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COMPANY LAW (MODULE – 1)

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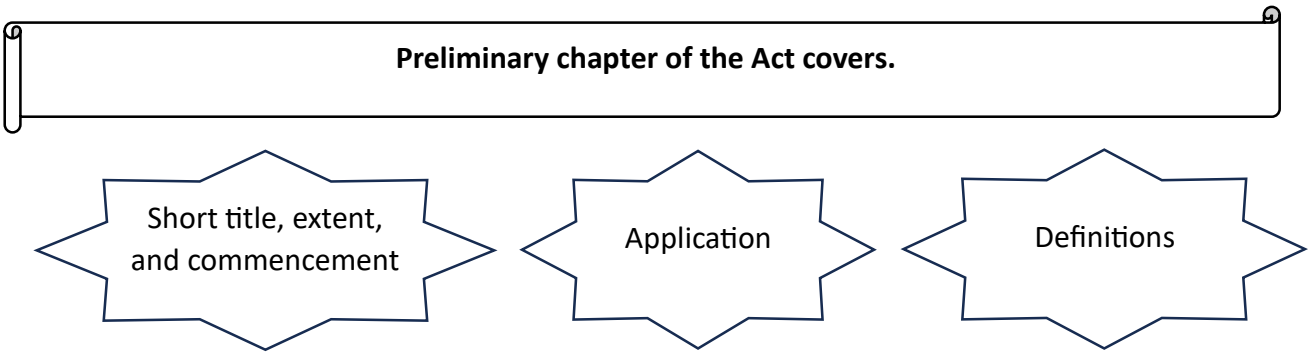
1. PRELIMINARY



PART – I – SCOPE AND APPLICABILITY

OVERVIEW TO COMPANIES ACT:

1. The Companies Act, 2013 is an Act to consolidate and amend the law relating to companies. The legislation was necessitated to meet changes in the national and international economic environment and for expansion and growth of economy of our country.
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 for public information stating that different dates may be appointed for enforcement of different provisions of the Companies Act, 2013, through notifications.
3. Section 1 came into force on 30th August 2013; 98 sections came into force on 12th September 2013; 143 sections were enforced from 1st April 2014 and so on.
4. The Companies Act, 2013 is rule based legislation with 470 sections and seven schedules. 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 strengthen the interests of investors. Thus, this enactment makes our corporate regulations more contemporary.

Q.NO.1 WRITE A SHORT NOTE ON DEFINITION OF A COMPANY AND APPLICABILITY OF COMPANIES ACT?

ANSWER: (Sec. 1)

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

1. "Company Means – a Company incorporated under Companies Act, 2013 or any other previous law"
2. Company is an Association of Person. (Where minimum 2 persons are needed to form a company).

B. SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION

1. Section 1 of the Companies Act, 2013 deals with the title of the Act according to which this Act may be called as the Companies Act, 2013.
2. Further, section deals with the extent to the applicability of the Act. It says that the Act shall extend to the whole of India.
3. This section also specifies the date of commencement of this Act. Accordingly, this section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
4. This Section furthermore states of the applicability of the Act. The provisions of this Act shall apply to-
   - **a.** Companies incorporated under this Act or under any previous company law. (E.g., Indian Companies Act, 1882 or Companies Act, 1956).
   - **b.** Insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999
   - **c.** Banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949.
   - **d.** Companies Engaged in the Generation or Supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003.
   - **e.** Any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act, and
   - **f.** Such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf.

     Example: Food Corporation of India (FCI), National Highway Authority of India (NHAI) etc.

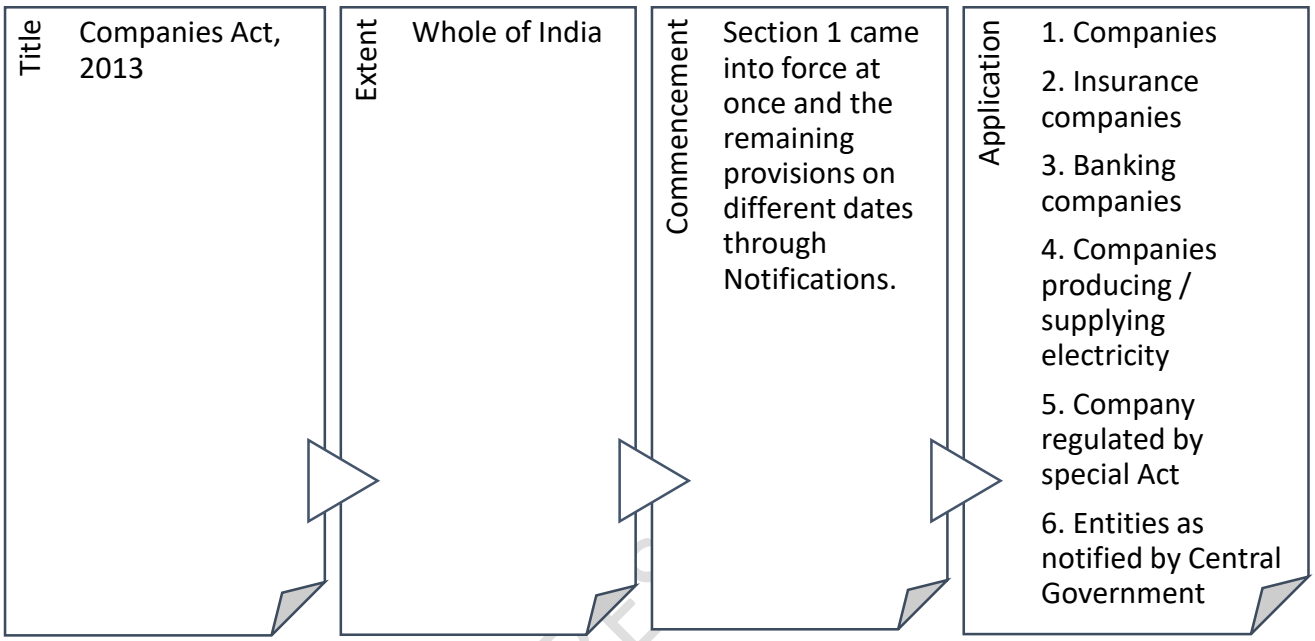
Note: *The term "except in so far as" shall mean excluding to the extent of i.e., if any provision of the Companies Act is inconsistent with any of the provisions of other Act (Insurance Act, Banking Regulation Act, Electricity Act, etc.) to which the company is regulated than that company shall comply with the provisions of respective Act/Acts to which it is governed and regulated by.*

Note:

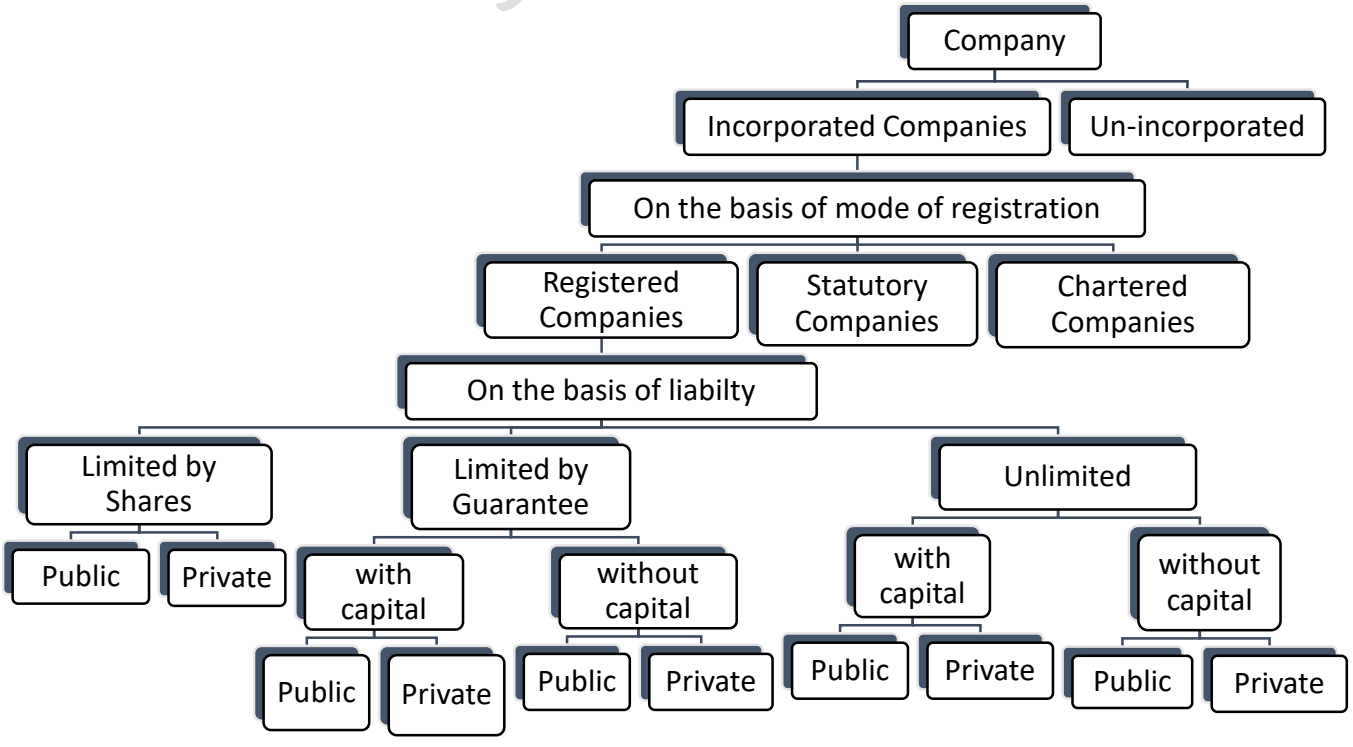
Body corporate or **Corporation** includes a company incorporated outside India, but does not include—

i. A co-operative society registered under any law relating to co-operative societies; and

ii. Any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.



PART – II – DIFFERENT TYPES OF COMPANIES:



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

ANSWER:

A. One Person Company means a company which has only one person as a member;

B. PRIVATE COMPANY [Sec 2(68)] Private company means a company

1. having a minimum paid-up share capital as may be prescribed, **and**

2. which by its articles, —

i. Restricts the right to transfer its shares;

ii. limits the number of its members to 200 (In case of OPC company – Only one member)

a. Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

b. Provided further that—

- Persons who are in the employment of the company; and
- Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall **not be included** in the number of members; and

iii. Prohibits any invitation to the public to subscribe for any securities of the company;

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]

C. 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.

Q.NO.3 WRITE A SHORT NOTE ON SMALL COMPANY?

ANSWER:

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

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) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act,

1. Paid up capital of the small company shall not exceed ₹ 4 Crores
2. Turnover of the small company shall not exceed ₹ 40 crore respectively.

Capital- ₹ 4 crores

Turnover- ₹ 40 crores

Example: H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2023 of S Pvt. Ltd., its turnover was to the extent of ₹ 1.50 crores; and paid up share capital was ₹ 40 lacs. Since S Pvt. Ltd., as per the turnover and paid up share capital norms, qualifies for the status of a 'small company' it wants to be categorized as 'small company'. S Pvt. Ltd. cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.). [Proviso to section 2(85)].

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.
6. **Total voting power**, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.

7. **Control** shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner; It is an inclusive definition and relevant for the provisions relating to subsidiary and holding companies.

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 WHAT IS A FOREIGN COMPANY AND GOVERNMENT COMPANY UNDER COMPANIES ACT?

ANSWER:

A. 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)

B. 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.

Example: X Industries Ltd. is a company in which 25% of shareholding is held by Central Government; 10% shareholding is held by Government of Maharashtra and 15% shareholding is held by Central Government and Government of Rajasthan. Here, X Industries Ltd. is not a government company as there is no compliance of minimum holding of paid-up share capital i.e., at least 51 % by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Government.

Note: For Government Companies, suffix "Pvt Ltd / Ltd" not required. This exception shall be applicable to a government company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar of companies.

E.g., BPCL, IOCL, HPCL, ITCL, BHEL, BDL, NLCL.

Q.NO.6 WRITE ABOUT TYPES OF COMPANIES BASED ON LIABILITY? (JUST ACADEMIC SAKE)

ANSWER:

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

Example: A shareholder who has paid rupees 75 on a share of face value rupees 100 can be called upon to pay the balance of rupees 25 only.

B. COMPANY – LIMITED BY GUARANTEE [SEC. 2(22)]: Company limited by guarantee means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

C. UNLIMITED COMPANY [SEC. 2(92)]: A Company not having any limit on the liability of its members. Typically, these are private limited companies with unlimited liabilities.

E.g., AMWAY India Enterprises Limited. (Source – Connect2India).

TEST YOUR KNOWLEDGE

MCQ based Questions

1. **Green Ltd. is incorporated on 3rd January, 2022. As per the Companies Act, 2013, what will be the financial year for the company:**
   a. **31st March, 2022**
   b. **31st December, 2022**
   c. **31st March, 2023**
   d. **30th September, 2023**

2. **Roma along with her six friends has incorporated Roma Trading Ltd. in May 2021. The paid-up share capital of the company is ₹ 2 crore. Further, in April 2022, she noticed that in the last financial year, the turnover of the company was well below ₹ 40 crore. Advise whether the company can be treated as a 'small company'.**
   a. **Roma Trading Ltd. is definitely a 'small company' since its paid-up capital is much below ₹ 4 crore and also its turnover has not exceeded the threshold limit of ₹ 40 crore.**
   b. **The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited company it cannot enjoy benefits of 'small company'.**
   c. **Unlike a private limited company/OPC which automatically becomes a 'small company' as soon as it meets the criteria of 'small company', Roma Trading Ltd. being a public limited company has to maintain the norms applicable to a 'small company' continuously for two years so that, thereafter, it will be treated as a 'small company'.**
   d. **If all the shareholders of Roma Trading Ltd. give an undertaking to the ROC stating that they will not let the paid-up share capital and also turnover exceed the limits applicable to a 'small company' in the next two years, then it can be treated as a 'small company'.**

3. **Abhilasha and Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends has informed them that their company can be categorized as a 'small company' because as per the last profit and loss account for the year ending 31st March, 2022, its turnover was less than ₹ 40 crore and its paid up share capital was less than ₹ 4 crore. Advise.**
   a. **A section 8 company, which meets the criteria of 'turnover' and 'paid-up share capital' in the last financial year, can avail the status of 'small company' only if it acquires at least 5% stake in another 'small company' within the immediately following financial year.**

b. **If the acquisition of minimum 5% stake in another 'small company' materializes in the second financial year (and not in the immediately following financial year) after meeting the criteria of 'turnover' and 'paid-up share capital' then with the written permission of concerned ROC, it can acquire the status of 'small company'.**
c. **The status of 'small company' cannot be bestowed upon a 'not for profit' company which is registered under Section 8 of the Companies Act, 2013.**
d. **A section 8 company, if incorporated as a private limited company (and not as public limited company) can avail the status of 'small company' with the permission of concerned ROC, after it meets the criteria of 'turnover' and 'paid-up share capital'.**

4. **Kaveri Goods Carriers Private Limited (KGCPL) issued 9% Non-convertible Debentures worth ₹ 10 lakhs and thereafter, the directors contemplated to get them listed. After due formalities, these privately placed non-convertible debentures of ₹ 10 lakhs were listed. Which of the following options is applicable in the given situation:**
   a. **KGCPL shall be considered as a listed company.**
   b. **KGCPL shall not be considered as a listed company.**
   c. **KGCPL shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is ₹ 15 lakhs.**
   d. **KGCPL shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is minimum ₹ 20 lakhs.**

5. **"Associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Here, the words 'significant influence' means:**
   a. **Control of at least 10% of total voting power**
   b. **Control of at least 15% of total voting power**
   c. **Control of at least 20% of total voting power**
   d. **Control of at least 25% of total voting power**

Answer to MCQ based Questions

1.	**c.**	31st March, 2023
2.	**b.**	The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited company cannot enjoy benefits of 'small company'.
3.	**c.**	The status of 'small company' cannot be bestowed upon a 'not for profit' company which is registered under Section 8 of the Companies Act, 2013.
4.	**b.**	KGCPL shall not be considered as a listed company.
5.	**c.**	Control of at least 20% of total voting power

PRACTICE QUESTIONS

Q.NO.1 MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 2 crore and turnover of ₹ 60 crore. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

i. Whether the MNP Private Ltd. can avail the status of small company?

ii. What will be your answer if the turnover of the company is ₹ 30 crore?

ANSWER:

PROVISION: As per Sec. 2(85) of Companies Act, 2013, Small Company means a company other than a public company and:

1. Whose paid-up capital shall not exceed Rs. 2 Crore or such higher amount as may be prescribed which shall not exceed Rs. 10 Crore **AND**
2. Whose turnover shall not exceed Rs. 20 Crore or such higher amount as may be prescribed which shall not exceed Rs. 100 Crore.
3. Which do not have a holding company or subsidiary company.

Which is not a Sec. 8 Company.

As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crores and rupees forty crores respectively.

ANALYSIS AND CONCLUSION:

i. In the present case, MNP Private Ltd., is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 2 crore and having turnover of ₹ 60 crore. Since only one criteria of share capital not exceeding ₹ 4 crore is met, but the second criteria of turnover not exceeding ₹ 40 crore is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.

ii. If the turnover of the company is ₹ 30 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

Q.NO.2 FLORA FAUNA LIMITED WAS REGISTERED AS A PUBLIC COMPANY. THERE ARE 230 MEMBERS IN THE COMPANY AS NOTED BELOW:

a.	**Directors and their relatives**	**50**
b.	**Employees**	**15**
c.	**Ex- Employees (Shares were allotted when they were employees)**	**10**
d.	**5 Couples holding shares jointly in the name of husband and wife (5*2)**	**10**
e.	**Others**	**145**

THE BOARD OF DIRECTORS OF THE COMPANY PROPOSE TO CONVERT IT INTO A PRIVATE COMPANY. ALSO ADVISE WHETHER REDUCTION IN THE NUMBER OF MEMBERS IS NECESSARY.

ANSWER:

PROVISION: As per Provisions of Companies Act, 2013, A 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.

ANALYSIS AND CONCLUSION:

In the given case the total number of members of the company are counted as below:

1. Directors and relatives – 50
2. Employees – Not counted
3. Past Employees – Not Counted (As Shares were allotted during employment)
4. Couple Shareholding – 5
5. Others – 145

Since Total number of Members are EXACTLY 200, FLOURA FAUNA Limited Can Convert into Private Company subject to other provisions of the act. Further there is no need to reduce number of members also as total members does not exceed 200.

2. INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

Q.NO.1 WRITE ABOUT THE CONCEPT OF PROMOTER?

ANSWER:

A. GENERAL MEANING:

1. Persons who initiate promotion of a company are known as promoters.
2. All persons who:
   a. Take steps for the registration of a company e.g., those associated with the preparation of a prospectus or
   b. In drawing up the Memorandum of Association of the company and
   c. Assisting in its registration,

   are regarded as promoters.

B. DEFINITION U/S. 2(69) OF COMPANIES ACT:

Promoter means a person—

a. **PROSPECTUS / ANNUAL RETURN:** Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92 or
b. **CONTROL OVER AFFAIRS:** Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise or
c. **SHADOW DIRECTORS:** In accordance with whose advice, directions, or instructions the Board of Directors of the company is accustomed to act.

NOTE: A person who is acting merely in a professional Capacity, shall not be regarded as promoter. E.g., the solicitor, banker, accountant etc. are not regarded as promoters.

Illustration (True/False)

Statement – To be a promoter one necessarily be associated with the initial formation of the company.

Answer - False, one who subsequently helps company to keep going, raise fund & advice to board (other than in professional capacity) will equally be regarded as a promoter.

Q.NO.2 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.

   Example – *Amar, Akbar, and Anthony along with five of their friends were member of Harmony Limited. Amar and Akbar died on 18th August 2022, resultantly members count reduced to 6 and everyone aware about it. Harmony limited continued its operation without increasing members. In March 2023, Company took loan for business operations, and defaulted in payment thereof. The lender of such loan can sue company, or Anthony or any of rest of five friends, because members shall severally liable for said loan in given case.*

C. Further, sub-section 2 to section 3 provides that, company formed as specified above may be incorporated either as;

1. Companies limited by shares; or

2. Companies limited by guarantee; or

3. Unlimited liability companies.

Note: A limited liability companies may be Companies limited by guarantee as well as shares. Specified IFSC Public or Specified IFSC Private Company shall be formed only as a company limited by shares. IFSC Company means a company licensed to set up businesses in any International Financial Services Centre in India, like in Gujarat International Finance Tec-City.

Illustration (True/False)

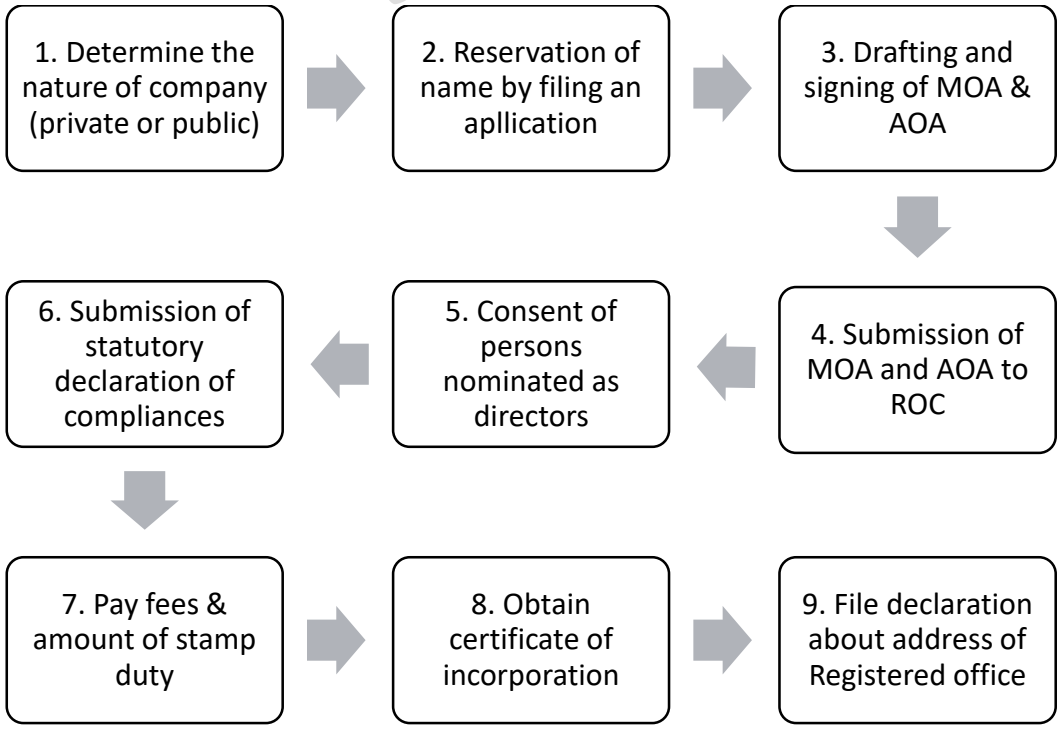
Statement – Members who knowingly operating the company for more than six months with less than the minimum number of members specified in Section 3(1) are severally liable for the payment of all debts contracted by the company during the period since the number of members was first reduced.

Answer – False, refer section 3A of the Act. Such members are liable severally for the payment of the whole debts of the company contracted during that time (after elapse of six months)

Q.NO.3 WRITE ABOUT PROCEDURE FOR INCORPORATION OF A COMPANY?

ANSWER: (SEC. 7)

Steps for Incorporation



A. 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 following particulars of every subscriber to the memorandum shall be filled;
   - **a.** Name (including surname or family name) and recent Photograph affixed
   - **b.** Father's/Mother's name
   - **c.** Nationality, Proof of nationality in case the subscriber is a foreign national
   - **d.** Date and Place of Birth (District and State)
   - **e.** Educational qualification and Occupation
   - **f.** Permanent Account Number
   - **g.** Email id and Phone number of Subscriber
   - **h.** Permanent residential address and also Present address
   - **i.** Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill, provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old

j. Proof of Identity (For Indian Nationals - Voter's identity card, Passport copy, Driving License copy, Unique Identification Number (UIN) & for Foreign nationals and Non Resident Indians – Passport)

k. If the subscriber is already a director or promoter of a company(s), the particulars relating to name of the company; Corporate Identity Number; Whether interested as a director or promoter

Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the Registrar

a. The name of the body corporate and Corporate Identity Number of the Company or Registration number of the body corporate, if any

b. GLN, if any

c. The registered office address or principal place of business

d. E-mail Id

e. If the body corporate is a company, certified true copy of the board resolution specifying inter-alia the authorization to subscribe to the MOA

f. If the body corporate is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the MOA

g. In case of foreign bodies corporate, the details relating to the copy of certificate of incorporation of the foreign body corporate; & the registered office address.

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 shall be filed in Form No. DIR-12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

8. DECLARATION (Rule 12 of the Companies (Incorporation) Rules, 2014)

a. In case any of the objects of a company requires registration or approval from sectoral regulators such as the RBI and SEBI, then such registration or approval shall be obtained by the proposed company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation.

b. In case of a Company being incorporated as a Nidhi, the declaration by the Central Government under Section 406 of the Act shall be obtained by the Nidhi before commencing the business and a declaration in this behalf shall be submitted at the stage of incorporation by the Company.

B. 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. Certificate of Incorporation shall mention permanent account number of the company where if it is issued by the Income-tax Department.

C. 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.

Practical Insight

Certificate of Incorporation

GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

Registrar of Companies, Delhi
4th Floor , IFCI Tower , 61 , Nehru Place

Certificate of Incorporation

[Pursuant to sub-section (2) of section 7 of the Companies Act, 2013 and rule 8 of the Companies (Incorporation) Rules, 2014]

I hereby certify that DARPAN TECHNOLOGIES PRIVATE LIMITED is incorporated on this Eleventh day of December Two Thousand Fifteen under the Companies Act, 2013 and that the company is limited by shares.

The CIN of the company is U72900DL2015PTC288378.

Given under my hand at Delhi this Eleventh day of December Two Thousand Fifteen.

Nitin Phartyal
Assistant Registrar of Companies
Delhi

Mailing Address as per record available in Registrar of Companies office:

DARPAN TECHNOLOGIES PRIVATE LIMITED
I-229, Jaitpur Extn.,, Part-1, Badarpur,,
NEW DELHI - 110044,
Delhi, INDIA

Students are advised to take note;

The Certificate contains the name of the company, the date of its issue, CIN (Corporate Identity Number) and the signature of the Registrar with his seal.

Certificate of incorporation is evidence of registration (existence of separate legal entity with perpetual succession). It effects are highlighted by section 9, explain later in this chapter.

Earlier, the certificate of incorporation considered as conclusive proof, but as per the Companies Act, 2013, ***certificate of Incorporation is not conclusive proof of everything prior to incorporation being in order.*** *Sub-section (6) and (7) of section 7 signify this understanding.*

D. 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.4 WRITE ABOUT SIGNING OF MOA AND AOA?

ANSWER:

The MOA and AOA duly signed by all the subscribers to the memorandum

a. Each subscriber shall add his name, address, description & Occupation, if any, in the presence of at least one witness who shall attest the signature, shall sign, and add his name, description and occupation, if any.

b. ILLETERATE AS SUBSCRIBER: Where a subscriber is illiterate, 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 it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.

Note: The type written or printed particulars of the subscribers and witnesses shall be allowed as if it is written, so long as appends signature or thumb impression.

c. BODY CORPORATE AS SUBSCRIBER: 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.

d. LLP AS SUBSCRIBER: Where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership:

Note: In either case c or stated above, the person so authorized shall not be a subscriber to the memorandum and articles of Association at the same time.

e. FOREIGN NATIONAL AS SUBSCRIBER:

1. Where subscriber to the memorandum is a foreign national residing outside India his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) with a certificate. Further, if such person residing in a country outside the Commonwealth or which is not a party to the Hague Apostille Convention, 1961, the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer.
2. Where subscriber to the memorandum is a foreign national residing outside India and visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.
3. In case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.

Practical Insight / Illustration

Extracts from Memorandum of Association of Infosys Limited (Corporate Identification Number: L85110KA1981PLC013115)

We the several persons whose names and addresses are subscribed below are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the Capital of the Company set opposite to our respective names.

Signature, Name, Address, description and occupation of Subscribers	***Number of Equity shares taken by Subscriber***	***Signature, Name, Address, description and occupation of Witness***
Nagavara Ramarao Narayana Murthy (Son of Nagavara Ramarao) Flat 6, Padmanabham Apartment, 1126/2 Shivajinagar, Pune – 411016 Consultant	*1 (One equity)*	

Nadathur Srinivasa Raghavan *(Son of N. Sarangapani)* *5, "Ravikripa", Station Road,* *Matunga (C.R),* *Bombay – 400019.* *Consultant*	*1 (One equity)*	*VIPUL DEVENDRA KINKHABWALA* *(S/o. Devendra Vithaldas Kinkhabwala)* *14, Thakurdwar Road,* *Zaveri Building,* *Bombay – 400002.* *Service*
Senapathy Gopalakrishnan *(Son of P.G.Senapathy)* *Krishna Vihar, Kalapalayam Lane,* *Pathenchanthai,* *Trivendrum – 695001.* *Consultant*	*1 (One equity)*	
Nandan Mohan Nilekani *(Son of M.R. Nilekani)* *37, Saraswatput,* *Dharwar – 580002.* *KARNATAKA* *Consultant*	*1 (One equity)*	
	4 (Four equity)	

Dated this 15th day of June 1981. *Amended on August 23, 2018*

Q.NO.5 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.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. The memorandum of OPC shall indicate the name of the NOMINEE, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
2. The nominee, whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation along with its Memorandum of Association and Articles of Association.
3. Such nominee may be given the right to withdraw his consent.
4. The member of OPC may at any time change the name of such nominee by giving notice to the company and the company shall intimate the same to the Registrar.
5. Any such change in the name of NOMINEE shall not be deemed to be an alteration of the memorandum.

EXAMPLE: Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years, his wife Roopali is suffering from terminal illness and due to this hard fact, he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. In the instant case, Rajesh can appoint his friend Ramnivas as nominee in his OPC and not Rakshak because Rakshak is a minor.

G. When Nominee become Member

Where the sole member ceases to be the member and nominee become new member, then such new member shall nominate within 15 days of becoming member, a person (new nominee) who shall in the event of his death or his incapacity to contract become the member of such company.

H. Notice of change to Registrar

1. In all the three cases of change

a. Withdraw of Consent by Nominee,

b. Replacing Nominee with another one and

c. When Nominee become Member

the company within 30 days of receipt of notice of withdrawal of consent by nominee, intimation of change of nominee from member, or cessation; shall file the notice with the Registrar of such withdrawal of consent, change or cessation respectively.

2. Intimate the name of such another person (new nominee) in Form No. INC-4 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 along with the prior written consent of such another person so nominated in Form No. INC-3.

I. BENEFITS OR RELAXATIONS AVAILABLE TO AN OPC:

1. OPC is Not required to prepare a cash-flow statement with effect of section 2(40).

2. The annual return to furnished under section 92 can be signed by the Director and not necessarily a Company Secretary, even abridged annual return may be prescribed.

3. Further, following the similar line, section 134 provides it would suffice if one director signs the audited financial statements and abridged form of director report may be prescribed.

4. Holding annual general meeting as required under section 96 is not necessary in case of OPC. Moreover, certain specific provisions related to general meetings and extraordinary general meetings, specified under sections 100 to 111 not applicable to OPC.

5. Even relaxation is also there in convening board meetings section 173 requires an OPC to hold only one meeting of the Board of Directors in each half of a calendar year.

6. Vide section 137, the OPC are allowed to file financial statements within 6 months from the close of the financial year as against 30 days from holding AGM.

Illustration (True/False)

Statement – Even a Non-Resident Indian can form and become member of OPC.

Answer – True, Rule 3(1) of The Companies (Incorporation) Rules, 2014.

Only a natural person, other than minor; who is an Indian citizen and **whether resident in India or otherwise** shall be eligible to incorporate a One Person Company.

Q.NO.7 EXPLAIN ABOUT FORMATION OF COMPANIES WITH CHARITABLE OBJECTIVES?

ANSWER: (SEC. 8 COMPANY)

FORMATION OF COMPANIES WITH CHARITABLE OBJECTS, ETC. [SECTION 8] The purpose of formation of company is not always making profit through operating economic activities, it may have charitable or social objects.

Example: *Tata Foundation (CIN U85191MH2014NPL253500) and Azim Premji Foundation (CIN U93090KA2001NPL028740). Students are advised to take note that 5th data section of both the CIN comprises of 'NPL', which signify Not-for-Profit License Company.*

A. OBJECTIVE OF FORMATION OF SEC.8 COMPANY:

1. To promote the charitable objects of:
   - **a.** Commerce,
   - **b.** Art,
   - **c.** Science,
   - **d.** Sports,
   - **e.** Education,
   - **f.** Research,
   - **g.** Social welfare,
   - **h.** Religion,
   - **i.** Charity,
   - **j.** Protection of environment etc.
2. Such company intends to apply its profit in promoting its objects and prohibiting the payment of any dividend to its members.

B. REGISTRATION OF COMPANY USING LICENSE

After granting licence, an application shall be made to registrar under section 8(1) itself for registration of company in the manner specified in rule 19 of the Companies (Incorporation) Rules 2014.

1. **Application for registration**

   A person or an association of persons desirous of incorporating a company with limited liability under section 8(1), shall make an application to registrar in **Form SPICe+** (Simplified Proforma for Incorporating company Electronically Plus: INC32) along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

2. **Supporting document along with Application**

   The application furnished as specified above shall be accompanied by the following documents;

   a. The memorandum and articles of association of the proposed company in the Form No. INC-13 and Form No. INC-31, respectively;

   b. An estimate of the future annual income and expenditure of the company for next 3 years, specifying the sources of the income and the objects of the expenditure;

   c. The declaration in by an Advocate, a Chartered Accountant, cost accountant or Company Secretary in practice Form No. INC-14 and by each of the persons making the application in Form No. INC-15, that;

   - The memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and
   - 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. PRIVILEGES OF LIMITED COMPANY: On registration, the company shall enjoy same privileges and obligations as of a limited company.

D. 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.
4. A firm may be a member of the company registered under section 8.

E. ALTERATION OF MEMORANDUM AND ARTICLES REQUIRES PRIOR PERMISSION OF GOVERNMENT

1. A company registered under this section requires prior permission from;
   a. Central Government (power delegated to **regional directors**) for alteration of its **memorandum** and

b. Central Government (power delegated to **ROCs**) for alteration of its **articles**.

2. CONVERSION INTO ANY OTHER KIND OF COMPANY

A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed in rule 21 and 22 of the Companies (Incorporation) Rule 2014 as described below;

a. A company shall pass a special resolution at a general meeting for approving such conversion.

b. An explanatory statement to notice of such general meeting must set-out the details on reason of such conversion.

c. The company shall file an application in Form No. INC-18 with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for conversion.

d. Also attach the proof of serving of the notice served by registered post or hand delivery**,** to:

- The Chief Commissioner of Income Tax having jurisdiction over the company,
- Income Tax Officer who has jurisdiction over the company,
- The Charity Commissioner,
- The Chief Secretary of the State in which the registered office of the company is situated,
- Any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating.

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

e. A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar**.**

f. The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in Form No. INC-19 and 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; and

- On the website of the company, if any, and as may be notified or directed by the Central Government.

g. The company should have filed all its financial statements and Annual Returns up to the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director

Note: 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 chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.

h. On receipt of the application, and on being satisfied , the Regional Director 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.

i. Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director

j. On receipt of the approval of the Regional Director, 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 and the Company shall thereafter file these with the Registrar (with declaration to adhere conditions if any, imposed by Regional Director)

k. On receipt of the documents referred above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation**.**

Q.NO.8 WRITE ABOUR REVOCATION OF LICENSE TO SEC.8 COMPANY?

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).

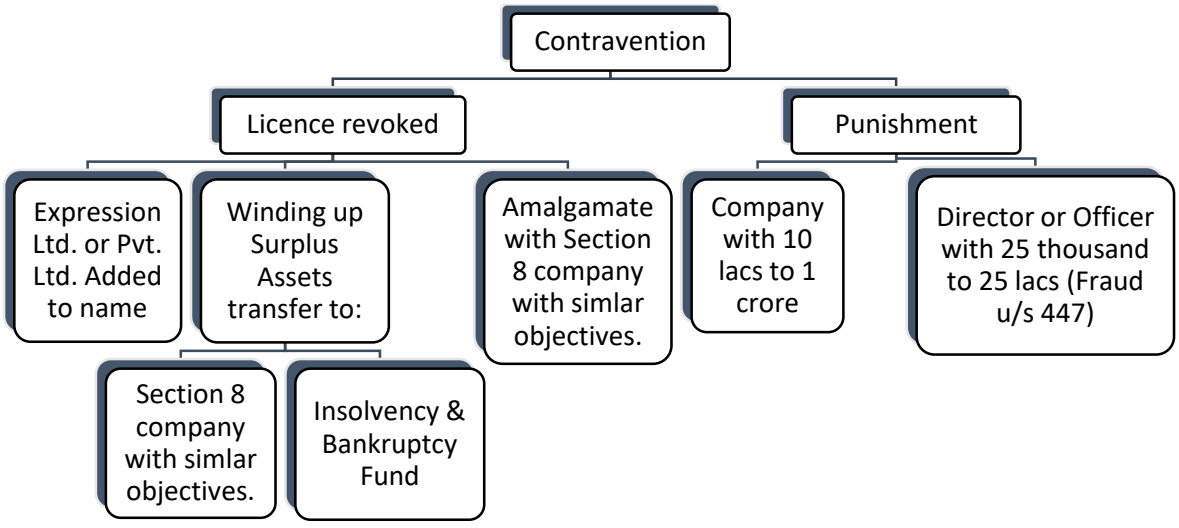
Note:

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 Insolvency and Bankruptcy Fund u/s 224 of IBC, 2016.

D. PENALTY/ PUNISHMENT IN CONTRAVENTION

Penalty for offences under section 8 are summarised below;

Offence	Penalty
Company makes any default in complying with any of the requirements laid down in this section	Company shall, be punishable with fine varying from ₹ 10 lakhs to ₹ 1crore
	Directors and Every officer of the company who is in default shall be punishable with fine varying from ₹ 25,000 to ₹ 25 lakh
The affairs of the company were conducted fraudulently	Every officer in default shall be liable for action under section 447



SUMMARY OF SUB-SECTION 6 TO 11 OF SECTION 8

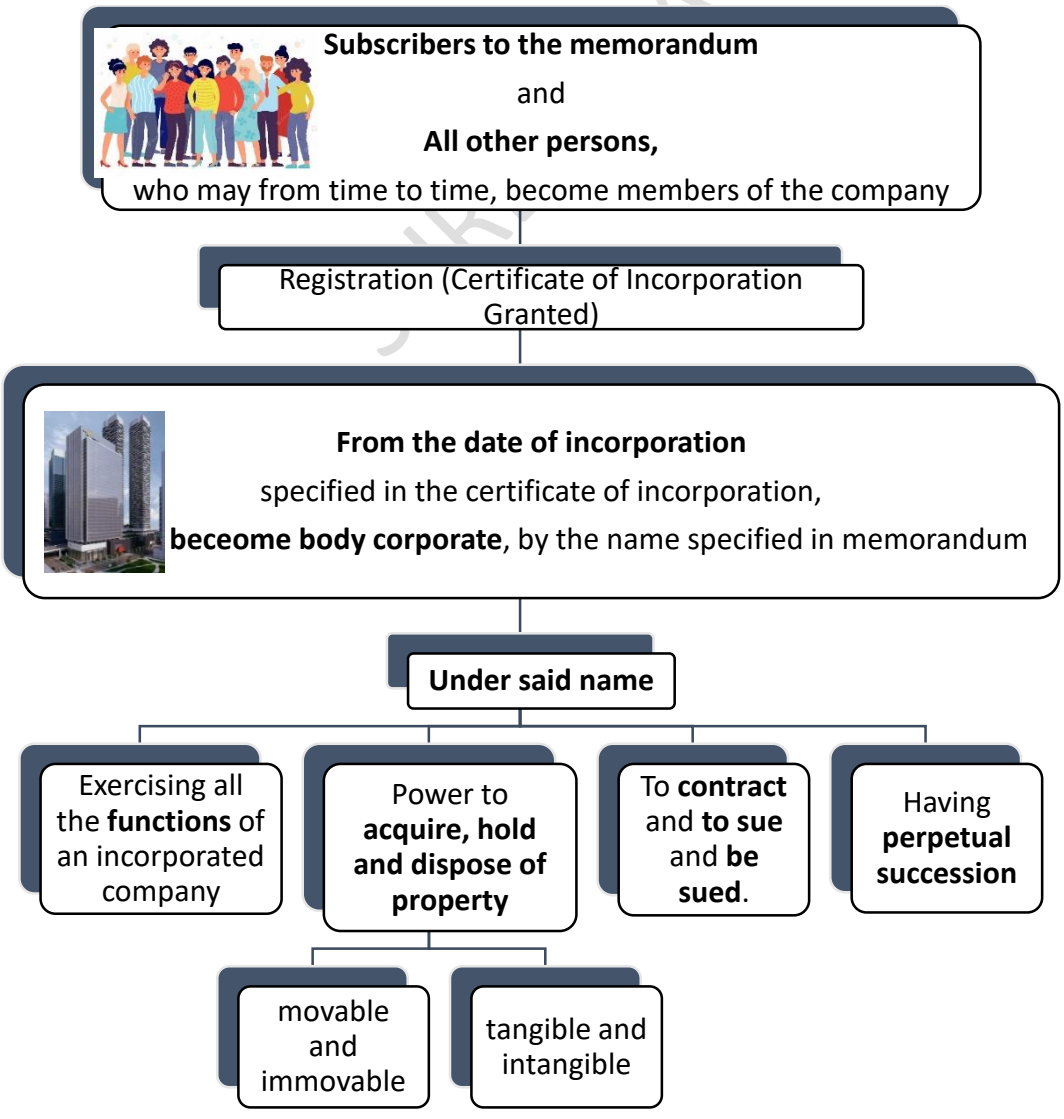
Q.NO.9 WRITE ABOUT EFFECT OF REGISTRATION?

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.

SUMMARY OF SECTION 9



Q.NO.10 WRITE ABOUT DEFINITION OF MEMORANDUM AND ITS SIGNIFICANCE?

ANSWER:

A. DEFINITION OF MEMORANDUM [SEC.2(56)]:

1. 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.
2. It is the base document for the formation of the company and along with the Articles of Association (AOA) is regarded as the Constitution of the Company.
3. The contents of MOA and AOA shall be in compliance with companies act, 2013 and all other applicable laws and regulations.

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.
5. **ULTRAVIRES:** A company cannot depart from the provisions contained in the memorandum whatever may be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. If it does so, it would be ultra vires the company and void.

C. The memorandum shall contain the following clauses:

1. Name Clause
2. Situation Clause (also called registered office clause)
3. Objects Clause
4. Liability Clause
5. Capital Clause (applicable, if company is formed with share capital)

6. Association Clause or Subscription Clause (specifically drafted in case of OPC)
7. Nomination Clause (applicable, in case of OPC)

Q.NO.11 EXPLAIN NAME CLAUSE IN MEMORANDUM OF ASSOCIATION?

ANSWER:

A. NAME CLAUSE: The name of the company with the last word "Limited" in the case of a public limited company, or "Private Limited" in the case of a private limited company.

Note: The above clause is not applicable in case of section 8 companies. In case of Specified IFSC Public Company & IFSC Private Company, name shall have the suffix, "International Financial Service Company" or "IFSC".

1. **RESTRICTION ON SELECTION OF NAMES:** The name stated in the memorandum shall not be identical with or resemble too nearly to the name of an existing company and shall not use an undesirable name in the opinion of the Central Government.
2. **UNDESIRABLE NAMES:** A company SHALL **NOT** be registered with a name which contains—
   a. **RESEMBLES GOVERNMENT:** Any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force or such words or expressions without obtaining prior approval of government.

   A name said to be 'resemble' when difference is only and only of

   a. *Plural or singular form of words in one or both names (Green Technology Ltd. is same as Greens Technology Ltd. and Greens Technologies Ltd.)*

   b. *Type and case of letters, spacing between letters, and punctuation marks used in one or both names (ABC Ltd. is same as A.B.C. Ltd. and A B C Ltd.)*

   c. *Use of different tenses in one or both names (Ascend Solutions Ltd. is same as Ascended Solutions Ltd. and Ascending Solutions Ltd.)*

   d. *Slight variation in the spelling of the two names including a grammatical variation thereof (Disc Solutions Ltd. is same as Disk Solutions Ltd. but it is not same as Disco Solutions Ltd)*

   e. *Use of different phonetic spellings including use of misspelled words of an expression (Bee Kay Ltd is same as BK Ltd, Be Kay Ltd., B Kay Ltd., Bee K Ltd., B.K. Ltd. and Beee Kay Ltd)*

f. *Complete translation or transliteration, and not part thereof, of an existing name, in Hindi or in English (National Electricity Corporation Ltd. is same as Rashtriya Vidyut Nigam Ltd.)*

g. *Use of host name such as 'www' or a domain extension such as .net'. org', 'dot' or 'com' in one or both names (Ultra Solutions Ltd. is same as Ultrasolutions.com Ltd. But Supreme Ultra Solutions Ltd. is not the same as Ultrasolutions.com Ltd.)*

h. *The order of words in the names (Ravi Builders and Contractors Ltd. is same as Ravi Contractors and Builders Ltd.)*

i. *Use of the definite or indefinite article in one or both names (Congenial Tours Ltd. is same as A Congenial Tours Ltd. and The Congenial Tours Ltd. But Isha Industries Limited is not the same as Anisha Industries Limited.)*

j. *Addition of the name of a place to an existing name, which does not contain the name of any place; (If Salvage Technologies Ltd. is an existing name, it is same as Salvage Technologies Delhi Ltd. But Retro Pharmaceuticals Ranchi Ltd. is not the same as Retro Pharmaceuticals Chennai Ltd.)*

k. *addition, deletion, or modification of numerals or expressions denoting numerals in an existing name, unless the numeral represents any brand (Thunder Services Ltd is same as Thunder 11 Services Ltd and One Thunder Services Ltd.)*

b. SPECIFIC WORDS NOT TO USE: The following words and combinations thereof shall not be used in the name of a company unless the previous approval of the Central Government has been obtained for the use of any such word or expression-*Board; Commission; Authority; Undertaking; National; Union; Central; Federal; Republic; President, SSI, Financial Corporation, Development Authority,* etc. (Rule 8 of CIR, 2014)

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

3. RESERVATION OF NAME:

a. APPLYING FOR NAME: A person may make an application to the Registrar for the reservation of a name set out in the application as:

i. the name of the proposed company; or

ii. the name to which the company proposes to change its name.

Note: Resubmission shall be allowed within 15 days, for rectification of defect, if any.

b. RESERVING THE NAME: (RUN – Reserve Unique Name)

i. NEW COMPANY: Upon receipt of an application and on the basis of information and documents furnished along with the application, the registrar, reserves the name for a period of 20 DAYS from the date of approval or such other period as may be prescribed:

ii. EXISTING COMPANY: Further if an application for the same name is received from an existing company for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of 60 DAYS from the date of approval.

c. Extension of Reservation of Name: An application for extension of reservation of name under rule 9A of the Companies (Incorporation) Rules 2014 can be made before expiry of 20 days;

i. For another 20 days (total of 40 days) with fee of ₹ 1000, which may be further extend by another 20 day (total of 60 days) with fee of ₹ 2000.

Or

ii. For another 40 days (total of 60 days) with fee of 3000

d. CANCELLING NAME: Where after reservation of name, it is found that name was applied by furnishing wrong or incorrect information, then:

i. NOT YET INCORPORATED: If the company has not been incorporated, the reserved name shall be cancelled and the person who has made the application shall be liable to a penalty which may extend to one lakh rupees.

ii. INCORPORATED: If the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard—

a. Either direct the company to change its name within a period of 3 months, after passing an ordinary resolution or

b. Take action for striking off the name of the company from the register of companies or

c. Make a petition for winding up of the company.

----**AUTHOR NOTE:** Striking off is a simple and faster way to close company than the process of windup----

e. **EMBLEMS AND NAMES ACT:** As per the *General Circular No.29/2014, dated 11th of July, 2014,* Government directed that while allotting names to Companies/Limited Liability Partnerships, the Registrar of Companies should exercise due care that the names are not in contravention of the provisions of the *EMBLEMS AND NAMES (PREVENTION OF IMPROPER USE) ACT, 1950.*

EXAMPLE: Mr. Anil Desai, has applied for reservation of company name with a prefix "Sanwariya". He claimed that the Prefix "Sanwariya" is registered trademark in his name. Later on, it is found that the said prefix is not registered with Mr. Anil Desai, however, he has formed company by giving incorrect documents/ information while applying the name of the company.

In such case, the Registrar shall take action as per the provisions of the act after giving opportunity of being heard.

Q.NO.12 EXPLAIN SITUATIONCLAUSE IN MEMORANDUM OF ASSOCIATION?

ANSWER:

SITUATION CLAUSE - SECTION 4 (1) (b)

Section 4(1)(b) requires, the memorandum of a company shall mention the name of state, where registered office is proposed to be situated.

The situation (place) of registered office is important from perspective of.

a. Establishing the domicile of company for the purpose of determining jurisdictions in context to compliance (ROC, RD etc.), judicial aspects (bench of NCLT, high court etc.), fiscal aspects (taxation), and for many other purposes.

b. Place at which the company's statutory books must normally be kept (in case of public company, general meeting also required to be conducted at registered office or in the city where it is situated).

c. Act as the address to which notices and other communications can be sent.

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.

Q.NO.13 EXPLAIN OBJECT CLAUSE IN MEMORANDUM OF ASSOCIATION?

ANSWER:

OBJECT CLAUSE & DOCTRINE OF ULTRA VIRES

Section 4(1)(c), requires the memorandum of a company shall state the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

Note: Specified IFSC Public Company & IFSC Private company shall state its objects to do financial services activities as permitted under the Special Economic Zones Act, 2005 read with SEZ Rules, 2006 and any matter considered necessary in furtherance thereof in accordance with license to operate, from International Financial Services Centre located in an approved multi services Special Economic Zone, granted by the RBI, SEBI, or IRDA.

DOCTRINE OF ULTRA VIRES:

1. **VOID:** In the case of a company, whatever is NOT STATED in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires. As a result, an act which is ultra vires is void, and does not bind the company.

   Neither the company nor the contracting party can sue on it. The company cannot make it valid, even if every member assent to it.

2. **PRINCIPLE OF RATIFICATION:**
   - i. **CANNOT RATIFY:** The general rule is that an act which is ultra vires the company is incapable of ratification.
   - ii. **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

       To illustrate; One of the director is authorised to issue cheque of ₹ 10000, but he issued for ₹ 12000; company can ratify so.
     - **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.

3. **PROTECTION TO STAKE HOLDERS:** The rule is meant to protect shareholders and the creditors of the company. The doctrine of ultra vires was first enunciated by the House of Lords in a classic case:

   ASHBURY RAILWAY CARRIAGE AND IRON CO. LTD. V. RICHE, (1878) L.R. 7 H.L. 653: The memorandum of the company in the said case defined its objects thus: "The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers AND GENERAL CONTRACTORS…….".

The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation of this contract by the company on the ground of its being ultra vires, Riche brought a case for damages on the ground of breach of contract, as according to him the words "general contractors" in the object's clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. More so because the contract was ratified by a majority of shareholders.

The House of Lords held that the contract was ultra vires the company and, therefore, null and void. The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers.

The Court held that if every shareholder of the company had been in the room and had said, "That is a contract which we desire to make, which we authorise the directors to make", still it would be ultra vires. The shareholders cannot ratify such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

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

Q.NO.14 EXPLAIN LIABILITY, CAPITAL, SUBSCRIPTION CLAUSES IN MEMORANDUM OF ASSOCIATION?

ANSWER:

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

i. **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

ii. **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.

Example - *Modern Furniture limited, a company limited by shares having share capital divided into shares with face value of ₹ 10 each, out of which ₹ 8 is called up. Mr. Singh who is having 200 share paid all ₹ 8 on each of share he hold, while Ms. Sarla owning 100 shares paid ₹ 10 (Rupee 2 in advance); whereas Mr. Sanju owning 250 shares paid ₹ 6 per share (₹ 2 in arrear per share). Liability of Mr. Singh, Ms. Sarla, and Mr. Sanju shall be maximum upto ₹ 400, Nil, and ₹ 1000 only; respectively.*

B. SHARE CAPITAL CLAUSE: (SHALL DISCLOSE)

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.
3. In case of One Person Company, along with member name, the MOA shall also contain Nominee Details.

C. 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.*

D. 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**

NOTE: Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, shall not give any person a right to participate in the divisible profits of the company otherwise than as a member. If the contrary is done, it shall be void.

Q.NO.15 WRITE ABOUT OVERVIEW OF AN 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: 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.

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.

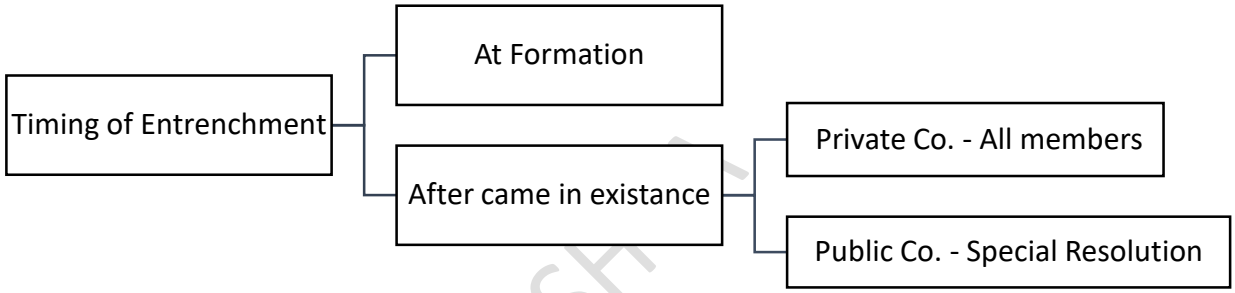
   b. MANNER OF INCLUSION: The provisions for entrenchment shall only be made:

   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:** The company shall give notice to the Registrar of entrenchment provisions included in article
   i. In the **SPICe+**(Simplified Proforma for Incorporating company Electronically Plus: INC-32), along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company, and
   ii. In case of existing companies, in Form No. MGT-14 within 30 days from the date of entrenchment of the articles, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.



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.

EXAMPLE: If PQR Company subscribes 20% shares of XYZ, a Private Ltd. company. Remaining 80% shares are held by promoters and family. Tomorrow if XYZ private limited approaches any Bank for a loan, the bank officials would read the Articles & would ask to get the consent of PQR Company. Now, if there is no entrenchment provision, then 'XYZ' may, after passing a special resolution remove the minority right and can borrow beyond the limit.

In order to control it, the entrenchment provisions are usually compelled by the minority to make the majority responsible and the minorities in these provisions can get incorporated a clause saying that borrowing beyond a particular limit or issuances of shares is to be done only after the requisite consent of minority has been obtained.

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.

	TABLE	CONTAINS
AOA	**F**	ARTICLES OF ASSOCIATION OF A COMPANY **LIMITED BY SHARES**
	G	ARTICLES OF ASSOCIATION OF A COMPANY **LIMITED BY GUARANTEE** AND HAVING A **SHARE CAPITAL**
	H	ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY **GUARANTEE** AND **NOT HAVING SHARE CAPITAL**
	I	ARTICLES OF ASSOCIATION OF AN **UNLIMITED** COMPANY AND HAVING A **SHARE CAPITAL**
	J	ARTICLES OF ASSOCIATION OF AN **UNLIMITED** COMPANY AND **NOT HAVING SHARE CAPITAL**

Q.NO.16 HIGHLIGHT DIFFERENCES BETWEEN THE MOA AND AOA?

ANSWER:

The key differences between the MOA and AOA includes;

1. **Content -** The memorandum contains the fundamental conditions as basis of incorporation. It lays down the parameters that define relation of company with outsiders. The Articles contain internal regulations of the company; hence regulate the relationship between company and the members and members inter se.
2. **Supremacy -** Memorandum cannot include any clause that is contrary to the provisions of the law, whereas the articles shall be subordinate to both the law and memorandum. Therefore, in case on conflict among the two, the MOA shall prevail.
3. **Scope -**Memorandum lays down the scope beyond which the activities of the company cannot go. An act done by a company beyond the scope of the memorandum are ultra vires and void. They cannot be ratified even by all the shareholders. Articles provide for regulations inside scope established by MOA, hence acts beyond the articles can be ratified by the shareholders provided the relevant provisions are not beyond the memorandum.

Q.NO.17 WRITE ABOUT DOCTRINE OF INDOOR MANAGEMENT AND EXCEPTIONS TO IT?

ANSWER:

A. **DOCTRINE OF INDOOR MANAGEMENT:**

   1. Persons dealing with the company cannot be assumed to have knowledge of internal problems of the company. He can simply assume that all the required things were get done properly in the company.

2. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.
3. The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.
4. The doctrine of indoor management evolved around 150 years ago in the context of the doctrine of constructive notice.
5. This doctrine also is a possible safeguard against the possibility of abusing the doctrine of constructive notice.

B. BASIS FOR DOCTRINE OF INDOOR MANAGEMENT:

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

C. EXCEPTIONS TO DOCTRINE OF INDOOR MANAGEMENT:

(APPLICABILITY OF DOCTRINE OF CONSTRUCTIVE NOTICE) (REF NOTE)

1. **KNOWLEDGE OF IRREGULARITY:** In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.
2. **NEGLIGENCE:** If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply.
3. **FORGERY:** The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

NOTE: (DOCTRINE OF CONSTRUCTIVE NOTICE)

The role of doctrine of indoor management is opposed to of the role of doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company.

Illustration

1. **The doctrine of indoor management is considered to be _____ to the doctrine of constructive notice.**
   a. **Exception**
   b. **Extension**
   c. **Alternative**
   d. **Not related**

   Answer – a. Exception

Q.NO.18 MOA AND AOA CANNOT OVERRIDE THE ACT. COMMENT.

ANSWER:

ACT OVERRIDES MOA AND AOA (SEC .6)

'SAVE AS OTHERWISE EXPRESSLY PROVIDED in this Act—

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.'

NOTE: In simple words, the provisions of this Act shall have overriding effect. But keep in mind that this section starts with "Save as otherwise ….". It means that if any other section of the Act says that article is superior then we will treat it accordingly.

Example - Section 123 declares that no dividend shall be paid by a company except out of profits. The force of this section cannot be undone by any provision in the articles of association, because the articles cannot sanction something which is forbidden by the Act. Even still it attempts then shall be void.

Q.NO.19 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. It means that, on the basis of MOA and AOA:

a. Company is liable to members.

b. Members are liable to company.

c. But members are not liable to each other.

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.]

Example (Member to the Company)

The articles of association of the Steel Bros & Co Ltd contained clauses to the effect that on the bankruptcy of a member his shares would be sold to a person and at a price fixed by the directors. Borland, a shareholder, was adjudicated bankrupt. His trustee in bankruptcy claimed that he (Borland) was not bound by these provisions and should be at liberty to sell the shares at their true value. But it was held that contracts contained in the articles of association is one of the original incidents of the shares. Shares having been purchased on those terms and conditions, it is impossible to say that those terms and conditions are not to be observed.[24]

Example (Company to the Member)

The articles of the Odessa Waterworks Co provided that "the directors may, with the sanction of the company at general meeting, declare a dividend to be paid to the members". Instead of paying the dividend in cash to the shareholders a resolution was passed to give them debenture bonds. In an action by Mr. Wood, a member to restrain the directors from acting on the resolution, it was held that "The question is whether that which is proposed to be done in the present case is in accordance with the articles of association of the company. Those articles provide that the directors may, with the sanction of a general meeting, declare a dividend to be paid to shareholders. Prima facie that means to be paid in cash. The debenture bonds proposed to be issued are not a payment in cash."

Example (Member to the Member)

Mr. Rayfield was a shareholder in a company. Clause 11 of the articles of company required him to inform the directors of his intention to transfer his shares in the company and which provided that the directors will take the said shares equally between them at a fair value. In accordance with this provision the Mr. Rayfield so notified the directors (who are members as well), who contended that they were not bound to take and pay for the shares. They said, articles could not impose such obligation upon them in their capacity as directors. Their argument was set aside by the court by treating those directors as members. Accordingly, the directors (being members) were compelled to take the Mr. Rayfield's shares at a fair value.

Q.NO.20 WRITE ABOUT ALTERATION OF NAME CLAUSE IN 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. **PROHIBITION OF CHANGE OF NAME:**
   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.

   Example –

   Tata Sky Limited change its Name to Tata Play Limited (CIN U92120MH2001PLC130365).

   On August 24, 1910, a company was registered in India under the name Imperial Tobacco Company of India Limited. As the Company's ownership progressively Indianised, the name of the Company was changed to India Tobacco Company Limited in 1970 and then to I.T.C.

Limited in 1974. In recognition of the ITC's multi business portfolio encompassing a wide range of businesses, the full stops in the Company's name were removed effective September 18, 2001. The Company now stands rechristened 'ITC Limited,' where 'ITC' is today no longer an acronym or an initialised form.

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 **3 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.

3. In case of Default

- **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.

Q.NO.21 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. It could be different from a Head Office or Corporate office.

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.

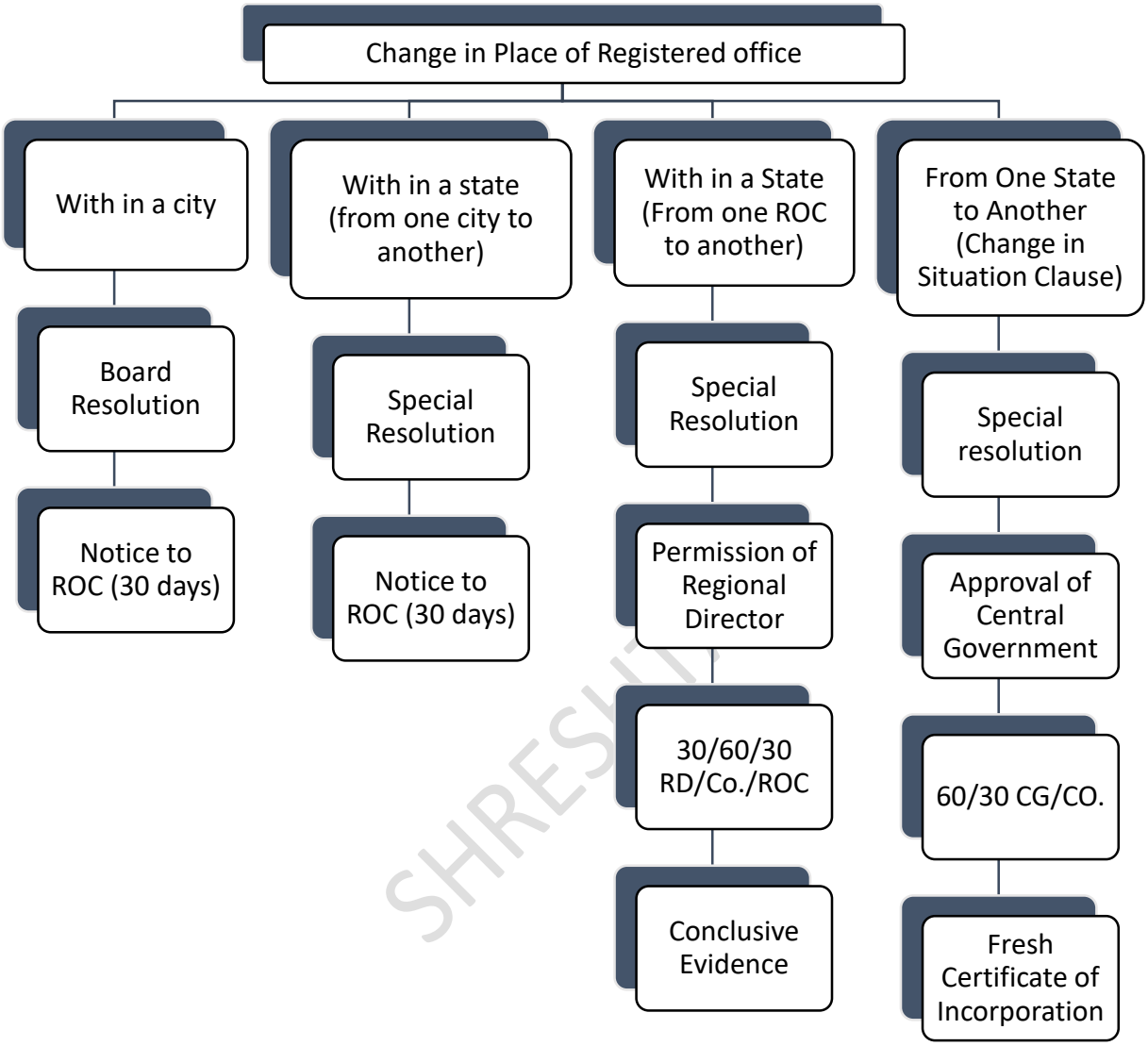
B. 30 DAYS TIME LIMIT: A company shall, within thirty days of its incorporation and at all times, thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it. (For IFSC Companies - R.O shall be there in the IFSC and 60 Days - time limit is given for IFSC Co's)

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.

D. LABELING 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:** 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 30 days of the change.

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 a 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. 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.22 WRITE ABOUT ALTERATION OF MEMORANDUM OF ASSOCIATION REGARDING SHIFTING OF REGISTERED OFFICE FROM ONE STATE TO ANOTHER STATE?

ANSWER:

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 Form No. INC-23 along with the fee and shall be accompanied by the following documents, namely;
   - **a.** Copy of Memorandum of Association, with proposed alterations;
   - **b.** 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. Copy of Board Resolution or Power of Attorney or the executed vakalatnama, as the case may be.

d. List of creditors and debenture holders

e. 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.

2. **ADVERTISEMENT IN NEWSPAPERS:** The Company not more than 30 days before the date of filing the above application, shall 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 wide circulation in the state in which the registered office of the company is situated.

3. **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.

4. 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.

5. **FILING WITH REGISTRAR:** A company shall, within 30 days from the date of receipt of certified copy of the order, 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.

6. **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.

Q.NO.23 WRITE ABOUT ALTERATION OF MEMORANDUM OF ASSOCIATION REGARDING ALTERATION OF OBJECT CLASUE?

ANSWER:

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.
5. **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**.

ALTERATION NOTED IN EVERY COPY:

a. Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or 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 memorandum or articles issued without such alteration. [Section 15]

Q.NO.24 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 made **within sixty days** from the date of passing of special resolution, be filed with Regional Director in e-Form No. RD-1 along with the fee.
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 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.25 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.26 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) Ordinance, 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.

5. **VERIFY BY CA / CS / CMA:** The contents of the said declaration form shall be verified by a Company Secretary or a Chartered Accountant or a Cost Accountant, in practice:
6. **SPECIAL ENTITIES:** In the case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration.

Q.NO.27 WRITE ABOUT CONVERSION OF COMPANIES ALREADY REGISTERED?

ANSWER:

CONVERSION OF COMPANY (SEC .18): A company may convert itself in some other class of company by altering its memorandum and articles of association. Following is the law with respect to the conversion of the companies already registered.

1. **BY ALTERATION OF MEMORANDUM AND ARTICLES:** A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.
2. **FILE AN APPLICATION TO THE REGISTRAR:** Wherever such conversion of companies is required to be done, the company shall file an application to the Registrar, who shall after satisfy himself that the provisions applicable for registration of companies have been complied with, close the former registration of the company.
3. **ISSUE A CERTIFICATE OF INCORPORATION:** After registering the required documents, issue a certificate of incorporation in the same manner as its first registration.
4. **NO EFFECT ON THE DEBTS, LIABILITIES ETC. INCURRED BEFORE CONVERSION:** The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

Q.NO.28 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. EXAMPLE: RPIP Ltd. has invested 51% in the shares of SSP Pvt. Ltd. on 31 March 2017. SSP Pvt. Ltd. have been holding 2% equity of RPIP Ltd since 2011. SSP Pvt. Ltd. cannot increase its equity beyond that 2% on or after 31 March 2017. However, it could continue to hold or reduce its initial 2% stake.

Q.NO.29 WRITE ABOUT SERVING OF DOCUMENTS? (SELF STUDY)

ANSWER:

Section 20 of the Companies Act, 2013, provides the mode in which documents may be served on the company, on the members and also on the registrars. Law with respect to the service of documents is as follows—

A. SERVING OF DOCUMENT TO COMPANY: A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by-

1. Registered post, or
2. Speed post, or
3. Courier service, or
4. Leaving it at its registered office, or
5. Means of such electronic or other mode as may be prescribed.

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

B. SERVING OF DOCUMENT TO REGISTRAR OR MEMBER: For filing of documents with the Registrar in electronic mode, 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.

Explanation—For the purposes of this section, the term "courier" means a person or agency which delivers the document and provides proof of its delivery.

Note:

1. In case of Nidhi Company, a document may be served upon a member only if he holds shares of more than Rs.1000/- in face value or more than 1 % of the total paid up capital, whichever is less.
2. For Remaining shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhi is situated; and publication of the same on the notice board of the Nidhi.
3. **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.30 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.

Note:

1. **CHIEF EXECUTIVE OFFICER (CEO)** means an officer of a company, who has been designated as such by it.
2. **CHIEF FINANCIAL OFFICER (CFO)** means a person appointed as the Chief Financial Officer of a company; These definitions of CEO & CFO should be read with section 2(51) and 203 which deals

with the definition and appointment of Key Managerial Personnel (KMP) of the Companies Act, 2013.

3. **MANAGER** means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;
4. **MANAGING DIRECTOR** means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

   Explanation— For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as:

   - The power to affix the common seal of the company to any document or
   - To draw and endorse any cheque on the account of the company in any bank or
   - To draw and endorse any negotiable instrument or
   - To sign any certificate of share or to direct registration of transfer of any share,

   Shall not be deemed to be included within the substantial powers of management;

   Explanation- For any individual to be called as managing director, an individual shall first be a director duly appointed by the Company under the provisions of the Companies Act, 2013. This also implies that an individual who is not a director in the company cannot be appointed as Managing Director of that company.
5. **OFFICER** includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.
6. **OFFICER WHO IS IN DEFAULT,** for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—
   - **i.** Whole - time director (WTD);
   - **ii.** Key managerial personnel (KMP);
   - **iii.** Where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

iv. Any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

v. Any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

vi. Every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

vii. In respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

Q.NO.31 WRITE ABOUT AUTHORISATION OF A PERSON TO ACT AS ATTORNEY OF THE COMPANY TO EXECUTE HUNDI, BILLS, PROMISSORY NOTES AND OTHER DOCUMENTS. [SEC. 22]

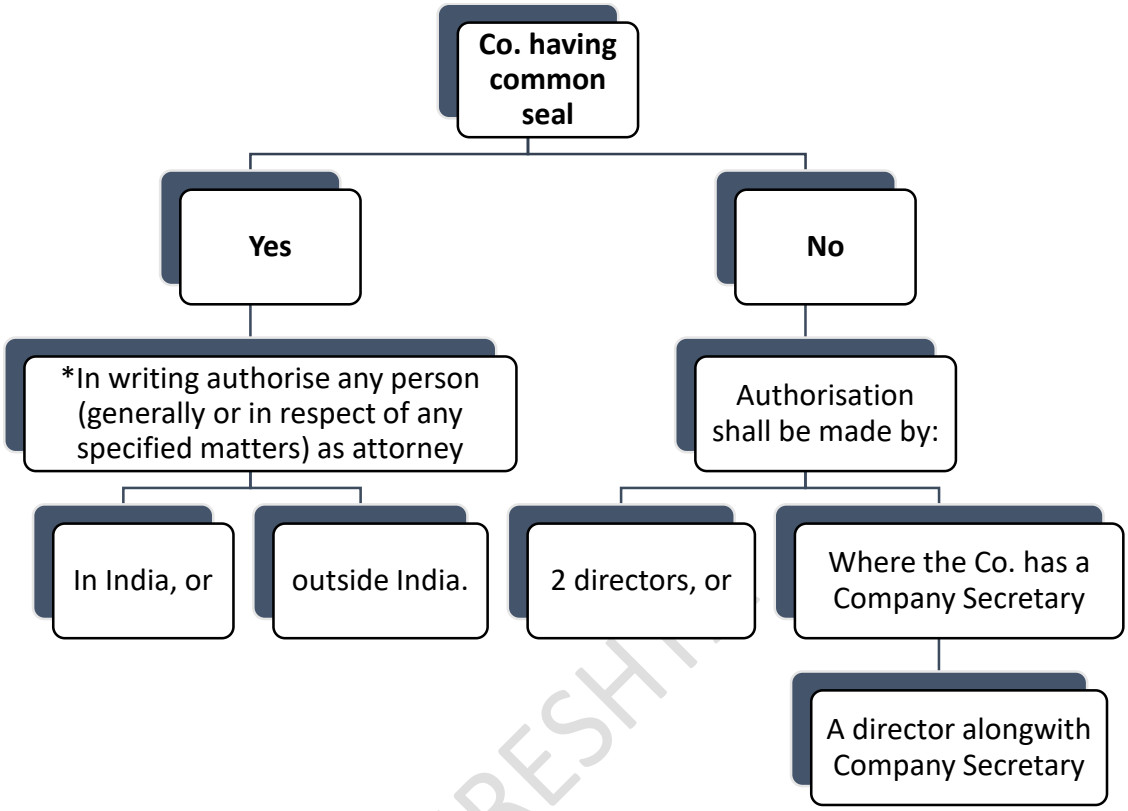
ANSWER:

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.

NOTE:

DOCUMENT includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;



TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. **Entrenchment enhance the protection. Modern Furniture Limited, an existing private company willing to insert the provisions for entrenchment; it**
   a. **Can amend the article by passing an ordinary resolution**
   b. **Can amend the article by passing a special resolution**
   c. **Can amend the article agreed by all the members**
   d. **Can't amend article to made the provisions for entrenchment**

2. **Today, it's May 2023. Mr. Nilanjan Chattopadhyay a 24 years old Indian youngster, who returned back to India in January month of 2023 after completing his education in bio-nutrient and willing to form an OPC; but not sure about the requirements or pre-conditions regarding eligibility. He read some articles on provisions related to OPC and concluded;**
   (i) **OPC can be formed by Indian Citizen only**
   (ii) **He can't form OPC because in immediate previous year he was not resident in India**
   a. **Both the conclusions are valid**
   b. **None of the conclusion is valid**
   c. **First conclusion is invalid**
   d. **Second conclusion is invalid**

3. **In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of ……. from the date of approval**
   a. **90 days**
   b. **60 days**
   c. **30 days**
   d. **20 days**

4. **Modern Furniture incorporated on 30th June 2022, its directors filled a declaration under section 10A (1)(a) regarding receipt of payment i.e. value of share (against share subscribed by subscriber) to registrar on 18th April 2023. The company and its officers (officers who are in default) shall be charged with penalty of:**
   a. **₹ 1,11,000 and ₹ 1,11,000 respectively**

b. **₹ 50,000 and ₹ 1,11,000 respectively**

c. **₹ 1,11,000 and ₹ 50,000 respectively**

d. **₹ 50,000 and ₹ 1,00,000 respectively**

5. **I.T.C limited changed its name to ITC limited. Company and officers thereat made default by failing to make alteration in every issued copy of memorandums and articles. In this context you are required to pick incorrect statements out of followings**

   i. **Alternation shall be made to every copy of MOA/AOA because these are considered as public document.**

   ii. **Alternation shall be made to every copy be it in electronic form or otherwise.**

   iii. **Penalty shall be Rupees one thousand for every copy of the articles issued without such alteration.**

   a. **Ii. only**

   b. **iii. only**

   c. **ii. and iii. only**

   d. **None of i., ii. and iii.**

Answer to MCQ based Questions

1.	**c.**	Can amend the article agreed by all the members
2.	**d.**	Second conclusion is invalid
3.	**b.**	60 days
4.	**d.**	₹ 50,000 and ₹ 1,00,000 respectively
5.	**d.**	None of (i), (ii) and (iii)

PRACTICAL QUESTIONS

Q.NO.1 YADAV DAIRY PRODUCTS PRIVATE LIMITED HAS REGISTERED ITS ARTICLES ALONG WITH MEMORANDUM AT THE TIME OF REGISTRATION OF COMPANY IN DECEMBER, 2014. NOW DIRECTORS OF THE COMPANY ARE OF THE VIEW THAT PROVISIONS OF ARTICLES REGARDING FORFEITURE OF SHARES SHOULD NOT BE CHANGED EXCEPT BY A RESOLUTION OF 90% MAJORITY. WHILE AS PER SECTION 14 OF THE COMPANIES ACT, 2013 ARTICLES MAY BE CHANGED BY PASSING A SPECIAL RESOLUTION ONLY. ONE OF THE DIRECTORS SAID THAT THEY CANNOT MAKE A PROVISION AGAINST THE COMPANIES ACT. YOU ARE REQUIRED TO ADVISE THE COMPANY ON THIS MATTER.

ANSWER:

PROVISION: As per Sec. 5 of Companies act, 2013, a company can have entrenchment provisions in its AOA. The Entrenchment provisions can be added in AOA either at the time of Formation of the company or after incorporation by getting approval of ALL MEMBERS in case of Private Company and by Special Resolution in case of Public Company. The entrenchment of Articles gives more protective rights to the members of the company. Further only those matters which requires special resolution can be entrenched by AOA.

ANALYSIS AND CONCLUSION: In the given case, YADAV Dairy Private Limited, after incorporation want to entrench its AOA with regard to forfeiture of shares, where 90% majority is required to forfeit rather special resolution. Yadav Dairy Private Limited can entrench their AOA, if and only if ALL MEMBERS of the company give their consent to such entrenchment. Further it shall a notice of entrenchment with the ROC.

Q.NO.2 A GROUP OF INDIVIDUALS INTEND TO FORM A CLUB NAMELY 'BUDDING PILOTS FLYING CLUB' AS LIMITED LIABILITY COMPANY TO IMPART CLASS ROOM TEACHING AND AIRCRAFT FLIGHT TRAINING TO TRAINEE PILOTS. IT WAS DECIDED TO FORM A LIMITED LIABILITY COMPANY FOR CHARITABLE PURPOSE UNDER SECTION 8 OF THE COMPANIES ACT, 2013 FOR A PERIOD OF TEN YEARS AND THEREAFTER THE CLUB WILL BE DISSOLVED AND THE SURPLUS OF ASSETS OVER THE LIABILITIES, IF ANY, WILL BE DISTRIBUTED AMONGST THE MEMBERS AS A USUAL PROCEDURE ALLOWED UNDER THE COMPANIES ACT.

EXAMINE THE FEASIBILITY OF THE PROPOSAL AND ADVISE THE PROMOTERS CONSIDERING THE PROVISIONS OF THE COMPANIES ACT, 2013.

ANSWER:

RELEVANT PROVISION:

1. As per sec. 8 of companies act, 2013, with the prior approval of Central Government, a company can be formed for promotion of charitable objects of:
   - **a.** Commerce,
   - **b.** Art,
   - **c.** Science,
   - **d.** Sports,
   - **e.** Education,
   - **f.** Research,
   - **g.** Social welfare,
   - **h.** Religion,
   - **i.** Charity,
   - **j.** Protection of environment etc.
2. Further such company intends to apply its profit in promoting its objects and prohibiting the payment of any dividend to its members.

ANALYSIS AND CONCLUSION:

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (2) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company.

Therefore, the proposal is **NOT FEASIBLE**.

Q.NO.3 ALFA SCHOOL STARTED IMPARTING EDUCATION ON 1.4.2010, WITH THE SOLE OBJECTIVE OF PROVIDING EDUCATION TO CHILDREN OF WEAKER SOCIETY EITHER FREE OF COST OR AT A VERY NOMINAL FEE DEPENDING UPON THE FINANCIAL CONDITION OF THEIR PARENTS. HOWEVER, ON 30TH MARCH 2018, IT CAME TO THE KNOWLEDGE OF THE CENTRAL GOVERNMENT THAT THE SAID SCHOOL WAS OPERATING BY VIOLATING THE OBJECTS OF ITS OBJECTIVE CLAUSE DUE TO WHICH IT WAS GRANTED THE STATUS OF A SECTION 8 COMPANY UNDER THE COMPANIES ACT, 2013. DESCRIBE WHAT POWERS CAN BE EXERCISED BY THE CENTRAL GOVERNMENT AGAINST THE ALFA SCHOOL, IN SUCH A CASE?

ANSWER:

PROVISION: Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them.

The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest. Further on revocation of license, the company may be wound-up or amalgamated with another sec.8 company having similar objectives.

ANALYSIS AND CONLUSION: In the given case, Since ALFA SCHOOL, a sec. 8 company, has violated its objects clause and hence the central government can revoke the license granted to the school and may order to wind up or amalgamate with another sec. 8 company having similar objectives.

Q.NO.4 XY LTD. HAS ITS REGISTERED OFFICE AT MUMBAI IN THE STATE OF MAHARASHTRA. FOR BETTER ADMINISTRATIVE CONVENIENCES THE COMPANY WANTS TO SHIFT ITS REGISTERED OFFICE FROM MUMBAI TO PUNE (WITHIN THE STATE OF MAHARASHTRA, BUT FROM MUMBAI ROC TO PUNE ROC). WHAT FORMALITIES THE COMPANY HAS TO COMPLY WITH UNDER THE PROVISIONS OF THE COMPANIES ACT, 2013 FOR SHIFTING ITS REGISTERED OFFICE AS STATED ABOVE? EXPLAIN.

ANSWER:

PROVISION: The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, does not result in the alteration of the Memorandum and hence the provisions of section 13 (and its sub sections) do not apply in this case.

Further Shifting of R.O from one ROC to another ROC within the same state is dealt under Sec. 12. As per Sec.12 the company has to pass a special resolution and get the approval of Regional Director in order to shift R.O from One ROC to another ROC within the same state.

ANALYSIS AND CONCLUSION: In the given case XY Limited, wants to change its R.O from MUMBAI ROC to PUNE ROC. Therefore, since there is a change of ROC and though the change is within the state of Maharashtra, the company has to get the approval of Regional director after passing Special Resolution in order to shift R.O from Mumbai to Pune.

Q.NO.5 ANUSHKA SECURITY EQUIPMENT'S LIMITED IS A MANUFACTURER OF CCTV CAMERAS. IT HAS RAISED RS. 100 CRORES THROUGH PUBLIC ISSUE OF ITS EQUITY SHARES FOR STARTING ONE MORE UNIT OF CCTV CAMERA MANUFACTURING. IT HAS UTILIZED 10 CRORES RUPEES AND THEN IT REALIZED THAT ITS EXISTING BUSINESS HAS NO POTENTIAL FOR EXPANSION BECAUSE GOVERNMENT HAS REDUCED CUSTOMS DUTY ON IMPORT OF CCTV CAMERA HENCE IMPORTED CAMERAS FROM CHINA ARE CHEAPER THAN ITS OWN MANUFACTURING. NOW IT WANTS TO UTILIZE REMAINING AMOUNT IN MOBILE APP DEVELOPMENT BUSINESS BY ADDING A NEW OBJECT IN ITS MEMORANDUM OF ASSOCIATION.

DOES THE COMPANIES ACT ALLOW SUCH CHANGE OF OBJECT. IF NOT, THEN WHAT ADVISE WILL YOU GIVE TO COMPANY. IF YES, THEN GIVE STEPS TO BE FOLLOWED.

ANSWER:

PROVISION: As per Sec. 13 of companies act, Alteration of Memorandum, 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. Further the details of alteration of Objects clause shall be published in newspapers and shall also be placed on website of the company. The change in Objects clause shall be informed to ROC within prescribed time who shall approve it within 30 days.

Also, for Dissenting shareholders, the company management and controlling shareholders shall give an option to exit as per directions of securities and exchange board in this regard.

ANALYSIS AND CONCLUSION: In the given case, Anushka Security Equipment's Limited which is originally formed with the object of manufacturing CCTV Cameras, wishes to change its objects clause so as to include development of mobile applications. This can be done by following the above procedures given u/s 13 of the act.

Q.NO.6 THE OBJECT CLAUSE OF THE MEMORANDUM OF VIVEK INDUSTRIES LIMITED., EMPOWERS IT TO CARRY ON REAL-ESTATE BUSINESS AND ANY OTHER BUSINESS THAT IS ALLIED TO IT. DUE TO A DOWNWARD TREND IN REAL-ESTATE BUSINESS, THE MANAGEMENT OF THE COMPANY HAS DECIDED TO TAKE UP THE BUSINESS OF FOOD PROCESSING ACTIVITY. THE COMPANY WANTS TO ALTER ITS MEMORANDUM, SO AS TO INCLUDE THE FOOD PROCESSING BUSINESS IN ITS OBJECTS CLAUSE. EXAMINE WHETHER THE COMPANY CAN MAKE SUCH CHANGE AS PER THE PROVISIONS OF THE COMPANIES ACT, 2013?

ANSWER:

PROVISION: As per Sec. 13 of companies act, Alteration of Memorandum, A company can alter its objects clause only after passing special resolution by postal ballot. Further the details of alteration of Objects clause shall be published in news papers and shall also be placed on website of the company. The change in Objects clause shall be informed to ROC within prescribed time who shall approve it within 30 days.

Also, for Dissenting shareholders, the company management and controlling share holders shall give an option to exit as per directions of securities and exchange board in this regard.

ANALYSIS AND CONCLUSION: In the given case, VIVEL INDUSTRIES LIMITED which is engaged in business of real estate, can change its objects clause so as to include FOOD processing by following above procedure.

Q.NO.7 THE PERSONS (NOT BEING MEMBERS) DEALING WITH THE COMPANY ARE ALWAYS PROTECTED BY THE DOCTRINE OF INDOOR MANAGEMENT. EXPLAIN. ALSO, EXPLAIN WHEN DOCTRINE OF CONSTRUCTIVE NOTICE WILL APPLY.

ANSWER:

Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company.

This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)

i. **Knowledge of irregularity:** In case an 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.

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

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

Q.NO.8 MANGLU AND FRIENDS GOT REGISTERED A COMPANY IN THE NAME OF TAXMANN ADVISORY PRIVATE LIMITED. TAXMANN IS A REGISTERED TRADEMARK. AFTER 5 YEARS WHEN THE OWNER OF TRADEMARK CAME TO KNOW ABOUT THE SAME, IT FILED AN APPLICATION WITH RELEVANT AUTHORITY. CAN THE COMPANY BE COMPELLED TO CHANGE ITS NAME BY THE OWNER OF TRADEMARK? CAN THE OWNER OF REGISTERED TRADEMARK REQUEST THE COMPANY AND THEN COMPANY CHANGES ITS NAME AT ITS DISCRETION?

ANSWER:

PROVISION: As per Sec. 16 of companies act, 2013, Rectification of Name by Central Government. If the CG (Now Regional Director), receives an application from the proprietor of trademark that a company is registered with a name which resembles the trademark registered in the name of proprietor, the CG can pass an order on the company to change its name within 3 months of the order by passing an ordinary resolution. However, the application by owner of trademark shall be made to CG within 3 years of formation of company.

ANALYSIS AND CONCLUSIONS: In the given case, Manglu and friends registered a company with a name "TAXMANN ADVISORY PRIVATE LIMITED", which is in resemblance of existing trademark. However, since the proprietor of trade mark filed application after 5 Years (i.e., after 3 years of formation), The company is under NO OBGLIGATION to change its name and the company can continue with the name "TAXMANN ADVISORY PRIVATE LIMITED".

Further if the owner of trademark requests company and the company accepts to change the name, it can do so by-passing special resolution as per Sec.13 and with the approval of CG.

Q.NO.9 EXPLAIN IN THE LIGHT OF THE PROVISIONS OF THE COMPANIES ACT, 2013, THE CIRCUMSTANCES UNDER WHICH A SUBSIDIARY COMPANY CAN BECOME A MEMBER OF ITS HOLDING COMPANY.

ANSWER:

In accordance with the provisions of Section 19 of the Companies Act, 2013, a subsidiary company cannot 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 subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where:

1. The subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company,
2. The subsidiary company holds such shares as a trustee, or
3. The subsidiary company was a shareholder in the holding company even before it became its subsidiary.

Q.NO.10 SHRI LAXMI ELECTRICALS LTD. (S) IS A COMPANY IN WHICH HANUMAN POWER SUPPLIERS LIMITED (H) IS HOLDING 60% OF ITS PAID UP SHARE CAPITAL. ONE OF THE SHARE HOLDER OF H MADE A CHARITABLE TRUST AND DONATED HIS 10% SHARES IN H AND INRS 50 CRORES TO THE TRUST. HE APPOINT S AS THE TRUSTEE. ALL THE ASSETS OF THE TRUST ARE HELD IN THE NAME OF S. CAN A SUBSIDIARY HOLD SHARES IN ITS HOLDING COMPANY IN THIS WAY?

ANSWER:

As per Sec.19 of companies act 2013, 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.

However, in the following cases a subsidiary can hold shares in Holding company:

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)

ANALYSIS AND CONCLUSION:

In the given case, SHRI LAXMI ELECTRICALS LIMITED (S LTD) is a subsidiary company of HANUMAAN POWER SUPPLIERS LIMITED (H LTD). Whereas, S LTD is holding Shares in H LTD on behalf of one of the shareholders, as a trustee. Hence it is not violation of Sec. 19 of the companies act 2013. So, S LTD can continue to hold such shares in H LTD in the capacity of trustee.

Q.NO.11 PARAG CONSTRUCTIONS LIMITED IS A LEADING INFRASTRUCTURE COMPANY. ONE OF THE DIRECTORS OF THE COMPANY MR. PARAG HAS BEEN SIGNING ALL CONSTRUCTION CONTRACTS ON BEHALF OF COMPANY FOR MANY YEARS. ALL THE PARTIES WHO EVER DEAL WITH THE COMPANY KNOW MR. PARAG VERY WELL. COMPANY HAS GOT A VERY IMPORTANT CONSTRUCTION CONTRACT FROM A RENOWNED SOFTWARE COMPANY. PARAG CONSTRUCTIONS

WILL DO CONSTRUCTION FOR THIS SITE IN PARTNERSHIP WITH A LOCAL CONTRACTOR FIROZBHAI. MR. PARAG SIGNED PARTNERSHIP DEED WITH FIROZBHAI ON BEHALF OF COMPANY BECAUSE HE HAS AN IMPLIED AUTHORITY. LATER IN A DISPUTE COMPANY DENIED TO ACCEPT LIABILITY AS A PARTNER. CAN THE COMPANY DENY ITS LIABILITY AS A PARTNER?

ANSWER:

PROVISION: As per section 22 of the Companies Act, 2013 a company may authorise any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed.

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal.

ANALYSIS AND CONCLUSION: In the present case company has not neither given any written authority not affixed common seal of the authority letter. It means that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.

3. PROSPECTUS AND ALLOTMENT OF SECURITIES

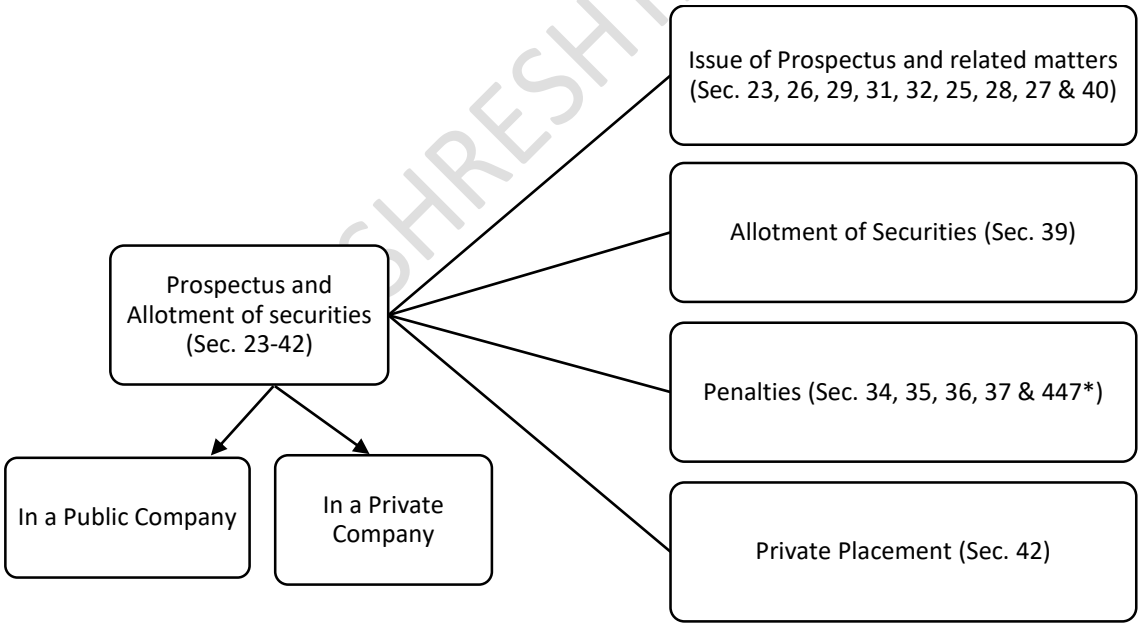
One of the advantages of floating a company is raising of capital. Capital could be raised from public at large or from a defined group or inner circle (pre-known select group of persons). The former is called the 'Public offer' and the latter is called 'Private Placement'.

Capital acquisition is inflow of funds for the issuer and needs advertisement which should be in accordance with the relevant legal provisions so that any investor is not defrauded or be-fooled. On successful closure of the application process, securities are allotted to investors which could be then listed on an appropriate segment of a recognised stock exchange.

The provisions related to raising of capital such as issue of prospectus, allotment of shares etc. and other matters incidental thereto are contained in Chapter III of the Companies Act, 2013, which is divided into two parts:

Part I – Public Offer of the chapter comprise sections 23 to 41, and

Part II – Private Placement comprises section 42.



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.

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.

POWERS OF CENTRAL GOVERNMENT [SEC. 23(4)]: The Central Government has power to exempt any class or classes of public companies from complying with the provisions of

a. Chapter III (Prospectus and Allotment of Securities),

b. Chapter IV (Share Capital and Debentures),

c. Section 89 (Declaration in respect of a beneficial interest in any share),

d. Section 90 (Register of significant beneficial owners in a company) or

e. Section 127 (Punishment for failure to distribute dividends) of the Act, by issuing notification.

REGULATION OF ISSUE AND TRANSFER OF SECURITIES ETC. [SECTION 24]

1. Securities and Exchange Board of India is empowered to administer those provisions under chapter III and IV of the Act, which pertains to
   a. issue & transfer of securities and
   b. non-payment of dividend;
   by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, by making regulations in this behalf.

2. All other matters (including matters relating to prospectus, return of allotment, redemption of preference shares) specifically provided in this Act, shall be administered by the Central Government, Tribunal or the Registrar, as the case may be.

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.

"SECURITIES" INCLUDE:

i. Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.

ii. Derivative.

iii. Units or any other instruments issued by any collective investment scheme to the investors in such schemes.

iv. Security receipt as defined in clause (zg) under section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

v. Units or any other such instrument issued to the investors under any mutual fund scheme.

vi. Any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be.

vii. Government securities.

viii. Such other instruments as may be declared by the Central Government to be securities; and

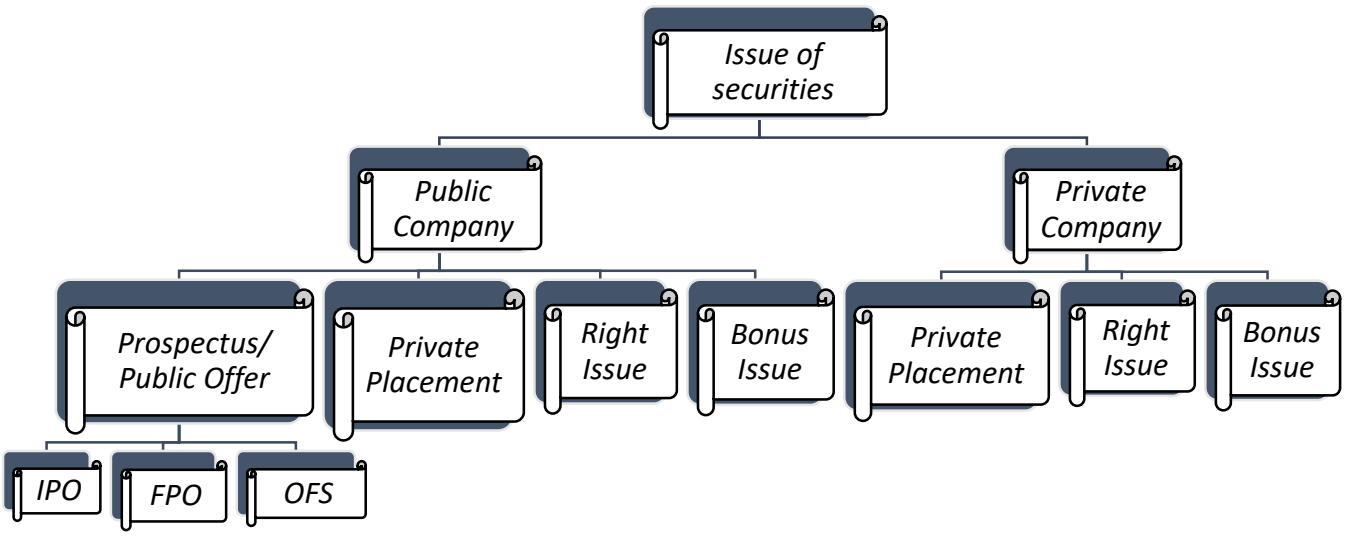
ix. Rights or interests in securities; (E.g., Renouncement's)

NOTE: Securities, however, shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938.

***Summary** of modes (for issue of securities)*

Mode of Issue	***Public Company***	***Private Company***
Public Offer (including IPO, FPO or OFS)	*Yes*	*No*
Private Placement	*Yes*	*Yes*
Rights issue / Bonus Issue	*Yes*	*Yes*
Compliance with SEBI rules & regulations	*Yes**	*No*

**For a listed company or a company proposed to be listed.*



LISTED COMPANY means a company which has any of its securities listed on any recognised stock exchange;

Note:

1. Such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.
2. According to rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-
   a. Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –
      i. Non- convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
      ii. Non - convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
      iii. Both categories of (i) and (ii) above.
   b. Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
   c. Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

Illustration (MCQ)

Which of following shall be considered as securities for purpose of section 23 of the Act;

i. **Unit linked insurance policy**
ii. **Actionable claim regarding mortgaged debt**
iii. **Securities issued by National Asset Reconstruction Ltd**

Options

a. (iii) only
b. Both (i) and (iii) only
c. Both (ii) and (iii) only
d. None of the (i), (ii), and (iii)

Answer – (c) (Refer section 2(h) of the Securities Contracts (Regulation) Act, 1956)

Illustration (True/False)

Statement – The powers to administer the matters pertaining to redemption of preference share by listed company vested with the Securities and Exchange Board of India.

Answer – False (Refer Section 24(1)(a)

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

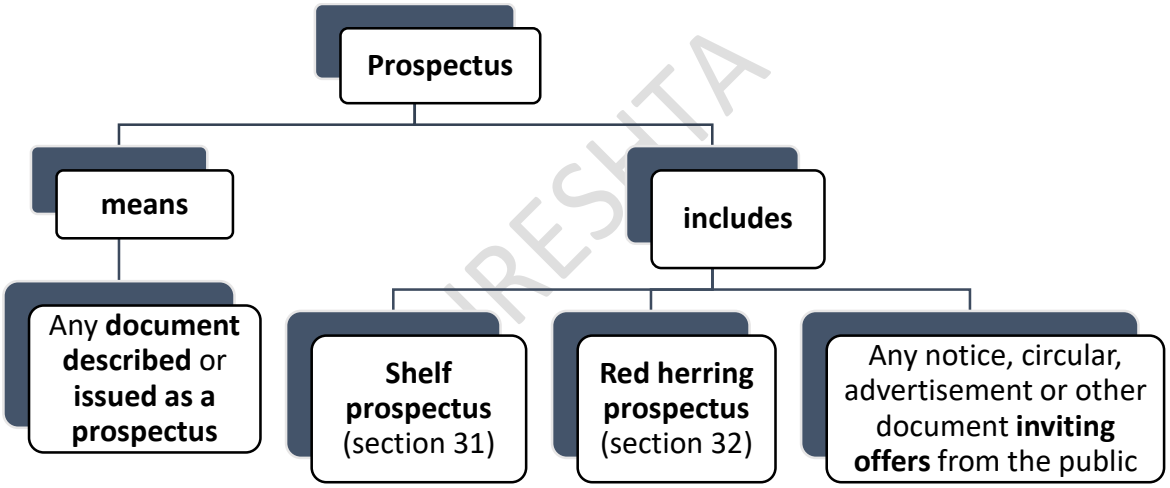
ANSWER:

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.



Q.NO.3 WHAT ARE THE MATTERS TO BE STATED IN PROSPECTUS?

ANSWER:

A. **MATTERS TO BE STATED IN PROSPECTUS [SECTION 26] – CONTENTS & REQUIREMENTS AS TO PROSPECTUS**

   1. Every prospectus issued shall be dated and signed and

   2. 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.

   3. Prospectus shall make a declaration about the compliance of the provisions of this Act and

   4. 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

d. The rules and regulations made under above three statutes.

B. 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.

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

D. FILE WITH THE ROC BEFORE PUBLICATION:

2. A prospectus shall not be issued unless a signed copy of such prospectus has been delivered to the Registrar for filing**.**

3. Such copy shall be signed by every person who is named as either director or proposed director in such prospectus. Duly authorised attorney can sign representative capacity.
Example *– Ms. Sarika, executive director of leading Fintech Company has to fly to Davos to attend World Economic Forum meet. While company secretary of the company intended to file a copy of prospectus with registrar upcoming, Ms. Sarika authorised in writing, Mr. Gautam for signing of such copy on her behalf.*

E. EXPERT'S STATEMENT [SEC. 26(5)]: A prospectus shall not include a statement that it is made by an expert unless

1. The expert is a person who is not connected or interested in the formation or promotion or management, of the company and

2. Has given his written consent to the issue of the prospectus and

3. Has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and

4. A statement to that effect shall be included in the prospectus. (Declaration by expert)

5. MEANING OF EXPERT [Sec. 2(38)]: Expert includes an engineer, a valuer, a Chartered Accountant, a Company Secretary, a Cost Accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

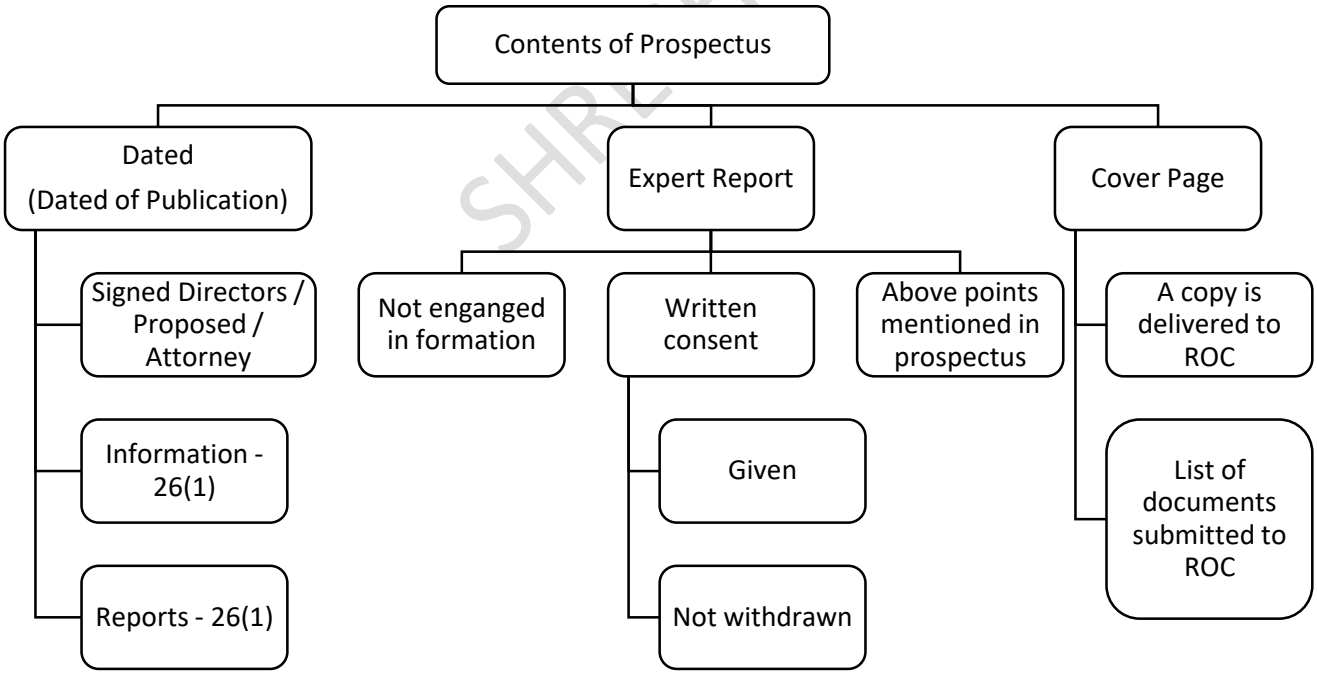
F. 90 DAYS VALIDITY [SEC .26(8)]: No prospectus shall be valid for more than 90 DAYS after the date on which a copy thereof is delivered to the Registrar.

G. DISCLOSURE ON THE FACE OF PROSPECTUS: Every prospectus issued shall, on the face of it:

- **a.** State that a copy has been delivered for filing to the Registrar as required under sub-section (4) and
- **b.** Specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

H. 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 with fine which shall not be less than Rs.50,000/- but which may extend to Rs.3,00,000/-.



EXAMPLE 1: The Board of Directors of Dr. Sunny Pharmaceutical Limited has allotted shares to the investors at large without issuing a prospectus with the Registrar of Companies, Mumbai. In this regard, it is to be noted that a public company can issue securities to the public only by issuing a prospectus (Section 23).

Section 26 (1) lays down the matters required to be disclosed and included in a prospectus and requires the filing of the prospectus with the Registrar before it is issued.

In the given case, the company has violated the above provisions of the Companies Act, 2013 and hence the allotment made by it is void. The company will have to refund the entire moneys received and will also be punishable under section 26 (9) of the Act.

Illustration (True/False)

Statement – The copy of prospectus submitted with registrar for filling need to be duly signed by majority of directors.

Answer – False

Under section 26(4) of the Act, the copy of prospectus submitted with registrar for filling shall be signed by every person who is named as either director or proposed director in such prospectus. Duly authorised attorney can sign representative capacity.

Q.NO.4 WRITE ABOUT ISSUE OF SECURITIES IN DEMATERIALISED FORMAT?

ANSWER:

1. **LISTED COMPANIES [SEC. 29(1)]:**
   - **a.** Every company making public offer (Listed Companies) shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
   - **b. PROMOTER SHAREHOLDING:** According to Rule 9 of Companies (Prospectus and Allotment of Securities) Rules, 2014 (Dematerialisation of securities)
     - **i. NEW SECURITIES:** The promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialised form.
     - **ii. EXISTING SECURITIES:** The entire holding of convertible securities of the company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialised form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.

2. ***UNLISTED PUBLIC COMPANIES – ONLY DEMAT SECURITIES [SEC. 29(1A)] [RULE 9A OF PAS RULES]:***
   - ***a. OFFER ONLY IN DEMAT FORM:*** *Every unlisted public company (excluding a Nidhi, a Government company and a wholly owned subsidiary) shall issue the securities only in dematerialised form and also facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under.* ***[w.e.f. 15th Aug 2019]***

b. ***DEMATERIALISE BEFORE MAKING FURTHER ALLOTMENTS:*** *Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made there under.*

c. ***RESPONSIBILITY OF EXISTING SECURITIES HOLDER [on or after 2nd Oct, 2018]:***

   i. ***TRANSFER ONLY AFTER DEMAT:*** *Existing holder, who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or*

   ii. ***CANNOT SUBSCRIBE WITHOUT DEMAT:*** *Existing holder, who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018, shall ensure that all his existing securities are held in dematerialized form before such subscription.*

d. ***APPLICATION TO DEPOSITORY:*** *Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository and shall secure International Security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.*

e. ***OBLIGATIONS OF SUCH UNLISTED PUBLIC COMPANY W.R.T DEPS / RTI/STA:***

   i. *Make timely payment of fees (admission as well as annual) to the depository, registrar to an issue (RTI) (IPO /FPO) and share transfer agent (STA) (Secondary Market dealings) in accordance with the agreement executed between the parties.*

   ii. *Maintains security deposit, at all times, of not less than 2 YEARS fees.*

   iii. *Comply with guidelines, regulations and directions by Securities and Exchange Board or Depository.*

f. ***CONSEQUENCE OF NON-PAYMENT OF FEES TO DEPS / RTI / STA:***

   Unlisted public company which has defaulted in complying with above obligations – SHALL NOT make offer of any securities or buyback its securities or issue any bonus or right shares till the payments are made to them. (Default shall be made good).

g. ***FILING WITH ROC:*** *The company also need to file PAS-6 for the Reconciliation of Share Capital Audit Report within 60 days from the end of each half-year.*

   Author Note: *The details which need to be provided in PAS-6 includes:*

   i. *ISIN number, the period for which it is being filed,*

ii. *Shares held with depository and physical form,*

iii. *Change in the share capital during the period for which form is being filed,*

iv. *Details of shares in DEMAT form and shares held in physical form, etc.*

h. REPORTING OF DIFFERENCES: *In case there is any discrepancy between issued capital and capital held in the dematerialised form then the company shall bring such discrepancy to the notice of the depository at the earliest.*

i. GRIEVANCES REDRESSAL MECHANISM: *Shareholders of the unlisted public company can file their grievances with Investor Education and Protection Fund Authority [IEPF].*
IEPF Authority with the prior consultation of SEBI may take action against Depository, DP, Registrar, and Share Transfer Agent in case of any default by these intermediaries.

3. OTHER THAN ABOVE COMPANIES [SEC. 29(2)]: *Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder. [E.g., Private Limited Companies, Government Companies, NIIDHI Companies and Wholly Owned Subsidiary Companies of Public Limited]*

4. NUTSHELL:

a. *For Private Limited, Government, Nidhi and Wholly owned Subsidiaries of Public Limited Companies - Securities could be held in physical or dematerialised form.*

b. *However public offer of securities has to be mandatorily in DEMAT form in accordance with the Depositories Act, 1996.*

c. *Further as per Rule 9A – Specified Unlisted Public companies, shall issue shares only in DEMAT form and convert all their existing securities into DEMAT Form.*

d. *DEMAT ensures fool proof control over issue, sale, purchase, pledge, extinguishment of securities leading transparency and credibility to the entire process and securities markets.*

Q.NO.5 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.

Q.NO.6 WRITE ABOUT SHELF 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.

Illustration (MCQ)

An applicant who made application for allotment along with advance payment of subscription, if he expresses a desire to withdraw his application after changes reported in information memorandum came to his knowledge. The company;

Options

a. **May refund the monies at discretion of Board of Directors**
b. **Shall refund the monies after deducting the administrative charges within fifteen days**
c. **Shall refund all the monies received as subscription within fifteen days**
d. **Shall refund the monies after deducting the administrative charges within 30 days**

Answer – c (Refer proviso to section 31(2). It is 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).

Q.NO.7 WRITE ABOUT RED HERRING PROSPECTUS?

ANSWER:

RED HERRING PROSPECTUS [SECTION 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.

Note: Book Building is actually a price discovery method. In this method, the company doesn't fix up a particular price for the shares, but instead gives a price range.

An underwriter builds a book by accepting orders from fund managers, indicating the number of shares they desire and the price they are willing to pay.

Q.NO.8 WRITE ABOUT ABRIDGED PROSPECTUS?

ANSWER:

ABRIDGED PROSPECTUS - ISSUE OF APPLICATION FORMS FOR SECURITIES [SECTION 33]

1. **MEANING OF ABRIDGED PROSPECTUS [SECTION 2(1)]**

   Abridged Prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

2. **NEED OF ABRIDGED PROSPECTUS**

   'Abridged Prospectus' is a summarized form of actual prospectus, containing the salient features of a prospectus to cut the cost involved in the publication of large number of prospectus which has to accompany the application forms for shares or debentures in case of public offer.

3. **ABRIDGED PROSPECTUS ACCOMPANY THE APPLICATION FORM [SUB-SECTION 1]**

   a. Every application form for shares or debentures has to be accompanied with the abridged prospectus.

   b. Exceptions, when the requirement of abridged prospectus does not apply;

      i. When application form is issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to shares or debentures:

      ii. In relation to shares or debentures which were not offered to the public; or

      iii. Where offer is made only to existing members of the company

4. **RIGHT TO RECEIVE PROSPECTUS [SUB-SECTION 2]**

   A prospectus (full prospectus) is to be made available to any person who request for it before the closing of the subscription list and the offer.

5. **PENALTY [SUB-SECTION 3]**

   A company who makes any default in complying with the provisions of section 33, shall be liable to a penalty of **₹ 50,000 for each default.**

Q.NO.9 WRITE ABOUT DEEMED PROSPECTUS?

ANSWER:

AUTHOR NOTE: ***"The concept of Deemed Prospectus is to protect gullible investors from subscribing securities of the company that do not follow appropriate procedures for raising funds through issue of a formal Prospectus as per Companies Act Read with SEBI Regulations and will prevent Indirect Public Offer of Securities".***

A. DEEMED PROSPECTUS [SEC .25]: Document by which the offer for sale to the public is made shall be deemed to be a prospectus issued by the company:

1. Where a company allots or agrees to allot any securities of the company WITH A VIEW to securities being offered for sale to the public, any document by which the offer for sale to the public is made shall be deemed to be a prospectus issued by the company and
2. All enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and **OMISSIONS** from, prospectus, shall apply and shall have effect accordingly.

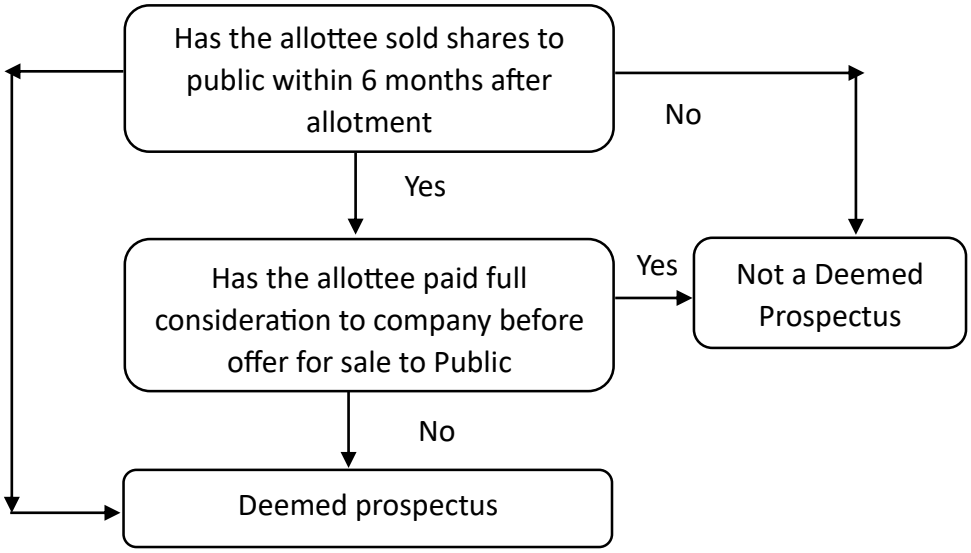
B. DEEMED PUBLIC OFFER: An allotment of, or an agreement to allot, securities will be treated as public offer if it is shown -

1. That an offer of the securities for sale to the public was made within 6 MONTHS after the allotment or agreement to allot (i.e., After allotment, the allottee shall not offer those shares to public up to 6 months from the date of allotment) or
2. That at the date when the public offer was made, the WHOLE CONSIDERATION to be received by the company in respect of the securities had not been received by it. (I.e., Allottee shall pay full consideration to company before making offer to public, otherwise it is treated as deemed public offer)

C. CONTENTS OF DEEMED PROSPECTUS:

1. Contents of Prospectus u/s 26.
2. The net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates.
3. The time and place for inspection of the contract where the said securities have been or are to be allotted.
4. **DEEMED DIRECTORS:** The persons making the offer were persons named in a prospectus as directors of a company. (if any misstatements are there in deemed prospectus – these will be punished)
5. **PERSON MAKING AN OFFER IS A COMPANY OR A FIRM:** Where a person making an offer is a company or a firm, it shall be sufficient if the document is signed on behalf of
   a. The company – by two directors of the company or
   b. The firm – by not less than one-half of the partners in the firm.

6. Accordingly, all applicable provisions relating to prospectus viz., misstatement, contents, civil, criminal liability etc. are applicable to the said deemed prospectus. There is no dilution of liability for the persons making the offer which is in addition to liability of the company whose securities are offered for sale.



Note:

1. Where a rights issue is made to existing members with a right to renounce in favour of others, if the number of such others exceeds 50, it also becomes a deemed prospectus. **[SEBI v Kunnamkulam Paper Mills Ltd]**

ADDITIONAL READING – FOR BETTER UNDERSTANDING ONLY

1. **What constitute as 'Public'? Does only 'Public at large' constitute as Public?**

   Re, South of England Natural Gas and Petroleum Co. Ltd[10]

   Facts – 3000 copies of a document which offered for subscription shares in a company and which was headed "for private circulation only" circulated to the members of certain number of gas companies only.

   Legal Question – Was this a prospectus? Should it contains the particulars required by the Act?

   Decision – It was decided that though the offer was only to limited class, it was not less than an offer to the public in any sense, because those persons from limited class were nonetheless the public. Hence, the distribution of a document entitled, "For Private Circulation only" offering the company shares was an offer to the public and their document was a prospectus. Therefore, it must contain the particulars required by the Act.

2. **Whether a single private communication tantamount to issue; can it be construe to a prospectus to attract the provisions of the Act?**

   The term "issue" is not satisfied by a single private communication. There must be some measure of publicity, however modest. **A** private communication is not thus open and does not construe to be a prospectus, hence not attract the provisions of the act.

Nash Vs Lynde

Facts – Nash applied for certain shares in a company on the basis of a document sent to him by Lynde, the managing director of the company. The document was marked 'strictly private and confidential'. The document did not contain all the material facts required by the Act to be disclosed. Nash's filled a suit for compensation for loss suffered by him by reason of the Omissions.

Decision – Suit was dismissed.

Viscount Summer's landmark dictum in this case is worth to consider here as basis of above answer. "The public in the definition is of course a general word, no particular number are prescribed. Anything from two to infinity may serve perhaps even one if he is intended to be the first of a series of subscribers but made further proceedings needless by himself subscribing the whole. The point is that the offer is such as to be opened to anyone who brings his money and applies in due from, whether the prospectus was addressed to him on behalf of the company or not. A private communication is not thus open and does not construe to be a prospectus."

Illustration (True/False)

Statement – The matters specified under section 25(3) need to be stated in substitution of matters stated under section 26.

Answer – False (Section 25(3) provided three matters that need to be stated in addition to matters required to be stated in prospectus under section 26.

Q.NO.10 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.

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

NOTE: The primary difference between OFS and IPO/FPO is that, in the first one there won't be any additional capital raised by the company. While in the latter, the company will get additional capital. OFS is generally used to dilute promoter's stake. (E.g., Dis Investment by GOI by selling shares of Government companies)

Q.NO.11 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.

Example *– Ind-swift pharma limited after issue of prospectus, willing to make variation in object of issue of prospectus (due to change in industry brought by covid-19 among other dynamics of pharma industry). What is your piece of advice to Ind-swift pharma limited?*

In given case, Ind-swift should authorise the changes through special resolution at general meeting and copy of notice that is given to shareholder for such variation shall be published in newspaper along with justification of variation.

If any shareholder shows dissent, then exit option shall be provided in accordance with guideline issued in this regards by SEBI.

Illustration (MCQ)

In case of variation in terms of contract or objects in prospectus, which of the followings statement are not true;

i. Ordinary resolution shall be passed at general meeting

ii. Notice given to shareholder shall also be published in two newspapers

iii. Amount so raised can be invested only in equity share of prescribed class of companies.

Options

a. (i) only

b. Both (i) and (ii) only

c. Both (i) and (iii) only

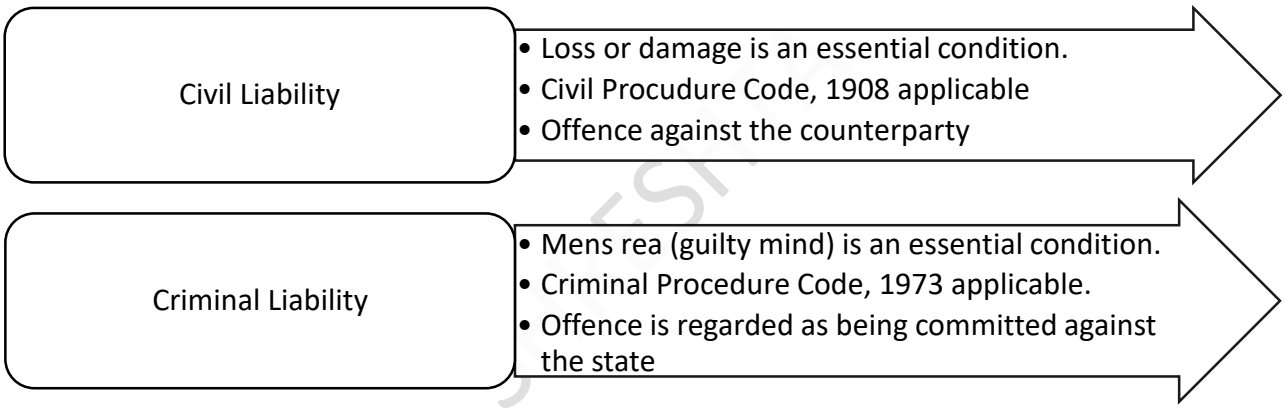
d. Both (ii) and (iii) only

Answer – d. (Refer section 27)

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. As per section 34, a statement included in a prospectus shall be deemed to be untrue;
   - **a.** if the statement is misleading in the form and context in which it is included: or
   - **b.** where any inclusion or omission of any matter is likely to mislead

2. **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.
3. **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)]**

ADDITIONAL READING - ONLY FOR BETTER UNDERSTANDING

1. ***Mislead through false Statement (on prima-facie of facts) - Henderson v. Lacon***

   It was stated in the prospectus, 'the directors and their friends have subscribed a large portion of the capital and they now offer to the public the remaining shares.' Whereas in actually each of director had subscribed only 10 shares. It was held that such a statement is misleading one.

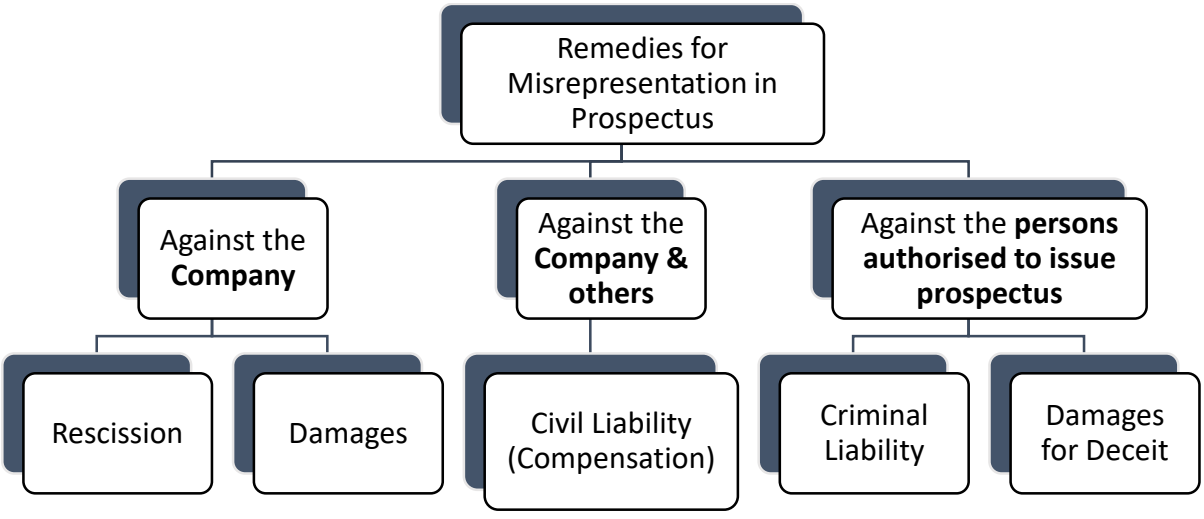
2. ***Misled by hiding truth through superficial statement - Rex v. Kylsant***

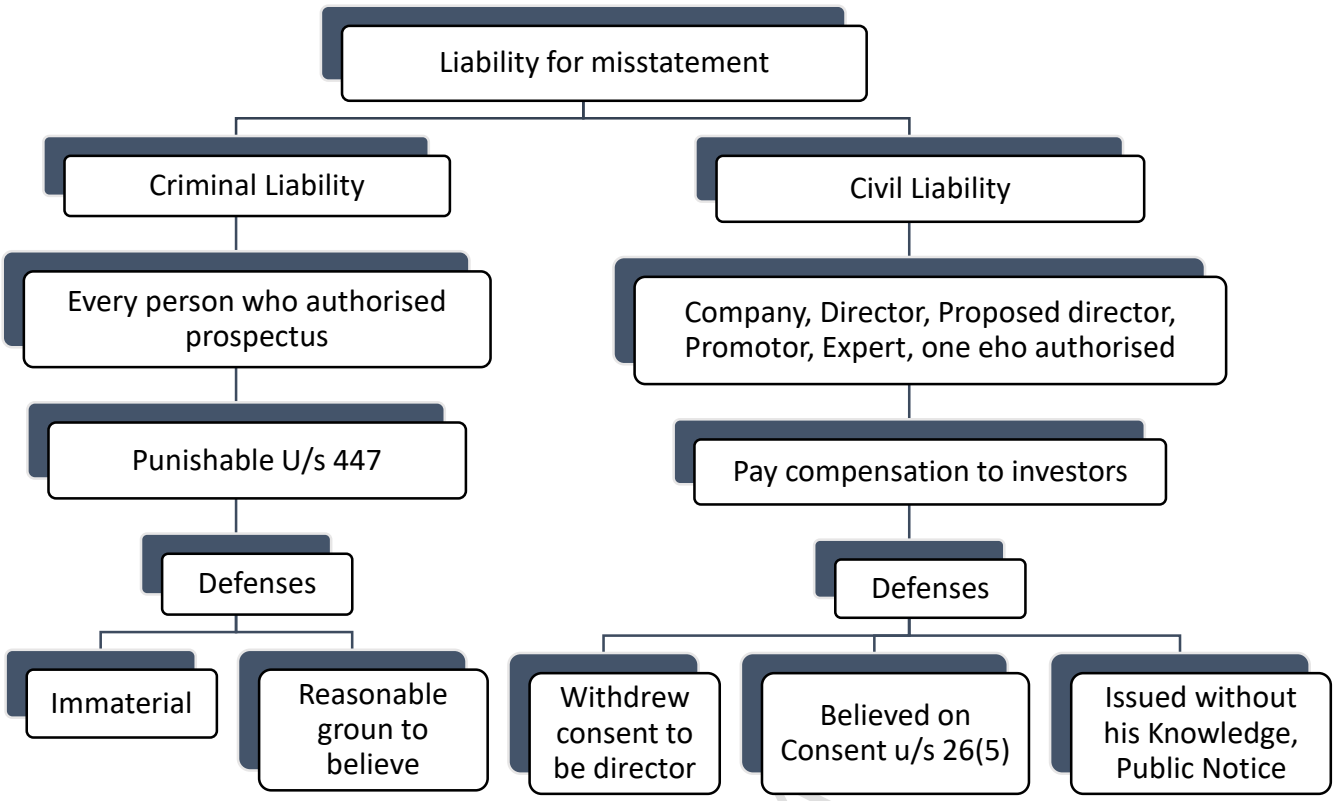
   In the prospectus, it is stated that the company had regularly paid dividends, in actual company has been incurring substantial losses during all those years. Company used to write back some of the past provisions to the credit of the profit and loss account. It was held that the prospectus did not disclose the true picture of the company.

3. ***Misled through ambiguous statement - Smith v. Chadwick***

   The prospectus of a manufacturing company contains, 'the present value of turnover is £1million sterling per annum,' the statement was true only if production capacity is considered but untrue if it meant the present production level (capacity in utilisation). It was held that, such a statement which director knew may bear multiple meaning out of which any can be false to their knowledge, considered to be furnishing of misleading statement

EFFECT OF MISLEADING PROSPECTUS – REMEDIES OF MISREPRESENTATION [SUMMARY]





Summary of section 34 and 35.

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. 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 ACTIONS THAT CAN BE TAKEN BY AFFECTED PERSONS U/S 34, 35 AND 36?

ANSWER:

1. 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.)

2. **CLASS ACTIONS – GIFT OF COMPANIES ACT, 2013:**

   MEANING: Class action suit is for a group of people filing a suit against a defendant who has caused common harm to the entire group or class. This is not like a common litigation method where one defendant files a case against another defendant while both the parties are available

in court. In the case of class action suit, the class or the group of people filing the case need not be present in the court and can be represented by one petitioner. The benefit of these type of suits is that if several people have been injured by one defendant, each one of the injured people need not file a case separately but all of the people can file one single case together against the defendant.

EXAMPLE: M APPLIES FOR SHARE ON THE BASIS OF A PROSPECTUS WHICH CONTAINS MIS–STATEMENT. THE SHARES ARE ALLOTTED TO HIM, WHO AFTERWARDS TRANSFERS THEM TO N. CAN N BRING AN ACTION FOR A RESCISSION ON THE GROUND OF MIS-STATEMENT UNDER SECTION 37 OF THE COMPANIES ACT, 2013?

ANSWER: No, N cannot bring an action for rescission of the contract to buy shares from M on the ground of mis-statement as under section 37 of the Companies Act, 2013. A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 only 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.

Q.NO.15 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. **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.

EXAMPLE: AFTER RECEIVING 80% OF THE MINIMUM SUBSCRIPTION AS STATED IN THE PROSPECTUS, A COMPANY ALLOTTED 100 EQUITY SHARES IN FAVOUR OF 'X'. THE COMPANY DEPOSITED THE SAID AMOUNT IN THE BANK BUT WITHDREW 50% OF THE AMOUNT, BEFORE FINALISATION OF THE ALLOTMENT, FOR THE PURCHASE OF CERTAIN ASSETS. X REFUSES TO ACCEPT THE ALLOTMENT OF SHARES ON THE GROUND THAT THE ALLOTMENT IS VIOLATIVE OF THE PROVISIONS OF THE COMPANIES ACT, 2013.

ANSWER: The company has received 80% of the minimum subscription as stated in the prospectus. Hence, the allotment is in contravention of section 39(1) of the Companies Act, 2013 which prohibits a company from making any allotment of securities until it has received the amount of minimum subscription stated in the prospectus. Under section 39 (3), it is required to refund the money received (i.e., 80% of the minimum subscription) to the applicants. It has no other option available.

Therefore, in the present case, X is within his rights to refuse to accept the allotment of shares which has been illegally made by the company.

Q.NO.16 WRITE ABOUT SECURITIES TO BE DEALT WITH IN STOCK EXCHANGES [SEC. 40]?

ANSWER:

A. **APPLICATION WITH RECOGNISED STOCK EXCHANGE:** 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:

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. CONDITION PURPORTING TO WAIVE COMPLIANCE SHALL BE VOID [SUB-SECTION 4]

Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

E. IN CASE OF DEFAULT: 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:** Fine varying from Rs. 50,000/- to 3,00,000/-.

F. PAYMENT OF COMMISSION:

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.

EXAMPLE: A PUBLIC LIMITED COMPANY WHICH WENT IN FOR PUBLIC ISSUE OF SHARES HAD APPLIED FOR LISTING OF SHARES IN THREE RECOGNISED STOCK EXCHANGES AND OUT OF IT ONLY TWO HAD GIVEN PERMISSION FOR LISTING. CAN THE COMPANY PROCEED FOR ALLOTMENT OF SHARES?

ANSWER: Every company making a 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. [Section 40 (1)]

Where a prospectus states that an application has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with. [Section 40 (2)]

From the above it is clear that not only the company has to apply for listing of the securities at a recognized stock exchange but also obtain permission thereof before making the public offer.

Hence, under the Companies Act, 2013 by making the offer of shares before getting the approval from the stock exchanges, it has violated the provisions of section 40. (in other words, even if one stock exchange rejects listing permission – the company has to withdraw public offer)

EXAMPLE: THE BOARD OF DIRECTORS OF A COMPANY DECIDE TO PAY 5% OF ISSUE PRICE OF SHARES AS UNDERWRITING COMMISSION TO THE UNDERWRITERS. ON THE OTHER HAND, THE ARTICLES OF ASSOCIATION OF THE COMPANY PERMIT ONLY 3% COMMISSION. THE BOARD OF DIRECTORS FURTHER DECIDE TO PAY THE COMMISSION OUT OF THE PROCEEDS OF THE SHARE CAPITAL. ARE THE DECISIONS TAKEN BY THE BOARD OF DIRECTORS VALID UNDER THE COMPANIES ACT, 2013?

ANSWER: Under the Companies (Prospectus and Allotment of Securities) Rules, 2014 the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

The same rules allow the commission to be paid out of proceeds of the issue or the profit of the company or both. Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is INVALID while the decision to pay out of the proceeds of the share issue is VALID.

Q.NO.17 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. **PROHIBITION ON OFFER TO BODY CORPORATE OR THE NATIONAL OF NEIGHBOURING COUNTRIES**
   - **a.** No offer or invitation of any securities under rule 14 shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India,
   - **b.** unless such body corporate or the national, as the case may be, have obtained Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter.

4. **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.

5. **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.

6. **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/-.

7. **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.

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

9. **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.

10. **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.18 EXPLAIN VARIOUS INSTANCES WHICH MAKE THE ALLOTMENT OF SECURITIES AS IRREGULAR ALLOTMENT UNDER THE COMPANIES ACT, 2013. [TYK – SM]

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 lower 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.

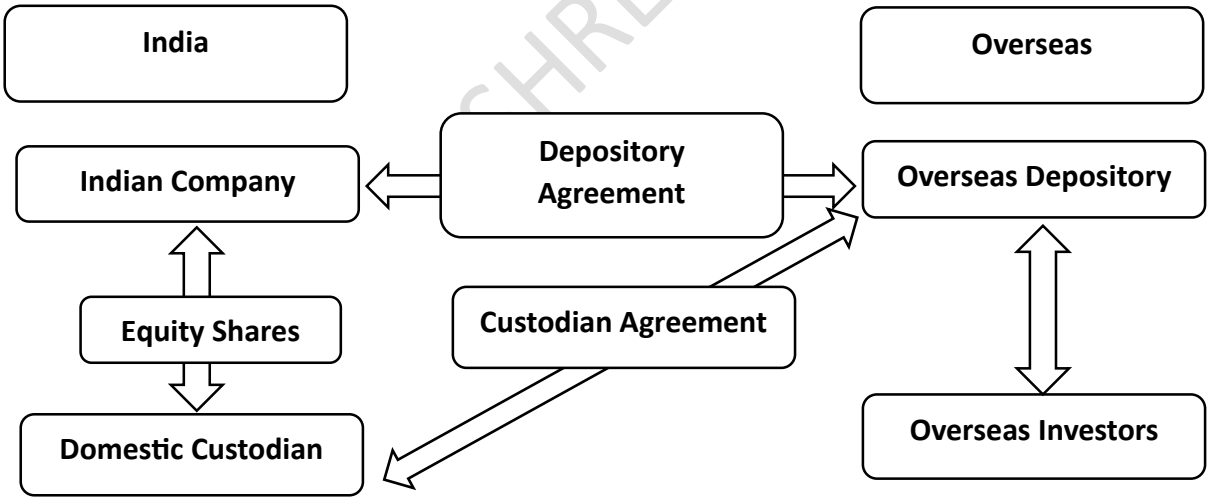
Q.NO.19 WRITE SHORT NOTE ON GLOBAL DEPOSITORY RECEIPTS

ANSWER:

GLOBAL DEPOSITORY RECEIPT [SECTION 41]

1. A global depository receipt is a general name for a depository receipt where a certificate issued by a depository bank, which purchases shares of foreign companies, creates a security on a local exchange backed by those shares.
2. **DEFINITION:** GDR as per section 2(44) of this act means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India & authorized by a co. making an issue of such depository receipts.
3. Section 41 provides company may issue depository receipts in any foreign country after passing a special resolution in its general meeting and subject to such conditions as may be prescribed in Companies (Issue of Global Depository Receipts) Rules, 2014 (as further amended in 2020).

HOW GDR OPERATES?



4. **MANNER AND FORM OF DEPOSITORY RECEIPTS**
   a. The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent in the concerned jurisdiction and may be listed or traded on the listing or trading platform in the concerned jurisdiction.
   b. 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.

c. 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.

5. VOTING RIGHT

a. A holder of depository receipts may become a member of the company and shall be entitled to vote as such only on conversion of the depository receipts into underlying shares after following the procedure provided in the Scheme and the provisions of this Act.

b. Until the conversion of depository receipts, the overseas depository shall be entitled to vote on behalf of the holders of depository receipts in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard.

ILLUSTRATIONS

Illustration 1.

COMPANY'S PROSPECTUS WAS GIVEN TO A SOLICITOR OF THE COMPANY AND HE FORWARDED IT TO ONE OF HIS CLIENTS DESPITE IT WAS MARKED STRICTLY PRIVATE, WHO APPLIED FOR SHARE BASED UPON SAME. LATER FILED SUIT FOR DAMAGES. IS THIS COMMUNICATION AMOUNT TO AN ISSUE TO THE PUBLIC AND WHETHER THE PROVISIONS OF THE ACT ATTRACTED?

Answer - No, this did not amount to an issue to the public and accordingly the provisions of the Act relating to liability for omissions, etc. not attracted. **(Refer Nash Vs Lynde[12])**

Illustration 2.

IN CASE OF SUPER-FIX-IT LIMITED, SOME OF MEMBERS OF A COMPANY OFFER PART OF THEIR HOLDING OF SHARES TO THE PUBLIC (IN CONSULTATION WITH BOARD OF DIRECTORS), WHEREIN COMPANY TOOK ALL ACTIONS ON THEIR BEHALF FOR CARRYING OUT THE TRANSACTION. COMPANY INCUR THE EXPENSE OF ₹ 3.2 LAKH TO CARRYING OUT SUCH TRANSACTIONS, CAN COMPANY RECOVER THE AMOUNT SO INCURRED IN FULL FROM SUCH MEMBERS?

Answer – Yes, members who are offer whole or part of their holding of shares to the public, in consultation with board of directors, shall authorised the company to take all actions on their behalf for carrying out the transaction, and bound to reimburse the company for all expenses made by it on this matter (Refer section 28(3).

Illustration 3.

ALL THE STATEMENTS CONTAINED IN A PROSPECTUS ISSUED BY A COMPANY WERE LITERALLY TRUE. IT WAS ALSO STATED IN THE PROSPECTUS THAT THE COMPANY HAD PAID DIVIDENDS FOR A NUMBER OF YEARS BUT THERE WAS NO DISCLOSURE REGARDING THE FACT THAT THE DIVIDENDS WERE PAID OUT OF REALISED CAPITAL PROFITS AND NOT OUT OF TRADING PROFITS. AN ALLOTTEE OF SHARES WANTS TO AVOID THE CONTRACT ON THE GROUND THAT THE PROSPECTUS WAS FALSE IN MATERIAL PARTICULARS.

Answer – The non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances it can pay dividend out of capital profits. Hence, a material misrepresentation has been made.

Accordingly, in the given case the allottee can avoid the contract of allotment of shares.

Illustration 4.

A PROSPECTUS ISSUED BY A COMPANY CONTAINED CERTAIN MIS-STATEMENTS. ON BECOMING AWARE OF THE FACT REGARDING MIS-STATEMENTS IN THE PROSPECTUS, ONE OF THE EXPERTS ANILESH WHO HAD EARLIER GIVEN HIS CONSENT, FORTHWITH GAVE A REASONABLE PUBLIC NOTICE STATING THAT THE PROSPECTUS WAS ISSUED WITHOUT HIS KNOWLEDGE AND CONSENT. IS IT POSSIBLE FOR ANILESH TO ESCAPE LIABILITY FOR MIS-STATEMENT IN THE PROSPECTUS?

Answer – Section 35 (2) of the Companies Act, 2013 states that no person shall be liable under Sub-section (1) if he proves 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.

The case of Anilesh is covered under the above exception provided by Sub-section (2) and therefore, he will escape liability for mis-statement in the prospectus.

Illustration 5.

AN ALLOTTEE OF SHARES IN A COMPANY BROUGHT ACTION AGAINST A DIRECTOR IN RESPECT OF FALSE STATEMENTS MADE IN THE PROSPECTUS. THE DIRECTOR CONTENDED THAT THE STATEMENTS WERE PREPARED BY THE PROMOTERS AND HE SIMPLY RELIED ON THEM. IS THE DIRECTOR LIABLE UNDER THE CIRCUMSTANCES?

Answer – Yes, the Director shall be held liable for the false statements made in the prospectus under sections 34 and 35 of the Companies Act, 2013. Whereas section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such mis-statements.

Certain situations when a director will not incur any liability for mis-statements in a prospectus are covered under exceptions provided by Section 35 (2) but no such exception specifies that relying on the statements prepared the promoters of the company is a valid ground for a director to escape liability for mis-statement.

Illustration 6.

THE BOARD OF DIRECTORS OF A COMPANY DECIDE TO PAY 5% OF THE ISSUE PRICE OF SHARES AS UNDERWRITING COMMISSION TO THE UNDERWRITERS. HOWEVER, THE ARTICLES OF ASSOCIATION OF THE COMPANY PERMIT ONLY 3% COMMISSION. THE BOARD OF DIRECTORS FURTHER DECIDE TO PAY THE COMMISSION OUT OF THE PROCEEDS OF THE SHARE CAPITAL. ARE THE DECISIONS TAKEN BY THE BOARD OF DIRECTORS VALID UNDER THE COMPANIES ACT, 2013?

Answer – Under Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

The same rule allows the commission to be paid out of proceeds of the issue or the profit of the company or both.

Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid since the same cannot exceed the rate which is permitted by the Articles. However, the decision to pay commission out of the proceeds of the share issue is valid provided it is paid at the rate authorised by the Articles.

Illustration 7.

RUHI AND HER BROTHER SOHIT WERE OFFERED JOINTLY 1000 EQUITY SHARES OF ₹ 100 EACH BY SOUMYA SOFTWARE PRIVATE LIMITED UNDER THE ISSUE OF SHARES ON PRIVATE PLACEMENT BASIS. OFFER-CUM-APPLICATION LETTER ADDRESSED TO BOTH CONTAINING THEIR NAMES AS "MS. RUHI, MR. SOHIT". FROM WHOSE ACCOUNT THE COMPANY IS REQUIRED TO TAKE SUBSCRIPTION MONEY FOR 1000 EQUITY SHARES?

Answer – According to the first Proviso of Rule 14 (5) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application. Since Ruhi's name appears first in the application, therefore the subscription of ₹ 1,00,000 shall be payable by her from her account. It is obligatory for the company to ensure that the money is paid from her bank account and not from the bank account of her younger brother Sohit.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. **Trident Limited is in process of making private placement of securities. It received application money on 2nd March 2023. It shall allot its securities by _____, if failed then repay application money to the subscribers by _____, else liable to repay that money with interest at the rate of _____.**
   a. **1st April, 16th April, and 12% respectively**
   b. **1st May, 16th May, and 12% respectively**
   c. **1st April, 16th April, and 6% respectively**
   d. **16th April, 1st May, and 12% respectively**
2. **Modern Furniture Limited, issued a document containing offer of securities for sale that is considered as deemed prospectus under section 25, which requires such document must contains certain matters/disclosure in addition to those required under section 26. Which of following are correct requirements;**
   i. **A statement of the net amount received or to be received as consideration for the securities to which the offer relates**
   ii. **The persons making the offer were named in the prospectus as promoters of the company.**
   iii. **The time and place at which the underlying contract for allotment may be inspected.**
   a. **i or ii only**
   b. **i or iii only**
   c. **ii or iii only**
   d. **All of i, ii and iii**
3. **Section 40 of the Companies Act, 2013 requires every company shall make an application to one or more recognised stock exchange or exchanges before making public offer. Madhav Casting Limited filled application to three exchanges for the securities to be dealt with in such stock exchanges, it received permission from couple of them and proceed with public issue. There will be:**
   a. **No penalty, as application has been filled**
   b. **Penalty on Madhav Casting ranging from ₹ 5 lakh to ₹ 50 lakh**
   c. **Penalty on Madhav Casting ranging from ₹ 5 lakh to ₹ 50 lakh and every officer of the company who is in default ranging from ₹ 50 thousand to ₹ 3 lakh**
   d. **Penalty on Madhav Casting ranging from ₹ 5 lakh to ₹ 50 lakh and every officer of the company who is in default ranging from ₹ 50 thousand to ₹ 3 lakh and/or Imprisonment upto one year.**

4. **Rig exploration and refinery limited (RERL) decided to raise capital through issue of a shelf prospectus. Company secretary explains the requirement to board that RERL shall be required to file an information memorandum with the Registrar within_____, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.**
   a. **15 days**
   b. **21 days**
   c. **30 days**
   d. **1 month**
5. **Modern Furniture decided to raise capital by issue for which prospectus need to be issued. The copy of prospectus submitted with registrar for filling need to be duly signed by:**
   a. **Any two directors including managing directors**
   b. **Majority of directors**
   c. **Majority of directors including proposed directors**
   d. **Every director or proposed director**

Answer to MCQ based Questions

6.	**b.**	1st May, 16th May, and 12% respectively
7.	**b.**	i or iii only
8.	**c.**	Penalty on Madhav Casting ranging from ₹ 5 lakh to ₹ 50 lakh and every officer of the company who is in default ranging from ₹ 50 thousand to ₹ 3 lakh.
9.	**d.**	1 month
10.	**d.**	Every director or proposed director

PRACTICAL QUESTIONS

Q.NO.1. THE BOARD OF DIRECTORS OF CHANDRA MECHANICAL TOYS LIMITED PROPOSES TO ISSUE A PROSPECTUS INVITING OFFERS FROM THE PUBLIC FOR SUBSCRIBING TO THE EQUITY SHARES OF THE COMPANY. STATE THE REPORTS WHICH SHALL BE INCLUDED IN THE PROSPECTUS FOR THE PURPOSES OF PROVIDING FINANCIAL INFORMATION UNDER THE PROVISIONS OF THE COMPANIES ACT, 2013.

ANSWER:

RELEVANT PROVISION:

As per provisions of companies act, 2013, the following matters shall be stated in prospectus:

1. Every prospectus issued shall be dated and signed and
2. 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.
3. Prospectus shall make a declaration about the compliance of the provisions of this Act and
4. 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.

ANALYSIS AND CONCLUSION:

Accordingly, the Board of Directors of Chandra Mechanical Toys Limited which proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government to comply with the above stated provisions and make a declaration about such compliance.

Q.NO.2. UNIQUE BUILDERS LIMITED DECIDES TO PAY 2.5 PERCENT OF THE VALUE OF DEBENTURES AS UNDERWRITING COMMISSION TO THE UNDERWRITERS BUT THE ARTICLES OF THE COMPANY AUTHORIZE ONLY 2.0 PERCENT UNDERWRITING COMMISSION ON DEBENTURES. THE COMPANY FURTHER DECIDES TO PAY THE UNDERWRITING COMMISSION IN THE FORM OF FLATS. EXAMINE THE VALIDITY OF THE ABOVE ARRANGEMENTS UNDER THE PROVISIONS OF THE COMPANIES ACT,2013.

ANSWER:

RELEVANT PROVISION: As per Sec. 40 of the companies act, 2013 regarding payment of underwriting commission, the provisions are as below:

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. 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. No Commission is payable to underwriters in respect of securities that are not offered to public.

ANALYSIS AND CONCLUSION:

In the given case, UNIQUE BUILDERS LIMITED decided to pay 2.5% of the value of debentures as commission to underwriters. Since the AOA of the company limits the commission at 2%, the company cannot pay 2.5% Commission is invalid and ultra vires the Articles of Association.
Further the mode of payment of commission can be either in cash or other than cash, as there is no express restriction in this regard. Therefore, the company decision to pay consideration in the form of Flats is permitted.

Q.NO.3. PQR LIMITED WANTS TO RAISE FUNDS FOR ITS UPCOMING PROJECT. IT HAS ISSUED PRIVATE PLACEMENT OFFER LETTERS TO 55 PERSONS IN THEIR INDIVIDUAL NAME TO ISSUE ITS EQUITY SHARES. OUT OF THESE FOUR ARE QUALIFIED INSTITUTIONAL BUYERS. BEFORE ALLOTMENT UNDER THIS OFFER LETTER COMPANY ISSUED ANOTHER PRIVATE PLACEMENT OFFER LETTER TO ANOTHER 155 PERSONS IN THEIR INDIVIDUAL NAME FOR ISSUE OF ITS DEBENTURES. BEING A PUBLIC COMPANY CAN IT ISSUE SECURITIES IN A PRIVATE PLACEMENT? IS IT IN COMPLIANCE WITH PROVISIONS RELATED TO PRIVATE PLACEMENT OR SHOULD THESE OFFERS BE TREATED AS PUBLIC OFFERS?

WHAT IF THE OFFER FOR DEBENTURES IS GIVEN AFTER ALLOTMENT OF EQUITY SHARES BUT WITHIN THE SAME FINANCIAL YEAR?

ANSWER:

RELEVANT PROVISION:

As per Sec. 42 of companies act, "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer)

through private placement offer-cum-application. The persons to whom the private placement offer is made are known as "Identified Persons". The following points shall be kept in mind relating to private placement:

1. The total number of identified persons shall not exceed 200 in a financial year.
2. Further The limit of 200 shall be counted separately for each kind of security that is equity share, preference share or debenture.
3. While Counting the Limit of 200, Qualified Institutional buyers (QIB) and Employees who are offered ESOP, shall be excluded from Counting.
4. A company can offer securities under private placement only if allotment procedure under previous offer is completed or has been withdrawn or abandoned.

ANALYSIS AND CONCLUSION:

1. In the Given Case, PQR LIMITED offered Equity shares under private placements to 51 Persons (i.e.,55 minus 4 QIB's). Since the offer is made to Less than 200 Persons and it is NOT VIOLATIVE of provisions of companies act.
2. Further the company offered Debentures to another 155 persons in their individual names before allotment of previous offer of equity shares. Therefore, offer of debentures under private placement is VIOLATIVE of provisions of companies act, 2013, as the offer is made before completion of existing offer for allotment.

Suppose, if the offer for debentures to 155 persons, is made after completion of allotment of equity shares, then it is NOT A VIOLATION of provisions. The Limit of 200 Persons in a financial year shall be counted for each type of securities i.e., Equity shares, preference shares and debentures. Therefore, the first offer of equity shares to 51 Persons and Subsequent offer of debentures to 155 Persons shall not be clubbed for counting of 200 In a Financial Year.

Q.NO.4. THE BOARD OF DIRECTORS OF RECKLESS INVESTMENTS LTD. HAVE ALLOTTED SHARES TO THE INVESTORS OF THE COMPANY WITHOUT ISSUING A PROSPECTUS WITH THE REGISTRAR OF COMPANIES, MUMBAI. EXPLAIN THE REMEDY AVAILABLE TO THE INVESTORS IN THIS REGARD.

ANSWER:

RELEVANT PROVISIONS:

As per Sec. 23 of the companies act, 2013, a company can issue securities to public only after registering a valid prospectus with ROC. The Prospectus shall contain all the information and reports as required u/s 26.

ANALYSIS AND CONCLUSION:

In the given case, Board of Directors of RECKLESS INVESTMENTS LIMITED have allotted shares to investors (Assumed Public issue) without issuing and registering the prospectus with the ROC. Hence the allotment of shares is VOID. The company has to refund entire money received and will be liable for penal provisions under the act.

Q.NO.5. AN ALLOTTEE OF SHARES IN A COMPANY BROUGHT ACTION AGAINST A DIRECTOR IN RESPECT OF FALSE STATEMENTS IN PROSPECTUS. THE DIRECTOR CONTENDED THAT THE STATEMENTS WERE PREPARED BY THE PROMOTERS AND HE HAS RELIED ON THEM. IS THE DIRECTOR LIABLE UNDER THE CIRCUMSTANCES? DECIDE REFERRING TO THE PROVISIONS OF THE COMPANIES ACT, 2013.

ANSWER:

RELEVANT PROVISIONS:

1. Mis- statement of prospectus is a serious offence which attracts criminal liability u/s 34 and / or civil liability u/s 35. As per Sec. 34, Every person who authorises the issue of such prospectus shall be liable under section 447, if the prospectus authorised by them is containing any statement or omission, which is untrue or mis leading. Further u/s.35, a DIRECTOR of a company Shall be liable to pay compensation to every person who has sustained such loss or damage which is in addition to punishments under the act.
2. The director will not be liable if he proves that:
   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 gives a public notice the prospectus was issued without his consent.

ANALYSIS AND CONCLUSION:

In the given case, the director of the company is LIABLE for consequences of False statements in the prospectus. Because he has not withdrawn his consent to prospectus and not made any public announcement. Therefore, the director is deemed to have the knowledge of misstatement in the prospectus issued by promoters of the company. Accordingly, the action taken by Allottee of shares is VALID.

Q.NO.6. SUDARSHAN EXPORTS LIMITED WAS DEALING IN EXPORT OF RUBBER TO SPECIFIED FOREIGN COUNTRIES. THE COMPANY WAS WILLING TO PURCHASE RUBBER TREES IN A.P. STATE. THE PROSPECTUS ISSUED BY THE COMPANY CONTAINED SOME IMPORTANT EXTRACTS OF THE EXPERT'S REPORT AND NUMBER OF TREES IN A.P. STATE. THE REPORT WAS FOUND UNTRUE. MR. ALOK PURCHASED THE SHARES OF SUDARSHAN EXPORTS LIMITED ON THE BASIS OF THE EXPERT'S REPORT PUBLISHED IN THE PROSPECTUS. WILL MR. ALOK HAVE ANY REMEDY AGAINST THE COMPANY? STATE ALSO THE CIRCUMSTANCES WHERE AN EXPERT IS NOT LIABLE UNDER THE COMPANIES ACT, 2013.

ANSWER:

RELEVANT PROVISION:

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 including an EXPERT shall be liable to pay compensation to the person who has sustained such loss or damage.

ANALYSIS AND CONCLUSION:

In the present case, Mr. Alok purchased the shares of Sudarshan Exports Limited on the basis of the expert's report published in the prospectus. Mr. Alok can claim compensation for any loss or damage that he might have sustained from the purchase of shares, which has not been mentioned in the given case. Further, Section 35 also mentions punishment prescribed by section 36 i.e., punishment for fraud under section 447.

CIRCUMSTANCES WHERE EXPERT IS NOT LIABLE:

An Expert shall not 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. **[SEC .35(2)]**

c. An expert will not be liable in respect of any statement not made by him in the capacity of an expert. [E.g., Fake Reports or statements]

Q.NO.7. Examine the validity of the following statement with reference to the provisions of the Companies Act, 2013.

The Articles of Association of X Limited contain a provision that the underwriting commission may be paid up to 4% of the issue price of the shares. However, the Board of Directors have decided to pay the underwriting commission of 5% to Deal & Co., the underwriters."

ANSWER

RELEVANT PROVISION:

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription to its securities, subject to the conditions prescribed under the Companies (Prospectus and Allotment of Securities) Rules, 2014. Rule 13 states that the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

ANALYSIS AND CONCLUSION:

In the given problem, the articles of X Ltd. have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission.

Therefore, the decision of the Board of Directors to pay 5% underwriting commission to the underwriters (i.e., Deal & Co.) is invalid.

4. SHARE CAPITAL AND DEBENTURES

BASIC INTRODUCTION:

The share capital is the lifeblood for running the affairs of the company. Sometimes after the issue of capital a company may either alter or reduce the share capital depending upon the exigencies (need) of the situation. For desired share capital, a company may also raise a debenture which have to be registered as a charge. Shares and debentures are financial instruments for raising funds for the company. Under the Companies Act, 2013, these are jointly referred to as "Securities".

Generally, shares depict ownership interest in a company with entrepreneurial risks and rewards whereas debentures depict lender's interest in the company with limited risks and returns.

Both these financial instruments are presented on the liabilities side of the issuer company and on the assets side of the investor or lender respectively.

Legal provisions related to these instruments are covered in Chapter IV of the Companies Act, 2013 (comprising sections 43 to 72) and the Companies (Share Capital & Debentures) Rules, 2014 as amended from time to time.

Q.NO.1 WHAT ARE DIFFERENT TYPES OF SHARE CAPITAL?

ANSWER:

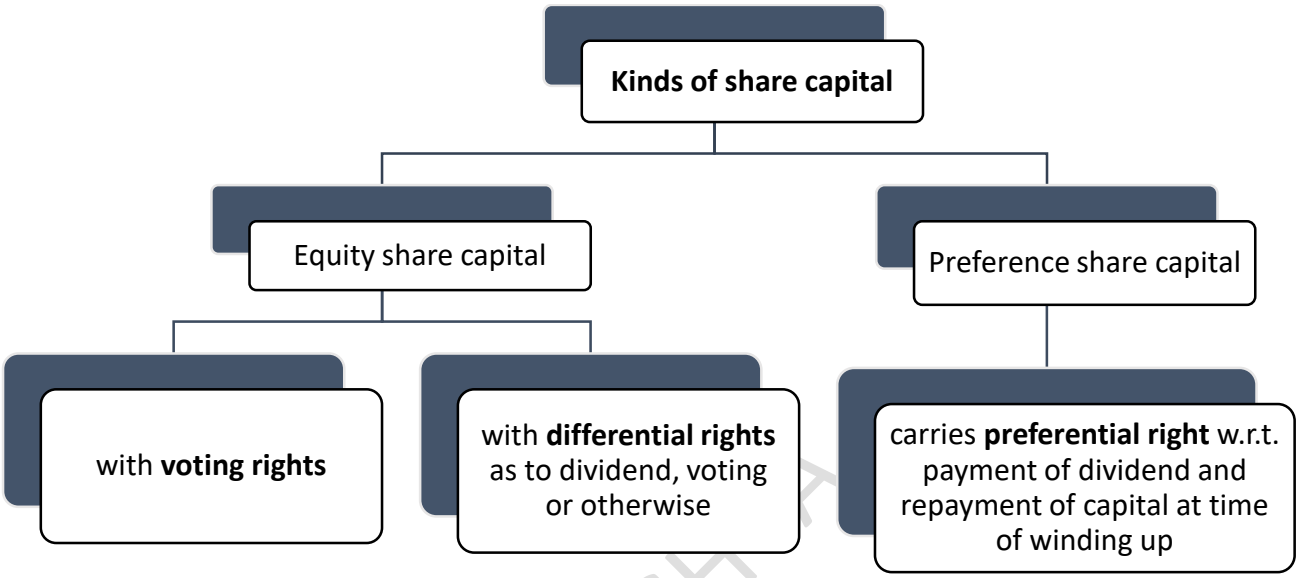
MEANING OF SHARE CAPITAL [SEC. 2(84)]: Share Means a share in the share capital of a company and includes stock.

The Following are Two types of Share capital:

1. Equity Share Capital:
   - **a.** With Voting Rights (Plain vanilla**,** because equitable/same voting rights)
   - **b.** With Differential Rights as to dividend, voting or otherwise.
   - **c.** As Per Sec.43, ESC is a capital other than PSC.

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)

Note: The definition of 'share' states that the term 'share' includes 'stock'. If a company undertakes to aggregate the fully paid-up shares of various members as per their requests and merge those shares into one fund, then such fund is called 'stock'. Stock is stated in lump sum whereas a 'share' being the smallest unit is having face value. Originally shares are issued to the shareholders while in case of stock, the fully paid-up shares of the members are converted into 'stock' afterwards. Thus 'stock' is not issued originally but is obtained by conversion of fully paid-up shares.



Q.NO.2 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. **MAX 74% OF TOTAL VOTING POWER:** The Voting powers of shares with differential rights (DVR) shall not exceed 74% of the total VOTING POWER including voting power of equity shares with DVR issued at any point of time. (ALWAYS SHOULD CHECK THIS POINT)

5. **REGULAR FILER WITH ROC:** The company has not defaulted in filing financial statements and annual returns for 3 financial years immediately preceding the financial year in which it is decided to issue such shares.
6. **NO DEFAULT:** The company has
   a. No Default in the payment of a declared dividend to its shareholders or
   b. No Default in repayment:
      i. **DEPOSITS:** Of its matured deposits or
      ii. **PREFERENCE CAPITAL:** Redemption of its preference shares or
      iii. **DEBENTURES:** Debentures that have become due for redemption or
      iv. **INTEREST:** Payment of interest on such deposits or debentures or
      v. **DIVIDEND:** The company has not defaulted in payment of the dividend on preference shares or
      vi. **TERM LOAN:** 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
      vii. **EMPLOYEE STATUTORY DUES:** With respect to statutory payments relating to its employees to any authority or
      viii. **IEPF DUES:** Crediting the amount in Investor Education and Protection Fund to the Central Government.
7. **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.
8. **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.
9. **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.
10. **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.

11. **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.
12. **DISCLOSURE IN THE BOARD'S REPORT:** The Board of Directors shall disclose the specified particulars in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed.
13. **NON APPLICABILITY:**
    - **a.** Specified IFSC Public Company, where memorandum of association or articles of association of such company provides for it.
    - **b.** Private company, where memorandum or articles of association of the private company so provides; however, this exemption shall be available to only that private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar.

Q.NO.3 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
    - **a.** under common seal of the company or
    - **b.** signed by two directors or
    - **c.** by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

B. DUPLICATE SC:

6. A duplicate certificate of shares may be issued if such certificate:
    - **a.** Is proved to be lost or destroyed
    - **b.** Has been Defaced, mutilated or torn and is surrendered to the company.
7. **FEES:** Company may charge fees as the Board thinks fit, not exceeding rupees fifty per certificate.
8. **DISCLOSURE:** On the face of duplicate certificate, it shall be stated prominently that it is "duplicate issued in lieu of share certificate No....." and the word "duplicate" shall be stamped or printed prominently

9. **TIME LIMIT:**
    a. In case unlisted companies, the duplicate share certificates shall be issued within a period of three months and
    b. In case of listed companies such certificate shall be issued within fifteen days, from the date of submission of complete documents with the company respectively.
10. **RECORD OF RENEWED AND DUPLICATE CERTIFICATE TO BE MAINTAINED**
    a. Particulars of every renewed and duplicate share certificates maintained in Form SH 2 with cross reference to register of members**,** in shape of register.
    b. Such register shall be kept at registered officer or any other place where register of members in custody of company secretary or such other person as may be authorised by the Board.
    c. All entries made in such register shall be authenticated by the company secretary or such other person as may be authorised by the Board.

C. 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.

D. MANNER OF ISSUE OF CERTIFICATES/DUPLICATE CERTIFICATES

i. Sub-section 3 overrule the articles of a company, and say the issue of a certificate of shares or the duplicate thereof, the particulars to be entered in the register of members and other matters shall be in manner and form as prescribed

ii. Share certificate is in vogue in case of shares which are held in the physical form, not in the demat form (under the depository mode).

iii. Pre-requisites for issue of share certificate

a. Share Certificate shall be issued on surrender of 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); in pursuance of a resolution passed by the Board**.**

b. Form of share certificate: Certificate of share shall be in Form SH 1 or as near thereto as possible and shall specify;

i. The name(s) of the person(s) in whose favor the certificate is issued,

ii. The shares to which it relates and

iii. The amount paid-up thereon.

iv. Recording of particulars stated in share certificate

The particulars of every share certificate issued in accordance with sub-rule (1) shall be entered in the Register of Members maintained in accordance with the provisions of section 88 along with the name(s) of person(s) to whom it has been issued, indicating the date of issue.

v. Maintenance of share certificate forms and related books and documents (Rule 7 of the Companies (Shares and Debentures) Rules, 2014)

a. All blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board and these shall be consecutively machine-numbered.

b. Such forms shall be kept in the custody of the secretary or such other person as the Board may authorise for the purpose.

c. All books pertain to record of share certificates shall be preserved in good order not less than 30 years and in case of disputed cases, shall be preserved permanently.

d. All certificates surrendered to a company shall immediately be defaced by stamping or printing the word "cancelled" in bold letters and may be destroyed after the expiry of three years from the date on which they are surrendered, under the authority of a resolution of the Board and in the presence of a person duly appointed by the Board in this behalf.

E. 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.

ACADEMIC INTEREST (NOT REQUIRED FOR EXAMS):

ABOUT DEMAT: Now-a-days most of the listed shares are held in electronic format. Even banks and financial institutions now insist for demat of securities for charge creation to facility corroboration with central registry for loans and mortgages.

PHYSICAL SECURITIES are mostly limited to private limited companies and closely held companies.

ABOUT DEPOSITORY: At present, there are two depositories in India, NSDL and CDSL, with various depository participants (DPs) linked to them. Dematerialised securities are held by investors in their

respective accounts with the DP. The DP keeps a track of transfer, transmission, charge creation etc. There are necessary enabling legal enactments to facilitate all these procedures.

PUNISHMENT FOR WRONG DOERS: An intelligent reader would observe that the share certificate issues by a company could be in a way compared to currency notes issued by the Central Bank. Therefore, strict penal provisions are there against fraudulent activities. In such cases, the wrong-doer company and every officer in default is punishable under section 447.

Example: *It is observed that Golden Apple Transport Limited issued share certificates in duplicate with intend to defraud. The total shares in regard to which such certificates are issued nearly 12,00,000. Face value of each share is ₹ 10. The maximum fine that can be imposed on company shall be ₹ 12,00,00,000.*

Q.NO.4 WRITE ABOUT VOTING RIGHTS OF SHARE HOLDERS U/S 47 OF COMPANIES ACT, 2013?

ANSWER:

A. VOTING RIGHT OF MEMBER HOLDING EQUITY SHARE CAPITAL:

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

   FOR NIDHI COMPANIES: However, no member shall exercise voting rights on poll in excess of 5 %, of total voting rights of equity shareholders. (Notification dated 5th June, 2015.)

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. **PROPORTION OF VOTING RIGHTS:**
   a. **"EQUITY CAPITAL: PREFERENCE CAPITAL":** The proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares.

b. **PREFERENCE DIVIDEND NOT PAID:** Where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, there such class of preference shareholders shall have a right to vote on all the resolutions placed before the company. (Just like Equity Share Holders).

c. **PROPORTIONATE VOTING FOR EACH CLASS OF SHARES:** On analysis of above provision, in case of equity shares other than equity shares with differential voting rights, each shareholder is entitled to vote on any resolution placed before the company i.e., in the annual general meeting (AGM) or Extra-ordinary general meeting (EGM) of the members of the company. The voting right shall be proportionate to the paid-up capital of the class of shares involved.

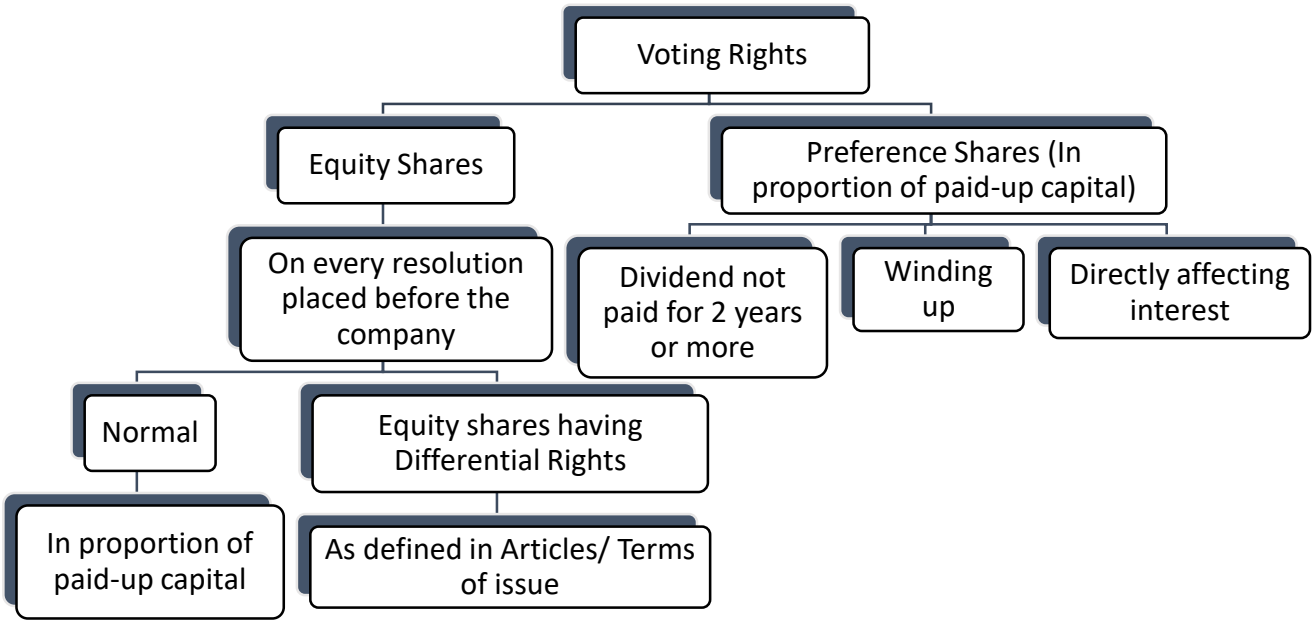
C. SPECIAL BENEFITS TO PRIVATE COMPANY FROM SEC. 47:

1. Section 47 shall not apply where memorandum or articles of association of the private company so provides.
2. The above-mentioned exception shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar. (Notification dated 13th June, 2017)
3. Thus, Private company could be more innovative in terms of voting rights if permitted by their Memorandum of Association or Article of Association.

D. NON-APPLICABILITY: Section 47 shall not apply to;

1. A Specified IFSC Public Company, where memorandum of association or articles of association of such company provides for it.
2. A private company, where memorandum or articles of association of the private company so provides, however, this exemption shall be available to only that private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar.

Summary of section 47



Example: *Indswift Pharma Labs Limited raised the capital of 300 crores through issue of single series of 8% preference share apart from 1200 crores ordinary shares, Indswift last paid dividend to such preference share holder for 2019-20.*

Preference shareholder w.e.f 1st April 2022 assume the right to vote on any resolution placed before company. But till 31st March 2022 they can vote only on that resolution which directly affect the rights attached to his preference shares or involve matter of the winding up of the company, or for the repayment or reduction of its equity or preference share capital.

The proportion of voting right of equity shareholders to the voting rights of the preference shareholders shall be 4:1.

Q.NO.5 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:
3. Provided that 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. **BINDING DECISION OF TRIBUNAL:** The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.
4. **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. SPECIAL POINTS:

1. New issue of preference shares ranking pari-passu with the existing shares does not amount to variation so as to require the consent of preference shareholders.
2. Cancellation of shares and reduction of capital also do not amount to variation of class rights.

Illustration - MCQ

DBS Chemicals Limited issue ordinary share of different classes. DBS planned to vary rights of one the class wherein only 105 holders. The 100 out 105 holder own 0.5% shares of that class, whereas each of remaining 5 holders hold 10% shares of that class. Presuming 100 holder who own 0.5% shares already signed/authorised the consent letter sanctioning the variation, how many holders out of such 5 need authorise said letter to approve the variation.

Options;

a. 0

b. 1

c. 3

d. 5

Answer – c.

Q.NO.6 WRITE ABOUT CALLS AND INCEDENTAL MATTERS THERE TO?

ANSWER:

A. INTRODUCTION TO CALLS [SEC. 49]:

1. *The liability of a shareholder to pay the full value of the shares held by him, which is currently partly paid-up is enforced by making "calls" for payment.*
2. *It is worth noting here that every shareholder is under a statutory liability to pay the full amount of his shares as Section 10(2) declares that "all money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company".*
3. *But the liability to pay this debt arises only when a valid call has been made. Section 49 lay down the principle of uniformity, whereas section 50 deals with calls in advance and section 51 contains the provisions regarding dividend rights on paid-up amount*

B. CALL SHALL BE ON UNIFORM BASIS

1. Calls are made by the company on security holders to pay the amount called up in respect of partly paid-up securities.
2. As per Section 49, these calls have to uniformly made and there should be no differentiation for a given class of security holders.
3. Explanation: For the purposes of this section, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class (i.e. the provision is not applicable in case where different amounts are paid for a same class for security.)

***Note:** A shareholder on whom a regular call for payment has been served may choose to pay only a part of the sum due. Here it is important to consider the debt (of calls made) is not an entire and indivisible debt, therefore, the company may be bound to accept the amount tendered by the shareholder.*

C. CALLS IN ADVANCE [SEC. 50]:

1. If AOA permits, A Company can accept the whole or part of the amount remaining unpaid on shares held by a member, in advance even if the company has not called up such amount.

2. However, there would be no voting right on that advance amount till the amount is duly called for.
3. Further advance payment will never lead to increased voting rights but delayed payment of call money could decrease voting rights.

D. PROPORTIONATE DIVIDEND [SEC. 51]:

i. A Company may pay proportionate dividend on such paid-up capital (Including Calls in Advance) subject to AOA.
ii. The Board of Directors of a company may decide to pay dividends on pro rata basis if all the equity shares of the company are not equally paid-up. However, in the case of preference shares, dividend is always paid at a fixed rate.

Example: "Moonstar Ltd" is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. 'A', a shareholder of the Moonstar Ltd., deposits in advance the remaining amount due on his shares without any calls made by "Moonstar Ltd." In the given case Mr. A, has deposited in advance the remaining amount due on his shares without any calls made by 'Moonstar Ltd'. So, 'Moonstar Ltd' was authorized to accept the unpaid calls by its articles. Hence, this is a valid transaction.

Example: Coriander Masale Limited has issued 10,00,000 equity shares of Rs. 10 each on which Rs. 6 per share has been called till allotment and the first and final call of Rs. 4 is yet to be made. Reena holds 10,000 shares on which she has paid whole of Rs. 10 per share. In the upcoming extra-ordinary general meeting of the company she wants to exercise her voting rights as the owner of fully paid-up shares. However, the company cannot permit her as she does not have voting right in respect of the 'advance amount' paid by her in respect of first and final call. The restriction will continue till the amount is duly called up by the company.

Q.NO.7 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. Premium may be received in cash or in kind
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.8 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.
4. **PENALTY FOR NON-COMPLIANCE:** Where any company fails to comply with the provisions of this section:
   a. Such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or **5 LAKH RUPEES**, whichever is less, and

b. The company shall also be liable to refund all monies received with interest at the rate of 12 % per annum from the date of issue of such shares to the persons to whom such shares have been issued.

Note: This restriction does not apply for Debt Instrument.

Q.NO.9 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. **LOCK IN PERIOD:** The sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of 3 years from the date of allotment.
   e. **VALUATION – SHARE:** The sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation.
   f. **VALUATION – IPR / KNOWHOW/ VALUE ADDITION:** The valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a registered valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation.
   g. **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.
   h. **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.

6. **TREATMENT OF NON-CASH CONSIDERATION:** Non-cash consideration shall be treated in the following manner in the books of account of the company:
   a. Where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards or
   b. It shall be expensed as provided in the accounting standards. (if Clause (a) Do not Apply).

D. DEFINITION OF ''EMPLOYEE'' MEANS:

1. A permanent employee of the company who has been working in India or outside India or

2. A director of the company, whether a whole- time director or not or
3. 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.

MEANING OF 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)

Illustration – T&F

A company that incorporated and commenced the business on 9th Nov 2022, can issue sweat equity share only after 8th Nov 2023.

Answer - False. Currently there is no condition prescribed by section 54 (1) regarding age of company.

Q.NO.10 WRITE ABOUT PROVISIONS OF COMPANIES ACT, 2013 REGARDING ISSUE OF PREFERENCE SHARES?

ANSWER:

A. 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.

B. 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.

EXAMPLE: During the current financial year, the Board of Directors of Vintee Lifestyles Garments Limited is to undertake redemption of 20,000 preference shares of Rs. 100 each at a premium of Rs. 20 per share. It is made out by the Accounts Department that the profits are sufficient to meet the ensuing liability arising out of redemption of preference shares at premium.
In this case, the amount that needs to be transferred to Capital Redemption Reserve (CRR) account, if preference shares are redeemed at a premium out of profits which are otherwise available for dividend, is Rs. 20,00,000 being the sum equal to the nominal amount of the preference shares to be redeemed. There is no need to transfer to CRR account any amount paid towards 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.

C. **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.

In this way the unredeemed preference shares shall be deemed to have been redeemed.

- Where a company is not in a position to redeem any preference shares or to pay dividend on such preference shares (called unredeemed preference shares) in accordance with the terms of issue;
- Then such company may issue further redeemable preference shares to the holder of unredeemed preference shares;
- Equal to the amount due, including the dividend thereon;
- With the consent of the holders of three-fourth in value of such unredeemed preference shares, and approval of the tribunal on a petition made by it in this behalf.
- In this way the unredeemed preference shares shall be deemed to have been redeemed.

Example: *Bell Homes Furnisher Limited (BHFL) unable to redeem the preference shares as they become due. Hence BHFL decided to issue further preference share in against unredeemed preference shares. Holder holding 93% of such unredeemed preference shares in value, gave their consent; tribunal also assented to issue of further preference shares. The 18 holders who own remaining 7% seek redemption of shares held by them.*

In this case while giving approval under section 55(3), tribunal shall order the redemption forthwith of shares (7% in value) held by dissenting 18 holders.

Q.NO.11 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. **BONDS OF GOVT COMPANY: INSTRUMENT NOT REQUIRED:** In Case of Government Company, this instrument of transfer is not required in the following cases:
   a. For Bonds issued by such government company – Transferee shall give intimation to the company along with bond certificate.
   b. For securities held by nominees of government. (i.e., Change of Nominees)
   Note: The above exceptions are applicable to a Government Company, which has not committed a default in filing its financial statements under section 137 or Annual Return under section 92 with the Registrar.

3. **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.

4. **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.

5. **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 and the transferee gives no objection to the transfer within **2 WEEKS** from the receipt of notice.

6. **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.

7. **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
In the case of all securities by specified IFSC public and private company	Within a period of **60days** after incorporation, allotment, transfer or transmission

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

8. **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)

   EXAMPLE: Richa Daniel, after having obtained succession certificate, succeeded to 7,000 shares of Rs. 100 each allotted to her late father Alexender Daniel by Speed Software Limited. To pay off the debt of her cousin Stesley, she wants to transfer whole of the 7,000 shares to her on the basis of a duly stamped instrument of transfer which has been signed by her as well as Stesley. Accordingly, she has delivered the required documents to the company for transfer of shares.

   ANSWER: In terms of Section 56 (5), the company, on receipt of duly stamped instrument of transfer along with requisite share certificates and succession certificate, shall transfer the shares in favour of Stesley. Thus, even though Richa Daniel, the legal representative of Alexender Daniel, is not a holder of 7,000 shares as per the Register of Members of the company, the transfer effected by her in favour of her cousin Stesley is a valid transfer as if she had been the holder of securities at the time of executing the transfer deed.

   Note: As an alternative, Richa Daniel may choose to get herself registered as holder of the 7,000 shares in which case, she will make an application to Speed Software Limited. Such application shall be accompanied with share certificates and succession certificate. There is no need to submit instrument of transfer or transfer deed in such a case of transmission. This is so because transfer deed cannot be signed by the deceased person as transferor.

   On receipt of these documents, the company will scrutinize them and if found in order, it shall proceed to enter the name of Richa Daniel in the Register of Members. Consequently, the name of the deceased person i.e., Alexender Daniel shall be deleted. Further, new share certificates will be issued in the name of Richa Daniel, the legal representative of Alexender Daniel.

9. **DEFAULT IN COMPLIANCE OF THE ABOVE PROVISIONS:**
   a. The company and every officer of the company who is in default shall be liable to a penalty of 50,000/-.
   b. **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.
10. **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.12 IS IT POSSIBLE FOR A TRANSFEREE OF 'FORGED TRANSFER' TO ACQUIRE OWNERSHIP OF SHARES CONTAINED IN THE INSTRUMENT OF TRANSFER?

ANSWER:

1. The answer is 'NO'. At the same time, the transferor who is the real owner continues to be the shareholder and accordingly, the company can be forced by him to delete the name of the transferee and to restore his name as owner of shares in the Register of Members.
   a. A forged transfer is a 'nullity' and is not legally binding.
   b. Forged transfer takes place when a company effects transfer of shares on the basis of an instrument of transfer containing forged signatures of transferor.

2. **REMEDY TO GENUINE 3RD PARTY BUYER AND COMPANY:** What will happen if the transferee of 'forged transfer' transfers the shares to another buyer who does not know about the forgery and the company also registers the transfer in the name of new buyer and endorses the share certificates. In fact, the company cannot deny the ownership rights of new genuine buyer, but it can also not deny the ownership rights of original shareholder because 'forged transfer' is void ab-initio and therefore, the company has to restore his name.
   a. **REMEDY TO THE 3RD PARTY BUYER:** While restoring the name of the original shareholder, the company may be asked to compensate the new genuine buyer who exercised good faith in purchasing the shares.
   b. **REMEDY TO THE COMPANY:** As a remedy, the company may get itself indemnified by the first transferee who used the forged instrument of transfer to get the shares transferred in his name.

3. With the dematerialisation process becoming a necessity in case of unlisted public companies i.e., they are required to dematerialise all of their securities as per Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the chances of forgery are very thin or almost negligible. Though private companies are not required to dematerialise their securities but due to the limited number of shareholders, the company can exercise caution and easily detect the forgery, if at all it is going to happen.

Q.NO.13 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.14 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 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.15 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. CONTRAVENTION OF OTHER LAWS:

If the transfer of securities is in contravention of any of the provisions of:

1. the Securities Contracts (Regulation) Act, 1956,
2. the Securities and Exchange Board of India Act, 1992 or
3. this Act or any other law for the time being in force,

then the Tribunal set right the contravention and rectify the registers or records of various parties concerned (Viz., Depositary, Company, DP, SEBI or any other party).

Summary of section 58

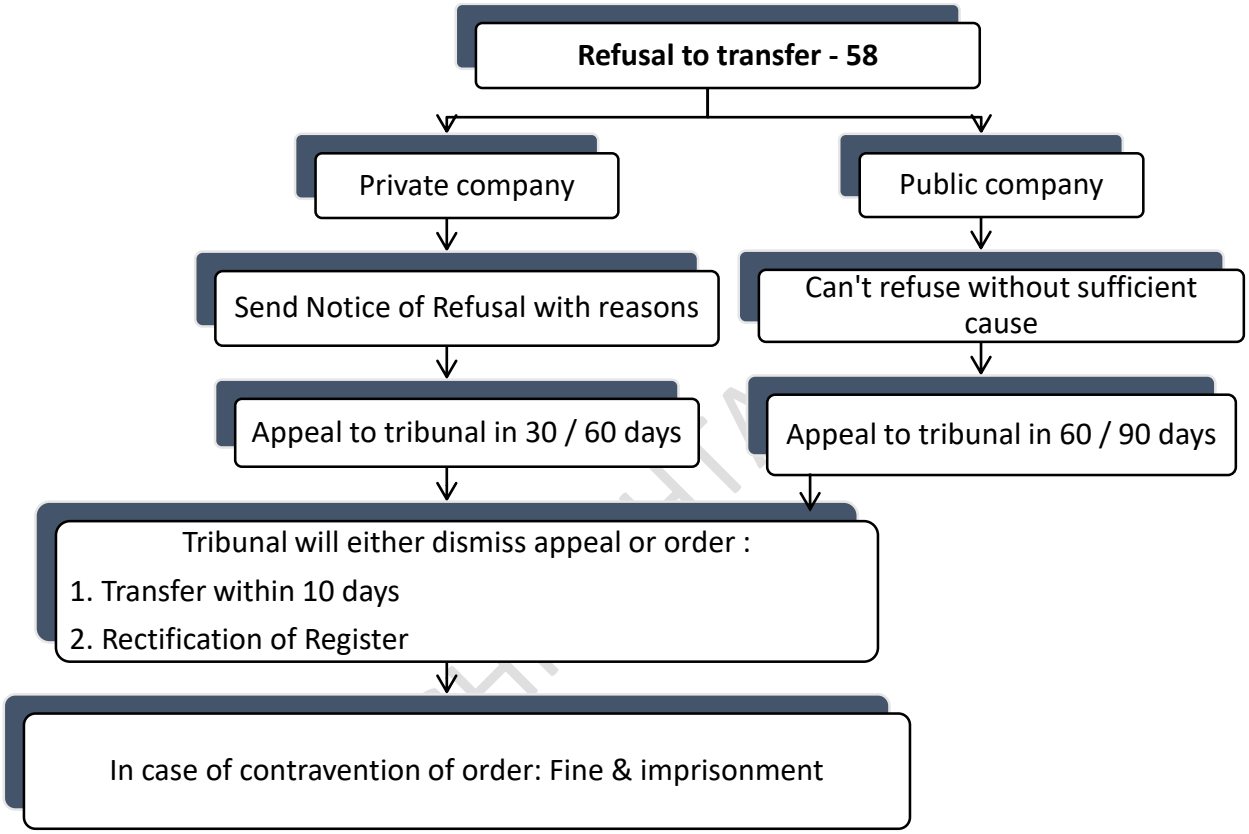


Illustration – T&F

Notice of refusal to register transfer of shares by private company shall be sent only to the transferee within 30 days, stating reasons of refusal therein.

Answer –False, notice of refusal shall be given to both transferee and transferor under section 58(1).

Q.NO.16 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.17 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.

INFORM TO ROC: A company shall within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, notice should be given to the Registrar in the prescribed form along with an altered memorandum [Section 64 of the Companies Act, 2013].

Q.NO.18 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. **LESS THAN 15 DAYS – ONLY PRIVATE COMPANY / IFSC PUBLIC COMPANY:** In case of Private Company or IFSC Public Company, the offer letter can be given for a time period of LESS THAN 15 DAYS provided 90 percent of the members have given their consent in writing or electronic mode.

   c. **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)]:

1. **UNLISTED PUBLIC COMPANIES:** SPECIAL RESOLUTION passed by company and subject to the conditions as may be prescribed or
2. **LISTED COMPANIES:** SEBI Regulations shall apply.
3. **PRIVATE LIMITED COMPANY:** ORDINARY RESOLUTION shall be passed subject to that it has not defaulted in filing its financial statements under Section 137 or Annual Return under Section 92.
4. **Specified IFSC Public Company:** ORDINARY RESOLUTION would be sufficient.
5. **OTHER CONDITIONS:**
   a. **EXPLANATORYN STATEMENT:** The company shall make the specified disclosures in the explanatory statement annexed to the notice for passing of the resolution.
   b. **FREEDOM TO DETERMINE EXERCISE PRICE:** The companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.
   c. **ONE YEAR TIME GAP:**
      i. There shall be a minimum period of 1 year between the grant of options and vesting of option.
      ii. **AMALGAMATION OR DEMERGER:** It is provided that in a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option 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.
   d. **LOCK IN PERIOD:** The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.
   e. **NO DIVIDEND UNTIL EXERCISE DATE:** The Employees shall not have 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.
   f. **NON-TRANSFERABLE:** The option granted to employees shall not be transferable to any other person
   g. **NO PLEDGE OR HYPOTHECATION:** The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.

h. **ONLY EMPLOYEE / LEGAL HEIR SHALL EXERCISE:**

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

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

i. **PERMENANT INCAPACITY – VESTS ON SUCH DATE:** In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day.

j. **RESIGNATION – NON-VESTED - EXPIRES:**

i. In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire.

ii. However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme granting such options as approved by the Board.

'EMPLOYEES' STOCK OPTION' means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

'EMPLOYEE' means:

a. **PERMENANT EMPLOYEE:** A permanent employee of the company who has been working in India or outside India; or

b. **DIRECTORS:** A director of the company, whether a whole-time director or not but excluding an independent director or

c. **EMPLOYEE OF GROUP COMPANIES:** An employee as defined in clause (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company but does **NOT** include:

i. **PROMOTER EMPLOYEE:** An employee who is a promoter or a person belonging to the promoter group or

ii. **DIRECTOR HOLDING MORE THAN 10% EQUITY:** A director who either himself or through his relative or through anybody corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company.

NOTE: Provided that in case of a start-up company, the conditions mentioned in sub-clauses [i.e., Exclusions] (i) and (ii) shall not apply up to 10 years from the date of its incorporation or registration.

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.

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)
   Section 62 shall not apply to Nidhi Company. While complying with such exception, the Nidhi Companies shall ensure that the interests of their shareholders are protected.

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.

NOTE:

Relative, with reference to any person, means anyone who is related to another, if—

i. They are members of a Hindu Undivided Family;

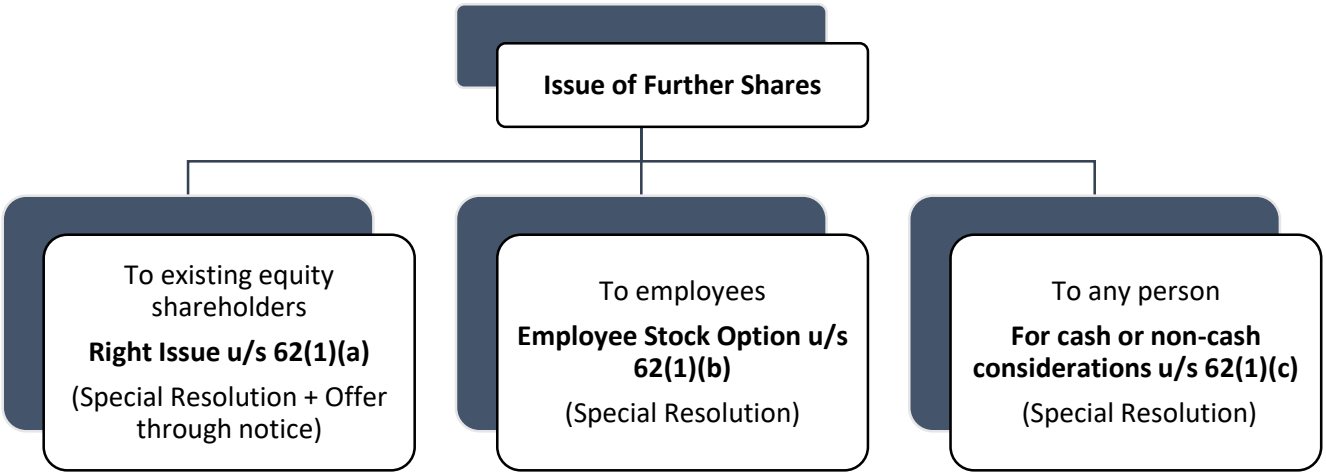
ii. They are husband and wife; or

iii. One person is related to the other in such manner as may be prescribed;

Rule 4 given in the Companies (Specification of Definitions Details) Rules, 2014 provides of the List of Relatives in terms of Clause (77) of section 2. Accordingly, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

1. Father: Provided that the term "Father" includes step-father.
2. Mother: Provided that the term "Mother" includes the step-mother.
3. Son: Provided that the term "Son" includes the step-son.
4. Son's wife.
5. Daughter.
6. Daughter's husband.
7. Brother: Provided that the term "Brother" includes the step-brother;
8. Sister: Provided that the term "Sister" includes the step-sister.

Offering of issue of further Shares [Sub-section 1]



Practical Insight - Right Issue by Suzlon Energy Limited (October 2022)

Suzlon Energy Limited (SEL) is among the world's leading renewable energy solutions provider in India operating in wind energy segment.

To part finance its needs for repayment/prepayment of certain borrowings (₹ 900.00 crore) and general corporate purposes (₹ 283.50 crore), SEL is offering a rights issue of 240 crore equity shares (Face Value ₹ 2) each at a price of ₹ 5 per share (Current Market Price of Share was ₹ 8.47) to mobilize ₹ 200.00 crore.

The company is offering the right shares in the ratio of 5 shares for every 21 shares held as of the record date of October 04, 2022. Rights entitlements can be renounced up till Oct 14, 2022 (Current Market Price of Rights Entitlement was ₹ 1.32).

The issue opens for subscription on October 11, 2022, and will close on October 20, 2022.

Only 50% amount (i.e., ₹ 2.50 per share) is to be paid on application and the balance on one or more calls by the company from time to time.

Post allotment, shares will be listed on BSE and NSE.

SEL is proposed to spend ₹ 16.50 crore for this Right Issue process.

Q.NO.19 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: 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.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.

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The following are the conditions for issue of Bonus Shares:

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f. **NOT IN LIEU OF DIVIDEND:** The bonus shares shall not be issued in lieu of dividend.

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.

Illustration – True/False

Bonus share can be issued to partly paid shares in proportion to paid-up value.

Answer – False, Bonus shares can only be issued against fully paid, the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

Q.NO.21 WRITE ABOUT FILINGS WITH ROC U/S 64 OF COMPANIES ACT, 2013?

ANSWER:

1. **NOTICE TO BE GIVEN TO REGISTRAR FOR ALTERATION OF SHARE CAPITAL [SECTION 64]**

   As and when, there is an alteration (including increase and decrease) of share capital, the company concerned shall notify the registrar. The provisions in this respect are contained in Section 64.

2. **FILING OF PRESCRIBED NOTICE [SUB-SECTION 1]**

   Company shall file a notice in the Form No. SH-7 with the Registrar, along with an altered memorandum; within 30 days of alteration (including increase or decrease) to its capital in case of;

   a. Alternation of capital in manner specified in section 61 (1),

b. Order made by the Government under section 62(4) read with 62(6) has the effect of increasing authorised capital of a company; or

c. Redemption of any redeemable preference shares,

3. PENALTY FOR DEFAULT IN FILING OF NOTICE [SUB-SECTION 2]

Liable	Penalty
Company	**Five hundred rupees** for **each day** during which such default continues, subject to a **maximum of five lakh rupees**
Every officer who is in default	**Five hundred rupees** for **each day** during which such default continues, subject to a **maximum of one lakh rupees**

Q.NO.22 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.

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.

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

1. Abet means to encourage or incite another to commit a crime
2. Privy signify a coparticipant; one who has an interest in a matter

The provisions contained in Section 447 which describe 'punishment for fraud' are stated in the earlier Chapter 3 relating to 'Prospectus and Allotment of Securities'.

Q.NO.23 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.

   Note: An English court held that where money is given for the very purpose of purchasing the bank's shares that would not be lending in the ordinary course of business and the provision would be violated

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.

   Note:

   1. In case the shares of the company are listed - Such purchase of shares shall be made only through a recognized stock exchange and not by way of private offers or arrangements.

   2. Where shares of a company are not listed - the valuation at which shares are to be purchased shall be made by a registered valuer**.**

   3. The value of shares to be purchased or subscribed in the aggregate shall not exceed five percent of the aggregate of paid up capital and free reserves of the company;

4. 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 for the relevant financial year, namely:
   a. Names of the employees who have not exercised the voting rights directly;
   b. Reasons for not voting directly;
   c. Name of the person who is exercising such voting rights;
   d. Number of shares held by or in favour of, such employees and the percentage of such shares to the total paid up share capital of the company;
   e. Date of the general meeting in which such voting power was exercised;
   f. Resolutions on which votes have been cast by persons holding such voting power;
   g. Percentage of such voting power to the total voting power on each resolution;
   Whether the votes were cast in favour of or against the resolution.

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.24 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)]:

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.

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

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.

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/-

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.

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:
     - **i.** In repayment of deposits or interest payment thereon or
     - **ii.** Redemption of debentures or preference shares or payment of dividend or
     - **iii.** 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.

2. **NON-COMPLIANCE OF SEC. 92 / 123 / 127 / 129:** No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with:
   - **a.** Provisions of Sections 92 (Annual Report),
   - **b.** SEC. 123 (Declaration of dividend),
   - **c.** SEC. 127 (Punishment for failure to distribute dividends), and
   - **d.** SEC. 129 (Financial Statements).

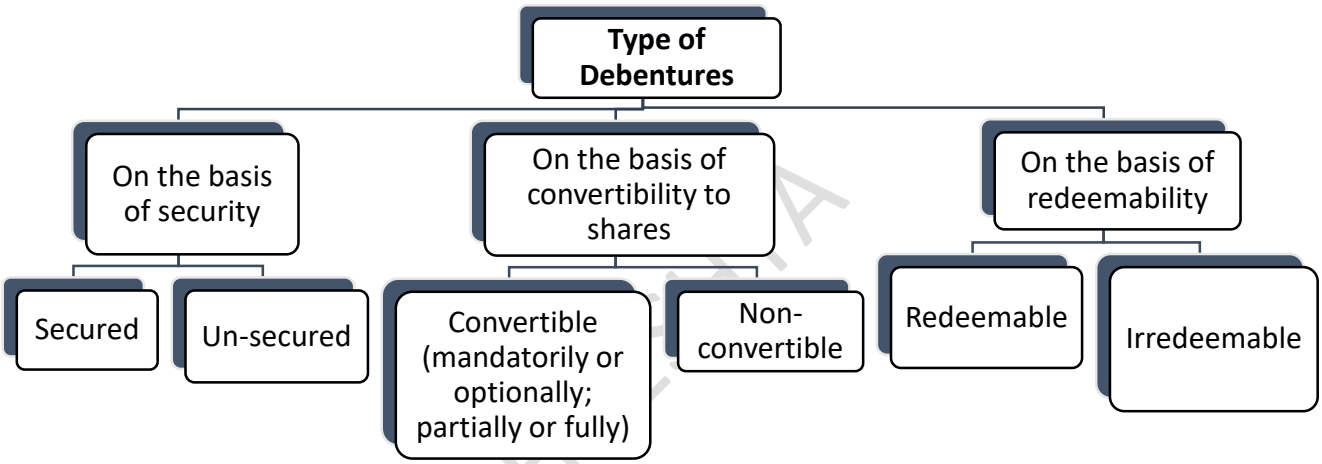
Illustration – True and False

1. Passing an ordinary resolution is sufficient where the buy-back is, not exceeding ten percent of the total paid-up equity capital and free reserves of the company.

   Answer - False, such buy-back has to be authorised by the Board resolution passed at its meeting.

2. CRR can be used to issue partly paid bonus shares or finance discount portion of sweat equity shares.

   Answer - False, the capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.



Q.NO.25 WRITE ABOUT THE FEATURES OF DEBENTURES?

ANSWER:

1. A debenture is the smallest unit of a sizeable amount of loan.
2. When debentures are issued, the applicants are given certificates representing the money they have lent to the company.
3. A debenture certificate is issued by the company under its common seal, if any, or under the signatures of two directors or a director and the company secretary, if he has been appointed.
4. The company pays periodic interest on the amount raised by issuing debentures till they are fully redeemed.
5. A debenture is generally pre-fixed with the rate of interest which the company intends to pay.

Example: The name '10% Debentures' indicates that the company shall pay interest at the rate of 10% on the outstanding amount till maturity of such debentures.

6. Voting rights are not available in case of debentures since Section 71 (2) clearly states that no company shall issue any debentures carrying any voting rights.

7. A debenture is in the nature of movable property which is transferable as per the provisions contained in the Articles of the company issuing the debentures49.
8. A debenture may be secured or unsecured. In case of secured debentures, a charge is created on the assets of the company in favour of debenture trustee.
9. As per the terms of the issue of debentures, they may be redeemed (i.e., repaid) at the end of full term or in installments, say yearly or bi-yearly or any other period like in two installments.
10. The terms of issue may also provide for conversion of debentures at maturity into equity shares at the option of the debenture holders.
11. The debenture certificates are required to be delivered within a period of 6 months from the date of allotment of debentures, unless the company is prohibited by any provision of law or any order of Court, Tribunal or any other authority.

Example: Sigma Computers Limited desires to borrow Rs. 50,00,000 from the public by issuing 7% Debentures. It is intended that each unit of debenture shall be of Rs. 100. Thus, it can issue 50,000 debentures of Rs. 100 each carrying 7% rate of interest which can be paid at the end of every quarter. If such debentures (secured by a charge on the assets of the company) are issued for six-year duration, the principal amount shall be repaid by the end of sixth year. The terms of issue may even allow repayment of principal amount in equal yearly instalments, in which case a portion of debentures shall be redeemed on yearly basis and the company shall be required to pay interest only on the outstanding amount. The debenture holders may also be given the option of converting their debentures into equity shares at the time of maturity.

Thus, Sigma Computers Limited is able to borrow a large sum of money from different borrowers with the help of debentures and it is not required to approach a single borrower for such a big amount. In other words, 'issue of debentures' is the most convenient way of borrowing large sums of money and at the same time the debenture holders do not exert any influence over the ownership and working of the company unless their interest is jeopardized by certain decisions.

TYPES OF DEBENTURES:

1. **ON THE BASIS OF SECURITY:**
   - **a.** Secured Debentures.
   - **b.** Unsecured Debentures.
2. **ON THE BASIS OF CONVERTIBILITY:**
   - **a.** Convertible Debentures (Fully or Partly).
   - **b.** Non-Convertible Debenture.
3. **ON THE BASIS OF REDEEMABILITY:**
   - **a.** Redeemable Debentures. (Secured Debentures shall be redeemed within 10 Years)
   - **b.** Irredeemable Debentures.

Q.NO.26 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.

The following are not treated as Debentures:

1. The instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934 (E.g., Money Market Instruments such as T Bills, CP's) and
2. Such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company. (E.g., Foreign currency convertible bonds)

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.

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.

5. **LIMITS ON BORROWINGS FROM DEBENTURES: [SEC 180 (1)(c)]**

a. **SPECIAL RESOLUTION:** Before the issue of debentures, the Board of Directors of the company shall obtain approval of the shareholders through SPECIAL RESOLUTION **IF** the borrowings by issuing debentures together with the amount already borrowed **exceed** the aggregate of company's paid-up share capital, free reserves and securities premium amount.

b. **ONLY BOARD RESOLUTION:** In other words, if the borrowings DO NOT Exceed as above – a Board Resolution would be sufficient.

c. Temporary loans obtained from the company's bankers in the ordinary course of business are not to be included in the borrowings.

[NOT APPLICABLE TO PRIVATE COMPANIES]

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:**
   a. A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed.
   b. **MEETING OF DEBENTURE HOLDERS:** In order to protect the interest of debenture holders, Rule 18 (4) provides for the convening of the meeting of debenture-holders. Accordingly, the meeting of all the debenture holders shall be convened by the debenture trustee on:
      i. Requisition in writing signed by debenture holders holding at least 1/10th in value of the debentures for the time being outstanding.
      ii. 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.

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. PROCEDURE TO BE PRESCRIBED BY THE CENTRAL GOVERNMENT:

The Central Government may prescribe the procedure:

1. For securing the issue of debentures,
2. The form of debenture trust deed,
3. The procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof,
4. Quantum of debenture redemption reserve required to be created and
5. Such other matters.

Q.NO.27 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.

b. Above investments cannot be charged for securing any loan etc. Also, it should be used only for redemption of debentures.

a. 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.

b. In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture.

Illustration – True / False

If interest to debenture holder remain un-paid for two years then they may vote on resolution affecting their interests.

Answer – False, no debenture hold can never assume voting right, unless their debenture converted in equity as per terms of issue. Though similar provision exist in case of preference dividend remain unpaid for two year to preference shareholder

ILLUSTRATIONS

Illustration 1.

Can a company have only preference share capital?

Answer – It may be noted that while a company may have only equity share capital but it cannot have only preference share capital. This is because preference shareholders have certain 'preferential rights' over the equity shareholders.

Thus, in the absence of equity share capital, there cannot be preferential share capital **(Bihar State Financial Corporation vs. CIT Bihar (1976))**

Illustration 2.

Where a shareholder paid the first two calls after a great delay and neglected to pay the third call and the directors, being annoyed, and called upon him to pay the whole amount due. In your opinion is call valid?

Answer - A call can't be made on some of the members only, unless they constitute a separate class of shareholders, hence such a call shall be invalid. **(Galloway v Halle Concerts Society, (1915) 2 Ch 233)**

Illustration 3.

Moon Star Machineries Limited is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member even if no part of that amount has been called up by it. 'Anand', a shareholder, deposits in advance the remaining amount due on his partly paid-up shares without any calls being made by the company. Advise the company about the validity of accepting money in advance.

Answer - In view of the authorisation given by the Articles, Moon Star Machineries Limited is permitted to accept the advance amount received on unpaid calls from Anand. In other words, this is a valid transaction.

Illustration 4.

What shall be length of period specified by notice of offer of further issue for giving acceptance?

Answer – Notice of offer of further shares shall specify the **time period** within which the offer must be accepted. The time period should not be less than 15 days or such lesser number of days as may be prescribed but not exceeding 30 days from the date of the offer

Note – Rule 12A inserted in the Companies (Share Capital and Debentures) Rules, 2014, that provides the time period within which the offer shall be made for acceptance **shall be not less than seven days** from the date of offer.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. **Sarvodhaya Urban Nidhi Limited has ₹ 14 Crore and ₹ 6 Crore as paid-up equity and preference share capital respectively. Balance in retain earnings account is ₹ 2.4 Crore. Equity share capital having face value of ₹ 10 each, while preference share has face value of 100 each. Mr. Surya and Mr. Chandan own 11,20,000 and 5,60,000 shares respectively. In context of resolution placed before the company which directly affect the rights attached to his preference shares, the voting right of Mr. Surya and Mr. Chandan in percentage term shall be:**
   a. **8% and 4% respectively**
   b. **5.6% and 2.8% respectively**
   c. **5% and 2.8% respectively**
   d. **5% and 2.5% respectively**
2. **In a litigation regarding title of shares, a share certificate issued in physical form by Modern Furniture Limited, an unlisted private company that doesn't have a common seal submitted as evidence of the title. The same shall be clear and convincing evidence of title, if signed by;**
   i. **two directors**
   ii. **two directors, out which one shall be managing director**
   iii. **two directors and the Company Secretary, wherever the company has appointed a Company Secretary**
   iv. **a director and the Company Secretary, wherever the company has appointed a Company Secretary**
   a. **By i or iii only**
   b. **By i or iv only**
   c. **By ii or iii only**
   d. **By ii or iv only**
3. **Mr. Bahu has received a notice from Mahishmati Private Limited on 2nd March, 2023 intimating that Mr. Bali has submitted a transfer deed duly signed by him for transfer of 1000 partly paid shares (₹ 8 paid-up out of Face Value of ₹ 10 per share) in his (Mr. Bahu) name. Mr. Bahu as transferee must raise his objection to the proposed transfer of partly paid shares latest by**
   a. **9th March, 2023**
   b. **16th March, 2023**
   c. **17th March, 2023**
   d. **31st March, 2023**

4. **Section 67 of the Companies Act, 2013 impose a restriction on public company from giving any financial assistance whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company. Star Engineering Limited which is not covered by any of exemptions specified under said section, contravene the restrictive provisions stated above. Every officer of the company who is in default shall be liable for;**
   a. **Fine which shall not be less than one lakh rupees but may extend to twenty- five lakh rupees**
   b. **Fine which shall not be less than one lakh rupees but may extend to twenty-five lakh rupees or Imprisonment for a term which may extend to three years or both**
   c. **Fine which may extend to twenty-five lakh rupees or Imprisonment for a term which may extend to three years or both**
   d. **Fine which shall not be less than one lakh rupees but may extend to twenty-five lakh rupees and Imprisonment for a term which may extend to three years**
5. **Modern Furniture an unlisted company receive a request for issue of duplicate share certificate. Complete documents in this regards submitted with the company on 30th December 2022. Modern furniture shall issue the duplicate share certificates by:**
   a. **29th January 2023**
   b. **13th February 2023**
   c. **28th February 2023**
   d. **29th March 2023**

Answer to MCQ based Questions

1.	**c.**	5% and 2.8% respectively
2.	**b.**	two directors, out which one shall be managing director
3.	**c.**	16th March, 2023
4.	**d.**	Fine which shall not be less than one lakh rupees but may extend to twenty-five lakh rupees and Imprisonment for a term which may extend to three years
5.	**d.**	29th March 2023

PRACTICAL QUESTIONS

Q.NO.1 VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2019) decided to raise the share capital by issuing further Equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd, on the ground that it was already holding a high percentage of the total number of shares already issued, in SV Company Ltd. The Articles of Association of SV Company Ltd. provides that the new shares be offered to the existing shareholders of the company. On March 1, 2019 new shares were offered to all the shareholders except VRS Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Limited of not offering any further shares to VRS Company Limited.

ANSWER:

RELEVANT PROVISION:

As per Sec. 62 of companies act, 2013, If a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered first to Existing Shareholders subject to the following conditions:

1. The offer shall be made uniformly to all the shareholders without any reservation for a particular member, in proportion to their existing shareholding.
2. 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.
3. 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 renouncement's then there is no renouncement option.

ANALYSIS AND CONCLUSION:

In the given case the BOD of SV Company Limited Proposed a right share offer to existing shareholders except VRS Company Limited on the ground that it is already holding high percentage of shares.

The offer and contention made by BOD is INVALID. As VRS Company Limited is equally eligible participate in the rights offer along with other existing shareholders.

Q.NO.2 The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered. (Direct Theory Question)

ANSWER:

As per Sec. 61 of companies act, 2013, 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.

INFORM TO ROC: A company shall within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, notice should be given to the Registrar in the prescribed form along with an altered memorandum [Section 64 of the Companies Act, 2013].

Q.NO.3 Ramesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai. He did not receive the shares certificates even after the expiry of four months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to take action in the said matter?

ANSWER:

RELEVANT PROVISION:

As per Section. 56 of the Companies Act, 2013 every company shall deliver the certificates of all shares transferred within a period of 1 MONTH from the date of receipt of the INSTRUMENT OF TRANSFER.

If a company fails to deliver the share certificate then:

1. The company shall be punishable with fine varying from Rs. 25,000 to Rs. 5,00,000/- and
2. Every officer of the company who is in default shall be punishable with fine with the minimum of Rs. 10,000/- extending to Rs. 1,00,000/-.

Further the aggrieved person can file an appeal in a court falling within the jurisdiction of the registered office of the company.

ANALYSIS AND CONCLUSION:

In the given case, the company and officers in default will be liable to bear the above consequences. Further Mr. Ramesh has filed a petition in New Delhi Court which is outside the jurisdiction of Registered Office of the company (i.e., Mumbai) and Hence Delhi court cannot take any action in this regard.

Q.NO.4 Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to Rs.10,00,000 (10,000 preference shares of Rs.100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013?

ANSWER:

RELEVANT PROVISION:

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.

ANSLYSIS AND CONCLUSION:

1. In view of the above, Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. Rs.10,00,000.
2. For this purpose, it shall obtain the consent of the holders of $3/4^{th}$ in value of such preference shares and also seek approval of the Tribunal by making a petition.
3. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares.
4. Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented.
5. On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

Q.NO.5 Trisha Data Security Limited (listed on Stock Exchange) was incorporated on 1st August, 2019 with a paid- up share capital of Rs. 200 crores. Within this small time of 1 year it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfilled before the issue of sweat equity shares especially since their company is just a few months old.

ANSWER:

RELEVANT PROVISION:

As per Sec. 54 of companies act, 2013, 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.

Condition for Issue of Sweat Equity Shares:

1. The issue is authorised by a special resolution passed by the company.
2. The rights, limitations, restrictions and provisions related to sweat equity shareholders shall *Pari Passu* with other equity shareholders.
3. In case of Listed Companies, they have to comply with SEBI guidelines.

ANALYSIS AND CONCLUSION:

So, the contention of the Friend of CEO that a company cannot issue sweat equity shares up to 2 years is INVALID. So, DATA LIMITED, A listed company can proceed to issue sweat equity shares in accordance with the provisions of Sec. 54 of companies act, 2013.

There is no such minimum time limit of 2 years in operations is specified under Section 54.

Q.NO.6 Walnut Limited has an authorized share capital of 2,00,000 equity shares of Rs. 100 per share and an amount of Rs. 2 crores in its Share Premium Account as on 31-3-2020. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice.

ANSWER:

The provisions related to Securities premium account are contained in Sec. 52 of companies act, 2013 which are as below:

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. The securities premium account can be utilised for:
   a. towards the issue of fully paid bonus shares.
   b. in writing off the preliminary expenses of the company.
   c. in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company.
   d. in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company or
   e. for the purchase of its own shares or other securities under section 68 (Buy Back).
4. **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.7 OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of Rs. 4,00,000 to the Human Resource Manager Mr. Surya nayan, who is not a Key Managerial Personnel of OLAF Limited, drawing salary of Rs. 40,000 per month, to buy 500 partly paid-up Equity Shares of Rs. 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

ANSWER:

RELEVANT PROVISION:

As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

1. The employee must not be a director or Key Managerial Personnel.
2. The amount of such loan shall not exceed an amount equal to 6 months' salary of the employee.
3. The loan must be extended for subscribing fully paid-up shares.

ANALYSIS AND CONCLUSION:

In the given case OLAF Limited (Public Company) which is a subsidiary of PQR Limited gives a loan amount of Rs.4,00,000/- to an employee to purchase the shares of its own company.

Since the amount of loan exceeds 6 months' salary of HR Manager (i.e.,40,000 x 6M = 2,40,000/-), The company (OLAF Limited) has VIOLATED the provisions of Sec. 67 and IS INVALID.

Moreover, the loan give to employee can be used only to subscribe Fully Paid shares and NOT FOR PARTLY PAID SHARES.

Q.NO.8 SHILPI DEVELOPERS INDIA LIMITED OWED TO SUNIL ₹ 10,000. ON BECOMING THIS DEBT PAYABLE, THE COMPANY OFFERED SUNIL 100 SHARES OF ₹ 100 EACH IN FULL SETTLEMENT OF THE DEBT. THE SAID SHARES WERE ALLOTTED TO SUNIL AS FULLY PAID-UP IN LIEU OF HIS DEBT. EXAMINE THE VALIDITY OF THIS ALLOTMENT IN THE LIGHT OF THE PROVISIONS OF THE COMPANIES ACT, 2013.

ANSWER:

RELEVANT PROVISION:

Under Section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or

for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a empowered to allot the shares to Sunil in settlement of its debt to him. This valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

ANALYSIS AND CONCLUSION:

In the present case, Shilpi Developers India Limited's allotment, to be classified as shares issued for consideration other than cash, must be approved by the members by a special resolution**.** Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Q.NO.9 WHAT ARE THE PROVISIONS OF THE COMPANIES ACT, 2013 RELATING TO THE APPOINTMENT OF 'DEBENTURE TRUSTEE' BY A COMPANY? WHETHER THE FOLLOWING CAN BE APPOINTED AS 'DEBENTURE TRUSTEE':

i. **A SHAREHOLDER WHO HAS NO BENEFICIAL INTEREST.**
ii. **A CREDITOR WHOM THE COMPANY OWES ₹ 499 ONLY.**
iii. **A PERSON WHO HAS GIVEN A GUARANTEE FOR REPAYMENT OF AMOUNT OF DEBENTURES ISSUED BY THE COMPANY?**

ANSWER:

RELEVANT PROVISION:

1. As per Sec. 71 of Companies Act, 2013, 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. A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed.
3. As per Rules, the following Persons cannot be appointed as Debenture trustees:
   a. Beneficially holds shares in the company
   b. Is promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company
   c. Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee.
   d. Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company.

e. Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon.

f. Has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year.

g. is a relative of any promoter or any person who is in the employment of the company as director or key managerial personnel

ANALIS AND CONCLUSION:

Thus, based on the above provisions answers to the given questions are:

i. A shareholder who has no beneficial interest, can be appointed as a debenture trustee.

ii. A creditor whom company owes Rs.499 cannot be so appointed. The amount owed is immaterial.

iii. A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

Q.NO.10 MR. NILESH HAS TRANSFERRED 1000 EQUITY SHARES OF PERFECT VISION PRIVATE LIMITED TO HIS SISTER MS. MUKTA. THE COMPANY DID NOT REGISTER THE TRANSFER OF SHARES AND ALSO DID NOT SEND A NOTICE OF REFUSAL TO MR. NILESH OR MS. MUKTA WITHIN THE PRESCRIBED PERIOD. DISCUSS AS PER THE PROVISIONS OF THE COMPANIES ACT, 2013, WHETHER AGGRIEVED PARTY HAS ANY RIGHT(S) AGAINST THE COMPANY?

ANSWER:

RELEVANT PROVISION:

As per Sec. 58 of Companies Act, 2013, 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 the concerned person can APPEAL TO THE TRIBUNAL within:

a. REFUSAL INTIMATED: 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.

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 10 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.

ANALYSIS AND CONCLION:

In this case, as the company has not sent even a notice of refusal, Ms. Mukta being transferee can make an appeal before the tribunal within 60 days from the date on which instrument of transfer is to the company.

Q.NO.11 SHREE LTD. IS ENGAGED IN THE MANUFACTURE OF CONSUMER GOODS AND HAS GOT A GOOD BRAND VALUE. OVER THE YEARS, IT HAS BUILT A GOOD REPUTATION AND ITS BALANCE SHEET AS AT MARCH 31, 2020 SHOWS THE FOLLOWING POSITION:

1. **AUTHORIZED SHARE CAPITAL (25,00,000 EQUITY SHARES OF FACE VALUE OF RS. 10/- EACH) RS. 2,50,00,000**
2. **ISSUED, SUBSCRIBED AND PAID-UP CAPITAL (10,00,000 EQUITY SHARES OF FACE VALUE OF RS.10/- EACH, FULLY PAID-UP) RS. 1,00,00,000**
3. **FREE RESERVES RS. 3,00,00,000**

THE BOARD OF DIRECTORS ARE PROPOSING TO DECLARE A BONUS ISSUE OF 1 SHARE FOR EVERY 2 SHARES HELD BY THE EXISTING SHAREHOLDERS. THE BOARD WANTS TO KNOW THE CONDITIONS AND THE MANNER OF ISSUING BONUS SHARES UNDER THE PROVISIONS OF THE COMPANIES ACT, 2013. DISCUSS.

ANSWER:

RELEVANT PROVISION:

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.** Issue of Bonus shares shall be authorised by its articles.
   - **b.** Shall be approved by BOD. Further Once after BOD made recommendation, they cannot withdraw the same.

c. Shall be approved by Shareholders at General Meeting by passing an ordinary resolution.

d. The company has not defaulted in payment of interest or principal in respect of fixed deposits or debentures/bonds.

e. The Company has not defaulted in respect of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.

f. The existing partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

g. The bonus shares shall not be issued in lieu of dividend.

CONCLUSION: To issue bonus shares by SHREE Limited, the company will need reserves of Rs.50,00,000 (half of Rs.1,00,00,000), which is available with the company and Hence the company can proceed to issue bonus shares in accordance with the above provisions.

5. ACCEPTANCE OF DEPOSITS

[SEC. 73 TO 76A]

INTRODUCTION:

Acceptance of deposits from the members as well as public at large are an important source of finance for the corporate sector. It is, therefore, necessary to control the companies which invite deposits in order to safeguard the general and wider interest of all those persons who provide deposits out of their precious savings. The statutory provisions as contained in sections 73 to 76A of the Companies Act, 2103 (hereinafter referred to as 'the Act') and the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as 'the Rules') govern the acceptance of deposits and also renewal thereof.

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.

DECODING THE DEFINITION:

1. The above definition of 'deposit' is inclusive one.
2. It includes any money received by way of:
   a. deposit; or
   b. loan; or
   c. in any other form.
3. Repayment of 'deposit' is time-bound.
4. It can be secured or unsecured. (Secured by creation of charge on only Tangible assets)
5. It does not include prescribed categories of amounts (given under the Rules) [RULE 2(1)(C)].
6. A private company can accept deposits from its members only.
7. A public company can accept deposits from its members and also from the public if it fulfils certain parameters.
8. It may be accepted in joint names not exceeding three persons.
9. A depositor may nominate any person at any time.
10. Every deposit accepted by the company shall be repaid with interest.
11. Premature repayment of a deposit can be made by the company.

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

ANSWER:

Following categories of amounts are not considered as deposit [Rule 2 (1) (c)]:

1. **AMOUNTS RECEIVED FROM GOVERNMENT / GUARANTEED BY GOVERNMENT:** Any amount received from
   a) **GOVERNMENT:** The Central Government or a state Government, or
   b) **GUARANTEED BY GOVERNMENT:** From any other source whose repayment is guaranteed by the Central Government or a State Government, or
   c) **LOCAL AUTHORITY:** Any amount received from a local authority, or
   d) **STATUTORY AUTHORITY:** Any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature.

2. **FOREGIN GOVERNMENT:** Any amount received from
   a. foreign Governments,
   b. foreign or international banks,
   c. multilateral financial institutions (including, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation, and International Bank for Industrial and Financial Reconstruction),
   d. foreign Governments owned development financial institutions,
   e. foreign export credit agencies,
   f. foreign collaborators,
   g. foreign bodies corporate and foreign citizens,
   h. foreign authorities or persons resident outside India;

   The receipt of funds shall be subject to the provisions of Foreign Exchange Management Act, 1999 and rules and regulations made thereunder;

3. **LOANS FROM BANKS:** Any amount received as a loan or facility from
   a. any banking company, or
   b. State Bank of India or its subsidiary banks, or
   c. a notified banking institution, or
   d. a corresponding new bank (as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Acts of 1970 and 1980), or
   e. any co-operative bank;

4. **LOANS FROM PFI:** Any amount received as a loan or financial assistance from
   a. Public Financial Institutions.
   b. any regional financial institutions, or
   c. Insurance companies, or
   d. Scheduled banks (as defined in Reserve bank of India Act, 1934;

5. **COMMERCIAL PAPERS:** Any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India.

6. **INTERCOMPANY LOANS:** Any amount received by a company from any other company.

7. **SHARE APPLICATION MONEY:**
   a. **SHARES MEANT FOR ALLOTMENT:** Any amount received and held towards subscription to any securities (including share application money pending allotment (SAMPA)), so long as such amount is appropriated only against the amount due on allotment of the securities applied for.
   b. **EXCESS APPLICATION MONEY / UNALLOTTED APPLICATION MONEY – TREATED AS DEPOSIT:** If the securities for which application money was received cannot be allotted within 60 days from the date of receipt of the application money, such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules. (I.e., deposit the reason we will have to pay interest @12% p.a.)

8. **LOAN FROM DIRECTOR:**
   a. Any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company.
   b. **DISCLOSURES BY DIRECTOR AND COMPANY:** Further the director is required to furnish to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report.

9. **BONDS AND DEBENTURES:**
   a. **SECURED DEBENTURES / BONDS:** Any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III (i.e., Balance Sheet) of the Act excluding intangible assets of the company or

b. **CONVERTIBLE DEBENTURES:** Bonds or debentures compulsorily convertible into shares of the company within 10 years.

CONDITION: However, if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer.

c. **NONCONVERTIBLE SECURITIES:** Any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India;

Example: *Soorya Ltd. has raised ₹ 20,00,000 through issue of non-convertible debentures (20,000 NCDs of ₹ 100 each) not constituting a charge on the assets of the company. The NCDs are listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India. The said amount will not be considered as deposit in terms of the rule stated above [Sub-clause (ixa)]*

10. SECURITY DEPOSIT FROM EMPLOYEES: Any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non- interest-bearing security deposit.

EXAMPLE: *Rs. 2,50,000 received from Mr. Raghu, an employee of the company who is drawing annual salary of Rs. 2,00,000 under a contract of employment with the company in the nature of non-interest bearing security deposit. This amount received by company from employee, Mr. Raghu will be considered as deposit in terms of sub-clause (x) of the said rule, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit.*

Example: *Ratnakar was appointed as Supervisor by Siddhi Transporters and Logistics Limited on an annual salary of ₹ 6,00,000. He was required to deposit a sum of ₹ 6,50,000 under the contract of employment with the company as security deposit on which no interest was payable to him.*

In the above case, the amount so received by Siddhi Transporters and Logistics Limited from Ratnakar under the contract of employment with the company being non-interest bearing security deposit, will be considered as deposit in terms of sub-clause (x), since the amount is more than his annual salary. Had the amount of non-interest bearing security deposit received by the company under the contract of employment been limited to ₹ 6,00,000 or less, it would not have been considered as deposit.

11. **FROM TRUST:** Any non-interest-bearing amount received or held in trust.

12. **ADVANCES RECEIVED FOR COMMERCIAL TRANSACTIONS:** any amount received in the course of, or for the purposes of, the business of the company:

    a. **BUSINESS ADVANCES:**

        i. An advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of 365 DAYS from the date of acceptance of such advance:

        ii. However, in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of 365 DAYS shall not apply.

    b. **ADVANCE FOR IMMOVABLE PROPERTY:** An advance received in connection with consideration for an immovable property under an agreement or arrangement, provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement.

    c. **SECURITY DEPOSIT FOR GOODS OR SERVICES:** as security deposit for the performance of the contract for supply of goods or provision of services;

    d. **ADVANCES FOR LONG TERM PROJECTS:** as advance received under long term projects for supply of capital goods.

    e. **ADVANCE FOR AMC CONTRACTS:** An advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less.

    f. **SECTORIAL PERMITTED ADVANCES:** An advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government.

    g. **ADVANCES FOR SUBSCRIPTIONS:** An advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

NOTE: However, it is clarified that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting

the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

DEEMED DEPOSIT: Further, by way of Explanation it is clarified that for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund. (Accordingly, Interest is payable)

13. **LOAN FROM PROMOTER:** Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfilment of following conditions:
    - **a.** The loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
    - **b.** The loan is provided by the promoters themselves or by their relatives or by both; and
    - **c.** Such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter. (I.e., After repayment of loan it may be treated as Deposit. Further if the promoter is a director it will not be treated as Deposit)

14. **NIDHI COMPANY:** Any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act.

15. **CHIT FUND COMPANIES:** any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982.

16. **COLLECTIVE INVESTMENT SCHEME (MUTUAL FUNDS):** Any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India.

17. **STARTUPS – MORE THAN RS. 25LAKHS:** An amount of Rs.25,00,000/- or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) in a single tranche, from a person.

    By way of Explanation it is clarified that:

    1. ‘‘Start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry;

2. ‘‘Convertible note” means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument.

***Example**: Greedwood limited (‘the company) which is register as start-up company register under Companies Act, 2013 has received an amount of ₹ 20 lacs and ₹ 10 lakh on different date by way of a convertible note. Though the company has received an amount of twenty-five lakh rupees or more, the said amount will be considered as deposit since the aggregate amount has not received in single tranche in terms of the rule stated above Sub-clause (xvii)].*

18. RelT/ IFIT: Any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, Infrastructure Investment Trusts, Real Estate Investment Trusts and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it.

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.

IN OTHER WORDS:

a. Any member of a private or public company who has deposited money with his company is a ‘depositor’.

b. Any person (even if not a member of the company) who has deposited money with a public company is also a ‘depositor’. (SIMPLY DEPOSITER MAY BE A MEMBER OR NON-MEMBER)

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.

In other words, above referred companies are exempted from the 'deposit provisions'. This brings out the fact that 'deposit provisions' as contained in the Companies Act, 2013 are meant to regulate acceptance of deposits by NON-BANKING NON-FINANCIAL COMPANIES (i.e., manufacturing, trading companies, etc.) only.

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. **MODE OF SENDING THE CIRCULAR:** According to Rule 4, the company shall issue such circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form DPT-1.

3. **PUBLISH IN NEWS PAPER:** Further, the circular may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated. (NOT COMPULSORY)

4. **CA CERTIFICATE – NON-DEFAULTER:** In addition, a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company has not committed default in the repayment of deposits or in the payment of interest on such deposits accepted either before or after payment of interest on such deposits accepted either before or after the commencement of the Act.

   IN CASE OF DEFAULT – 5 YEARS COOLING PERIOD: In case a company had committed a default in the repayment of deposits accepted, a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company had made good the default and a period of 5 YEARS has lapsed since the date of making good the default as the case may be.

5. **AUTHORITY OF BOD:** Such Circular shall be issued on the authority and in the name of Board of Directors of the company.

6. **VALIDITY PERIOD ADVERTISEMENT:** The advertisement shall remain valid till the EARLIEST of the following dates:
   - **a.** Up to six months from the closure of the FY in which it is issued or
   - **b.** The date on which the financial statements are laid before the company at the AGM or Due date of AGM, if No AGM is held.

7. **FRESH CIRCULAR FOR EACH FY:** A fresh circular shall be issued, in each succeeding financial year, for inviting deposits during that financial year.
   Example: *Ray Pharmaceuticals Limited issued a Circular inviting 'deposits' from its members on 14-02-2022. Its Annual General Meeting (AGM) was held on 07-09-2022. Since, six months from the closure of FY 2021-22 end on 30-09-2022, the Circular remains valid till 07-09-2022 only. After this date, a fresh Circular shall be issued if the company wants to invite further deposits from its members.*

III. 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)]

IV. 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.

V. 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)]

VI. PROVISION OF SECURITY:

SECURED – CREATE CHARGE: The Company may provide security, if any, for the due repayment of the amount of deposit or the interest thereon. Further, if security is provided, the company shall take steps for the creation of charge on the property or assets of the company.

UNSECURED – QUOTE IN CIRCULAR: It may be noted that in case a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as ''unsecured deposits''. Accordingly, it shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits. [section 73 (2) (f)]

VII. RELAXATION FOR PRIVATE COMPANIES:

The provisions relating to "Issue of Circular", "Filing of Circular with ROC", "DRRA" and "NO DEFAULT CERTIFICATE BY COMPANY" shall not apply to certain private companies:

1. **PRIVATE COMPANY WITH MAX DEPOSIT – 100% OF PUC + FREE RESERVES:** A Private Company which accepts from its members monies not exceeding 100 % of aggregate of the paid-up share capital, free reserves and securities premium account or
2. **START UP COMPANY:** which is a start-up, for five years from the date of its incorporation or
3. **OTHER PRIVATE COMPANIES WHICH:**
   - **a.** Which is not an associate or a subsidiary company of any other company AND
   - **b.** If the borrowings of such a company from banks or financial institutions or any body corporate is less than TWICE OF ITS PAID-UP SHARE CAPITAL or 50 CRORES, whichever is lower AND

c. Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

4. **FILE DPT – 3:** The above Private companies shall file the details of monies accepted to the Registrar in the specified manner (i.e., in Form DPT-3).

NOTE: SPECIFIED IFSC PUBLIC COMPANY COMPANIES Which accepts from its members, monies not exceeding 100% of aggregate of the paid-up share capital and free reserves. They just have to file DPT 3. Also The provisions relating to "Issue of Circular", "Filing of Circular with ROC", "DRRA" and "NO DEFAULT CERTIFICATE BY COMPANY" shall not apply to SPECIFIED IFSC PUBLIC COMPANIES.

A SPECIFIED IFSC PUBLIC COMPANY:

1. **OPERATED BY:** Means an unlisted public company which is licensed to operate by:
   a. The Reserve Bank of India or
   b. The Securities and Exchange Board of India or
   c. The Insurance Regulatory and Development Authority of India
2. **LOCATION:** From the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act 2005 read with the Special Economic Zones Rules, 2006. [E.g., GIFT City, Gujarat]

VIII. 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)]

IX. 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)]

X. USING THE AMOUNT OF DRRA:

The deposit repayment reserve account shall not be used by the company for any purpose other than repayment of deposits. [Section 73 (5)]

XI. TENURE FOR DEPOSITS [MIN 6M AND MAX 36M]:

A company is NOT PERMITTED to accept or renew deposits (whether secured or unsecured) which is:

a. Repayable on demand or
b. For a Tenure less than 6 MONTHS.
c. The maximum period of acceptance of deposit cannot exceed 36 MONTHS.

Example: A, a member of the company has deposited Rs. 1,00,000 with his company on 1st April, 2019. The earliest repayment date in this case shall be 30th September, 2019 and the latest repayment date shall be 31st March, 2022. Thus, the tenure will range between 6 months to 36 months, as per the policy of the company.

EXCEPTION TO THE RULE OF TENURE OF 6 MONTHS – I.E., 3 MONTHS: For the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than 6 months subject to the following conditions:

i. **10% CEILING:** such deposits shall not exceed 10 % of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
ii. **3 MONTHS IS MINIMUM:** such deposits are repayable only on or after 3 months from the date of such deposits or renewal.

Example: *Continuing the example of Swapnil Traders Private Limited, it is assumed that aggregate of its paid-up share capital, free reserves and securities premium account is ₹ 2,00,00,000. In order to meet its short-term requirement of funds, it can raise deposits maximum up to ₹ 20,00,000 (being 10% of ₹ 2,00,00,000) whose repayment tenure can be less than six months; but such tenure cannot be less than three months.*

Therefore, Swapnil Traders Private Limited must ensure that the short-term deposits so accepted are repaid only on or after three months from the date of such deposits.

XII. MAXIMUM AMOUNT OF DEPOSITS FROM MEMBERS:

a. **FROM MEMBERS - MAX 35% OF PUC, RS AND SP:** A company is permitted to accept or renew any deposit from its members including other such deposits outstanding as on the date of acceptance or renewal maximum up to 35% of the aggregate of its paid-up share capital, free reserves and securities premium account.

b. **EXCEPTION TO RULE 35%:**
   i. **PRIVATE /IFSC – 100%:** Specified IFSC Public company and a private company may accept from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account. Further, and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.
   ii. **NO LIMIT:** In addition, the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies:
      I. a private company which is a start-up, for five years from the date of its incorporation.
      II. a private company which fulfils all of the following conditions, namely:

i. Which is not an associate or a subsidiary company of any other company.

ii. The borrowings of such a company from banks or financial institutions or anybody corporate is less than TWICE of its paid-up share capital or 50 CRORE rupees, whichever is less; and

iii. Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73.

NOTE: All the companies accepting deposits shall file the details of monies so accepted with the Registrar in Form DPT-3.

XIII. APPOINTMENT OF TRUSTEE FOR DEPOSITORS:

As regards appointment of trustee, refer provisions given under 'Acceptance of Deposits from Public' because same provisions are applicable.

XIV. TRUSTEE TO CALL MEETING OF DEPOSITORS:

The trustee for depositors shall call a meeting of all the depositors in the following cases:

a. On receipt of a requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding;

b. On the happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of depositors.

XV. CEILING ON RATE OF INTEREST AND BROKERAGE PAYABLE ON DEPOSITS:

A company is permitted to invite or accept or renew any deposit at any rate of interest or pay any amount of brokerage, but it SHALL NOT EXCEED the maximum rate of interest or brokerage prescribed by the RBI set for NBFC's for acceptance of deposits.

Note: Further, no brokerage shall be paid to any person except the person who is authorised in writing by the company to solicit deposits on its behalf and through whom deposits are actually procured. Payment of brokerage to any other person for procuring deposits shall be deemed to e in violation of 'deposit rules'.

XVI. FILLING OF APPLICATION BY DEPOSITOR:

The Intending Depositor shall submit an application in order for a company to accept or renew a deposit. The application shall be in the form prescribed by the company.

The application shall contain a declaration made by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

XVII. DEPOSITS IN JOINT NAMES:

Application for Deposits may be accepted in joint names NOT EXCEEDING **3**. A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.

Example: A, B and C have jointly deposited Rs. 1,00,000 in a company.

- In case of 'Jointly' clause the repayment of deposit on maturity shall be made to all the three together i.e. A, B and C or the survivors.
- In case of 'Either or Survivor' clause, the repayment of deposit on maturity shall be made to either of the three i.e. either A or B or C or the survivor.
- In case of 'First named or Survivor' clause, the repayment of deposit on maturity shall be made to the first named person i.e. A if he is the first named person or the survivor.
- In case of 'Anyone or Survivor' clause, the repayment of deposit on maturity shall be as in the case of 'Either or Survivor'.

XVIII. NOMINATION:

Every depositor may nominate any person at any time. The nominee shall be the person to whom his deposits shall vest in the event of death of depositor.

XIX. DEPOSIT RECEIPT:

a. Within a period of 21 DAYS from the date of:

i. Receipt of money or

ii. Realization of cheque or

iii. Date of renewal,

The company is required to furnish a deposit receipt to the depositor or his agent.

b. The receipt shall be signed by the duly authorised officer and state the:

i. Date of deposit,

ii. The name and address of the depositor,

iii. The amount of deposit,

iv. The rate of interest and

v. The maturity dates.

XX. REGISTER OF DEPOSITS: As regards Register of Deposits, refer provisions given under 'Acceptance of Deposits from Public' because same provisions are applicable.

XXI. PREMATURE REPAYMENT OF DEPOSITS: As regards premature repayment of deposits, refer provisions given under 'Acceptance of Deposits from Public' because same provisions are applicable.

XXII. FILING OF RETURN OF DEPOSITS WITH THE REGISTRAR:

a. A duly audited return of deposits in DPT-3 (containing particulars as on 31st March of every year) shall be filed with the Registrar of Companies on or before the 30th June of that year.

b. DPT-3 shall be used to include particulars of deposits or particulars of transactions not considered as deposits or both by every company (other than a Government company).

XXIII. NO RIGHT TO ALTER TERMS:

The company has no right to alter any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract which may prove detrimental to the interest of the depositors after circular or circular in the form of advertisement is issued and deposits are accepted.

XXIV. DISCLOSURES IN FINANCIAL STATEMENTS:

A public company shall disclose in its financial statements by way of note about the money received from its directors. In case of a private company, it shall disclose in its financial statements by way of note about the money received from the directors or the relatives of directors.

XXV. 18% PENAL RATE OF INTEREST:

In case the company fails to repay deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal rate of interest of 18% PER ANNUM for the overdue period.

XXVI. PUNISHMENT FOR CONTRAVENTION:

If any company inviting deposits or any other person contravenes any of the 'deposit rules' for which no punishment is provided in the Act, the company and every officer-in-default shall be punishable as under:

a. With fine extendable to Rs. 5,000/- and

b. In case the contravention is a continuing one, with a further fine up to Rs. 500/- for every day during which the contravention continues.

E.g., Failing to send deposit receipt within 21 days.

Note: As per Rule 16A. — Vide Rule 16A (3), as a onetime measure, every company (other than a Government company) was required to file a onetime return of outstanding receipt of money or loan by a company not considered as deposits from 1st April 2014 till 31st March, 2019 in Form DPT-3 with the Registrar of Companies within ninety days from 31st March, 2019 along with requisite fee.

Q.NO.6 WRITE ABOUT RELAXATIONS TO PRIVATE COMPANIES WITH RESPECT TO PROVISIONS UNDER ACCEPTANCE OF DEPOSITS? (ALREADY COVERED IN ABOVE QUESTIONS)

ANSWER:

A. RELAXATION FOR PRIVATE COMPANIES:

The provisions relating to "Issue of Circular", "Filing of Circular with ROC", "DRRA" and "NO DEFAULT CERTIFICATE" shall not apply to certain private companies:

1. **PRIVATE COMPANY WITH MAX DEPOSIT – 100% OF PUC + FREE RESERVES:** A Private Company which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid-up share capital, free reserves and securities premium account or
2. **START UP COMPANY:** which is a start-up, for five years from the date of its incorporation or
3. **OTHER PRIVATE COMPANIES WHICH:**
   - **a.** Which is not an associate, or a subsidiary company of any other company AND
   - **b.** If the borrowings of such a company from banks or financial institutions or any body corporate is less than TWICE OF ITS PAID-UP SHARE CAPITAL or 50 CRORES, whichever is lower AND
   - **c.** Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.
4. **FILE DPT – 3:** The above Private companies shall file the details of monies accepted to the Registrar in the specified manner (i.e. in Form DPT-3).

NOTE: SPECIFIED IFSC PUBLIC COMPANY COMPANIES Which accepts from its members, monies not exceeding 100% of aggregate of the paid-up share capital and free reserves. They just have to file DPT 3.

B. EXCEPTION TO RULE OF MAX 35%:

- **i. PRIVATE /IFSC – 100%:** Specified IFSC Public company and a private company may accept from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account. Further, and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.
- **ii. NO LIMIT:** In addition, the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies:
  - **I.** a private company which is a start-up, for five years from the date of its incorporation.
  - **II.** a private company which fulfils all of the following conditions, namely:
    - **i.** Which is not an associate or a subsidiary company of any other company.
    - **ii.** The borrowings of such a company from banks or financial institutions or anybody-corporate is less than TWICE of its paid-up share capital or 50 CRORE rupees, whichever is less and

iii. Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73.

NOTE: All the companies accepting deposits shall file the details of monies so accepted with the Registrar in Form DPT-3.

Q.NO.7 WRITE ABOUT ELIGIBLE PUBLIC COMPANIES THAT ARE PERMITTED TO ACCEPT DEPOSITS FROM PUBLIC?

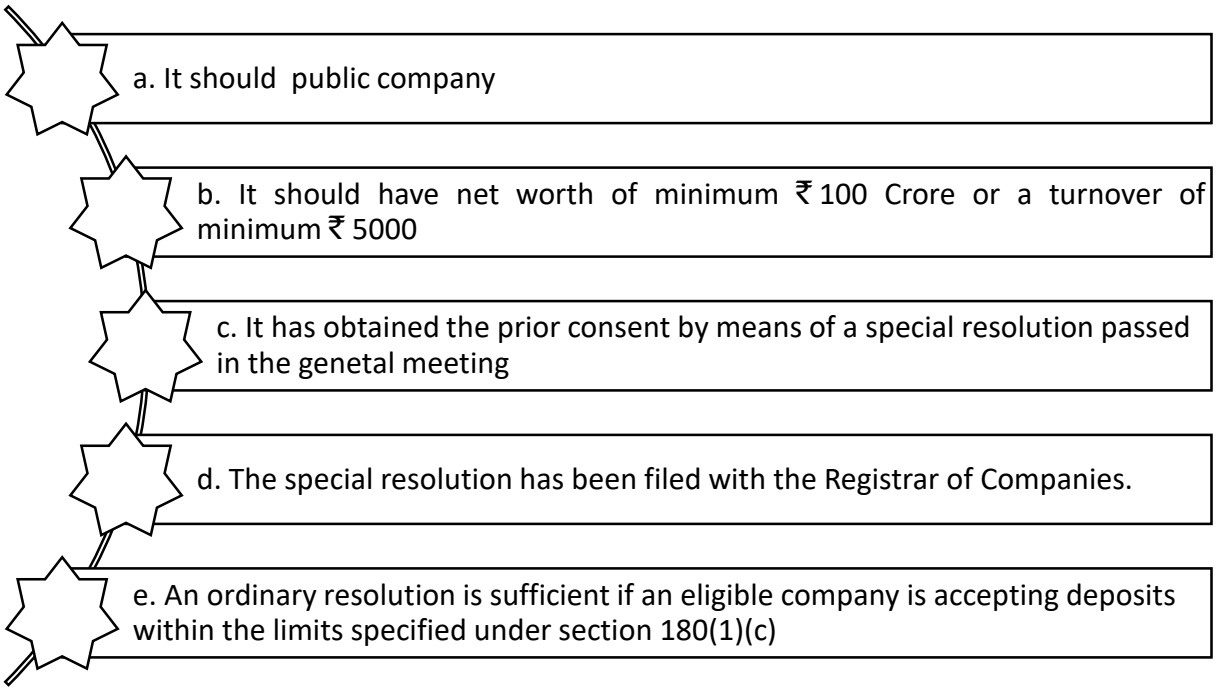
ANSWER:

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)].

A public company is 'eligible' to accept deposits from the public at large only if it meets the above-mentioned criteria. Accordingly



Q.NO.8 WRITE ABOUT PROVISIONS RELATING TO ACCEPTANCE OF DEPOSITS FROM PUBLIC BY ELIGIBLE PUBLIC COMPANIES (SEC. 76)?

ANSWER:

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

I. 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.
- **d.** Copy of the credit rating obtained every year shall be sent to the Registrar of Companies along with the return of deposits in Form DPT-3.
- **e.** Further, the credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits, from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998.

II. 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. 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.
- **b.** Charge can be made only in respect of TANGIBLE ASSETS.
- **c.** The company CANNOT create charge on intangible assets (i.e., goodwill, trade-marks, etc.).
- **d.** Total value of security (Value of Tangible Assets) should not be less than the amount of deposits accepted and interest payable thereon.
- **e.** The market value of assets subject to charge shall be assessed by a registered valuer.
- **f.** The security shall be created in favour of a trustee for the depositors on specific movable and immovable property of the company.

III. TENURE FOR DEPOSITS [MIN 6M AND MAX 36M]: (SAME AS EARLIER QUESTION)

A company is not permitted to accept or renew deposits (whether secured or unsecured) which is:

a. Repayable on demand or

b. For a Tenure less than 6 MONTHS.

c. The maximum period of acceptance of deposit cannot exceed 36 MONTHS.

Example: A, a member of the company has deposited Rs. 1,00,000 with his company on 1st April 2019. The earliest repayment date in this case shall be 30th September 2019 and the latest repayment date shall be 31st March 2022. Thus, the tenure will range between 6 months to 36 months, as per the policy of the company.

EXCEPTION TO THE RULE OF TENURE OF SIX MONTHS: For the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the following conditions:

i. **10% CEILING:** such deposits shall not exceed 10 % of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

ii. **3 MONTHS IS MINIMUM:** such deposits are repayable only on or after three months from the date of such deposits or renewal.

IV. APPOINTMENT OF TRUSTEE FOR DEPOSITORS:

Following provisions are required to be observed in this respect:

a. APPOINTMENT OF TRUSTEE: One or more trustees for depositors need to be appointed by the company for creating security for the deposits.

b. CONSENT LETTER: A written consent shall be obtained from the trustee before their appointment.

c. CIRCULATE THE CONSENT: A statement shall appear in the circular or advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.

d. TRUST DEED: The company shall execute a deposit trust deed in Form DPT-2 at least 7 DAYS before issuing the circular or circular in the form of advertisement.

e. DISQUALIFICATIONS: The following Persons cannot be appointed as Deposit Trustee if he: (Similar to Debenture Trustee)

i. is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company or relatives thereof.

ii. is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company.

iii. has any material pecuniary relationship with the company.

iv. has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon.

v. is related to any person specified in clause (i) above

f. PROHIBITION ON REMOVAL: No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term EXCEPT WITH THE CONSENT OF ALL THE DIRECTORS present at a meeting of the board. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

V. TRUSTEE TO CALL MEETING OF DEPOSITORS:

The trustee for depositors shall call a meeting of all the depositors in the following cases:

a. On receipt of a requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding;

b. On the happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of depositors.

VI. MAXIMUM AMOUNT OF DEPOSITS – NON-GOVERNMENT COMPANY:

An eligible company is permitted to accept or renew deposits as under:

1. **FROM ITS MEMBERS:** The amount of such deposit together with outstanding deposits from the members as on the date of acceptance or renewal can be **MAXIMUM 10% OF THE AGGREGATE OF ITS PAID-UP** share capital, free reserves and securities premium account.
2. **FROM PERSONS OTHER THAN ITS MEMBERS:** The amount of such deposit together with the amount of outstanding deposits (*excluding deposits from members*) on the date of acceptance or renewal can be maximum 25% of the aggregate of its paid-up share capital, free reserves and securities premium account.

VII. MAXIMUM AMOUNT OF DEPOSITS - GOVERNMENT COMPANY:

Such a company is permitted to accept or renew any deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to 35% of the aggregate of its paid-up share capital, free reserves and securities premium account.

VIII. ISSUANCE OF CIRCULAR IN THE FORM OF ADVERTISEMENT: (**SIMILAR** AS EARLIER QUESTION)

a. CIRCULAR: An 'eligible company' intending to invite deposits is required to issue a circular in the form of an advertisement in DPT-1.

b. **ADVERTISEMENT:** Such advertisement shall be published in English in an English newspaper and in vernacular language in a vernacular newspaper. Both newspapers should have wide circulation in the State in which the registered office of the company is situated.

c. **WEBSITE:** If the company has its website, the circular shall also be placed on the website.

d. **ON AUTHORITY OF BOD:** Such advertisement shall be issued on the authority and in the name of Board of Directors of the company.

e. **FILING WITH THE REGISTRAR:** At least 30 DAYS BEFORE the issue of the advertisement, its copy duly signed by a majority of the directors who approved the advertisement or otherwise signed by their duly authorised agents is required to be delivered to the Registrar of Companies for registration.

f. **VALIDITY OF THE ADVERTISEMENT:**

The advertisement shall remain valid till the earliest of the following dates:

i. up to 6 MONTHS from the closure of the financial year in which it is issued; or

ii. the date on which the financial statements are laid before the company at the AGM, or in case no AGM has been held, the due date of AGM

g. **FRESH ADVERTISEMENT:** A fresh advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

h. **ISSUE AND EFFECTIVE DATES:** The date on which the advertisement appeared in the newspaper shall be taken as the date of the issue of advertisement. Further, the effective date of issue of circular shall be the date on which the circular was dispatched.

IX. **REQUIREMENT OF DEPOSIT REPAYMENT RESERVE ACCOUNT (DRRA):** (SAME AS PER EARLIER QUESTION)

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.

X. **CEILING ON RATE OF INTEREST AND BROKERAGE PAYABLE ON DEPOSITS:** (SAME AS EARLIER QUESTION)

A company is permitted to invite or accept or renew any deposit at any rate of interest or pay any amount of brokerage, but it SHALL NOT EXCEED the maximum rate of interest or brokerage prescribed by the RBI for deposits accepted by NBFC's.

Further, no brokerage shall be paid to any person except the person who is authorised in writing by the company to solicit deposits on its behalf and through whom deposits are actually procured.

XI. FILLING OF APPLICATION BY DEPOSITOR: (SAME AS EARLIER QUESTION)

The Intending Depositor shall submit an application in order for a company to accept or renew a deposit. The application shall be in the form prescribed by the company.

The application shall contain a declaration made by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

XII. DEPOSITS IN JOINT NAMES: (SAME AS EARLIER QUESTION)

Application for Deposits may be accepted in joint names NOT EXCEEDING **3**. A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.

Example: A, B and C have jointly deposited Rs. 1,00,000 in a company.

- *In case of 'Jointly' clause the repayment of deposit on maturity shall be made to all the three together i.e. A, B and C or the survivors.*
- *In case of 'Either or Survivor' clause, the repayment of deposit on maturity shall be made to either of the three i.e. either A or B or C or the survivor.*
- *In case of 'First named or Survivor' clause, the repayment of deposit on maturity shall be made to the first named person i.e. A if he is the first named person or the survivor.*
- *In case of 'Anyone or Survivor' clause, the repayment of deposit on maturity shall be as in the case of 'Either or Survivor'.*

XIII. NOMINATION: (SAME AS EARLIER QUESTION)

Every depositor may nominate any person at any time. The nominee shall be the person to whom his deposits shall vest in the event of death of depositor.

XIV. DEPOSIT RECEIPT: (SAME AS EARLIER QUESTION)

a. Within a period of 21 DAYS from the date of:

i. Receipt of money or

ii. Realization of cheque or

iii. Date of renewal,

The company is required to furnish a deposit receipt to the depositor or his agent.

b. The receipt shall be signed by the duly authorised officer and state the:

i. Date of deposit,

ii. The name and address of the depositor,

iii. The amount of deposit,

iv. The rate of interest and

v. The maturity dates.

XV. REGISTER OF DEPOSITS:

a. Every company accepting deposits shall maintain one or more separate registers for deposits accepted or renewed at its registered office.

b. Following particulars shall be entered separately in the case of each depositor:

i. Name, address and PAN of the depositor/s.

ii. Particulars of the guardian, in case of a minor.

iii. Particulars of the nominee.

iv. Deposit receipt number.

v. Date and the amount of each deposit.

vi. Duration of the deposit and the date on which each deposit is repayable.

vii. Rate of interest on such deposits to be payable to the depositor.

viii. Due date for payment of interest.

ix. Mandate and instructions for payment of interest and for non-deduction of tax at source, if any.

x. Date or dates on which the payment of interest shall be made.

xi. particulars of security or charge created for repayment of deposits;

xii. any other relevant particulars.

c. The entries shall be made within 7 days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose.

d. The said register shall be preserved in good order for a period of not less than 8 YEARS from the financial year in which the latest entry is made in the register.

XVI. PREMATURE REPAYMENT OF DEPOSITS:

1. After the expiry of 6 months but before the actual date of maturity, if a depositor requests for premature repayment, the rate of interest payable shall be 1 % less than the which would be payable for the period for which the deposit has actually run.

Note: In this respect it is to be noted that the period for which the deposit has run, if it contains any part of the year which is less than six months then it shall be excluded; otherwise if that part is six months or more it shall be taken as one year.

2. **REDUCTION OF RATE OF INTEREST IS NOT APPLICABLE IN THE FOLLOWING CASES:**
   - **a.** Where the deposit is prematurely repaid to comply with Rule 3 i.e., premature repayment made in order to reduce the total amount of deposits to bring it within the permissible limits. or
   - **b.** Where the deposit is prematurely repaid to provide for war risk or other related benefits to the personnel of naval, military or air forces or to their families during the period of emergency declared under Article 352 of the constitution.

3. **PREMATURE CLOSURE OF DEPOSIT TO EARN HIGHER RATE OF INTEREST:**
   In case a depositor desires to avail higher rate of interest by renewing the deposit before its actual maturity date, the company shall pay him the higher rate of interest only if the deposit is renewed for a period longer than the unexpired period of deposit.

XVII. FILING OF RETURN OF DEPOSITS WITH THE REGISTRAR: (SAME AS EARLIER QUESTION)

A duly audited return of deposits in DPT-3 (containing particulars as on 31st March of every year) shall be filed with the Registrar of Companies along with requisite fee on or before the 30th June of that year.

DPT-3 shall include particulars of deposits or particulars of transactions not considered as deposits or both by every company (other than a Government company).

XVIII. DISCLOSURES IN FINANCIAL STATEMENTS: (SAME AS EARLIER QUESTION)

A public company shall disclose in its financial statement by way of note about the money received from its directors.

XIX. 18% PENAL RATE OF INTEREST: (SAME AS EARLIER QUESTION)

In case the company fails to repay deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal rate of interest of 18% PER ANNUM for the overdue period.

XX. NO RIGHT TO ALTER TERMS: (SAME AS EARLIER QUESTION)

The company has no right to alter any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract which may prove detrimental to the interest of the depositors after circular or circular in the form of advertisement is issued and deposits are accepted.

XXI. PUNISHMENT FOR CONTRAVENTION: (SAME AS EARLIER QUESTION)

If any company inviting deposits or any other person contravenes any of the 'deposit rules' for which no punishment is provided in the Act, the company and every officer-in-default shall be punishable as under:

a) With fine extendable to Rs. 5,000/- and

b) In case the contravention is a continuing one, with a further fine up to Rs. 500/- for every day during which the contravention continues.

Note: The Provisions related to Sec. 73, such as circular contents, advertisement of circular, No Default Certificate by Statutory auditor, No Default Certificate by Company are equally applicable to ELIGIBLE COMPANIES that are accepting deposits from Public.

Q.NO.9 EXPLAIN PROVISIONS OF COMPANIES ACT REGARDING REPAYMENT OF DEPOSITS ACCEPTED BEFORE COMMENCEMENT OF THE COMPANIES ACT, 2013?

ANSWER:

REPAYMENT OF DEPOSITS ACCEPTED BEFORE COMMENCEMENT OF THE COMPANIES ACT, 2013 [SEC 74]

i. FILING OF STATEMENT OF DEPOSITS WITH THE REGISTRAR OF COMPANIES AND REPAYMENT THEREAFTER: As per section 74 (1), in case any deposit was accepted by a company before the commencement of this Act (i.e., before 1- 4-2014), and the amount of such deposit or any interest remains unpaid as on 1-4-2014 or becomes due at any time thereafter, the company shall take the following steps:

a. file, within a period of 3 months from such commencement or from the date on which such payments are due, with the Registrar:

- A statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment. This is to be done notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and

b. Repay within 3 years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier.

Note 1: As per Explanation to Rule 19 if the company has been repaying such deposits and interest thereon without any default on due dates for the remaining period of such deposit in accordance with the terms and conditions, point (b) above shall be deemed to have been complied with.

Note 2: It is to be noted that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made thereunder.

ii. **EXTENSION OF TIME FOR REPAYMENT OF DEPOSITS BY THE TRIBUNAL:** The Tribunal may, on an application made by the company, after considering the financial condition of the company, the amount of deposit and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.

iii. **PUNISHMENT FOR NON-REPAYMENT OF DEPOSITS:** If a company **fails** to repay the deposit or part thereof or any interest thereon within the time specified in section 74 (1) or such further extended time allowed by the Tribunal under section 74 (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable as under:

- **Company:** with fine minimum of ₹ 1 crore and maximum of ₹ 10 crore; and
- **Every officer-in-default:** with imprisonment extendable to seven years or with fine minimum of ₹ 25 lakh and maximum of ₹ 2 crore, or with both.

iv. **POWER OF CENTRAL GOVERNMENT TO DECIDE CERTAIN QUESTIONS**

If any question arises as to the applicability of these rules to a particular company, such question shall be decided by the Central Government in consultation with the Reserve Bank of India.

Q.NO.10 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.

WILLFUL DEFAULT – SEC 447: Further, if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447 (Punishment for fraud).

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. **Varsha Limited decides to raise deposits of ₹ 20.00 lakh from its members. However, it proposes to secure such deposits partially by offering a security worth ₹ 15.00 lakh. Which of the following options best describe such deposits:**
   a. **Fully secured deposits (except a small portion)**
   b. **Unsecured deposits**
   c. **Partially secured deposits**
   d. **These cannot be classified as deposits**

2. **What is the maximum tenure for which a company can accept or renew deposits from its members as well as public?**
   a. **12 months**
   b. **24 months**
   c. **36 months**
   d. **48 months**

3. **Fin Limited is accepting deposits of various tenures from its members from time to time. The current Register of Deposits, maintained at its registered office is complete. State the minimum period for which it should mandatorily be preserved in good order.**
   a. **Four years from the financial year in which the latest entry is made in the Register.**
   b. **Six years from the financial year in which the latest entry is made in the Register.**
   c. **Eight years from the financial year in which the latest entry is made in the Register.**
   d. **Ten years from the latest date of entry.**

4. **Every company shall pay a penal rate of interest of ---------- per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid:**
   a. **9%**
   b. **14%**
   c. **18%**
   d. **24%**

5. **As per the provisions of the Companies Act, 2013 and relevant rules thereunder, an eligible company is not permitted to accept from public or renew the same deposits (whether secured or unsecured) which is repayable on demand or in less than _____ months. Further, the maximum period of acceptance of deposit cannot exceed _____ months. But, for the purpose of meeting any of its short- term requirements of funds, a company may accept or renew deposits for repayment earlier than _____ months subject to certain conditions.**
   a. **six, thirty-six, six**
   b. **three, twenty four, three**
   c. **six, sixty, six**
   d. **three, sixty, six**

Answer to MCQ based Questions

1.	**b.**	Unsecured deposits
2.	**c.**	36 months
3.	**c.**	Eight years from the financial year in which the latest entry is made in the Register.
4.	**c.**	18%
5.	**a.**	six, thirty six, six

DESCRIPTIVE QUESTIONS

Q.NO.1. ENUMERATE THE AMOUNTS WHICH WHEN RECEIVED BY A COMPANY IN THE ORDINARY COURSE OF BUSINESS ARE NOT TO BE CONSIDERED AS DEPOSITS.

ANSWER:

1. any amount received in the course of, or for the purposes of, the business of the company:

a. BUSINESS ADVANCES:

i. An advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of 365 DAYS from the date of acceptance of such advance:

ii. However, in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of 365 DAYS shall not apply.

b. ADVANCE FOR IMMOVABLE PROPERTY: An advance received in connection with consideration for an immovable property under an agreement or arrangement, provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement.

c. SECURITY DEPOSIT FOR GOODS OR SERVICES: as security deposit for the performance of the contract for supply of goods or provision of services;

d. ADVANCES FOR LONG TERM PROJECTS: as advance received under long term projects for supply of capital goods.

e. ADVANCE FOR AMC CONTRACTS: An advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less.

f. SECTORIAL PERMITTED ADVANCES: An advance received and as allowed by any sectorial regulator or in accordance with directions of Central or State Government.

g. ADVANCES FOR SUBSCRIPTIONS: An advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

NOTE: However, it is clarified that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

DEEMED DEPOSIT: Further, by way of Explanation it is clarified that for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund. (Accordingly, Interest is payable)

Q.NO.2. STATE THE PROCEDURE TO BE FOLLOWED BY COMPANIES FOR ACCEPTANCE OF DEPOSITS FROM ITS MEMBERS ACCORDING TO THE COMPANIES ACT, 2013. WHAT ARE THE EXEMPTIONS AVAILABLE TO A PRIVATE LIMITED COMPANY?

ANSWER: Refer Q. No. 05

Q.NO.3. DISCUSS THE FOLLOWING SITUATIONS IN THE LIGHT OF 'DEPOSIT PROVISIONS' AS CONTAINED IN THE COMPANIES ACT, 2013 AND THE COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014, AS AMENDED FROM TIME TO TIME.

i. **SAMIT, ONE OF THE DIRECTORS OF ZARR TECHNOLOGY PRIVATE LIMITED, A START-UP COMPANY, REQUESTED HIS CLOSE FRIEND RITESH TO LEND TO THE COMPANY ₹ 30.00 LAKH IN A SINGLE TRANCHE BY WAY OF A CONVERTIBLE NOTE REPAYABLE WITHIN A PERIOD SIX YEARS FROM THE DATE OF ITS ISSUE. ADVISE WHETHER IT IS A DEPOSIT OR NOT.**
ii. **POLESTAR TRADERS LIMITED RECEIVED A LOAN OF ₹ 30.00 LAKH FROM RACHNA WHO IS ONE OF ITS DIRECTORS. ADVISE WHETHER IT IS A DEPOSIT OR NOT.**
iii. **CITY BAKERS LIMITED FAILED TO REPAY DEPOSITS OF ₹ 50.00 CRORE AND INTEREST DUE THEREON EVEN AFTER THE EXTENDED TIME GRANTED BY THE TRIBUNAL. IS THE COMPANY OR SWATI, ITS OFFICER-IN-DEFAULT, LIABLE TO ANY PENALTY?**
iv. **SHRINGAAR READYMADE GARMENTS LIMITED WANTS TO ACCEPT DEPOSITS OF ₹ 50.00 LAKH FROM ITS MEMBERS FOR A TENURE WHICH IS LESS THAN SIX MONTHS. IS IT A POSSIBILITY?**
v. **IS IT IN ORDER FOR THE DIAMOND HOUSING FINANCE LIMITED TO ACCEPT AND RENEW DEPOSITS FROM THE PUBLIC FROM TIME TO TIME?**

ANSWER:

i. In terms of Rule 2 (1) (c) (xvii) if a start-up company receives rupees 25 lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding **10 years** from the date of issue) in a single tranche, from a person, it shall not be treated as deposit. In the given case, Zarr Technology Private Limited, a start-up company, received Rs. 30.00 lacs from Ritesh in a single tranche by way of a convertible note which is repayable within a period of 6 years from the date of its issue.

In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of ten years from the date of its issue, the amount of Rs. 30.00 lacs SHALL NOT be considered as deposit.

ii. In terms of Rule 2 (1) (c) (viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.
In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of ₹ 30.00 lacs from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.
If these conditions are satisfied Rs. 30.00 lacs **shall not be treated as deposit**.

iii. By not repaying the deposit of Rs. 50.00 crores and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:
Punishment for the company: City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than rupees 1 crore or twice the amount of deposit accepted by the company, whichever is **lower** but which may extend to rupees 10 crores.
Punishment for officer-in-default: Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to 7 years and with fine which shall not be less than rupees **25 lakhs but** which may extend to rupees 2 crores.
Further, if it is proved that Swati had contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, she will be liable for action under section 447 (Punishment for fraud).

iv. RELEVANT PROVISION:
According to Rule 3 (1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than 6 months. Further, the maximum period of acceptance of deposit cannot exceed 36 six months.
However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than 6 months subject to the conditions that:

i. such deposits shall not exceed 10%. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

ii. such deposits are repayable only on or after 3 months from the date of such deposits or renewal.

ANALYSIS AND CONCLUSION:

In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of Rs. 50.00 lacs from its members for a tenure which is less than 6 months.

It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after 3 months from the date of such deposits.

v. According to section 73 (1) of the Act, no company can accept or renew deposits from public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public.

However, Proviso to Section 73 (1) states that such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance renewal of deposit from public shall not apply to it.

In other words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

Q.NO.4. ABC LIMITED HAVING A NET WORTH OF ₹ 120 CRORE WANTS TO ACCEPT DEPOSIT FROM ITS MEMBERS. THE DIRECTORS OF THE COMPANY HAVE APPROACHED YOU TO ADVISE THEM AS TO WHAT SPECIAL CARE HAS TO BE TAKEN WHILE ACCEPTING SUCH DEPOSIT FROM THE MEMBERS IN CASE THEIR COMPANY FALLS WITHIN THE CATEGORY OF AN 'ELIGIBLE COMPANY'.

ANSWER:

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)].

Further an 'eligible company' shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members **does not exceed 10%. of the** aggregate of the paid-up share capital, free reserves and securities premium account of the company.

ANALYSIS AND CONCLUSION:

ABC Limited is having a net worth of 120 crore rupees. Hence, it falls in the category of 'eligible company'.

Thus, ABC Limited has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Q.NO.5. DEFINE THE TERM 'DEPOSIT' UNDER THE PROVISIONS OF THE COMPANIES ACT, 2013 AND COMMENT QUOTING RELEVANT PROVISIONS WHETHER THE FOLLOWING AMOUNTS RECEIVED BY A COMPANY WILL BE CONSIDERED AS DEPOSITS OR NOT:

i. **₹ 5,00,000 RAISED BY RISHI CONFECTIONARIES LIMITED THROUGH ISSUE OF NONCONVERTIBLE DEBENTURES NOT CONSTITUTING A CHARGE ON THE ASSETS OF THE COMPANY AND LISTED ON A RECOGNISED STOCK EXCHANGE AS PER THE APPLICABLE REGULATIONS MADE BY THE SECURITIES AND EXCHANGE BOARD OF INDIA.**
ii. **₹ 2,00,000 RECEIVED BY RAJA YARNS LIMITED FROM ITS EMPLOYEE MR. TARUN, WHO DRAWS AN ANNUAL SALARY OF ₹ 1,50,000, AS A NON-INTEREST BEARING SECURITY DEPOSIT UNDER A CONTRACT OF EMPLOYMENT.**
iii. **₹ 3,00,000 RECEIVED BY A PRIVATE COMPANY FROM ONE OF THE RELATIVES OF A DIRECTOR. THE SAID RELATIVE HAS FURNISHED A DECLARATION THAT THE AMOUNT WAS RECEIVED BY HIM FROM HIS MOTHER AS A GIFT.**

ANSWER:

DEPOSIT: According to Section 2 (31) of the Companies Act, 2013, 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.

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

i. Rs. 5,00,000 raised by Rishi Confectionaries Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

ii. Rs. 2,00,000 received by Raja Yarns Limited from its employee Mr. T, who draws an annual salary of Rs. 1,50,000, as a non-interest bearing security deposit under a contract of employment **will be considered as deposit** in terms of sub-clause (x) of Rule 2 (1) (c), for the amount received is more than his annual salary of Rs. 1,50,000.

iii. Rs. 3,00,000 received by a private company from one of the relatives of a Director. When the relative furnishes a declaration that the said amount was received by him from his mother as a gift, then it will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c). In fact, the preceding sub-clause requires that any amount given by a relative of a director of a private company shall not be considered as deposit if the relative furnishes a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others. Thus, the amount given to the private company out of gifted money by one of the relatives of a director is not a 'deposit'.

As an additional requirement, the company shall disclose the details of money so accepted in the Board's report.

Q.NO.6. STATE, WITH REASONS, WHETHER THE FOLLOWING STATEMENTS ARE 'TRUE OR FALSE'?

i. ABC PRIVATE LIMITED MAY ACCEPT DEPOSITS FROM ITS MEMBERS TO THE EXTENT OF ₹ 50.00 LAKH, IF THE AGGREGATE OF ITS PAID-UP CAPITAL, FREE RESERVES AND SECURITY PREMIUM ACCOUNT IS ₹ 50.00 LAKH.

ii. A GOVERNMENT COMPANY, WHICH IS ELIGIBLE TO ACCEPT DEPOSITS UNDER SECTION 76 OF THE COMPANIES ACT, 2013, CANNOT ACCEPT DEPOSITS FROM PUBLIC EXCEEDING 25% OF THE AGGREGATE OF ITS PAID-UP CAPITAL, FREE RESERVES AND SECURITY PREMIUM ACCOUNT.

ANSWER:

i. As per the provisions of Section 73 (2) of the Companies Act, 2013 read with Rule 3 (3) of the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding 35% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.
It is provided that a private company may accept from its members monies not exceeding **100% of aggregate of the paid-up share capital, free reserves and securities premium** account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.
Therefore, the given statement where ABC Private Limited is accepting deposits from its members to the extent of Rs. 50.00 lakh is '**true'**.

ii. As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds 35% of the aggregate of its paid-up share capital, free reserves and securities premium account.
Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is '**false'**.

Q.NO.7. ANSWER THE FOLLOWING CITING RELEVANT PROVISIONS:

a. PRAYAS ELECTRICALS LIMITED HAVING PAID-UP CAPITAL OF ₹ 1 CRORE AVAILED A TERM LOAN OF ₹ 10,00,000 FROM BETA BANK LIMITED TO PURCHASE ELECTRICAL ITEMS. MR. SAMBHAV, ONE OF THE DIRECTORS OF THE COMPANY, IS OF THE OPINION THAT IT SHALL BE CONSIDERED AS 'DEPOSIT'. IS HIS CONTENTION CORRECT?

b. EKLAVYA PUBLISHING COMPANY LIMITED FACING ACUTE CASH CRUNCH WANTS TO UTILISE A PORTION OF 'DEPOSIT REPAYMENT RESERVE ACCOUNT' TO PAY OFF ITS SHORT-TERM CREDITORS WHO ARE PRESSING HARD FOR REPAYMENT OF ₹ 20,00,000. IS IT JUSTIFIED TO USE FUNDS LYING IN 'DEPOSIT REPAYMENT RESERVE ACCOUNT' IN THIS MANNER?

c. SANJIV IS A SHAREHOLDER IN UTSAH TEXTILES PRIVATE LIMITED HOLDING 10,000 SHARES OF ₹ 10 EACH. HIS WIFE SNEHA AND HIS THREE SONS AAYUSH, PRANAV AND HIMANSHU ARE ALSO SHAREHOLDERS IN THE COMPANY HOLDING 1,000 SHARES EACH. IN RESPONSE TO THE INVITATION FROM THE COMPANY INVITING DEPOSITS FROM ITS MEMBERS, SANJIV WANTS TO DEPOSIT RS. 1,00,000 FOR 36 MONTHS JOINTLY WITH HIS WIFE AND THREE SONS. WHETHER UTSAH TEXTILES PRIVATE LIMITED CAN ACCEDE TO THE REQUEST OF SANJIV AND ACCEPT DEPOSIT JOINTLY IN FIVE NAMES SINCE ALL THE DEPOSITORS ARE SHAREHOLDERS OF THE COMPANY.

ANSWER:

a. In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'. In view of the above, the contention of Mr. Sambhav that the term loan of ₹ 10,00,000 availed by the company from Beta Bank Limited shall be considered as 'deposit' is not correct.

b. Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, states that the amount deposited in the 'Deposit Repayment Reserve Account' shall not be used by a company for any purpose other than repayment of deposits. Since there is a prohibition, Eklavya Publishing Company Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.

c. Rule 3 (2) of the Companies (Acceptance of Deposits) Rules, 2014, provides that where depositors so desire, deposits may be accepted in joint names not exceeding three. In view of this provision, Sanjiv can deposit ₹ 1,00,000 with Utsah Textiles Private Limited jointly with two other persons only irrespective of the fact that all the five persons are members of the company.

Q.NO.8. SHUBHRA CHEMICALS PRIVATE LIMITED (NOT A START-UP COMPANY) IS DESIROUS OF ACCEPTING 'DEPOSITS' FROM ITS MEMBERS AMOUNTING TO TWO HUNDRED PERCENT OF AGGREGATE OF ITS PAID-UP SHARE CAPITAL, FREE RESERVES AND SECURITIES PREMIUM ACCOUNT. WHAT ARE THE CONDITIONS IT MUST FULFILL BEFORE SUCH ACCEPTANCE?

ANSWER:

RELEVANT PROVISION

According to first proviso to Rule 3 (3), a private company may accept from its member's monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account.

According to second proviso to Rule 3(3), the maximum limit in respect of deposits to be accepted from members shall not apply to the classes of private company which fulfils all of the following conditions, namely:

a. which is not an associate or a subsidiary company of any other company;

b. the borrowings of such a company from banks or financial institutions or anybody-corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is less; and

c. such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

According to third proviso all the companies accepting deposits shall file the details of monies so accepted with the Registrar in Form DPT-3.

ANALYSIS AND CONCLUSION:

In case Shubhra Chemicals Private Limited is not an associate or a subsidiary company of any other company and its borrowings from banks, etc. is less than twice of its paid-up share capital or fifty crore rupees, whichever is less and also it has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits, then it can accept 'deposits' from its members amounting to two hundred percent of aggregate of its paid-up share capital, free reserves and securities premium account.

Further, it shall file the details of monies so accepted with the Registrar in Form DPT-3.

6. REGISTRATION OF CHARGES

[SEC. 77 TO 87]

Q.NO.1 WRITE ABOUT CONCEPT AND MEANING OF CHARGE AND VARIOUS TYPES OF CHARGES UNDER COMPANIES ACT, 2013?

ANSWER:

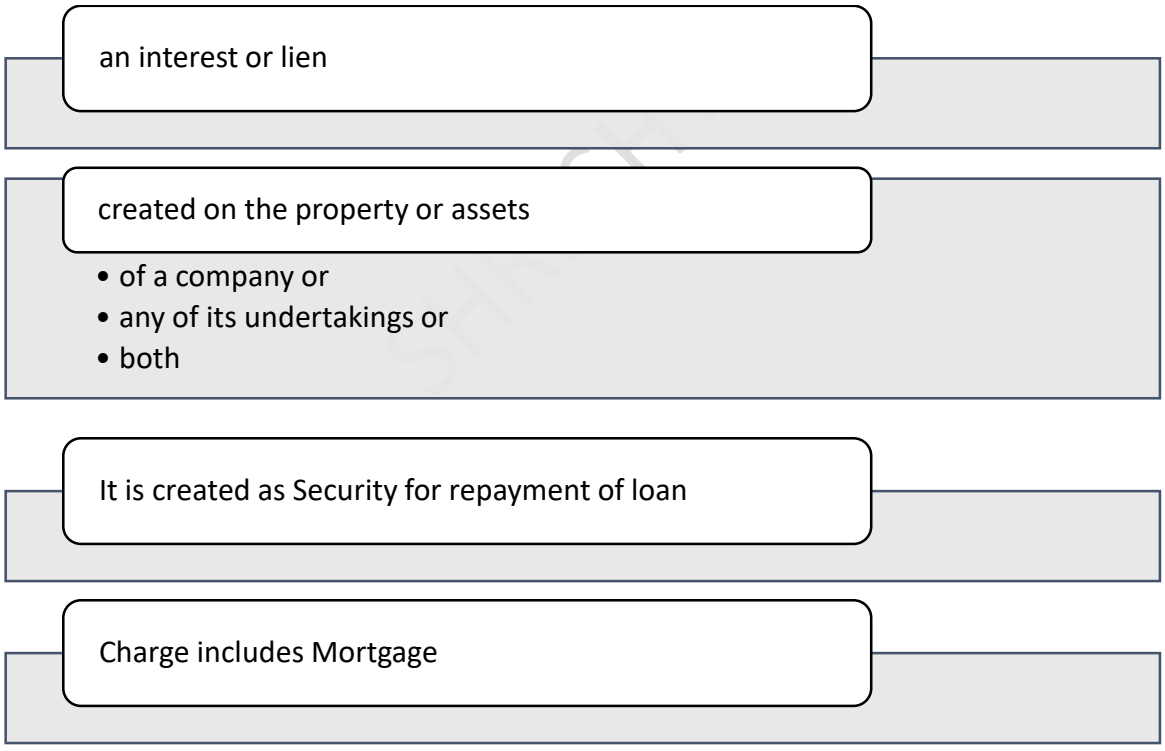
A. DEFINITION OF CHARGE [SEC. 2(16)]:

"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.



BACKGROUND AND PURPOSE:

1. Whenever a company obtains term loans or working capital loans from financial institutions or banks by offering its property or assets, etc. as security it is required to create a charge on such property or assets in favour of the lender. In other words, creation of charge is necessary in case of secured borrowings availed by a company. Even where secured debentures are issued, a charge on any specific movable or immovable property needs to be created in favour of debenture trustee.

2. Once the charge is registered with the Registrar of Companies, it becomes an information available in the public domain which can be used by a lender to his advantage. After the registration, apparently the company is precluded from offering the same assets again to borrow funds fraudulently from a different lender.
3. Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the Rules made in this regard.

EXAMPLE: *Vishnu Marketing Limited obtained a term loan of Rs. 50 lacs from Beta Commercial Bank Limited by creating a charge on one of its office buildings and the charge was duly registered. Later on, if the building is sold to Neeraj, he is deemed to have notice of such charge. In other words, it is presumed that Neeraj knew beforehand that the building was mortgaged to the bank for obtaining a loan.*

He cannot plead against such presumption by contending that he did not know about the charge if he suffers any loss at a later date because of the mortgage.

B. TYPES OF CHARGE:

FIXED CHARGE:

1. A 'fixed charge' is a charge which attaches specific assets of the borrowing company. These assets are of permanent nature like land and building, office premises, machinery installed by the company, etc. and are identified at the time of creation of charge. When a charge is created on such assets, the charge remains 'fixed' and the borrowing company is not permitted to sell such assets though it may use them.
2. A fixed charge is created by way of mortgage or deposit of title deeds. Assets under fixed charge can be sold only with the permission of the charge-holder. A fixed charge is vacated when the money borrowed against the assets subject to fixed charge is repaid in full.
   Example: Pearl Electronics Limited raised a term loan ₹ 10 lakh from Everest Commercial Bank Limited, against the security of its office building. In this case, the company shall create a charge on specific asset i.e., its office building and such charge shall be a fixed charge. The company can sell this particular office building either by repaying the borrowed amount in full or after seeking permission from the charge-holder i.e., lender bank

FLOATING CHARGE:

1. A 'floating charge' is created on assets or a class of assets which are of fluctuating nature like raw material, stock-in-trade, debtors, etc. A floating charge is created by way of hypothecation or lien. It is a charge upon assets both present and future.

2. The assets under floating charge keep on changing because the borrowing company is permitted to use them for producing final goods for sale. Thus, a floating charge is a charge that floats above ever-changing assets.

   EXAMPLE: *A retail showroom will contain numerous articles kept for sale. The owner of the showroom might have borrowed against the security of all those goods in the showroom. But he may still sell or otherwise deal with them in the ordinary course of business. The buyer will get it free of the charge.*

   EXAMPLE: *In case of a company which manufactures leather goods, the raw material in the form of leather, which is subject matter of floating charge, shall be used to manufacture leather goods without seeking any permission from the lender.*

   Thus, unlike a fixed charge, the assets offered as security by the company can be dealt with by the company in the ordinary course of business. The buyer of the asset will get it free of charge.

   When the creditor enforces the security or the company goes into liquidation, the floating charge will become a fixed charge on all the assets available on that date and which may come into existence thereafter.

3. **CRYSTALLISATION:** When the creditor enforces the security due to the breach of terms and conditions of floating charge or the company goes into liquidation, the floating charge will become a fixed charge on all the assets available on that date. This is called crystallization of a floating charge
   a. A floating charge remains dormant until it becomes fixed or crystallises. On crystallisation, the security (i.e., raw material, stock-in-trade, etc.) becomes fixed and is available for realization so that borrowed money is repaid.
   b. Crystallisation of floating charge may occur when the terms and conditions of floating charge are violated or the company ceases to continue its business or the company goes into liquidation or the creditors enforce the security covered by the floating charge, etc.

      Example: *Prism Limited had taken a loan from ABC Bank, on the security of it stock. Now, in the event of Prism Limited failing to repay the security interest or entering liquidation, the floating charge will change to a fixed charge. Once a floating charge gets converted to a fixed charge, the stock can neither be sold nor used by the company in its business operations.*

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. It shall be duty of the company creating a charge within 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.

B. HOW TO REGISTER CHARGE:

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.

C. VERIFICATION OF INSTRUMENT OF CHARGE:

A copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar, shall be verified as follows:

1. **PROPERTY SITUATED OUTSIDE INDIA:** Where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either-
   - **a.** under the seal, if any, of the company, or
   - **b.** under the hand of any director or company secretary of the company, or an authorised officer of the charge holder, or
   - **c.** under the hand of some person other than the company who is interested in the mortgage or charge.
2. **PROPERTY SITUATED IN INDIA (WHETHER WHOLLY OR PARTLY):** Where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

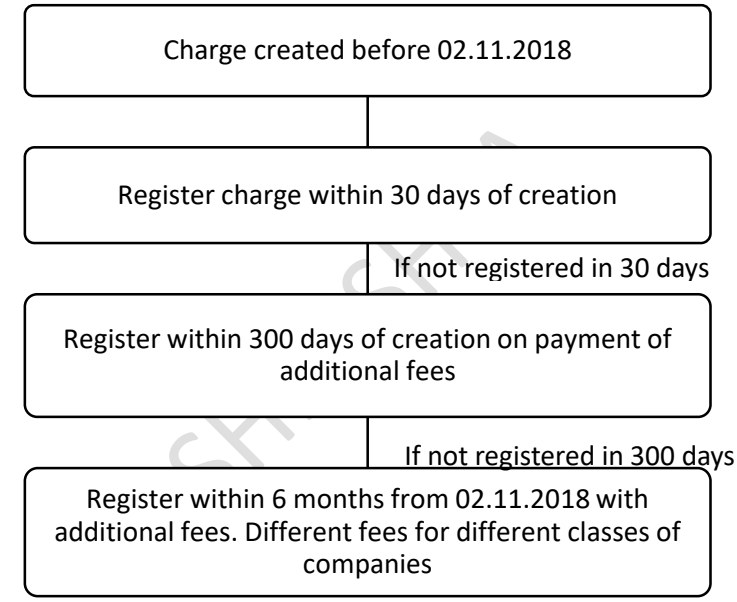
Note:

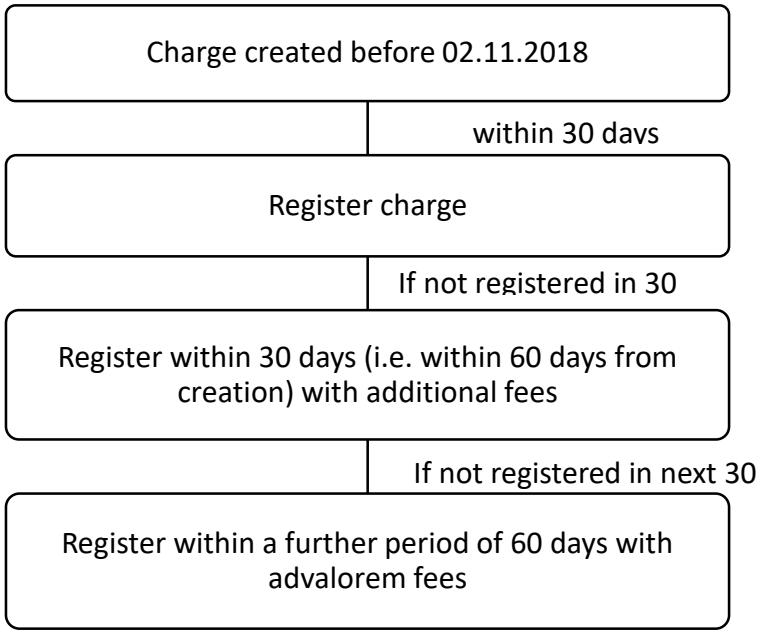
Signing of charge e-forms by **insolvency resolution professional or resolution professional or liquidator** for companies under resolution or liquidation.

The Form No.CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar.

3. Thus, in case the instrument or deed relates solely to a property situated outside India, the copy may also be additionally verified by a certificate issued under the hand of some person other than the company who is interested in the mortgage or charge. This type of verification is not possible when the instrument or deed relates to the property situated in India, whether wholly or partly.

D. <u>EXTENSION OF TIME LIMIT:</u>





The original period within which a charge needs to be registered is 30 days from the date of creation of charge. The Companies (Amendment) Second Ordinance, 2019 (w.r.e.f. 02-11-2018) has amended the provisions relating to extension of time limit as under:

CHARGES CREATED BEFORE 02-11-2018 (I.E. BEFORE THE COMMENCEMENT OF THE COMPANIES (AMENDMENT) SECOND ORDINANCE, 2019):

a. **NOT REGISTERED WITHIN 30DAYS – 300 DAYS TIME LIMIT:** Where charge was created before 02-11-2018 but was not registered within the original period of 30 DAYS, the Registrar may, on an application by the company, allow such registration to be made within a period of 300 DAYS of such creation.
b. **NOT REGISTERED WITHIN 300 DAYS – 6M TIME LIMIT:** Further, if the registration is not made within the extended period of 300 days, it shall be made within 6 MONTHS from 02-11-2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.

CHARGES CREATED ON OR AFTER 02-11-2018 (I.E. ON OR AFTER THE COMMENCEMENT OF THE COMPANIES (AMENDMENT) SECOND ORDINANCE, 2019):

a. **NOT REGISTERED WITHIN 30DAYS – WITHIN NEXT 30 DAYS:** In such cases (i.e., charge was created on or after 02-11-2018 but the registration of charge not effected within the original period of 30 days), the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e., another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed.
b. **NOT REGISTERED WITHIN 60 DAYS – ADVALOREM BASIS:** If the registration is not made within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of 60 DAYS after payment of prescribed Ad valorem fees.
c. **PROCEDURE FOR EXTENSION OF TIME LIMIT:** For seeking extension of time, the company is required to make an application to the Registrar. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company. The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or Ad valorem fee, as applicable, must also be paid.

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. **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.

F. SUBSEQUENT REGISTRATION NOT TO PREJUDICE RIGHTS OF CHARGE-HOLDER:

It is provided that any subsequent registration of a charge (i.e., registered within the extended period instead of original 30 DAYS) shall not prejudice any right acquired in respect of any property before the charge is actually registered by the company. (i.e., Registration is only a legal formality – the concept of charge will not be affected by late-registration, However Non-registration will affect creditor from gaining advantage.)

G. CONSEQUENCES OF NON - REGISTRATION OF CHARGES:

1. If a registrable charge though created but was not registered by a company and no certificate of registration of such charge was issued by the Registrar, it shall not be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 or any other creditor.
2. However, not registering the charge shall not impact/negate any contract or obligation for the repayment of the money secured by the charge. Further, it may be noted that failure to register charge shall not absolve a company from its liability in respect of any offence under this Chapter.
3. Another important consequence of non-registration is that the charge-holder loses priority. Any subsequent registration of a charge (i.e., even if it is registered within the extended period instead of original 30 days) shall not prejudice any right acquired in respect of any property before the charge is actually registered.

EXAMPLE: *Bank A has advanced Rs. One Crore to Akash Limited against the security of the company's land and building at Mulund. The charge was created by deposit of title deeds on 1st June 2019. The company did not register the charge within 30 days. Subsequently, the charge was registered on 13th August 2019 after payment of ad valorem fees and proving sufficient cause. In the meantime, Bank B has advanced Rs. Two Crore to Akash Limited against the security of the same property on 20th June 2019. This charge was duly registered on 27th June 2019.*

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

H. SECTION 77 NOT TO APPLY TO CERTAIN CHARGES

The application of Section 77 shall not be made to certain charges which are prescribed in consultation with the Reserve Bank of India.

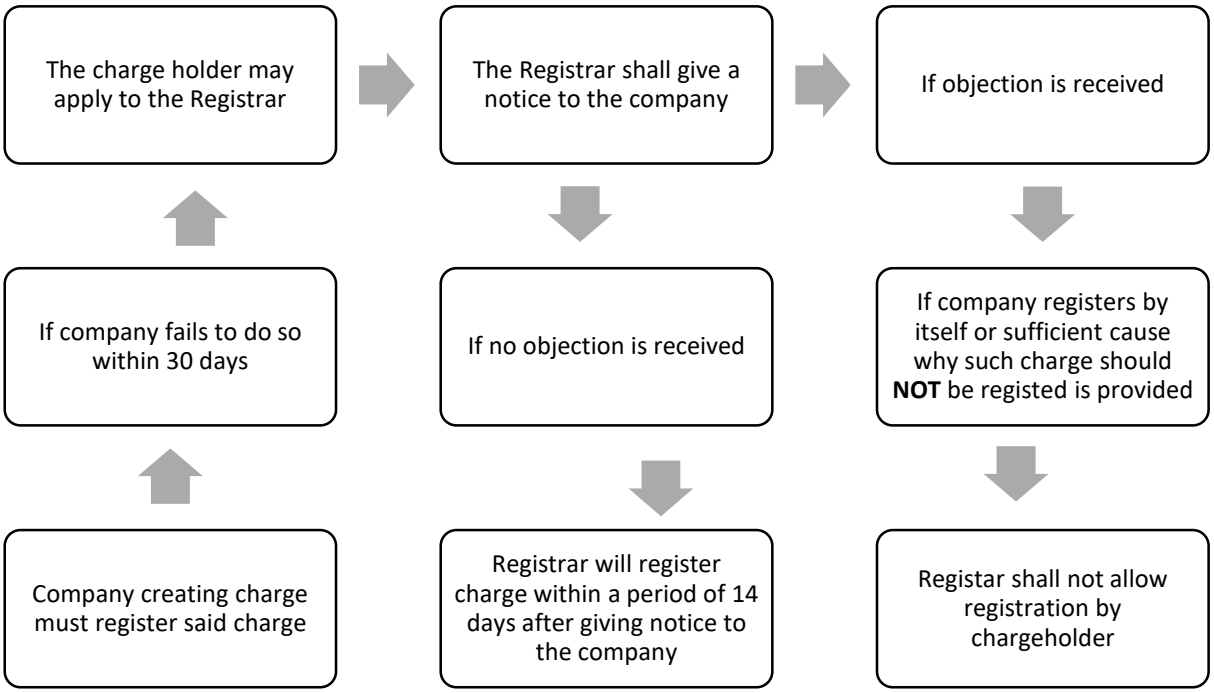
Note: Rule 3 (5) states that nothing contained in Rule 3 shall apply to any charge required to be created or modified by a banking company under section 77 in favour of the Reserve Bank of India when any loan or advance has been made to it under section 17(4)(d) of the Reserve Bank of India Act, 1934.

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 COMPANY ACQUIRING A PROPERTY ALREADY SUBJECT TO CHARGE?

ANSWER:

COMPANY ACQUIRING ANY PROPERTY SUBJECT TO CHARGE [SECTION 79 (a)]:

In case of a property where charge is already registered and if it is sold with the permission of the holder of charge, it shall be the duty of the company acquiring it to get the charge registered in accordance with Section 77.

In other words, the earlier charge should get vacated, and, in its place, new charge should get registered by the company which has acquired it.

Q.NO.5 WRITE ABOUT MODIFICATION OF CHARGES U/S 79 OF THE COMPANIES ACT, 2013?

ANSWER:

SECTION 79 (b): 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.

MEANING OF MODIFICATION: 'Modification' includes:

1. Variation in any of the terms and conditions of the agreement including change in rate of interest which may be by mutual agreement or by operation of law.
2. Variation in extent or operation of any charge is also a kind of modification.
3. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.
4. **Examples** of 'modification' are as under:

a. Where the charge is modified by varying any terms and conditions of the existing charge through an agreement.

b. Where the modification is in pursuance of an agreement for enhancing or decreasing the limits.

c. Where the modification is by ceding a pari - passu charge.

d. Where there is change in rate of interest (other than bank rate).

e. Where there is change in repayment schedule of loan (not applicable in case of working loans which are repayable on demand) and

f. Where there is partial release of the charge on a particular asset or property.

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.6 WRITE ABOUT DEEMED NOTICE OF CHARGE U/S 80?

ANSWER:

BUYER - DEEMED TO BE AWARE OF CHARGES:

1. 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]

2. All charges registered with the registrar are public documents. This means that any person who wishes to lend money to the company against the security of such property or buy it can refer to the MCA Portal and find out if there is any charge created on that asset.

3. Please remember that any document filed with the registrar for registration acts as Constructive Notice. Constructive means "deemed". Notice means "knowledge". So Constructive notice means deemed knowledge. This means even though the third party has not referred to the public document he would still be considered or deemed to have seen it. This is because a deeming provision creates a legal fiction.

4. He shall be deemed to have notice of charge from the date of its registration.

TRANSACTION WITHOUT THE KNOWLEDGE OF CHARGE:

1. In case he enters into the transaction without making any enquiry and later on suffers loss because of charge, he cannot succeed against the company for incurring loss, for it shall be deemed that he had notice of charge.

2. It is noteworthy that compulsory registration of charge also acts as a method of preventing a company from offering the same assets as security to borrow funds fraudulently from a different lender.

   For example, Vishnu Marketing Limited obtained a term loan of Fifty lacs from Beta Commercial Bank Limited by creating a charge on one of its office buildings and the charge was duly registered. Later on, if the building is sold to Neeraj, he is deemed to have notice of such charge. In other words, it is presumed that Neeraj knew beforehand that the building was mortgaged to the bank for obtaining a loan.

3. He cannot plead against such presumption by contending that he did not know about the charge if he suffers any loss at a later date because of the mortgage.

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.

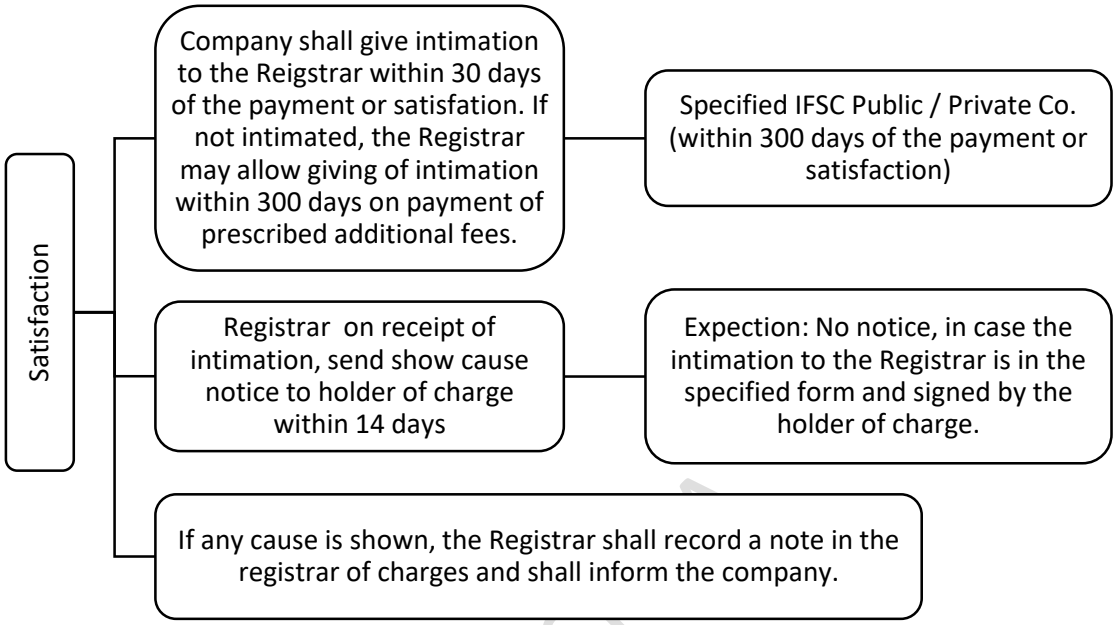
NOTICE TO THE HOLDER OF CHARGE BY THE ROC – OBTAIN NOC:

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.
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 REGISTERS OF CHARGES MAINTAINED BY COMPANY AND ROC?

ANSWER:

REGISTER OF CHARGES

1. **REGISTER OF CHARGES TO BE KEPT BY THE REGISTRAR** [Section 81]
   a. Registrar shall, in respect of every company, keep a register containing particulars of the charges registered under Chapter VI in the prescribed form and manner.
   b. The particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges for the purposes of Section 81.
   c. **Inspection of Register:**
      i. Such register shall be open to inspection by any person on payment of such fees as may be prescribed for each inspection.
      ii. Register shall be open to inspection by any person on payment of fee.

2. **REGISTER OF CHARGES TO BE KEPT BY THE COMPANY** [Section 85]

   a. Every company shall keep a Register of Charges in Form CHG-7 and manner at its registered office.

   b. 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 the prescribed particulars.

   c. A copy of the instrument creating the charge shall also be kept at the registered office along with the Register of Charges.

   d. The company shall enter in the Register particulars of all the charges registered with the Registrar on any of its property, assets or undertakings and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.

   e. The entries in the Register shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.

   f. The entries in the Register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.

3. INSPECTION OF REGISTER OF CHARGES AND INSTRUMENT OF CHARGES:

The register of charges and the instrument of charges shall be open for inspection during business hours:

   a. by any member or creditor without any payment of fees; or

   b. by any other person on payment of prescribed fees. subject to such reasonable restrictions as the company may, by its articles, impose.

4. PRESERVATION OF REGISTER:

The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of 8 years from the date of satisfaction of charge.

Q.NO.9 WRITE ABOUT POWER OF REGISTRAR TO MAKE ENTRIES OF SATISFACTION AND RELEASE IN ABSENCE OF INTIMATION FROM COMPANY [SECTION 83]?

ANSWER:

POWER OF ROC:

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.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

This situation would arise where the property subject to a charge is sold to a third-party and neither the company nor the charge-holder has intimated the Registrar regarding satisfaction of the earlier charge.

INFORMATION TO AFFECTED PARTIES:

The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

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.10 WRITE ABOUT INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER U/S 84?

ANSWER:

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.

ROC DUTY:

The Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

CESSATION OF APPOINTMENT:

On ceasing to hold such appointment, the person appointed as above shall give a notice (Form no CHG-6) to that effect to the company and the Registrar. In turn, the Registrar shall register such notice.

Q.NO.11 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 to a penalty of 5 lakh rupees and
2. **Every officer** of the company who is in default shall be liable to a penalty of Rs. 50,000/-.

PUNISHMENT FOR FRAUD [SEC. 86(2)]:

1. If any person wilfully furnishes:
   - **a.** any false or incorrect information; or
   - **b.** knowingly suppresses any material information which is required to be registered under section 77,
2. He shall be liable for action under section 447.

Q.NO.12 WRITE ABOUT RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES [SEC. 87]?

ANSWER:

RECTIFICATION IN REGISTER OF CHARGES [Sec. 87]:

1. The Central Government (Now Regional Director) to order rectification of Register of Charges in the following cases of default:
   - **a.** When there was No intimation is given to the Registrar with respect to payment or satisfaction of charge within the specified time.
   - **b.** When there was omission or misstatement of any particulars in any filing previously made to the Registrar. [Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release).

2. The Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.

3. The application in Form CHG-8 shall be filed by the company or any interested person and order of rectification shall be made by the Central Government on such terms and conditions as it deems fit.

4. "According to Rule 12 of the Companies (Registration of Charges) Rules, 2014:

The Central Government may on an application filed in Form No. CHG-8 in accordance with section 87-

a. direct rectification of the omission or misstatement of any particulars, in any filing, previously recorded with the Registrar with respect to any charge or modification thereof, or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

b. direct extension of time for satisfaction of charge, if such filing is not made within a period of 300 DAYS from the date of such payment or satisfaction."

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. **Any person acquiring property, on which charge is registered under section 77, shall be deemed to have notice of the charge from:**
   a. **the expiry of thirty days of such charge**
   b. **the date of application for registration of the charge**
   c. **the date of acquiring the property**
   d. **the date of such registration**

2. **A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of ₹ 1 crore availed from Next Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16th February, 2023. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. The latest date within which the company must register the charge with the ROC so as to avoid paying ad valorem fees for registration of the charge is:**
   a. **27th April, 2023**
   b. **17th April, 2023**
   c. **2nd May, 2023**
   d. **16th June 2023**

3. **The instrument creating a charge or modification thereon shall be preserved for a period of _____ years from the date of satisfaction of charge by the company.**
   a. **5**
   b. **7**
   c. **8**
   d. **15**

4. **An interest or lien created on the property or assets of a company or any of its undertakings or both as security is known as:**
   a. **Debt**
   b. **Charge**
   c. **Liability**
   d. **Hypothecation**

5. **Who cannot inspect the register of charges and instrument of charges, during business hours, without paying any fees:**
   a. **Any member of the company**
   b. **The Creditor of the company**
   c. **Persons other than member and creditor of the company**
   d. **No person is allowed to inspect the register of charges**

Answer to MCQ based Questions

1.	**d.**	the date of such registration
2.	**b.**	17th April, 2023
3.	**c.**	8
4.	**b.**	Charge
5.	**c.**	Persons other than member and creditor of the company

PRACTICE QUESTIONS

Q.NO.1 RENUKA SOAPS AND DETERGENTS LIMITED REALISED ON 2ND MAY 2019 THAT PARTICULARS OF CHARGE CREATED ON 12TH MARCH, 2019 IN FAVOUR OF A BANK WERE NOT REGISTERED WITH THE REGISTRAR OF COMPANIES. WHAT PROCEDURE SHOULD THE COMPANY FOLLOW TO GET THE CHARGE REGISTERED? WOULD THE PROCEDURE BE DIFFERENT IF THE COMPANY REALISED ITS MISTAKE OF NOT REGISTERING THE CHARGE ON 7TH JUNE 2019 INSTEAD OF 2ND MAY, 2019? EXPLAIN WITH REFERENCE TO THE RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013.

ANSWER:

RELEVANT PROVISION:

CHARGES CREATED ON OR AFTER 02-11-2018 (I.E. ON OR AFTER THE COMMENCEMENT OF THE COMPANIES (AMENDMENT) SECOND ORDINANCE, 2019):

a. **NOT REGISTERED WITHIN 30DAYS – WITHIN NEXT 30 DAYS:** In such cases (i.e., charge was created on or after 02-11-2018 but the registration of charge not effected within the original period of 30 days), the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e., another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed.
b. **NOT REGISTERED WITHIN 60 DAYS – ADVALOREM BASIS:** If the registration is not made within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of 60 DAYS after payment of prescribed Ad valorem fees.
c. **PROCEDURE FOR EXTENSION OF TIME LIMIT:** For seeking extension of time, the company is required to make an application to the Registrar. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company. The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or Ad valorem fee, as applicable, must also be paid.

ANALYSIS AND CONCLUSION:

Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June 2019 instead of 2nd May 2019, it shall be noted that a period of 60 days has already expired from the date of creation of charge.

However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of 60 days but the company is required to pay ad valorem fees.

Since the first 60 days from creation of charge have expired on 11th May 2019, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of 60 days from 11th May, 2019 after paying the prescribed ad valorem fees.

The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

Q.NO.2 MR. ANTRIKSH PURCHASED A COMMERCIAL PROPERTY IN DELHI BELONGING TO NRT LIMITED AFTER ENTERING INTO AN AGREEMENT WITH THE COMPANY. AT THE TIME OF REGISTRATION, MR. ANTRIKSH COMES TO KNOW THAT THE TITLE DEED OF THE COMPANY IS NOT FREE AND THE COMPANY EXPRESSES ITS INABILITY TO GET THE TITLE DEED TRANSFERRED IN HIS NAME CONTENDING THAT HE OUGHT TO HAVE THE KNOWLEDGE OF CHARGE CREATED ON THE PROPERTY OF THE COMPANY. EXPLAIN, WHETHER THE CONTENTION OF NRT LIMITED IS CORRECT?

ANSWER:

According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, 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.

Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration.

Mr. Antriksh, therefore, ought to have been careful while purchasing property and should have verified beforehand that NRT Limited had already created a charge on the property.

In view of above, the contention of NRT Limited is correct.

Q.NO.3 'A COMPANY IS REQUIRED TO KEEP A REGISTER OF CHARGES AT ITS REGISTERED OFFICE'. CONSIDERING THIS STATEMENT, MENTION THE PROVISIONS OF THE COMPANIES ACT, 2013 IN RESPECT OF KEEPING OF REGISTER OF CHARGES BY THE COMPANIES.

ANSWER:

REFER ANSWER TO Q NO 8

Q.NO.4 ABC LIMITED CREATED A CHARGE IN FAVOUR OF OK BANK. THE CHARGE WAS DULY REGISTERED. LATER, THE BANK ENHANCED THE FACILITY BY ANOTHER RS. 20 CRORES. DUE TO INADVERTENCE THIS MODIFICATION IN THE ORIGINAL CHARGE WAS NOT REGISTERED. ADVISE THE COMPANY AS TO THE COURSE OF ACTION TO BE PURSUED IN THIS REGARD.

ANSWER:

REFER ANSWER TO Q NO 12

Q.NO.5 RANJIT ACQUIRED A PROPERTY FROM ABC LIMITED WHICH WAS MORTGAGED TO OK BANK. HE SETTLED THE DUES TO OK BANK IN FULL AND THE SAME WAS REGISTERED WITH THE SUB-REGISTRAR WHO HAS NOTED THAT THE MORTGAGE HAS BEEN SETTLED. BUT NEITHER THE COMPANY NOR OK BANK HAS FILED PARTICULARS OF SATISFACTION OF CHARGE WITH THE REGISTRAR OF COMPANIES. CAN MR. RANJIT APPROACH THE REGISTRAR AND SEEK ANY RELIEF IN THIS REGARD? DISCUSS THIS MATTER IN THE LIGHT OF PROVISIONS OF THE COMPANIES ACT, 2013.

ANSWER:

REFER ANSWER TO Q NO.9

THE END