

# A Professional Guide on **COMPANIES ACT 2013**

**6th  
Edition**



A comprehensive reference book for Directors, CFOs,  
CEOs and Senior Professionals

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## **2026 Edition**

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### **NOT FOR SALE**

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*Founder of VS Associates, a Practising Company Secretaries Firm*



This book is dedicated to Smt. Santosh Devi,  
my mother and Late Shri Mahendra Pratap Sharma, my  
father.

Without their unconditional love,  
unwavering guidance and support,  
all this could have never happened.

# ACHIEVEMENTS

*"Only those who attempt the absurd can achieve the impossible"*

Honoured by Hon'ble Finance minister sh. Arun Jaitley ji, for Incorporating India's very first company, (M/s Pawanvijay Business Advisors Pvt. Ltd.) through e-biz portal



**CS Vijay Kumar Sharma**



**Mr. Pawan Kumar Pawan**

## Brief profiles of the Authors

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*Founder of M/s VS Associates*



Mr. Vijay Kumar Sharma is an Insolvency Professional, a Practicing Company Secretary and he has been in the profession of company secretary for more than two decades. He has an impressive academic back ground. He holds the degree of Bachelor of Laws and is a fellow member of Institute of Company Secretaries of India.

His forte lies in corporate compliance management, corporate project consulting and paralegal support in the fields of corporate laws, Restructuring of Companies, etc. He is a proactive speaker in seminars, workshops, conferences and conventions and has gained affluent skills and versatile experience in the specified sectors.

He has recently gained a vagarious experience in the field of Insolvency and bankruptcy codes by getting being appointed as an official Insolvency Professional for the companies who are under the process of Liquidation.

His professional approach is not only limited to laws and practice but even holds a clear understanding on every aspect of Corporate Law which is a need of an hour.

Not limiting the comprehension to the Company Law, Mr. Sharma is also engaged in the matters related to Intellectual Property Rights and allied affairs.

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*Co-Founder of VS Associates*

Mr. Pawan Kumar Pawan is a law graduate from a reputed university practicing his advocacy for the span of around 19 years.

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Mr. Pawan has an invaluable experience in the field of Corporate Law matters and has got flair in drafting various business deeds and documents. He has an acute proficiency in matters of Non-Banking Financing Companies, Foreign Investment Services, Foreign Exchange Management Act etc.

**ARPANA NASSA | B.Com, M.Com., FCS, LL.B.**

*Partner at VS Associates*



Ms. Arpana Nassa is a Practicing Company Secretary. She has been in the profession of Company Secretary for 10 years. She has an impressive academic back ground. She holds the degree of Bachelor of Laws and is a Fellow member of Institute of Company Secretaries of India. Her forte lies in corporate compliance management, due diligence, corporate project consulting and paralegal support and proactive advisory in the fields of corporate laws, Restructuring of Companies, etc. Along with the corporate statutory and regulatory compliances she holds proficiency in intellectual property rights and allied affairs.

# PREFACE

*"If we desire respect for the law, we must first make the law respectable.*

*Ethics is knowing the difference between what you have a right to do and what is right to do"*

This book is an endeavour to comprehensively analyse the legal and procedural aspects associated with the reformed Companies Act, 2013. It is a treasure of amended knowledge of Company Law that will assist the professionals and other readers enriching their span of knowledge. It will throw light on the plethora of amendments in the Law which consequently has brought the devastating impact on the practical operations of corporate sectors and the legal framework across the corporate world. Hence, in consonance with the evolutions of new regulatory framework, Companies utmost are required to get their reforms updated or reframed.

The edition aligns good governance practices with requirement under Companies Act, 2013 which will provide the comprehensive, visualization of the law.

The content of the Book is in the form of ready reckoner along with the intent of law have been detailed in the edition.

The edition has been detailed keeping in mind the basic requirement of the corporates and is a much-needed text which articulates the changes, the principles behind the change, comparative study of some important sections with illustrative presentations that enables the reader to get friendly with the provisions and operate the business with ease, interest and allure.

Nothing in this world is worth having or worth doing unless it builds up with effort, pain, and difficulties. We have assembled this book with vigorous indebt study incorporating the relevant amendments, notifications along with the circulars issued to deal with the pit falls of the Corporate World Diligently.

Not being the novice in the field, we feel quite assertive that the contents covered in this book would stand worth valuable and will be reader oriented.

Editors are very happy to bring out this new edition of the book giving corporate procedures up-to-date as possible. Editors are also grateful to the publishers and the entire team for their immense help and support for shaping the book in its present form and content by putting lot of dedication and hard work in the entire process.



# ACKNOWLEDGEMENT

Dear Readers,

I would like to express my immense gratitude to all those people who have provided me the inspiration and valuable guidance in completion of this book. I am thankful to those who have seen me through this book; to all those who have provided support, interacted, read, wrote, offered comments, allowed me to quote their remarks and assisted in the editing, proofreading and designing.

I want to share my word of appreciation for the rigorous efforts put in by my team including Company Secretaries, Chartered Accountants, Advocates; MBA's who have spent many hectic and sleepless nights for scripting this Book.

VS ASSOCIATES, a Company Secretary firm, is an eminent firm indulged into corporate and business advisory services with the span of almost two decades. It was established with a view to provide Corporate Secretarial & other consultancy services to clients. We also deal in issues involving corporate restructuring, IBC, IPR and SEBI related matters. Our top-notch service range includes areas such as corporate laws, labor laws, special economic zones, real estates, and corporate transactional advisory.

This book is a result of integrated efforts by team of VS Associates and we wish to acknowledge the endeavour of all those people who have supported in all possible ways for writing this book.

Above all I want to thank my Parents Smt. Santosh Sharma and Late Sh. M.P. Sharma, my wife Dr. Shashi Sharma and the rest of my family, who supported and encouraged me in making this legendary dream come true.

Last but not the least: I beg forgiveness of all those who have been with me over the course of the years and whose names I have failed to mention.

**Best Regards,**  
**Vijay Kumar Sharma**  
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# SEGMENT 1

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## (I) THRESHOLD-BASED PROVISIONS UNDER THE COMPANIES ACT, 2013

This Chapter explains the provisions of the Companies Act, 2013 by mapping their applicability on the company based on defined threshold limits accordance with the following criteria's:

1. Paid-up share capital,
2. Turnover,
3. Borrowing & deposits,
4. Net worth,
5. Net profit.

It enables companies to clearly identify the provisions relevant to them and ensure focused and accurate compliance.

	S. No.	Triggering threshold	Provisions applicable on Private companies	Provisions applicable on public companies
<b><i>On the Basis of Paid-Up Capital</i></b>	1.	<b>Irrespective of Capital</b>	-	<ol style="list-style-type: none"> <li>1. CARO</li> <li>2. Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS</li> <li>3. Cash Flow statements</li> <li>4. Obtaining ISIN and Dematerialization of shares</li> </ol>
	2.	<b>&gt;1crore to &lt;5crore</b>	<ol style="list-style-type: none"> <li>1. CARO (applicable on other than small companies)</li> </ol>	<ol style="list-style-type: none"> <li>1. CARO</li> <li>2. Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS</li> <li>3. Cash Flow statements</li> <li>4. Obtaining ISIN and Dematerialization of shares</li> </ol>
	3.	<b>≥ 5 crore to &lt; 10 crore</b>	<ol style="list-style-type: none"> <li>1. CARO (applicable on other than small companies)</li> <li>2. Annual filling in “XBRL” Format {AOC-4 XBRL}</li> </ol>	<ol style="list-style-type: none"> <li>1. CARO</li> <li>2. Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS</li> <li>3. Cash Flow statements</li> <li>4. Obtaining ISIN and Dematerialization of shares</li> <li>5. Annual filling in “XBRL” Format {AOC-4 XBRL}</li> </ol>

<b><i>On the Basis of Paid-Up Share Capital</i></b>	<b>S. No.</b>	<b>Triggering threshold</b>	<b>Provisions applicable on Private companies</b>	<b>Provisions applicable on public companies</b>
	4.	≥ 10 crore to < 25 crore	<ol style="list-style-type: none"> <li>CARO</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Whole time Company Secretary</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> </ol>	<ol style="list-style-type: none"> <li>CARO</li> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS</li> <li>Cash Flow statements</li> <li>Obtaining ISIN and Dematerialization of shares</li> </ol>
			<ol style="list-style-type: none"> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS</li> <li>Cash Flow statements</li> <li>Obtaining ISIN and De-materialization of shares</li> </ol>	<ol style="list-style-type: none"> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>KMP (Key Managerial Personnel)</li> <li>Independent Director</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Audit Committee</li> <li>Nomination and Remuneration Committee (NRC)</li> <li>Rotation of Auditor</li> <li>Whole time Company Secretary</li> </ol>
	5.	≥ 25 Crore to < 50 crore	<ol style="list-style-type: none"> <li>CARO</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Whole time Company Secretary</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS</li> <li>Cash Flow statements</li> <li>Obtaining ISIN and De-materialization of shares</li> </ol>	<ol style="list-style-type: none"> <li>CARO</li> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS</li> <li>Cash Flow statements</li> <li>Obtaining ISIN and Dematerialization of shares</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>KMP (Key Managerial Personnel)</li> <li>Independent Director</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Audit Committee</li> <li>Nomination and Remuneration Committee (NRC)</li> <li>Rotation of Auditor</li> <li>Whole time Company Secretary</li> <li>A Statement in the Board report indicating the manner in which formal evaluation has been made.</li> </ol>

	S. No.	Triggering threshold	Provisions applicable on Private companies	Provisions applicable on public companies
<b><i>On the Basis of Paid-Up Share Capital</i></b>	6.	≥ 50 Crore to < 100 crore	<ol style="list-style-type: none"> <li>CARO</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Whole time Company Secretary</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS</li> </ol>	<ol style="list-style-type: none"> <li>CARO</li> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS</li> <li>Cash Flow statements</li> <li>Obtaining ISIN and Dematerialization of shares</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>KMP (Key Managerial Personnel)</li> </ol>
			<ol style="list-style-type: none"> <li>Cash Flow statements</li> <li>Rotation of Auditor</li> <li>Obtaining ISIN and De-materialization of shares</li> </ol>	<ol style="list-style-type: none"> <li>Independent Director</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Audit Committee</li> <li>Nomination and Remuneration Committee (NRC)</li> <li>Rotation of Auditor</li> <li>Whole time Company Secretary</li> <li>A Statement in the Board report indicating the manner in which formal evaluation has been made.</li> <li>Secretarial Auditor</li> <li>Internal Auditor</li> </ol>
	7.	≥100 Crore	<ol style="list-style-type: none"> <li>CARO</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Whole time Company Secretary</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS</li> <li>Cash Flow statements</li> <li>Rotation of Auditor</li> <li>Obtaining ISIN and Dematerialization of shares</li> </ol>	<ol style="list-style-type: none"> <li>CARO</li> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS</li> <li>Cash Flow statements</li> <li>Obtaining ISIN and Dematerialization of shares</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>KMP (Key Managerial Personnel)</li> <li>Independent Director</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Audit Committee</li> <li>Nomination and Remuneration Committee (NRC)</li> </ol>

S. No.	Triggering threshold	Provisions applicable on Private companies	Provisions applicable on public companies
			11. Rotation of Auditor 12. Whole time Company Secretary 13. A Statement in the Board report indicating the manner in which formal evaluation has been made. 14. Secretarial Auditor 15. Internal Auditor 16. Woman Director

	S. No.	Triggering threshold	Provisions applicable on Private Companies	Provisions applicable on Public Companies
<b><i>On the Basis of Turnover</i></b>	1.	<b>Irrespective of Turnover</b>	-	1. Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS. 2. Cash Flow statements
	2.	<b>&gt;10 crore to &lt;50 crore</b>	1. CARO	1. Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS. 2. Cash Flow statements
	3.	<b>≥50 Crore to &lt; 100 crore</b>	1. CARO 2. Obtaining a Certificate in Form MGT 8 from a PCS	1. Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS. 2. Cash Flow statements 3. Obtaining a Certificate in Form MGT 8 from a PCS
	4.	<b>≥100 crore to &lt;200 crore</b>	1. CARO 2. Obtaining a Certificate in Form MGT 8 from a PCS 3. Annual filling in “XBRL” Format {AOC-4 XBRL} 4. Annual returns to be signed by a Company Secretary in employment. In the absence of CS, by a practicing Company Secretary. 5. Cash Flow statements	1. Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS. 2. Cash Flow statements 3. Obtaining a Certificate in Form MGT 8 from a PCS 4. Independent Director 5. Audit Committee 6. Nomination and Remuneration Committee (NRC) 7. Annual filling in “XBRL” Format {AOC-4 XBRL}



	S. No.	Triggering threshold	Provisions applicable on Private Companies	Provisions applicable on Public Companies
<b><i>On the Basis of Turnover</i></b>	5.	≥200 crore to <250 crore	<ol style="list-style-type: none"> <li>CARO</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Annual returns to be signed by a Company Secretary in employment. In the absence of CS, by a practicing Company Secretary.</li> <li>Cash Flow statements</li> <li>Internal Auditor</li> </ol>	<ol style="list-style-type: none"> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS.</li> <li>Cash Flow statements</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Independent Director</li> <li>Audit Committee</li> <li>Nomination and Remuneration Committee (NRC)</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Internal Auditor</li> </ol>
	6.	≥250 crore to <300 crore	<ol style="list-style-type: none"> <li>CARO</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Annual returns to be signed by a Company Secretary in employment. In the absence of CS, by a practicing Company Secretary.</li> <li>Cash Flow statements</li> <li>Internal Auditor</li> </ol>	<ol style="list-style-type: none"> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS.</li> <li>Cash Flow statements</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Independent Director</li> <li>Audit Committee</li> <li>Nomination and Remuneration Committee (NRC)</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Internal Auditor</li> <li>Secretarial Auditor</li> </ol>
	7.	≥300 crore to <1000 crore	<ol style="list-style-type: none"> <li>CARO (applicable on other than small companies)</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Annual returns to be signed by a Company Secretary in employment. In the absence of CS, by a practicing Company Secretary.</li> <li>Cash Flow statements</li> <li>Internal Auditor</li> </ol>	<ol style="list-style-type: none"> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS.</li> <li>Cash Flow statements</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Independent Director</li> <li>Audit Committee</li> <li>Nomination and Remuneration Committee (NRC)</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Internal Auditor</li> <li>Secretarial Auditor</li> <li>Woman Director</li> </ol>

	S. No.	Triggering threshold	Provisions applicable on Private Companies	Provisions applicable on Public Companies
<b><u>On the Basis of Turnover</u></b>	8.	≥1000 crore	<ol style="list-style-type: none"> <li>CARO (applicable on other than small companies)</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Annual returns to be signed by a Company Secretary in employment. In the absence of CS, by a practicing Company Secretary.</li> <li>Cash Flow statements</li> <li>Internal Auditor</li> <li>CSR</li> </ol>	<ol style="list-style-type: none"> <li>Annual Return to be signed by Company Secretary in Whole Time Employment. Where no CS, then by a PCS.</li> <li>Cash Flow statements</li> <li>Obtaining a Certificate in Form MGT 8 from a PCS</li> <li>Independent Director</li> <li>Audit Committee</li> <li>Nomination and Remuneration Committee (NRC)</li> <li>Annual filling in “XBRL” Format {AOC-4 XBRL}</li> <li>Internal Auditor</li> <li>Secretarial Auditor</li> <li>Woman Director</li> <li>CSR</li> </ol>

	S. No.	Triggering threshold	Provisions applicable on Private Companies	Provisions applicable on Public Companies
<b><u>On the Basis of Borrowings &amp; Deposit</u></b>	1.	Outstanding loan from any bank or financial institution exceeds ₹1 crore	1. CARO (applicable on other than small companies)	—
	2.	Outstanding Deposits of 25crore rupees or more at any time during the preceding financial year	—	1. Internal Auditor
	3.	Public borrowings from banks/financial institutions or public deposits of more than ₹50 Crore;	1. Rotation of Auditor	1. Rotation of Auditor
	4.	Public Companies which have in aggregate outstanding loans and debentures and deposits exceeding 50crore	—	<ol style="list-style-type: none"> <li>Independent Director</li> <li>Audit Committee</li> <li>Nomination and Remuneration Committee</li> </ol>
	5.	Have accepted deposits from public or borrowed money from banks and financial institutions in excess of ₹50 Crore;	1. Vigil Mechanism	1. Vigil Mechanism

	S. No.	Triggering threshold	Provisions applicable on Private Companies	Provisions applicable on Public Companies
<b><u>On the Basis of Borrowings &amp; Deposit</u></b>	6.	Outstanding loan or borrowings from banks or financial institutions exceeding 100 Crore at any point of time during the preceding financial year;	1. Internal Auditor	1. Internal Auditor
	7.	Outstanding loan or borrowings from banks or financial institutions exceeding 100 Crore at the end of the financial year	1. Secretarial Audit	1. Secretarial Audit

	S. No.	Triggering threshold	Provisions applicable on Private Companies	Provisions applicable on Public Companies
<b><u>On the basis of Net Worth</u></b>	1.	> 1 crore	1. CARO (applicable on other than small companies)	—
	2.	≥250 Crore to <500 crore	1. CARO (applicable on other than small companies) 2. Annual filling in “XBRL” Form {AOC-4 XBRL}	1. Annual filling in “XBRL” Form {AOC-4 XBRL}
	3.	≥500 crore	1. CARO (applicable on other than small companies) 2. Annual filling in “XBRL” Form {AOC-4 XBRL} 3. CSR	1. Annual filling in “XBRL” Form {AOC-4 XBRL} 2. 1. CSR

	S. No.	Net Profit	Provisions applicable on Private Companies	Provisions applicable on Public Companies
<b><u>On the basis of Net profit</u></b>	1.	≥5 crore	1. CSR	1. CSR

**UNDERSTANDING THE THRESHOLD BASED PROVISIONS OF COMPANIES ACT, 2013**

This part of the chapter presents a structured and practical overview of the key provisions of the Companies Act, 2013 that are most relevant for companies. It aims to simplify complex statutory requirements by highlighting essential compliances, thresholds, and applicability, enabling better understanding and effective implementation by stakeholders:

Particulars	Section/ Notification/ Circular/ Amendments	Applicability
Cash flow statement	Section 2(40)	<p>“Every Company” shall prepare “<b>Cash Flow Statement</b>” along with its Balance Sheet &amp; Statement of Profit &amp; Loss account.</p> <p><b><u>Following companies may not include the cash flow statements in its financial statement:</u></b></p> <ul style="list-style-type: none"> <li>✓ One Person Company,</li> <li>✓ Small company and</li> <li>✓ Dormant company.</li> </ul>
Small Company	Section 2(85) read with Companies (Specification of Definition Details) Rules, 2014	<p>“small company” means a company, other than a <u>public company</u>,—</p> <p>(i) <u>paid-up share capital</u> of which does not exceed Ten crore rupees, and</p> <p>(ii) <u>turnover</u> of which as per profit and loss account for the immediately preceding financial year does not exceed One Hundred crore rupees:</p> <p><b>Provided</b> that nothing in this clause shall apply to—</p> <p>(A) a <u>holding company</u> or a <u>subsidiary company</u>;</p> <p>(B) a <u>company</u> registered under <u>section 8</u>; or</p> <p>(C) a <u>company</u> or <u>body corporate</u> governed by any special Act;</p>
Certification of Annual Return by a Company Secretary in Practice (MGT-8)	Section 92 read with Rule 11(2) of Companies (Management and Administration) Rules, 2014	<ul style="list-style-type: none"> <li>✓ Every Listed Company;</li> <li>✓ Every Company having; <ul style="list-style-type: none"> <li>○ Paid-up share capital of ₹10 crore or more; OR</li> <li>○ Turnover of ₹50 crore or more,</li> </ul> </li> </ul>
Disclosure in Board’s Report for manner of formal annual evaluation of Board of Directors, its Committees and of individual Directors	Section 134 read with Rule 8(4) of the Companies (Accounts) Rules, 2014	<ul style="list-style-type: none"> <li>✓ Listed Companies;</li> <li>✓ Public Companies having paid up share capital of ₹25 crore or more at the end of preceding financial year.</li> </ul> <p><i>NB.: Government companies are exempted in case the Directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or as the case may be, the State Government, as per own evaluation methodology.</i></p>

Particulars	Section/ Notification/ Circular/ Amendments	Applicability
<b>Corporate Social Responsibility Committee (CSR)</b>	135(1)	<p>Every company having:</p> <ul style="list-style-type: none"> <li>✓ Net worth of rupees 500 Crore (five hundred crore) or more; or</li> <li>✓ Turnover of rupees 1000 crore (one thousand crore) or more; or</li> <li>✓ Net profit of rupees 5 crore (five crore) or more.</li> <li>✓ During the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee.</li> </ul>
<b>XBRL (Extensible Business Reporting)</b>	Section 137	<p><b>Following Companies are required to file their financial statements and other documents under section 137 of the Companies Act, 2013 with the concerned Registrar in e-form AOC-4 XBRL:</b></p> <ul style="list-style-type: none"> <li>✓ all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries;</li> <li>✓ All companies having Paid up Capital of Rupees 5 Crore (five crore) and above;</li> <li>✓ All companies having Turnover of Rupees 100 Crore (one hundred) crore and above.</li> <li>✓ All companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.</li> </ul> <p>Further, Once XBRL Filing is applicable, an entity shall be required to follow it for all the subsequent financial statements, whether adopted voluntarily or mandatorily.</p>
<b>Internal auditor</b>	Section 138(1) read with Rule 13(1) Chapter IX, Companies (Accounts) Rules, 2014	<ul style="list-style-type: none"> <li>✓ <b>Every Listed Company</b></li> <li>✓ <b>Every unlisted PUBLIC company having:</b> <ul style="list-style-type: none"> <li>○ Paid Up Share capital of 50 Crore (Fifty crore) rupees or more during the preceding financial year;</li> <li>○ Turnover of 200 Crore (two hundred crore) rupees or more during the preceding financial year;</li> <li>○ Outstanding loans or borrowings from banks or public financial institutions exceeding 100 Crore (one hundred crore) rupees or more at any point of time during the preceding financial year; or</li> <li>○ Outstanding Deposits of 25 Crore (twenty five crore) rupees or more at any point of time during the preceding financial year.</li> </ul> </li> </ul>

Particulars	Section/ Notification/ Circular/ Amendments	Applicability
<b>Rotation of Auditor</b>	139(2)	<ul style="list-style-type: none"> <li>✓ Every Listed Company; or</li> <li>✓ Every unlisted Public Company having a Paid-Up Share Capital of `10 Crore (Ten crore rupees) or more or</li> <li>✓ Every Private Limited Company having Paid-Up Share Capital of `50 Crore (Fifty crore rupees) or more or</li> <li>✓ All Companies having public borrowings from Financial Institutions, banks or public deposits of ₹50 Crore (Rupees Fifty Crore Only) or more</li> <li>✓ <i>NB.: one person companies and small companies are excluded from rotation of auditor</i></li> </ul>
<b>Reporting of Internal Financial Control in Auditors Report</b>	Section 143(3)	<p>All companies except private companies which is;</p> <ul style="list-style-type: none"> <li>✓ One Person Company;</li> <li>✓ Small Company;</li> <li>✓ Having turnover of less than ₹50 crore as per the latest financial statement &amp; aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than ₹25 crore.</li> </ul>
<b>Woman Director</b>	Section 149(1)	<ul style="list-style-type: none"> <li>✓ Every Listed Company;</li> <li>✓ Every Public Company having <ul style="list-style-type: none"> <li>○ Paid-Up Share Capital of ₹100 Crore (One Hundred crore rupees) or more;</li> <li>○ Turnover of ₹300 Crore (Three Hundred crore rupees) or more;</li> </ul> </li> </ul> <p><i>NB.: paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account</i></p>

Particulars	Section/ Notification/ Circular/ Amendments	Applicability
<b>Independent Director</b>	Section 149(4)	<p>Every Listed Company is required to appoint at least 1/3 of total number of directors as independent directors;</p> <p>Every Public limited Company fulfilling any of the below mentioned requirement then it shall have at least 2 (Two) Independent Director:</p> <ul style="list-style-type: none"> <li>✓ Paid Up Share capital of ₹10 Crore (ten crore rupees) or more</li> <li>✓ Turnover of ₹100 Crore (one hundred crore rupees) or more</li> <li>✓ In aggregate, outstanding loans, debentures and deposits, exceeding ₹50 Crore (fifty crore rupees).</li> </ul> <p><i>NB.: The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the last date of latest audited Financial Statements shall be taken into account.</i></p> <p>Following unlisted public company are not required to appoint independent director:</p> <ul style="list-style-type: none"> <li>✓ a joint venture;</li> <li>✓ a wholly owned subsidiary; and</li> </ul> <p>a dormant company as defined under section 455 of the Act</p>
<b>Audit Committee, Nomination and Remuneration Committee (NRC)</b>	Section 177(1) Section 178(1)	<ul style="list-style-type: none"> <li>✓ Every Listed Public Company, and</li> <li>✓ Every Public Company having Paid-Up Share Capital of ₹10 Crore (Ten crore Rupees) or more.</li> <li>✓ The Public Companies having Turnover of ₹100 Crore (one hundred crore rupees) or more</li> <li>✓ The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹50 Crore (fifty crore rupees)</li> </ul> <p><i>NB.: The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the last date of latest audited Financial Statements shall be taken into account.</i></p>



Particulars	Section/ Notification/ Circular/ Amendments	Applicability
<b>Vigil Mechanism</b>	Section 177(9)	<ul style="list-style-type: none"> <li>✓ Every Listed Company;</li> <li>✓ The Company which accepts deposits from the public;</li> </ul> <p>The companies which have borrowed money from banks and public financial institutions exceeding ₹50 crore (Rupees Fifty Crore only);</p>
<b>Stakeholders Relationship Committee (SRC)</b>	178(5)	A company which consists of <b>more than 1000 (one thousand) shareholders, debenture-holders, deposit-holders and any other security holders</b> at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board;
<b>Whole time Company Secretary</b>	Section 203(1) read with rule 8(A) of Companies Appointment and Remuneration of Managerial Personnel Rules, 2014	Every company having a paid-up share capital of ₹10 Crore (Ten crore rupees) or more;
<b>Whole Time Key Managerial Personnel</b>	Section 203(1) read with rule 8 of Companies Appointment and Remuneration of Managerial Personnel Rules, 2014	<ul style="list-style-type: none"> <li>✓ Every Listed Company;</li> <li>✓ Every Public Company having a Paid-Up Share Capital of ₹10 Crore (Ten crore rupees) or more; shall appoint; <ul style="list-style-type: none"> <li>○ Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director</li> <li>○ Company Secretary and</li> <li>○ Chief Financial Officer</li> </ul> </li> </ul>
<b>Secretarial Audit</b>	Section 204(1)	<ul style="list-style-type: none"> <li>✓ Every Listed Company;</li> <li>✓ Every Public Company having a Paid-Up Share Capital of ₹50 Crore (fifty crore rupees) or more.</li> <li>✓ Every Public Company having a Turnover of ₹250 Crore (two hundred fifty crore rupees) or more.</li> <li>✓ Every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.</li> </ul> <p><i>NB.: the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.</i></p>

Particulars	Section/ Notification/ Circular/ Amendments	Applicability
<b>CARO 2020</b>	Companies (Auditor's Report) Order, 2020	<p>CARO 2020 shall apply to <b>all companies including a foreign company</b> defined under section 2(42) of the Companies Act 2013, except the following:</p> <ul style="list-style-type: none"> <li>○ A banking company</li> <li>○ An insurance company</li> <li>○ Section 8 company</li> <li>○ OPC &amp; small company</li> <li>• <b>Private company</b> (not being a subsidiary or holding company of a public company) having Paid-up share capital &amp; reserves and surplus not more than 1 Crore rupees as on the date of balance sheet, <b>and</b></li> <li>• Total Borrowings from any bank or financial institutions does not exceed 1 Crore rupees at any point of time during the financial year, <b>and</b></li> <li>• Total Revenue as disclosed in Schedule III (including revenue from discontinued operations) does not exceed 10 Crore during the financial year.</li> </ul> <p><b><i>NB.: CARO 2020 is applicable from the financial years commencing from 01st April 2020.</i></b></p>
<b>POSH Policy</b>	Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013	Applies to all workplaces in India including Includes private companies, government bodies, offices, factories, hospitals, schools, colleges, NGOs, shops, and places visited during employment (including transportation).
<b>Internal Committee (IC)</b>		Mandatory for workplaces with 10 or more employees
<b>Local Committee (LC)</b>		For establishments with fewer than 10 employees



## (II) POST INCORPORATION COMPLIANCES

### 1. For a Private Company

The following calendar shall serve the purpose of a Private Limited Company:

#### I. Immediate upon Incorporation

Period	Particulars	Compliance
IMMEDIATE	Download PAN & TAN	An email will be received on the registered email ID of the company providing e-copy of PAN and TAN which may be password protected.  You can download the same from your email.
	Apply for GST	Reach out to a professional who can apply your GST.
	Opening of Bank account	Open a current Bank account of the company
	File application for commencement of business	<ul style="list-style-type: none"> <li>Post opening of Bank account, the subscribers to the MOA, shall deposit the amount of subscription money into the Bank account of the company.</li> <li>Thereafter, e-form INC-20A shall be filed with the Registrar of companies.</li> </ul> <p><b><i>Only after the form is filed along with Form for situation of registered office, the company can commence its business operations and perform its power to borrow money.</i></b></p>
WITHIN 30 DAYS	Send notice of BM for convening the 1 <sup>st</sup> Board meeting of the company to be held within 30 days of Incorporation	Pass resolutions for: <ul style="list-style-type: none"> <li>Taking note of COI, Adoption of MOA &amp; AOA as tabled</li> <li>Taking note of first Directors</li> <li>Appointment of first auditors</li> <li>Disclosure of interest (MBP-1)</li> <li>Opening of bank account</li> <li>Taking note of registered office filing (INC-22), if applicable</li> <li>Taking note of subscribers to MOA</li> <li>To approve and ratify preliminary expenses and preliminary agreement</li> </ul>
	Filing of e-form INC-22 (if applicable)	<ul style="list-style-type: none"> <li>This needs to be filed where registered office address is not provided in the incorporation forms.</li> </ul>
	Appointment of First Auditors by the Board	<ul style="list-style-type: none"> <li>Statutory auditor of the company for the first financial year (i.e. from the date of incorporation till 31<sup>st</sup> March of next year) shall be appointed by the Board in its Board meeting</li> </ul>

		<ul style="list-style-type: none"> <li>The statutory auditor shall be a Chartered Accountant in Practice</li> <li>For this purpose, Form ADT-1, though not mandatory but recommended, to be filed within 15days.</li> </ul>
<b>WITHIN 60 DAYS</b>	Issue Share Certificates	<ul style="list-style-type: none"> <li>The Board shall issue share certificates to the subscribers to the MOA in form SH-1</li> <li>The Share certificates shall be Stamped &amp; an entry of the said members and certificates needs to be made in Register of Members (MGT-1)</li> </ul>

## II. Ongoing & Annual Compliances

S. No.	Particulars	Compliance
1.	<b>Convening Board meetings</b>	<ul style="list-style-type: none"> <li>The company shall hold at least four Meetings of its Board in each Calendar Year with a maximum interval of 120 days between any two consecutive Meetings</li> <li>In case of One Person Company, Small Company, Dormant Company or private company which is recognized as start-up, the company shall hold one Meeting of the Board in each half of a Calendar Year and the gap between the two Meetings of the Board is not less than 90 days.</li> </ul>
2.	<b>Form DIR-3 KYC-WEB</b>	<ul style="list-style-type: none"> <li>30th June of the immediately following financial year in which the 3-year cycle completes</li> </ul>
3.	<b>Form DPT-3</b>	<ul style="list-style-type: none"> <li>By 30<sup>th</sup> June every year</li> </ul>
4.	<b>MSME Form 1</b>	<ul style="list-style-type: none"> <li>By 30<sup>th</sup> October &amp; 30<sup>th</sup> April every year</li> </ul>
5.	<b>Form PAS -6-</b> Applicable on every Private Company, other than small company.	Half Yearly: <ul style="list-style-type: none"> <li><b>April to September:</b> 29<sup>th</sup> November</li> <li><b>October to March:</b> 30<sup>th</sup> May</li> </ul>
6.	<b>Convening of AGM</b>	<ul style="list-style-type: none"> <li>First AGM shall be convened by 31<sup>st</sup> December of the subsequent Calendar year of incorporation</li> <li>Rest of the AGM shall be convened by 30<sup>th</sup> September each year</li> <li>Gap between two AGM shall not be more than 15months</li> <li>There should be one AGM in every Calendar year.</li> </ul>
7.	<b>Annual Filing</b>	<ul style="list-style-type: none"> <li>Form AOC-4 within 30days of AGM</li> <li>Form MGT-7/7A – within 60days of AGM</li> </ul>

S. No.	Particulars	Compliance
8.	<b>Appointment of Auditor</b> <b>(For a period of 5years</b>	<ul style="list-style-type: none"> <li>Form ADT-1 within 15days of AGM</li> </ul>
9.	<b>Form MBP-1-</b> Filling of Disclosure of interest by Director to the company in which he holds office. <i><b>Interest</b> here refers to interest in Company(s) or bodies corporate, firms, or other association of individuals, including the shareholding.</i>	<ul style="list-style-type: none"> <li>In 1<sup>st</sup> Board Meeting in which he participates as a director, &amp;</li> <li>In 1<sup>st</sup> Board Meeting of every FY; or</li> <li>whenever there is any change in the disclosure already made, then at the first board meeting held after such change</li> </ul>
10.	<b>Maintenance of Minutes*</b>	<ul style="list-style-type: none"> <li>Minutes of Board meeting</li> <li>Minutes of Committee meetings</li> <li>Minutes of Shareholder meetings</li> </ul>
11.	<b>Maintenance of Statutory Registers*</b>	<ul style="list-style-type: none"> <li>Register of Members (MGT-1)</li> <li>Register of Directors &amp; KMP (MBP-4)</li> <li>Register of Charges (CHG-7)</li> <li>Register of Share Transfers</li> <li>Register of Loans, Investments &amp; Guarantees (MBP-2)</li> <li>Such other register as may be applicable on the company</li> </ul>
12.	<b>Any other event-based compliances, in addition to those mentioned above, shall be identified and complied with as and when applicable</b>	

**\*NB:**

1. *Where the statutory registers and minutes are required to be maintained at the registered office of the company. However, if it is proposed to keep them at a place in India other than the registered office of the company, the company must inform the Registrar of Companies by filing Form AOC-5 within 7 days of passing the Board Resolution or Special Resolution, as applicable.*
2. *For Elaborative provisions of Minutes and Meeting of Board and Shareholder, please refer the following Chapters:*
  - a. *Board Management and Administration*
  - b. *Shareholder Management and Administration*
2. **For Public Limited Companies (In addition to Private companies)**

The compliances applicable to a private limited company shall apply **mutatis mutandis** to a public

limited company as well. In addition, a public company is required to comply with the following further mandatory compliances:

S. No.	Compliance	Periodicity
1.	<b>Retirement of directors by Rotation</b> Unless provided by the articles of the company, 2/3rd directors (excluding independent directors) are liable to retire by rotation and out of which 1/3rd shall retire at every AGM of the company	- at every AGM of the company
2.	<b>Form MGT -14 for Approval of financial statements</b> All public Companies are required to give intimation to the concerned ROC regarding approval of financial statements including consolidated financials by the Board.	- Within 30 days of approval of financial statements in the Board meeting
3.	<b>Approval of Board of Directors report</b> All public Companies are required to give intimation to the concerned ROC regarding approval of Directors report by the Board.	- Within 30 days of approval of Board report in the Board meeting

### 3. Additional compliance for Listed Companies under the Companies Act, 2013

All mandatory compliances applicable to a Private Limited Company and a Public Limited Company shall apply **mutatis mutandis** to a Listed Company. Further, an entity listed on the main board of a stock exchange must comply with the following additional mandatory requirements:

S. No.	Compliance	Periodicity
1.	<b>Report on AGM in Form MGT-15</b> A report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted shall be prepared and submitted with Registrar	• <b>Within 30 Days of AGM</b>
2.	<b>Form MGT-14 for Appointment of Secretarial Auditor</b> All the Listed Companies are required to appoint a Practicing Company Secretary as its Secretarial Auditor and give intimation to the concerned ROC	• Within 30 Days of Board meeting within which the appointment is made
3.	<b>Providing e-voting facility to its members</b> Every company which has Shares listed on a Stock exchange shall provide remote e-voting facility to its shareholders	<ul style="list-style-type: none"> <li>• Intimated to the shareholders in the Notice of the General meeting.</li> <li>• E-voting shall remain open for three days ending on the evening before the date of general meeting.</li> </ul>

S. No.	Compliance	Periodicity
4.	<b>Certification of Annual Return by a Practicing Company Secretary in Form MGT-8</b> Every Listed company and such other public companies shall obtain a certificate from a Practicing Company Secretary annually and submit the same to the concerned ROC	<ul style="list-style-type: none"> <li>To be filed as an attachment to Form MGT-7</li> </ul>
5.	<b>Appointment of Internal Auditor in Form MGT-14</b> Every Listed Company and such other public company is required to appoint an internal auditor every year	<ul style="list-style-type: none"> <li>Within 30 days of appointment in the Board meeting</li> </ul>
6.	<b>Formation of committees</b> Every Listed company has required to form following committees: 1. Audit committee 2. Nomination and Remuneration Committee 3. Stakeholder Relationship committee 4. Vigil Mechanism	<ul style="list-style-type: none"> <li>The information about the formation of the committee is required to be disclosed in the Board report of the company and intimated to the concerned ROC.</li> </ul>

4. **Compliance under SEBI Regulations (for Listed Companies only):**

	S. No	Regulation	Due Date
<b>Quarterly Compliance</b>	1.	Integrated Filing – Governance (comprising Regulation 13(3): Statement on redressal of investor grievances and 27(2): Compliance Report on Corporate Governance and few provisions of Regulation 30)	Within 30 days from the end of each quarter.
	2.	Regulation 31(1)(b) – Shareholding Pattern.	Within 21 days from quarter end.
	3.	Integrated Filing – Financials (comprising Regulation 33 (3) (a) Financial Results along with Limited review report/ Auditor's report, Regulation 23(9) Disclosure of Related Party Transactions and Regulation 32 (1) Statement of deviation(s) or variation(s)*)	Within 45 days from quarter end. And in case of Annual Financial Result, within 60 days from end of Financial Year.  * The frequency of compliance regarding Regulation 23(9) with respect to the disclosure of Related Party Transactions shall be Half Yearly
	4.	Reconciliation of share capital audit report:	Within 30 days from the end of the quarter.



	S. No	Regulation	Due Date
<b>Half Yearly Compliance</b>	1.	Regulation 23(9) – Related Party Transactions	On the date of publication of standalone and consolidated financial results. The Disclosure of related party transactions shall be forming part of the Integrated Filing – Financials.

	S. No	Regulation	Due Date
<b>Annual Compliance</b>	1.	Regulation 24A – Secretarial Compliance Report	within 60 days of the end of the financial year
	2.	Regulation 33(3)(d) – Financial Results along with Auditor's Report:	Within 60 days from the end of the financial year
	3.	Regulation 34(1)– Annual Report	Not later than the day of commencement of dispatch to its shareholders
	4.	Initial Disclosure requirements for large entities	Within 30 days from the beginning of the FY
	5.	Annual Disclosure requirements for large entities	Within 45 days of the end of the FY

	S. No	Regulation	Due Date
<b>Event Based Compliance</b>	1.	Regulation 7(5) – Intimation of appointment of Share Transfer Agent	Within 7 days of Agreement with RTA
	2.	Regulation 28(1) – In-principle approval of recognized stock exchange(s)	Before issuing securities
	3.	Regulation 29(1)(a) to (h) – Prior intimation of Board meeting	At least 2 working days in advance, excluding the date of the intimation and date of the meeting
	4.	Regulation 30(6) – Disclosure of events or information	Disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than thirty minutes/three hours/twelve hours/twenty-four hours from the occurrence of event or information as may be applicable.

	S. No	Regulation	Due Date
<b>Event Based Compliance</b>	8.	Regulation 31(1)(a) – Shareholding Pattern prior to listing of securities	1 day prior to listing of securities
	9.	Regulation 31(1)(c) – Shareholding Pattern in case of capital restructuring	Within 10 days of any change +/- 2 % of the total paid-up share capital
	10.	Regulation 37(2) – Draft Scheme of arrangement	Obtain observation letter or No-objection letter from the stock exchange(s) before filing the scheme with any court or tribunal
	12.	Regulation 44(3) – Voting Results	Within 2 working days of conclusion of Meeting
	14.	Regulation 46 – Website	The listed entity shall maintain a functional website containing the basic information about the listed entity

	S. No	Regulation	Due Date
<b>Corporate Action</b>	1.	Regulation 42(2) – Record Date for dividend, bonus, rights etc.,	<p>The listed entity shall give notice in advance of atleast three working days (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date.</p> <p>The listed entities shall ensure a minimum gap of at least three working days between the date of board/shareholders' approval, as applicable to the specific corporate action mentioned in Regulation 42 (1), and the Record Date fixed for such purpose. The minimum gap shall be exclusive of the date of board/shareholder's approval and the actual record date.</p> <p>In the case of corporate actions through schemes of arrangement covered under Regulation 37, the listed entity shall give notice in advance of atleast seven working days (excluding the date of intimation and the record date).</p>
	2.	Regulation 42(4) – Record Date	The listed entity shall ensure the time gap of at least five working days between two record dates.



### III. CIRCUMSTANCES REQUIRING FILING OF FORM MGT-14

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The requirement to file resolutions or agreements in Form MGT-14 arises under the Companies Act, 2013. Broadly, filings are required under the following three categories:

#### ❖ CATEGORIES REQUIRING FILING OF FORM MGT-14

- (1) Resolutions/Agreements specified under Section 117(3)
- (2) Resolutions covered under Section 179(3) read with rule 8(5) of Companies (Meetings of Board and its Powers) Rules, 2014
- (3) Resolution passed under Section 94(1)

#### (1) **Resolutions/Agreements specified under Section 117(3):**

As per Section 117(3) of the Companies Act, 2013, the following resolutions and agreements must be filed with the ROC within the prescribed time in Form MGT-14:

- ✓ Special Resolutions.
- ✓ Resolutions which are required to be passed as special resolutions;
- ✓ Board resolution or any agreement executed by the company relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a Managing Director;
- ✓ Resolutions requiring a company to be wound up voluntarily
- ✓ Resolutions passed in pursuance of section 179(3); and
- ✓ Any other resolution or agreement as may be prescribed and placed in the public domain.

#### (2) **List of Resolutions given in Section 179(3)(g) read with rule 8(5) of Companies (Meetings of Board and its Powers) Rules, 2014:**

The following powers of the Board must be exercised only through a Board Resolution and are required to be filed (except for the private company exemption):

##### (a) **Section 179(3)(g)**

- ✓ To make calls on shareholders in respect of money unpaid on their shares;
- ✓ To authorise buy-back of securities under section 68;
- ✓ To issue securities, including debentures, whether in or outside India;

- ✓ To borrow monies;
- ✓ To invest the funds of the company;
- ✓ To grant loans or give guarantee or provide security in respect of loans;
- ✓ To approve financial statement and the Board's report;
- ✓ To diversify the business of the company;
- ✓ To approve amalgamation, merger or reconstruction;
- ✓ To take over a company or acquire a controlling or substantial stake in another company;

(b) **Rule 8(5) of Companies (Meetings of Board and its Powers) Rules, 2014**

- ✓ To make political contributions;
- ✓ To appoint or remove key managerial personnel (KMP);
- ✓ To appoint internal auditors and secretarial auditor;

***NB.: Exemption to Private Companies:***

***Vide Notification dated 05.06.2015, private companies are exempted from filing MGT-14 for Board Resolutions passed under Section 179(3) and Rule 8(5).***

(3) **Resolution passed pursuant to the provisions of Section 94(1)**

- ✓ Resolution passed for keeping the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 at any place in India other than the Registered office of the Company.

Provided that the place where such registers and annual return are kept and maintained should be a place where more than one-tenth of the total number of members reside.



## IV. STATUTORY FEE STRUCTURE

### ❖ FORM SPICE + (INCORPORATION OF COMPANIES)

#### ➤ In case of company having share capital;

##### ✓ For OPC and Small Companies;

Nominal Share Capital	Fee Applicable (in ₹)
Up to 15,00,000	NIL
More than 10,00,000 the fee of ₹2,000 with the following additional fees regulated according to the amount of nominal capital: For every ₹10,000 of Nominal Share Capital or part of ₹10,000 after the first ₹15 Lacs and up to ₹50 Lacs	200

##### ✓ For other than OPC and Small Companies;

Nominal Share Capital	Fee Applicable (in ₹)
Up to 15,00,000	NIL
More than 15,00,000 the fee of ₹36,000 with the following additional fees regulated according to the amount of nominal capital:	
(a) For every ₹10,000 of Nominal Share Capital or part of ₹10,000 after the first ₹10 Lacs and up to ₹50 Lacs	300
(b) For every ₹10000 of Nominal Share Capital or part of ₹10,000 after the first ₹50 Lacs and up to ₹1 Crore	100
(c) For every ₹10,000 of Nominal Share Capital or part of ₹10,000 after the first ₹1 Crore	75

**NB.:-**

1. In addition to above fees on registration of MOA based on authorised capital is also applicable.
2. Application For Name Reservation U/S 4(4): ₹1,000 For Each Submission

#### ➤ In case of company not having share capital;

Number of members	Fee applicable
Up to 20 members	N/A
More than 20 members	Rupees 500

**NB.:-**In addition to above fees on registration of MOA based on authorised capital also applicable

❖ **Registration fee for Memorandum of Association (MOA) (Applicable in case of Incorporation also):**

➤ **In case of company having share capital**

Nominal Share Capital	Other than OPCS and Small Companies		OPC and *Small Companies	
	Fixed	For Every 10,000 or Part Thereof	Fixed	For Every 10,000 or Part Thereof
Up to 1,00,000	N/A	N/A	N/A	N/A
More than 1,00,000 up to 5,00,000	N/A	N/A	N/A	N/A
More than 5,00,000 up to 10,00,000	N/A	N/A	N/A	N/A
More than 10,00,000 up to 50,00,000	36,000+	300	12,000+	200
More than 50,00,000 up to 1,00,00,000	1,56,000+	100	1,56,000+	100
More than 1,00,00,000	2,06,000+	75	2,06,000+	75

*NB.: If fee payable on the authorized capital is exceeding Rupees two Crore and fifty lakhs then the fee applicable shall be limited to two Crore and fifty lakhs only.*

➤ **In case of company not having share capital**

Number of Members	Fee Applicable
Up to 20 members	2000
More than 20 but up to 200 members	5,000
More than 200 members (If number of members not stated as unlimited in AOA)	5,000 + Rupees 10 for every member, after the first 200

*NB.: The maximum fee payable to the Registrar for registration of a new company not having share capital and having unlimited members, is fixed at rupees 10,000.*

➤ **Filing fees for Miscellaneous Forms and Documents including annual filing**

Particulars	Fees
If Authorised Capital is less than ₹1 Lac	200
If Authorised Capital is ₹1 Lac or more but less than 5 Lac	300
If Authorised Capital is ₹5 Lac or more but less than 25 Lac	400
If Authorised Capital is ₹25 Lac or more but less than 1 Crore	500
If Authorised Capital is equal to or more than ₹1 Crore	600

➤ **Additional fees in case of delayed filing of miscellaneous forms and documents with registrar (other than for increase in Nominal Share capital or forms under section 92/137 of the Act):**

Period of Delay	Additional Fees
Upton 15 days (Appointment of Auditors and intimation of DIN)	One times of normal fees

Period of Delay	Additional Fees
More than 15 days and up to 30 days ((Appointment of Auditors and intimation of DIN) and up to 30 days (in case of other forms)	2 times of normal fees
More than 30 days and up to 60 days	4 times of normal fees
More than 60 days and up to 90 days	6 times of normal fees
More than 90 days and up to 180 days	10 times of normal fees
Beyond 180 days	12 times of normal fees

➤ **Additional fees in case of delay if filing forms for Annual Filing:**

✓ **For delay up to 30.06.2018:**

Period of Delay	Additional Fees
Upton 30 days from the date of AGM	2 times of normal fees
More than 30 days and up to 60 days from the date of AGM	4 times of normal fees
More than 60 days and up to 90 days from the date of AGM	6 times of normal fees
More than 90 days and up to 180 days from the date of AGM	10 times of normal fees
Beyond 180 days from the date of AGM	12 times of normal fees

✓ **If delay continues after 30.06.2018:**

Period of Delay	Additional Fees (In addition to the fees specified in the above table)
Delay beyond 30 days in case of Financial Statements (Form AOC-4)	One hundred per day till the time default continues.
Delay beyond 60 days in case of Annual Return (Form MGT-7)	One hundred per day till the time default continues.

✓ **In case of increase in authorised capital, the additional fees shall be applicable at the following rates:**

Delay up to 6 months	Delay beyond 6 months
2.5 % per month on the fees payable, as the case may be	3% per month on the fees payable, as the case may be.

**Table Representing Fee Payable for Registration of Authorise Share Capital**

Fees for Registration of Memorandum			
S. No.	Authorised Capital (in ₹)	Other than OPC & Small Company (in ₹)	OPC & Small Company (in ₹)
1	1500000	51000	12000
2	1600000	54000	14000
3	1700000	57000	16000
4	1800000	60000	18000
5	1900000	63000	20000
6	2000000	66000	22000
7	2100000	69000	24000



Fees for Registration of Memorandum			
S. No.	Authorised Capital (in ₹)	Other than OPC & Small Company (in ₹)	OPC & Small Company (in ₹)
8	2200000	72000	26000
9	2300000	75000	28000
10	2400000	78000	30000
11	2500000	81000	32000
12	2600000	84000	34000
13	2700000	87000	36000
14	2800000	90000	38000
15	2900000	93000	40000
16	3000000	96000	42000
17	3100000	99000	44000
18	3200000	102000	46000
19	3300000	105000	48000
20	3400000	108000	50000
21	3500000	111000	52000
22	3600000	114000	54000
23	3700000	117000	56000
24	3800000	120000	58000
25	3900000	123000	60000
26	4000000	126000	62000
27	4100000	129000	64000
28	4200000	132000	66000
29	4300000	135000	68000
30	4400000	138000	70000
31	4500000	141000	72000
32	4600000	144000	74000
33	4700000	147000	76000
34	4800000	150000	78000
35	4900000	153000	80000
36	5000000	156000	82000
37	6000000	166000	
38	7000000	176000	
39	8000000	186000	
40	9000000	196000	
41	10000000	206000	
42	11000000	281000	
43	12000000	356000	
44	13000000	431000	
45	14000000	506000	

Fees for Registration of Memorandum			
S. No.	Authorised Capital (in ₹)	Other than OPC & Small Company (in ₹)	OPC & Small Company (in ₹)
46	15000000	581000	
47	16000000	656000	
48	17000000	731000	
49	18000000	806000	
50	19000000	881000	
51	20000000	956000	
52	22500000	1143500	
53	25000000	1331000	
54	27500000	1518500	
55	30000000	1706000	
56	32500000	1893500	
57	35000000	2081000	
58	37500000	2268500	
59	40000000	2456000	
60	42500000	2643500	
61	45000000	2831000	
62	47500000	3018500	
63	50000000	3206000	
64	55000000	3581000	
65	60000000	3956000	
66	65000000	4331000	
67	70000000	4706000	
68	75000000	5081000	
69	80000000	5456000	
70	85000000	5831000	
71	90000000	6206000	
72	95000000	6581000	
73	100000000	6956000	
74	110000000	7706000	
75	120000000	8456000	
76	130000000	9206000	
77	140000000	9956000	
78	150000000	10706000	
79	160000000	11456000	
80	170000000	12206000	
81	180000000	12956000	
82	190000000	13706000	
83	200000000	14456000	

Fees for Registration of Memorandum			
S. No.	Authorised Capital (in ₹)	Other than OPC & Small Company (in ₹)	OPC & Small Company (in ₹)
84	210000000		15206000
85	220000000		15956000
86	230000000		16706000
87	240000000		17456000
88	250000000		18206000
89	260000000		18956000
90	270000000		19706000
91	280000000		20456000
92	290000000		21206000
93	300000000		21956000
94	310000000		22706000
95	320000000		23456000
96	330000000		24206000
97	340000000		24956000
98	350000000		25000000



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## **SEGMENT 2**

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# **“COMPREHENSIVE VIEW” OF COMPANIES ACT, 2013**

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# PREFACE

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# CHAPTER I

## PRELIMINARY – LEGAL TERMINOLOGIES

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### ❖ Important Definitions

#### ➤ Associate Company

A company in which the company has a **significant influence**, but which is not a subsidiary company of the company having **such influence** and includes a **joint venture company**.

**Explanation 1: “Significant Influence** “means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

**Explanation 2: “Joint Venture”** means a joint arrangement whereby parties that have joint control of the arrangement have rights to the net assets of the arrangement.

#### ➤ “Body corporate” or “Corporation”

It includes a company incorporated outside India, but does not include

- ✓ a co-operative society registered under any law relating to co-operative societies; and
- ✓ any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

#### ➤ Financial statement

in relation to a company, includes—

- ✓ a balance sheet as at the end of the financial year;
- ✓ a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- ✓ cash flow statement for the financial year;

**Provided** that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

- ✓ a statement of changes in equity, if applicable; and
- ✓ any explanatory note *annexed* to, or forming part of, any document referred to in above-mentioned clauses

#### ➤ Financial Year

In relation to any company or body corporate, financial year means

- ✓ The period ending on the 31st day of March every year, and

- ✓ Where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year in respect whereof financial statement of the company or body corporate is made up.

E.g.: -

Date of incorporation	Financial Year
On or after 01.01.2022	Date of incorporation to 31.03.2023
On or before 31.12.2021	Date of incorporation to 31.03.2022

- ✓ Where a company or body corporate, which is
  - a holding company or
  - a subsidiary company or
  - an associate company

of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the company may make an application to the Central Government, who may allow any period as its financial year, whether or not that period is a year.

### ➤ **Foreign company**

A company or body corporate incorporated outside India which:

- ✓ Has a place of business in India whether by itself or through an agent, physically or through **electronic mode** and
- ✓ Conducts any business activity in India in any other manner

### ➤ **Member**

In relation to a company, means—

- ✓ The subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company and on its registration, shall be entered as a member in its register of members.
- ✓ Every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company.
- ✓ Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

### ➤ **Officer 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:—

- ✓ Whole-time director
- ✓ Key Managerial Personnel
- ✓ **In case 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.

- ✓ **In case where no such director is specified, all the directors shall become officer in default**

**Explanation:** In accordance with Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014, when a company charges any person with the responsibility of complying with the provisions of the Act, it has to file Form GNL-3 along with the consent from the person so charged in this behalf.

- ✓ **Authorised Person-**

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

- ✓ **Shadow Personnel-**

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**

- ✓ **Willful contravener-**

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

- ✓ **RTA's/MB's –**

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.

### ➤ **Key Managerial Personnel**

In relation to a company, means—

- ✓ the Chief Executive Officer or the managing director or the manager;
- ✓ the Company Secretary;
- ✓ the Whole-Time Director;
- ✓ the Chief Financial Officer;
- ✓ such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- ✓ such other officer as may be prescribed

### ➤ **Private Company**

A company, having a minimum paid-up share capital, as may be prescribed and which by its articles,—

- ✓ restricts the right to transfer its shares and
- ✓ except in case of OPC, limits the number of its members to 200 and
- ✓ prohibits any invitation to the public to subscribe for any securities of the company



**NB.:-**

○ **Joint shareholders**

*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.*

○ **Not considered as member**

(a) *Persons who are in the employment of the company, and*

(b) *Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.*

➤ **“Promoter”** means a person

- ✓ who has been named as such in a prospectus or
- ✓ who is identified by the company in the annual return referred to in section 92; or
- ✓ who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- ✓ in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

**Provided that nothing in third clause shall apply to a person who is acting merely in a professional capacity;**

➤ **“Related party”**, with reference to a company, means—

- ✓ a director or his relative;
- ✓ a key managerial personnel or his relative;
- ✓ a firm, in which a director, manager or his relative is a partner;
- ✓ a private company in which a director or manager or his relative is a member or director;
- ✓ a public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
- ✓ anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- ✓ any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

Any body corporate which is—

- a holding, subsidiary or an associate company of such company;
- a subsidiary of a holding company to which it is also a subsidiary; or
- an investing company or the venturer of the company;

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

- ✓ such other person as may be prescribed;

**Rule 3: Related Party:**

For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

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

- ✓ they are members of a Hindu Undivided Family;
- ✓ they are husband and wife; or
- ✓ one person is related to the other in the manner as prescribed below:
  - Father, provided that the term “Father” includes step-father
  - Mother, provided that the term “Mother” includes step-mother
  - Son, provided that the term “Son” includes step-son
  - Son’s wife
  - Daughter
  - Daughter’s husband
  - Brother, provided that the term “Brother” includes step-brother
  - Sister, provided that the term “Sister” includes step-sister

- **Small Company**

- ✓ A private company having —
    - paid-up share capital up to ₹10 crore
- “AND”**
- turnover of which as per the profit and loss account for the immediately preceding financial year is up to ₹100 crore

**It is to be noted that following shall not be considered as a small company even though the paid up capital and turnover falls below the above-mentioned limits:**

- Public company,
- a holding company,
- a subsidiary company,
- Section 8 companies,
- a company or body corporate governed by any special Act

➤ **Subsidiary Company**

“**Subsidiary Company “or” Subsidiary**”, in relation to any other company (that is to say the holding company) means a company in which the holding company —

- ✓ **Controls** the composition of the Board of Directors or
- ✓ Exercises or controls more than 50% of the total voting power either at its own or together with one or more of its subsidiary companies

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

**NB.:-**

- **Deemed subsidiary**— a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company.
- The composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion **can appoint or remove all or a majority of the directors**
- The expression “company” includes any body corporate
- “Layer” in relation to a holding company means its subsidiary or subsidiaries



## CHAPTER II

# INCORPORATION OF COMPANIES

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### I. FORMATION OF COMPANIES

The incorporation of a company refers to the legal process that is used to form a corporate entity or a company. An incorporated company is a separate legal entity on its own, recognized by the law. These corporations can be identified with terms like 'Private Limited' or 'Limited' or 'OPC' etc. in their names. It becomes a corporate legal entity completely separate from its owners.

✓ **Company may be formed for a lawful purpose as a**

- Public company with 7 or more members
- Private Company with 2 or more members
- One person company with only 1 member

✓ **Company may be formed with**

- Limited by shares
- Limited by Guarantee
- Unlimited Company

✓ **In pursuant to the Companies Act, 2013, a Company in India can only be incorporated through SPICE+ ((Simplified Proforma for Incorporating Company electronically Plus)**

✓ **SPICE+ is further categorised into:**

- SPICE+ Part A
- SPICE+ Part B

✓ **E-Form SPICE+ Part A is a single form for application for reservation of name only.**

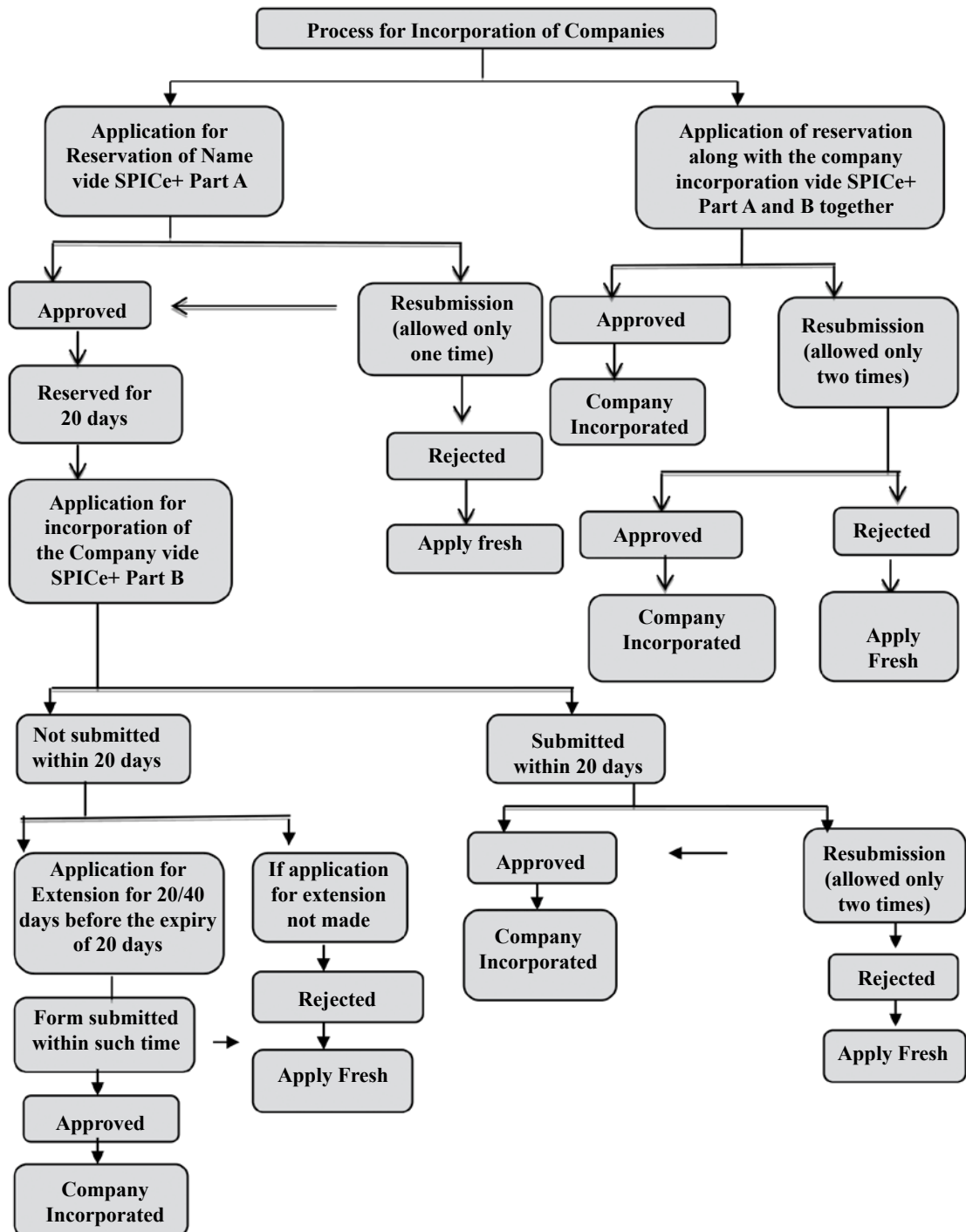
✓ **E-Form SPICE+ Part B is a single form for:**

- Application for incorporation of a company can be made through SPICE+ Part B separately after the name is approved by CRC or simultaneously with SPICE+ Part A.
- application for allotment of DIN (Maximum three Directors are allowed for using this integrated form for allotment of DIN)
- Incorporation of a new company;
- Application for PAN
- Application for TAN
- Application for Registration of GST in form AGILE Pro (optional)

- Application for Registration of Employees' State Insurance Corporation (ESIC), Employees' Provident Fund Organization (EPFO), Professional Tax Registration and Bank Account Opening in form AGILE Pro Application for the verification of corresponding office being registered office may be made in integrated form.

The process of incorporation is as follows:

→ → →



### ➤ **Name Reservation**

- ✓ The first step in the incorporation of any company is to choose an appropriate name.
- ✓ The company's name must end with 'Limited' if it's a public company, 'Private Limited' if it's a private company and 'OPC' if it's a One Person company.
- ✓ Every company shall have name which represents its separate identity.
- ✓ *Such name* is used on all company documents including letterhead and other stationary.
- ✓ Application for reservation of name can be made through SPICe+ Part A separately or together with SPICe+ Part B
- ✓ Some of the important points which need to be considered before deciding a name are as follows:
  - **Name of company shall not be such that-**
    - Is identical or too nearly resemble to the name of any existing company and Limited liability partnership firm
    - Is undesirable in the opinion of the Central government.
    - Constitute an offence under any law for time being in force.
    - **Prior CG Approval** If proposed name Contain any word or expression that gives an impression that the company is connected with or having the patronage of the Central or/and State Government or corporation or body corporation by the Central or State government under any law for time being in force, such as Board; Commission; Authority; Undertaking; National; Union; Central; Federal; Republic; etc.
- ✓ **Name of company shall end with:**

Type of companies	Domain/suffix
One person Company	OPC or One person Company
Private company	Private Limited
Public Company	Limited
Nidhi Company	Nidhi Limited
Section 8 company	Foundation, Association, Forum, chamber, Trust, Council and a like
Producer Company	Producer Company Limited
Unlimited Company	Unlimited/Private Unlimited
IFSC company	IFSC Limited/Private Limited

- ✓ **Manner of name reservation application**
  - Web based application for reservation of name through Spice+ Part A
  - Two names are allowed to be entered based on priority.
  - Names shall be reserved for a period of 20 days

Application for Extension for 20/40 days before the expiry of 20 days can be made on the payment of additional fees.

- ✓ Following are some of the important points where Name will be undesirable in the opinion of Central Government (**Central Registration Centre**) if:
- Name is prohibited under the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950, unless a previous permission has been obtained under the Act
  - Name is identical or similar to an existing domestic/foreign company's or LLP's Name
  - Name is a popular/close abbreviated description of an existing company's or LLP's Name
  - Name include a name of a registered trade mark or a trade mark which is subject of an application for registration
  - Name include the word "British India"
  - Any part of the proposed name includes the words indicative of a separate type of business constitution or legal person e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm
  - Proposed name implies association or connection with an embassy or consulate of a foreign government
  - the proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in the Government
  - Where the company/LLP's has been closed by any of the following routes, the name of the company shall not be available for following periods:-

Particulars	Time limit
Dissolved by way of liquidation	2 Years
Strike off U/S 248	20 Years
LLP Dissolved/struck off	5 Years

- Where a company has changed its name, previous name shall not be available for a period of 3 years unless competent authority directs
- If the name includes words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc.

**However, if a declaration is submitted by the applicant stating that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant, the application may be approved.**

- The word "STATE" can be used in a proposed name only if company is a government company
- The proposed name is containing only the name of a continent, country, state, and city such as Asia limited, Germany Limited, Haryana Limited, Mysore Limited.
- Where the proposed name includes name of foreign country/city, it may be allowed provided the applicant produces proof of significance of business relations with such foreign country such as memorandum of understanding.
- Use of descriptive names where the name merely consists of commonly used words to describe activities like Cotton Textile Mills Ltd. or Silk Manufacturing Ltd., and not Lakshmi Silk Manufacturing Co. Ltd.

✓ **Declarations by Applicant:** —

The applicant shall declare in affirmative or negative (to affirm or deny) whether he is using or has

been using in the last five years, the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not.

➤ **Where Foreign National are subscribers and/or Directors**

- Where subscriber to MOA is foreign National Residing outside India then his signatures and address on Memorandum of Association and Article of Association shall be attested as follow:

If subscriber is residing in a country which is a:

Particulars	Details
Commonwealth Country	Notary (Public) in that part of Country
Hague apostils Convention Country	Notary (Public) of such country and duly apostilled
Other country	Notary (Public) of such country along with authentication by Diplomatic or Counsellor officer
If person visited India	Company can be incorporated only if he visits India with <b>Valid Business visa</b> . Business visa is not required if the person is of Indian Origin

**NB.:-**Here, Indian Origin means, means a foreign citizen (except a national of Pakistan, Afghanistan, Bangladesh, China, Iran, Bhutan, Sri Lanka and/or Nepal), who:

- At any time held an Indian passport; or
  - Either of their parents/grandparents/great-grandparents were born and permanently resident in India as defined in Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any of the aforesaid countries; or
  - Is a spouse of a citizen of India or a Person of Indian Origin.
- Where the proposed Director (whether having DIN or not) is a national of a country which shares land border with India, necessary security clearances from the Ministry of Home Affairs, Government of India is required to be attached in the Form SPICE+ Part B.

➤ Company shall attach the following documents along with **FORM INC-22/SPICE+ Part B:**

If premises is in the name of company	If premises is taken on lease or rent
<p><b><u>Documents required:</u></b></p> <ul style="list-style-type: none"> <li>✓ Title deed/purchase deed in the name of company</li> <li>AND</li> <li>✓ Utility bill as Ownership Proof (Attested by owner): Any of following (not older than 2 months):</li> <li>• Phone/mobile bill</li> <li>• Electricity bill</li> <li>• Gas bill</li> <li>• Water bill</li> </ul>	<p><b><u>Documents required:</u></b></p> <ul style="list-style-type: none"> <li>✓ Notarized copy of lease or rent agreement;</li> <li>✓ Rent receipt (not older than One month);</li> <li>✓ NOC from the owner for use of premises as registered office;</li> <li>AND</li> <li>✓ Utility bill as Ownership Proof (Attested by owner): Any of following (not older than 2 months):</li> <li>• Phone/mobile bill</li> <li>• Electricity bill</li> <li>• Gas bill</li> <li>• Water bill</li> </ul>



➤ **Additional pre-requisites for different kind of companies:**

**A. Nidhi company**

- Shall incorporate as public company
- Minimum equity paid up capital being ₹10,00,000/-
- Object-only to cultivate habits of thrift and saving among its members
- Shall not admit body corporate and trust as its members
- Shall ensure that members are not less than 200 within one year of incorporation and thereafter at any time.

**B. Producer company**

- Incorporated as private company, by primary producers (like farmers, artisans) to handle their produce, but do not include word Private in its name
- Have 10 or more individuals as members or 2 or more producer institution or Any combination thereof

**C. One person company**

- It shall be incorporated as a private limited company.
- It should have minimum 1 Director
- Only a natural person who is a citizen of India (whether resident or otherwise) can form OPC
- It should have a nominee for its sole member & its memorandum should also contain the name of the nominee who shall be a natural person.
- A person cannot be a member or nominee for more than one OPC.
- No Minor shall become a member or nominee or hold shares of the OPC.
- It shall not carry out any non-banking financial investment activities including investment in corporate securities.
- It shall not be incorporated or converted into section 8 company

*NB.: For the purpose of incorporating OPC, a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year shall be considered as a resident.*

**D. Section-8 company, i.e. company with charitable object**

- Company having:
  - ★ object to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
  - ★ intends to apply its profits, if any, or other income in promoting its objects; and
  - ★ prohibit the payment of any dividend to its members,
- may be granted with license by Government to pursue the object under the name of the company without adding the word “Limited”, or as the case may be, the words “Private Limited”,
- Company shall be incorporated as a limited company
- A firm may be a member of the company registered under this section.

- Section 8 Company shall not alter its article or memorandum of association with the prior permission of Central Government

➤ **Display of Company Name and Registered Office Details**

- ✓ Every company shall at all times:
  - 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.
  - If the characters employed are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages.
  - Mention Goods and Service Tax Identification Number, if any.
- ✓ In case the company has changed its name or names during the last two years, it shall paint or affix the former names also along with new name so changed during the last two years.
- ✓ Company documents including the letter head & other stationary shall contain the name, CIN, email address, web address (if any) registered office address and phone number of the company.
- ✓ If the company has changed its name, it has to show its former name on the boards, letterheads or other documents wherever the name appears for two years from such change.

**II. CONVERSION OF ENTITIES INTO COMPANIES**

➤ **Following are the entities which are eligible to be converted into a Company under the Companies Act, 2013:**

- ✓ Partnership firm,
- ✓ Limited Liability Partnership,
- ✓ Cooperative Society,
- ✓ Society
- ✓ Any other business entity formed under any other law for the time being in force which applies for registration under Part I of Chapter XXI of the Companies Act, 2013.

➤ **The conversion will not be treated as a transfer of property within the meaning of Section 47 of the Income Tax Act, 1961, subject to the fulfilment of the following conditions:**

- ✓ All the assets and liabilities of the firm or of the association of persons or body of individuals relating to the business immediately before the succession become the assets and liabilities of the company
- ✓ All the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of the succession.
- ✓ The partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company.
- ✓ the aggregate of the shareholding in the company of the partners of the firm is not less than fifty per cent of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession.

➤ **Key benefits of the process of converting Partnership Firm into a Company.**

- ✓ There is automatic transfer i.e. all the assets and the liabilities of the firm, just before the conversion, become the assets and liabilities of the company.
- ✓ There is no stamp duty on such transfer from Firm to Limited Company. The entire movable and the immovable properties of the firm get vested into the company automatically. There is no requirement of an instrument of transfer to be executed, so there is no stamp duty required to be paid.
- ✓ No capital gain tax is also charged on transfer of property from partnership firm to company. The goodwill of the partnership firm and its brand value is always kept intact and one can continue enjoying the previous success story with a better legal recognition.
- ✓ The accumulated loss and un-absorbed depreciation of partnership firm are considered to be loss/depreciation of the successor company for the previous year in which the conversion was done.
- ✓ This loss can be carried forward for the next eight years by the successor company.
- ✓ The partnership firm and the private limited company are entirely two different legal entities. They also have different legal liabilities.

➤ **Brief Process of Conversion of Limited Liability Partnership or Firm into Company:**

✓ **Important provisions/conditions of under the Companies Act, 2013**

- A company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee.

**NB.:**

*LLP may be converted into Company limited by Guarantee if resolution to this effect is passed and attached to the application at the time of conversion.*

- A company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;
- A company shall not register without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;
- Where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting.
- Shall have paid up capital or nominal share capital divided into shares or transferable stock
- Shall have minimum seven partners to be registered as public company, otherwise to be registered as private company
- If any proceeding is pending, a declaration in respect of the same shall be attached to the application.

✓ **Key points to be kept in mind:**

- List of the partners intended to undertake the shares of the proposed company shall not be more than 6 days old from the date of making application of conversion
- If any person not having DIN proposed to become Director of the proposed company he shall obtain Directors Identification Number before making application of conversion

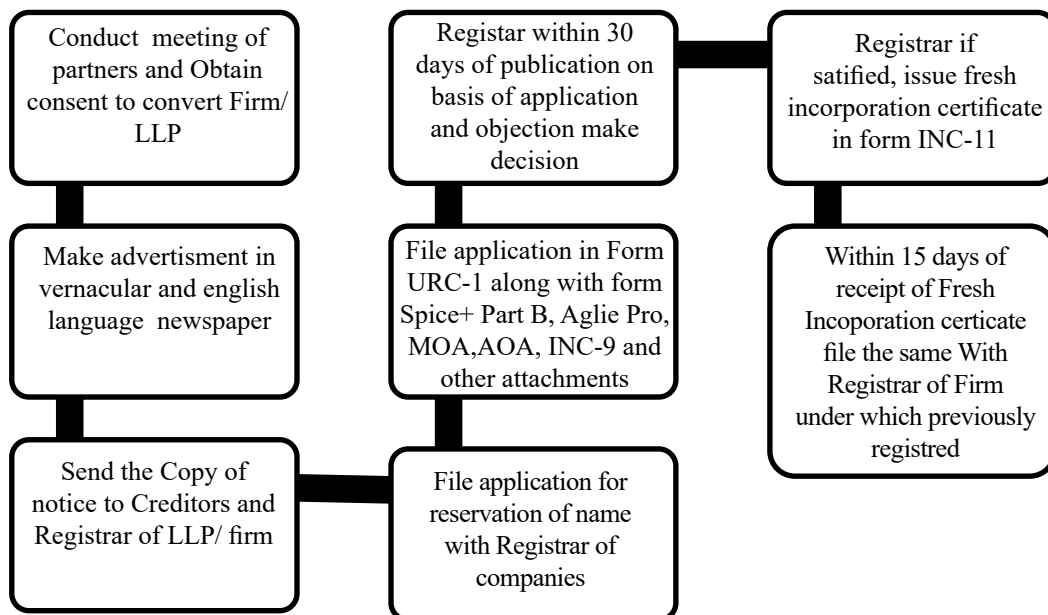
- Following documents to be attached with the application made in e-form URC-1:

1	Limited Liability partnership to be converted in to company having shares capital	<ul style="list-style-type: none"> <li>• List of all partners containing names, addresses, occupation with detail of shares held by them.</li> <li>• List of particulars showing the details of proposed Directors including their DIN, passport Number (if any), residential address, and their interest in other firm or body corporate and their consent to act as the Director of the proposed company.</li> <li>• Partnership deed/bye-laws along with latest deed or bye-laws (In case altered at any time) together with certificate of registration.</li> <li>• No Objection Certificate from secured Creditors</li> <li>• Written consent of partners allowing conversion</li> <li>• Undertaking the proposed directors shall comply with the requirements of Indian Stamp Act, 1899.</li> <li>• Latest income tax return</li> <li>• Not more 15 days preceding Statement of accounts and certificate of Auditor together with Audited financial statements</li> </ul>
2.	Limited Liability partnership to be converted in to a company limited by guarantee or an unlimited company	<ul style="list-style-type: none"> <li>• List of all partners containing names, addresses, occupation along with proof of membership</li> <li>• List of particulars showing the details of proposed Directors including their DIN, passport Number (if any), residential address, and their interests in other firms or body corporates and their consent to act as the Director of the proposed company</li> <li>• Partnership deed/bye-laws along with latest deed or bye-laws (In case altered at any time) together with certificate of registration.</li> <li>• Resolution approving the conversion into Company limited by guarantee</li> <li>• No Objection Certificate from secured Creditors</li> <li>• Written consent of partners allowing conversion</li> <li>• Undertaking the proposed directors shall comply with the requirements of Indian Stamp Act, 1899.</li> <li>• Latest income tax return</li> <li>• Not more 15 days preceding Statement of accounts and certificate of Auditor together with Audited Financial Statements</li> </ul>

- Form URC-1 shall be filed with the Spice+ Part B, e-AOA, e-MOA, Agile Pro and INC-9.
- ✓ Advertisement in form URC-2 inviting objection within 21 days of publication in vernacular language and English language to be made in the newspaper of respective language.

- ✓ Attach in application to Registrar (LLP) copy of notice in form of advertisement along with proof of sending of notice.

➤ **Steps for conversion of LLP/Firm into Company**



## CHAPTER III

# MODES OF RAISING FUNDS

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### ❖ EQUITY FINANCING

- Under the Companies Act, 2013, equity financing refers to raising funds by a company through the issuing **share capital**, which includes **equity shares as well as preference shares**. While preference shareholders do not usually have voting rights like equity shareholders, they are still owners of the company and receive a preferential right to dividend and repayment of capital. This can be done through:
  - Rights Issue - Issue of shares to existing shareholders in proportion to their holdings.
  - Preferential allotment
  - Private Placement - Issue of securities to a selected group of persons (not exceeding prescribed limits).
  - Public Issue (IPO/FPO) Issue of shares to the public through prospectus.

### ❖ DEBT FINANCING

- Under the Companies Act, 2013 Debt Financing involves raising funds by borrowing. The company is obligated to repay the principal amount along with interest within a specified period, regardless of its profitability. This can be done through:
  - Issue of Debentures -whether Secured or unsecured.
  - Deposits -Deposits accepted from members or public (subject to conditions)
  - Bank Loans & Financial Institution Borrowings -Term loans, cash credit, overdrafts, etc.

### ❖ EQUITY FINANCING:

#### ❖ Rights issue of shares

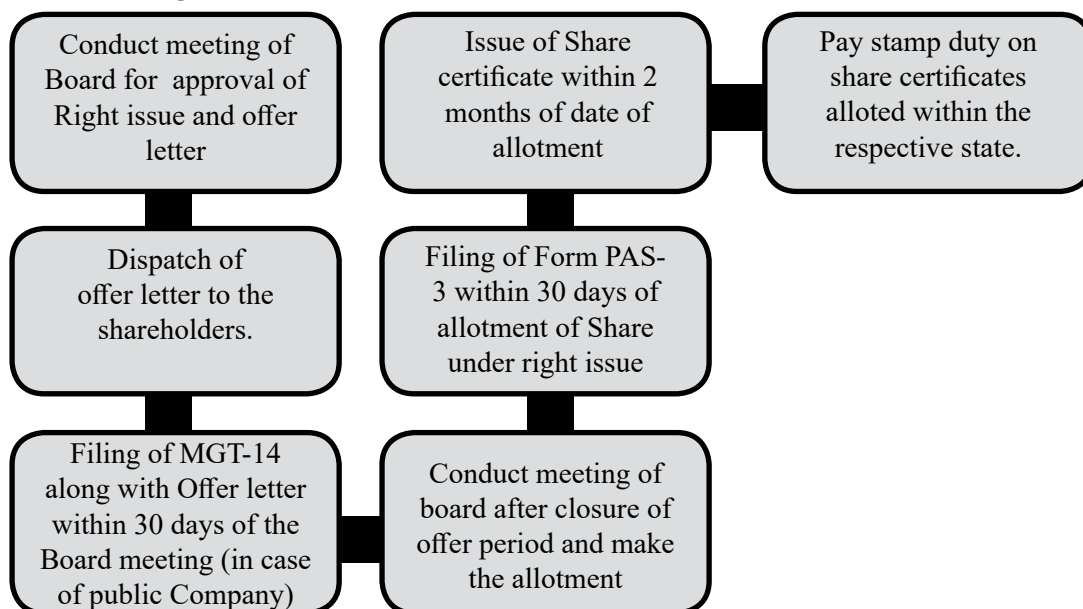
- ✓ **A Rights issue is an invitation to ‘existing shareholders’ to purchase additional new shares in the company in the proportion of the shares already held by them.**
- ✓ Existing shareholders means persons whose names are registered as members of the company in the register of members as on the record date fixed by the Board of Directors.

*Explanation: The record date for rights issue is the cut-off date as on which a company takes out a list of existing shareholders holding the stock of the company to determine the eligible shareholders for the rights issue*

- ✓ Offer for right issues will remain open for a minimum of 7 days and maximum of 30 days. However, in case 90% of the members of a private company have given their consent in writing or in electronic mode, the period for sending of letter of offer or issue open period may be reduced.

- ✓ The notice of offer in case of right issue shall be dispatched to all the existing shareholders at least 3 days before the opening of the issue.

### ➤ Procedure of Right issue



### ❖ Preferential Allotment

**Preferential Allotment means issue of shares or other securities, by a company to any select person or group of persons on a preferential basis.**

For the purpose of preferential allotment “shares or other securities” means equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date.

- ✓ Following issues, whether or not made in India, are not preferential allotment:
  - offer through a public issue
  - rights issue
  - employee stock option scheme
  - employee stock purchase scheme or
  - an issue of sweat equity shares or
  - bonus shares or
  - depository receipts
- ✓ The Article of Association of the company shall contain a clause authorizing the company to raise capital through preferential allotment.
- ✓ Issue of shares through preferential allotment shall only be done if the proposal has been previously approved by the shareholders of the company by way of a special resolution.
- ✓ The allotment of securities on a preferential basis shall be completed within a period of 12 months from the date of passing of special resolution. If the securities are not allotted within 12 months, another special resolution shall be passed for the company to complete such allotment thereafter.
- ✓ Company shall issue Offer Letter in PAS-4 and shall maintain a complete record of offers in Form PAS-5.
- ✓ Price at which shares are offered shall not be less than the price of the shares determined in the valuation report of registered valuer.

- ✓ Price of shares to be determined on the basis of valuation report of the registered valuer, whether or not shares are issued for cash or consideration other than cash except in case of Listed Company.
- ✓ Issue on Preferential basis should also comply with the conditions of Private Placement.
- ✓ Where preferential allotment is made to one or more existing members only, a person other than the person so addressed in the offer letter may be allowed to apply through such application form

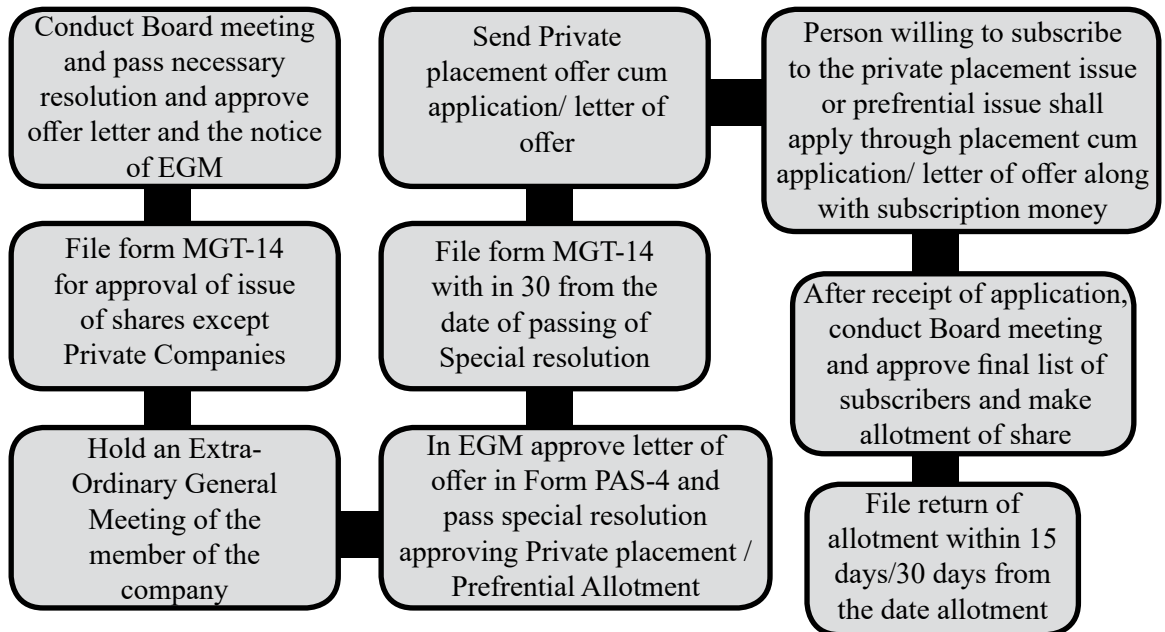
### ❖ **Private Placement**

**Private Placement means securities offered for subscription by the company to the selected group of the person i.e. Identified Persons**

- The Article of Association of the company shall contain a clause authorizing the company to raise capital through private placement.
- Issue of shares through private placement shall only be done if the proposal has been previously approved by the shareholders of the company by way of a special resolution for each of the offers or invitations.
- Private Placement offer of securities can be made to a maximum of 200 persons in a financial year. The limit of 200 excludes Qualified Institutional Buyers and Employees.
- A company can't come with Private Placement offer until earlier offer is completed or withdrawn.
- A Company shall issue private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed with the Registrar.
- A private placement offer cum application letter shall be in the form of an application in Form PAS-4 serially numbered and addressed specifically to the person to whom the offer is made and sent to him within 30 days of recording the name of such person.
- A Company shall not make any offer or invitation of any securities, via private placement, to a body corporate incorporated in, or a national of, a country which shares a land border with India (i.e. China, Bhutan, Nepal, Pakistan, Bangladesh and Myanmar), 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 Form PAS-4.
- Private placement cum application shall not carry any right of renunciation.
- Date of private placement offer letter shall be deemed to be the date of circulation of private placement offer letter.
- The company shall maintain a complete record of private placement offer in Form PAS-5.
- Company can utilize the application money only after the allotment has been done and return of such allotment in Form PAS-3 has been filed with the concerned Registrar within 15 days of allotment in Form PAS-3.
- Private Placement offer shall be completed within the period of 12 months from the date of passing of Special resolution of such issue.
- If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than 200 persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognized stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Chapter III part I of the Companies Act, 2013 i.e. Prospectus and Allotment of Securities.



❖ **Procedure of Preferential issue/Private placement:**



❖ **Issue of Preference Shares Capital**

Preference share is a good tool to arrange finance for a company without parting with ownership rights of the company, unlike equity shares.

- ✓ Preference shares carries preferential right with regard to:
  - Payment of dividend either at a fixed amount or an amount calculated at a fixed rate, and
  - Repayment of share capital in the event of winding up of the company.
  - Preference shares can be issued at pre-determined dividend rate.
  - Dividend paid on preference shares can be cumulative (interest is accumulated and paid on a specific date) or non-cumulative (interest is not accumulated and paid yearly).
  - Preference shares can be convertible i.e. it can be converted to equity shares on a specified date or non-convertible.
- ✓ Preference shares can be issued through any mode discussed above.

❖ **Key provisions to be kept in mind while issuing of securities:**

- ✓ Before raising further capital, ensure that proposed respective issued capital is within the limit of authorized share capital of respective share of the company and if not then alter the capital clause in the memorandum of the company.
- ✓ Share application money can be accepted **through a banking channel only**.
- ✓ Acceptance of application money in cash is completely prohibited.
- ✓ The price of the security has to be justified and the same shall be determined on the basis of valuations report given by registered valuer except in case of right issue, bonus issue and ESOP.
- ✓ Where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation.

- ✓ Every company shall file a copy of special resolution passed with respect to the approval of issue of securities, including debentures, with the Registrar of Companies
- ✓ The offer letter shall be sent to persons, either in writing through registered post or speed post or courier or through any other mode having proof of delivery or in electronic mode.
- ✓ Company can issue shares with differential voting rights subject to cap of seventy four per cent. of total voting power including voting power in respect of equity shares with differential rights issued at any point of time and fulfill the other conditions specified in Rule 4 of “Companies (Share Capital and Debenture) Rules, 2014”.
- ✓ Application money shall be deposited in separate bank account opened in the name of the company and the allotment shall be made in respect to the subscription money received in that bank account. In any case, subscription money shall not be received in regular bank account opened in the name of the company.
- ✓ Company shall allot securities **within 60 days from** the date of application. If not allotted within 60 days, entire amount should be repaid along with interest by the company within 15 days to the respective applicants. If not repaid within prescribed time, then from the 76th day it will be treated as deposit.
- ✓ Return of allotment shall be filed with the ROC in Form PAS-3 within 15 days in case of Private Placement and within 30 days in any other case.
- ✓ Company is prohibited to issue shares on discount, except the following issue:
  - Issue of sweat equity shares.
  - Issue shares to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.
- ✓ The Director/Company Secretary who has signed the list of allottee shall only affix his/her DSC in Form PAS-3 wherein such list of allottee is to be attached.
- ✓ Shares issued for consideration other than cash should be executed as an agreement which is duly stamped and signed by either parties, and if agreement is not reduced to writing then complete details of contract shall be filed with ROC in form PAS-3 along with valuation report.
- ✓ Valuation report wherever required, shall be attached to PAS-3.
- ✓ In case of Private and preferential allotment, the Company can utilize the application money only after
  - the allotment has been done and
  - return of such allotment has been filed with the concerned registrar
- ✓ Certificate of securities shall be issued within 2 months from the date of allotment in case of shares and 6 months in case of debentures from the date of allotment.
- ✓ No offer or invitation of any securities under Private placement and preferential allotment shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, 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.
- ✓ Unlisted public company and Private company other than small company cannot make any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer unless

- entire holding of securities of its promoters, directors, key managerial personnel has been dematerialized in accordance with provisions of the Depositories Act 1996 and regulations made there under, and
- all the payments to depositories or registrar to an issue and share transfer agent are made

❖ **Additional requirements for Public Limited company:**

- ✓ Every public company shall file with the concerned Registrar, copy of the **Board resolution** with respect to approval to issue securities, including debentures, whether in or outside India.

❖ **DEBT FINANCING**

❖ **Issue of Debentures**

- ✓ A company can issue debentures with an option to convert such debentures into shares either wholly or partly at the time of redemption of debentures.
- ✓ A company can issue both secured or unsecured debentures;
- ✓ No debentures shall have voting rights.
- ✓ Secured debentures can be issued upon fulfilling required conditions.

❖ **Acceptance of Deposits by the Company:**

➤ **Definition of ‘deposit’**

“**Deposit**” includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such **categories of amount** as may be prescribed in consultation with the Reserve Bank of India;”

Following Companies not covered under the provision of Deposits:

- ✓ Banking company;
- ✓ Non-Banking Financial Companies (NBFCs) as defined in the Reserve Bank of India Act 1934 (2 of 1934) registered with the Reserve Bank of India;
- ✓ A company specified by the Central Government under the proviso to sub-section (1) of section 73 of the Act

❖ **Acceptance of Deposits from Members**

✓ **Provisions in respect to acceptance of deposits from members**

- Deposits can be accepted from persons, whose name appears on the Register of Members of the Company
- The company should pass an ordinary resolution seeking authorization for acceptance of deposits;
- **Issuance of circular** to members showing the financial position of the company, the credit ratings obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars **in the Form DPT-1**.
- Filing a copy of the circular with the Registrar of Companies within 30 days before the date of issue of the circular;
- Depositing, on or before the thirtieth day of April each year, such sum which shall not be less

than twenty per cent. 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

- certifying that the company has **not committed any default** in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default
- providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:
- All the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3
- No company shall accept or renew deposit whether, secured or unsecured, which is repayable on demand or upon receiving a notice within a period of less than 6 months or more than 36 months from the date of acceptance or renewal of such deposit.

However, a company may for the purpose of meeting its short-term requirements of funds accept or renew deposits whose repayment is before six months provided, they do not exceed 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company and they are not repayable before 3 months from the date of deposits.

#### ➤ **Quantum of acceptance of deposit**

- Eligible companies can accept deposits from its members where the amount of deposits together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits is up to 10% of the paid-up share capital, free reserves and securities premium account.

Where “**Eligible Company**” is the company which fulfilled all the following conditions:

- Public company having a net worth of not less than one hundred crore rupees or Turnover of not less than five hundred crore rupees;
- **Other than eligible companies** can accept deposits from its members where the amount of deposits together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits is up to 35% of the Paid-up share capital, free reserves and securities premium account.

Provided that following private companies can accept deposits up to 100% of its paid-up share capital, free reserves and securities premium account if:

- It is not an associate or subsidiary of any other company;
- Borrowing of such company from banks or financial institution or body corporate is less than twice its paid-up share capital or ₹50 crores, whichever is less, and
- Such a company has not defaulted in repayment of money at the time of accepting deposit.
- It is start up for ten years from the date of its incorporation.
- IFSC public company and IFSC private company.

*NB.: Limit of paid up share capital, free reserve & Securities Premium should be calculated based on the last audited Financial Statements adopted by the members.*

#### ❖ **Acceptance of Deposits From Public**

- ✓ **Provisions in respect to acceptance of deposits from public**

- Complete prohibition on acceptance of “Deposits from public” by private limited Company.
- Deposits from persons other than members can be accepted by “Eligible Companies” only.
- “**Eligible Company**” is the company which fulfilled all the following conditions:
  - Public company having a net worth of not less than one hundred crore rupees or Turnover of not less than five hundred crore rupees;
- Has obtained the prior consent of the company in general meeting by means of a special resolution;
- Filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.
- All the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3
- No company shall accept or renew deposit whether, secured or unsecured, which is repayable on demand or upon receiving a notice within a period of less than 6 months or more than 36 months from the date of acceptance or renewal of such deposit.

However a company may for the purpose of meeting its short term requirements of funds accept or renew deposits whose repayment is before six months provided they do not exceed 10% of the aggregate of the paid up share capital, free reserves and securities premium account of the company and they are not repayable before 3 months from the date of deposits.

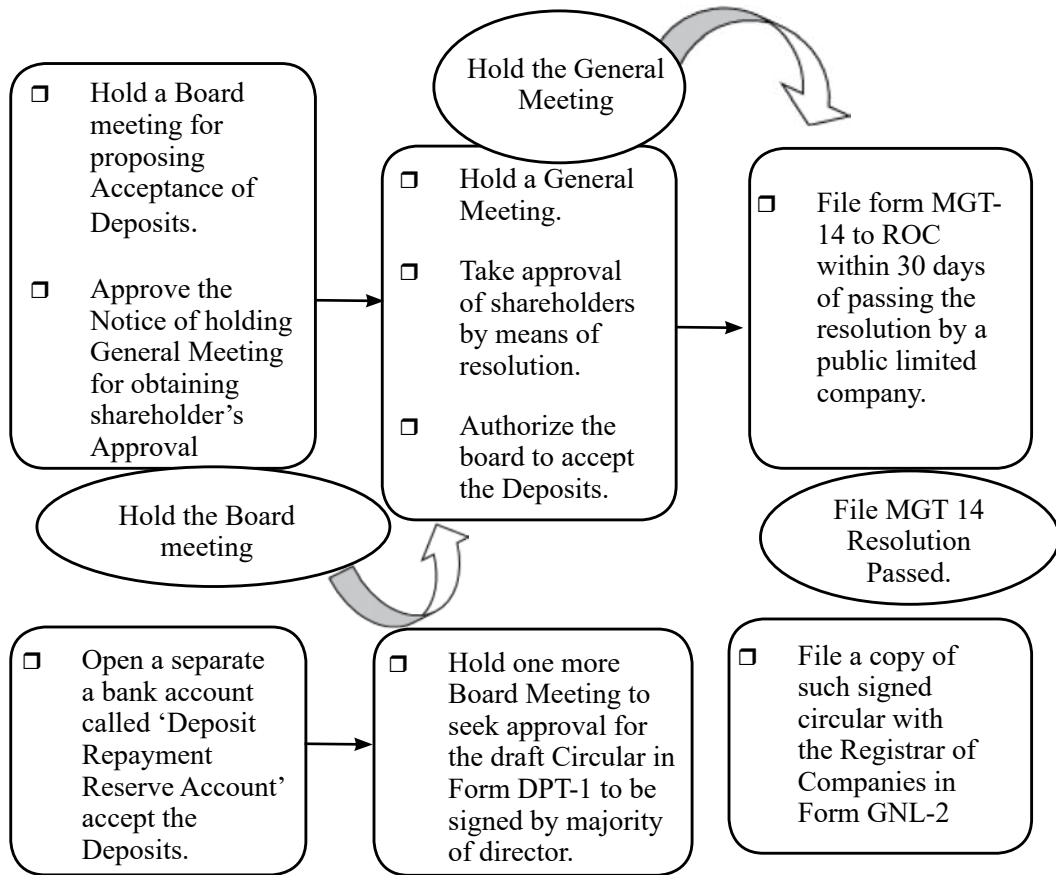
➤ **Quantum of acceptance of deposit:**

- In case of deposits from other persons (not being specifically to members):
    - The proposed deposits including existing deposits (excluding deposits not accepted from members) are more than 25% Paid-up share capital, free Reserves and securities premium account. Therefore, in total an eligible Company can raise deposits up to 35% of the of Paid-up share capital, free Reserves and securities premium account.
- For Government eligible Company, it cannot accept or renew deposit when that proposed deposits including existing deposits are more than 35% Paid-up share capital, free Reserves and securities premium account.

➤ **Points to be remembered in the procedure of acceptance of deposits:**

- ✓ Ensure that the Circular which is to be issued for acceptance of deposits is sent either by electronic mail or registered post AD or by speed post to the members of the company only and not to public or other persons.
- ✓ Appoint Deposit Trustees for creating security for the secured deposits, if any by executing a Deposit Trust Deed in Form DPT-2 at least 7 days before issuing the Circular.
- ✓ Issue deposit receipts in the prescribed format and under the signature of an officer duly authorized by the Board within a period of twenty-one days from the date of receipt of money or realization of the cheque
- ✓ Make entries in the Register of Deposits within 7 days from the date of issuance of the deposit receipt and arrange to get such entries authenticated by a Director or Secretary of the Company or by any other officer authorized by the Board

- ✓ File the return of deposit in Form DPT-3 by furnishing the requisite information contained thereon as on 31st day of March each year duly audited by the Auditors before 30th June every year.



### ❖ Borrowings

#### ➤ **By Way of Loan**

- ✓ The company can take loan from Banks/NBFCs/State Government/Central Government and the like.
- ✓ Any amount received from Directors and their relatives
  - A Private company can accept loan from director and relative of such director. However, a public company can accept loan only from director.
  - Position at the time of taking loan will be considered.
  - Loan can be with or without interest.
  - At the time of giving loan to the company, the director or his relative as the case may be, is required to submit a declaration to the company that the amount of loan given by him is from his own funds and is not being given out from the funds borrowed by him by way of loan or deposit from others.
  - The company is required to mention in its board's report the amount of unsecured loan taken from a director and his relatives.

➤ **Loan from Promoters**

- ✓ Loan is brought in due to the condition imposed by a bank or any lending institution for promoters to bring in funds by way of loan;
- ✓ Loan is provided either by promoters themselves or by their relatives or by both;
- ✓ This loan shall subsist only till there is an outstanding loan from such bank or lending institution and needs to be repaid after the bank or financial institutional loan has been repaid

➤ **Loan from any other Company**

- ✓ Company can take loan from any other company.
- ✓ A Public company shall also ensure that
  - The borrowed money together with the money already borrowed should not exceed the aggregate of its paid-up capital, free reserves and securities premium.
  - A special resolution is passed where the borrowed money exceeds the said limits.



## CHAPTER IV

# FINANCIAL RESTRUCTURING OF COMPANY

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### ❖ Bonus issue

**Bonus Shares are shares distributed by a company to its current shareholders, as fully paid shares free of charge, to capitalize a part of the company's retained earnings for conversion of its share premium account, or distribution of treasury shares.**

- ✓ Following funds can be capitalized for issue of bonus shares:
  - free reserves
  - securities premium account
  - capital redemption reserves
- ✓ Such capitalization of the funds must be authorized by the company in the articles of the company and at general meeting by means of an ordinary resolution.
- ✓ Company shall not be eligible to capitalize its funds if it has:
  - defaulted in payment of interest and/or principle amount in respect of debt securities, or
  - defaulted in contribution to provided fund/gratuity, or
  - outstanding partly paid up shares.
- ✓ Capitalization of revaluation reserve is not eligible for issue of bonus shares
- ✓ Bonus shares cannot be issued in lieu of dividend.
- ✓ The company which has once announced the decision of its Board recommending a bonus issue shall not subsequently withdraw the same.

### ❖ Dividend

- ✓ Dividend refers to sharing of profits of the company with members of the company in proportion to the amount paid up on the share held by them. In other words, dividend is a return on the investment made in the share capital of a company.
- ✓ Every company can pay dividend except for section 8 companies.
- ✓ However, before declaring dividend, if company wishes to transfer certain amount to reserves, it can do so. There is no mandatory requirement to transfer to reserves.

*NB.: A detailed knowledge of dividend can be established from the Chapter – Dividend.*

### ❖ Buy Back

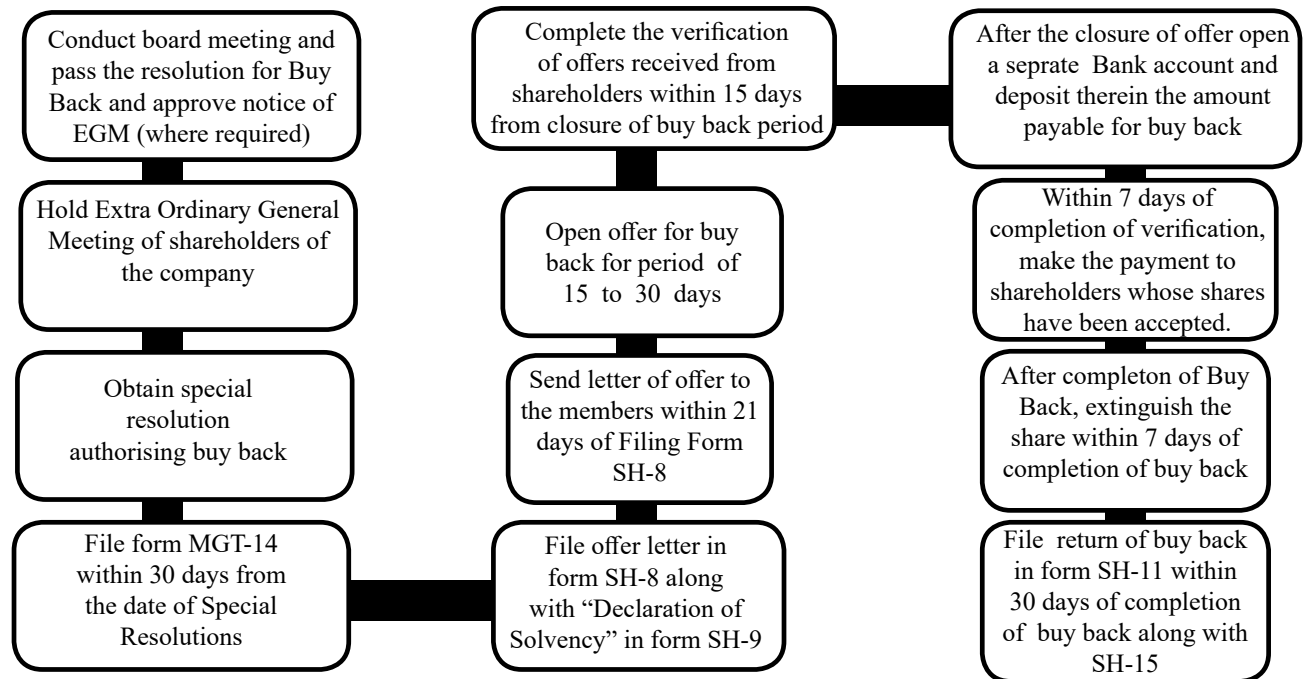
**Buy-Back is a corporate action in which a company buys back its shares from the existing shareholders usually at a price higher than market price. Through buys back, the number of shares outstanding in the market reduces.**



- ✓ Company shall have the authorization to buy back its shares in its articles of association.
  - ✓ **Methods of Buy back:**
    - From the existing shareholders or security holders on a proportionate basis
    - From the open market
    - By purchasing the securities issued to employees of the company under the scheme of ESOP or sweat equity.
  - ✓ **Sources of Buy back**
    - Free reserves
    - Securities premium account
    - Proceeds of issue of shares or other specified securities
  - ✓ Buy back shall not be made out of following funds:
    - Borrowings from the banks or financial institutions and
    - Out of the proceeds of same kind of the shares or securities
  - ✓ The Buy-back offer shall remain open for a minimum of 15 days and maximum of 30 days, however where all the members agree, offer period for buy back may be less than 15 days.
  - ✓ Once the offer of Buy back is made it shall not be withdrawn
  - ✓ Approval of Board of Directors only is required where amount of buy back is up to 10% of paid up equity share capital and free reserves (including securities premium)
  - ✓ Approval of Shareholders is required where amount of buy back is more than 10% but up to 25% of paid-up capital and free reserves (including securities premium)
- NB.:** In respect of Buy-back of equity shares in the financial year, the reference to twenty-five per cent. in this clause shall be construed with respect to its total paid-up equity capital in that financial year.*
- ✓ Post Buy back, debt to equity ratio shall not exceed 2:1 (In case of Government company it shall not exceed 6:1)
  - ✓ All the shares to be bought back, must be fully paid-up.
  - ✓ Minimum gap between two buy back shall be 1 year from the closure of earlier buy back.
  - ✓ Buy back shall be completed within 1 year from the date of passing of Special resolution.
  - ✓ A Company cannot buy back its shares if it has failed in:
    - ✓ repaying deposits or redemption of debentures or interest thereon, or
    - ✓ redeeming preference share or payment of dividend thereon, or
    - ✓ repaying matured loan or interest payable thereon due from the financial institution, or
    - ✓ Complying with provisions of annual filing of ROC and declaration and payment of dividend

- ✓ If the securities offered for buy back are more than the securities to be bought back, the company shall accept the buy back on proportionate basis.

#### ❖ **Events and Action Points**



#### ❖ **MERGER**

Merger and Acquisition has been the most popular means of inorganic expansion of companies over the years. It is extensively used for restructuring the business organizations. Companies undertake mergers and acquisitions based on strategic business motivations that are, in principle, economic in nature.

#### **Laws Governing mergers and acquisitions in India**

*The Companies Act, 2013*

Section 230-240 of the act covers the provisions relating to mergers and acquisitions including arrangements that cover companies, their members, and creditors. All sections except Section 234 became effective on 15th December 2016 and Section 234 was notified on 13th April 2017.

Apart from these sections, we have The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ('CAA RULES')

#### **MERGERS AND ACQUISITIONS BY APPROVAL OF NCLT**

- Since a merger essentially involves an arrangement between companies, those companies which intend to merge must make an application to the National Company Law Tribunal ("NCLT") having jurisdiction over such companies for
  - (i) convening meetings of its respective shareholders and/or creditors; or
  - (ii) seeking dispensation of such meetings basis the consents received in writing from the shareholders and creditors.

- A company or a body corporate, which has been incorporated in a country that shares a land border with India, shall furnish a declaration in Form CAA 16, stating that if they need prior approval from the Government of India under FEMA NDI Rules, to make an application for merger or demerger with an Indian company.
- Basis the NCLT order, either a meeting is convened or dispensed with.
- If the majority in number, representing 3/4th in value of the creditors or shareholders present and voting at such meeting (if the meeting is held) agree to the merger, then the merger, if sanctioned by the NCLT, is binding on all creditors and shareholders of the company.
- The Merger Provisions constitute a comprehensive code in themselves, and under these provisions, the NCLT has full power to sanction any alterations in the corporate structure of a company.
- Under Section 231, Power is with NCLT to enforce compromise and arrangement by
  1. Accepting the proposal
  2. Modifying the proposal and
  3. Lastly by rejecting the proposal

### **FAST TRACK MERGERS**

Section 233 is read with Rule 25 of CAA rules talks about fast track mergers. This section was inserted to prevent companies from going through a lengthy procedure given under Section 232. Provided they need to have approval from shareholders, directors, creditors of the company. In short, each person is directly related to a company.

#### **Fast track Merger schemes can be vested between the following companies:**

1. Holding Company and its wholly-owned subsidiary company;
2. The merger between two or more small companies;
3. Two or more start-up companies
4. One or more start-up company with one or more small company
5. one or more unlisted company, (not being company referred to in section 8 of the Act) with one or more unlisted company, (not being company referred to in section 8 of the Act), where every company involved in the merger, –
  - (a) has, in aggregate, outstanding loans, debentures or deposits not exceeding two hundred crore rupees, and
  - (b) has no default in repayment of loans, debentures or deposits referred to in sub-clause (a), on a day, not more than thirty days before the date of notice referred to in clause (a) of sub section (1) of section 233 of the Act and on the date of filing of scheme under sub-section (2) of section 233 of the Act.
6. a holding company (listed or unlisted) and a subsidiary company (listed or unlisted), provided that this clause shall not apply where the transferor company or companies are listed.
7. one or more subsidiary company of a holding company with one or more other subsidiary company of the same holding company where the transferor company or companies are not listed.

8. merger of the transferor foreign company incorporated outside India being a holding company with the transferee Indian company being its wholly owned subsidiary company incorporated in India referred to in sub-rule (5) of rule 25A.

**Prominent features of this section are:**

1. No mandatory approval of NCLT is required.
2. No need of issuing public advertisements.
3. Less administrative burden.
4. Economic in nature.
5. Series of hearing may be avoided.
6. Shorter time period involved.



# CHAPTER V

## TRANSFER AND TRANSMISSION OF SHARES

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### ❖ Transfer of Shares

- ✓ In case of transfer of shares of a private Limited Company, the transfer of shares is subject to the restrictions of the Articles of Association of the Company.
- ✓ Every holder of securities of an unlisted public company and a private company (except small company), who intends to transfer securities, shall get such securities dematerialized before the transfer.
- ✓ Instrument of transfer of securities shall be in the Form SH-4.
- ✓ Documents related to transfer of securities shall be submitted to the company within 60 days from the date of execution.
- ✓ In case of transfer of partly paid up shares, NOC from the transferee shall also be submitted to the company along with the documents of transfer of shares.
- ✓ Processing of off-market transfer instructions in shares of Private Limited Companies by NSDL:
  - As per **the Circular No.: NSDL/POLICY/2025/0071 issued by the NSDL** on June 03, 2025, the shareholders were advised that where a:
    - demat account holder(s) intending to transfer shares of a Private Limited Company, he/she shall submit to the Depository Participant, a duly filled and signed Delivery Instruction Slip (DIS) along with a “confirmation for transaction in shares” as per the format mentioned in the circular
    - Pursuant to the said circular, it is pertinent to note that necessary approval of the Board of Directors is a pre-requisite requirement before registering transfer of shares in Demat.
- ✓ Where transaction is between an Indian shareholder and a foreign shareholder:
  - A declaration is also required to be stated in the share transfers deed in form SH-4 stating whether “Transferee is required/not required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares. Where the transferee is required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares, the same has been obtained and is enclosed to the share transfer form.
  - Form FC-TRS (Foreign Currency Transfer of Shares) is required to be filed with the RBI via FIRMS portal in accordance with the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019

✓ **Stamp duty on transfer of shares:**

- With effect from July 1<sup>st</sup>, 2020, stamp duty on the transfer of shares **is a uniform national rate of 0.015% of the total market value or consideration**, regardless of whether the shares are in physical or dematerialized (demat) form.
- **Key Aspects of Stamp Duty on Share Transfers (India):**

Criteria	Physical Share Transfer	Demat Share Transfer
<b>Stamp Duty Rate</b>	0.015% of consideration value	0.015% on delivery-based transfers
<b>Payment Method</b>	Share transfer stamps, franking, or e-stamping on the physical transfer deed (Form SH-4)	Collected electronically by depositories (NSDL/CDSL) or stock exchanges at the time of transaction
<b>Responsibility</b>	Transferor (seller) is legally responsible, though often paid by the buyer in practice	Transferee (buyer) pays the duty through the depository/exchange
<b>Timing</b>	Paid at the time of or before execution of the transfer deed	Collected before the execution of the transaction in the depository system

- No stamp duty is levied on the transfer of shares by way of gift or without consideration, as the duty is based on the price or consideration involved

❖ **Transmission of Shares**

- ✓ Transmission of securities means where a person acquires an interest in property by operation of law, such as by right of inheritance or by reason of the insolvency or lunacy of the holder of securities or by purchase in a Court-sale.
- ✓ For transmission, instrument of transfer is not required, merely an application addressed to the company by the legal representative is sufficient.
- ✓ No stamp duty is payable on transmission of securities.

❖ **Nomination by Securities Holders**

- ✓ Nomination may be made by any holder of securities of a company in Form No. **SH.13** of any person as his nominee in whom the securities shall vest in the event of his death.
- ✓ Where the nomination is made in respect of the securities held by more than one person jointly, all joint holders shall together nominate in Form No. SH.13 any person as nominee.
- ✓ The request for nomination should be recorded by the Company within a period of 2 months from the date of receipt of the duly filled and signed nomination form.
- ✓ A person, being a nominee, becoming entitled to any securities by reason of the death of the holder shall be entitled to the economic benefits of the securities as if he is the registered holder of the

securities. However, before being registered as a holder in respect of such securities, he shall not have corporate benefits such as voting rights etc.

- ✓ In the event of death of the security holder/all the joint holders, the person nominated as the nominee may either choose-
  - To register himself as holder of the securities, or
  - To transfer the securities as the deceased holder could have done.
- ✓ A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in Form No. **SH.14**.
- ✓ The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.



## CHAPTER VI

### CHARGES

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#### ❖ Definition of Charge

Sec 2 (16) Defines Charge as “an interest or lien created on the property or assets of the Company or any of its undertaking or both as security and includes a “**mortgage**”.

In other words, charge is a security created over the assets or properties or any of its undertakings of the company in favour of banks, financial institutions or any other lender who has agreed to extend financial assistance to the company.

#### ❖ Duty to Register or modify charges

It shall be the duty of “**Every Company**” creating a charge within or outside India on Company’s property or assets or any of its undertakings, whether tangible or otherwise situated in or outside India to register the charge in Form **CHG-1** (other than debentures) or **CHG-9** (for debentures including rectification)

The form shall be signed by the **company and the charge - holder** together with the instruments, if any, creating such charge, with the Registrar within a period of **30 days of the date of creation or modification** of charge.

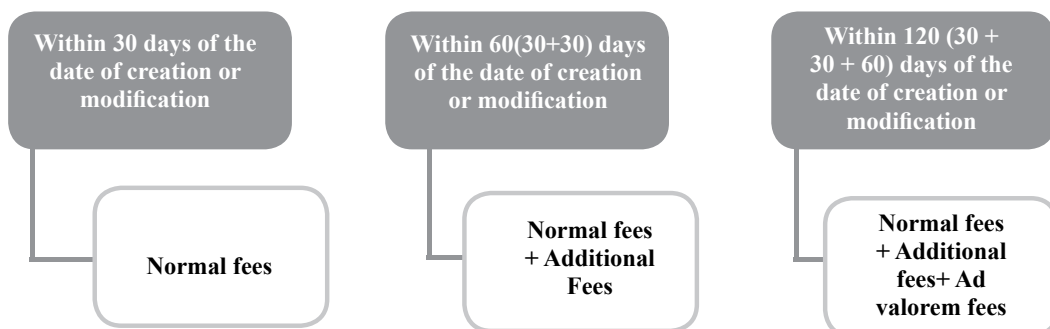
#### ❖ Satisfaction of Charge

Satisfaction of Charge means payment has been made and satisfied in full against the charge registered with the Registrar of Companies and nothing is due towards that charge.

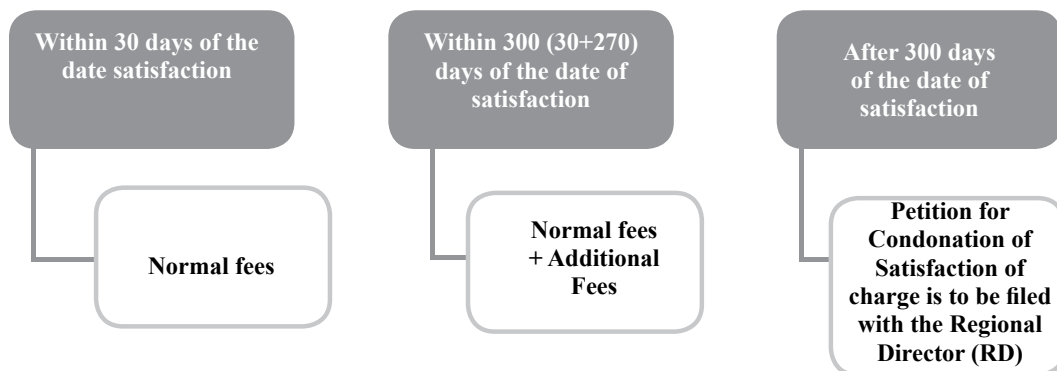
Satisfaction of charge shall be filed with the Registrar in Form CHG-4.

#### ❖ Timelines for filing the forms with Registrar of companies for creation/modification and satisfaction of charge

##### Creation/Modification of Charge





**Satisfaction of Charge**

**NB.: - Ad valorem fees refer to the fees charged by way of a specified percentage of the loan amount which differs according to the class of the company, calculated as per the table below:**

<b><u>Ad valorem fees</u></b>			
<b><u>S. No.</u></b>	<b><u>Period of delay</u></b>	<b><u>Small Companies and One Person Company</u></b>	<b><u>Other than Small Companies and One Person Company</u></b>
1	Up to 30 days	3 times of normal fees	6 times of normal fees
2	More than 30 days and up to 90 days	3 times of normal fees plus an ad valorem fee of 0.025 per cent. of the amount secured by the charge, subject to the maximum of one lakh rupees.	6 times of normal fees, plus an ad valorem fee of 0.05 per cent. of the amount secured by the charge, subject to the maximum of five lakh rupees

❖ **Consequences of Non-Creation of Charge**

Non registration of charge shall not prejudice any contract or obligation for the repayment of the money secured

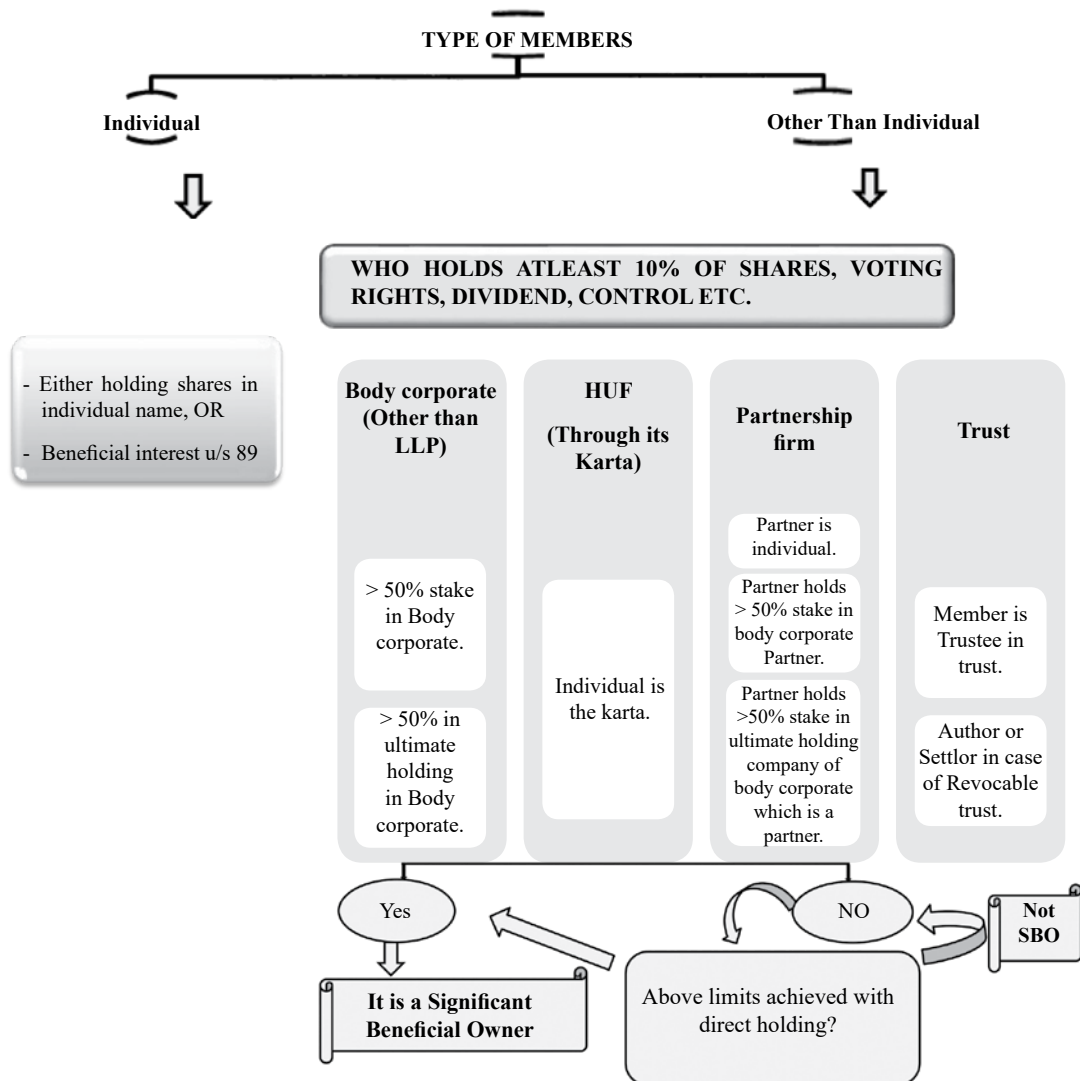
However, where no charge is created by a company with the Registrar of Companies and a certificate of registration of charge is not issued to the Company, the same cannot be taken into consideration by the liquidator or any other creditor.



# CHAPTER VII

## SIGNIFICANT BENEFICIAL OWNERSHIP (SBO)

### ❖ IDENTIFICATION OF SIGNIFICANT BENEFICIAL OWNER



### ✓ Persons acting together:

- Any individual, or individuals acting through any person or trust, who share a common intent or purpose of:
  - exercising rights or entitlements, or
  - exercising control or significant influence over a reporting company,

- and who act pursuant to an agreement or understanding, whether formal or informal,
- ✓ **For the purpose of finding the SBO, shares include:**
  - Global Depository Receipts (GDRs)
  - Compulsorily Convertible Preference Shares (CCPS)
  - Compulsorily Convertible Debentures (CCDs)
- ✓ **“Significant Influence”** means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.

#### ❖ FILING OF RETURN IN FORM BEN-2

- ✓ Every individual, who subsequently **becomes a significant beneficial owner**, or where his significant beneficial **ownership undergoes any change** shall file a declaration in Form BEN-1 to the reporting company, **within thirty days of acquiring such significant beneficial ownership or any change therein.**
- ✓ Upon receipt of declaration by the Company in form BEN-1, the Company is required to file Form BEN-2 with Registrar of Companies **within 30 days from receipt of BEN-1** by the Company.

#### ❖ DUTY OF THE REPORTING COMPANY

- ✓ Every reporting company shall take necessary steps to identify an individual who is a significant beneficial owner, in relation to that reporting company, and require him to make a declaration in Form BEN-1.
- ✓ Every reporting company shall in all cases where its member (other than an individual), holds not less than ten percent of its-
  - (a) Shares, or
  - (b) Voting rights, or
  - (c) Right to receive or participate in the dividend or any other distribution
 Payable in a financial year, give notice to such member in form BEN-4, seeking requisite information.

#### ❖ NON-APPLICABILITY:

- ✓ The Companies (Significant Beneficial Owners) Rules, 2018, shall not be made applicable to the extent the share of the reporting company is held by:
  - (a) the authority constituted under sub-section (5) of section 125 of the Act;
  - (b) its holding reporting company:
 

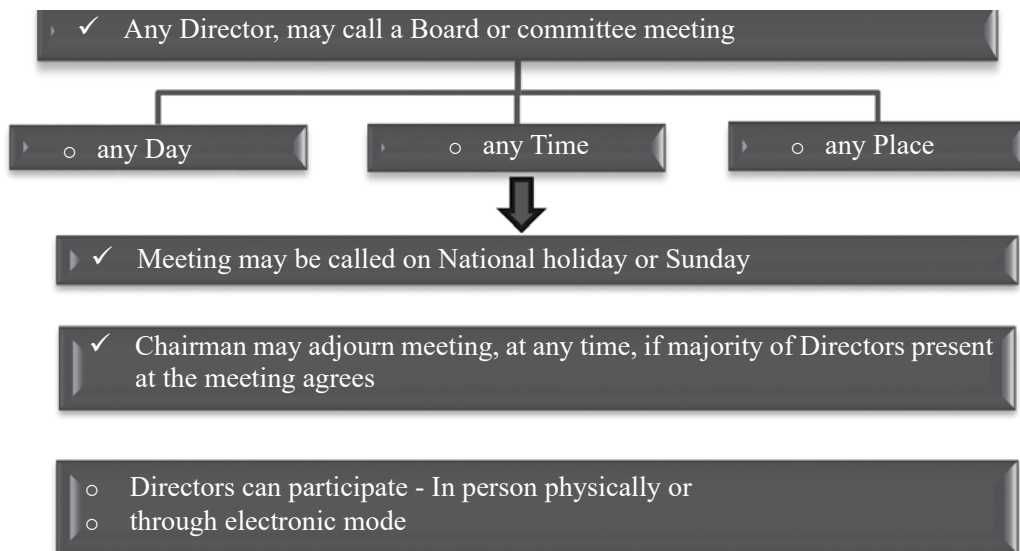
Provided that the details of such holding reporting company shall be reported in Form No. BEN-2.
  - (c) the Central Government, State Government or any local Authority;
  - (d) (i) a reporting company, or
    - (ii) a body corporate, or
    - (iii) an entity, controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;
  - (e) Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India,
  - (f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.



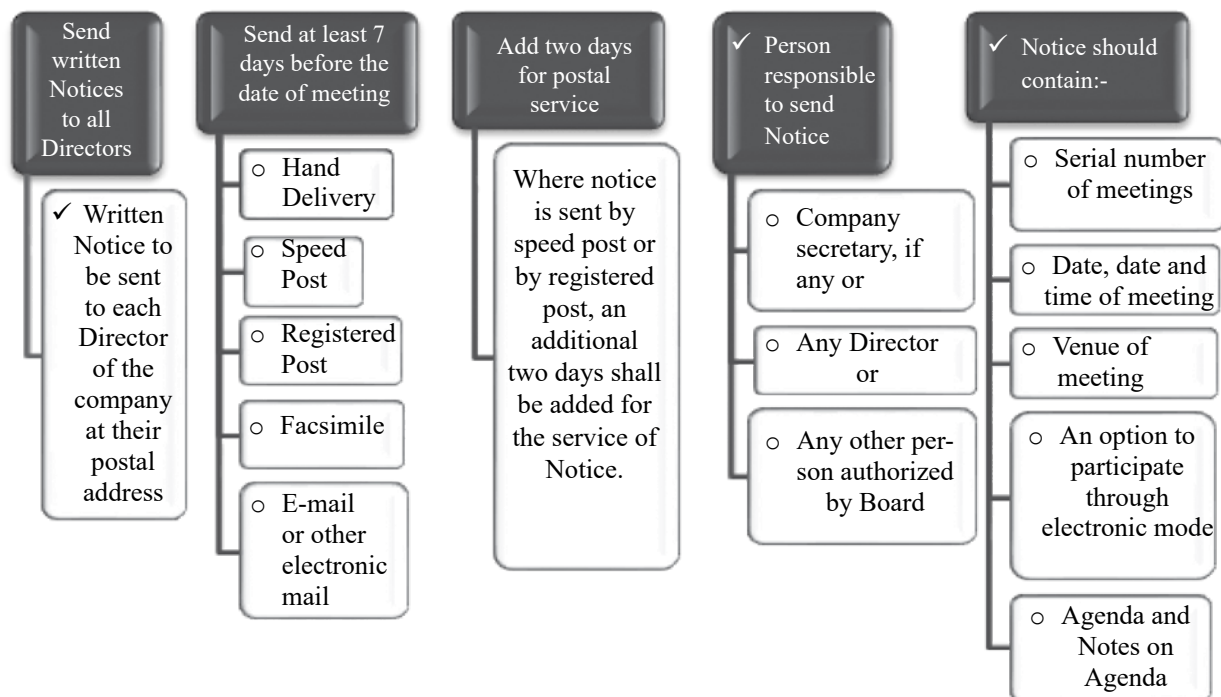
## CHAPTER VIII

# BOARD MANAGEMENT AND ADMINISTRATION

### ❖ Provisions in respect of convening of Board/Committees of Board



### ❖ Notice of Board/Committees of Board Meeting



- ✓ In case of urgent business, meeting may be called on shorter notice subject to the following conditions:
  - At least one Independent Director, if any, is present at the meeting.
  - If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any.
  - In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.
- ✓ The fact that the Meeting is being held at a shorter Notice shall be stated in the Notice.
- ✓ While counting the days, the day of sending the notice and the day of meeting shall not be counted.

**Under provisions of SS-1,**

- In the absence of Postal or email address, the notice shall be sent to the Address appearing in the Director Identification Number (DIN) registration of the Director.
- Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means.
- Proof of sending Notice and its delivery shall be maintained by the company for minimum 3 years.
- The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.

❖ **Frequency of Board/Committees of Board**

S. No.	Type of Meeting	Frequency
1.	First meeting of the Board	✓ Within 30 days of incorporation
2.	Subsequent meetings of the Board in case of: <ul style="list-style-type: none"> <li>✓ Small companies</li> <li>✓ Dormant companies</li> <li>✓ OPC having more than one Director</li> </ul>	✓ At least one Board meeting in each half of calendar year and ✓ Where only two meetings are held in a year, gap between such meetings shall not be less than 90 days.
	Subsequent meetings of the Board in case of in case of companies other than small, OPC and Dormant companies	✓ At least 4 Board meeting in each calendar year. ✓ With maximum interval of 120 days between two subsequent meetings.
3.	Meetings of Audit Committee	✓ At least 4 audit committee meeting in each calendar year. ✓ With maximum interval of 120 days between two subsequent meetings.
4.	Meeting of: <ul style="list-style-type: none"> <li>✓ Nomination and remuneration Committee</li> <li>✓ Stakeholders Relationship Committee</li> </ul>	✓ At least once in a year

	✓ Other committees as may be prescribed	
5.	Independent Director's Meeting	✓ Independent director should meet at least at once in the Calendar year to review the functions of Board as a whole

- ✓ Every Director of the company shall attend at least one Board meeting, in twelve months from the date of last attended meeting.

#### ❖ Quorum of Board/Committees of Board

- ✓ Quorum shall be presented throughout the meeting
- ✓ Interested directors are not counted for quorum and are not entitled to participate in respect of an item of business in which he is interested

*Provided that in case of a private company, a director can participate in respect of such item of business in which he is interested after disclosure of his interest, however he shall not be counted for the purpose of quorum.*

- ✓ Director participating through electronic mode shall be counted for the purpose of quorum.
- ✓ Quorum shall be

**1/3rd of total strength of Board,**

**Or**

**2 Directors**

} **whichever is high**

#### **Under provisions of SS-1,**

- Any fraction contained in the above one-third shall be rounded off to the next one;
- Where the Quorum requirement provided in the Articles is higher than one-third of the total strength, the company shall conform to such higher requirement;
- Total strength for this purpose, shall not include Directors whose places are vacant;
- If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, shall be the Quorum during such item.

#### ✓ **Non-presence of quorum:**

- If articles are silent, then the meeting shall stand adjourned to the same day, time and place in the next week;
- In case, it's a national holiday then the next succeeding day at the same time and place; **and**
- If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.

#### ❖ Chairman of Board/Committees of Board

##### ✓ **Board meeting**

- The chairman of the company shall be chairman of the meeting
- If there is no chairman in the company, the Board should choose one of themselves as the Chairman

- If the chairman is not elected or not present at the meeting, the directors present at the meeting shall choose among themselves a chairperson.

✓ **Committee meeting**

- The member of committee elected by the board shall be the chairman of the meeting.
- If the chairperson is not elected/present in the meeting, members of the committee present at the meeting shall choose one among themselves as the chairman

❖ **Passing Resolution by Circulation**

- ✓ Draft Resolution should be circulated (Either by hand, through Post, Courier, Fax or E mail).
- ✓ It should be sent to all the directors, or members of the committees, whom so ever required at their addresses registered with the company in India.
- ✓ The resolution should be approved by a majority of directors who are entitled to vote on the resolution.
- ✓ The resolution passed by circulation shall be noted at the subsequent meeting of the board or committee as the case may be.
- ✓ Where not less than 1/3rd of the total number of directors of the company for the time being required that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

**Under provisions of SS-1**

**Illustrative list of items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting**

○ ***General Business Items***

- Noting Minutes of Meetings of Audit Committee and other Committees.
- Approving financial statements and the Board's Report.
- Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company.
- Specifying list of laws applicable specifically to the company.
- Appointment of Secretarial Auditors and Internal Auditors.

○ ***Specific Items***

- Borrowing money otherwise than by issue of debentures.
- Investing the funds of the company.
- Granting loans or giving guarantee or providing security in respect of loans.
- Making political contributions.
- Making calls on shareholders in respect of money unpaid on their shares.
- Approving Remuneration of Managing Director, Whole-time Director and Manager.
- Appointment or Removal of Key Managerial Personnel.
- Appointment of a person as a Managing Director/Manager in more than one company.
- According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis.

- Purchase and Sale of subsidiaries/assets which are not in the Normal course of business.
- Approve Payment to Director for loss of office.
- Items arising out of separate meeting of the Independent Directors if so decided by the Independent Directors.
- Appointment of a Director in case of Casual Vacancy
- ***Corporate Actions***
  - Authorize Buy Back of securities
  - Issue of securities, including debentures, whether in or outside India.
  - Approving amalgamation, merger or reconstruction.
  - Diversify the business.
  - Takeover another company or acquiring controlling or substantial stake in another company.
- ***Additional list of items in case of listed companies***
  - Approving Annual operating plans and budgets.
  - Capital budgets and any updates.
  - Information on remuneration of KMP.
  - Show cause, demand, prosecution notices and penalty notices which are materially important.
  - Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
  - Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
  - Any issue, which involves possible public or product liability claims of substantial nature, including any judgment or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
  - Details of any joint venture or collaboration agreement.
  - Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
  - Significant labour problems and their proposed solutions. Any significant development in Human Resources/Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
  - Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
  - Non-compliance of any regulatory, statutory or listing requirements and shareholder services such as non-payment of dividend, delay in share transfer etc.



## **MINUTES OF BOARD AND COMMITTEE MEETINGS**

Minutes are the written record of the business transacted and the decisions made at a meeting. Minutes are understood as a record of resolutions and matters ancillary thereto.

SS-1 has defined minutes as “a formal written record, in physical or electronic form, of the proceedings of a Meeting.”

Standard 7 of SS-1 deals with minutes. It opens with the lines, “every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.”.

The primary purpose of maintaining minutes is succinctly and aptly captured in the last limb of the standard. Minutes are to be comprehended as the key and means to understanding the thinking and reflections of the directors. It is the channel that enables a reader or user to understand the purpose, reason and background of any decision that is taken. It is the route to the root of the decision maker.

### **✓ Provisions in respect to maintenance of Minutes**

- Minutes shall be recorded in the books maintained for this purpose
- Distinct Minutes Book shall be maintained for the Meetings of Board and Committee Meetings.
- Minutes may be maintained in the physical or electronic format with timestamp
- Pages should be consecutively numbered
- Minutes shall not be pasted, tampered or attached in minute books
- Minutes if maintained in loose sheet shall be bounded periodically with a proper locking device
- Minutes shall be kept at the registered office/other place as decided by Board
- Minutes shall contain Fair and correct summary of proceedings
- Minutes shall be written in clear, concise, and plain language
- Minutes shall be written in Third Person

### **✓ General content of Minutes Book**

- Serial number of meetings, day, date, time and of commencement, venue of meeting and types of meeting
- Name of Directors, Company Secretary and Invitee and their mode of attending
- Leave of Absence of Directors, Election of Chairman
- Recording of previous Board meeting minutes and committee meeting minutes, if any
- Brief background of all proposals and summarize the deliberations thereof.
- In case of major decisions, the rationale thereof shall also be mentioned.

### **✓ Time limit for entry in the minute's books**

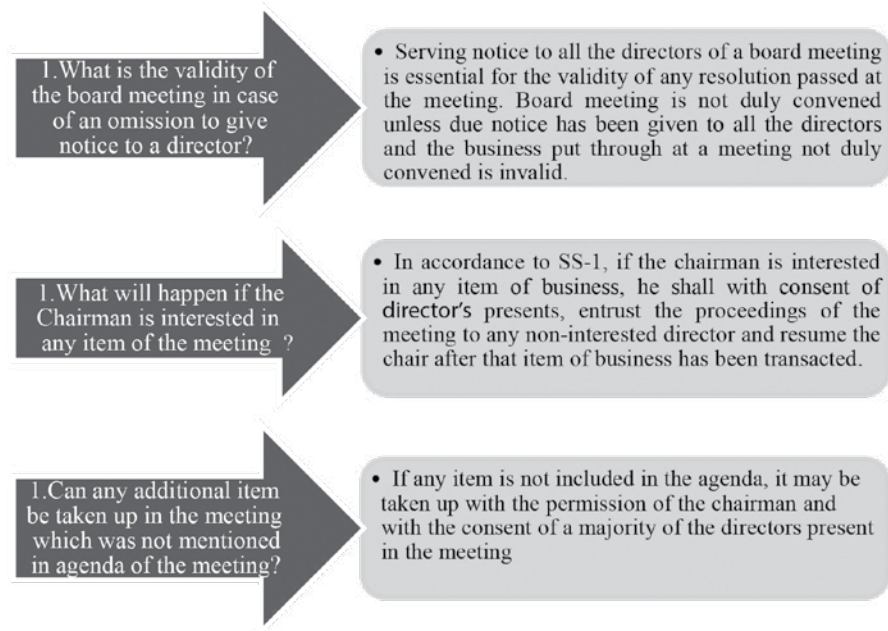
- Draft of Minutes shall be circulated to the member of the board and committee members within the period of 15 days from the date of the conclusion of the meeting
- The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof
- Minutes shall be entered within 30 days from the date of conclusion of board meeting.
- Minutes once entered in the minutes books shall not be altered without prior approval by way of

resolution in this behalf at the subsequent meeting at which the Minutes are noted by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent Meeting

### ✓ **Signing and dating of minutes**

- Minutes of the Board meeting/committee meeting shall be signed by the chairperson of that meeting or the chairman of next board meeting.
- Chairperson shall initial each page and sign last page stating therein the place of signing
- Minutes once signed shall not be altered
- Signed copy of minutes shall be sent to each member or board or Committee within 15 days from the date of signing
- Draft and final Minutes must also be sent to the directors who did not participate in the meeting.

### ❖ **Some frequently asked questions**



### ❖ **Power of Board of Directors**

- ✓ The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do, except the power which can only be exercised by the members of the company.

However, in exercising such power or doing such act or thing, the Board shall adhere to the following:

- the provisions contained in the Act where specifically provides for; or
  - the Memorandum or Articles of the company, or
  - any resolution passed by the shareholder in general meeting, or
  - the regulations made by the company or the Act to be executed in general meeting only.
- ✓ Board of Directors can take all actions on matters in which the company has authority.

- ✓ Any resolutions that are passed in a General Meeting cannot invalidate any provisions that the board of directors made prior to the resolution.
- ✓ The Board of Directors of a company shall exercise some powers on behalf of the company by means of resolutions passed at meetings of the Board only.
- ✓ Board may, by a resolution passed at a meeting, delegate the power to;
  - any committee of directors,
  - the managing director,
  - the manager or
  - any other principal officer of the company or
  - In the case of a branch office of the company, the principal officer of the branch office.

❖ **Restrictions on loan to Director (under Section 185)**

- ✓ No Company shall directly or indirectly advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by;
  - any director of company, or of a company which is its holding company or any partner or relative of any such director; or
  - any firm in which any such director or relative is a partner.
- ✓ For better understanding of the section, the matter can be classified in following three categories i.e;
  - Prohibited,
  - Restricted and
  - Unrestricted for giving loans, guarantees and securities.

Prohibited	Restricted	Unrestricted
<p>All Companies are prohibited to give loans, guarantees and securities to the following persons and firm:</p> <ul style="list-style-type: none"> <li>✓ Any Director of a Company</li> <li>✓ Any Directors of a Holding Company</li> <li>✓ Any Relative of above-mentioned directors</li> <li>✓ Any Partner of above-mentioned directors</li> <li>✓ Any firm in which any such director is a Partner</li> <li>✓ Any firm in which the relative of <b>any such</b> director is a partner</li> </ul>	<p>Companies can give loans, guarantee or securities to the following entities <b>after passing Special Resolution at a duly convened general meeting:</b></p> <ul style="list-style-type: none"> <li>✓ Any private company of which any such director is a director or member</li> <li>✓ Any body corporate in which at least 25% of the total voting power exercised or controlled by any such director, or by two or more such directors, together</li> </ul> <p>Any body corporate, the BOD, MD or manager, where of is accustomed to act in accordance with the directions or instructions of</p>	<p>The Provisions of Section 185 doesn't apply to the following transactions:</p> <ul style="list-style-type: none"> <li>✓ Any loan given to a M.D or W.T.D:               <ul style="list-style-type: none"> <li>○ As a part of the conditions of service extended by the company to all its employees</li> </ul> </li> <li>OR</li> <li>○ Pursuant to any scheme approved by the members by a Special Resolution</li> </ul> <p>✓ <b>Ordinary course of business</b></p> <p>A company which '<b>in the ordinary course of its business</b>' provides</p>

Prohibited	Restricted	Unrestricted
<b>NB.:</b> <i>The Term “any such” would mean in reference to the director of the lending company and/or in relation to the director of its holding company.</i>	<p>the BOD, or of any director or directors, of the lending Company.</p> <p><b>NB.:</b></p> <p><i>However, such loans, guarantee or securities to the aforementioned entities shall be utilized by the borrowing companies for its principal business activities only</i></p> <p>○ <i>Loan, guarantee and security provided under this section must be within the limit of Section 186 of the Companies Act, 2013.</i></p>	<p>loans or gives guarantees or securities for the due repayment of any loan and <b>in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan or</b></p> <p>✓ A holding company can give <b>loan</b> to its wholly owned subsidiary Company.</p> <p>✓ A holding company can give <b>guarantee or provide security</b> in respect of loan made by any banks or financial institution to its wholly owned subsidiary Company and subsidiary company</p> <p><b>NB.:</b></p> <p><i>However, it should be noted that loans granted to subsidiary companies aforementioned shall be utilized for its principal business activities only</i></p>

#### ❖ Loans and Investment by Company (under Section 186)

- ✓ Loans and Investments cannot be made by a Company through more than two layers of investment companies.
- ✓ ‘Layer’ in relation to a holding Company means its subsidiary or subsidiaries.
- ✓ **‘Investment Company’** means a Company whose principal business is the acquisition of shares, debentures or other securities.
- ✓ **Limits for Loans/Investment by Company**

A company cannot directly or indirectly:

- Give loan to any person or body corporate
- Give any security or provide a guarantee in connection with a loan to any other person or body corporate, And
- acquire by way of purchase, subscription or otherwise, the securities of any other body corporate

Exceeding 60% of its paid-up share capital plus free reserves plus, securities premium account

**OR**

100% of its free reserves plus securities premium account

Which ever is more

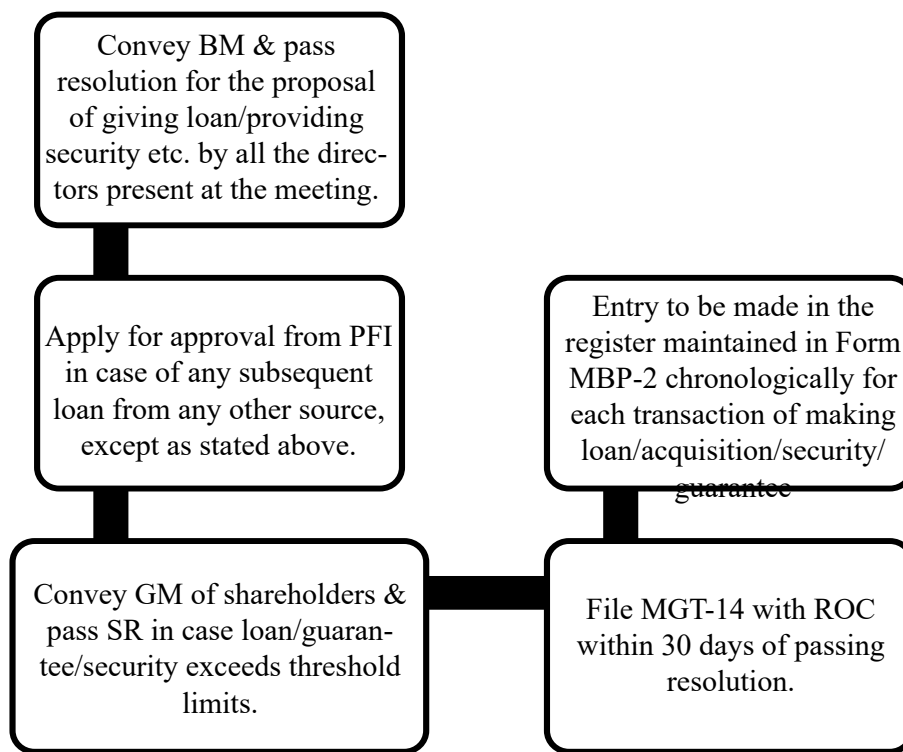
**NB.:** *The target entity into which investment flows must not necessarily be a company, though the intermediary company through which investments are made must have to be a company.*

➤ **Requirements for making Loans/Investment**

<b>1. Approval</b>	<ul style="list-style-type: none"> <li>○ <b>Board-</b> by means of a unanimous resolution passed at a Board meeting</li> <li>○ <b>Members-</b> in case of giving a guarantee or providing any security or acquisition beyond the limit must be authorized by a special resolution passed at a general meeting.</li> <li>○ <b>Public Financial Institution-</b> in case the company has taken a term loan   <p style="text-align: center;"><b>However, approval from the financial institution is not required where-</b></p> <ul style="list-style-type: none"> <li>○ The aggregate of loans, guarantee, investments or security already made together with the loan, investment, guarantee or security proposed to be made does not exceed the limit given.</li> <li>○ There is no default in repayment of loan installments or interest to PFI as per the terms and conditions of such term loan.</li> </ul> </li> </ul>
<b>2. Rate of interest</b>	<ul style="list-style-type: none"> <li>○ Charging of interest is mandatory</li> <li>○ Rate of interest shall not be lower than the prevailing yield of 1-year, 3-year, 5-year or 10-year Government Security closest to the tenor of the loan.</li> </ul>
<b>3. No loan by defaulter company with respect to deposits</b>	<ul style="list-style-type: none"> <li>○ A company which has defaulted in repayment of any deposits accepted by it or in payment of interest on deposits shall not make any loan, guarantee, investments or security till such default is subsisting.</li> </ul>
<b>4. Disclosure in financial statments</b>	<ul style="list-style-type: none"> <li>○ The company shall disclose to the members in the financial statement</li> <li>○ The full particulars of any loans given, investments made, guarantee or security provided, and</li> <li>○ The purpose for which the loan or guarantee or security is proposed to be utilized by the recipient.</li> </ul>

➤ **Non-Applicability**

- ✓ Loan made, guarantee given or security provided, in the ordinary course of its business, by a
  - banking company or
  - an insurance company or
  - a housing finance company
- ✓ A company engaged in the business of financing of companies.
- ✓ A company **engaged** in the business of **providing infrastructural facilities**
- ✓ Any acquisition made by a NBFC whose principal business is acquisition of securities. Provided that the exemption to NBFC shall be with respect to investment and lending activities.
- ✓ Any acquisition of shares allotted in pursuance of right shares.
- ✓ Any acquisition made by a company whose principal business is the acquisition of securities (i.e. Investment Company).

➤ **Events and Action Points****Procedure for making loan, giving guarantee and providing security**❖ **Related Party Transactions**

- ✓ Applicable to both private as well as public companies
- ✓ Type of transactions which can be related party transactions, if entered into with a related party:
  - Sale, purchase or supply of any goods or materials
  - Selling or otherwise disposing of, or buying, property of any kind
  - Leasing of property of any kind
  - Availing or rendering of any service
  - Appointment of any agent for purchase or sale of goods, materials, service or property
  - Appointment of related party to any office or place of profit in the co., its subsidiary or associate

Here, "***Office or place of profit***" means any office or place—

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

*free accommodation, or otherwise*

- Company Underwriting the subscription of any securities or derivatives thereof, of the company

✓ **“Related party” as per Section 2(76):**

For better understanding, we can classify the definition into two parts:

**Individual who is**

- Director or his relative
- Key managerial personnel or his relative
- Any person on whose advice, direction or instructions a director or manager is accustomed to act
- A director (other than independent director) or key managerial personnel of the holding company or his relative.

**Other than Individual:-**

- a firm in which a director, manager or his relative is a partner
- a private company in which a director or manager is a member or director
- a public company in which a director or manager is a director and holds along with his relative, more than 2% of its paid-up share capital
- a body corporate whose board of directors, managing directors or manager is accustomed to act in accordance with the advice, direction or instructions of a director or manager.
- A holding, subsidiary or an associate company
- A subsidiary of a holding company to which it is also a subsidiary.
- An investing company or the venture of the company.

- ✓ The provisions of the Section 188 are not applicable in respect to transactions entered into by a company in its ordinary course of business which are on arm's length basis.

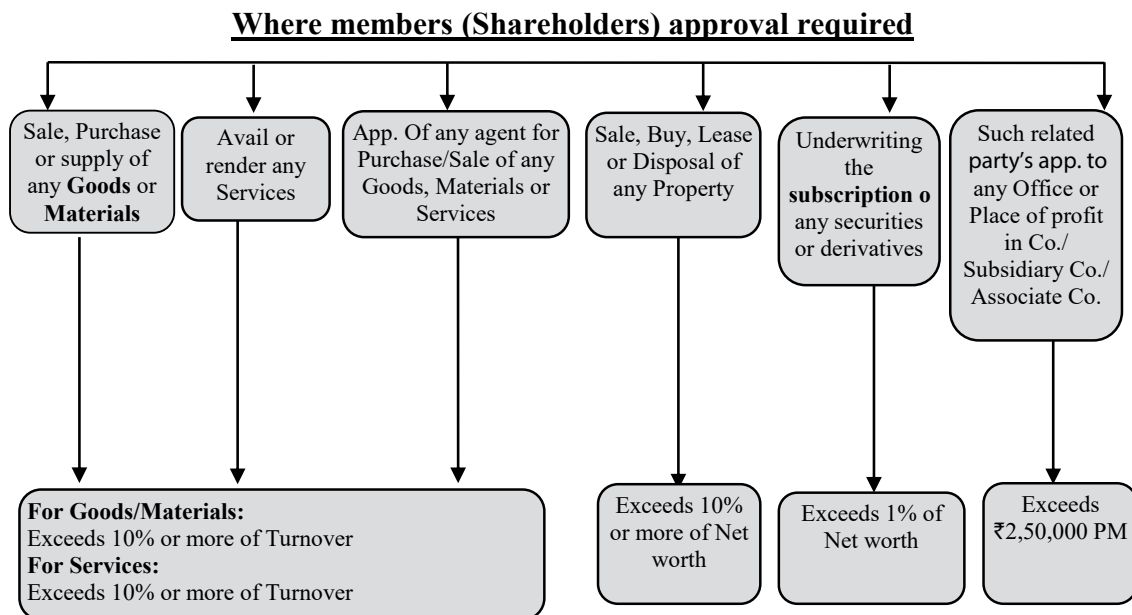
***Here, “Arm's length transaction” means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.***

✓ **Approvals required from**

- **Board:** No company shall enter into any contract or arrangement with a related party except with the approval of Board by way of resolution **(Not Resolution by circulation).**
- **Audit Committee:**
  - If Company is required to constitute an Audit Committee, company shall not enter into any related party transaction without approval of the Audit Committee.
  - Audit Committee may make omnibus approval for related party transactions to be entered by the company.
  - If any Director or officer of the company enters into any transaction involving any amount not exceeding ₹1 Crore, without taking approval of the Audit Committee and same is not ratified by the Audit Committee within 3 months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee, and if any loss incurred to company the concerned shall indemnify the same.

○ **Members (In case of Specified Transactions):**

Prior approval of Members by means of **Ordinary resolution** in case of specified Transactions that is:



- ✓ It is hereby clarified that the limits specified above shall apply for transaction or
- Transactions to be entered into either individually or taken together with the previous transactions during a financial year.
  - **Requirement of passing the ordinary resolution in above cases shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval**
  - It is to be noted that except for a private company or a company where at least 90% members in number are relatives of promoter, an interested member in any of the contracts or arrangements specified above may participate and vote on any such ordinary resolution





# CHAPTER IX

## SHAREHOLDER MANAGEMENT AND ADMINISTRATION

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### ❖ Elementary provisions in respect to General Meetings

- ✓ **Meeting can be called by:**
  - Board of Directors
  - Shareholders on requisition
  - NCLT either itself or on application of any person
- ✓ **The provisions of general meeting shall not apply to a One Person Company.**
- ✓ **Quorum of general meetings**
  - **Private company:**
    - Two Members (personally present at the meeting)
  - **Public company:**

No. of members as on the date of meeting	Quorum
Not more than 1000	5 Members Personally present
More than 1000 but up to 5000	15 Members Personally present
Exceed 5000	30 Members Personally present

- In case in the **adjourned meeting**, a quorum is not present within half-an-hour from the schedule time of the meeting, the members present, not being less than two in number, shall be the “Quorum”.

***NB.:** The articles of association of the company can provide a larger quorum number.*

- In case of change in day, time or place of the adjourned meeting: The company shall give not less than three days’ notice to the members;
  - Either individually; or
  - By publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.
  - If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—
  - The meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the board may determine; or
  - The meeting, if called by requisitionists under section 100, shall stand cancelled;
  - Proxies shall be excluded for determining the quorum.
  - A duly authorised representative of a body corporate or the representative of the President

of India or the Governor of a state is deemed to be a member personally present and enjoys all the rights of a member present in person and shall be counted for quorum.

❖ **Notice of the Meetings**

- ✓ Notice in writing of every meeting shall be given at least twenty-one clear days in advance of the meeting.
- ✓ Notice through electronic mode is permitted.
- ✓ The company may send notices
  - by hand or
  - by speed post or
  - by registered post or
  - by courier or
  - by facsimile or
  - by e-mail or
  - by any other electronic means.
  - By ordinary post
- ✓ Notice shall be given to the
  - Every member of the company
  - In case of joint holder- first named joint holder
  - In case of insolvency of member-his assignee
  - In case member is company/body corporate (being wound up)-his liquidator
  - In case company received intimation of death of the member:
    - His nominee
    - If first joint holder dies- subsequent named joint holder
    - If all joint holders die- Nominee appointed on the behalf of all of them
  - Every director of company
  - The auditor or auditors of the company
  - Secretarial auditor of company
  - Debenture Trustees
- ✓ Notice should be hosted at the **Website of the Company**, if any.
- ✓ To maintain the system of confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent resending shall be retained by or on behalf of the company as **“proof of sending”**.
- ✓ Proof of sending the notice shall be maintained for the period of at least 3 years.
- ✓ Addition two days shall be provided for delivery of notice if notice send through post
- ✓ While counting the days, the day of sending the notice and the day of meeting shall not be counted.
- ✓ Notice shall contain complete particulars of the venue of the meeting including route map and prominent land mark for easy location. In case of companies having a website, the route map shall be hosted along with the notice on the website.
- ✓ E-voting facility to be provided in the notice, to exercise the right to vote on resolutions proposed to be considered at a general meeting by electronic means, by the following companies:
  - Every company which has listed its equity shares on a recognized stock exchange; and

- Every company having one thousand or more members.

❖ **Chairman of the meeting**

- ✓ The Chairman of the board shall take the Chair and conduct the meeting.
- ✓ If the Chairman is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unwilling to act as chairman of the meeting, directors present shall elect any one amongst themselves as the chairman of the meeting.
- ✓ If no director is present within fifteen minutes after the time appointed for holding the meeting, or if no director is willing to take the chair, the members present shall elect, on a show of hands, one of themselves to be the chairman of the meeting, unless otherwise provided in the articles.

❖ **Additional points to be kept in mind in case of Annual General Meetings (AGM)**

- ✓ **First AGM** should be held **within 9 months** from the date of closing of the first financial year of the company.
- ✓ **Financial Year**”, in relation to any company or body corporate means;
  - If a company is incorporated on or before the 31st day of December of a year, the period ending on the 31st day of March of the same financial year;
  - If a company is incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following financial year.
- ✓ **Subsequent AGMs** should be held **within 6 months** from the closure of every financial year.
- ✓ The gap between two AGMs shall not be more than 15 months.
- ✓ There should be an AGM held in each calendar year.
- ✓ In case of first AGM, it is not necessary to hold AGM in the year of incorporation.
- ✓ Registrar may for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.
- ✓ Every AGM shall be called during business hours i.e. 9:00 am to 6:00 pm.
- ✓ AGM may be called after giving shorter notice if consent, in writing or by electronic mode, is accorded thereto by not less than 95% (Ninety-Five per cent.) of the members entitled to vote thereat.
- ✓ AGM shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.  
However, AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.
- ✓ AGM cannot be held on national holiday. It means AGM can be held on public holiday like Sundays.

❖ **Additional points to be kept in mind in case of Extra Ordinary General Meetings (EGM)**

- ✓ Board may, whenever it deems fit and necessary, call an EGM of the company.
- ✓ EGM of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India
- ✓ EGM of the company which is wholly owned subsidiary of a company incorporated outside India can be held outside India.
- ✓ EGM may be called after giving shorter notice if consent, in writing or by electronic mode, is accorded thereto by members of the company, in the following manner:
  - (a) in case of company having share capital – by majority in number of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

- (b) in case of company having no share capital - by not less than ninety-five per cent. of the total voting power exercisable at that meeting:

Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub section in respect of the former resolution or resolutions and not in respect of the latter

### ❖ Minutes

- ✓ Provisions in respect to maintenance of minute
  - Minutes shall be recorded in the books maintained for this purpose
  - Distinct minute books shall be maintained for the meeting of Shareholders, creditors, debenture holders or any class of them.
  - Minutes may be maintained in the physical or electronic format with time stamp.
  - Pages should be consecutively numbered
  - Minutes shall not be pasted, tampered and attached in minute books.
  - Minutes if maintained in loose sheet shall be bounded periodically
  - Minutes shall be kept at the registered office/other place as decided by Board
  - Minutes shall contain fair and correct summary of proceedings
  - Minutes shall be written in clear, concise, and plain language
  - Minutes shall write in third person
- ✓ **General content of minutes book:**
  - Serial number of meetings, day, date, time and of commencement, venue of meeting and type of meeting
  - Resolution passed
  - Minutes of the adjourn meeting to be included in the minutes books separate from the minutes of original meeting.
  - Resolution passed at the adjourn meeting shall be deemed to have been passed on the date of adjourn meeting and not on the date of original meeting.
- ✓ **Time Limit for Entry in the minute's books**
  - Minutes shall be entered within 30 days from the date of conclusion of meeting.
  - Minutes once entered in the minutes books shall not be altered without prior approval by way of resolution in this behalf.
- ✓ **Signing and dating of minutes**
  - Minutes of the general meeting shall be signed by the chairperson of that meeting or in the event of his death, by the director authorized by board in this behalf within 30 days from the date of conclusion of meeting.
  - Chairperson shall initial each page and sign last page stating therein the place of signing
  - Minutes once shall be signed shall not be altered.
  - If any page left blank the same shall be marked by the director, and signed
- ✓ **For One Person Company (OPC):** It shall be sufficient if, the resolution is communicated by the member to the company and entered in the minutes-book as required to be maintained and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.



# CHAPTER X

## DECLARATION AND PAYMENT OF DIVIDEND

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### ❖ Dividend

Dividend refers to sharing of profits of the company with members of the company in proportion to the amount paid up on the shares held by them. In other words, dividend is a return on the investment made in the share capital of a company.

Every company can pay dividend except for section 8 companies.

### **Nitty-gritties of dividend**

- ✓ Dividend shall be declared or paid by a company for any financial year out of
  - out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of Schedule II, or
  - out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both
  - out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:
- ✓ Dividend cannot be declared or paid by a company from its reserves other than free reserves.
- ✓ The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.
- ✓ No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash:
- ✓ Dividend may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.
- ✓ A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.
- ✓ Prohibited source of Dividend: —
  - Securities Premium Account or
  - the Capital Redemption Reserve or
  - Revaluation Reserve or
  - Amalgamation Reserve or
  - Out of profits on re-issue of forfeited shares or
  - Out of profits earned prior to incorporation of the company

- ✓ Dividend, once declared, becomes a debt and shall not be revoked.
- ✓ Dividend shall be paid within 30 days of declaration.
- ✓ Preference shareholders shall be paid dividend (including any arrears of Dividend on cumulative preference shares) before dividend is paid to the equity shareholders of the company.
- ✓ Dividend on equity shares shall be paid in accordance with the rights of the respective classes, if any, of such shares.
- ✓ Dividends are to be rounded off to the nearest rupees.
- ✓ Dividend can't be paid in 'KIND' e.g. in form of gifts, discount coupons, goods or bonus shares

#### ❖ Interim Dividend

- ✓ Interim dividend can only be declared by the board of directors
- ✓ Interim dividend is the one paid any time during the financial year or at any time during the period from the closure of the financial year till the holding of the annual general meeting.
- ✓ Sources of payment of interim dividend
  - The Surplus in the profit and loss account or
  - out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of Schedule II or
  - Out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

***NB.:** In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of **interim dividend**, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 financial years.*

#### ❖ Final Dividend

The board of directors may decide the amount of dividend which they want to declare at the annual general meeting of the company which shall be called as final dividend.

##### ✓ Sources of payment of final dividend

Company can declare dividends out of:

- Current year profits after providing for depreciation or
- Accumulated profits after providing depreciation till the current financial year or
- Out of both the sources mentioned above
- Funds provided by the CG/SG for the payment of dividend by the company in pursuance of a guarantee given by that Government

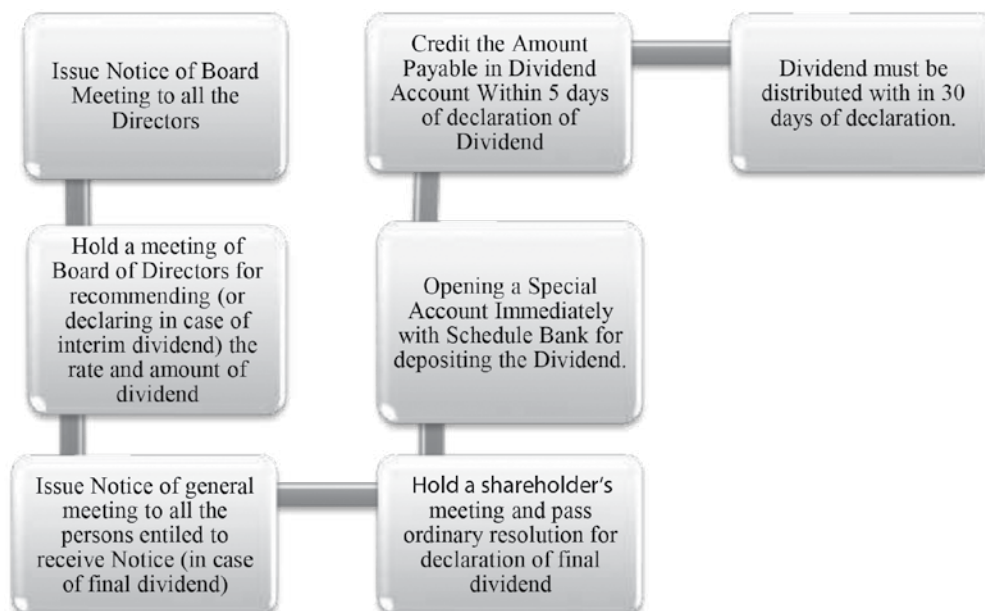
#### ❖ Dividends in case of inadequate profits/loss during the year

A company can still declare dividend but such declaration shall be made considering the below mentioned restrictions:

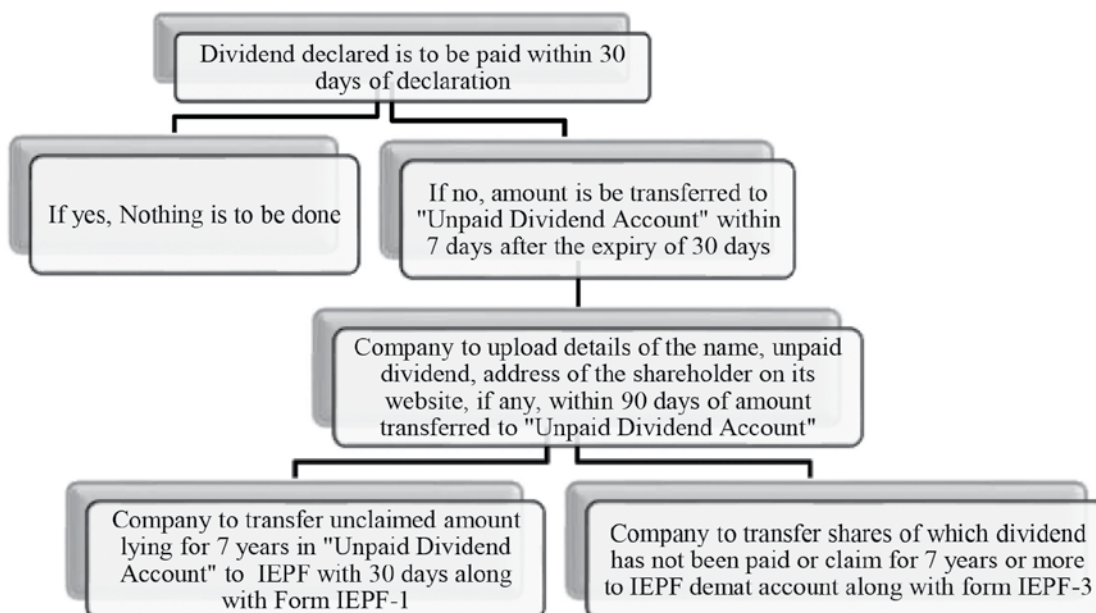
- ✓ The rate of dividend declared shall not exceed the average of the rate of dividend declared in the immediately preceding 3 financial years

- ✓ However, if the company has not declared any dividend in three immediately preceding financial year, this restriction is not applicable on such companies
- ✓ The total amount to be drawn from such accumulated profits shall not exceed 1/10 of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
- ✓ The amount drawn from such accumulated profits shall be utilized first to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
- ✓ The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

❖ **Procedure for Declaration of dividend**



❖ **Unpaid Dividend Account**



**❖ Frequently Asked Questions****1. Whether the Company can declare a dividend in EGM instead of AGM?**

As per regulations of 2013, Act, “The Company in general meeting may declare dividend”. Henceforth, in case dividend is not declared in AGM then the company can declare a dividend in subsequent EGM.

In case dividend is declared in AGM, it can't be increased further in subsequent EGM.

Dividend shall relate to a financial year and shall be declared by the members at the AGM of the company after adoption of the financial statements of the company.

Hence, dividend can only be declared at an AGM.

**2. In case of a joint shareholder who will be entitled to receive the dividend?**

In case of joint holdings, the dividend shall be paid to the person whose name is registered first in books. Where a request has been received in writing for providing dividend in the name of other joint holder, the company shall pay dividend to such other joint holder.





# CHAPTER XI

## ACCOUNTS OF COMPANIES

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Under this chapter, account of companies is broadly categorized as follows:

I. Financial Statements

II. Board Report

### I. FINANCIAL STATEMENTS

- **Financial statement** in relation to a company, includes—
  - Balance sheet as at the end of the financial year;
  - Profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
  - Cash flow statement for the financial year;
  - Provided that the financial statement, with respect to one person company, small company and dormant company, may not include the cash flow statement
  - Statement of changes in equity, if applicable; and
  - Any explanatory note annexed to, or forming part of, any document referred above
- Financial Statement shall:
  - Give true and fair view of the state of affairs of the company.
  - Comply with the AS notified u/s 133
  - Be as per **schedule III** of the companies Act, 2013
- If financial statements do not comply with accounting standards, then company shall disclose in financial statements the reason for such deviation and financial effect due to such deviation.
- The financial statements shall be prepared and laid before at every AGM of the company by the board of directors.
- Where a Company has one or more subsidiaries (subsidiary include associate company and joint venture), Company shall in addition to its own financial statements prepare and file a consolidated financial statement of all the subsidiaries in the same manner as the company prepare its own Financial Statement.
- The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiaries in **AOC-1**.
- Following companies are required to maintain their financial statements as per Indian Accounting Standards (Indian AS);
  - All listed companies;
  - Companies having net worth of 250 crore or more.

*NB.: IND AS is also applicable on parent, subsidiary, associate and joint ventures of above companies.*

*Further, once Ind AS is applicable, an entity shall be required to follow the Ind AS for all the subsequent financial statements, whether adopted voluntarily or mandatorily.*

**A. Signing of financial statement**

- Financial statements (for submission to the auditor for his report thereon) shall be first approved by the board of directors before they are signed.
- Financial statements shall be signed on behalf of the board at least by:
- **In case of one person company**
  - the financial statement is required to be signed **only by one director**.
- **In case of companies other than one person company**
  - The chairperson of the company where he is authorised by the Board;

**OR**

By two directors out of which one shall be managing director; if any.

**AND**

- The Chief Executive Officer, Chief Financial Officer; and Company Secretary of the company, wherever they are appointed.

**B. Books of account etc. to be kept by company**

- ✓ Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statements for every financial year including its branch office or offices and explain the transactions effected both at registered office and its branches
- ✓ **Books of account and other relevant papers may be kept at such place other than its registered office as the Board of Directors may decide by passing board resolution**
- ✓ If the company decides to keep documents at any other place other than the registered office, the company shall intimate about such place in “**Form AOC-5**” to the ROC **within 7 days** from the date of passing resolution in this regard
- ✓ Where a company has a branch office in India or outside India, it shall be deemed to have complied with the above provisions, if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarized returns periodically are sent by the branch office to the company at its registered office or the other place.
- ✓ If documents maintained outside India, summarized returns of books of accounts shall be sent at quarterly intervals to the registered office and shall be kept open to Director for inspection.
  - The books of account of the company may be kept in “**Electronic Form**”, **provided that the books of accounts:**
  - Shall remain accessible in India for subsequent references
  - Shall be in original format and in complete and unaltered form
  - Must be in readable format
  - Information/details received from the branch office shall not be altered
  - Capable of being displayed in legible form
  - proper system for storage, retrieval, display or printout of the electronic records
  - One must keep the back-up of the books of account in servers physically located in India on a periodical basis

- ✓ The books of account of every company together with the vouchers shall be kept in good order for:-
  - At least eight financial years
- “Or”**
- For period in which company is in existence,

**“Whichever is less”**

**C. Inspection of Books of Account etc.**

- ✓ Director of the Company can inspect books of account and papers maintained by the company at the registered office of the company or at such other place in India by himself or through his authorised representative during business hours.
- ✓ If other financial information maintained outside the country is required by a director, he shall furnish a written request to the company setting out the full details of the financial information sought, the period for which such information is sought.
- ✓ Company shall produce such financial information to the director within fifteen days of the date of receipt of the written request.
- ✓ Above financial information can be inspected by the director himself and not by or through his power of attorney holder or agent or representative.
- ✓ Inspection in respect of any subsidiary company shall be done only by any person authorized in this behalf by a resolution of the board of directors.

**D. Filing of financial statement with the Registrar**

- ✓ Company (other than OPC) shall file within 30 days of AGM
  - A copy of complete financial statement of the company in form AOC-4
  - Every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) shall file the financial statements in Form AOC-4 NBFC (Ind AS)
  - Consolidated financial statement in AOC-4 CFS, if applicable.
  - For NBFC that is required to comply with Indian Accounting Standards (Ind AS) shall file the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (Ind AS).
  - All documents which are required to be attached with the financial statement
- ✓ One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year.
- ✓ In the case of a subsidiary which has been incorporated outside India which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the audit shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.
- ✓ **Filing of a company can be made in the following ways:**
  - Extensible Business Reporting (XBRL)
  - Non- Extensible Business Reporting (Non-XBRL)

✓ **Extensible Business Reporting (XBRL)**

Following Companies are required to file their financial statements and other documents under section 137 of the Companies Act, 2013 with the Registrar in e-form AOC-4 XBRL:

- All companies listed with any stock exchange(s) in India and their Indian subsidiaries;
- All companies having paid up capital of rupees 5 crore (five crore) and above;
- All companies having turnover of rupees 100 crore (one hundred) crore and above.
- All companies who have done XBRL filing (whether voluntarily or mandatorily) in previous financial year.

✓ **Non - Extensible Business Reporting (Non- XBRL)**

- All the companies other than those on whom XBRL is applicable shall file their financial statements and other documents under Section 137 of the Companies Act, 2013 with the Registrar in e-form AOC-4.

**II. IMPORTANT ASPECTS OF BOARD REPORT**

✓ Board's report is a comprehensive document which confines both financial and non-financial information, serving to inform the stakeholders about the performance and prospects of the company, relevant changes in management, capital structure, major policies, and recommendations as to the distribution of profits etc.

✓ **There shall be attached to the financial statements laid before a company in annual general meeting, a report by its Board of Directors, which shall include**

- web address, if any, where annual return has been placed
- number of meetings of the Board held during the year
- Directors Responsibility Statement
- details in respect of frauds reported by auditors **other than those which are reportable to the Central Government**
- a statement on declaration given by independent directors
- **Nomination and remuneration policy**, if applicable,
  - company's policy on directors' appointment
  - company's policy on directors' remuneration including criteria for determining qualifications, positive attributes
  - independence of a director and other matters
- explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
  - by the auditor in his report and
  - by the company secretary in practice in his secretarial audit report
- particulars of loans, guarantees or investments to other companies
- Particulars of contracts or arrangements with related parties in the **Form AOC-2**
- the state of the company's affairs
- the amounts, if any, which it proposes to carry to any reserves

- the amount, if any, which it recommends should be paid by way of dividend
- material changes and commitments, if any, affecting the financial position of the company which have occurred from the closure of financial year of the company to which the financial statements relate and the date of the report
- **Risk Management Policy** — a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company
- **CSR Policy** — The details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.
- Every listed company and every other public company having paid-up share capital of Rupees twenty-five crore or more calculated at the end of the preceding financial year shall include a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.
- Information related to:

**(A) Conservation of energy-**

- (i) the steps taken or impact on conservation of energy;
- (ii) the steps taken by the company for utilizing alternate sources of energy;
- (iii) the capital investment on energy conservation equipment's

**(B) Technology absorption-**

- (i) the efforts made towards technology absorption;
- (ii) the benefits derived like product improvement, cost reduction, product development or import substitution;
- (iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)-
  - (a) the details of technology imported
  - (b) the year of import
  - (c) whether the technology been fully absorbed
  - (d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof
- (iv) Expenditure incurred on Research and Development.

**(C) Foreign exchange earnings and Outgo-**

The foreign exchange earned in terms of actual inflows during the year and the foreign exchange outgo during the year in terms of actual outflows.

- the details of directors and key managerial personnel who were appointed or have resigned during the year.
- Statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year.
- the names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies during the year

- details relating to deposits
  - accepted during the year
  - remained unpaid or unclaimed as at the end of the year
  - whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved—
    - ▲ at the beginning of the year
    - ▲ maximum during the year
    - ▲ at the end of the year
- Details of deposits which are not in compliance with the requirements of Chapter V.
- The details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.
- The details in respect of adequacy of internal financial controls with reference to the financial statements.
- Disclosure as to whether maintenance of cost records as specified by the Central Government
- Statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013 along with the following details:-
  - (a) number of complaints of sexual harassment received in the year;
  - (b) number of complaints disposed off during the year; and
  - (c) number of cases pending for more than ninety days
- the details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof
- Details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) during the year along with their status as at the end of the financial year
- a statement by the company with respect to the compliance to the provisions relating to the Maternity Benefits Act, 1961.

✓ **Abridged Format of Board's Report for one Person Company and Small Company**

- The Board's report of one person company and small company shall be prepared based on the stand alone financial statement of the company and shall contain the following:—
  - the web address, if any,
  - number of meetings of the Board
  - Directors' responsibility statement
  - details in respect of frauds reported by auditors other than those which are reportable to the Central Government

- explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report
- the state of the company's affairs
- the financial summary or highlights
- material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company
- the details of directors who were appointed or have resigned during the year
- Details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.
- The report of the Board shall contain the particulars of contracts or arrangements with related parties

✓ **Signing of Board report**

- Board report shall be signed on behalf of the board at least by:
  - **In case of one person Company**
    - ▲ By at least one director
  - **In case of Companies other than one person company**
    - ▲ The chairperson of the company where he is authorised by the Board

**OR**

- ▲ By two directors out of which one shall be managing director; if any.



## CHAPTER XII

# CORPORATE SOCIAL RESPONSIBILITY (CSR)

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➤ **Applicability:**

- ✓ CSR is applicable on **every company** which triggers any of the following during the immediately preceding financial year:
  - Net worth of rupees five hundred crore or more;
  - OR
  - Turnover of rupees one thousand crore or more;
  - OR
  - Net Profit of rupees five crore or more

➤ **CSR committee**

✓ **Formation of committee**

- If a company falls under the prescribed criteria of CSR, it shall require to comply with the provisions of the CSR and shall require;
  - To constitute Corporate Social Responsibility Committee of the Board “hereinafter CSR Committee” comprised of:
    - 3 or more directors, out of which at least one director shall be an independent director.
- Provided where a company is not required to appoint an independent director it shall have in its Corporate Social Responsibility Committee without Independent Director.
- Provided further in case a Private Company is having only two directors on its Board, it shall constitute its CSR Committee with two such directors.
- Provided further in case of a Foreign Company, the CSR committee shall comprise of at least two persons of which one person shall be resident in India and who is authorised on behalf of the company to accept service of process and any notices or other documents required to be served on the company.
- Where the amount to be spent by a company towards CSR Obligation does not exceed ₹50 Lakh, there is no obligation upon company to constitute CSR Committee and the functions for spending CSR Corpus shall be discharged by board of directors.

✓ **Role of CSR committee:**

- The CSR Committee constituted in pursuance of Section 135 of the Companies Act, 2013 shall be required to carry out the following activities:



- Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- Recommend the amount of expenditure to be incurred on the activities referred; and
- Monitor the Corporate Social Responsibility Policy of the company from time to time.

➤ **CSR Policy**

- ✓ The CSR Policy shall be approved by the Board
- ✓ The CSR activities undertaken by the Company shall be as per its CSR policy.

➤ **CSR Expenditure**

- ✓ All such companies, shall spend, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.
- ✓ It is the responsibility of the Board to ensure the spending of such CSR expenditure.
- ✓ The average net profits shall be calculated in accordance with the provisions of Section 198 of the Companies Act, 2013.
- ✓ In case of foreign company, the net worth, turnover or net profit shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Companies Act, 2013.
- ✓ The company shall give preference to local areas where it operates, for spending amount for CSR activities.

➤ **Implementation of CSR activities:**

- ✓ The Board shall ensure that the CSR activities are undertaken by the company itself.  
However, CSR activities can be done through the following entities under the supervision of the Board –
  - section 8 Company or a registered public trust or a registered society, established by the company, either singly or along with any other company, or
  - section 8 Company or a registered trust or a registered society, established by the Central Government or State Government or
  - any entity established under Act of Parliament or a State legislature or
  - a company established under section 8 of the Act, or a registered public trust or a registered society, and having an established track record of at least 3 years in undertaking **similar activities**.
- ✓ Such entity, before undertaking CSR activities, shall register itself with the Central Government by **filing the form CSR-1** with the Registrar and obtain a **unique CSR Registration Number**.
- ✓ The CSR amount may be spent by a company for **creation or acquisition of a capital asset**, which

shall be held by –

- Section 8 company, or a Registered Public Trust or Registered Society, and having CSR Registration Number
- beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities or
- Public authority
- ✓ Any **surplus** arising out of the CSR activities
  - shall not form part of the business profit of a company; and
  - shall be ploughed back into the same project or
  - shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or
  - Shall be transferred to a Fund specified in Schedule VII within a period of six months of the expiry of the financial year.

➤ **Treatment of unspent amount**

- ✓ If the unspent amount relates to the on-going project:
  - Such amount shall be transferred to special account called as “unspent Corporate Social Responsibility account” within 30 days of closure of FY and shall be utilized within 3 years from the date of transfer.
  - If such amount is not spent within the period of 3 years from the date of such transfer, then the said amount shall be transferred to the funds specified in schedule VII within 30 days from the end of third FY.
  - The company shall also constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of section 135.
- ✓ If the unspent amount does not relate to an on-going project:
  - Such amount shall be transferred to one of the Funds specified in Schedule VII within a period of **6 months** of the expiry of the financial year within which such amount was required to be spent.

***NB.: Contribution made to chief minister relief fund or state relief fund is not qualified for eligible CSR contribution.***

➤ **Treatment of excess amount**

- ✓ If the **company spends an amount in excess** of the requirements, such company may set off such excess amount against the requirement to spend for immediate succeeding 3 financial years subject to the conditions that –
  - The excess amount available for set off shall not include the surplus arising out of the CSR activities,

**AND**

  - The Board of the company shall pass a resolution to that effect.

➤ **Impact assessment of CSR projects**

- ✓ Every company having average CSR obligation of 10 crore rupees or more in the 3 immediately preceding financial years shall
  - undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.
  - The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
  - A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year which shall not exceed 5% of the total CSR expenditure for that financial year or ₹50 Lakh, whichever is less.

➤ **Disclosure of CSR**

- ✓ The contents of the CSR policy shall be placed on the company's website, if any.
- ✓ The compositions of the CSR Committee shall be disclosed in the Board's report.
- ✓ Every company on whom the provisions of CSR are applicable shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the financial year 2021-2022 and onwards as an addendum to Form AOC-4 or AOC-4 XBRL.

➤ **End of applicability of CSR provisions**

- ✓ If company cease to be covered under the CSR provisions in the previous financial year, it shall not be required to comply with the provisions of CSR till the time it meets the criteria specified in the provision of CSR.

➤ **Activities included in Schedule VII includes involve the following:**

- (i) Eradicating hunger, poverty and malnutrition, “promoting health care including preventive health care” and sanitation including contribution to the **Swachh Bharat Kosh** set-up by the Central Government for the promotion of sanitation and making available safe drinking water;
- (ii) promoting education, including special education and employment enhancing vocation skills especially among children, woman, elderly and the differently abled and livelihood enhancement projects;
- (iii) promoting gender equality, empowering woman, setting up homes and hostels for woman and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the **Clean Ganga Fund** set-up by the Central Government for rejuvenation of river Ganga;
- (v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicraft;

- (vi) measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;
- (vii) training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;
- (viii) contribution to the **Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other fund set up by the Central Government** for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and woman;
- (ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and
  - (b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organization (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).;
- (xi) Rural development projects.
- (xi) Slum area development.

For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.

- (xii) disaster management, including relief, rehabilitation and reconstruction activities

➤ **CSR activities shall not include the following activities**

- ✓ Activities undertaken in the normal course of the business

However, company engaged in the research and development activities of new vaccine, drug and medical devices in the normal course of business may undertake research and **development activity of new vaccine, drug and medical devices related to COVID-19** for financial year 2020-21 to 2022-2023

- ✓ Activities undertaken by the company outside India except for training sports personnel representing any state or union territory at the National level or India at the international level
- ✓ Contribution of any amount whether directly or indirectly to any political party
- ✓ Activities benefiting employee of the company
- ✓ Activities carried out for the fulfilment of any statutory obligation under any law in force in India

➤ **Frequently Asked Questions:**

1. **Company X is covered by the CSR Rules. Company Y is holding company of company X. Y by itself does not satisfy any of the 3 triggers referred to above. Will Company Y be covered by the CSR Rules?**

No. The applicability of CSR requirements comes by way of section 135 of the Act. The section is quite clear – if the company by itself fulfils the conditions, it will be covered by the CSR provisions.

There is an apparently confusing reference in Rule 3 (1) to holding and subsidiary companies – that does not anyway expand the applicability of Section 135 to such companies who are otherwise not included in Section 135. The interpretation therefore is – if the company is otherwise covered by Section 135 on standalone basis, the mere fact that the holding or subsidiary company is also covered by the section does not give it any relief from the section. That is, the section will have to be complied with by every company on standalone basis.

2. **A company satisfies the turnover/net worth trigger but the company does not have average profits over last 3 years. Does the company have to comply with the CSR Committee requirements, though it does not have profits?**

**Ans.** Once any of the triggers are met as per the immediately preceding financial year, a company is required to comply with the provisions of Section 135 of the Act. However, constituting of a CSR committee shall only be applicable where the CSR spending is 50lakhs and above.

In case, the company does not have average net profits over the last 3 years, the Company would not be required to do the necessary CSR spending.

3. **What are the Eligible CSR activities under COVID-19 scenario?**

**Ans.**

- ✓ Creating health infrastructure for COVID care, establishment of medical oxygen generation and storage plants, ‘manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19’ or similar such activities are eligible CSR activities
- ✓ Contribution to specified R&D projects as well as contribution to public funded universities and certain Organizations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.
- ✓ Setting up makeshift hospitals and temporary COVID care facilities
- ✓ Carrying out awareness programs/campaigns or public outreach campaigns on vaccination
- ✓ Vaccination of persons other than Employees and their families is an eligible CSR activity



## CHAPTER XIII

# AUDIT AND AUDITORS

### ❖ Who can be the auditor

- ✓ A person, being an individual or a partnership firm or an LLP, having the following qualifications is eligible to be appointed as an auditor of a company:

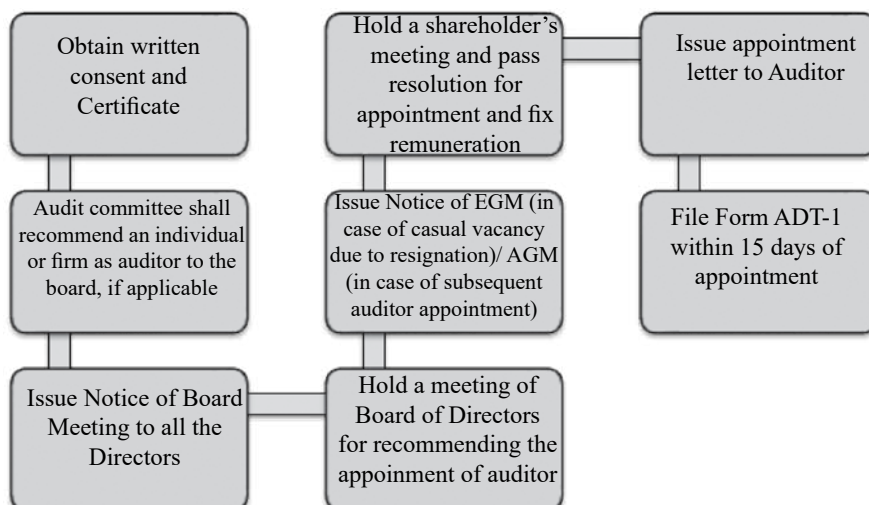
Particulars	Qualification
<b>Individual</b>	A person is eligible to be an auditor only if he is a qualified Chartered Accountant through ICAI.
<b>An Auditing Firm (including LLP)</b>	Majority of partners should be practicing in India
	Only the partners who are Chartered Accountants shall be authorized to act and sign on behalf of the firm.

### ✓ Eligibility certificate by auditor

The auditor shall furnish a certificate, before the date of his appointment, on his/its letter head stating the following:-

- The individual or the firm is eligible for appointment and is not disqualified for appointment under the Chartered Accountants Act, 1949 and the rules or regulations made there under
- The proposed appointment is as per the term provided under the Act
- The proposed appointment is within the limits laid down by or under the authority of the Act.
- The list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

### ❖ Procedure for appointment of auditor



❖ **Persons who are ineligible for being appointed as an auditor**

S. No	Unentitled Persons	Explanation
1.	A body corporate	However, an LLP registered under the Limited Liability Partnership Act, 2008 can become an auditor
2.	An officer or employee of the company;	-
3.	Any partner/employee of an officer or employee of the company	-
4.	<p>A person who either himself or his relative or partner is holding any security or interest in excess of ₹1,00,000/- in the company or its</p> <ul style="list-style-type: none"> <li>• subsidiary company</li> <li>• holding company</li> <li>• associate company or subsidiary of such holding company</li> </ul>	A relative of an auditor may hold securities or interest in the company of face value up to <b><u>₹1,00,000/-</u></b>
5.	<p>A person who either himself or his relative or partner is indebted in excess of <b><u>₹5,00,000</u></b> to the company or its</p> <ul style="list-style-type: none"> <li>• subsidiary company</li> <li>• holding company</li> <li>• associate company or subsidiary of such holding company</li> </ul>	Such persons may be indebted up to ₹5,00,000/- to the company or its subsidiary company or its holding company or associate company or subsidiary of such holding company
6.	<p>A person who either himself or his relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person in excess of <b><u>₹1,00,000</u></b> to the company, or its</p> <ul style="list-style-type: none"> <li>• subsidiary company</li> <li>• holding company</li> <li>• associate company or subsidiary of such holding company</li> </ul>	Such persons may give guarantee or provide any security in connection with the indebtedness of any third person up to <b><u>₹1,00,000/-</u></b> to the company or its subsidiary company, or its holding company or associate company or subsidiary of such holding company
7.	<p>A person or a firm who, whether directly or indirectly, has <b>business relationship</b> with the company, or its</p> <ul style="list-style-type: none"> <li>• subsidiary company</li> <li>• holding company</li> <li>• associate company or subsidiary of such holding company</li> </ul>	1. Commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under

S. No	Unentitled Persons	Explanation
		2. Commercial transactions which are in the ordinary course of business of the company at arm's length price by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.
8.	A person whose relative is a <ul style="list-style-type: none"> <li>• director, or</li> <li>• employee of the company as director or key managerial personnel</li> </ul>	-
9.	A person who is in full time employment elsewhere	-
10.	Person who is auditor of more than 20 companies	While counting the limit of 20 companies following companies shall not be counted: <ol style="list-style-type: none"> <li>1. One Person Companies,</li> <li>2. Dormant companies,</li> <li>3. Small companies</li> <li>4. Private companies having paid-up share capital less than ₹100 crores</li> </ol>
11.	A person who has been convicted by a court of an offence involving fraud and a <b>period of 10 years</b> has not elapsed from the date of such conviction <u><i>i.e. 10 years barring period</i></u>	A person can be appointed as an auditor after a period of 10 years have lapsed from the date of conviction.
12.	Any Individual or an audit firm is engaged as on the date of appointment in consulting and specialized services as provided in section 144 with the company or its <ul style="list-style-type: none"> <li>• subsidiary company</li> <li>• holding company</li> </ul>	

**Note:**

In case the auditor of the company incurs any of the disqualifications mentioned as above midway during his tenure as auditor, he shall vacate his office as such auditor and such vacation shall be deemed to be casual vacancy in the office of the auditor.

**❖ Auditor not to render certain services**

An Auditor shall not, **directly or indirectly**, render any of the following service to the company or its holding company or its subsidiary company, as the case may be:

- any services which are not approved by the Board of Directors or the audit committee, as the case may be
- accounting and book keeping services;
- internal audit;



- design and implementation of any financial information system;
- actuarial services;
- investment advisory services;
- investment banking services;
- rendering of outsourced financial services
- management services
- any other kind of services as may be prescribed

**Note:** Here “directly or indirectly” means;

✓ **In case of auditor being an individual,**

- either himself or
- through his relative or
- through any other person connected or associated with such individual or
- through any other entity, whatsoever, in which such individual has significant influence or control, or
- through any other entity whose name or trade mark or brand is used by such individual;

✓ **In case of auditor firm,**

- either itself or
- through any of its partners or
- through its parent, subsidiary or associate entity or
- through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or
- Through any other entity whose name or trade mark or brand is used by the firm or any of its partners.

❖ **Rotation of Auditor**

✓ **Applicability of Rotation**

The concept of Rotation is Applicable to:-

- All listed companies,
- **Unlisted public companies** having paid up capital of ₹10 Crore
- **All private companies** having paid up share capital of ₹50 Crore or more
- **All companies (whether private or public)** having public borrowings from financial institution, banks or **public deposits** of ₹50 Crore or more

***NB.:** Rotation of auditors does not apply to OPC, small companies & dormant companies*

✓ **In case of Individual auditor**

- Appointment or reappointment can be made as auditor for not more than one term of 5 consecutive years.
- A cooling period of 5 years, from the date of completion of last tenure, is required before re-appointment of an auditor.

✓ **In case of Firm auditor**

- Appointment or reappointment can be made as auditor for not more than two terms of 5 consecutive years.
- A cooling period of 5 years, from the date of completion of last tenure, is required before re-appointment of an auditor
- ✓ The incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.
- ✓ A break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation.

❖ **Casual Vacancy**

- ✓ Instances of casual vacancy:—
  - Death
  - Resignation
  - Disqualification – If an existing auditor gets disqualified under Section 141 then he shall inform the company and the situation will be treated as a casual vacancy.
- ✓ Casual vacancy should be filled by the Board within 30 days.

Provided that where the casual vacancy has arisen due to resignation of auditor then such appointment shall also be approved by the members at a duly convened general meeting within three months of the recommendation of the Board.

❖ **Removal of an Auditor**

- ✓ Auditor may be removed **before the expiry** of his term by passing a special resolution & with prior approval of central government.
- ✓ The auditor shall be given a reasonable opportunity of being heard
- ✓ The application to the Central Government shall be filed in Form ADT-2 within 30 days of convening the Board meeting.
- ✓ A general meeting is required to be held by the company within 60 days of receipt of Central Government's approval for the passing of Special Resolution and such special resolution shall be filed with the ROC within 30 days.

❖ **Frequently Asked Questions (FAQs)**

**1. Whether an auditor of the company is required to be ratified at the annual general meeting of the company every year during the tenure ship?**

As per the erstwhile proviso to section 139 (1), at every annual general meeting the appointment of auditor was required to be ratified. However, pursuant to the Companies Amendment Act, 2017 the requirement of ratification of auditor has been done away with.

Henceforth, in the light of the above, ratification of auditor is not required every year.

**2. Whether E-form ADT-3 is required to be filed after completion of the tenure of the Auditor?**

The purpose of e-form ADT-3 is to intimate the ROC about the termination of the office as a result of resignation of the Auditor before the expiry of his/her tenure. The Auditor who has resigned, is required to file e-form ADT-3 within a period of 30 days from the date of resignation. Thus, e-form ADT-3 is not required in following situations:

- If any new auditor (other than first Auditor) is appointed in the first AGM, no need to file e-form ADT-3 as the term of the first Auditor is only till the conclusion of first AGM. However, the Company shall file e-form ADT-1 towards the appointment of new auditor appointed post the first AGM.
- Mr. A is appointed as auditor for 5 years. After completion of the said period of 5 years, if Mr. B is appointed as auditor, no need to file e- form ADT-3 for Mr. A. The Company shall file ADT-1 for the appointment of B.
- ADT-3 is not required to be filed in case of death of auditor.

**3. Can the Auditor be appointed for a period less than 5 years?**

The terms for appointment of Statutory Auditors is defined under Section 139(1), which clearly stipulates that the auditor appointed shall hold office till the conclusion of sixth AGM from the AGM in which he is appointed. Thus, one can opine that the auditor cannot be appointed for one term, consisting of period less than or more than five years. Even if a Company has previously appointed an auditor for a term lesser than 5 years, it shall still be treated as one full term and the cooling period under Section 139(2) shall be required for specified companies.

If the auditor is appointed to fill in the casual vacancy arisen due to vacancy of office of previous years, then, the period he serves to complete the tenure of the previous auditor (i.e. till the conclusion of ensuing AGM) shall not be counted as term of this auditor and he can be appointed for a fresh term of 5 consecutive years in the same Company.



## CHAPTER XIV

# EXIT MODES OF COMPANIES

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There are **two exit modes** of companies:

- A. Voluntary Strike off by Company under Section 248(2) of Companies Act, 2013
- B. Winding up of companies under Insolvency and Bankruptcy Code, 2016

### A. VOLUNTARY STRIKE OFF BY COMPANY

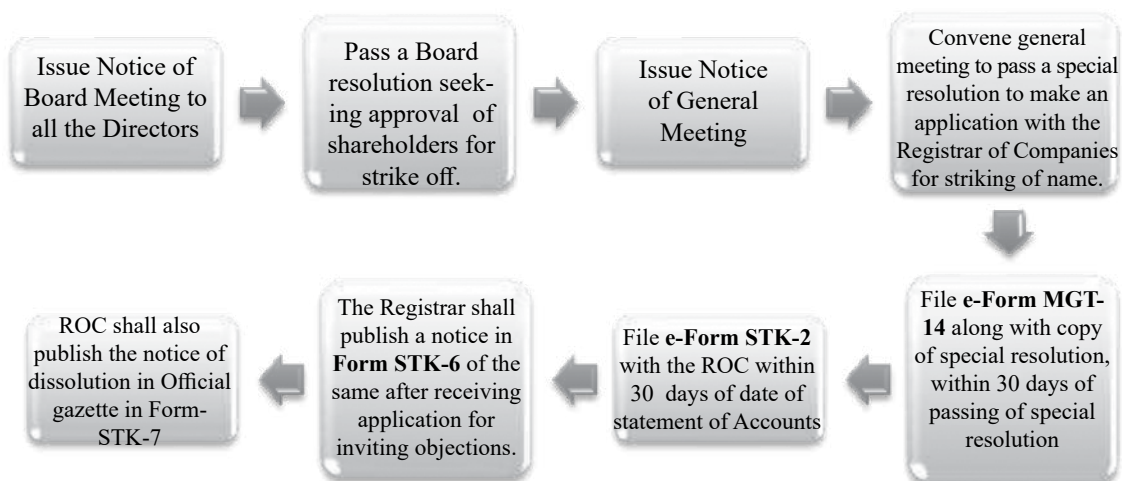
- ✓ A Company may file an application voluntary for removal of its name from the Registrar of Companies on all or any of the following grounds:
    - If the company is a defunct company.
      - In respect to the above the Defunct Company is a company which has:
        - Nil Asset and liability,
        - AND
        - Not commenced any business or activity within one year of its incorporation or has not been carrying any business operation since last two year.
    - Where subscribers to the MOA have not paid the undertaken subscription amount and a declaration to this effect in Form INC-20A is not filed within 180 days of incorporation.
  - ✓ All bank accounts, Registrations with the govt. authorities should be closed/cancelled before applying for closure of the company.
  - ✓ A Company may file an application along with fees of ₹10,000 to the concerned ROC for removing its name from the register of Companies on all or any of above grounds, after paying off its liabilities,
    - by special resolution in general meeting or
    - with the consent of its 75% members in terms of Paid-up share capital,
- NB.: *In case a Company is registered or regulated under a special act, approval of the regulatory body under that specific act shall be obtained and enclosed with the application.*
- ✓ **Categories of companies cannot not be removed from the register of companies:**
    - Listed companies
    - Section 8 companies i.e., NGO'S/Charitable trusts etc.
    - Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws
    - Vanishing companies

- Companies upon which inspection or investigation
  - is ordered and being carried out or actions on such order are yet to be taken up or
  - were completed but prosecutions arising out of such inspection or investigation are pending in the Court
- Companies where
  - notices under section 234 of the Companies Act, 1956 or
  - section 206 or section 207 of the Act have been issued and reply is pending or
  - report under section 208 has not yet been submitted or follow up of instructions on report under section 208 is pending or
  - where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the Court
- Companies against which any prosecution for an offence is pending in any court
- Companies whose application for compounding is pending for the offences committed by the company or any of its officers in default
- Companies, which have accepted public deposits which are either outstanding or the company is in default in repayment of the same
- Companies having charges which are pending for satisfaction

**In other words, companies which have subsisting charges registered with ROC cannot be struck off.**

- The Ministry of Corporate Affairs (MCA) established the Centre for Processing Accelerated Corporate Exit (C-PACE) on March 17, 2023, with the office becoming operational on May 1, 2023. It centralizes the voluntary strike-off process (Form STK-2) under the Companies Act, 2013, aiming for closure within 70-90 days.

✓ **Procedure for making application to ROC for removal**



**B. WINDING UP OF COMPANIES UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016**

Any Company or LLP which has not defaulted in payment and have a full capacity to repay debt can apply for voluntary liquidation.

➤ **Requirement of voluntary liquidation:**

✓ **Declaration of solvency:**

A declaration from majority of the directors of the company or designated partners of the LLP, **verified by an affidavit** stating that:

- They have made a full inquiry into the affairs of the company/LLP and they have formed an opinion that
  - Either the company/LLP has no debt or
  - It will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation

**AND**

- The company is not being liquidated to defraud any person
- ✓ The above declaration shall be accompanied with the following documents:
- Audited financial statements and records of business operations of the company/LLP for;
    - the previous 2 years
  - OR**
  - for the period since its incorporation,
- } Whichever is later
- Valuation report of the assets of the company/LLP prepared by a registered valuer;

✓ **Shareholder's Approval**

- Within 4 weeks of declaration of solvency, a company/LLP shall pass special resolution by the members of the company in a general meeting:
  - Requiring the company to be liquidated voluntarily and
  - Appointing an insolvency professional to act as the liquidator.

✓ **Creditor's Approval**

- If the company/LLP owes any debt to any person,
  - Creditors representing 2/3rd in value of the debt of the company shall **ratify** the resolution passed by the shareholders for voluntary liquidation within 7 days of shareholder's approval

✓ **Liquidation commencement date**

- In case the company/LLP does not owe any debt to any person - Date of passing of shareholder resolution shall be deemed to be the date of commencement of voluntary liquidation proceedings.
- In case the company/LLP owes any debt to any person - Date of approval by creditors, shall be deemed to be the date of commencement of voluntary liquidation proceedings

➤ **Procedure to be adopted for voluntary liquidation**

**PHASE-1**

- The company shall notify the ROC in form GNL 2 and the IBBI about the resolution passed to

liquidate the company within 7 days of shareholder's resolution or the subsequent approval by the creditors, as the case may be.

- Liquidator shall make public announcement within 5 working days of his appointment;
  - To call stakeholders to submit their claims within 30 days from the liquidation commencement date
  - It must be published in one English daily and one Regional daily newspaper wherein registered office and principal office, if any of the corporate person is situated.
  - It must also be posted in the website of corporate persons, if any.
  - It must be sent to the IBBI for posting it in board's website.
    - Public Announcement must contain the following:
- Liquidation commencement date
  - Name, Address, Contact number, Registration number of liquidator
  - Mode of submission of claim
  - Last date of submission of claim
- A new bank account with scheduled bank must be opened with the word '**In Voluntary Liquidation**' at last after the name of corporate person for receiving and paying settlement amount.
- Each and every financial transaction must be settled through the newly opened bank accounts.

### **PHASE-2**

- Claims Collection, Segregation, Acceptance and Rejections
- Claims could be submitted to the Liquidator in person, by post or electronic means
- Claim should be accomplished with proof of claim.

### **PHASE-3**

- Liquidator needs to prepare Preliminary Report:
  - Within 45 days from the date liquidation commencement date
  - Containing capital structure, assets and liabilities, etc.
- The liquidator may value and sell the assets in the manner and mode as approved by the corporate person.
- The liquidator shall endeavor to recover and realize all assets of and dues to the corporate person in a time bound manner for maximization of value for the stakeholders.
- Liquidator must prepare a final report containing liquidation proceedings and submit it to the ROC, IBBI and NCLT.
- Based on final report and application for dissolution, NCLT pass an order for dissolution of corporate entity.
- Copy of order received from NCLT needs to be filled with ROC in e-form INC-28 for dissolution of a corporate entity.

**Important Points to be considered:**

- ✓ In case of the capital of the company, no distribution shall be to the contributory unless he makes his contribution to the uncalled or unpaid capital of the company
- ✓ All payments by liquidator above ₹5000 out of the account shall be made by Cheque drawn or online banking modes.
- ✓ Where there are mutual dealings between the company and another party, the sums due from one party shall be set off against the sum due from the other party to arrive at net amount payable to the company or to the other party
- ✓ Where the amount claimed by claimant is not precise due to any contingency or any other reason, the liquidator shall make the best estimate of the amount of the claim, based on consultation with the claimant and company as well the information available with him
- ✓ In case of the claim denominated in foreign currency, it shall be valued in Indian currency at the official exchange rate as on liquidation commencement date.

**❖ Frequently Asked Questions (FAQs)****1. How can a Private Limited/Limited Company be closed?**

The closure of a limited company depends on whether it is solvent (able to pay its bills) or insolvent (unable to pay its bills). If it is solvent, the easiest way to close it is for the directors to apply to Registrar of Companies to have it struck off the register.

Alternatively, if the company is insolvent, the directors can propose a creditors' voluntary liquidation process. This course of action will require at least 75% of the voting shareholders (by value of their shares) to agree to the closure by passing a winding-up resolution. In certain situations, a company can be forced to close by its creditors.

**2. Under which circumstances voluntary strike off cannot be done?**

- ✓ Company has not filed INC-20A i.e. application for certificate of commencement of business
- ✓ One year is not completed since incorporation
- ✓ For ongoing company i.e. having business transactions in last 1-2 years
- ✓ DIN are deactivated due to non-filing of KYC
- ✓ Any director is disqualified under Section 164(2) of the Companies Act, 2013
- ✓ Company has already received notice from ROC of strike off

**3. Are there any restrictions on making application for strike off?**

Yes, there are certain cases as mentioned below wherein application for voluntary strike off is restricted if at any time **in the previous 3 months**, the company,

- ✓ Has Changed its name or shifted its registered office from one State to another
- ✓ Has made a disposal for value of property or rights held by it, or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on any sort of business;
- ✓ Has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;



- ✓ Has made an application to the NCLT for the sanctioning of a Compromise or Arrangement under section 230 and the matter has not been finally concluded or
- ✓ Is being wound up, whether voluntarily or by the NCLT or under the IBC, 2016.

**4. What is the treatment of Unclaimed Proceeds of Liquidation under IBC, 2016?**

- ✓ The liquidator, on the date of the order of dissolution shall apply to the NCLT for an order to transfer the following amount into the Companies Liquidation Account to the Public Account of India:
  - Any unclaimed proceeds of liquidation or
  - Undistributed assets or
  - Any other balance payable to the stakeholders.
- ✓ A person claiming to be entitled to any money transferred into the Companies Liquidation Account may apply to the Insolvency and Bankruptcy Board of India for an order for payment of the money claimed.
- ✓ If IBBI is satisfied about the entitlement of such person (the whole or any part thereof), make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.
- ✓ Any money transferred into the Companies Liquidation Account, which remains unclaimed thereafter for a period of 15 years shall be transferred to the General Revenue Account of the Central Government.



## CHAPTER XV

# APPOINTMENT AND QUALIFICATION OF DIRECTORS

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### ❖ Characteristics in respect to appointment of Directors:

- ✓ Only individual can be director of the company.
- ✓ A person who holds a valid Director Identification Number (DIN) can only be appointed as a director of a company.
  - A DIN can be obtained through filing of requisite information and documents in Form DIR-3.
  - An individual, who is a national of any of the following countries, is required to obtain approval/clearance from the Ministry of Home Affairs, under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, before applying for DIN:
    - China
    - Bhutan
    - Pakistan
    - Myanmar
    - Nepal
    - Bangladesh
  - DIN allotted is a unique number which shall be valid for the life time and the same number shall not be allotted to any other person.
  - Every individual who has been allotted DIN needs to file form DIR-3-KYC-web on or before 30th June of the immediately following financial year in which the 3-year cycle completes to update KYC details with the Ministry of Corporate Affairs.
  - Where any person proposes to change the particulars (except Phone number, email ID and residential address) mentioned in DIN shall make an application in form DIR-6 along with proof of such changes.
  - Where the person wishes to update email ID, Phone number and residential address, he shall update the same by submitting e-form DIR 3 KYC only on or before 30th June of the financial year.
  - Where the person wishes to update email ID, Phone number and residential address again in addition to the filing of DIR-3KYC-WEB, he can update the same by submitting e-form DIR-3 KYC-WEB only within 30days of change and on payment of prescribed fees.

- ✓ Minimum and maximum number of directors in a company shall be as follows:

Type of company	Minimum director	Maximum director
One person company	1	15
Private company	2	15
Public company	3	15

- A maximum limit can be increased by way of passing special resolution.
- The limit of maximum 15 Directors is not applicable on:
  - Section 8 companies, and
  - Government companies
- ✓ Every company, other than OPC, shall have at least one director who has stayed in India for total period of not less than one hundred and eighty-two days during the financial year.
- ✓ Provided in case of a newly incorporated company the above requirement shall apply proportionately at the end of the financial year in which it is incorporated.
- ✓ Every OPC shall have at least one director who is “resident in India” i.e. such person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year
- ✓ Every person to be appointed as director shall give his consent in writing in Form DIR-2 along with following:
  - Interest in other entities.
  - Declaration **that he is not disqualified under this act in form DIR-8.**

#### ❖ Appointment of Directors

- ✓ Save as otherwise expressly provided in companies act, every director shall be appointed by the company in general meeting only.
- ✓ Supplementary provision in case of public company:
  - The person intending to become as a Director or some other member who proposing his candidature shall deposit the amount of ₹1,00,000 (One Lakh) with the company along with at least 14 days prior notice before the Meeting. **(Shorter notice is not allowed)**
  - Amount deposited will be refunded if candidate gets more than 25% of total casted votes.
  - Regularization of additional director as a normal director, in annual general meeting of the Company, should follow the above procedure, if such appointment is proposed by the member;
  - However, in our opinion, if the appointment is been proposed by board, the deposit of rupees one lakh is not required to be made.
  - Provisions mentioned above relating to deposit of sum of ₹100,000 by the person intending to be appointed as director would not applicable in following cases:
    - Appointment of independent director;

- Appointment of director recommended by the nomination and remuneration committee, if constituted;
  - Appointment of director recommended by the Board of Directors if company does not require constituting the nomination and remuneration committee.
- ✓ A director shall be appointed on the Board of the company in any of the following one class or a combination thereof, wherever allowed:

1.	<b>Additional Director</b>	<ul style="list-style-type: none"> <li>✓ Board of Directors can at any time appoint additional director to hold the office.</li> <li>✓ Such director shall hold the office till the conclusion of next annual general meeting.</li> <li>✓ The position of additional director can be regularized in the next annual general meeting to director.</li> </ul>
2.	<b>Alternate Director</b>	<ul style="list-style-type: none"> <li>✓ Board of Directors can appoint alternate director to hold the office in place of the director who is outside India for the period of at least 3 months.</li> <li>✓ Alternate director shall have all the rights and power of the director in place of whom he is appointed</li> <li>✓ Alternate director shall leave his office <ul style="list-style-type: none"> <li>• On the expiry of tenure of the period of office of director in whose place he is appointed or</li> <li>• When the said director returns India</li> </ul> </li> <li>✓ Any provision of automatic reappointment shall be applicable to the director in whose place alternate director is appointed</li> </ul>
3.	<b>Nominee director</b>	<ul style="list-style-type: none"> <li>✓ Nominee director is nominated by any financial institution, in pursuance of any agreement, or appointed by any government to represent its shareholding in the company.</li> <li>✓ Nominee director shall not be deemed to be an independent director.</li> </ul>
4.	<b>Director to fill casual vacancy</b>	<ul style="list-style-type: none"> <li>✓ Where any director appointed by the company in the general meeting vacates the office before the expiry of their tenure, the Board shall appoint another director to fill the casual vacancy arisen due to his vacation. E.g.: death of director</li> <li>✓ Such director shall hold the office till the date up to which the director in whose place he is appointed, would have held the office if he has not vacated the office.</li> </ul>

- ✓ Save as otherwise expressly provided in companies act, following types of directors are become mandatory to appoint by company based on their applicability:

S.No.	Type of Director	Applicability
1.	<b>Woman Director</b>	<ul style="list-style-type: none"> <li>✓ Following classes of the companies are required to appoint Woman Director- <ul style="list-style-type: none"> <li>• Every listed company</li> <li>• Every public company having: <ul style="list-style-type: none"> <li>○ paid up capital 100 crores or more or</li> <li>○ turnover of 300 crores or more</li> </ul> </li> </ul> </li> <li>✓ Any intermittent vacancy shall be filled within- <div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"> 3 months from the vacancy or Next Board meeting </div> <div style="font-size: 3em; margin-right: 10px;">}</div> <div>Whichever is later</div> </div> </li> </ul>
2.	<b>Resident Director</b>	<ul style="list-style-type: none"> <li>✓ Every company shall have at least 1 director who stays in India for the period of 182 days or more during the financial year.</li> <li>✓ For newly incorporated company the requirement shall <b>apply proportionately</b> at the end of the financial year in which it is incorporated.</li> </ul>
3.	<b>Independent Director</b>	<ul style="list-style-type: none"> <li>✓ Following companies need to appoint independent director on the Board of the company: <ul style="list-style-type: none"> <li>• <b>Every listed public company-</b> <ul style="list-style-type: none"> <li>1/3rd of board shall comprise of independent Director</li> </ul> </li> <li>• Following classes of public companies, shall have at least <b>two</b> independent directors: <ul style="list-style-type: none"> <li>(a) Having paid up capital of 10 crores or more</li> <li>(b) Having turnover of 100 crores or more</li> <li>(c) Having Loans and outstanding borrowing, debentures and borrowing exceeding 50 crores</li> </ul> </li> </ul> <p>Exception: The following classes of unlisted public company are not required to have independent director on board:</p> <ul style="list-style-type: none"> <li>(a) A joint venture</li> <li>(b) A wholly owned subsidiary and</li> <li>(c) A dormant company as defined under section 455 of the Act.</li> </ul> </li> <li>✓ Independent director is the non-executive Director</li> <li>✓ He cannot be whole time director, managing director and nominee director.</li> <li>✓ <b>Filing up of vacancy:</b> <p>Any intermittent vacancy of an independent director shall be filled-up by the Board at the <b>earliest but not later than:</b></p> </li> </ul>

S.No.	Type of Director	Applicability
	<ul style="list-style-type: none"> <li>✓ Independent director is the non-executive Director</li> <li>✓ He cannot be whole time director, managing director and nominee director.</li> <li>✓ <b>Filing up of vacancy:</b> Any intermittent vacancy of an independent director shall be filled-up by the Board at the <b>earliest but not later than:</b> <ul style="list-style-type: none"> <li>• Immediate next board meeting; or</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Immediate next board meeting; or</li> <li>• 3 months from the date of such vacancy.</li> <li>✓ <b>Tenure-</b> Can be appointed for the consecutive period of 5 years</li> <li>✓ Hold the office maximum up to 2 consecutive term of 5 years each, subject to shareholders approval by way of special resolution passed at the general meeting.</li> <li>✓ <b>Cooling off period-</b> Such person may be reappointed after 3 years from the date he ceases to become director of the company Provided that such director shall not be engaged with company in any capacity during the period of 3 years.</li> </ul>
4.	<b>Small Shareholders Director</b>	<ul style="list-style-type: none"> <li>✓ Listed company may have 1 director elected by the small share-holders, to represent the interest of small shareholders of the company. <i>NB.: Small shareholder means the holder of the share of the nominal value not exceeding 20,000 rupees</i></li> </ul>
5.	<b>Key Managerial Personnel:</b> <ul style="list-style-type: none"> <li>(a) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;</li> <li>(b) Company secretary; and</li> <li>(c) Chief Financial Officer</li> </ul>	<ul style="list-style-type: none"> <li>✓ Following class of companies shall have whole time key managerial personnel: <ul style="list-style-type: none"> <li>(a) Every listed company, and</li> <li>(b) Every other public company having a paid-up share capital of ten crore rupees or more</li> </ul> </li> </ul>

- ✓ An individual who is a national of a country which shares a land border with India, i.e., China, Bhutan, Pakistan, Nepal, Myanmar and Bangladesh, shall before giving consent for appointment as the director of the company, obtain Government approval/clearance under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and such approval/clearance shall be enclosed with Form DIR-2

#### ❖ Retirement of Director in case of Public Company

- ✓ In case of public limited company unless the articles provide for the retirement of all directors at

every annual general meeting, not less than two-thirds of the total number of directors shall be liable to determination by retirement by rotation.

- One third of such retiring director shall be liable to retire by rotation at every Annual General Meeting.
- Directors to retire by rotation shall be those who have been longest in office since their last appointment.

However, in case of persons became directors on the same day;

- Retirement shall be as per agreement among themselves,
- If no agreement, it shall be determined by lot.

#### ❖ **Appointment of Whole Time Director/Managing Director/Manager:**

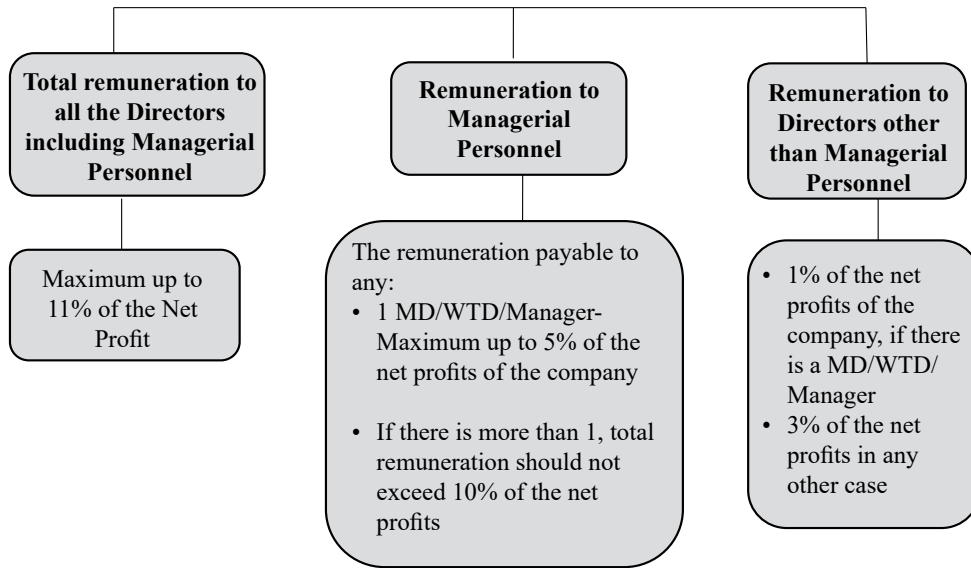
- ✓ On the recommendation of nomination and remuneration committee, if any, the Board shall appoint the director to hold the office of MD or WTD on such terms and conditions and on such remuneration as agreed between them
- ✓ Appointment and Remuneration of the managing director and whole-time director shall be approved by the shareholders at the general meeting.
- ✓ MD/WTD/Manager shall be appointed or re-appointed to hold the office for consecutive period of 5 years.
- ✓ Company shall file returns of appointment in form MR-1 within 60 days of date of appointment.
- ✓ Any act done by person as the WTD/MD/Manager shall not be invalidate on the ground that later on his appointment is not approved by the shareholders at the meeting.
- ✓ The notice convening Board or general meeting for considering appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest of a director
- ✓ Company cannot appoint manager and managing director at the same time
- ✓ Company cannot reappoint the WTD/MD one year before the expiry of his term.
- ✓ Any person may be appointed as the MD of the company even if he holds office as MD or manager in other company, where all the directors present the meeting in which appointment has been considered approves such appointment.
- ✓ Company may have more than one Managing Director at the same time.

#### ❖ **Managerial Remuneration**

<b>Applicability</b>	Public companies and its subsidiary(ies)
<b>Governing Authority</b>	<p>In case of remuneration is paid</p> <ul style="list-style-type: none"> <li>• <b>within the limits specified in section 197(1)</b> – By passing board resolution</li> <li>• <b>exceed the limits specified in section 197(1)</b> – By passing shareholders resolution by way of special resolution along with subject to the provisions of Schedule V</li> </ul>

**NB.:**

1. *Prior approval of Banks, PFI, NCD holders or secured creditors is mandatory before getting approval of shareholders in general meeting **in case of defaulting companies.***

➤ **Limits of Managerial Remuneration u/s 197(1)**

**NB.:** Managerial remuneration shall not be deducted from Gross Profits.

➤ **Managerial Remuneration in case of no profits/inadequate profits**✓ **TO MANAGERIAL PERSONNEL**

If there are no profits or in case of inadequate profits, remuneration to the managerial personnel should be paid as per Schedule V as follows:

Where the effective capital is:	Limits of yearly remuneration
Negative or less than 5 Crores	60 Lakhs
5 crores and above but less than 100 Crores	84 Lakhs
100 crores and above but less than 250 crores	120 lakhs
250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of 250 Crores

*Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders, is a special resolution.*

✓ **TO OTHER DIRECTORS INCLUDING INDEPENDENT DIRECTOR**

If there are no profits or in case of inadequate profits, remuneration to the other directors should be paid as per Schedule V as follows

Where the effective capital is:	Limits of yearly remuneration
Negative or less than 5 crores	12 lakhs
5 crores and above but less than 100 crores	17 lakhs



Where the effective capital is:	Limits of yearly remuneration
100 Crores and above but less than 250 crores	24 lakhs
250 crores and above	24 lakhs plus 0.01% of the effective capital in excess of 250 crores

➤ **Points to be kept in mind:**

- Section 197 applies only to public companies and hence private companies are free to pay remuneration at any rate to such directors in case of adequacy or inadequacy of profits.
- A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other;
- The net profits for the purposes of this section shall be computed in the manner referred to in Section 198
- The limit of remuneration specified in section 197 does not include Sitting fee or any kind of fee paid to directors for rendering services of a professional nature;
- The amount of sitting fee to be paid to a director for attending the board meeting or any committee meeting shall not exceed ₹1,00,000 per meeting.  
Provided that for independent directors and woman directors the sitting fee shall not be less than the sitting fee paid to other directors.
- Every listed company shall disclose the ratio of the remuneration paid and the median employee's remuneration along with other prescribed details.
- When the company insures its personnel by providing protection against any act done by them due to negligence, default, misfeasance, breach of duty, breach of trust, such premium paid for this insurance shall not be treated as part of remuneration except if the director is proved guilty.
- Any managing director/whole time director receiving commission from the company may also receive remuneration or commission from the holding or subsidiary of such a company provided the same is disclosed in the board's report.

❖ **Disqualifications of Directors:**

- ✓ A person is disqualified to become director if such person is:
  - Unsound mind and stands so declared by court
  - Undischarged insolvent
  - Applied to be adjudicated as an insolvent and application is still pending
  - Convicted for the offences and sentenced in respect thereto for the imprisonment of at least 6 months and 5 years from the date of expiration of sentence is not lapsed
  - Subsisting Order of court/tribunal disqualifying him to be appointed as the director of the company
  - On the date of appointment holds directorship in more than 20 companies
  - Convicted for the offence dealing with related party during the period of last 5 years
  - Not paid calls in respect of the shares of the company held by him and 6 months have lapsed from the last date on which calls were made.

- Has not been allotted a Director Identification Number and/or clearance from the Ministry of Home Affairs, where the applicant is from a country which shares land Borders with India.
- ✓ Private company may provide any other grounds disqualification in its Articles of association
- ✓ Person shall not be eligible to be appointed/re-appointed as the director in any company for the period of 5 years, if the company in which he holds or has held the directorship:
  - Has failed to file financial statements or annual return for the continuous period of 3 financial years.
  - Has failed to repay the deposits accepted by it or redeem any debentures on due date or to pay interest thereon or pay any dividend declared and where such failure continues for the period of at least 1 year.
- ✓ **Perpetual disqualification:** If the person convicted in respect of any offences for the period of 7 years or more, he/she shall never be eligible to be appointed as director.
  - ✓ However, if intermittent vacancy arises due to resignation or removal, the vacancy shall be filled within 3 months of such vacation.
  - ✓ If annual general meeting is not held, additional director shall hold office till the last date up to Annual general meeting should have been held.
  - ✓ Alternate Director appointed for in the place of independent director shall possess all the qualifications of the independent director.

❖ **Supplementary disqualifications of Managing Director/Whole Time Director/Manager**

Any person shall not be eligible to be appointed as the MD or WTD or manager of any company if:

1	If the person is below the age of twenty one years or has attained the age of 70 years
2	Un-discharge insolvent or at any time adjudicated as an insolvent
3	Has at time suspended the payment of the creditors or make composition with them
4	Convicted for offences and sentenced in respect thereof for the period of more than six months

- ✓ person who has attained the age of seventy years may be appointed
  - after passing special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person; and
  - **Where no such special resolution is passed** but votes cast in favor of the motion exceed the votes cast in against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company.

❖ **Cessation of Director**

A. **Resignation of Director**

- ✓ Director shall submit written resignation to the company.
- ✓ Resignation will take **effect later of the following:—**
  - On the date given in resignation letter by the director. If any or
  - On which resignation is received by the company.

- ✓ The fact of such resignation shall be incorporated in the director's report laid in the following annual general meeting of the company.
- ✓ Director **may** forward a copy of his resignation letter along with the detailed reason for the resignation to ROC within 30 days in Form DIR-11.
- ✓ Company **shall** intimate ROC along with a copy of director's resignation letter within 30 days in Form DIR-12.
- ✓ If all directors vacate their offices, promoter shall appoint required number of directors. If Promoter fails to appoint the required directors within reasonable time then Central Government shall appoint required number of directors.

**B. Automatic vacation of office**

- ✓ **Office of director shall deem to be vacated if:**
  - (a) He incurs any of the disqualifications specified in section 164;
  - (b) He absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
  - (c) He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
  - (d) He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
  - (e) He becomes disqualified by an order of a court or the Tribunal;
  - (f) He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:

**Provided that the office shall not be vacated by the director in case of orders referred to in above clauses (e) and (f)-**

- For thirty days from the date of conviction or order of disqualification;
- where an appeal or petition is preferred:- until expiry of seven days from the date on which such appeal or petition is disposed of; or
- Where any further appeal or petition is preferred: - within seven days, until such further appeal or petition is disposed of.
  - (a) He is removed in pursuance of the provisions of this Act;
  - (b) He, having been appointed as a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

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

**C. Removal of directors**

- ✓ Shareholders can remove the director, not being a director appointed by the Tribunal, by passing an **ordinary resolution** in a general meeting.

**This right cannot be restricted by the MOA, AOA, or any document or any agreement.**

- ✓ Whereas an independent director re-appointed for second term, can only be removed by passing a special resolution.
- ✓ A special notice pursuant to section 115 of the Companies Act, 2013 shall be sent intending to remove a director.

- ✓ Such special notice shall signed either by individually or collectively by such number of members **holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than five lakh rupees** has been paid up on the date of the notice.
- ✓ Special notice shall be sent **at least fourteen days before the date of the meeting** at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
- ✓ The company shall immediately after it has received the notice should inform its members by a notice of resolution in the same way it does at the time of general meetings.
- ✓ If it is not possible for the company to send notice to all the members, it should publish it in form of an advertisement in a newspaper having an appropriate circulation at least before 7 days of the meeting.
- ✓ The company should give intimation to the concerned director about his removal by sending the copy of the resolution which is sought to be passed. The director will have the right to be heard on the said resolution at the meeting.
- ✓ The director can submit his statement in writing against his removal from the company and can also ask the company to notify it to the other members as well.
- ✓ If the representation of a reasonable length has been given by the director proposed to be removed, and if the time permits to do so, the company may;
  - State the fact of the representation having been made, and;
  - Send a copy of the representation to every member of the company to whom notice of the meeting is sent.
- ✓ If the representation is not able to reach the members of the company because it has been received too late or the company itself has made some default in sending it then the representation must be read at the general meeting, it is at the discretion of the director. In addition, he can also make oral representation.

However the copy of the representation need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or any other person who claims to be aggrieved, and the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter and the tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is a party to it.

### ❖ Board Committees

<b>Audit Committee</b>	<b>Applicability</b>	<ul style="list-style-type: none"> <li>• Every listed company,</li> <li><b>and</b></li> <li>• All public companies with a paid up capital of 10 crore rupees or more</li> <li>• All public companies having turnover of 100 crore rupees or more</li> <li>• All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 Crore rupees or more.</li> </ul> <p><i>NB.: The paid up share capital or turnover or outstanding loans or borrowing s or debentures or deposits, as the case may be, as existing on the date of last audited financial statements shall be taken into account</i></p>
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	<b>Composition</b>	<p>Minimum of 3 directors with independent directors forming a majority.</p> <p>The Chairman of the audit committee shall be an independent director. The Company Secretary shall act as the secretary to the committee.</p> <p>The majority of members of audit committee including its Chairperson shall be persons with ability to read and understand the financial statement.</p>
<b>Nomination and Remuneration Committee</b>	<b>Applicability</b>	<ul style="list-style-type: none"> <li>• Every listed company,</li> <li><b>and</b></li> <li>• all public companies with a paid up capital of 10 crore rupees or more</li> <li>• all public companies having turnover of 100 crore rupees or more</li> <li>• all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 Crore rupees or more.</li> </ul> <p><i>NB.: The paid up share capital or turnover or outstanding loans or borrowing s or debentures or deposits, as the case may be, as existing on the date of last audited financial statements shall be taken into account</i></p>
	<b>Composition</b>	<p>The committee so constituted by the Board shall consist of 3 or more non-executive directors out of which not less than 1/2 shall be independent directors.</p> <p>The chairperson of the company (whether executive or non-executive) may be appointed as a member of the nomination and remuneration committee but he shall not chair such committee.</p> <p>In case of a listed company as chairman of the committee shall be an independent director.</p>
<b>Stakeholder Relationship Committee</b>	<b>Applicability</b>	The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year.
	<b>Composition</b>	Chairperson who shall be a non-executive director and such other members as may be decided by the Board.

### ➤ Frequently Asked Questions

#### 1. Whether there is any need of General Meeting approval for appointment of MD/WTD in Private Limited Company.

As per Section 196(4) Board of Directors of company shall appoint MD/WTD subject to approval of Shareholders in general meeting.

However, due to exemption to private limited companies by notification dated 05.06.2015 Section 196(4) shall not be applicable on private limited Companies.

Therefore, private limited company can designate its Director as MD/WTD without approval of shareholder only by passing of board resolution.

**2. Can a Company pay Sales commission to its non-executive director(s)?**

As per Section 197(6), Director(s) may be paid remuneration either by way of monthly payment or at a specified percentage of the net profits of the Company or partly by one way and partly by other way. Therefore, a company may pay to its director's remuneration including Sales commission to its non-executive directors in case of a private limited company without any limit and in case of a public company within limit specified in Section 197(1).

**3. Can an MD/Whole Time Director can draw remuneration from more than One Company?**

In case of public companies MD/Whole time director can draw remuneration from one or both companies provided that the total remuneration shall be within the limit prescribed in Section 197(1) and Schedule V.

However, there is no limit for paying such remuneration for private companies.

***NB.:** A private limited company which is a subsidiary of any public company will be considered as public companies for the provisions of Section 197.*



## CHAPTER XVI

# KNOW ABOUT LLP

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### ❖ *Salient Features, Advantages and Limitations of LLP*

#### ➤ **Salient Features of LLP**

- Separate legal entity distinct from partners
- Limited liability of partners
- Perpetual succession
- Contractual flexibility through LLP Agreement
- Partners act as agents of the LLP, not of each other

#### ➤ **Advantages of LLP Structure**

- **Hybrid Business Model:-** It blends the advantages of a corporate structure such as separate legal personality and limited liability with the flexibility of a partnership
- **Limited Liability Protection:-** Personal assets are protected from business risks and misconduct of other partners.
- **Flexibility and Managerial Control :-** Internal management is governed by the LLP Agreement, allowing partners to define profit sharing, decision-making authority, and operational roles.
- **Reduced Compliance Burden :-** LLPs face fewer compliance requirements compared to private limited companies, including:
- **Professional-Friendly Entity :-** LLPs are particularly suitable for professionals such as chartered accountants, company secretaries, lawyers, consultants, and multidisciplinary practices.
- **Loan to partners:** A Limited Liability Partnership (LLP) can give loans to its partners, but this must be explicitly allowed and governed by terms within the LLP Agreement.
- **No allotment of shares:** There is no concept of “share capital” that needs formal allotment and valuation in an LLP. Capital contribution by partners is based on mutual agreement and can be easily adjusted through amendments to the LLP agreement.
- **Simplified Profit Withdrawal:** In an LLP, profits are shared among partners as per the terms of the LLP agreement. Partners can withdraw their share of profits without complex formalities, buy-back procedures, or limitations common in companies

#### ➤ **Limitations and Challenges**

- **Limited Funding Options:** -LLPs have restricted access to venture capital and angel investments. Financing is generally limited to partner contributions or institutional borrowings.
- **Higher Cost than Traditional Partnerships:** -Compliance filings with the Registrar, maintenance of statutory records, and professional costs make LLPs more expensive than general partnerships.

- **Public Disclosure:** Documents filed with the Ministry of Corporate Affairs are public records, reducing confidentiality compared to traditional partnership firms.
- **Regulatory Compliance and Penalties:** Non-compliance attracts significant penalties, and evolving disclosure requirements have increased the compliance burden.
- **Higher Potential Tax Rate:** While LLPs enjoy pass-through taxation (avoiding double taxation of profits), they are subject to a flat tax rate of 30% on their profits in India, which can be higher than the progressive tax rates or certain exemptions available to smaller private limited companies.

### ❖ *Incorporation Of LLP*

#### ➤ **Basic Requirements**

- Minimum two partners
- Minimum two designated partners
- DSC and DPIN
- Registered office in India
- Unique name ending with “LLP”

#### ➤ **Brief Incorporation Procedure**

- Obtain DSC and DPIN
- Name approval through RUN-LLP
- File FiLLiP form
- Obtain Certificate of Incorporation and LLPIN
- File LLP Agreement in Form 3

#### ➤ **Fees Structure :-**

##### • **Name Approval Fees**

A fixed fee of **₹200 (Rupees Two Hundred only)**

##### • **Incorporation Fees**

The incorporation fees shall be charged on the basis of the **capital contribution** of the LLP as detailed below:

<b>Capital Contribution</b>	<b>MCA Filing Fees (per form)</b>
Up to ₹1,00,000	₹500
₹1,00,001 to ₹5,00,000	₹2,000
₹5,00,001 to ₹10,00,000	₹4,000
₹10,00,001 and above	₹5,000

The procedure for incorporation of a Limited Liability Partnership (LLP) broadly follows the same framework as that applicable to the incorporation of a company. It involves similar preliminary requirements such as name reservation, preparation and filing of incorporation documents, and registration with the Registrar. Therefore, in order to avoid repetition and to provide a better understanding of the procedural aspects, the detailed step-by-step process of incorporation has been discussed in Segment 2 – Incorporation of Companies, which may be referred to for comprehensive guidance.



## CHAPTER XVII

# UNDERSTANDING LLP AGREEMENT

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### ➤ Nature and Importance

- The LLP Agreement governs the mutual rights and duties of partners
- The LLP Agreement is not mandatory,
- It is essential for smooth governance.
- In its absence of The LLP Agreement provisions of the First Schedule apply.
- Some standard conditions of first schedule are not practicable hence every LLP should have a written LLP agreement

### ➤ Execution and Filing

- Can be executed before or after incorporation
- Columns 7 to 20 of Form 3 are in respect of information with regard to LLP agreement. It is highly advisable to draft LLP Agreement in same sequence as far as possible, so that filling form 3 and its checking by Registrar will be easy.
- Must be filed within 30 days from the execution in form 3

### ➤ Amendment in LLP Agreement

- The agreement can be amended any number of times.
- Amendments permitted with statutory filing
- Change shall be file within 30 days with fees, in form 3 within 30 days of ratification by all members

### ➤ Stamp Duty

- Stamp duty applicability depends on State Stamp Acts and is generally treated as a partnership deed or residual agreement.
- The applicable stamp duty rates is mentioned herein below:

State	Capital Contribution & LLP Agreement Stamp Duty			
	Less than Rs.1 Lakh	Rs. 1 Lakh to Rs. 5 Lakh	Rs. 5 Lakh to Rs. 10 Lakh	Rs. 10 Lakh & Above
Andhra Pradesh	500	500	500	500
Arunachal Pradesh	100	100	100	100
Assam	100	100	100	100
Bihar	2500	5000	5000	5000
Chhattisgarh	2000	2000 – 5000	5000	5000
Goa	150	150	150	150

<b>Gujarat</b>	1000	2000 – 5000	6000 – 10000	10000
<b>Haryana</b>	1000	1000	1000	1000
<b>Himachal Pradesh</b>	100	100	100	100
<b>Jammu Kashmir</b>	100	100	100	100
<b>Jharkhand</b>	2500	5000	5000	5000
<b>Karnataka</b>	5000	5000	5000	5,000 plus an additional 1000 for every ₹5 lakh increase
<b>Kerala</b>	5000	5000	5000	5000
<b>Madhya Pradesh</b>	2000	2000 – 5000	5000	5000
<b>Maharashtra</b>	1% of Capital(minimum of 500)	% of Capital	% of Capital	1% of Capital(15000 Max)
<b>Manipur</b>	100	100	100	100
<b>Meghalaya</b>	100	100	100	100
<b>Mizoram</b>	100	100	100	100
<b>Nagaland</b>	100	100	100	100
<b>New Delhi</b>	<i>1% of Capital</i>	1% of Capital	1% of Capital (Max: 5000)	1% of Capital (Max: 5000)
<b>Orissa</b>	200	200	200	200
<b>Punjab</b>	1000	1000	1000	1000
<b>Rajasthan</b>	4000 (Min of 2000)	2000 on every 50000 multiple, max of 10,000	10000	10000
<b>Sikkim</b>	100	100	100	100
<b>Tamil Nadu</b>	300	300	300	300
<b>Tripura</b>	100	100	100	100
<b>Uttar Pradesh</b>	750	750	750	750
<b>Uttarakhand</b>	750	750	750	750
<b>West Bengal</b>	150	150	150	150
<b>Dadra and Nagar Haveli</b>	1000	2000 – 5000	6000 – 10000	10000
<b>Daman and Diu</b>	150	150	150	150

## CHAPTER XVIII

# DESIGNATED PARTNERS: LEGAL POSITION AND RESPONSIBILITIES

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### ➤ Partners in an LLP

- Any individual or body corporate may be a partner in a limited liability partnership
- Partners contribute capital
- Their liability is limited to their agreed contribution.

### ➤ Designated Partners

- Designated partners are partners entrusted with statutory and regulatory responsibilities.
- Every LLP must have at least two designated partners, of whom one must **be a resident in India**.

### ➤ Distinction between Partners and Designated Partners

- All designated partners are partners, but not all partners are designated partners
- Designated partners are responsible for compliance and filings
- Only designated partners' names appear on the MCA portal

### ➤ Eligibility and Appointment Designated Partners

- Minimum age: 18 years
- Only an individual (either acting personally or as a nominee of a Body Corporate)
- Mandatory consent to act as designated partner
- DPIN required
- Body corporates may act through a nominee

### ➤ Liabilities of Designated Partners

- Designated partners are personally responsible for:
  - Ensuring statutory compliance
  - Filing returns and documents
  - Penalties imposed for violations
- These liabilities cannot be contractually waived through the LLP Agreement.

### ➤ Roles and Powers

- Designated partners have authority to:

- Enter into contracts
- Operate bank accounts
- Appoint employees
- Initiate or defend legal proceedings
- Ensure regulatory disclosures and compliance

➤ **Change in Management**

- Changes involving partners or management require:
  - Partner resolution
  - Supplementary LLP Agreement
  - Filing Forms 3 and 4
  - Updating internal and third-party records

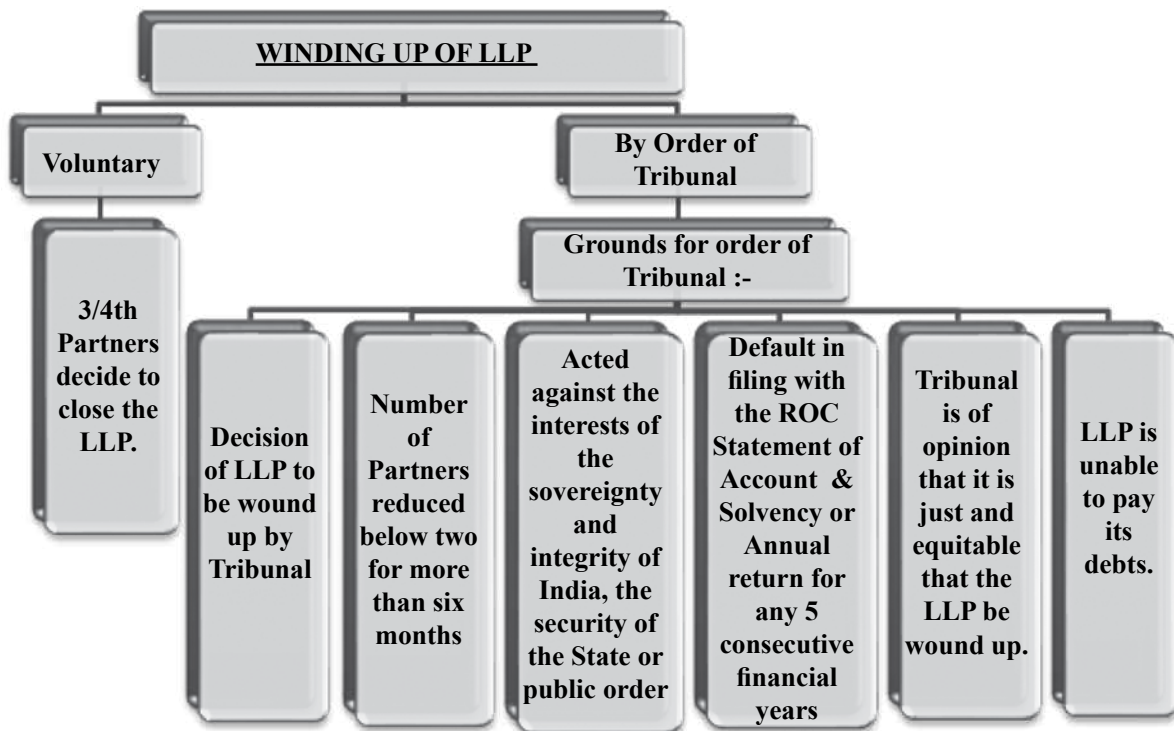
## CHAPTER XIX

### WINDING UP OF LLP

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❖ An LLP can be wound up by way of:

- Voluntary winding up procedure
- By the order of Tribunal



➤ Voluntary Winding up of an LLP:-

• Primary conditions of Winding up of LLP Voluntary

- Resolution to wind up the LLP with approval of at least three-fourths of the total number of its partners.
- Consent from creditors is required (if LLP have any creditors).
- Declaration of Solvency that it will be able to pay its debts in full within one year.
- Appointment of a liquidator to manage asset disposal and liability settlement.

- **Procedure of Winding up of LLP Voluntary (Provided reference of of LLP (Winding up & Dissolution) Rules, 2012**

### VOLUNTARY WINDING UP

- Partners pass resolution with 3/4th consent (Rule-5).
- A copy of the resolution shall be filed with the Registrar within thirty days of passing of such resolution in Form No. 1 (Rule-5).
- Meeting of creditors (if any); consent to be filed to ROC in Form No. 5 (Rule-8)
- Declaration of Solvency within 15 days immediately preceding the date of the passing of the resolution (Rule-7).
- Newspaper advertisement in the district of registered office within 14 days of the receipt of creditors consent (Rule 9).
- Appointment LLP Liquidator- Passing of resolution (No creditors) or Filing Notice for winding up decision (Creditors) (Rule-10).
- Declaration by Liquidator in the Form No. 6 disclosing conflict of interest or lack of independence in respect of his appointment (Rule-10).
- LLP shall give notice of appointment or change (if any) of Liquidator within ten days in Form No.7. (Rule-12).
- Quarterly Progress report by Liquidator Form No. 8 to the partners or creditor before the end of the following quarter.
- Preparation of Final Report in Form No. 9 showing that the property and assets of the LLP have been disposed of and its debts fully discharged or discharged to the satisfaction of the creditors and thereafter seek approval of the partners or the creditors of the LLP.
- If the Tribunal is satisfied that the LLP's winding-up process has been properly completed, it may order the LLP to be dissolved within 60 days of receiving the liquidator's application, accounts, and report.
- The LLP Liquidator shall file a copy of the order under sub-rule (4) with the Registrar within thirty days in Form No 11. (If LLP not wound up within one year LLP Liquidator shall file an application before the Tribunal explaining the reasons thereof and seek appropriate directions).
- Upon winding up of LLP, its assets are first used to pay off debts equally. After that, unless the LLP Agreement says otherwise, the remaining assets are shared among the partners based on their rights and interests. (Rule 21).
- During winding up, all proper costs and the liquidator's fee are paid first from the LLP's assets, before any other claims - except secured creditors and workmen who have priority. (Rule-24).

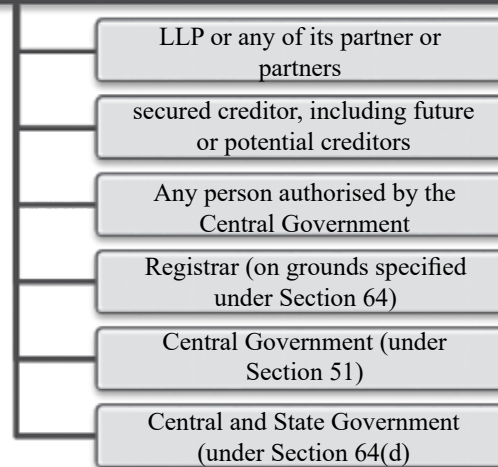
➤ **Winding up of Tribunal**

• **Primary conditions:**

- **Inability to pay debt as per Rule 25 of LLP (Winding up & Dissolution) Rules, 2012:** LLP shall be deemed to be unable to pay its debts:-
  - If an LLP owes a creditor more than ₹1 lakh and, after receiving a formal demand, fails within 21 days to pay, provide security, or settle the debt to the creditor's satisfaction, it is treated as unable to pay its debts.
  - If a court or tribunal order in favour of an LLP's creditor cannot be fully carried out (wholly or partly), it means the LLP has not satisfied that debt.
  - If the Tribunal is satisfied that an LLP cannot pay its debts, including future and potential liabilities, it may declare the LLP insolvent.

• **Who can present an application to the Tribunal?**

**Who can present an application to Tribunal by winding up?  
Rule-26 of LLP (Winding up & Dissolution) Rules, 2012**



• **Powers of Tribunal as per Rule-27 of LLP (Winding up & Dissolution) Rules, 2012**

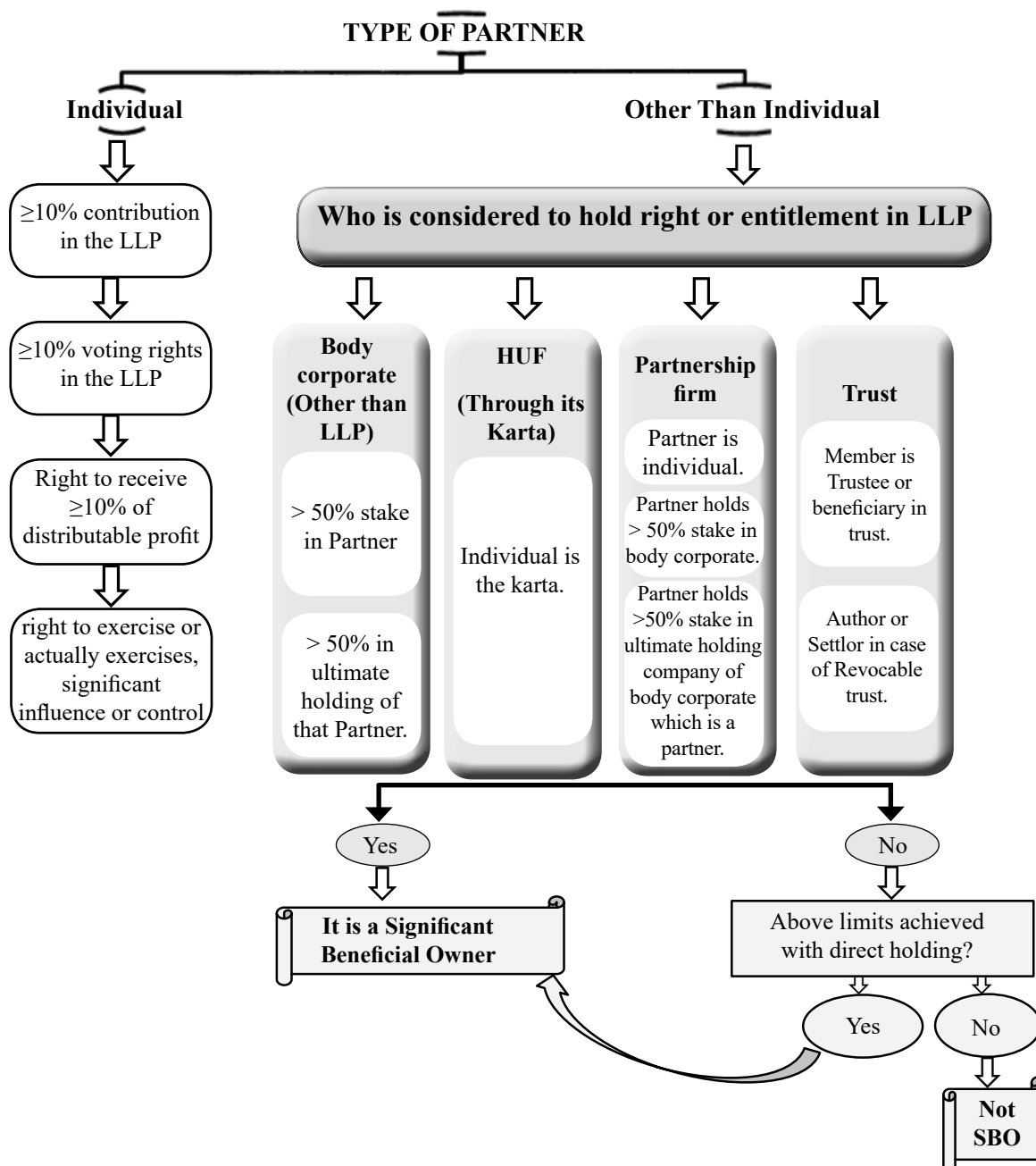
- On hearing a winding up petition, the Tribunal may-
  - i. dismiss it, with or without costs
  - ii. make any interim order, as it thinks fit
  - iii. direct revival or rehabilitation of the LLP as per Sections 60–62 of the LLP Act, 2008.
  - iv. Appoint a provisional liquidator for the LLP until the windingup order is made.
  - v. Tribunal may wind up the LLP, with or without costs
  - vi. any other orders or orders as may be considered fit.

***Note:** The Tribunal cannot refuse winding up just because the LLP's assets are fully mortgaged or absent.*

# CHAPTER XX

## SIGNIFICANT BENEFICIAL OWNERSHIP (SBO) FOR LLPS

### ❖ IDENTIFICATION OF SIGNIFICANT BENEFICIAL OWNER





**❖ FILING OF RETURN IN FORM BEN-2**

- ✓ Every individual, who subsequently **becomes a significant beneficial owner**, or where his significant beneficial **ownership undergoes any change** shall file a declaration in Form LLP BEN-1 to the LLP, **within thirty days of acquiring such significant beneficial ownership or any change therein**.
- ✓ Upon receipt of declaration by the LLP in form LLP BEN-1, the LLP is required to file Form LLP BEN-2 with Registrar of Companies **within 30 days from receipt of LLP BEN-1** by the LLP.

**❖ DUTY OF THE REPORTING LLP**

- ✓ Every reporting LLP shall take necessary steps to identify an individual who is a significant beneficial owner, in relation to that reporting LLP, and require him to make a declaration in Form LLP BEN-1.
- ✓ Every reporting LLP shall in all cases where its member (other than an individual), holds not less than ten percent of its-
  - (a) Contribution, or
  - (b) Voting rights, or
  - (c) Right to receive distributable profitsPayable in a financial year, give notice to such partner in form LLP BEN-4, seeking requisite information.

**❖ REGISTER OF SIGNIFICANT BENEFICIAL OWNERS-**

- ✓ The LLP shall maintain a register of significant beneficial owners in Form No. LLP BEN-3.
- ✓ The register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as may be decided by limited liability partnership agreement, or by partners of the limited liability partnership on payment of such fee as may be specified by the limited liability partnership but not exceeding fifty rupees for each inspection.

**❖ NON-APPLICABILITY OF RULES:**

These rules shall not apply to the extent the contribution of the reporting limited liability partnership is held by:

- (a) The Central Government, State Government or any local authority;
- (b) (i) a reporting limited liability partnership, or
  - (ii) a body corporate, or
  - (iii) an entity,
    - controlled by the Central Government or by one or more State Government, or partly by the Central Government and partly by one or more State Government;
- (c) SEBI-Regulated Investment Vehicles such as, Mutual Funds, Alternative Investment Funds (AIFs), Real Estate Investment Trusts (REITs), Infrastructure Investment Trusts (InvITs).
- (d) An investment vehicle regulated by the Reserve Bank of India (RBI), or the Insurance Regulatory and Development Authority of India (IRDAI), or the Pension Fund Regulatory and Development Authority (PFRDA).

## CHAPTER XXI

### STATUTORY FEE STRUCTURE FOR LLPS

- For registration of Limited Liability Partnership including conversion of a firm or a private company or an unlisted public company into Limited Liability Partnership:

Contribution	Fees
Limited Liability Partnership whose contribution does not exceed ₹1 lakh	₹500/-
Limited Liability Partnership whose contribution exceeds ₹1 lakh but does not exceed ₹5 lakhs	₹2000/-
Limited Liability Partnership whose contribution exceeds ₹5 lakhs but does not exceed ₹10 lakhs	₹4000/-
Limited Liability Partnership whose contribution exceeds ₹10 lakh but does not exceed ₹25 lakhs	₹5000/-
Limited Liability Partnership whose contribution exceeds ₹25 lakhs but does not exceed ₹1Crore	₹10000/-
Limited Liability Partnership whose contribution exceeds ₹1crore	₹25000/-

**Note:** The difference between the fees payable on the increased slab of contribution and the fees paid on the preceding slab of contribution shall be paid through Form 3.

- For filing, registering or recording any document, form, statement, notice, Statement of Accounts and Solvency, annual return and an application along with the Statement for conversion of a firm or a private company or an unlisted public company into LLP by this Act or by these rules required or authorized to be filed, registered or recorded:

Contribution	Fees
Limited Liability Partnership whose contribution does not exceed ₹1 lakh	₹50/-
Limited Liability Partnership whose contribution exceeds ₹1 lakh but does not exceed ₹5 lakhs	₹100/-
Limited Liability Partnership whose contribution exceeds ₹5 lakhs but does not exceed ₹10 lakhs	₹150/-
Limited Liability Partnership whose contribution exceeds ₹10 lakhs but does not exceed ₹25 lakhs	₹200/-
Limited Liability Partnership whose contribution exceeds ₹25 lakhs but does not exceed ₹1 Crore	₹400/-
Limited Liability Partnership whose contribution exceeds ₹1 Crore	₹600/-

- **Fee for filing, registering, or recording notice of appointment, cessation, change in name, address, designation of a partner or designated partner, intimation of Designated Partner Identification Number and consent to become a partner or designated partner in LLP Form No. 4:**

Particulars	Fees
For Small LLPs	₹50/-
For other than Small LLPs	₹150/-

- **Fee for any application other than application for conversion of a firm or a private company or an unlisted public company into LLP shall be as under:**

Particulars	Small LLPs	Other than Small LLPs
An application for reservation of name u/s 16	₹200/-	₹200/-
For direction to change the name under section 17	₹5,000/-	₹5,000/-
For striking off name of defunct LLP under rule 37	₹500/-	₹1,000/-
Application for reservation of name under Rule 18(3)	₹10,000/-	₹10,000/-
Application for renewal of name under rule 18(3)	₹5000/-	₹5000/-

- **Fee for inspection of documents or for obtaining certified copy thereof shall be as under:**

Particulars	Fees
For inspection of documents of an LLP under section	₹50/-
For Copy or extract of any document under section 36 to be certified by Registrar	₹5 per page or fractional part thereof

- **Fee for filing any form or a Statement of Account and Solvency or a notice or a document by foreign limited liability partnership:**

Particulars	Fees
For filing a document under rule 34(1)	₹5000/-
Any other form or Statement of Account and Solvency or notice or document	₹1000/-

- **Following Table of additional fee shall be applicable for delay in filing of forms:**

Period of Delays	Small LLPs	Other than Small LLPs
Upto 15 days	One time	One time
More than 15 days and upto 30 days	2 times of normal filing fees	4 times of normal filing fees

Period of Delays	Small LLPs	Other than Small LLPs
More than 30 days and upto 60 days	4 times of normal filing fees	8 times of normal filing fees
More than 60 days and upto 90 days	6 times of normal filing fees	12 times of normal filing fees
More than 90 days and upto 180 days	10 times of normal filing fees	20 times of normal filing fees
More than 180 days and upto 360 days	15 times of normal filing fees	30 times of normal filing fees
Beyond 360 days	25 times of normal filing fees for forms other than Form 8 and Form 11. For Form 8 and Form 11, 15 times normal filing fees plus Rs. 10 per day for every day delay beyond 360 days	50 times of normal filing fees for forms other than Form 8 and Form 11. For Form 8 and Form 11, 30 times normal filing fees plus Rs. 20 per day for every day delay beyond 360 days

***NB: Small LLP: An LLP whose contribution does not exceed Rs. 25 lakhs and Turnover, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed Rs. 40 lakhs.***

[illegible]