. The Procedure for altering terms of prospectus is as below:

1. **SPECIAL RESOLUTION AT GENERAL MEETING:** A company shall not vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued except subject to an authority given by the company in general meeting by way of SPECIAL RESOLUTION through POSTAL BALLOT.

2. **CONTENTS OF NOTICE OF EGM FOR SPECIAL RESOLUTION:**
    a. The Original Purpose or object of the Issue.
    b. The total money raised.
    c. The money utilised for the objects of the company stated in the prospectus.
    d. The extent of achievement of originally proposed objects (that is fifty percent, sixty percent, etc.)
    e. The **UNUTILISED AMOUNT** out of the money so raised through prospectus.
    f. the particulars of the proposed variation in the terms of contracts referred to in the prospectus or objects for which prospectus was issued.
    g. The reason and justification for seeking variation.
    h. The proposed time limit within which the proposed varied objects would be achieved.
    i. the clause-wise details as specified in sub-rule (3) of rule 3 as was required with respect to the originally proposed objects of the issue.

j. The risk factors pertaining to the new objects.
k. The other relevant information which is necessary for the members to take an informed decision on the proposed resolution.

3. **ADVERTISEMENT & WEBSITE:** The notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation. Further Notice shall also be placed on WEBSITE of the company. [PAS -1 FORM]

4. **PROHIBITION ON SPECULATION:** The company shall not use any amount raised by it through prospectus for buying, trading or dealing in equity shares of any other listed company.

5. **EXIT OFFER TO DISSENTING SHAREHOLDERS:** The dissenting shareholders shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions SEBI.

Q.NO.8 WRITE ABOUT SECURITIES TO BE DEALT WITH IN STOCK EXCHANGES [SEC. 40]?

ANSWER:

A. APPLICATION WITH RECOGNISED STOCK EXCHANGE[SEC.40(1)]: Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

B. PROSPECTUS TO STATE NAME OF STOCK EXCHANGE: Prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.

C. MAINTAIN SEPARATE BANK ACCOUNT[SEC40(3)]:
All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

a) For adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or
b) For the repayment of monies within the time specified by the Securities and Exchange Board, where the company is unable to allot securities.

D. Void condition
Section 40(4) provides that any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of Section 40 is void.

E. PENALTY: If a default is made in complying with the provisions of this section, both the company and the officer of the company shall be liable.

1. **COMPANY:** Fine varying from 5 LAKH rupees to 50 lakh rupees
2. **OFFICER:**
    a. imprisonment for a term which may extend to one year or
    b. Fine varying from Rs. 50,000/- to 3,00,000/- or
    c. both

Q.NO.9 WRITE ABOUT UNDERWRITING COMMISSION? [SEC. 40]?

ANSWER:

PAYMENT OF COMMISSION[SEC40(6)]:

1. A company may pay commission to any person in connection with the subscription to its securities subject to such conditions.

2. **CONDITIONS:**
    a. The payment of such commission shall be authorized by articles of association.
    b. The commission may be paid out of proceeds of the issue or the profit of the company or both.

3. **RATE OF COMMISSION:** Following is the rate of commission to be paid to the person:
    a. **FOR SHARES:** Shall not exceed 5% of the issue price, or a rate authorised by the articles, whichever is less.
    b. **FOR DEBENTURES:** shall not exceed 2.5% of the issue price, or as specified in the company's articles, whichever is less.

4. **DISCLOSURE OF THE PARTICULARS:** The prospectus of the company shall disclose the following particulars -
    a. The name of the underwriters.
    b. The rate and amount of the commission payable to the underwriter; and
    c. The number of securities which is to be underwritten or subscribed by the underwriter.

5. **NO COMMISSION TO BE PAID:** No Commission is payable to underwriters in respect of securities that are not offered to the public.

6. **COPY OF PAYMENT OF COMMISSION TO BE DELIVERED TO REGISTRAR:** A copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Q.NO.10 WRITE ABOUT MINIMUM SUBSCRIPTION AND ALLOTMENT OF SECURITIES BY COMPANY [SEC. 39]?

ANSWER:

A. MEANING OF ALLOTMENT: "Allotment" means the appropriation out of previously un-appropriated capital of a company, of a certain number of shares to a person. Till such allotment, the shares do not exist as such. It is on allotment that the shares come into existence.

B. MINIMUM SUBSCRIPTION:

1. A company shall not allot any securities unless applications equal to or more than minimum subscription has been received. Minimum Subscription is nothing but the minimum amount stated in prospectus to proceed for allotment of securities. (It cannot be Less than 90% of the Issue Size as per SEBI Rules).
2. If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of 30 DAYS from the date of issue of the prospectus:
    a. The amount received shall be returned within 15 DAYS from the closure of the issue and
    b. Such application money shall be refunded (credited) to the bank account from which subscription money is received.
    c. If any such money is not paid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of 15% per annum.

C. MIN 5% APPLICATION MONEY: Application Money on every security shall not be less than 5% of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board. (As per SEBI 25% of Issue Price)

D. FILING WITH ROC: Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment within 30 days after allotment in form PAS 3 along with prescribed fee.

E. DEFAULT: In case of any default, the company and its officer who is in default shall be liable to a penalty, for each default, of Rs.1,000/- for each day during which such default continues or Rs.1,00,000/-, whichever is less.

Q.NO.11 WRITE ABOUT RETURN OF ALLOTMENT?

ANSWER:

1. Section 39(4) provides that whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment within 30 days in Form No. PAS-3 along with the fee.
2. **ATTACHMENTS:**
    a. A list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees in Form No.-PAS-3 shall be attached along with the return.

b. The said list shall be certified by the signatory of the said form as being complete and correct as per the records of the company.
c. Along with the return the following may be attached, as applicable to the company-
   I. if the securities are allotted for consideration other than cash, a copy of the contract, duly stamped, pursuant to which the securities have been allotted together with contract of sale if relating to a property or an asset, or a contract for services or other consideration;
   II. if the above said contract is not in written form, the company shall furnish complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899 and the Registrar may, as a condition of filing the particulars, require that the stamp duty payable thereon be adjudicated under Section 31 of the Indian Stamps Act, 1899;
   III. a report of a registered valuer in respect of valuation of the consideration shall also be attached along with the contract mentioned above;
   IV. in case of bonus shares a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached;
   V. in the case the shares have been issued in pursuance of Section 62 (1)(c) by a company other than a listed company whose equity shares or convertible preference shares are listed on any recognized stock exchange, the valuation report of the registered valuer shall be attached;

3. **PENALTY:** Any default is made in filing return of allotment, the company and every officer, who is in default shall be liable to a penalty, for each default, of Rs. 1,000 for each day during such default continues or Rs. 1 lakh, whichever is less.

Q.NO.12 WRITE ABOUT MIS-STATEMENTS IN PROSPECTUS?

ANSWER:

A. MEANING: Misstatement is the act of stating something that is false or not accurate. It could either be by commission or by omission or by both. Mis- statement of prospectus is a serious offence which attracts criminal liability u/s 34 and / or civil liability u/s 35.

B. CRIMINAL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS [SEC. 34]:

1. **PUNISHABLE U/S 447:** Where a prospectus, issued, circulated or distributed includes any statement which is untrue or misleading or where any inclusion or omission of any matter is misleading, every person who authorises the issue of such prospectus shall be liable under section 447.

2. **EXCEPTION:** However, if he proves that such statement or omission was IMMATERIAL or THAT HE HAD REASONABLE GROUNDS TO BELIEVE up to the time of issue of the prospectus,

that the statement was true or the inclusion or omission was necessary, then he cannot be liable u/s 447.

C. CIVIL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS [SEC. 35]:

1. **COMPENSATING THE LOSS SUSTAINED:** Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof:
   The COMPANY AND EVERY PERSON who—
   a. is a director of the company at the time of the issue of the prospectus.
   b. has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time.
   c. is a promoter of the company.
   d. has authorised the issue of the prospectus and
   e. is an expert.

   Shall be liable to pay compensation to every person who has sustained such loss or damage, in addition to punishment U/s 36 if apples.

2. **EXCEPTIONS – NO LIABILITY:** No person shall be liable if he proves—
   a) He withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent or
   b) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
   c) That, as regards every misleading statement purported [I.e., appeared] to be made by an expert or contained in what purports [appears] to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder. **[SEC .35(2)]**

3. **UNLIMITED LIABILITY - FRAUD:** Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred above shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus. **[SEC. 35(3)]**

Q.NO.13 WRITE ABOUT PUNISHMENT FOR FRAUDULENTLY INDUCING A PERSON TO INVEST MONEY.

ANSWER:

A. PUNISHMENT FOR FRAUDULENTLY INDUCING A PERSON TO INVEST MONEY [SEC. 36]:

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

a. Any agreement for acquiring, disposing of, subscribing for, or underwriting securities; or
b. Any agreement, of which the intention is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
c. Any agreement for, or with a view to obtaining credit facilities from any bank or financial institution, shall be liable for action under section 447.

B. **REMEDY:** Suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus. (Only if allotted in primary market and not if we buy shares in secondary market).

C. SEC. 447 OF COMPANIES ACT – PUNISHMENT FOR FRAUD:

1. **NO PUBLIC INTEREST:** Any person who is found to be guilty of fraud [involving an amount of AT LEAST Rs.10,00,000/- or 1 % of the turnover of the company, whichever is lower] shall be punishable with:
    a. **IMPRISONMENT:** Imprisonment for a term which shall not be less than 6 MONTHS but which may extend to 10 YEARS **AND**
    b. **FINE:** Shall also be liable to fine which shall not be less than the "amount involved in the fraud", but which may extend to "3 times the amount involved" in the fraud.

2. **PUBLIC INTEREST:** Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 YEARS.

3. **IF FRAUD IS LESS THAN 10 LAKHS OR 1% OF T/O [LOWER] AND NO PUBLIC INTEREST: Any Person guilty of such fraud shall be punishable with:**
    a. Imprisonment for a term which may extend to 5 YEARS or
    b. Fine which may extend to 50 LAKHS or
    c. Both.

4. **MEANING OF FRAUD:** "FRAUD" in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance (wrong doing) in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its

shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

a. "Wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled.
b. "Wrongful loss" means the loss by unlawful means of property to which the person losing is LEGALLY ENTITLED.

Q.NO.14 WRITE ABOUT PUNISHMENT FOR PERSONATION OF SECURITIES?

ANSWER:

PUNISHMENT FOR PERSONATING

1. Section 38(1) provides that any person who-
   a. makes or abets making of an application in a fictitious name to a company for acquiring or subscribing for its securities; or
   b. makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or
   c. otherwise induces directly or indirectly a company to allot, or register any transfer of securities to him, or to any other person in a fictitious name,

   shall be liable for action under Section 447.
2. The provisions of Section 38(1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.
3. Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by and seizure and disposal of the securities in possession of, such person. The amount received through disgorgement or disposal of securities shall be credited to the Investor Education and Protection Fund.

Q.NO.15 WRITE ABOUT INVITAION FOR SUBSCRIPTION OF SECURITIES ON PRIVATE PLACEMENT?

ANSWER:

OFFER OR INVITATION FOR SUBSCRIPTION OF SECURITIES ON PRIVATE PLACEMENT [SECTION 42]:

1. **MEANING OF PRIVATE PLACEMENT:** "private placement" means any offer or invitation to subscribe or issue of securities to a selected group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in Sec. 42.

2. **IDENTIFIED PERSONS:** A private placement shall be made only to a select group of persons who have been identified by the BOD and are referred to as "identified persons". Further Right of Renouncement shall not be applicable under private placement.

3. **NOT TO EXCEED 200:**
    a. **200 FOR A FINANCIAL YEAR:** The total number of identified persons shall not exceed 200 in a financial year. [rule 14 of PAS] *[ORIGINAL LIMIT – 50]*
    b. **200 FOR EACH KIND OF SECURITY:** The limit of 200 shall be counted separately for each kind of security that is equity share, preference share or debenture.
    c. **EXCLUSIONS FROM THE COUNT OF 200:**
        i. The Qualified Institutional Buyers (QIB) and
        ii. **ESOP's:** Employees of the company being offered securities under a scheme of employee's stock option.
    d. **SPECIFIC ENTITIES – LIMITS AS PER REGULATORY**: Further the Limit of 200 Identified Persons in a Financial Year shall not apply to:
        i. NBFC's
        ii. Housing Finance Companies. These Companies shall comply with RBI and National Housing Bank regulations.

4. **DEEMED PUBLIC OFFER:** If a company offers invitation for subscription of securities to more than 200 persons, it shall be deemed to be an offer made to public.

5. **PROCEDURE FOR PRIVATE PLACEMENT:** As per Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014:

    a. **BOARD RESOLUTION:** Pass a Board Resolution in board meeting.

    b. **NOTICE AND EXPLANATORY STATEMENT:** Explanatory statement annexed to the notice for shareholders' approval, the following disclosure shall be made:
        i. Particulars of the offer including date of passing of Board resolution.
        ii. Kinds of securities offered and the price at which security is being offered.
        iii. Basis or justification for the price (including premium, if any).
        iv. Name and address of VALUER who performed valuation.
        v. Amount which the company intends to raise by way of such securities.
        vi. Important terms and conditions of raising such securities such as:
            1. Proposed time schedule,
            2. Purposes or objects of offer,
            3. Contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects;
            4. Principle terms of assets charged as securities.

    c. **PASS A SPECIAL RESOLUTION:** The proposal has to be approved by the shareholders of the company, by a SPECIAL RESOLUTION for each of the offers or invitations at the General Meeting.

EXCEPTION TO SPECIAL RESOLUTION: However, in case of Private Placement by issue of Non-convertible debentures for an amount not exceeding limits u/s 180(1)(c) – only Board Resolution is adequate. (Sec. 180 – Deals with Restriction on Powers of BOD) (Limit – Existing Borrowings and Proposed NCD together shall not exceed PUC & Free Reserves of the company)

d. **OFFER AND APPLICATION:** A company making private placement shall issue private placement offer and application to identified persons within 30 DAYS of recording the name of such person in respect of which a special resolution is passed.

e. **NO RENUNCIATION:** Private placement offer and application shall not carry any right of renunciation.

f. **MODE OF PAYMENT TO APPLY PRIVATE PLACEMENT:** The identified person shall apply for private placement and pay subscription money only by cheque or DD or any other banking channel BUT NOT BY CASH.

g. **SEPARETE BANK ACCOUNT:** Monies received on application shall be kept in a separate bank account in a scheduled bank and shall be utilised only for the:
    i. For adjustment against allotment of securities or
    ii. For the repayment of monies where the company is unable to allot securities.

h. **60 DAYS TIMELIMIT FOR ALLOTMENT:**
    i. **ALLOT:** A company shall allot its securities within 60 DAYS from the date of receipt of the application money.
    ii. **FAILS TO ALLOT - REPAY:** If the company is not able to allot the securities within that period, it shall repay the application money within 15 DAYS from the expiry of 60 DAYS and
    iii. **FAILS TO REPAY - INTEREST:** If the company fails to repay the application money within 15 DAYS, it shall be liable to repay that money with interest at the rate of 12% per annum from the expiry of the **60 DAY.**

i. **FILING WITH ROC:**
    i. FIRST FILING – BEFORE ISSUE OF APPLICATION: A Company can make private placement offer cum application only after filing a copy of Board Resolution and Special Resolution with ROC. (FIRST FILING BEFORE ALLOTMENT)
    ii. A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within 15 DAYS from the date of the allotment. (SECOND AND FINAL FILING AFTER ALLOTMENT)
    iii. The return of allotment shall include a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

iv. Only after filing return of allotment with ROC, the company can use the money for the purposes for which it is raised.
v. **DEFAULT IN FILING WITH ROC:** If a company defaults in filing the return of allotment within 15 DAYS, the company, its promoters and directors shall be liable to a penalty for each default of Rs.1,000/- for each day during which such default continues but not exceeding Rs.25,00,000/-.

6. **PROHIBITION ON FURTHER OFFER U/S. 42:** A company can offer securities under private placement only if allotment procedure under previous offer is COMPLETED OR HAS BEEN WITHDRAWN OR ABANDONED.

7. **MULTIPLE OFFERS TO SAME PERSONS:** A company may make more than one issue of securities to such class of identified persons.

8. **PROHIBITION OF ADVERTISEMENT:** No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

9. **NON-COMPLIANCE OF SEC. 42:** If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for:
   a. **PENALTY:** A penalty which may extend to the amount raised through the private placement or 2 CRORE rupees, whichever is lower, and
   b. **REFUND WITH INTEREST:** The company shall also refund all monies with interest to subscribers within a period of 30 DAYS of the order imposing the penalty and
   c. **DEEMED TO BE PUBLIC OFFER:** Shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable.

Q.NO.16 EXPLAIN VARIOUS INSTANCES WHICH MAKE THE ALLOTMENT OF SECURITIES AS IRREGULAR ALLOTMENT UNDER THE COMPANIES ACT, 2013.

ANSWER:

The Companies Act, 2013 does not specifically provide for the term "Irregular Allotment" of securities. In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 or 40. Irregular allotment therefore arises in the following instances:

1. Where a company does not issue a prospectus in a public offer as required by section 23.
2. Where the prospectus issued by the company:
   a. Does not include any of the matters required to be included therein or
   b. The information given is misleading, faulty and incorrect.
3. Where the prospectus has not been filed with the Registrar for filing u/s. 26 (4).

4. The minimum subscription as specified in the prospectus has not been received in terms of section 39.
5. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or less than the amount prescribed by SEBI in this behalf.
6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.

Description	Form No.
Advertisement giving details of notice of special resolution for varying the terms of any contract	PAS-1
Information Memorandum	PAS-2
Return of Allotment	PAS-3
Private Placement Offer Letter	PAS-4
Record of Private Placement Offers	PAS-5

4. SHARE CAPITAL AND DEBENTURES

Q.NO.1 DEFINE THE TERM "SHARE"? WHAT ARE THE TYPES OF SHARE CAPILAL?

ANSWER:

A. **SHARE [Sec 2(84)]:** 'share' is a share in the share capital of a company and includes stock.
B. **NATURE OF SHARE [Sec 44]:** The shares in a company shall be movable property transferable in the manner prescribed by the articles of the company.
C. **DIFFERENT TYPES OF SHARE CAPITAL:** Publication of authorized, subscribed and paid up capital
D. **DISCLOSURES [**Section 60(1)]
    a. where any notice, advertisement or other official publication, any business letter, billhead or letter paper of a company contains a statement of the amount of the authorized capital of the company,
    b. such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement in an equally prominent position and in equally conspicuous characters, of the amount of capital which has been subscribed and the amount paid up.
E. **PENALTY IN CASE OF DEFAULT:** Section 60(2) provides that if any default is made in complying with the requirements of Section 60(1), the company shall be liable to pay a penalty of Rs. 10,000. Every officer of the company who is in default shall be liable to pay a penalty of Rs. 1,000 for each such default.

Q.NO.2 WHAT ARE DIFFERENT KINDS OF SHARE CAPITAL?

ANSWER:

MEANING OF SHARE CAPITAL [SEC. 2(84)]: Share Means a share in the share capital of a company and includes stock.

The Following are Two types of Share capital:

1. **EQUITY SHARE CAPITAL:** As Per Sec.43, ESC is a capital other than PSC. ESC is of two types:
    a. With Voting Rights
    b. With Differential Rights as to dividend, voting or otherwise.

2. **PREFERENTIAL RIGHTS – PSC:** Preference Share Capital which carries preferential rights such as:
    a. W.r.t Payment of Dividend at an agreed percentage (preferential dividend) and
    b. Repayment of capital at agreed premium as specified in MOA or AOA of the company at the time of liquidation of such company (preference at the time of wind up).
    c. **PARTICIPATORY RIGHTS – PSC:** It also includes those preference capitals with participatory rights in the dividend distribution / surplus of the company at the time of liquidation. (with or without above preferential rights) (POISON PILL STRATEGY)

Q.NO.3 WRITE ABOUT EQUITY SHARES WITH DIFFERENTIAL RIGHTS (DVR's)?

ANSWER:

RULE 4 OF THE COMPANIES (SHARE CAPITAL AND DEBENTURE) RULES, 2014 STATES ABOUT EQUITY SHARES WITH DIFFERENTIAL RIGHTS (DVR): (OBJECTIVE: TO RETAIN CONTROL AND MANAGEMENT)

CONDITIONS FOR THE ISSUE OF EQUITY SHARES WITH DVR: A Company can issue Equity shares with differential rights only if it satisfied all the following conditions:

1. **AOA:** The articles of association of the company authorizes the issue of shares with differential rights.

2. **UNLISTED COMPANIES - ORDINARY RESOLUTION:** The issue of shares is authorized by an ordinary resolution passed at a general meeting.

3. **LISTED COMPANIES – POSTAL BALLOT:** Where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot.

4. **MAXIMUM LIMIT:** The shares with differential rights shall not exceed 26% of the total post issue paid up share capital including equity shares with differential rights issued at any point of time. (ALWAYS SHOULD CHECK THIS POINT)

5. **TRACK RECORD:** The company having consistent track record of distributable profits for the last three years.

6. **REGULAR FILER WITH ROC:** The company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares.

7. **NO SUBSISTING DEFAULT:** The company has no subsisting default in the
   a. payment of a declared dividend to its shareholders or
   b. repayment of its matured deposits or
   c. redemption of preference shares or debentures that have become due for redemption or
   d. payment of interest on such deposits or debentures or payment of dividend;

8. **NO DEFAULT:** The company has not defaulted in
   a. payment of the dividend on preference shares or
   b. repayment of any term loan from a public financial institution or State level financial institution or scheduled bank that has become repayable or interest payable thereon or
   c. dues with respect to statutory payments relating to its employees to any authority or
   d. default in crediting the amount in Investor Education and Protection Fund to the Central Government

9. **DEFAULT MADE GOOD:** A company may issue equity shares with differential rights upon expiry of 5 years from the end of the financial Year in which such default was made good.

10. **WAS NOT PENALISED:** The company has not been penalized by Court or Tribunal during the last 3 years of any offence under:
    a. Reserve Bank of India Act, 1934,
    b. Securities and Exchange Board of India Act, 1992,
    c. Securities Contracts Regulation Act, 1956,
    d. Foreign Exchange Management Act, 1999 or
    e. Any other special Act, under which such companies being regulated by sectoral regulators.

11. **NON-CONVERSION:** Company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights (DVR) and vice–versa.

12. **RIGHTS TO THE HOLDERS OF THE EQUITY SHARES WITH DIFFERENTIAL RIGHTS:** States that the holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights share etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

13. **PARTICULARS OF SHARES TO BE MAINTAINED IN THE REGISTER OF MEMBERS:** Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

14. **DISCLOSURE IN THE BOARD'S REPORT:** Rule 4(4) provides that the Board of Directors shall disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, the following details:

    a. the total number of shares allotted with differential rights;
    b. the details of the differential rights relating to voting rights and dividends;
    c. the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
    d. the price at which such shares have been issued;
    e. the basis on which the price has been arrived at;
    f. in case of private placement or preferential issue-

       the particulars of promoters, directors or key managerial personnel to whom such shares are issued;

       details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;

    g. the change in control, if any, in the company consequent to the issue of equity shares with

differential voting rights;

h. the diluted Earnings Per Share pursuance to the issue of each class of shares, calculated in accordance with applicable accounting standards;

i. the pre and post issue shareholding pattern along with voting rights in the format specified.

j. **in case of public issue** – reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel

k. the percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

l. the scale or proportion in which the voting rights of such class or type of shares shall vary;

Q.NO.4 SHARE CERTIFICATE TO BE A PROOF OF SHARES HELD [SEC. 46]. COMMENT?

ANSWER: Under Sec. 46, the proof of evidence for a shareholder for the shares held by him are as below:

A. NON DEMAT - SHARE CERTIFICATE – EVIDENCE: A Certificate issued u/s 46(1) which is:

1. Distinctively numbered &
2. To be issued under common seal of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.
3. **DUPLICATE SC:**
   a. Section 46(2) provides that duplicate certificate of shares may be issued, if such certificate –
      - is proved to have been lost or destroyed; or
      - has been defaced, mutilated or torn and is surrendered to the company.

   b. The duplicate share certificate shall not be issued in lieu of those that are lost or destroyed, without prior consent of the Board and without payment of such fees as the Board thinks fit, not exceeding Rs. 50 per certificate and on such reasonable terms, such as furnishing supporting evidence and indemnity and the payment of out-of- pocket expenses incurred by the company in investigating the evidence produced.
   c. Where a duplicate certificate is issued, it shall be stated prominently on the face of it and be recorded in the Register maintained for this purpose, "duplicate issued in lieu of share certificate no……." and the word 'duplicate' shall be stamped or printed prominently on the face of share certificate.
4. **TIME LIMIT:**
   a. In case of unlisted companies, the duplicate share certificates shall be issued within a period of 3 months
   b. In case of listed companies such certificate shall be issued within 45 days from the date of submission o complete documents with the company respectively.

B. DEMAT SHARES – DEPOSITARY PROOF: The aforesaid requirements are not there in case of dematerialised shares or shares held in electronic form with any depository. In that case records of the depository will be treated as prima facie evidence of the right involved.

C. PUNISHMENT FOR DEFRUAD: if a company with intent to defraud, issues a duplicate certificate of shares, the punishment shall be as under:

a. The company shall be punishable with fine which shall not be less than 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extend to 10 times the face value of such shares or rupees **TEN CRORES** whichever is higher and
b. Every officer of the company who is in default shall be liable for action under section 447.

D. Rule 5(1) provides that where a company issues any share capital, no certificate of any share or shares held in the company shall be issued, except-

- in pursuance of a resolution by the Board; and
- on surrender to the company of the letter of allotment or fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares;
- if the letter of allotment is lost or destroyed, the Board may impose such reasonable terms, if any, as to seek supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as it may think fit.

E. SIGNING OF SHARE CERTIFICATE: A director shall be deemed to have signed the share certificate if his signature is printed thereon as a facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, or digitally signed, but not by means of a rubber stamp, provided the director shall be personally responsible for permitting the affixation o his signature thus and the safe custody of any machine, equipment or other material used for the purpose.

F. FORM: Every certificate of share or shares shall be issued in Form No. SH-1 or as near thereto as possible and specify the name(s) o the person(s) in whose favor the certificate is issued, the shares to which it relates and the amount paid up thereon.

G. REGISTER: The particulars of every share certificate issued shall be entered in the Register of Members along with the name(s) of person(s) to whom it is issued, indicating the date of issue.

Q.NO.5 EXPLAIN THE PROVISIONS OF COMPANIES RULES WITH RESPECT TO ISSUE OF RENEWED SHARE CERTIFICATE?

ANSWER:

A. Issue of renewed share certificate

1. Rule 6 provides that the certificate of any share(s) shall not be issued either in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out or where the pages on the reverse for recording transfers have been duly utilized, unless the certificate in lieu of which it is issued is surrendered to the company.

2. The company may charge such fees as the Board thinks fit, not exceeding Rs. 50 per certificate issued on splitting or consolidation of share certificate(s) or in replacement of share certificate(s) that are defaced, mutilated, torn or old, decrepit or worn out.
3. In such cases it shall be stated on the face of the share that it is "Issued in lieu of Share Certificate No."
4. Sub-divided/replaced/on consolidation" and also that no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court or Central Government.
5. A company may replace all the existing certificates by new certificates upon sub-division or consolidation of shares or merger or demerger or any reconstitution without requiring old certificates to be surrendered.
6. The details of such nature are to be entered in the Register maintained for this purpose.

B. Register of Renewed and Duplicate share certificate

1. Rule 6(3) provides that the particulars of every share certificate issued shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates maintained in Form No. SH-2. Indicating against the name(s) of the person(s) to whom the certificate is issued, the number and date of issue of the share certificate in lieu of which the new certificate is issued and the necessary changes indicted in the Register of Members by suitable cross reference in the "Remarks" column.
2. The register shall be kept at the registered office of the company or at such other place where the Register of Members is kept and it shall be preserved permanently and shall be kept in the custody of Company Secretary of the company or any other person authorized by the Board for this purpose.
3. All entries made in this register shall be authenticated by the Company Secretary or such other person as may be authorized by the Board for the purpose of sealing and signing the share certificate.

Q.NO.6 WRITE ABOUT VOTING RIGHTS OF SHARE HOLDERS U/S 47 OF COMPANIES ACT, 2013?

ANSWER:

A. VOTING RIGHT OF MEMBER HOLDING EQUITY SHARE CAPITAL:

Every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company and

1. **POLL:** His voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

B. VOTING RIGHT OF MEMBER HOLDING PREFERENCE SHARE CAPITAL:

Every member of a company limited by shares who is holding any preference share capital shall, in respect of such capital, have –

1. A right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares, and
2. Any resolution for the winding up of the company, or

3. For the repayment or reduction of its equity or preference share capital AND
4. **POLL:** His voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company.
5. Where the dividend is not paid to the preference shareholders for a period of 2 years or more, such preference shareholders shall have a right to vote on all the resolutions placed before the company.

Q.NO.7 WRITE ABOUT VARIATION OF RIGHTS OF SHAREHOLDERS U/S 48 OF COMPANIES ACT, 2013?

ANSWER:

VARIATIONS OF SHAREHOLDERS' RIGHTS [SEC. 48]:

Where share capital of a company is divided into different classes of shares, it may sometimes be necessary for it to amend the rights attached to one or more classes of shares. The Companies Act states the following laws on the variations of shareholders' right:

A. VARIATION IN RIGHTS OF SHAREHOLDERS WITH CONSENT:

Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than 3/4th of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class —

MOA AND AOA:

1. If provision with respect to such variation is contained in the memorandum or articles of the company; or
2. in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class then the voting rights may be varied.
3. However, if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

B. NO CONSENT FOR VARIATION – APPLICATION TO TRIBUNAL:

1. **DISSENTINENT MORE THAN 10% - NCLT:** Where the holders of not less than 10% of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.
2. **21 DAYS TIME LIMIT FOR APPLICATION:** An application under this section to NCLT shall be made within 21 DAYS after the date on which the consent was given or the resolution was passed.
3. **EFFECT OF VARIATION:** Such application may be made on behalf of all the shareholders who dissented by such one or more of their number as they may appoint in writing for the

purpose. If an application is made before the Tribunal the variation shall not be affected until it is confirmed by the Tribunal.

4. **BINDING DECISION OF TRIBUNAL:** The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.
5. **FILING COPY OF ORDER WITH THE REGISTRAR:** The Company shall, within 30 DAYS of the date of the order of the Tribunal, file a copy with the ROC.

C. DEFAULT IN COMPLIANCE WITH THE PROVISION:

Where any default is made in complying with the provisions of this section:

1. **THE COMPANY** shall be punishable with fine which shall not be less than RS.25,000/- but which may extend to RS. 5,00,000/- and
2. **EVERY OFFICER** of the company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than RS.25,000/- but which may extend to RS. 5,00,000/- or with both.

Q.NO.8 WRITE ABOUT ISSUE OF SHARES AT PREMIUM U/S 52?

ANSWER:

1. When a security of a given face value is issued at price higher than its face value, the issue is called as issue at premium and the differential amount as premium.
2. The Premium received by the company on those shares shall be transferred to a securities premium account
3. For the Purpose of Reduction of capital, the securities premium shall also be considered at par with paid up capital.

4. **APPLICATION OF SECURITIES PREMIUM ACCOUNT:** The securities premium account can be utilised for:
    a. Issue of fully paid bonus shares.
    b. Writing off the preliminary expenses of the company.
    c. Writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company.
    d. Premium payable on the redemption of any redeemable preference shares or of any debentures of the company or
    e. Purchase of its own shares or other securities under section 68 (Buy Back)

5. **Prescribed Class of Companies are permitted to apply Securities Premium Account:** The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under Section 133:
    a. in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares or

b. in writing off the expenses of or the commission paid, or discount allowed on any issue of equity shares of the company; or
c. for the purchase of its own shares or other securities under section 68.

Q.NO.9 A COMPANY IS PROHIBITED TO ISSUE SHARES AT DISCOUNT U/S 53 OF THE ACT. DISCUSS?

ANSWER:

1. According to section 53, a company shall not issue shares at a discount, except in the case of an issue of sweat equity shares given under section 54 of the Companies Act, 2013.
2. Any shares issued by a company at a discount shall be void.
3. **EXCEPTIONS**: a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.

Q.NO.10 WRITE ABOUT ISSUE OF SWEAT EQUITY SHARES U/S 54?

ANSWER:

A. SWEAT EQUITY SHARES [SEC. 2(88)]: Sweat equity shares mean such equity shares as are issued by a company to its directors or employees:
   1. At a discount or
   2. For consideration, other than cash (Non-Cash).

For providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

B. ESOP [SEC. 2(37)]: Employees' stock option means the option given to:
   1. the directors, officers or employees of:
      a) a company or
      b) of its holding company or
      c) subsidiary company or companies,
   2. which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

C. CONDITIONS FOR ISSUE OF SWEAT EQUITY SHARES [SEC .54]: The conditions where a company may issue sweat equity shares of a class of shares already issued only if the following conditions are satisfied:
   1. SPECIAL RESOLUTION: The issue is authorised by a special resolution passed by the company. The allotment under this section shall be completed within a period of 12 months from the date of Special Resolution.
   2. SPECIFY NO. OF SHARES: The resolution specifies:
      a. The number of shares,
      b. The current market price, consideration, if any, and

c. The class or classes of directors or employees to whom such equity shares are to be issued.

3. **FOR LISTED SHARES:** Where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board.
4. The rights, limitations, restrictions and provisions related to sweat equity shareholders shall *Pari Passu* with other equity shareholders.
5. **IMPORTANT CONDITIONS:**
   a. **MAX 15 % IN A YEAR:** A company shall not issue sweat equity shares for more than 15% of the existing paid-up equity share capital in a year or shares of the issue value of rupees 5 CRORES, whichever is higher.
   b. **MAX 25% IN LIFETIME:** Issuance of sweat equity shares in the Company shall not exceed 25% of the paid-up equity capital of the Company at any time.
   c. **STARTUP COMPANY – 50% (10 YEARS):** In case of a start-up company, it is provided that it may issue sweat equity shares not exceeding 50% of its paid-up capital up to 10 YEARS from the date of its incorporation or registration.
   d. **BOD REPORT:** The Board of Directors shall disclose in the Directors' Report for the year in which such shares are issued, the specified details of issue of sweat equity shares.
   e. **MEMBERS REGISTER:** The company shall maintain a Register of Sweat Equity Shares in Form No. SH. 3. It shall be maintained at the registered office of the company or such other place as the Board may decide.
   f. The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by the Board for this purpose.

6. **Explanatory statement:** Rule 8(2) provides that the explanatory statement to be annexed to the notice of the general meeting shall contain the following particulars:
   a. The date of the Board meeting at which the proposal for issue of sweat equity shares was approved;
   b. The reasons or justification of the issue;
   c. The class of shares under which sweat equity shares are intended to be issued;
   d. The total number of shares to be issued;
   e. The class or classes of directors or employees to whom such sweat equity shares are to be issued;
   f. The terms and conditions including basis of valuation;
   g. The time period of association of such person with the company;
   h. The names of the directors or employees to whom shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;
   i. The price of the share;
   j. The consideration including the consideration other than cash, if any to be received for the sweat equity;
   k. The applicable accounting standards;
   l. Diluted EPS calculated with the applicable accounting standards

D. DEFINITION:

1. **''EMPLOYEE'' MEANS:**
   a. A permanent employee of the company who has been working in India or outside India or
   b. A director of the company, whether a whole- time director or not or
   c. an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company.

2. **VALUE ADDITION:** 'Value additions' means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee. (I.e., Sweat Equity shares are in addition to agreed CTC to an employee) (ESOP is generally forming part of CTC)

Q.NO.11 WRITE ABOUT ISSUE OF EMPLOYEE STOCK OPTION U/S 62?

ANSWER:

A. Issue of Employees' stock option: A company, other than listed company shall not offer shares to its employees under a scheme of employee's stock option unless it complies with the following conditions:

1. The issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution;

2. The company shall make the following disclosures in the explanatory statement annexed to the notice for passing of the resolution-
   a. The total number of stock options to be granted;
   b. Identification of classes of employees entitled to participate in the Employees Stock Option scheme;
   c. The appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme;
   d. The requirements of vesting and the period of vesting;
   e. The maximum period within which the options shall be vested;
   f. The exercise price or the formula for arriving at the same;
   g. The lock-in period, if any;
   h. The maximum number of options to be granted per employee and in aggregate;
   i. The method which the company shall use to value its options;
   j. The conditions under which option vested in employees may lapse;
   k. The specified time period within which the employee shall exercise the vested options in the events of a proposed termination of employment or resignation of employee; and
   l. A statement to the effect that the company shall comply with the applicable accounting standards.

B. KEY DEFINITIONS:

1. **Employee:**

   For the purpose of this rule, the term 'employee' is defined as-

   i. A permanent employee of the company who has been working in India or outside India; or
   ii. A director of the company, whether a whole time director or not but excluding an independent director; or
   iii. An employee of a subsidiary in India or outside India, or of a holding company of the company

   but does not include-

   i. An employee who is a promoter or a person belonging to the promoter group; or
   ii. A director who either himself or through his relative or through anybody corporate, directly or indirectly, holds more than 10% o the outstanding equity shares of the company.

2. **Exercising price**

   Rule 12 (3) of the Companies (Share Capital and Debentures) Rules, 2014 provides that the companies granting option to its employees pursuance to the Employees Stock option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.

C. Special Resolution

1. Rule 12(4) provides that the approval of shareholders by way of separate resolution shall be obtained by the company in case of-
   i. Grant of option to employees of subsidiary or holding company; or
   ii. Grant of option to identified employees, during any one year, equal to or exceeding 1% of the issued capital of the company at the time of grant of option.
2. Rule 12(5)(a) provides that the company may by special resolution, vary the terms of Employees Stock Option Scheme not yet exercised by the employees provided such variation is not prejudicial to the interest of the option holders.
3. Rule 12(5)(b) provides that the notice for passing special resolution or variation of terms of the scheme shall disclose full of the variation, the rationale therefor, and the details of employees who are beneficiaries of such variation.

D. Period gap

1. Rule 12(6)(a) provides that there shall be a minimum period of one year between the grant of options and vesting of option.
2. In case where options are granted by a company under this scheme in lieu of options held by the same person under this scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause.

E. Lock in period: Rule 12 (6)(b) provides that the company shall have the freedom to specify the lock-in-period for the shares issued pursuant to exercise of such option.

F. Other aspects

1. The employees shall have not the right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.
2. The amount, if any, payable by the employees at the time of grant of option-
   a. May be forfeited by the company if the option is not exercised by the employees within the exercise period; or
   b. The amount may be refunded to the employees if the options are not vested due to non fulfillment of conditions relating to vesting of option as per the Employees Stock Option Scheme;
3. The options granted shall not be transferable to any other person.
4. The option granted shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.
5. No person other than the employees to whom the option is granted shall be entitled to exercise the option.
6. In the event of the death of the employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.
7. If the employee suffers a permanent incapacity in employment, all the options granted to him shall vest in him on that day.
8. In case of resignation or termination, all options not vested in the employee on that day shall expire.
9. However, the employee can exercise the option which is vested within the period specified, subject to the terms and conditions under the scheme granting such options as approved by the Board.

G. Disclosure

Rule 12(9) provides that the Board of Directors, shall, inter alia, disclose in the Directors' Report for the year, the following details of the Employees Stock Option Scheme:

1. Options granted;
2. Options vested;
3. Options exercised;
4. The total number of shares arising as a result of exercise of option;
5. Options lapsed;
6. The exercise price;
7. Variation of terms of options;
8. Money realized by exercise of options;
9. Total number of options in force;
10. Employee wise details of options granted to-
    - Key managerial personnel;
    - Any other employee who receives a grant of options in any one year of option amounting to 5% or more of options granted during that year;
    - Identified employees who were granted option, during any one year, equal to or exceeding 1% of the issued capital of the company at the time of grant.

H. Register

1. Rule 12(10) provides that the company shall maintain a Register of Employee Stock Options in Form No. SH-6 and shall forthwith enter therein the particulars of options granted.
2. The Register shall be maintained at the registered office of the company or such other place as the Board may decide.
3. The entries in the Register are to be authenticated by the Company Secretary of the Company or by any other person authorized by the Board for this purpose.

I. Listing Company

Rule 12 (11) provides that where the equity shares of the company are listed on a recognized stock exchange, the Employees Stock Option Scheme shall be issued, in accordance with the regulations made by SEBI.

Q.NO.12 WRITE ABOUT PROVISIONS OF COMPANIES ACT, 2013 REGARDING ISSUE OF PREFERENCE SHARES?

ANSWER:

A. Rule 9 of Companies (Share Capital and Debentures) Rules, 2014, provides that a company having a share capital may, if so authorized by articles, issue preference shares subject to the following conditions:

1. The issue should be authorized by passing a special resolution in the general meeting of the company;
2. The company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued earlier either before or after the commencement of this Act or in payment of dividend due on any preference shares.
3. In the resolution, the company shall set out the following:
   a. The priority with respect to payment of dividend or repayment of capital vis-à-vis equity shares; the participation in surplus fund;
   b. The participation in surplus assets and profits, on winding up which may remain after the entire capital has been repaid;
   c. The payment of dividend on cumulative or non cumulative basis;
   d. The conversion of preference shares into equity shares;
   e. The voting rights;
   f. The redemption of preference shares.
4. The explanatory statement to be annexed to the notice of the general meeting shall provide the complete material facts concerned with and relevant to the issue of such shares, including-
   a. The size of the issue and number of preference shares to be issued and nominal value of each share;
   b. The nature of such shares i.e., cumulative or non-cumulative, participating or non-participating, convertible or non-convertible;
   c. The objectives of the issue;

d. The manner of issue of shares;
e. The price at which such shares are proposed to be issued;
f. The basis on which the price has been arrived at;
g. The terms of issue, including terms and rate of dividend on each share, etc.,
h. The terms of redemption, including the tenure of redemption, redemption of shares at premium and if the preference shares are convertible, the terms of conversion;
i. The manner and modes of redemption;
j. The current shareholding pattern of the company;
k. The expected dilution in equity share capital upon conversion of preference shares.

B. The particulars of the issue of the preference shares shall be noted in the Register of Members. If a company wants to list its preference shares on a recognized stock exchange, it shall issue the preference shares in accordance with the regulations made by SEBI

C. REDEMPTION IS MUST:

1. A Company is Prohibited to Issue Irredeemable Preference Shares.
2. **MAX 20 YEARS TIME FOR REDEMPTION:** A Company subject to AOA issue preference shares which are to be redeemed within a period not exceeding 20 YEARS from the date of their issue.
3. However, A company may issue preference shares for a period exceeding 20 YEARS (but not exceeding 30 YEARS) for INFRASTRUCTURE PROJECTS (specified in schedule VI) and the preference shareholders shall be given an option to redeem 10% of shares beginning 21st YEAR.

D. REDEMPTION CONDITIONS:

1. **ONLY OUT OF PROFIT / FRESH PROCEEDS:** A Company can redeem preference shares only out of:
   a. Profits of the company that are otherwise eligible for distribution of dividend or
   b. Proceeds from Fresh Issue of Shares made for the purpose of such redemption.

2. **REDEEMED SHARES TO BE FULLY PAID:** In order to redeem, the shares must be fully paid.

3. **PROPOSED SHARES TO BE REDEEMED SHALL BE TRANSFERRED TO THE CRR ACCOUNT:**

   a. **OUT OF PROFITS:** Where such shares are to be redeemed out of the profits of the company, a sum equal to the nominal amount of the shares to be redeemed shall be transferred from profits to a reserve, to be called the Capital Redemption Reserve(CRR) Account.
   b. **OUT OF FRESH ISSUE:** CRR Requirement shall not apply. However, the proceeds from fresh issue to the extent of premium received can only be utilised for paying premium on redemption of existing preference shares. In other words, the nominal value of preference shares to be redeemed can be paid out from fresh proceeds which may consist of nominal value or securities premium.

4. **SOURCES FOR PREMIUM ON REDEMPTION:**

a. In case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed.
b. The premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.
c. In a case not meeting above criteria, the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.
d. In a case not falling of point a,b,c, then the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed) in a case not falling under sub-clause (i) above, the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

E. UNABLE TO REDEEM: Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue, it may—

1. **SPECIAL RESOLUTION:** The consent of the holders of **3/4th in VALUE** of such preference shares, and
2. **APPROVAL OF NCLT:** The approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares. On Further issue of redeemable preference shares, the unredeemed shares are deemed to be redeemed.
3. **DISSENTINENT SHAREHOLDERS FOR FURTHER ISSUE:** Where any existing preference shareholders who have not consented for such issue of fresh redeemable shares, the TRIBUNAL CAN ORDER that the unredeemed preference shares are deemed to be redeemed and the company will redeem all the existing preference shares from the proceeds of fresh issue of preference shares.
4. **NO INCREASE / REDUCTION OF CAPITAL:** It is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or a reduction, in the share capital of the company.

F. Period of redemption

Rule 9(6) provides that a company may redeem its preference shares only on the terms on which they were issued or as varied after due approval of preference shareholders under Section 48 of the Act. The preference shares may be redeemed-

1. At a fixed time or on the happening of a particular event;
2. Any time at the company's option; or
3. Any time at the shareholder's option.

Q.NO.13 WRITE ABOUT TRANSFER AND TRANSMISSION OF SECURITIES?

ANSWER:

SECTION 56 of the Companies Act, 2013 deals with the transfer and transmission of securities or interest of a member in the company.

CONDITIONS FOR TRANSFER OF SECURITIES:

In case of:

a. A transfer of securities of the company, or
b. A transfer of the interest of a member in the company in the case of a company having no share capital.

The following conditions shall be satisfied in order to register above such transfers:

1. **PROPER INSTRUMENT:** Only through a proper instrument of transfer (in SH-4) is duly stamped, dated and executed:
    a. by or on behalf of the transferor and the transferee (except where the transfer is between persons both of whose names are entered as holders of beneficial interest in the records of a depository) AND
    b. Specifying the name, address and occupation, if any, of the transferee.

2. **60 DAYS TIME LIMIT:** The Instrument shall be delivered to the company by the transferor or the transferee within a period of 60 days from the date of execution, along with:
    a. The certificate relating to the securities (share certificate), or
    b. If no such certificate is in existence, along with the letter of allotment of securities.

3. **IF INSTRUMENT IS LOST:** Where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the 60 DAYS, the company may register the transfer on such terms as to indemnity as the Board may think fit.

4. **PARTLY PAID SECURITIES – CONSENT OF TRANSFEREE:** Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice to the transferee(Form No. SH-5) and the transferee gives no objection to the transfer within **2 WEEKS** from the receipt of notice.

5. **POWER OF COMPANY TO REGISTER – TRANSMISSION [SEC 56(2)]**: Further in case of transmission of securities also same procedure as specified above shall be followed by the company while registering transfer of such securities in the name of transferee who is a successor / legal heir. The transmission request is generally received from the transferee to whom such right is given under the operation of law. (NO TIME LIMIT)

    CASES OF TRANSMISSION: In the following cases, transmission of shares shall take place:
    a. **Death:** When a shareholder expires, his shares need to be transmitted to his legal representative.

b. **Insolvency:** When a shareholder becomes insolvent, his shares are to be transmitted to his Official Receiver.
c. **Lunacy:** When a shareholder becomes lunatic, his shares are to be transmitted to his administrator appointed by the Court.

6. **TIME LIMIT - ISSUE OF CERTIFICATE OF SECURITIES**: Every company shall deliver the certificates of all securities allotted, transferred or transmitted—

Different Situations	Period of the delivering the certificates
In the case of subscribers to the memorandum; (upon subscribing)	Within **2 MONTHS** from the date of incorporation
In the case of any allotment of any of its shares (Primary Market)	Within a period of **2 MONTHS** from the date of allotment
In the case of a transfer or transmission of securities (Secondary Market)	Within a period of **1 MONTH** from the date of receipt of the instrument of transfer or the intimation of transmission
In the case of any allotment of debenture (For Debentures)	Within a period of **6 MONTHS** from the date of allotment

Further where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

7. **DIRECT TRANSFER OF SECURITY OF THE DECEASED BY LEGAL REPRESENTATIVE:** The transfer of any security or other interest by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer. (without transferring on to their Name)

8. **DEFAULT IN COMPLIANCE OF THE ABOVE PROVISIONS:**
   a. Section 56(6) provides that where any default is made in complying with the provisions of Section 56 the company shall be punishable with fine which shall not be less than ` 25,000 but which may extend to ` 5 lakhs.
   b. Every officer of the company who is in default shall be punishable with fine which shall not be less than ` 10,000 but which may extend to ` 1 lakh.
   c. **LIABILITY OF DEPOSITORY:** Where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447 of the Companies Act, 2013 and also for punishments mentioned under the Depositories Act, 1996.

9. **TRASNFER VS TRANSIMISSION: [SELF STUDY]**
   a. Transfer is a voluntary act by transferor to transfer securities or other interest, in the company, to transferee. Whereas Transmission involves Operation of Law.
   b. In case of Transfer adequate consideration is generally involved. In case of Transmission Adequate consideration may not be involved.

c. Transfer Deed is required in case of transfer of shares and not required in case of transmission of shares.

Q.NO.14 WRITE ABOUT PUNISHMENT FOR PERSONATION OF SHAREHOLDER [SECTION 57]?

ANSWER:

1. If any person intentionally personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and
    a. thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or
    b. receives or attempts to receive any money due to any such owner,
2. Such person shall be punishable with imprisonment for a term which shall not be less than 1 YEAR, but which may extend to 3 YEARS **AND** with fine which shall not be less than Rs. 1,00,000/- rupees but which may extend to Rs. 5,00,000/-.

Q.NO.15 WRITE ABOUT REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL [SECTION 58]?

ANSWER:

A. REFUSAL TO REGISTER TRANSFER OF SHARES:

PRIVATE COMPANY: If a Private company limited by shares refuses, to register the transfer of, or the transmission of the right to any securities or interest of a member in the company, then the company shall send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of 30 DAYS from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company. (within 30 days of receiving request)

PUBLIC COMPANY: The securities or other interest of any member in a public company are freely transferable, subject to the contract/arrangement which are enforceable under law.

B. APPEAL TO TRIBUNAL – 30 DAYS: The transferee may appeal to the Tribunal against the refusal:
    a. Within 30 DAYS from the date of receipt of the refusal notice or
    b. In case no notice has been sent by the company, within 60 DAYS from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company. (Note: the time limit for registering transfer instrument is ONE MONTH)

C. REFUSAL BY PUBLIC COMPANY: If a public company without sufficient cause refuses to register the transfer of securities within a period of 30 DAYS from the date of instrument of transfer or the intimation of transmission, is delivered to the company:
    a. **REFUSAL INTIMATED:** the transferee may, within a period of 60 DAYS of such refusal or
    b. **NO INTIMATION OF REFUSAL:** within 90 DAYS of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

D. DEALING BY NCLT: The Tribunal after hearing the parties, either dismiss the appeal, or by order—

1. **DIRECT – REGISTER THT TRANSFER:** direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
2. **RECTIFICATION OF REGISTER:** Direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.
3. **CONTRAVENTION OF NCLT ORDER:** Shall be punishable with imprisonment for a term not less than 1 YEAR but which may extend to 3 YEARS **AND** with fine not less than Rs. 1,00,000/- which may extend to Rs.5,00,000/-.

Q.NO.16 WRITE ABOUT RECTIFICATION OF REGISTER OF MEMBER [SECTION 59]?

ANSWER:

The procedure for the rectification of register of members after the transfer of securities:

A. REMEDY TO THE MEMBERS – APPLICATON TO NCLT:

1. If the name of any person is:
    a. Entered in the register of members (ROM) without a reasonable cause or
    b. The recorded member details are later omitted from ROM or
    c. A default or unnecessary delay takes place in entering in the ROM,
2. Such aggrieved person / member or such company may appeal to:
    a. The tribunal or
    b. Competent specified courts outside India – For Foreign members
3. For rectification of register.

B. ORDER OF THE TRIBUNAL – BE FINAL:

The Tribunal after hearing the parties to the appeal by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of 10 DAYS of the receipt of the order, or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

C. VOTING RIGHT – TRANSFEREE:

Any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

D. PUNISHMENT:

1. Section 59(5) provides that if any default is made in complying with the order of the Tribunal the company shall be punishable with fine which shall not be less than ` 1 lakh but which may extend to ` 5 lakh.

2. Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than `1 lakh but which may extend to `3 lakhs, or with both.

Q.NO.17 WRITE ABOUT MEANINGS OF AUTHORIED CAPITAL AND CALLED UP CAPITAL?

ANSWER:

AUTHORISED CAPITAL [Sec 2(8)]: Authorised capital or Nominal capital means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.

CALLED UP CAPITAL [Sec 2(15)]: States that called-up capital means such part of the capital, which has been called for payment.

Q.NO.18 WRITE ABOUT DIFFERENT WAYS OF ALTERATION OF SHARE CAPITAL U/S 61?

ANSWER:

A limited company having a share capital may alter its capital in memorandum subject to AOA in GM's in the following ways:

A. **INCREASE THE AUTHORISED CAPITAL:** Increase its authorised share capital by such amount as it thinks expedient (necessary).

B. **CONSOLIDATE:** Consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. However, if consolidation or division is resulting in change of voting powers of shareholders then it shall be approved by the Tribunal on an application made in the prescribed manner;

C. **CONVERSION TO STOCK:** convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination.

D. **SPLIT:** sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

E. **CANCEL OF SHARES:** cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

   NOTE: Further the cancellation of shares shall not be deemed to be a reduction of share capital.

F. **NOTICE TO ROC:**

   Section 64(1) provides that where-

- a company alters its share capital;
- an order made by the Government has the effect of increasing authorized capital of a company; or
- a company redeems any redeemable preference shares

the company shall file a notice in Form No. SH-7 along with fee, with the Registrar within a period of 30 days of such alteration or increase or redemption, along with an altered memorandum.

E. PUNISHMENT:

If a company and any officer, who is in default, contravene the provisions of Section 64(1) it or he shall be punishable with fine which may extend to ` 1,000 for each day during which such default continues, or ` 5 lakhs, whichever is less.

Q.NO.19 WRITE ABOUT FURTHER ISSUE OF SHARE CAPITAL AND PREFERENTIAL ALLOTMENT U/S 62?

ANSWER:

ABOUT - ISSUE OF RIGHT SHARES: A rights issue involves subscription rights to buy additional securities in a company offered to the company's existing security holders. It is a non-dilutive pro rata way to raise capital.

EXAMPLE: 1:10 rights issue means an existing investor can buy 1 extra share for every 8 shares already held by him/her. Usually, the price at which the new shares are issued by way of rights issue is less than the prevailing market price of the stock to encourage subscription.

SEC 62(1): If a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to:

A. RIGHTS ISSUE - OFFER TO EXISTING SHARE HODLERS: [SEC 62(1)(a)]:

First the offer shall be made to Existing Equity Shareholders in proportion to existing paid up share capital on the date of offer, subject to the following conditions:

1. NOTICE OF OFFER:

a) **MIN 15 / MAX 30:** The offer shall be made by notice specifying the number of shares offered and limiting a time not being less than 15 DAYS and not exceeding 30 DAYS from the date of the offer. If No response is obtained from such ESH – it is deemed that the offer is declined by him.

b) **NOTICE OF OFFER:** The notice of offer shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least 3 DAYS before the opening of the issue. Which means the rights issue shall open only after 3 days after the notice of offer is issued.

2. RIGHT OF RENOUNCEMENT:

The Shareholder in respect of whom the rights offer is made is deemed to have the right of renouncing his right in favour of another person in writing. However, if AOA of a company prohibits renouncements, then there is no renouncement option.

Further the notice of rights offer shall contain an explicit statement regarding renouncement option.

3. RIGHTS OFFER - ON EXPIRY:

After the expiry of the time specified in the offer notice, or on receipt of statement of decline from the concerned shareholder to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.

NOTE: Only Board resolution is adequate if right shares proposed are being issued to existing shareholders. In other words, General Meeting and OR/SR are not required.

B. ESOP – TO EMPLOYEES: [SEC 62(1)(b)]: To employees under a scheme of Employees' stock option, subject to special resolution passed by the company and subject to such conditions as may be prescribed.

C. FURTHER SHARES TO ANY OTHER PERSONS: [SEC 62(1)(c)]:

To any persons, if it is authorised by a SPECIAL RESOLUTION, in addition to existing shareholder and employees of the company, either for cash or for a consideration other than cash Provided:

1. The price of such shares is determined by the valuation report of a registered valuer,
2. Compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Examples: FPO or Private Placements.

D. Preferential Offer

1. The expression 'preferential offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity share or bonus shares or depository receipts issued in a country outside India or foreign securities.
2. Where the preferential offer of shares or other securities is made by a listed company, then such issue shall be done in accordance with the provisions of the Act and regulations made by SEBI.
3. If the company is an unlisted company, then it can be made subject to the compliance of the requirements as specified.

NON-APPLICABILITY OF SEC 62(1):

1. **[SEC. 62(3)]:** This section shall not apply to an increase of the subscribed capital of a company caused by the exercise of an option where debentures or loans are converted into shares in the company.
   CONDITION: SPECIAL RESOLUTION AT THE TIME OF ORIGINAL ISSUE: The terms of issue of such debentures or loan containing such an option have been approved BEFORE the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting. (E.g., Optional Convertible Debentures or Optional Convertible Loan)

2. MANDATORY CONVERSION OF DEBENTURES BY GOVERNMENT: [SEC. 62(4)]

a) Where it appears to the government that at public interest, it may order on a company to covert debentures issued or loan taken to be converted in to shares of the company EVEN THOUGH the terms of issue do not contain such provision for option of conversion.

b) While determining the terms and conditions of conversion, the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.

c) **IF GOVERNMENT ORDER NOT ACCEPTABLE – NCLT:**
   1) Where the terms and conditions of such conversion are not acceptable to the company, it may, within 60 DAYS from the date of communication of such order, appeal to the Tribunal.
   2) The Tribunal after hearing the company and the Government pass such order as it deems fit.

d) **DEEMED INCREASE IN AUTHORISED CAPITAL:** Where due to Government order or if the appeal is dismissed by NCLT then the increase in subscribed capital of the company which has the effect of increase in authorised capital then the authorised capital shall stand increased equal to an amount of value of shares which were came into existence due to such conversion.

Q.NO.20 WRITE ABOUT ISSUE OF BONUS SHARES U/S 63 OF COMPANIES ACT, 2013?

ANSWER:

Bonus shares are shares issued by a company to its current shareholders as fully paid shares free of any cost to them.

EXAMPLE: 1:3 bonus issue means an existing shareholder will get ONE EXTRA FREE SHARE for EVERY THREE SHARES already held by him/her.

The following are the conditions for issue of Bonus Shares:

1. **SOURCE:** A Company can issue fully paid bonus shares only out of the following sources:
   a) Its free reserves.

b) The securities premium account or
c) The capital redemption reserve account.

2. **PROHIBITED TO USE REVALUATION RESERVE:** Bonus shares shall not be made by capitalising reserves created by the revaluation of assets.

3. **PROCEDURAL CONDITIONS:**

   a. **AOA:** Issue of Bonus shares shall be authorised by its articles.
   b. **BOD APPROVAL:** Shall be approved by BOD. Further Once after BOD made recommendation, they cannot withdraw the same. [Once announced in board meeting, it cannot be withdrawn later]
   c. **ORDINARY RESOLUTION:** Shall be approved by Shareholders at General Meeting by passing an ordinary resolution.
   d. **NO DEFAULT:**
      i. The company has not defaulted in payment of interest or principal in respect of fixed deposits or debentures/bonds.
      ii. The Company has not defaulted in respect of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
   e. **PARTLY PAID TO FULLY PAID:** The existing partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.
   f. **NOT IN LIEU OF DIVIDEND:** The bonus shares shall not be issued in lieu of dividend.

Note: Rule 14 provides that the company which has once announced the decision of the Board recommending a Bonus issue shall not subsequently withdraw the same.

Note: According to the proviso to Section 123(5) of the Companies Act, 2013, it is permissible for a company to capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

Q.NO.21 WRITE ABOUT REDUCTION OF CAPITAL U/S 66 OF COMPANIES ACT, 2013?

ANSWER:

A. REDUCTION OF CAPITAL:

1. **SPECIAL RESOLUTION:** A company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital by: (Known as a type of Internal Reconstruction)
   a. Extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up or **(Example – 1)**
   b. Either with or without extinguishing or reducing liability on any of its shares:
      i. Cancel any paid-up share capital which is lost or is unrepresented by available assets **(Example – 2)** or

ii. Pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly **(Example – 3)**

2. **NCLT APPROVAL:** Further an Application shall be made to Tribunal after passing special resolution.
   (**Author Note:** Buy Back of shares u/s 68 and Redemption of Preference shares u/s 55 are also treated as reduction of capital but Sec. 66 shall not apply to them and NCLT approval is not required for them).

3. The company shall also alter its memorandum by reducing the amount of its share capital and of its shares accordingly

EXAMPLES:

1. ***WAIVE UNCALLED CAPITAL:*** *If the shares are of face value of INR 125 each of which INR 100 has been paid, the company may reduce them to INR 100 fully paid-up shares and thus relieve the shareholders from liability on the uncalled capital of INR 25 per share.*
2. ***WRITEOFF UNREPRESENTED CAPITAL:*** *If the shares of face value of INR 100 each fully paid-up is represented by INR 75 worth of assets. In such a case, reduction of share capital may be affected by cancelling INR 25 per share and writing off similar amount of assets.*
3. ***REDUCE PAID UP VALUE PER SHARE:*** *Shares of face value of INR 100 each fully paid-up can be reduced to face value of INR 75 each by paying back INR 25 per share.*
4. *Note that Diminution is different from reduction of capital. Diminution refers to reducing unsubscribed authorised capital of the company.*

B. PROHIBITION ON REDUCTION OF CAPITAL:

If the company has arrears in the repayment of any deposits accepted by it or the interest payable thereon, then the company cannot reduce the capital under this section.

C. ISSUE OF NOTICE BY TRIBUNAL AND CONSIDER REPRESENTAIONS RECEIVED:

1. **NOTICE TO WHOM:** The Tribunal shall give notice of every application to:
   a. The Central Government (Regional director),
   b. Registrar and
   c. The Securities and Exchange Board, in the case of listed companies, and
   d. The creditors of the company

2. **REPRESENTATION:** Shall take into consideration the representations, if any, made to it by that Government, Registrar, the SEBI and the creditors within a period of 3 MONTHS from the date of receipt of the notice.

3. **NO REPRESENTATION:** Where no representation has been received within the said period, it shall be presumed that they have no objection to the reduction.

D. ORDER OF TRIBUNAL:

1. The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been:
   a. Discharged or
   b. Determined or
   c. Has been secured or
   d. His consent is obtained,

   Make an order confirming the reduction of share capital on such terms and conditions as it deems fit.

2. **AUDITOR'S CERTIFICATE ON THE ACCOUNTING TREATMENT:** Further the tribunal shall sanction reduction of capital only if the accounting treatment proposed by the company for reduction of such capital is in accordance with accounting standards u/ 133 of the act AND a certificate to that effect by Company's Auditor is filed with tribunal.

3. **PUBLISHING OF ORDER OF CONFIRMATION OF TRIBUNAL:**

   The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct. (**Author Note:** Shall be Published in Newspaper and website to receive representations and objections of various parties such as creditors and these objections shall be forwarded to NCLT)

E. FILING WITH ROC:

The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Tribunal showing—

a) the amount of share capital.
b) the number of shares into which it is to be divided.
c) the amount of each share and
d) the amount, if any, at the date of registration deemed to be paid-up on each share,

To the ROC within 30 DAYS of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

F. NO LIABILITY OF MEMBER: A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.

E.g., Original FV 10/-, Paid Up 8/-. Reduced Face Value by order 6/-. Difference is 6 Minus 8 = -2. Therefore, no liability arises to the member in future.

G. IF CREDITOR IS ENTITLED TO OBJECT - FAILED:

Where a creditor who is entitled to object reduction of capital has not objected due to ignorance of such reduction or his name was not entered in list of creditors AND company commits a default as per the meaning of Sec. 6 of Insolvency and Bankruptcy Code, 2016, Then:

1. **COMPANY STILL EXIST:** Every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date (i.e., Order Date of Reduction of capital by tribunal) and
2. **COMPANY – ALREADY WOUNDUP:** If the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
3. This provision does not affect the rights of the contributories among themselves.

H. LIABILITY OF OFFICER:

If any officer of the company:

1. Knowingly conceals the name of any creditor entitled to object to the reduction;
2. Knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
3. Abets or is privy (already aware) to any such concealment or misrepresentation as aforesaid,

He shall be liable under section 447.

F. LIABILITY OF COMPANY:

If a company fails to comply with the directions of the Tribunal to publish its order, it shall be punishable with fine which shall not be less than ` 5 lakh but which may extend to ` 25 lakh.

NOTE: SEC 68 HAS OVERRIDING EFFECT ON 66. WHICH MEANS NOTHING IN THIS SECTION APPLIED TO BUY BACK OF SECURITIES.

Q.NO.22 A COMPANY IS RESTRICTED TO PURCHASE ITS OWN SHARES U/S 67. COMMENT?

ANSWER:

RESTRICTION ON PURCHASE BY COMPANY OR GIVING OF LOANS BY IT FOR PURCHASE OF ITS SHARES [SECTION 67]:

1. **PROHIBITION ON DIRECT PURCHASE:** A fundamental principle of Company Law was that a Company cannot buy its own shares. In other words, NO company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent to reduction of share capital.

[SIMPLEY A COMPANY CANNOT INVEST IN ITSELF]

EXCEPTIONS:

1. **PRIVATE COMPANIES / SPECIFIED IFSC PUBLIC COMPANY**- A Private company / IFSC Public Co.:
   a) In whose share capital no other body corporate has invested any money.
   b) If the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice its paid-up share capital or 50 CRORE rupees, whichever is lower and
   c) Such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.
2. **NIDHI COMPANY:** When shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013.

2. PROHIBITION ON INDIRECT PURCHASE OF OWN SHARES: No public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription by any person of any shares in its company or in its holding company.

EXCEPTIONS:

1. **LENDING BUSINESS:** The lending of money by a banking company in the ordinary course of its business.
2. **LENDING MONEY IN A SCHEME:** the provision is made by a company for lending of money in accordance with any scheme approved by company through special resolution with such requirements as may be prescribed, 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 employees or such shares held by the employee of the company.
3. **EMPLOYEE LOAN:** The giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.
   However, disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

3. RIGHT TO REDEMPTION: Further the right of a company to redeem any preference shares issued will not be affected due to the provisions of this section.

4. PENALTY FOR CONTRAVENTION: If a company contravenes the provisions of this section:

   a. **FOR COMPANY:** It shall be punishable with fine which shall not be less than Rs.1,00,000/- but which may extend to Rs.25,00,000/- and

b. **OFFICER IN DEFAULT:** Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 YEARS **AND** with fine which shall not be less than Rs.1,00,000/- but which may extend to Rs.25,00,000/-.

Q.NO.23 EXPLAIN BUYBACK OF SHARES IN ACCORDANCE WITH SEC 68 TO SEC 70 OF COMPANIES ACT 2013.

ANSWER:

MEANING: Buy back is the re-acquisition by a company of its own securities. It is a way of returning money to its investors.

EXAMPLES:

1. 2021, **INFOSYS** did buy back of shares worth of Rs. 9,200/- Crore.
2. Tata Consultancy Services (TCS), announced India's biggest buyback offer till date for whopping amount of Rs.16,000 Crores. The offer consists of 7.61 Crore shares which is 1.99% of the company's total paid up capital.

PROVISIONS OF BUY BACK UNDER SECTION 68:

A. SOURCES OF FUNDS FOR BUY-BACK OF SHARES [Sec. 68(1)]:

A company can purchase its own shares or other specified securities. The purchase should be out of:

a) its free reserves or
b) the securities premium account or
c) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities [Sec. 68(1)].

NOTE: "Specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.

B. CONDITIONS FOR BUY-BACK [Sec. 68(2)]:

The company shall comply with following conditions for Buy Back:

a) **AOA:** The buy-back is authorised by its articles.

b) **SPECIAL RESOLUTION:** A special resolution authorising the buy-back is passed in general meeting of the company.
EXCEPTION: If the buy-back is, 10% or less of the total paid-up equity capital and free reserves of the company, Then BOD Resolution in a Board Meeting would be sufficient. **(Free Reserves Includes Securities Premium for the purpose of this Section.)**

c) **MAX 25% OF PUC PLUS RESERVES:** The buy-back is 25% or less of the aggregate of paid-up capital and free reserves of the company.

Further the buy-back of equity shares in any financial year shall not exceed 25% of its total paid up EQUITY CAPITAL in that financial year.

d) **2:1 DEBT – POST BUYBACK:** The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid-up capital and its free reserves. (E.g., Similar to Capital Adequacy Norm). Further CG can prescribe higher ratio for specified companies.

e) **ONLY FULLY PAID:** All the shares or other specified securities for buy-back are fully paid-up. In other words, Partly Paid shares are not eligible for buy back. (But Reduction of Capital U/s. 66 is permitted).

f) **SEBI:** In Case of Listed Companies, SEBI Regulations Shall be followed.

g) **LOCK IN PERIOD:** No offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

C. PROCEDURE BEFORE BUY-BACK [Sec. 68(3)]:

The Company Shall send Notice of General Meeting along with Explanatory statement for passing special resolution for proposed buyback which shall contain the following:

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

D. MAX 12 MONTHS TIME LIMIT [Sec. 68(4)]:

Every buy-back shall be completed within twelve months from the date of passing the special resolution or a resolution passed by the Board at general meeting authorising the buy back.

E. BUY-BACK FROM WHOM [Sec. 68(5)]:

The buy-back may be:

a) From the existing shareholders or security holders on a proportionate basis; or
b) From the open market or
c) By purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity. [Sections 68(5)]

F. DECLARATION OF SOLVENCY [NO DEFAULT UPTO 1 YEAR] [Sec. 68(6)]:

Where a company has passed a special resolution or the Board has passed a resolution to buy-back its own shares or other securities, it shall, before making such buy-back, file with the Registrar and the SEBI (For Listed Companies):

a) **DECLARATION:** A declaration of solvency in the form as may be prescribed and verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of 1 YEAR of the date of declaration.

b) **SIGNING:** Such Declaration shall be signed by at least two directors of the company, one of whom shall be the managing director, if any.

G. EXTINGUISHMENT OF SECURITIES [Sec. 68(7)]:

Where a company buys-back its own securities or other specified securities, it shall extinguish and physically destroy the shares or securities so bought-back within 7 DAYS of the last date of completion of buy-back.

H. COOLING PERIOD ON FURTHER ISSUE OF SAME CLASS [Sec. 68(8)]:

1. Where a company completes a buy-back of its shares or other specified securities, it shall not make further issue of same kind of shares including in the form of Right Shares for a period of 6 Months.
2. However, this restriction shall not apply in the following cases:
    a. For Issue of bonus shares or
    b. In the discharge of subsisting obligations such as:
        i. conversion of warrants,
        ii. stock option schemes,
        iii. sweat equity or
        iv. conversion of preference shares or debentures into equity shares.

I. REGISTER OF BUY BACK [Sec. 68(9)]:

1. Every Company which completed buy back shall maintain a register of:
    a. Shares or securities so bought,
    b. The consideration paid for the shares or securities bought-back,
    c. The date of cancellation of shares or securities,
    d. The date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.
2. The Register shall be in Form No. SH-10. The register shall be maintained at the registered office of the company and shall be kept in the custody of the secretary of the company or any other person authorized by the Board in this behalf.
3. The entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

J. FILING OF BUY-BACK RETURN WITH ROC AND SEBI:

1. A company shall, after completion of the buy-back, file with the Registrar and the SEBI, a return containing such particulars relating to the buy-back within 30 DAYS of such completion, as may be prescribed.
2. No such return is required to be filed with SEBI by an unlisted company.

3. There shall be annexed to the return filed with the Registrar in Form No. SH-11, a certificate in Form No. SH-15 signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of this Act and the rules made there under.

K. PENALTY FOR DEFAULT [Sec. 68(11)]:

If a company makes default in complying with the provisions of this section or any regulations made under SEBI:

1. The **company** shall be punishable with fine which shall not be less than Rs.1,00,000/- but which may extend to Rs.3,00,000/- and
2. **Every officer** of the company who is in default shall be punishable not be less than Rs.1,00,000/- but which may extend to Rs.3,00,000/-

L. TRANSFER OF CERTAIN SUMS TO CAPITAL REDEMPTION RESERVE ACCOUNT [SECTION 69]:

1. **NOMINAL VALUE TO CRR:** Where a company purchases its own shares out of free reserves or securities premium account, then a sum equal to the nominal value of the share so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.
2. The capital redemption reserve account may be applied by the company for issuing Fully Paid Bonus Shares.

M. PROHIBITION FOR BUY-BACK IN CERTAIN CIRCUMSTANCES [SECTION 70]:

1. The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-
   a) Through any subsidiary company including its own subsidiary companies or
   b) Through any investment company or group of investment companies or
   c) **IF DEFAULT IS MADE:** If a default, is made by the company:
      a. In repayment of deposits or interest payment thereon or
      b. Redemption of debentures or preference shares or payment of dividend or
      c. Repayment of any term loan or interest payable thereon to any financial institutions or banking company.

      EXCEPTION: But where the default is made good and a period of three years has lapsed after such default ceased to subsist, there such buy-back is not prohibited.

PROVISIONS OF BUY BACK [COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014]

BUY BACK BY PRIVATE AND UNLISTED COMPANIES

A. Rule 17 of the Companies (Share Capital and Debentures) Rules, 2014 provides that unless stated otherwise, the explanatory statement annexed to the notice for general meeting, in respect of private companies and unlisted companies for buy-back of their securities, shall contain the following disclosures-

1. The date of the board meeting at which the proposal for buy-back was approved by the board of directors of the company.
2. The objective of the buy-back.
3. The class of shares or other securities intended to be purchased under the buy-back;
4. The number of securities that the company proposes to buy-back;
5. The method to be adopted for the buy-back;
6. The price at which the buy-back of shares or other securities shall be made;
7. The basis for arriving at the buy-back price;
8. The maximum amount to be paid for the buy-back and the sources of funds from which the buy- back would be financed;
9. The time limit for the completion of buy-back;
10. The aggregate shareholding of the promoters and of the directors of the promoter, where promoter is a company and of the directors and KMP as on the date of notice convening the general meeting;
11. A confirmation that there is no default subsisting in repayment of deposits, interest payment, redemption of debentures or payment of interest or redemption of preference shares or payment of dividend due to any shareholder or any term loans or interest payable to any financial institution or banking company;
12. A confirmation that the Board of Directors have made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-
    - There shall be no grounds that the company could be found unable to pay its debts;
    - The company shall able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of 1 year from the date on which the general meeting is convened and;
    - The directors have taken into account the liabilities (including prospective and contingent liabilities), as if the company were being wound up;

    A report addressed to the Board of directors by the company's auditors stating that-

    - They have inquired into the company's state of affairs;
    - The amount of the permissible capital payment for the securities in question is in their view properly determined;
    - That the audited accounts on the basis of which calculation with reference to buy-back is done is not more than six months old from the date of offer documents;
      Note: Provided that where the audited accounts are more than 6 months old, the calculations with reference to buy back shall be on the basis of un- audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company and
    - The Board of Directors have formed the opinion on reasonable grounds and that the company, having regard to its state of affairs, shall not be rendered insolvent within a period of 1 year from that date.

B. LETTER OF OFFER

1. **ROC FILING:**

a. Rule 17(2) provides that the company which has been authorized by a special resolution shall, before the buyback of shares, file with the Registrar of Companies a letter of offer in Form No. SH-8 along with the fee.
b. Such letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less than two directors, one of whom shall be the Managing Director, where there is one.

2. The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than 20 days from its filing with the Registrar of Companies.
3. **OFFER PERIOD:** Rule 17(5) provides that the offer for buy-back shall remain open for a period of not less than 15 days and not exceeding 30 days from the date of dispatch of offer letter provided that where all members of a company agree, the offer for buy-back may remain open for a period less than 15 days.
4. Rule 17(6) provides that in case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.

C. VERIFICATION OF OFFER

Rule 17(7) provides that the company shall complete the verifications of the offer received within 15 days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within 21 days from the date of closure of the offer.

D. BANK ACCOUNT

Rule 17(8) provides that the company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy back in terms of these rules.

E. Rule 17(9) provides that the company shall within seven days from 21 days from the date of closure of the offer-

1. Make payment of consideration in cash to those shareholders or security holders whose securities have been accepted; or
2. Return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance.

F. OBLIGATIONS OF COMPANY: Rule 17(10) provides that the company shall ensure that-

1. The letter of offer shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such document.
2. The company shall not issue any new shares including by way of bonus shares from the date of passing of special resolution authorizing the buy-back till the date of closure of

the offer under these rules, except those arising out of any outstanding convertible instruments;

3. The company shall confirm in its offer the opening of a separate bank account adequately funded for this purpose and to pay the consideration by way of cash;
4. The company shall not withdraw the offer once it has announced the offer to the shareholders.
5. The company shall not utilize any money borrowed from banks or financial institutions for the for the buy-back.
6. The company shall not utilize the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back.

Q.NO.24 WRITE ABOUT PROVISIONS UNDER COMPANIE ACT 2013 RELATING TO ISSUE AND REDEMTPION OF DEBENTURES?

ANSWER:

A. DEFINITION OF DEBENTURE [SEC. 2(30)]: Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not. Section 44 provides that the debentures shall be the movable property transferable in the manner provided in the articles of the company.

B. MANNER OF ISSUE AND REDEMPTION OF DEBENTURES [SEC. 71]:

1. **CONVERSION OPTION:** A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption.
2. **CONVERTIBLE DEBT – SPECIAL RESOLUTION:** The issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved BY A SPECIAL RESOLUTION passed at a general meeting. In other words, issue of NCD's do not require shareholders' approval.
   Note: Further if the proposed NCD's together with existing borrowings exceeds the total PUC and reserves and surplus, the Special Resolution shall be obtained.
3. **NO VOTING RIGHTS:** A company prohibited to issue any debentures carrying any voting rights.
4. **SECURED DEBENTURES:**
   a. Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed in Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014.
   b. **10 YEARS:** An issue of secured debentures may be made, provided the date of its redemption shall not exceed 10 years from the date of issue.
   c. **MORE THAN 10 BUT NOT EXCEEDING 30 YEARS:** The Following Classes Of Companies May Issue Secured Debentures For A Period Exceeding 10 Years But Not Exceeding 30 Years:
      i. Companies engaged in setting up of infrastructure projects.

ii. Infrastructure Finance Companies as defined in clause (viia) of sub direction (1) of direction 2 of Non-Banking Financial (Non-deposit accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007.

iii. Infrastructure Debt Fund Non-Banking Financial Companies' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011

iv. Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding 10 years.

d. **CREATION OF CHARGE:** Such an issue of debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies. Such assets or properties shall be of value which is sufficient for the due repayment of the amount of debentures and interest thereon.

e. **SECURITY:** The security for the debentures by way of a charge or mortgage shall be created by the company in favour of the debenture trustee on-

- any specific movable property of the company; and
- any specific immovable property wherever situate, or any interest therein.

f. **APPOINTMENT OF DEBENTURE TRUSTEE:** The company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures. Further, not later than 60 days after the allotment of the debentures, it shall execute a debenture trust deed to protect the interest of the debenture holders.

C. DEBENTURE TRUSTEE IF PUBLIC OFFER > 500:

1. **APPLICABILITY:** If a Company want to issue debentures to more than 500 persons including members of the company, Then Prospectus for public offer can be issued only if the company appointed one or more debenture trustee and prescribe governing rules and regulations.

2. **CONTENT LETTER:** Before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

3. **DISQUALIFICATIONS OF DEBENTURE TRUSTEES:** As per Rules, the following Persons cannot be appointed as Debenture trustees:

   i. Beneficially holds shares in the company

   ii. Is promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company

   iii. Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee.

iv. Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company.
v. Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon.
vi. Has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or 50 lakh rupees or such higher amount as may be prescribed, whichever is lower, during the 2 immediately preceding financial years or during the current financial year.
vii. is a relative of any promoter or any person who is in the employment of the company as director or key managerial personnel.

4. FILLING OF CASUAL VACANCY IN OFFICE OF TRUSTEE:

a. **ANY REASON OTHER THAN RESIGNATION:** The Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act.

b. **RESIGNATION – DEBETURE HOLDERS APPROVAL:** It is provided that where such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.

5. REMOVAL OF TRUSTEE: Any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than 3/4th in value of the debentures outstanding, at their meeting.

6. ROLE OF DEBENTURE TRUSTEE:

The debenture trustee is to-

1. Satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;
2. Satisfy himself that the covenants in the trust deed are not prejudicial to the interest of debenture holders;
3. Call for periodical status or performance reports from the company;
4. Communicate promptly to the debenture holders' defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor.
5. Appoint a nominee director on the Board of the company in the event of-
   - Two consecutive defaults in payment of interest to the debenture holders; or
   - Default in creation of security for debentures; or
   - Default in redemption of debentures.
6. Ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;

7. Inform the debenture holders immediately of any breach of the terms of the issue of debentures or covenants of the trust deed;
8. Ensure the implementation of the conditions regarding creation of security for debentures, if any, and debenture redemption reserve;
9. Ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;
10. Do such acts as are necessary in the event the security becomes enforceable;
11. Call for reports on the utilization of funds raised by the raised by the issue of debentures;
12. Take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;
13. Ensure that the debentures have been converted or redeemed in accordance with the terms of issue of debentures;
14. Perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.

7. LIABILITY OF DEBENTURE TRUSTEE:

a. Any terms in debenture trust deed are void if those terms are exempting the liability for breach of trust even without exercising degree of care and due diligence required from him as a trustee.
b. However, the liability of trustee can be exempted by passing a resolution by NOT LESS THAN $3/4^{TH}$ IN TOTAL VALUE of debentures of such class.

8. PAY INTEREST AND REDEMPTION: A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

9. PETITION BEFORE THE TRIBUNAL BY TRUSTEE:

SITUATION: Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due:

ORDER OF TRIBUNAL: The debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.

D. FAILURE TO REDEEM / TO PAY INTEREST:

1. Where a company fails to:

a. redeem the debentures on the date of their maturity or
b. fails to pay interest on the debentures when it is due.

2. The Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct the company to redeem the debentures forthwith on payment of principal and interest due thereon.

NOTE: A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

E. DEFAULT IN COMPLYING WITH THE ORDER OF THE TRIBUNAL

Section 71 (11) provides that if any default is made in complying with the order of the Tribunal, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than ` 2 lakhs but which may extend to ` 5 lakh or with both.

F. Meeting of debenture holders

Rule 18(4) provides that the meeting of all the debenture holders shall be convened by the debenture trustees on-

1. Requisition in writing signed by debenture holders holding at least once tenth in value of the debentures for the time being outstanding.
2. The happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

G. Trust deed

1. A trust deed in Form No. SH-12 shall be executed by the company issuing debentures in favor of the debenture trustees within three months of closure of the issue or offer.
2. A trust deed for securing any issue of debentures shall be open for inspection to any member of debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company.
3. A copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within 7 days of the making, on payment of fee.

Q.NO.25 WRITE ABOUT DEBENTURE REDEMPTION RESERVE U/S 71 OF COMPANIES ACT 2013?

ANSWER:

DEBENTURE REDEMPTION RESERVE: As per the Companies (Share Capital and Debentures) Rules, 2014, the company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below-

1. The Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend.
2. The company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:

	Public Issue	Private Placement
All India Financial Institutions	-	-
Financial Institutions U/s 2(72) of Companies act	RBI LIMITS	RBI LIMITS
Listed Companies:		
On Public Issue	-	-
On Private Placement	-	-
Unlisted Companies:		
NBFCs	-	-
Others	10% of Debentures*	10% of Debentures

***Outstanding Value**

3. **INVESTMENT REQUIREMENT:**
    a. For Listed Companies (Including Listed NBFC) and other unlisted companies shall (on or before the 30th day of April in each year) deposit minimum 15 % of the amount of its debentures maturing during the year, **Ending on 31st March of Next Year** in any one or more of the following methods, namely:
        1. In deposits with any scheduled bank.
        2. In securities of the Central Government or of any State Government.
        3. In securities and bonds mentioned in section 20 (a) to (f) of the Indian Trusts Act, 1882.
        4. The amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above:
        5. Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;
    b. Above investments cannot be charged for securing any loan etc. Also, it should be used only for redemption of debentures.
    c. Also, it should not at any time fall below 15% of the amount of the debentures maturing during the year ending on the 31st day of March of that year.
4. In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture.
5. The amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

5. ACCEPTANCE OF DEPOSITS

[SEC. 73 TO 76A]

Q.NO.1 EXPLAIN THE MEANING OF THE TERM DEPOSIT UNDER COMPANIES ACT 2013?

ANSWER:

DEFINITION [SEC. 2(31)]:

the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve bank of India.

Q.NO.2 PRESCRIBED CATOGERIES ARE NOT CONSIDERED AS DEPOSITS UNDER RULE 2(1)(C) OF COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014. EXPLAIN?

ANSWER:

Rule 2(c) of Companies (Acceptance of Deposits) Rules, 2014, defines the term 'deposit' as including any receipt of money by way of deposit or loan or in any form by a company, but does not include-

1. Any amount received from the Central Government or a State Government or any amount received from any other source, whose repayment is guaranteed by the Central Government or a State Government.
2. Any amount received from the local authority or statutory authority;
3. Any amount received from foreign Governments, foreign or international banks, multilateral financial institutions, foreign Governments owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of FEMA, 1999 and rules made there under.
4. Any amount received as a loan or facility from any bank;
5. Any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government;
6. Any amount received by a company from another company;
7. Any amount received towards an offer of securities; if the securities cannot be allotted and the said amount has not been refunded within 60 days it would amount to deposit;
8. Any amount received from a director of the company;
9. Any amount received by issue of bond or debenture;
10. Any amount received from the employee in the nature of non interest bearing security deposit;
11. Any non-interest bearing amount received and held in trust;
12. Any amount received in the course of the business of the company;
13. An advance received under an agreement or arrangement;

14. Any amount received as security deposit;
15. Any amount received as advance under long term projects for supply of capital goods;
16. Any amount brought in by the promoters of the company;
17. Any amount accepted by a Nidhi company;

Q.NO.3 EXPLAIN MEANING OF DEPOSITOR UNDER RULE (1)(d) OF ACCEPTANCE OF DEPOSIT RULES?

ANSWER:

As per Rule 2 (1) (d), the term 'Depositor' means:

a) Any member of the company who has made a deposit with the company in accordance with the provisions of subsection (2) of section 73 of the Act, or
b) Any person who has made a deposit with a public company in accordance with the provisions of section 76 of the Act.

Q.NO.4 WRITE ABOUT PROHIBITIVE PROVISION AND COMPANIES THAT ARE EXEMPT FROM PROHIBITIVE PROVISION FOR ACCEPTANCE OF PUBLIC DEPOSITS?

ANSWER:

PROHIBITIVE PROVISION [SEC. 73(1)]:

NO company can accept or renew deposits from public unless it follows the manner provided under Chapter V (contains provisions regarding acceptance of deposits by companies) of the Act for acceptance or renewal of deposits from public. Manner of acceptance of deposits from public is explained later in the Chapter.

EXEMPTED COMPANIES [Proviso to SEC. 73(1)]:

Prohibition on the acceptance or renewal of deposit from public shall not apply to the following types of companies:

1. Any banking companies.
2. Any non-banking financial company (NBFC) as defined in the Reserve Bank of India Act, 1934.
3. Any housing finance company (HFC) registered with the National Housing Bank established under the National Housing Bank Act, 1987 and
4. Such other company as the Central Government may specify, after consultation with the Reserve Bank of India.

Q.NO.5 WRITE ABOUT PROVISIONS RELATING TO ACCEPTANCE OF DEPOSITS FROM MEMBERS?

ANSWER:

Any company may accept or renew deposits from its members by following the provisions as set out below:

I. PASSING OF A RESOLUTION:

A company is required to pass a resolution in general meeting for acceptance of deposits from its members. [section 73 (2)]. **(ORDINARY RESOLUTION)**

II. ISSUANCE OF A CIRCULAR CONTAINING STATEMENT:

1. **PARTICULARS OF STATEMENT:** The company is required to issue a circular to its members including therein a statement showing:
    a. The financial position of the company,
    b. The credit rating obtained,
    c. The total number of depositors and
    d. The amount due towards deposits in respect of any previous deposits accepted by the company and
    e. Such other particulars in the prescribed form and manner. [SEC. 73 (2)(a)]

2. **FILING OF CIRCULAR - ROC:**

    The company is required to file a copy of the circular containing the statement with the Registrar WITHIN 30 DAYS before the date of issue of the circular. [section 73 (2) (b)]

III. REQUIREMENT OF DEPOSIT REPAYMENT RESERVE ACCOUNT (DRRA):

a) The company is required to deposit, on or before 30th of April each year, AT LEAST 20% OF THE AMOUNT of its deposits maturing during the FOLLOWING FINANCIAL YEAR and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account. [section 73(2)(c)]
b) Further such deposited amount shall not at any time fall below 20% of the amount of deposits maturing during the financial year.

IV. CERTIFICATION AS TO NO DEFAULT IN REPAYMENT - DECLARATION:

a) The company needs to certify that it has not committed any default in the repayment of deposits previously accepted including interest thereon.
b) In case a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default. [section 73 (2) (e)]

V. PROVISION OF SECURITY:

Provide security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

VI. REPAYMENT OF DEPOSIT:

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. [Section 73 (3)]

VII. FAILS TO REPAY - NCLT:

In case a company fails to repay the deposit or part thereof or any interest thereon, the DEPOSITOR concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit. [Section 73 (4)]

Q.NO.6 WRITE ABOUT ELIGIBLE PUBLIC COMPANIES THAT ARE PERMITTED TO ACCEPT DEPOSITS FROM PUBLIC?

ANSWER:

A. ELIGIBLE PUBLIC COMPANY: A public company is 'eligible' to accept deposits from the public at large only if it complies with the following conditions:

1. It should be a public company.
2. It should have:
    a. Net worth of **Not Less than Rs. 100 crores** or
    b. A turnover of **Not Less than Rs. 500 crores**.
3. It has obtained the prior consent by means of a special resolution passed in general meeting.
4. The special resolution has been filed with the Registrar of Companies.

Note: An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c). [(Proposed Deposits plus existing debts) ARE LESS THAN OR EQUAL TO (PUC plus Reserves and Surplus)].

B. The Eligible Companies shall comply with the following provisions in order to accept deposits from public:

1. OBTAINING OF CREDIT RATING:

a) The 'eligible company' shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency.
b) The given rating shall be informed to the public at the time of invitation of deposits from the public.
c) Further, the rating shall be obtained for every year during the tenure of deposits.

2. CHARGE CREATION ON ASSETS:

a) Every company which accepts secured deposits from the public shall within 30 DAYS of such acceptance, create a charge on its assets.
b) The amount of charge shall not be less than the amount of deposits accepted. The charge shall be created in favour of the deposit holders in accordance with the prescribed rules.

Q.NO.7 WRITE ABOUT PUNISHMENT FOR CONTRAVENTION OF PROVISIONS OF SEC 73 TO 76?

ANSWER:

PUNISHMENT FOR CONTRAVENTION [SEC. 76A]:

In case a company accepts or invites or allows any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or

If a company fails to repay the deposit or part thereof or any interest within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73, then the following consequences will follow:

A. PUNISHMENT FOR THE COMPANY:

The company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than 1 CRORE rupees or twice the amount of deposit accepted by the company, whichever is lower, but which may extend to 10 crore rupees and

B. PUNISHMENT FOR OFFICER-IN-DEFAULT:

Every officer of the company who is in default shall be punishable with imprisonment which may extend to 7 years and with fine which shall not be less than 25 LAKH rupees, but which may extend to 2 CRORE rupees.

Q.NO.8 WRITE ABOUT PROVISIONS FOR REPAYMENT OF DEPOSITS ACCEPTED BEFORE COMMENCEMENT OF THIS ACT?

ANSWER:

1. **REPAYMENT OF DEPOSITS ACCEPTED BEFORE COMMENCEMENT OF THIS ACT**
   Section 74(1) provides that if any deposit is accepted before the commencement of the Companies Act, 2013 and the amount of such deposit or part thereof or any interest due thereon remains unpaid, on such commencement or becomes and at any time thereafter the company shall within a period of 3 months from such commencement or from the date on which such payments due –
   a. file with the Registrar a statement of all deposits accepted by the company and the sums remaining unpaid on such amount with interest thereon along with the arrangements made for such repayment; and
   b. repay within 3 years from such commencement or on or before the expiry of the period, for which deposits were accepted, whichever is **earlier**.

2. **APPLICATION WITH NCLT:** Section 74(2) provides that the Tribunal may, on an application made by the company, after considering the financial condition of the company, the amount of deposit o part thereof and the interest payable thereon and such other matters allow further time as considered reasonable to the company to repay the deposit.

3. PUNISHMENT

Section 74(3) provides that if a company fails to repay the deposit or part thereof or any interest thereon within the specified time or on extended time as may be allowed by the Tribunal,

a. the company shall, in addition to the payment of the amount of the deposit or part thereof and the interest due, be punishable with fine which shall not be less than ` 1 crore but which may extend to ` 10 crores.
b. Every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than ` 25 lakh but which may extend to ` 2 crores, or with both.

4. DAMAGES FOR FRAUD

a. Section 75 provides that where a company fails to repay the deposit or part thereof or any interest within the specified time or such further time as allowed by the Tribunal, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose,
   i. every officer of the company, who was responsible for the acceptance of such deposit shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.
b. Any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

Q.NO.9 WRITE ABOUT PROVISIONS RELATED TO ISSUE OF GLOBAL DEPOSITORY RECEIPTS?

ANSWER:

A. GLOBAL DEPOSITORY RECEIPT

1. Section 41 of the Act provides for the issue of global depository receipt. A company may issue depository receipts in any foreign currency.
2. For this purpose, special resolution is to be passed in the General Meeting.
3. The procedure for issuing global depository receipt is prescribed in 'Companies (Issue of Global Depository Receipts) Rules, 2014 which was issued vide Notification No. GSR 252 (E), dated 31.03.2014. These Rules came into effect from 01.04.2014.

B. SCHEME: Rule 2(c) defines the term 'scheme' as the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or any modification or re-enactment thereof.

C. ELIGIBILITY: Rule 3 provides the eligibility criteria to issue global depository receipts. A company may issue depository receipts provided it is eligible to do so in terms of the Scheme and relevant provisions of Foreign Exchange Management Rules and Regulations.

D. CONDITIONS: Rule 4 provides the conditions in issuing global depository receipts. The following are the conditions-

1. The Board of Directors of the company shall pass a resolution authorizing the company to do so;

2. The Company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting. A special resolution passed under Section 62 for issue of shares underlying the depository receipts, shall be deemed to be a special resolution for this purpose;
3. The depository receipts shall be issued by an overseas depository bank appointed by the company;
4. The underlying shares shall be kept in the custody of a domestic custodian bank;
5. The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts.
6. The company shall appoint-
   - A merchant banker; or
   - A practising Chartered Accountant; or
   - A practising Cost Accountant; or
   - A practising Company Secretary

   to oversee all the compliances relating to issue of depository receipts;
7. The compliance report taken from the above professionals shall be placed at the meeting of the Board of Directors of the Company or of the committee of the Board of Directors authorized by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts. The committee of the Board of Directors shall have at least one independent director, if the company requires to have independent director;

E. ISSUE OF DEPOSITORY: Rule 5 provides the manner and form of depository receipts.

1. The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent abroad and may be listed or traded in an overseas listing or trading platform.
2. The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Central Government or Reserve Bank of India may prescribe or specify from time to time.
3. The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.

F. VOTING RIGHT: Rule 6 provides that a holder of depository receipts may become a member of the company.

1. He shall be entitled to vote as such only on conversion of the depository receipts to the underlying shares after following the procedure provided in the Scheme and the provisions of this Act.
2. The overseas depository shall be entitled to vote on behalf of the holders of depository receipts until the conversion of depository receipts to shares is taken place. For this purpose, there would be an agreement entered into between the overseas depository, holders of depository receipts and the company.

G. PROCEEDS OF THE ISSUE:

1. Rule 7 provides that the proceeds of issues of depository receipts shall either be remitted to a bank account in India or deposited in an Indian Bank operating abroad or any foreign bank, which is a Scheduled Bank under the Reserve Bank of India Act, 1934, having operations in India with an agreement that the foreign bank having operations in India shall take responsibility for furnishing all the information which may be required and in the event of a sponsored issue of depository receipts,
2. the proceeds of the sale shall be credited to the respective bank account of the shareholders.

H. DEPOSITORY RECEIPTS PRIOR TO THIS ACT: Rule 8 provides that a company which has issued depository receipts prior to commencement of these rules i.e., 01.04.2014, shall comply with the requirements within six months of such commencement.

I. Non applicability of certain provisions: Rule 9 provides that certain provisions of the Companies Act, 2013 are not applicable to the issue of global depository receipts as detailed below:

1. The provisions of the Act and rules issued thereunder for the public issue of shares or debentures;
2. The provisions as applicable to a prospectus or an offer document;

6. REGISTRATION OF CHARGES

Q.NO.1 WRITE ABOUT CONCEPT AND MEANING OF CHARGE AND VARIOUS TYPES OF CHARGES UNDER COMPANIES ACT, 2013?

ANSWER:

A. DEFINITION OF CHARGE [SEC. 2(16)]:

"charge" has been defined as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Thus, charge is:

a) An interest or lien
b) Created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Q.NO.2 REGISTRATION OF CHARGES IS THE DUTY OF THE COMPANY. EXPLAIN?

ANSWER:

A. REGISTRATION OF CHARGES [SEC. 77]:

REGISTRATION OF CHARGE BY THE COMPANY:

1. Charge may be created within India or outside India.
2. The subject-matter of the charge i.e., the property or assets or any of company's undertakings, whether tangible or non-tangible, may be situated within India or outside India.
3. Whenever charge is created it must be registered by the company.

Note: In case a charge is created by deposit of title deeds (normally banks agree for this mode of charge instead of proper mortgage), it should also be registered by the borrowing company.

REGISTRATION OF CHARGE BY THE CHARGE-HOLDER [SEC. 78]:

In case the company creating a charge fails to register the charge within the prescribed period of 30 days, the person in whose favour the charge is created can get the charge registered.

REGISTRATION BY THE PURCHASER [SEC. 79]:

In case of registration of charge where a company purchased some property in whose case a charge was already registered. In this case also, the company purchasing the property shall get the charge registered in its name in place of seller in the records of Registrar.

NON-APPLICABILITY: This section shall not apply to such charges as may be prescribed in consultation with the RBI.

B. HOW TO REGISTER CHARGE:

1. The particulars of charge in the CHG – 1 together with a copy of the instrument, if any, creating the charge duly signed by the company and the charge holder, shall be filed with the Registrar within 30 days of creation of charge along with the prescribed fee.
2. Rule 3(1) provides that the charge to be registered is to be in the Form No. CHG – 1 (for other than debentures) and Form No. CHG – 9 for debentures.

C. CONDONATION OF DELAY

1. Rule 4(1) provides that the Register may, if he is satisfied that the company had sufficient cause for not filing the particulars and instrument of charge within the period of 30 days of the date of creation of charge, allow the registration another thirty days but within a period of 120 days of the creation of charge or modification of charge on payment of additional fee.
2. The application for condonation of delay shall be made in Form No. CHG-1 supported by a declaration from the company signed by his Secretary or director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company.

D. EXTENSION OF TIME LIMIT:

1. The Registrar may, on an application by the company, allow registration to be made within a period of 300 days of such creation on payment of additional fees as may be prescribed. If the registration is not made within a period of 300 days of such creation, the company shall seek extension of time.
2. Any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered.

E. ISSUE OF CERTIFICATE OF REGISTRATION:

1) **CERTIFICATE OF REGISTRATION:** If a charge is registered, a certificate of registration of such charge shall be issued in Form CHG-2 to the company and, as the case may be, to the person in whose favour the charge is created.
2) Section 77(3) provides that no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered and a certificate of registration is given by the Registrar.
3) Section 77(4) provides that Section 77(3) shall not prejudice any contract or obligation for the repayment of the money secured by a charge.
4) **CERTIFICATE – CONCLUSIVE EVIDENCE:** The certificate issued by the Registrar shall be conclusive evidence that the requirements of Chapter VI of the Act and the rules made thereunder as to registration of creation of charge have been complied with.

Q.NO.3 WRITE ABOUT APPLICATION FOR REGISTRATION OF CHARGE BY A CHARGE HOLDER U/S 78?

ANSWER:

Section 78 of the Companies Act, 2013, empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so:

1. Accordingly, if a charge is created but the company primarily responsible for registering the charge fails to do so within the prescribed period of 30 days [as provided in section 77 (1)], the person in whose favour the charge is created (i.e., charge-holder) may apply to the Registrar for registration of the charge along with the instrument of charge within the prescribed time, form and manner.
2. On receipt of application from the charge-holder, the Registrar shall give a notice to the company and if no objection is received, allow such registration within a period of 14 days after giving notice to the company on payment of the prescribed fees.
3. However, the Registrar shall not allow such registration by the charge-holder, if the company itself registers the charge or shows sufficient cause why such charge should not be registered.
4. **RECOVERY OF FEES – FROM COMPANY:** In case registration is affected on application made by the holder of charge, such person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.

Q.NO.4 WRITE ABOUT MODIFICATION OF CHARGES U/S 79 OF THE COMPANIES ACT, 2013?

ANSWER:

SECTION 79: Any modification in charge (i.e., change in terms and conditions or change in extent of any charge, etc.) to be registered by the company in accordance with Section 77.

CERTIFICATE OF MODIFICATION: Where the particulars of modification of charge is registered under section 79, the Registrar shall issue a certificate of modification of charge in Form CHG-3.

CARFITICATE – CONCLUSIVE EVIDENCE: The certificate so issued by the Registrar shall be conclusive evidence that the requirements of Chapter VI of the Act and the rules made thereunder as to registration of modification of charge have been complied with.

Q.NO.5 WRITE ABOUT DEEMED NOTICE OF CHARGE U/S 80?

ANSWER:

BUYER - DEEMED TO BE AWARE OF CHARGES:

Where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings, or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. [Register of charge is a Constructive Notice]

Q.NO.6 WRITE ABOUT REGISTER OF CHARGES MAINTAINED BY ROC?

ANSWER:

REGISTER OF CHARGES:

1. Section 81(1) provides that the Registrar shall, in respect of every company, keep a register containing particulars of the charges registered in such form and in such manner as may be prescribed.
2. Rule 7(1) provides that the particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in) shall be deemed to be register of charges for the purposes of Section 81(1).
3. Section 81(2) provides that a register kept by the Registrar shall be open to inspection by any person on payment of such fees as may be prescribed.

Q.NO.7 WRITE ABOUT REPORTING OF SATISFACTION OF CHARGE?

ANSWER:

INTIMATION REGARDING SATISFACTION OF CHARGE [SEC. 82]:

30 DAYS TIME LIMIT: A company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in CHG - 4. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction. [IFSC Pvt Ltd and IFSC Pub Ltd – 300 Days with additional fees]

EXTENDED PERIOD OF INTIMATION: The Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 DAYS of such payment or satisfaction on payment of prescribed additional fees.

NOTICE TO THE HOLDER OF CHARGE BY THE ROC – OBTAIN NOC:

1) On receipt of intimation, the Registrar shall cause a notice to be sent to the holder of the charge calling upon him to show cause within 14 days, as to why payment or satisfaction in full should not be recorded.
2) If no cause is shown by the charge-holder, the Registrar shall order entering of a memorandum of satisfaction in the register of charges kept by him and accordingly, he shall inform the company of having done so in Form CHG-5.
3) However, NO notice is required to be sent, in case the intimation to the Registrar is in the CHG-4 and is signed by the holder of charge.
4) If any cause is shown by the charge-holder, the Registrar shall record a note to that effect in the register of charges and inform the company.

NO EFFECT OF SECTION 82 ON THE POWERS OF THE REGISTRAR:

The provisions of this section do not affect the powers of the ROC u/s 83 whether or not the ROC received intimation from the company.

ISSUE OF CERTIFICATE OF SATISFACTION:

In case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Q.NO.8 WRITE ABOUT POWER OF REGISTRAR TO MAKE ENTRIES OF SATISFACTION AND RELEASE IN ABSENCE OF INTIMATION FROM COMPANY [SECTION 83]?

ANSWER:

A. POWER OF ROC:

1. With respect to any registered charge if evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:
   a) The debt has been satisfied in whole or in part; or
   b) The part of the property or undertaking has been released from the charge or
   c) Has ceased to form part of the company's property or undertaking.
2. This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

B. INFORMATION TO AFFECTED PARTIES: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

C. ISSUE OF CERTIFICATE: If the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Q.NO.9 WRITE ABOUT INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER U/S 84?

ANSWER:

A. NOTICE TO COMPANY AND ROC:

1. If any person obtains an order for the appointment of a receiver or a person to manage the property which is subject to a charge, or
2. If any person appoints such receiver or person under any power contained in any instrument,

He shall give notice of such appointment to the company and the Registrar along with a copy of the order or instrument within 30 days from the passing of the order or making of the appointment. The required form is Form No. CHG-6.

B. ROC DUTY: The Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

C. CESSATION OF APPOINTMENT: On ceasing to hold such appointment, the person appointed as above shall give a notice to that effect to the company and the Registrar. In turn, the Registrar shall register such notice.

Q.NO.10 WRITE ABOUT PUNISHMENT OF CONTRAVENTION WITH PROVISIONS OF REGISTRATION, MODIFICATION OR SATISFACTION OF CHARGES?

ANSWER:

PUNISHMENT FOR CONTRAVENTION [SEC. 86(1)]:

According to section 86 (1) of the Act of 2013, if any company is in default in complying with any of the provisions of this Chapter:

1. **The company** shall be liable with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 10 lakh
2. **Every officer** of the company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than ` 25,000 but which may extend to ` 1 lakh, or with both.

Q.NO.11 WRITE ABOUT REGISTER OF CHARGES MAINTAINED BY COMPANY AND INSPECTION OF REGISTER OF CHARGES?

ANSWER:

A. COMPANY'S REGISTER OF CHARGES

1. Section 85 provides that every company shall keep at its registered office a register of charges in Form No.CHG-7 and in such manner as prescribed.
2. The register shall include all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed.
3. A copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

B. INSPECTION OF REGISTERS: The register of charges shall be open for inspection during business hours-

1. by any member or creditor without any payment of fees; or
2. by any other person on payment of such fees as may be prescribed subject to such reasonable restrictions as the company may, by its articles impose.

Q.NO.12 WRITE ABOUT RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES [SEC. 87]?

ANSWER:

RECTIFICATION IN REGISTER OF CHARGES [Sec. 87]:

A. Section 87(1) provides that the Central Government on being satisfied that-

1. The omission to file with the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or

2. The omission to register any charge within the time required or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge within the stipulated time; or
3. The omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of Section 82 or 83 was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or
4. On any other grounds, it is just and equitable to grant relief, it may, on application of the company or any person interested, direct that the time for filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or the omission or mis-statement shall be rectified.

B. Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered (Section 87(2)).

C. RECTIFICATION BY GOVERNMENT IN REGISTER OF CHARGES: Rule 12(1) provides that-

1. Where the instrument creating or modifying a charge is not filed within a period of 300 days from the date of its creation or modification; and
2. Where the satisfaction of charges is not filed within 30 days from the date on which such payment of satisfaction the Registrar shall not register the same unless the delay is condoned by the Government.
3. The application for condonation of delay is to be filed in Form No. CHG-8 along with the fee.

D. The order passed by the Central Government shall be required to be filed with the Registrar in Form No. INC-28 along with fees as per the conditions stipulated in the order (Rule 12(3)).

7. MANAGEMENT AND ADMINISTRATION

Q.NO.1 DISCUSS THE PROVISIONS OF COMPANIES ACT WITH RESPECT TO NOTICE CALLING FOR GENERAL MEETINGS?

ANSWER:

A. NOTICE (Sec 101)

1. A general meeting may be called by giving not less than clear 21 days notice either in writing or through electronic mode.

2. A general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto—

i) in the case of an annual general meeting: by not less than 95%. 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 95%. of the total voting power exercisable at that meeting.

B. CONTENTS OF THE NOTICE

1. Every notice of a meeting shall specify the place, date, day and the hour of the meeting. It shall contain a statement of the business to be transacted at the meeting (Sec 101(2)).
2. A statement to be annexed to the notice. It provides that a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely —

i. The nature of concern of interest, financial or otherwise, if any in respect of each items of-
   a) every director and the manager, if any;
   b) every other key managerial personnel; and
   c) relatives of the persons mentioned above;

ii. 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. (Sec 102(1))

C. Notice to whom to be issued (Sec 101(3)): The notice of every meeting of the company shall be given to-

1. every member of the company, legal representative of any deceased member or the assignee of an insolvent member;

2. the auditor or auditors of the company; and
3. every director of the company

D. NOTICE BY ELECTRONIC MODE (RULE 18):

1. The term 'electronic mode' shall mean any communication sent by a company through its authorized and secured computer program 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.
2. The procedure of sending notice through electronic mode is discussed as detailed below:
   - **a)** A notice may be sent through email as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator for accessing such notice;
   - **b)** The email shall be addressed to the person entitled to receive such email as per the records of the company or as provided by the depository;
   - **c)** The subject shall state the name of the company, notice of the type of meeting, place and date on which the meeting is scheduled;
   - **d)** The attachment shall in a PDF or in a non-editable format together with a link or instructions for recipient for downloading relevant version of the software;
   - **e)** The company should ensure that it uses a system which produces confirmation of the total number of recipients mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as 'proof of sending';
   - **f)** The company is not responsible for the failure in transmission beyond its control;
   - **g)** If a member fails to provide or update relevant e-mail address to the company or to the depository participant, the company shall not be in default for not delivering notice via e-mail;
   - **h)** The company may send e-mail through in-house facility or its registrar and transfer agent or authorize any third party agency providing bulk e-mail facility;
   - **i)** The notice made through electronic mode shall be readable and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information;
   - **j)** The notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Government.

Q.NO.2 DISCUSS THE PROVISIONS OF COMPANIES ACT WITH RESPECT TO EXPLANATORY STATEMENT?

ANSWER:

A. TYPES OF BUSINESS:

a. ORDINARY BUSINESS

Section 102(2) provides that for the purpose of Section 102(1), in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than-

- the consideration of financial statements and the reports of the Board of Directors and auditors;
- the declaration of any dividend;
- the appointment of directors in place of those retiring;
- the appointment of and the fixing of the remuneration of, the auditors; and

In the case of any other meeting, all business shall be deemed to be special.

b. Special business

i. Where any item of special business to be transacted at a meeting of a company relates to or affects any other company,

ii. the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than 2% of the paid up share capital of that company, also be set out in the statement.

B. Inspection of documents (Sec 102(3))

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 shall be specified in the statement under sub-Section (1).

C. Non disclosure in statement (Sec 102(4))

i. Where as a result of non-disclosure or insufficient disclosure in any statement under sub-Section (1), made by a promoter, director, manager, if any, or other key managerial personnel, any benefit accrues to such of the persons mentioned above or their relatives, either directly or indirectly, such persons shall hold the benefit in trust for the company.

ii. Such persons are liable to compensate the company to the extent of the benefit received by them.

D. Penalty (Sec 102 (5)): If any default is made in complying with the provisions of Section 102, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to

a. Rs. 50,000 or

b. five times the benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives,

whichever is more.

Q.NO.3 DISCUSS THE PROVISIONS OF COMPANIES ACT WITH RESPECT TO QUORUM OF GENERAL MEETINGS?

ANSWER:

A. QUORUM FOR MEETINGS

1. It is usual to calculate a quorum for a meeting for the validity of the transactions taken place in the meeting.

2. Section 103(1) provides that unless the Articles of the company provide for a large number-

i) In case of a **public company**-

a) 5 members personally present if the number of members as on the date of meeting is not more than 1000;

b) 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;

c) 30 members personally present if the number of members as on the date of the meeting exceeds 5000;

ii) In case of a **private company** 2 members personally present shall be the quorum for a meeting of the company.

B. The articles of the company shall indicate the quorum more than this number or otherwise the above will be applicable.

C. Section 103(2) provides that if the quorum is not there within half an hour from the time appointed for holding a meeting of the company-

i) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine;

ii) the meeting, if called by requisitionists shall stand cancelled.

D. In the case of an adjourned meeting, the company shall give not less than 3 days notice to the members either individually or by publishing an 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.

E. If at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding meeting, the members present shall be the quorum.

Q.NO.4 DISCUSS THE PROVISIONS OF COMPANIES ACT WITH RESPECT TO CHAIRMAN OF GENERAL MEETINGS?

ANSWER:

CHAIRMAN OF MEETINGS

1. Unless the Articles of the Company provide otherwise, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands [Sec 104(1)].
2. If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act [Sec 104(2)].
3. The Chairman elected on a show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll.
4. Such other person shall be the Chairman for the rest of the meeting.

Q.NO.5 DISCUSS THE PROVISIONS OF COMPANIES ACT WITH RESPECT TO PROXY OF GENERAL MEETINGS?

ANSWER:

PROXY [Sec 105]

1. Any member of a company, entitled to attend a meeting and vote, shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

2. **NON-APPLICABILITY**: Section 105(1) is not applicable to

   a. a company not having a share capital **unless** the articles of that company provide for the appointment of proxy.
   b. A member of company registered under Section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

3. **INSTRUMENT:** The proxy shall be in the Form No. MGT-11.
   a. Section 105(6) provides that the instrument appointing a proxy shall be in writing and be signed by the appointer or his attorney duly authorized in writing or,
   b. if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorized by it.

4. **Maximum Limit:**
   a. A person can act as proxy on behalf of members not exceeding 50 and holding in the aggregate not more than 10% of the total share capital of the company carrying voting rights.

b. A member holding more than 10% 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.

c. The instrument appointing proxy shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles of a company.

5. DISCLOSURE:

a. Section 105(2) provides that in every notice for a meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or where that is allowed, one or more proxies, to attend and vote instead of him and that a proxy need not be a member.

b. If there is a default in complying with this provision, every officer of the company who is in default shall be punishable with fine which may extend to Rs. 5,000.

6. The instrument of proxy shall be deposited with the registered office of the company 48 hours before the conduct of the meeting.

7. INVITATIONS TO APPOINT AS PROXY:

a. Section 105(5) provides that if for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have notice of the meeting sent to him and to vote thereat by proxy,

b. Every officer of the company who knowingly issues the invitations as aforesaid or willfully authorizes or permits their issue shall be punishable with fine which may extend to Rs. 1 lakh.

c. Exemption: An officer shall not be punishable by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

8. Inspection of instrument of proxy [Sec 105(8)]

a. Every member entitled to vote at a meeting or on any resolution to be moved thereat, shall be entitled during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting,

b. to inspect the proxies lodged at any time during the business hours of the company, provided not less than 3 days' notice in writing of the intention to inspect is given to the company.

9. Representation of President and Governors in meetings [Section 112]

- The President of India or the Governor of the State, if he is a member of the company, may appoint such person as he thinks fit to act his representative at any meeting of the company or at any meeting of any class of members of the company.
- A person so appointed shall be deemed to be a member of such company.
- He shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

10. Representation of Corporations at meeting of companies and creditors [Section 113]

- Where a body corporate is a member or a creditor including a holder of debentures of the company and it authorises any person as its representative at any meeting of the company or any class of members of the company or at any meeting of creditors of the company,
- such representative shall be entitled to exercise the same rights and powers including right to vote by proxy and by postal ballot on behalf of the body corporate which he represents.

Q.NO.6 DISCUSS THE PROVISIONS OF COMPANIES ACT WITH RESPECT TO RESTRICTIONS ON VOTING RIGHTS?

ANSWER:

Restrictions on voting rights

1. Section 106(1) provides that the articles of a company may provide that no member shall exercise any voting right in respect any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.
2. Section 106(2) provides that a company shall not prohibit any member from exercising his voting right on any other ground except mentioned in Section 106(1).
3. Section 106(3) provides that on a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

METHOD OF VOTING

The methods of voting in a meeting of a company are as follows:

1. Voting by show of hands;
2. Voting through electronic means;
3. Voting by poll;
4. Postal ballot;

Q.NO.7 EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDING CONDUCT OF VOTING UNDER SHOW OF HANDS?

ANSWER:

VOTING BY SHOW OF HANDS [SEC 107]

A. According to section 107 of the Companies Act, 2013, **unless the voting is demanded by way of poll or by electronic means**, the voting should be done by way of show of hands in the first instance.

B. The declaration by the Chairman of the meeting in the minutes books shall be the conclusive evidence that the resolution is passed. [Sec 107(2)]

Q.NO.8 EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDING VOTING UNDER POLL.

ANSWER:

DEMAND FOR POLL [SEC 109]: On or before declaration of result of the voting on any resolution by a show of hands, the Chairman of the meeting on his own, or on demand made by the 'specified' members in that behalf conduct poll.

A. MEMBERS WHO CAN DEMAND FOR POLL –

1. In case of a company having a share capital, by the members present in person or proxy, where allowed, and having not less than 1/10th of the total voting power or holding shares on which an aggregate sum of not less than Rs. 5,00,000 or such higher amount has been prescribed has been paid – up.

2. In the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than 1/10th of the total voting power.

B. WITHDRAWAL OF DEMAND FOR POLL: the demand for poll may be withdrawn by the persons who made the demand, at any time.

C. TIME LIMIT FOR CONDUCTING POLL:

1. A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.
2. A poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than 48 hours from the time when the demand was made, as the Chairman of the meeting may direct.

Q.NO.9 WRITE ABOUT THE PROCEDURE FOR CONDUCTING VOTING UNDER POLL.

ANSWER:

Procedure for poll

A. APPOINTMENT OF SCRUTINISER: Where a poll is to be taken, the Chairman of the meeting shall appoint a scrutinizer for observing the poll process and votes given on poll and to report thereon.

B. DUTIES OF SCRUTINISER: The duties of a scrutinizer shall be as follows–

1. To ensure proper conduct of the polling process;

2. To maintain proper records of the poll;

3. To submit a report to the Chairman of the meeting which shall contain the details of votes cast in the favour and against the resolution; and

4. To ensure that the compliance of the provisions of section 109 and Rule 21.

C. Rule 21 provides that Chairman of a meeting shall, in the poll process, ensure that-

a. The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.

b. The Scrutinizers are provided with all the documents received by the Company pursuant to sections 105, 112 and section 113.

c. The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio and the Polling paper shall be in Form No. MGT.12.

d. The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialling it.

e. The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.

f. The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.

g. In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.

h. The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.

i. The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.

j. Where voting is conducted by electronic means under the provisions of section 108 and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.

k. The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.

l. The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same.

m. The Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.

D. The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in Form No. MGT.13 and the report shall be signed by the scrutinizer and, in case there is more than one scrutinizer by all the scrutinizer, and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken

Q.NO.10 STATE THE APPLICABILITY OF E-VOTING TO THE COMPANIES UNDER COMPANIES ACT, 2013.

ANSWER:

VOTING THROUGH ELECTRONIC MEANS [SEC 108]

Voting through electronic means

E- Voting has been introduced under Section 108 read with the Companies (Management and Administration) Rules, 2014 and provides that a member in the prescribed class of companies may exercise his right to vote by electronic means

Rule 20 prescribes the procedure of voting through electronic means. 'Electronic voting system' is defined as a secured system based process of display of electronic ballots, recording votes of members and the number of votes polled in favour or against, in such a manner 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.

1. **NOTICE CONTAINING THE PARTICULAR:** 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 and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
   - **c.** that the members who have cast their vote by remote E-voting prior to the meeting may also attend the meeting but shall not been entitled to cast their vote again;
2. **CONTENTS OF NOTICE:** The notice shall:
   - **a.** indicate the process and manner for voting by electronic means;
   - **b.** indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
   - **c.** provide the details about the login ID;
   - **d.** specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.

3. **PUBLICATION OF NOTICE:** The company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4) but at least 21 days before the date of general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation, and specifying in the said advertisement, inter alia, the following matters, namely:-
   - **a.** statement that the business may be transacted through voting by electronic means;
   - **b.** the date and time of commencement of remote e-voting;
   - **c.** the date and time of end of remote e-voting;
   - **d.** cut-off date;
   - **e.** The manner in which persons who have acquired shares and become members of the company after the dispatch of notice may obtain the login ID and password;
   - **f.** the statement that-
     - **i)** remote e-voting shall not be allowed beyond the said date and time;
     - **ii)** the manner in which the company shall provide for voting by members present at the meeting; and
     - **iii)** a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and
     - **iv)** 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 in the general meeting;
   - **g.** website address of the company, if any, and of the agency where notice of the meeting is displayed; and
   - **h.** name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:

   NOTE: The public notice shall be placed on the website of the company, if any, and of the agency;
4. **TIME FOR OPENING OF E-VOTING:** The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;

5. **OPTION FOR REMOTE E-VOTING:** During the period when facility for remote e- voting is provided, the members of the company, holding shares either in physical form or in dematerialized form, as on the cut-off date, may opt for remote e-voting.

   NOTE:

   - **i)** once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again

ii) a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;

6. At the end of the remote e-voting period, the facility shall forthwith be blocked:

NOTE: if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e- voting.

7. APPOINTMENT OF SCRUTINIZER: The Board of Directors shall appoint one or more scrutinizer, who may be Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the voting and remote e-voting process in a fair and transparent manner.

NOTE: The scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the electronic voting system;

8. FUNCTION OF SCRUTINIZER: The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;

9. ROLE OF CHAIRMAN: The Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, as provided in clauses (a) to (h) of sub-rule (1) of rule 21, as applicable, with the assistance of scrutinizer, by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e-voting facility.

10. COUNTING OF VOTES: The scrutinizer shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting, 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 make, not later than three days of conclusion of the meeting, 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:

NOTE:

a) The Chairman or a person authorized by him in writing shall declare the result of the voting forthwith

b) A resolution proposed to be considered through voting by electronic means shall not be withdrawn.

Q.NO.11 WRITE ABOUT THE APPLICABILITY OF VOTING UNDER POSTAL BALLOT UNDER COMPANIES ACT, 2013.

ANSWER:

A. "Postal ballot" means voting by post or through any electronic mode. [Sec 2(65)]

B. The provisions relating to passing of resolution by postal ballot are contained in Section 110 read with Rule 22 of the Companies (Management and administration) Rules, 2014.

1. **Notwithstanding anything contained in this Act**, a company
   - **a.** shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and
   - **b.** may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot.

   In such manner as may be prescribed, instead of transacting such business at a general meeting.

   NOTE: Any item of business required to be transacted by means of postal ballot under clause (a), 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.
2. 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."
   - **a.** The section seeks to provide that the Central Government may declare items of business that can be transacted only by postal ballot and also in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting.
   - **b.** Only those assents/ dissents are to be considered which have been sent by the members within 30 days as prescribed in Rule 22. Section 110(2) makes a deeming provision that if a resolution is assented by requisite majority of shareholders by means of postal ballot, it shall be deemed to have been passed at a general meeting convened in that behalf.

C. The following items of business shall be transacted only by means of voting through a postal ballot [110(1)(a)]

1. Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act (Existing Companies), Alteration of the main objects of the memorandum;

2. Alteration of articles of association in relation to insertion or removal of provisions which, under section 2(68), are required to be included in the articles of a company in order to constitute it a private company;
3. Change in place of registered office outside the local limits of any city, town or village as specified in Section 12(5);
4. 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 Section 13(8);
5. Issue of shares with differential rights as to voting or dividend or otherwise under Section 43(a)(ii);
6. Variation in the rights attached to a class of shares or debentures or other securities as specified under Section 48;
7. Buy-Back of shares by a company under Section 68(1);
8. Election of a director under Section 151 of the Act;
9. Sale of the whole or substantially the whole of an undertaking of a company as specified under Section 180(1)(a);
10. Giving loans or extending guarantee or providing security in excess of the limit specified under Section 186(3)

NOTE:

1. Any aforesaid items 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.
2. One Person Companies and Other companies having member's up to 200 are not required to transact any business through postal ballot.

Q.NO.12 WRITE ABOUT THE PROCEDURE FOR CONDUCTING VOTING UNDER POSTAL BALLOT.

ANSWER:

Manner in which postal ballot shall be conducted [Rule 22 of the Companies (Management & Administration) Rules, 2014].

A. Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons there for and requesting them to send their assent or dissent in writing on a postal ballot because postal ballot means voting by post or through electronic means within a period of 30 days from the date of dispatch of the notice.

B. The notice shall be sent either

1. by Registered Post or speed post, or

2. through electronic means like registered e-mail id or
3. through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.

C. An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying therein, inter alia, the following matters, namely:-

1. A statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
2. The date of completion of dispatch of notices;
3. The date of commencement of voting;
4. The date of end of voting;
5. The statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;
6. A statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and
7. Contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

D. The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.

E. The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.

F. The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

G. Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.

H. 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;

I. The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.

J. The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely.

K. The assent or dissent received after 30 days from the date of issue of notice shall be treated as if reply from the member has not been received.

L. The results shall be declared by placing it on the website of the company along with the scrutinizer's report.

M. The provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis to this rule in respect of the voting by electronic means.

Q.NO.13 DEFINE RESOLUTION? STATE THE DIFFERENCES BETWEEN SPECIAL RESOLUTION AND ORDINARY RESOLUTION?

ANSWER:

A. RESOLUTION:

1. In lay man's language, a resolution is the formal decision of an organization while transacting a business at a meeting.
2. A motion which has obtained the necessary majority vote in its favour becomes a resolution. When a resolution is passed, a company is bound by it.

B. AS PER THE COMPANIES ACT, 2013, RESOLUTIONS ARE OF TWO TYPES

1. **ORDINARY RESOLUTION:** As per Section 114(1) states that a resolution shall be ordinary resolution,
   a. if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may

be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting.

2. **SPECIAL RESOLUTION:** As per Section 114(2) of the Act, a resolution shall be a special resolution, when–
   - **a.** The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
   - **b.** The notice required under this Act has been duly given; and
   - **c.** 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, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Q.NO.14 EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDING RESOLUTIONS REQUIRING SPECIAL NOTICE?

ANSWER:

A. APPLICABILITY:

1. Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees (as may be prescribed) has been paid-up.
2. The company shall give its members notice of the resolution in such manner as may be prescribed.

Q.NO.15 EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDING THE RESOLUTIONS PASSED AT ADJOURNED MEETING?

ANSWER:

RESOLUTIONS PASSED AT ADJOURNED MEETING [SEC 116]

1. Where a resolution is passed at an adjourned meeting of a company; or the holders of any class of shares in a company; or the Board of Directors,
2. the resolution shall be treated as passed on the day it was actually passed and not on any earlier date.

Q.NO.16 EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDING RESOLUTIONS AND AGREEMENTS TO BE FILED WITH ROC?

ANSWER:

RESOLUTIONS AND AGREEMENTS TO BE FILED [SECTION 117]

A. FILING WITH ROC: A copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within 30 days of the passing or making thereof in such manner and with such fees as may be prescribed.

B. FORM: A copy of every resolution or any agreement required to be filed, together with the explanatory statement under section 102, if any, shall be filed with the Registrar in Form No. MGT.14 along with the fee. [Rule 24]

NOTE: The copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

C. RESOLUTIONS AND AGREEMENTS TO BE FILED WITH THE REGISTRAR ARE AS UNDER:

1. Special Resolutions
2. 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;
3. 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;
4. 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.
5. Resolutions requiring a company to be wound up voluntarily passed in pursuance of section 59 of the Insolvency and Bankruptcy Code, 2016.
6. Resolutions passed in pursuance of section 179(3).

D. PENALTY:

If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein,

1. such company shall be liable to a penalty of Rs. 10,000 and in case of continuing failure, with a further penalty of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of Rs. 2,00,000 and
2. Every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of Rs. 10,000 and in case of continuing failure, with a further penalty of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of Rs. 50,000.

Q.NO.17 EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 AND RULES MADE THEREUNDER REGARDING MINUTES OF THE MEETINGS?

ANSWER:

A. MINUTES [SEC 118]

1. **TIME LIMIT:** Every company shall prepare, sign and keep minutes of
   - **a.** every general meeting of any class of shareholders or
   - **b.** creditors, including the meeting called by the requisitionists, and
   - **c.** every resolution passed by postal ballot and
   - **d.** every meeting of its Board of Directors or of every committee of the Board,

   within 30 days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered. [Sub section (1)]

   NOTE: In case of a Specified IFSC public company & IFSC private company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed under sub section (1) at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose.
2. **CONTENTS:** The minutes of each meeting shall contain a fair and correct summary of the proceedings that took place at the concerned meeting
   - **a.** All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.
   - **b.** In the case of a Board Meeting or a meeting of a committee of the Board, the minutes shall also contain
     - **i.** The names of the directors present at the meeting; and
     - **ii.** In the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.
   - **c.** Any of the following matter shall not be included in the minutes of the meeting, which in the opinion of the Chairman of the meeting
     - **i.** Is or could reasonably be regarded as defamatory of any person; or

ii. Is irrelevant or immaterial to the proceedings; or

iii. Is detrimental to the interests of the company.

d. The matter to be included or excluded in the minutes of the meetings shall be at the absolute discretion of the Chairman of the meeting.

3. The minutes kept in accordance with the provisions shall serve as the evidence of the proceedings therein.

4. Where the minutes have been kept in accordance with this section, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.

5. 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 requires by this section to be contained in the minutes of the proceedings of such meeting.

6. Every company shall observe Secretarial Standards with respect to general and Board meetings, specified by the Institute of Company Secretaries of India and approved as such by the Central Government. [Sub section (10)]

Note: The aforesaid point is not applicable to Specified IFSC Public Company, IFSC Private Company.

7. 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 25,000 and every officer of the company who is in default shall be liable to a penalty of 5,000.

8. If a person is found **guilty of tampering** with the minutes of the proceedings of the meeting, he shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000.

B. RULE 25 OF THE COMPANIES (MANAGEMENT & ADMINISTRATION) RULES, 2014 PRESCRIBES THE PROCEDURE FOR MAINTENANCE OF MINUTES OF PROCEEDINGS OF GENERAL MEETING, MEETING OF BOARD OF DIRECTORS AND OTHER MEETINGS AND RESOLUTIONS PASSED BY POSTAL BALLOT AS FOLLOWS–

1. A distinct minute book shall be maintained for each type of meeting namely:

a. general meetings of the members;

b. meetings of the creditors
c. meetings of the Board; and
d. meetings of each of the committees of the Board.

2. The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within 30 days of the conclusion of the meeting.

3. In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

4. Each page of every such book shall be initialled 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

a. in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;

b. in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose;

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.

5. 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.

6. The minute 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.

Q.NO.18 **EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 RELATING TO INSPECTION OF MINUTES OF THE MEETINGS?**

INSPECTION OF MINUTE-BOOKS OF GENERAL MEETING [SECTION 119]

A. HOW SHALL THE INSPECTION TAKE PLACE?

2. As per section 119 of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall–

a. be kept at the registered office of the company; and

b. be open for inspection, during business hours, by any member,

without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting.

However, at least 2 hours in each business day shall be allowed for inspection [Sub – Section (1)].

3. Any member shall be entitled to be furnished, within 7 working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes referred [Sub Section (2)].

B. WHAT IS THE PENALTY FOR CONTRAVENTION OF THE PROVISIONS OF THE ACT? [SUB SECTION (3)]: If any inspection under sub section (1), is refused by the company to the member, or if the copy of minute-book is not furnished within the time specified under sub section (2), then

1. The company shall be liable to a penalty of Rs. 25,000 and

2. Every officer of the company who is in default shall be liable to a penalty of Rs. 5,000 for each such refusal or default as the case may be.

Q.NO.19 EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDEING FIRST ANNUAL GENERAL METING AND SUBSEQUENT ANNUAL GENERAL MEETING?

ANSWER:

REQUIREMENTS AND TIME LIMIT TO HOLD ANNUAL GENERAL MEETING [SEC 96(1)]: Every company, whether public or private, except One Person Company, shall **hold an annual general meeting** every year.

A. FIRST AGM:

1. First annual general meeting of the company should be held within 9 months from the closing of the first financial year.
2. It shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.

B. SUBSEQUENT AGM:

1. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
2. The gap between two annual general meetings should not exceed 15 months.

C. EXTENSION OF VALIDITY PERIOD OF AGM:

1. In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time.
2. Such extension can be for a period not exceeding 3 months.
3. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.

D. TIME AND PLACE FOR HOLDING AN ANNUAL GENERAL MEETING [SEC 96(2)]:

1. Every annual general meeting shall be called during business hours, i.e., between 9 a.m. and 6 p.m. on any day that is not a National Holiday ("National Holiday" means and includes a day declared as National Holiday by the Central Government).

2. Every annual general meeting shall be **held** either
   a. at the registered office of the company or
   b. at some other place within the city, town or village in which the registered office of the company is situated.

3. The **Central Government** may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

4. 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.

Q.NO.20 WRITE THE POWERS OF TRIBUNAL TO CALL MEETINGS OF MEMBERS OTHER THAN ANNUAL GENERAL MEETING?

ANSWER:

A. POWER OF TRIBUNAL TO CALL MEETINGS OF MEMBERS, ETC. [SEC 98(1)]:

1. If for any reason it is **impracticable** to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company,

2. the Tribunal may, either suomotu or on the application of any director or member of the company who would be **entitled to vote** at the meeting
   a. order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and
   b. give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company
   c. such directions may include a direction that one member of the company present in person or by proxy shall be deemed to **constitute** a meeting.

B. METINGS OF MEMBERS CALLED BY TRIBUNAL TO BE DEEMED AS VALID GENERAL MEETING [SEC 97(2)]: Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

C. Punishment

Section 99 provides that if any default is made in holding a meeting of the company or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs.1 lakh. In case of a continuing default, the punishment will be addition of fine which may extend to Rs.5,000 for every day during which such default continues.

Q.NO.21 EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDEING EXTRA-ORDINARY GENERAL METING [SECTION 100]

ANSWER:

All general meetings other than annual general meetings are called extraordinary general meetings.

Who can call an EGM?

A. BOARD OF DIRECTORS:

1. The Board may, whenever it deems fit, call an extraordinary general meeting of the company.
2. An EGM of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be **held** at any place within India.
3. **Specified IFSC Private Company and Public Company:** The Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India.

B. ON THE REQUISITION OF MEMBERS BOD:

1. Who can make valid requisition:
   a. In the case of company having a share capital: Such number of **members** who hold, on the date of receipt of requisition, at least 1/10th of such paid- up capital of the company as on that date carries the right of voting;
   b. In the case of company not having a share capital: such number of **members** who hold, on the date of receipt of requisition, at least 1/10th of total voting power of all the members having on the said date a right to vote.

Q.NO.22 EXPLAIN THE PROVISIONS OF COMPANIES RULES, 2014 REGARDEING EXTRA-ORDINARY GENERAL METING BY REQUISITIONISTS [RULE 17]

ANSWER:

Rule 17 of the Companies (Management and Administration) Rules, 2014 provides as under with regard to calling of EGM by requisitionists:

1. The members may requisition convening of an extraordinary general meeting in accordance with Sec 100(4), by providing such requisition in writing or through electronic mode at least clear 21 days prior to the proposed date of such extraordinary general meeting.
2. The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting.
3. Requistionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on any day except national holiday.
4. If the resolution is to be proposed as a special resolution, the notice shall be given as required by Sec 114(2). (Disclosure of Special Resolution)
5. The notice shall be signed by all the requistionists or by a requistionists duly authorised in writing by all other requistionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
6. No explanatory statement as required under Sec 102 need be annexed to the notice of an extraordinary general meeting convened by the requistionists and the requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.
7. The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requistionists deposit with the Company a valid requisition for calling an extraordinary general meeting.
8. Where the meeting is not convened, the requistionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on 21st day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the 45 days from the date of receipt of a valid requisition.
9. The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall **not invalidate** the proceedings of the meeting.

Q.NO.23 EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDEING REPORT OF AGM?

ANSWER:

Report of Annual General Meeting

Rule 31 provides that the report in pursuance of Section 121(1) shall be prepared in the following manner-

- the report shall be prepared in addition to the minutes of the general meeting;

- the report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing Director, if there is one and company Secretary of the company;
- the report shall contain the details in respect of the following-
  - **a)** the day, date, hour and venue of the annual general meeting;
  - **b)** confirmation with respect to appointment of chairman of the meeting;
  - **c)** number of members attending the meeting;
  - **d)** confirmation of quorum;
  - **e)** confirmation with respect to compliance of the Act and the Rules, Secretarial Standards made business transacted at the meeting and the result thereof;
  - **f)** particulars with respect to any adjournment, postponement of meeting, change in venue; and
  - **g)** any other points relevant for inclusion in the report.
  - The report shall contain fair and correct summary of the proceedings of the meeting. The copy of the report shall be filed with the Registrar in Form No. MGT-15 within 30 days of the conclusion of the AGM along with the fee.

8. DIRECTORS

Q.NO.1 DEFINE THE TERM DIRECTOR? EXPLAIN THE ROLE OF DIRECTOR IN THE COMPANY.

ANSWER:

A. DEFINITION [SEC 2(34)]: 'Director' means a director appointed to the Board of a company.

B. ROLE OF DIRECTOR:

1. Under the scheme of the Companies Act, the company itself and its directors or the Board of directors are primary agents of the company to transact its operation.
2. The Companies Act specifies where the company itself is to act both as principal and the agent and where the Board of directors is to act on its behalf.
3. In respect of the properties and assets of the company the directors or the Board of directors act as Trustees.
4. Therefore, the directors have different attributes in relation to the company depending upon the facts of each case.
5. As stated earlier, directors apart from being trustees for the assets and properties of the company are also the agents of the company as it is the directors, collectively as Board, act on behalf of the company on all matters except those specifically reserved for company to act.
6. However, it may be noted that even though the directors for certain purposes can be considered as the agent of the company, yet to take a decision, the company in any manner, including in the general meeting cannot direct the directors to take a particular decision.
   Ex: Allotment of shares, Transfer of shares, Investments etc.
7. If the body of the shareholders did not approve the decision, they are free to change the directors in manner given in the Act.
8. As stated elsewhere in the chapter a director apart from being the agents from being the agent and trustee of the company, can also be treated as officer of the company, hence an employee for purpose specified in the Act.
9. The articles of a company may designate its directors as governors, members of the governing council or the board of management, or give them any other title, but so far as the law is concerned they are simply directors.
10. Similarly, in the case of associations or other bodies registered as companies under Section 8 of Companies Act, 2013, the members of the executive committee or the governing body are directors for purpose of the Act, though they may not be called by that name.

OFFICIER [Sec 2(59)]: the definition of an "officer" includes a director as well as any person under whose directions or instructions the Board or any one or more of the directors are accustomed to act.

Section 149 of the Companies Act, 2013 provides that only an individual can be appointed as director. Thus, no body corporate, association or firm can be appointed director of a company.

Q.NO.2 EXPLAIN THE RESPONSIBILITIES OF DIRECTOR UNDER COMPANIES ACT 2013?

ANSWER:

i. DUTIES AND RESPONSIBILITIES OF DIRECTORS [SECTION 166].

1. The duties and liabilities which encourage and promote the sincerest investment of the best efforts of directors in the efficient and prudent corporate management, in providing elegant and swift resolutions of various business-related issues and in taking wise decisions to avert unnecessary risks to the company.
2. The following duties and liabilities have been imposed on the directors of companies, by the Indian Companies Act of 2013, under its Section 166:-
   - **a.** A director of a company shall act in accordance with the Articles of Association of the company.
   - **b.** A director of the company shall act in good faith, in order to promote the objects of the company, for the benefits of the company as a whole, and in the best interests of the stakeholders of the company.
   - **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 a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest 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 of a company shall not assign his office and any assignment so made shall be void.

Q.NO.3 EXPLAIN THE PROVISIONS OF COMPANIES ACT 2013 RELATING TO DIRECTOR IDENTIFICATION NUMBER?

ANSWER:

A. DIRECTOR'S IDENTIFICATION NUMBER:

1. No person shall be appointed as a director of the company unless he has been allotted a Director Identification Number (DIN) or such other number as may be prescribed under section 153.
2. The Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act.

3. Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.
4. However, the Central Government may prescribe any other identification number as a DIN.

Q.NO.4 EXPLAIN THE PROVISIONS OF COMPANIES ACT 2013 RELATING TO QUALIFICATIONS AND DISQUALIFICATIONS OF DIRECTOR?

ANSWER:

A. QUALIFICATIONS:

1. The Companies Act does not prescribe any academic or professional qualifications for directors. There is also no mandatory share qualification as per the Act, **unless** the Articles of Association of the company prescribes for the same.
2. A director neither needs any minimum professional qualification nor any share qualification **unless** the articles of a company suggest for the same.

B. DISQUALIFICATIONS:

Section 164 (1) of the Companies Act, 2013 provides that a person shall not be eligible for appointment as a director of 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 elapsed from the date of expiry of the sentence. Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal 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 others, 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 complied with sub-section (3) of section 152.

i) he has not complied with the provisions of sub-section (1) of section 165 No person 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 debenture on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed 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.

Note: In addition to the aforementioned, private companies can include other disqualifications within their articles of association if they so wish.

Q.NO.5 EXPLAIN THE PROVISIONS OF COMPANIES ACT 2013 RELATING TO MINIMUM AND MAXIMUM NUMBER OF DIRECTORS FOR A COMPANY?

ANSWER:

A. MINIMUM AND MAXIMUM NUMBER ID DIRECTORS [SEC 149(1)]:

1. Every company shall have a board of directors consisting of individuals as directors and shall have a minimum of three directors, Two directors in case of private company, and One director in case of One Person Company.
2. Every company shall have a maximum of 15 directors.
3. However, a company may appoint more than fifteen directors after passing a special resolution.
4. In addition to the aforementioned, certain classes of companies may be prescribed to have at least one-woman director.

B. APPOINTMENT OF DIRECTORS CAN HAPPEN –

1. when first directors are appointed to the company,
2. when directors are appointed at general meeting,
3. when directors are appointed by the Board of Directors,
4. when a resident director is appointed and
5. when independent directors are appointed.
6. Board of Directors can appoint additional directors, alternate directors, nominee directors and can even fill up casual vacancies.

Q.NO.6 EXPLAIN THE PROVISIONS OF COMPANIES ACT 2013 RELATING TO RETIREMENT AND RESIGNATION OF DIRECTORS?

ANSWER:

A. RETIREMENT AND ROTATION OF DIRECTORS:

1. If the articles of association provided for retirement of all directors in the annual general meeting, then all the directors are liable to directors.
2. 2/3rd of the total number of directors are liable to retire by rotation and those directors are called as retiring directors [Sec 152(6)].
3. Out of the retiring directors (2/3rd of total number of directors) 1/3rd of directors is liable to vacate the office.
4. The directors who were in the office for the longer period is liable to retire first. However, if the two or more directors have been appointed on the same day then directors will retire based on the mutual understanding between them and when mutual understanding is not available then they retire based on draw by lots.
5. Section 152(6) provides that unless the articles provides otherwise for the retirement of all directors at every annual general meeting, not less the two-third (2/3rd) of the total number of directors (excluding independent directors, whether appointed under this act or under any other law) of a public company shall:
   - **a)** be persons whose period of office is liable to determination by retirement of directors by rotation; and
   - **b)** save as otherwise expressly provided in this Act, be appointed by the company in general meeting.
6. The remaining directors (i.e. non-rotational/non-retiring/permanent directors) in the case of public company shall be appointed as per provisions contained in the articles of the company.
7. Where a director retires by rotation at the annual general meeting of a company, the company at the same meeting may appoint i.e., the retiring director; or ii. some other person in the vacancy.

B. RESIGNATION:

1. A director may resign from his office by giving a notice in writing to the company as per Section 168 (1) of the Companies Act, 2013.
2. On receipt of such notice, the Board shall take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.
3. The director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within **thirty** days of resignation in such manner as may be prescribed.
4. The resignation of a director shall take effect from the
   a. date on which the notice is received by the company or

b. the date, if any, specified by the director in the notice, whichever is later.

However, under Section 168 (2) of the Companies Act, 2013, the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

In Saumil Dilip Mehta vs. State of Maharashtra [2002], it was held that a director can resign just by sending in writing a letter informing either chairman or secretary of company, his intention to resign from post of director of said company. He can tender his resignation unilaterally and without sending a notice to Registrar of Companies. In Mother Care (India) Ltd. vs. Prof. Ramaswamy P. Aiyar [2004], it was held that once a resignation letter is submitted to the board, the date on which the intention to relinquish post is communicated to board would be the date from which the director ceases to be a director of the company.

Q.NO.7 EXPLAIN THE PROVISIONS OF COMPANIES ACT 2013 RELATING TO REMOVAL OF DIRECTORS?

ANSWER:

A. REMOVAL OF DIRECTOR:

1. Directors can be either removed by shareholders or by Tribunal.
2. RIGHT OF SHAREHOLDERS: Under Section 169 of Companies Act, 2013,
   a. shareholders have been given the inherent right to remove the directors appointed by them.
   b. It is not necessary that there should be proof of mismanagement, breach of trust, misfeasance or other misconduct on the part of the directors.
   c. Where the shareholders feel the policies pursued by the directors or any of them are not to their liking, they have the option to remove the directors by passing an ordinary resolution in the same way as they have the right to appoint directors by passing an ordinary resolution.

B. PROCEDURE:

1. A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.
2. The vacancy is created under this section after the removal of the director then in the same meeting of the removal another director is being appointed for time being, and a special notice of the intended appointment is provided.
3. The newly appointed director has to hold the post until the duration up to the new formal appointment of the director is made.
4. When a director is removed as aforementioned, his office vacates automatically u/s 167.

5. The removed director is liable for the damages and compensation which is required to be payable to him in lieu of his removal or termination according to the prescribed terms and conditions of the appointment.

   In Queen Kuries & Loans (p.) Ltd. vs Sheena Jose [1993], it was held that the notice must disclose the ground on which the director is proposed to be removed.

6. Where an application has been made to the Tribunal, against oppression and mismanagement of a company's affairs, the Tribunal may order for the termination or setting aside of an agreement which the company might have made with any of its directors. It may also order the removal of any of the directors of the company.
7. A director so removed shall not be entitled to claim any compensation from the company for the loss of office under Section 243.
8. Additionally, such a director shall not be entitled to serve as a manger, managing director or director of the company without leave of the Tribunal for a period of five years from the date of Tribunal's order terminating or setting aside his contract with the company.

Q.NO.8 EXPLAIN THE PROVISIONS OF COMPANIES ACT 2013 RELATING TO REMUNERATION OF DIRECTORS?

ANSWER:

REMUNERATION: Section 2(78) of the companies Act, 2013 'Remuneration' defined as any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under income tax Act, 1961.

A. The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance with the provisions of Companies Act

   a. either by the articles of the company, or

   b. by a resolution (special resolution if the articles so require), passed by the company in general meeting

   The remuneration payable to any such director determined as per the said provisions shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity.

B. SECTION 198 LAYS DOWN THE OVERALL MAXIMUM OF MANAGERIAL REMUNERATION WHICH CAN BE PAID BY PUBLIC COMPANY OR A SUBSIDIARY OF A PUBLIC COMPANY.

   a. The total managerial remuneration payable to directors or manager in respect of a financial year shall not exceed eleven per cent of the net profits of the company.

   b. **In Case of no or inadequate profits in a financial year**: In such a case, the company may, with the previous approval of the Central Government, pay by way of minimum remuneration any sum as may be authorized.

   c. It may be noted that the remuneration of directors can be determined only by the

i. articles of a company or

ii. a resolution of the general body or

iii. a special resolution if the articles so require.

d. The directors cannot themselves fix the remuneration of all or any one of themselves.

e. A managing or whole-time director may be paid either on a monthly basis or a specified percentage of the net profits of the company or partly by one way and partly by the other.

f. But a managing director or whole-time director is not entitled to draw more than five per cent or where there is more than one such director, ten per cent of net profits by way of remuneration, except subject to conditions specified in Schedule XIII or with the approval of the Central Government.

g. As per Section 197 of the Act, the total managerial remuneration payable by a public company, to its directors, including managing director, whole time director and its manager, in respect of any financial year shall not exceed 11% of the net profits of that company.

h. Accordingly, a public company can pay remuneration to its directors including executive directors and non-executive directors within the limits of 11% of the net profits and this limits can only be exceeded with the prior approval of the members of the company by an ordinary resolution.

i. The remuneration payable to a director shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity. So, even if a director is paid remuneration for special services apart from directorial services, such amount must also be included in the total remuneration in order to ascertain the limits of 11% of net profits as prescribed under Section 197(1) of the Act.

j. **EXCEPTION:** When remuneration paid for professional services rendered by a director to the company without any limit is not included in the limit, if the following two conditions are satisfied:

i. The services rendered are of a professional nature and;

ii. In the opinion of the Nomination and Remuneration Committee the director possesses the requisite qualification for the practice of the profession.

If the company does not require to have such a committee under section 178, the board can form this opinion.

Q.NO.9 EXPLAIN THE PROVISIONS OF COMPANIES ACT 2013 RELATING TO POWERS OF DIRECTORS?

ANSWER:

POWERS OF DIRECTORS

A. The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained

a. in that behalf in this Act, or

b. in the memorandum or articles, or

c. in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:

B. The Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

C. No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

D. Moreover, the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:

a. to make calls on shareholders in respect of money unpaid on their shares;

b. to authorize buy-back of securities under Section 68;

c. to issue securities, including debenture, whether in or outside India;

d. to borrow monies;

e. to invest the funds of the company;

f. to grant loans or give guarantee or provide security in respect of loans;

g. to approve financial statement and the Board's report;

h. to diversify 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:

Note: The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

9.1 OPERATIONAL AND FINANCIAL CONTROL

Q.NO.10 EXPLAIN THE PROVISIONS OF COMPANIES ACT 2013 RELATING TO OPERATIONAL AND FINANCIAL CONTROL OF THE COMPANY?

ANSWER:

OPERATIONAL AND FINANCIAL CONTROL

A. A financial controller is responsible for the financial function of an overall organization.

B. An operational controller job title specifies the responsibilities for a particular part of a company, so those duties vary from business to business depending on its operations.

C. While there are some similarities of an operations or business controller versus financial controller, they are definitely two distinct roles within an organization.

D. Both positions usually involve budgeting, forecasting and financial reporting.

E. The financial control deals with the organization's daily accounting operations.
It includes overseeing accounting, payroll, accounts payable and accounts receivable departments. By managing the organizational budget and the preparation and publishing of regulatory and monthly financial reporting, the financial controller gauges fiscal efficacy.

F. Unlike a financial controller, the role of operation control includes reporting and budgeting responsibilities including fiscal reporting for a particular unit within the larger company.

9.2 INTERNAL FINANCIAL CONTROL FOR FINANCIAL REPORTING [SECTION 134, 143 AND 177]

Q.NO.1 WRITE ABOUT APPROVAL OF FINANCIAL STATEMENTS BY BOARD OF DIRECTORS?

ANSWER:

A. AUTHENTICATION OF FINANCIAL STATEMENTS [SECTION 134(1), (2) & (7)]:

1. The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board **AT LEAST BY:**
   - **a.** The chairperson of the company where he is authorised by the Board **OR** by 2 directors out of which 1 shall be managing director, if any, **and**
   - **b.** The Chief Executive Officer **and**
   - **c.** The Chief Financial Officer **and**
   - **d.** The Company Secretary of the company, wherever they are appointed.
2. **ONE PERSON COMPANY:** In the case of One person company, only by 1 director, for submission to the auditor for his report thereon.
3. The auditors' report shall be attached to every financial statement [Sub- section (2)].
4. A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy of [Section 134(7)]:
   - **a.** Any notes annexed to or forming part of such financial statement.
   - **b.** The auditor's report and
   - **c.** The Board's report

Q.NO.2 WRITE ABOUT BOARD OF DIRECTORS REPORT OR BOARD REPORT AND CONTENTS THERE IN AS PER THE COMPANIES ACT 2013?

ANSWER:

A. BOARD'S REPORT [SECTION 134(3) & (4) READ WITH RULE 8 OF THE COMPANIES (ACCOUNTS) RULES, 2014]:

According to Rule 8 of *the Companies (Accounts) Rules, 2014,* the Board's Report shall be prepared based on the standalone financial statement of the company and shall report on the highlights of performance of **subsidiaries, associates and joint venture** companies and their contribution to the overall performance of the company during the period under report.

B. CONTENTS OF BOARD REPORT [SEC 143(3) and RULE 8]: [NOT IMP FOR EXAMS]

The following are the contents of the board's report:

1. The web address, if any, where annual return has been placed.
2. Number of meetings of the board.

3. Directors' responsibility statement.
4. Details in respect of frauds reported by auditors under sub-section (12) of section 143 (powers and duties of auditors and auditing standards) other than those which are reportable to the central government.
5. A statement on declaration given by independent directors under sub-section (6) of section 149 (company to have board of board of directors in relation to independent director).
6. In case of a company covered under sub-section (1) of section 178 (nomination and remuneration committee and stakeholders relationship committee), company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178.

   Note: the above clause shall not apply in the case of a government company.
7. Explanations or comments by the board on every qualification, reservation or adverse remark or disclaimer made:
   a. By the auditor in his report and
   b. By the company secretary in practice in his secretarial audit report.
8. Particulars of loans, guarantees or investments under section 186.
9. Particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the form aoc-2.
10. The state of the company's affairs.
11. The amounts, if any, which it proposes to carry to any reserves.
12. The amount, if any, which it recommends should be paid by way of dividend.
13. 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
14. The conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed; however, the govt. Companies engaged in producing defence equipment is exempted from disclosure under this clause.
15. A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the board may threaten the existence of the company.
16. The details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.

C. 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 of the performance of the board, its committees and of individual directors has been made.

Q.NO.3 WHAT ARE THE RIGHTS OF THE AUDITOR?

ANSWER:

The duties of an auditor have been laid down by the Companies Act, 2013, provided in Section 143. The Act explains the duties in a simplified manner, although the list given is not exhaustive.

1. **ACCESS TO BOOKS OF ACCOUNTS:** Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place.
2. Every auditor of a company shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters
3. **Inquire Into The Following Matters, Namely: –**
   - **a.** whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its member;
   - **b.** whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
   - **c.** where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares , debenture and other securities have been sold at a price less than that at which they were purchased by the company;
   - **d.** whether loans and advances made by the company have been shown as deposits;
   - **e.** whether personal expenses have been charged to revenue account;
   - **f.** where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:

4. **ACCESS TO RECORDS OF SUBSIDIARY ETC.:** The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries its subsidiaries and associate companies insofar as it relates to the consolidation of its financial statement with that of its subsidiaries its subsidiaries and associate companies .

Q.NO.4 WHAT ARE THE DUTIES OF THE AUDITOR?

ANSWER:

1. **REPORT OF AUDITORS TO MEMBERS [SECTION 143(2)]:**

A. The author shall make a report to the members on

- **a)** The Accounts examined by him; and
- **b)** Financial Statements which are required to be laid before the company in general meeting.

B. The auditor shall state in his report as to whether the accounts examined by him and financial statements give a true and fair view of:

a) The statement of the company's affairs as at the end of its financial year;

b) The Profit/Loss for the year; and

c) Cash Flow Statement for the year.

C. The auditor shall prepare his report after taking into account the provisions of this Act and the Accounting and Auditing Standards.

D. As per Sec. 143(4), If auditor has given any qualifications or remarks in the audit report, he shall state reasons thereof in the said report.

2. The auditor's report shall also state–

a. whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit;

b. whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

c. whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

d. whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

e. whether, in his opinion, the financial statements comply with the accounting standards;

f. the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

g. whether any director is disqualified from being appointed as a director under sub-section (2) of section164;

h. any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

i. whether the company has adequate internal financial controls system internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;

j. such other matters as may be prescribed.

Note: Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.

Q.NO.5 EXPLAIN THE PROVISIONS OF COMPANIES ACT WITH RESPECT TO AUDIT OF GOVERNMENT COMPANIES?

ANSWER:

A. In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments,

B. the Comptroller and Auditor-General of India shall appoint the auditor under sub- section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the company are required to be audited an thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

C. POWERS OF CAG:

The Comptroller and Auditor-General of India shall within 60 days from the date of receipt of the audit report have a right to:

SUPPLMENTARY AUDIT:

1. Conduct a supplementary audit under section 143(6)(a), of the financial statement of the company by such person or persons as he may authorize in this behalf and
2. Comment upon or supplement such audit report under section 143(6)(b). It may be noted that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub-section (1) of section 136 i.e., every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled and
3. Also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

D. TEST AUDIT U/S 143(7):

Further, without prejudice to the provisions relating to audit and auditor, the Comptroller and Auditor- General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

Q.NO.6 EXPLAIN THE PROVISIONS OF COMPANIES ACT WITH RESPECT TO AUDIT OF GOVERNMENT COMPANIES?

ANSWER:

BRANCH AUDIT: Where a company has a branch office, the accounts of that office shall be audited either

a. by the auditor appointed for the company (hereafter in this section referred to as the company's auditor) under this Act or

b. by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or

c. where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed.

Note: The branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

Q.NO.7 DUTY OF AUDITOR IN COMPLYING AUDITING STANDARDS?

ANSWER:

1. Every auditor shall comply with the auditing standards.

2. The CG may, after consultation with the National Advisory Committee on Accounting and Auditing Standards, by notification, lay down auditing standards

Note: Until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

3. The CG may, after consultation with the Advisory Committee, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.

Note: Until the National Financial Reporting Authority is constituted under section 132, the Central Government may hold consultation required under this sub-section with the Committee chaired by an officer of the rank of Joint Secretary or equivalent in the Ministry of corporate Affairs and the committee shall have the representatives from the Institute of Chartered Accountants of India and Industry Chambers and also special invitees from the National Advisory Committee on Accounting Standards and the office of the Comptroller and Auditor General. (Effective from 10th April,2015)

4. Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is

being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

5. Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed

   Note:

   a. In case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed

   b. Further that the companies, whose auditors have reported frauds under this subsection to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.

6. No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section if it is done in good faith.

7. The provisions of this section shall mutatis mutandis apply to—

   a. the cost accountant in practice cost accountant conducting cost audit under section 148; or

   b. the conducting secretarial audit under section 204.

8. **PUNISHMENT:** If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall,–

   a. in case of a listed company, be liable to a penalty of Rs. 5,00,000; and

   b. in case of any other company, be liable to a penalty of Rs. 1,00,000.

OTHER DUTIES OF AUDITOR

1. **PREPARE AN AUDIT REPORT**

   a. An audit report, in simple terms, is an appraisal of a business's financial position.

   b. The auditor is responsible for preparing an audit report based on the financial statements of the company. The books of accounts so examined by him should be maintained in accordance with the relevant laws.

   c. He must ensure that the financial statements comply with the relevant provisions of the Companies Act 2013, relevant Accounting Standards etc.

   d. In addition to this, it is imperative that he ensures that the entity's financial statements depict a true and fair view of the company's financial position. Auditor is allowed to form a negative opinion, wherever necessary.

e. The auditor's report has a high degree of assurance and reliability because it contains the auditor's opinion on the financial statements. Where the auditor feels that the statements do not depict a true and fair view of the financial position of the business, he is also entitled to form an adverse opinion on the same.

f. Additionally, where he finds that he is dissatisfied with the information provided and finds that he cannot express a proper opinion on the statements, he will issue a disclaimer of opinion.

g. A disclaimer of opinion basically indicates that due to the lack of information available, the financial status of the entity cannot be determined. However, it is to be noted that the reasons for such negative opinion is also to be specified in the report.

2. MAKE INQUIRIES

- One of the auditor's important duties is to make inquiries, as and when he finds it necessary.
- A few of the inquiries include: loans and advances made on the basis of security which are properly secured and the terms relating to the same, any personal expenses charged to the Revenue Account, loans and advances made, shown as deposits, compliance of financial statements with the relevant accounting standards

3. LEND ASSISTANCE IN CASE OF A BRANCH AUDIT

- Where the auditor is the branch auditor and not the auditor of the company, he will lend assistance in the completion of the branch audit.
- He shall prepare a report based on the accounts of the branch as examined by him and then send it across to the company auditor.
- The company auditor will then incorporate this report into the main audit report of the company.
- In addition to this, on request, if he wishes to, he may provide excerpts of his working papers to the company auditor to aid in the audit.

4. COMPLY WITH AUDITING STANDARDS

- The Auditing Standards are issued by the Central Government in consultation with the National Financial Reporting Authority.
- These standards aid the auditor in performing his audit duties with relevant ease and accuracy.
- It is the duty of the auditor to comply with the standards while performing his duties as this increases his efficiency comparatively.

5. REPORTING OF FRAUD

- Generally, in the course of performing his duties, the auditor may have certain suspicions with regard to fraud that's taking place within the company, certain situations where the financial statements and the figures contained therein don't quite add up.
- When he finds himself to be in such situations, he will have to report the matter to the Central Government immediately and in the manner prescribed by the Act.

6. ADHERE TO THE CODE OF ETHICS AND CODE OF PROFESSIONAL CONDUCT

- The auditor, being a professional, must adhere to the Code of Ethics and the Code of Professional Conduct.
- Part of this involves confidentiality and due care in the performance of his duties. Another important requisite is professional skepticism.
- In simple words, the auditor must have a questioning mind, must be alert to possible mishaps, errors and frauds in the financial statements.

7. ASSISTANCE IN AN INVESTIGATION

- In the case where the company is under the scope of an investigation, it is the duty of the auditor to provide assistance to the officers as required for the same.
- Hence, it can be seen that the duties of the auditor are pretty diverse; it has an all-round and far-reaching impact.
- The level of assurance provided by a set of audited financial statements is comparatively far higher as compared to regular unaudited financial statements.

Q.NO.8 EXPLAIN THE PROVISIONS OF COMANIES ACT WITH RESPECT TO APPLICABILITY OF AUDIT COMMITTEE?

ANSWER:

A. APPLICABILITY OF AUDIT COMMITTEE (Section 177)

1. The Board of Directors of
   a. Every listed public company and
   b. such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.

2. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:

Note: Majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

3. Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).

B. ROLE OF AUDIT COMMITTEE (Section 177)

1. Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,–
   - **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;
   - **v.** scrutiny of inter-corporate loans and investments;
   - **vi.** valuation of undertakings 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.
2. 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;
3. 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:
   - **a.** In case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and
   - **b.** it is not ratified by the Audit Committee within three months from the date of the transaction,
   - **c.** such transaction shall be voidable at the option of the Audit Committee and
   - **d.** if the transaction is with the related party to any director or is authorised by any other director,
   - **e.** the director concerned shall indemnify the company against any loss incurred by it:
4. The provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.
5. **OTHER POWERS**
   - **a)** The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

b) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

c) The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

6. **DISCLOSURE IN BOARD'S REPORT:** The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

C. VIGIL MAECHANISM:

1. Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.
2. The vigil mechanism shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.
3. Details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.
4. 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 conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.
5. 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.
6. The vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors 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 exceptional cases.
7. 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.

9.3 RIGHTS OF SHAREHOLDERS

Q.NO.1 DEFINE MEMBER UNDER COMPANIES ACT 2013. STATE THE DIFFERENCES BETWEEN MEMBER AND SUBSCRIBER

ANSWER:

A. Section 2(55) of the Companies Act,2013 defines a member as:

1. The Subscribers to the Memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as member in its register of members.
2. Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a member of the company.

   In Herdilia Unimers Ltd. v. Renu Jain [1995], it was held that the moment the shares were allotted and share certificate signed and the name entered in the Register of members, the allottee became the shareholder, irrespective of the allottee receiving the shares or not.

   A person whose name is not entered into register of members of company cannot be treated as member or deemed member-Sant Chemicals (P) Ltd. v. Aviat Chemicals (P.) Ltd. [2000].
3. Every person holding shares of the company and whose name is entered as beneficial owner in the records of a depository.

NOTE: On this basis, apart from signing of the memorandum two pre- requisites for a person to become a member of a company are:

a. The agreement in writing to take shares of the company; and

b. The registration of his name in its register of members.

c. Besides, a person may also become a member of a company through the depository system.

B. Thus, a person can agree to take shares of a company either as the subscriber to the memorandum at the initial stage of its formation or in any of the following manner:

a. by subscribing to its further or new shares;

b. on transfer of its shares from an existing member;

c. on acquisition or purchase of its share(for example, take-over bid, renunciation of right s by an existing members);

d. on acquisition of its shares by devolution (for example, transmission of shares to legal of a deceased member, on insolvency, upon merger/amalgamation through the Tribunal's order); and

e. on conversion of convertible debentures or loans pursuant to the terms of issue of such debentures or loan agreement respectively.

DIFFERENCES

1. The fundamental difference between the subscribers who agree to take shares at the time of formation of the company and persons who agree to take shares later is that the former become members immediately on incorporation of the company, that is, they automatically become members.
2. The latter, through having agreed to take shares, become members only after their names are entered in the register of members of the company.

Q.NO.2 DEFINE THE RIGHTS OF MEMBER UNDER COMPANIES ACT 2013.

ANSWER:

1. A member by virtue of the contract with the company and any other members via the Memorandum and Articles is entitled to have his name on the Register of members, to vote at the meeting of members, to receive dividends when declared, to exercise the right of pre-emption, return of capital on winding-up or on reduction of share capital of the company.
2. As a member he also has certain other rights which may or may not arise out of a contract. In exercise of such rights he is entitled of such rights he is entitled to bring action to restrain the company from doing an ultra vires act, to attend and take part in the proceeding of meetings of the company and to move amendments.
3. **A person who is a shareholder of a company has many rights under the Act. Some of them are:**
   - **a)** The right to vote at all meetings [Sec.47];
   - **b)** The right to requisition an extraordinary general meeting of the compay [Sec.100];
   - **c)** The right to receive notice of a general meeting [Sec.101];
   - **d)** The right to appoint proxy and inspect proxy register [Sec.105]
   - **e)** In the case of a body corporate which is a member, the right to appoint a representative to attend a general meeting on its behalf [Sec.113]; and
   - **f)** The right to require the company to circulate resolution [Sec.111].
   - **g)** To have certificate of share held ready for delivery to him within 2 months from the date of allotment [Sec.56]
   - **h)** To Transfer shares subject to the provisions of the Act and Article of Association [Sec.44].
   - **i)** To inspect the Register of members and Register of debenture-holders and get extracts therefrom [Sec.94].
   - **j)** To obtain, on request, minutes of proceedings at general meetings as also to inspect the minutes [Sec.119].
   - **k)** To apply to the Tribunal to have any variation of shareholders rights set aside [Sec.48].
   - **l)** To participate in the removal of directors by passing an ordinary resolution [Sec.169]
4. **Certain other rights of a member spelt out by the Supreme Court in Life Insurance Corporation of India v. Escorts Ltd. [1986] are**:

a. To elect directors and thus to participate in the management through them;

b. To enjoy the profits of the company in the shape of dividends;

c. To apply to the court (now Tribunal) for relief in case of oppression;

d. To apply to the court (now Tribunal) for relief in case of mismanagement;

e. To apply to the court (now Tribunal) for winding-up of the company; and

f. To share in the surplus on winding-up

9.4 KEY MANAGERIAL PERSONNEL

Q.NO.1. DEFINE KEY MANGERIAL PERSONNEL UNDER COMPANIES ACT 2013.

ANSWER:

Section 2(51) of the Companies Act, 2013, key managerial personnel, in relation to a company has been defined as:

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.