

## CORPORATE AND OTHER LAWS: A CAPSULE FOR QUICK RECAP (THE COMPANIES ACT, 2013)

“At the Intermediate level, for the Company Law portion of the subject “Corporate and Other Laws” largely involves analysis and application of provisions of the Companies Act, 2013 to solve application-oriented issues. This subject is very dynamic on account of the large number of amendments/ circulars/ notification as issued by the Ministry of Corporate Affairs.

In this capsule for students, an attempt has been made to capture the significant provisions of Companies Act, 2013 (Sections 1 to 148). You are advised to read the July, 2017 edition of the Study Material for a thorough understanding of the relevant provisions of Companies Act, 2013 and solve the examples and exercise questions given therein to hone your application skills. This capsule (as applicable for May 2018 examinations) on Intermediate Paper 2: Corporate and Other Laws is intended to assist you in the process of revision of concepts discussed in the Study Material.”

Title	Extent	Commencement	Applicable On:
Companies Act, 2013	Whole of India	Section 1 came into force at once and the remaining provisions on different dates through Notifications.	<ul style="list-style-type: none"> <li>• Companies</li> <li>• Insurance companies</li> <li>• Banking companies</li> <li>• Companies producing /supplying electricity</li> <li>• Company regulated by special Act</li> <li>• Entities as notified by Central Government</li> </ul>

### A BRIEF INTRODUCTION ABOUT COMPANY AND ITS TYPES

**What is a Company:** Company means a company incorporated under this Act or under any previous Company Law [Section 2(20)].

In other words, a company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal.

#### TYPES OF COMPANIES

##### 1. On the basis of liability

###### Company Limited by shares [Section 2(22)]

- Liability of the members of a company is limited by its Memorandum of Association (MOA) to the amount (if any) unpaid on the shares held by them

###### Company Limited by Guarantee [Section 2(21)]

- Liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up
- Members cannot be called upon to contribute beyond that stipulated sum

###### Unlimited Company [Section 2(92)]

- No limit on the liability of members
- The liability ceases when he ceases to be a member

##### 2. On the basis of members

###### One Person company (OPC) [Section 2(62)]

- Only one person as member.
- Minimum paid up capital – no limit prescribed
- The MOA shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company
- No person shall be eligible to incorporate more than one OPC
- No minor shall become member of the OPC

- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases
- Such Company cannot carry out NBFC activities including investment in securities of any body corporate
- Here, the member can be the sole member and director

###### Private Company [Section 2(68)]

- No minimum paid-up capital requirement
- Minimum number of members – 2 (except if private company is an OPC, where it will be 1)
- Maximum number of members – 200, excluding present employee-cum-members and erstwhile employee-cum-members
- Right to transfer shares restricted
- Prohibition on invitation to subscribe to securities of the company
- Small company is a private company
- OPC can be formed only as a private company

###### Public Company [Section 2(71)]

- Is not a private company (Articles do not have the restricting clauses).
- Shares freely transferable
- No minimum paid up capital requirement
- Minimum number of members – 7
- Maximum numbers of members – No limit
- Subsidiary of a public company is deemed to be a public company

### 3. On the basis of control

#### Holding and Subsidiary company

**Holding company [Section 2(46)]:** Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

**Subsidiary company [Section 2(87)]:** means a company in which the holding company—

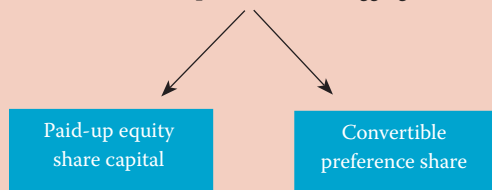
- controls the composition of the Board of Directors; or
- exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.

#### Associate Company [Section 2(6)]

In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

“**Significant influence**” means control of at least 20% of total share capital, or of business decisions under an agreement.

The term “**Total Share Capital**” means the aggregate of the



### 4. On the basis of access to capital

#### Listed company [Section 2(52)]

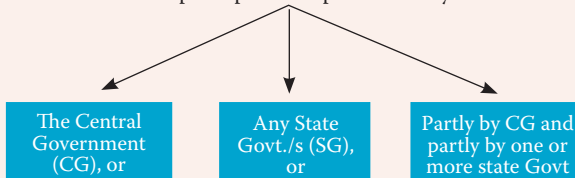
Which has any of its securities listed on any recognised stock exchange

**Unlisted company** - company other than listed company

### 5. Other companies

#### Government company (GC) [Section 2(45)]

At least 51% of the paid up share capital is held by-



Includes a company which is a subsidiary company of such a Government company.

#### Small Company [Section 2(85)]

- A private company
- Paid up capital – not more than ₹50 lakhs or such higher amount as may be prescribed which shall not be more than five crore rupees; and  
Turnover – not more than ₹2 crores or such higher amount as may be prescribed which shall not be more than twenty crore rupees.
- **Should not be** – Section 8 company  
– Holding or a Subsidiary company  
– a company or body corporate governed by any special Act

#### Foreign company [Section 2(42)]

Any 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

#### Formation of companies with charitable objects etc. [Section 8]

- Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc.
- Uses its profits for the promotion of the objective for which formed
- Does not declare dividend to members
- Operates under a special licence from Central Government
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Licence revoked if conditions contravened
- Can call its general meeting by giving a clear 14 days notice instead of 21 days
- Requirement of minimum number of directors, independent directors etc. does not apply

#### Dormant company [Section 455]

- formed and registered:
  - ✓ for a future project or
  - ✓ to hold an asset or intellectual property and
- has no significant accounting transaction,
- such a company or an inactive company may make an application to the Registrar in prescribed manner for obtaining the status of a dormant company.

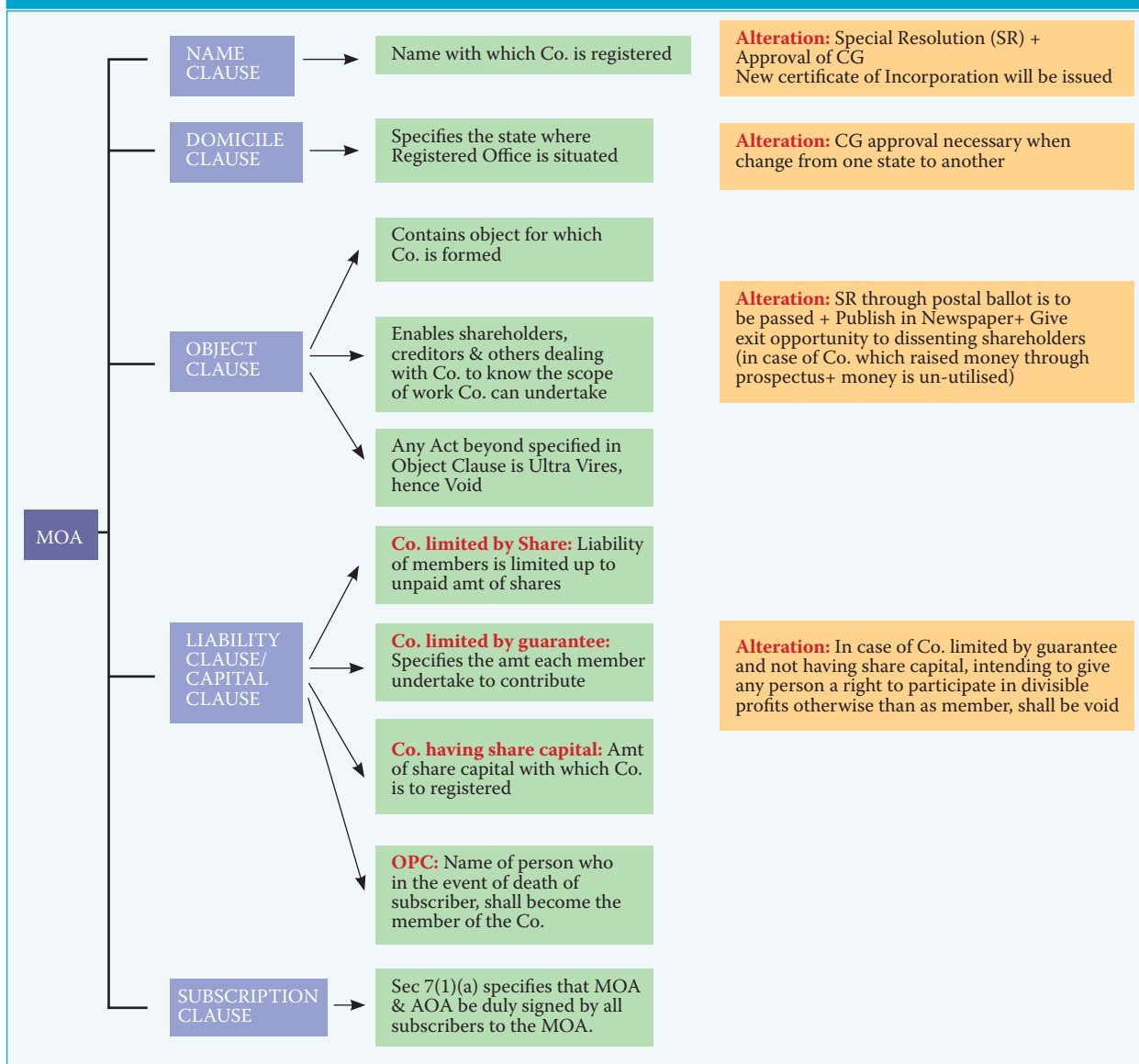
#### Nidhi Companies [Section 406]

- Incorporated as a nidhi with the object of
  - ✓ cultivating the habit of thrift (cost cutting)
  - ✓ savings amongst its members
  - ✓ receiving deposits from and lending to, its members only
- for their mutual benefit



## INCORPORATION OF COMPANIES

### I. MEMORANDUM OF ASSOCIATION



### II. ARTICLES OF ASSOCIATION (AOA)

AOA → Contain the regulations for the management of Co.

#### ALTERATION OF AOA

- (i) Alteration is effected by SR
- (ii) Alteration of AOA may include the Conversion of Pvt Co. to Public Co. and Vice versa. However, when Public Co. is converted into Pvt. Co., approval of Tribunal is necessary.
- (iii) Alteration of AOA+ Approval of Tribunal (if any) to be filed with ROC within 15 days
- (iv) Alterations once registered will be valid as if it were originally contained in AOA

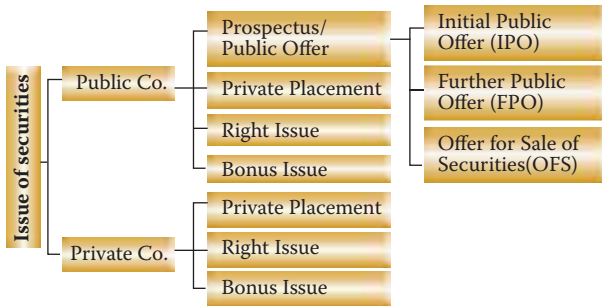
### III. STEPS FOR INCORPORATION OF COMPANY

- 1 Obtain Digital Signatures
- 2 Obtain Director Identification Number [Section 153]
- 3 Name availability for proposed company
- 4 Preparation of the MOA and AOA
- 5 Application for incorporation of company
- 6 **DUTY OF REGISTRAR TO SCRUTINISE THE DOCUMENTS**  
If after filling the Requisite forms for incorporation with the Registrar of Companies along with fees, ROC is satisfied with the contents of the documents filed, ROC will issue the Certificate of incorporation in Form no.INC 11 as directed by Rule-18 of Companies (Incorporation) Rules, 2014.
- 7 Certificate of Incorporation issued by ROC

**Simplified Proforma for Incorporating Company Electronically (SPICe):** The MCA has taken various initiatives for ease of business. In a step towards easy setting up of business, MCA has simplified the process of filing of forms for incorporation of company through SPICe.

## PROSPECTUS AND ALLOTMENT OF SECURITIES

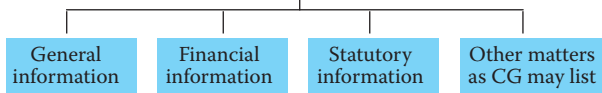
### I. ISSUE OF SECURITIES



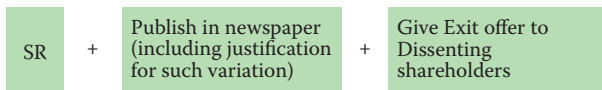
### III. PROSPECTUS [SECTION 2(70)]

Prospectus means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of body corporate.

#### Information in Prospectus



### PROCESS FOR VARIATION IN TERMS OF CONTRACT OF PROSPECTUS



### IV. ALLOTMENT OF SECURITIES

Allotment of securities		
Minimum amount subscribed, and	application money have been paid and received by the company	application money shall not be less than 5% or such other percentage or amount as specified by SEBI

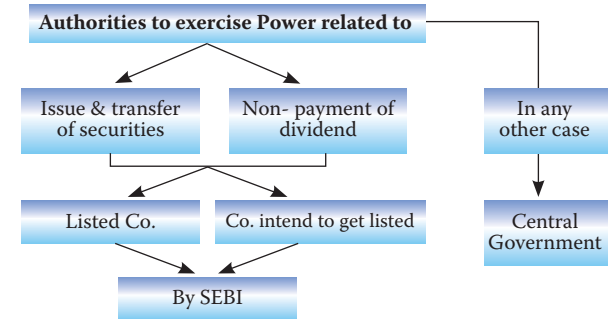
Minimum amount not subscribed and application money not received	
Within 30 days from date of issue of prospectus, or	Such other period as specified by SEBI

Amount received shall be returned within 15 days from the closure of issue

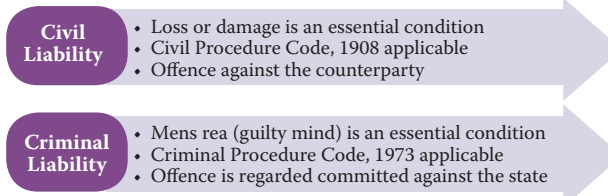
Where company makes an allotment of securities shall file a return of allotment with the registrar

In case of default		
Company shall pay penalty of ₹ 1000 for each day during which such default continues, or	1 lac	which ever is less

### II. POWER OF SEBI TO REGULATE ISSUE AND TRANSFER OF SECURITIES ETC. [SECTION 24]

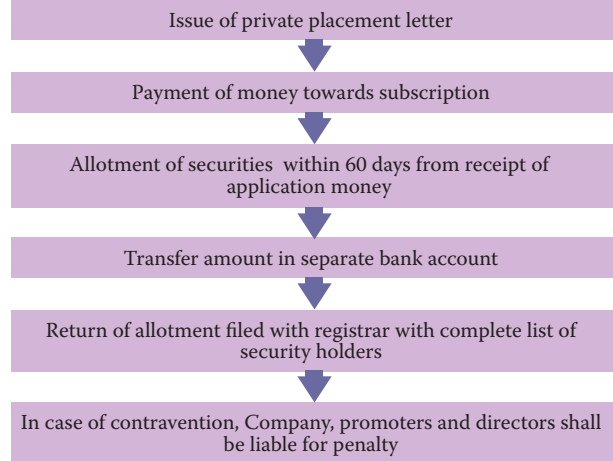


### V. LIABILITY IN CASE OF MIS-STATEMENTS IN PROSPECTUS

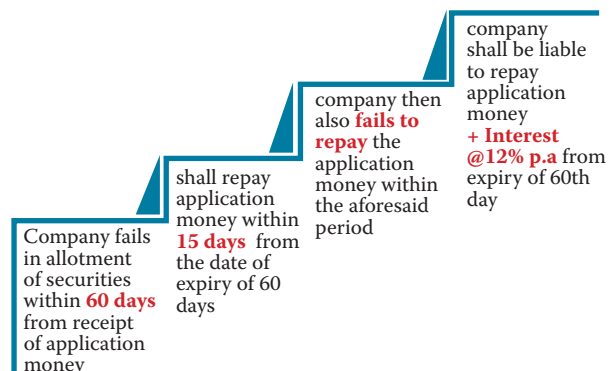


### VI. PRIVATE PLACEMENT

#### VI (A). Procedure of allotment of securities through Private placement



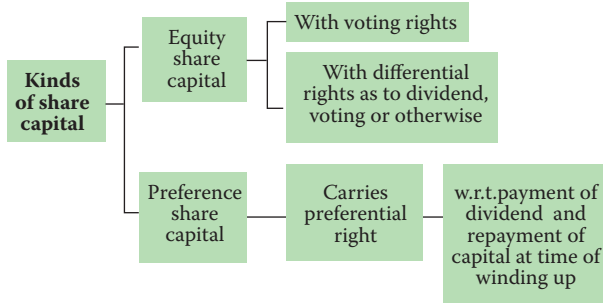
#### VI (B). Procedure in case of failure of allotment of securities through Private placement



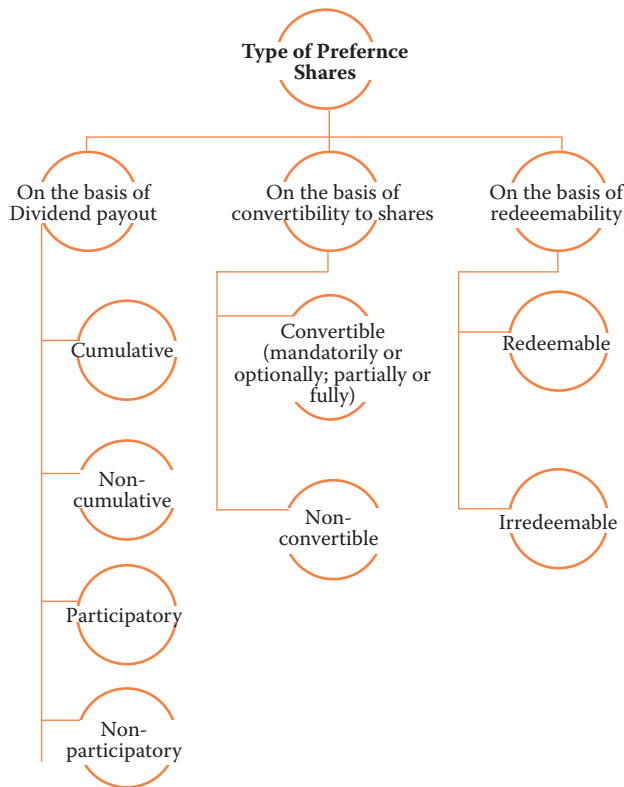
# COMPANY LAW

## SHARE CAPITAL AND DEBENTURES

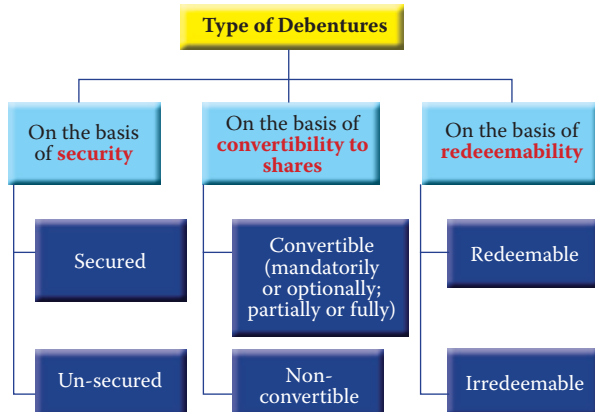
### I. TYPES OF SHARE CAPITAL



### II. TYPES OF PREFERENCE SHARES

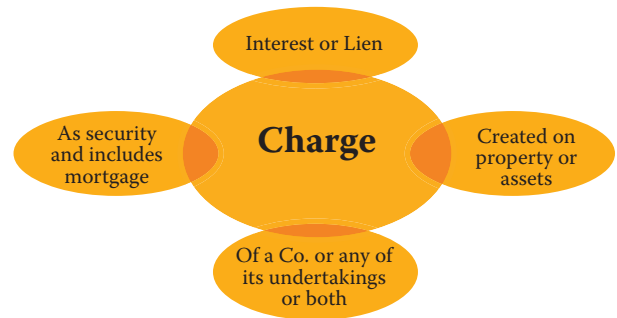


### III. TYPES OF DEBENTURES



## REGISTRATION OF CHARGES

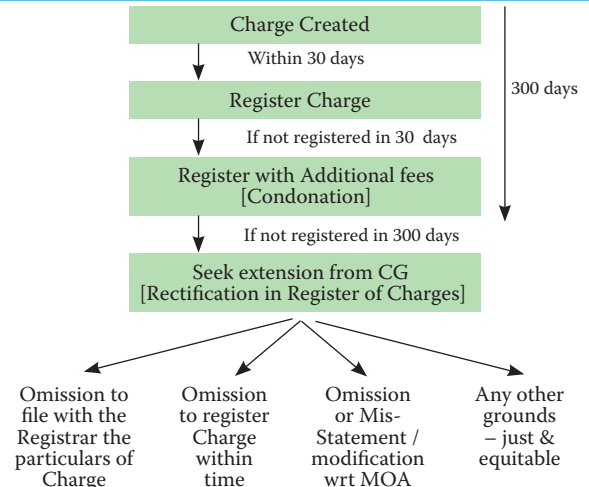
### I. DEFINITION OF CHARGE [SECTION 2(16)]



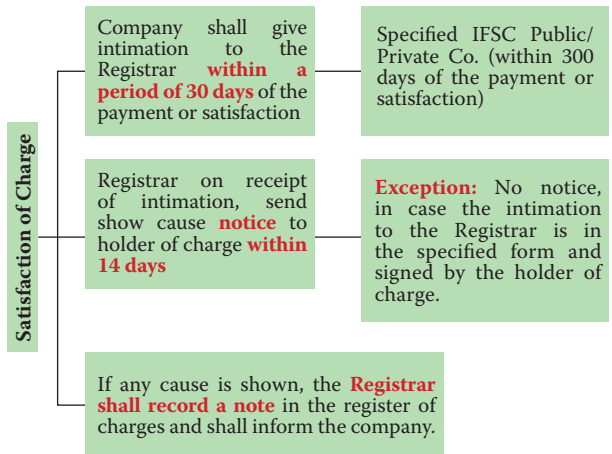
### II. NOTICE OF CHARGE



### III. PROCESS OF REGISTRATION OF CHARGE



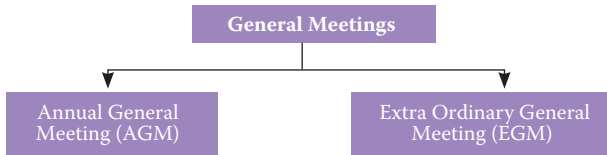
### IV. SATISFACTION OF CHARGE



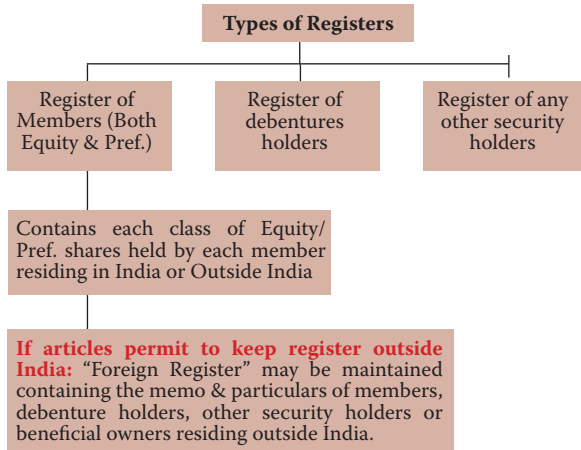


## MEETINGS OF THE COMPANY

### I. GENERAL MEETINGS



### II. TYPES OF REGISTERS

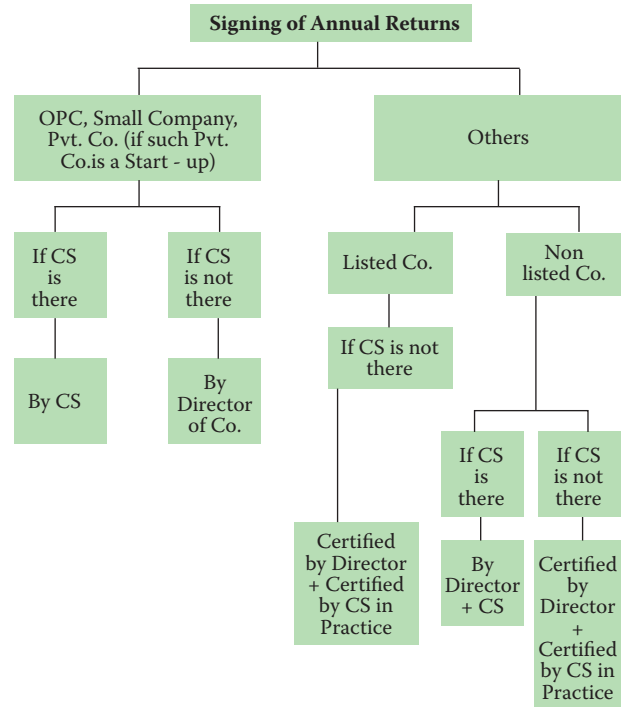


### III. ANNUAL RETURN

#### III (A). Particulars to be Contained in the Annual Return as they stood on Close of Financial Year

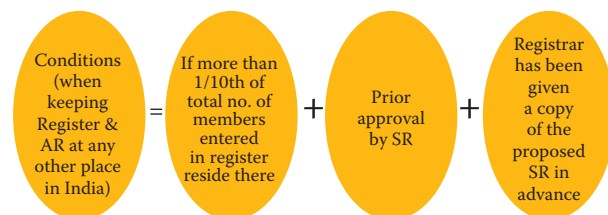
1. Companies' registered office, principal business activities, particulars of its holding, subsidiary and associate companies.
2. Its shares, debentures and other securities and shareholding pattern
3. Its indebtedness
4. Its members and debenture-holders along with the changes therein since the close of the PFY
5. Its promoters, directors, key managerial personnel along with changes therein since the close of the PFY
6. Meetings of members or a class thereof, Board and its various committees along with attendance details
7. Remuneration of directors and key managerial personnel
8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment
9. Matters relating to certification of compliances, disclosures
10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and % of shareholding held by them.

#### III (B). Signing of annual return

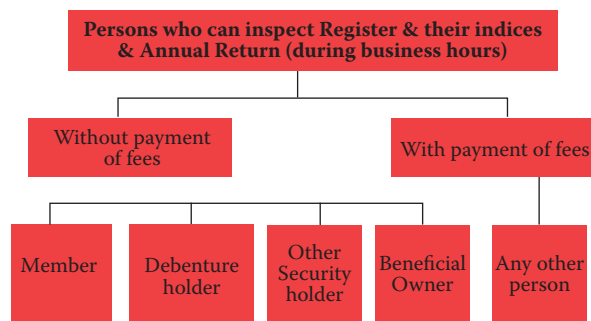


### IV. PLACE OF KEEPING OF REGISTERS AND ANNUAL RETURNS

Question	Answer
What is the Place of keeping of Registers and Annual Returns?	Registered Office (RO)
Can the Registers and Annual Returns be kept at any other place in India?	Yes



### V. PERSONS WHO CAN INSPECT REGISTER & THEIR INDICES & ANNUAL RETURN (DURING BUSINESS HOURS)

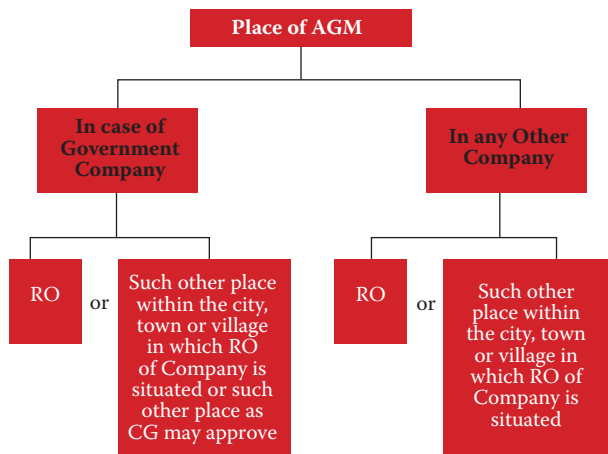
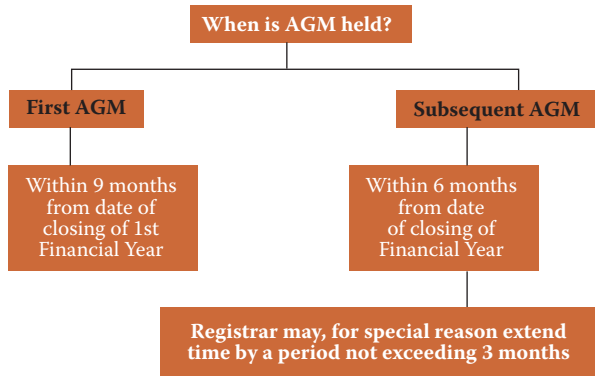


# COMPANY LAW ||

## V. MEETINGS OF MEMBERS

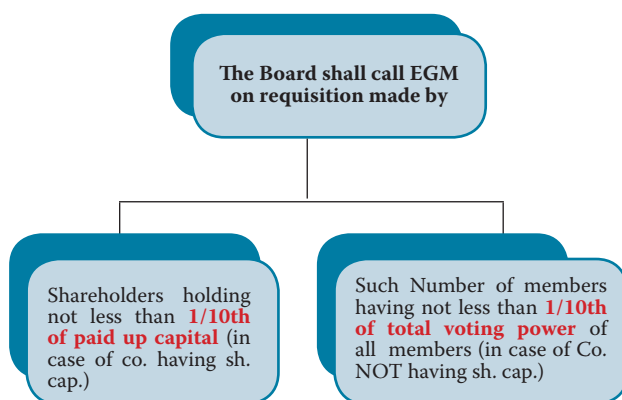
### V(A). AGM

Question	Answer
Maximum time duration between two AGMs	15 months + 3 months (for special reasons)
Date of AGM	Any day except National Holiday

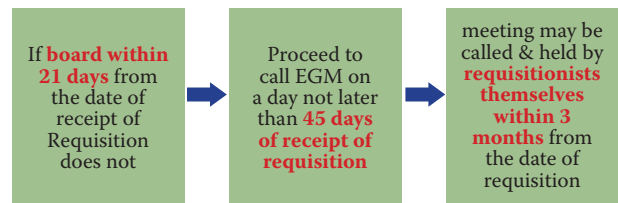


### V(B). EGM

#### Calling of EGM



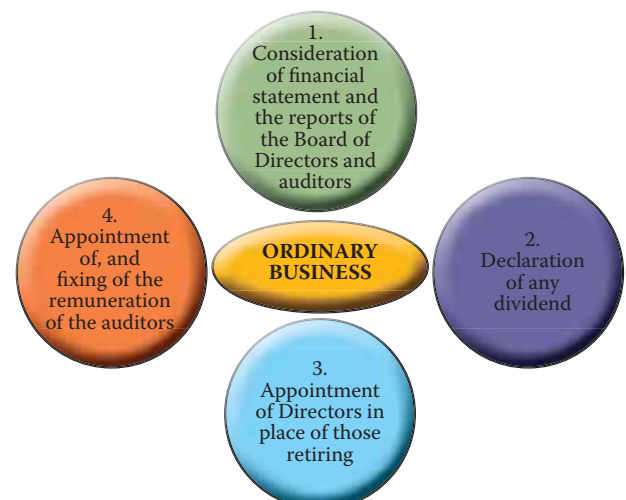
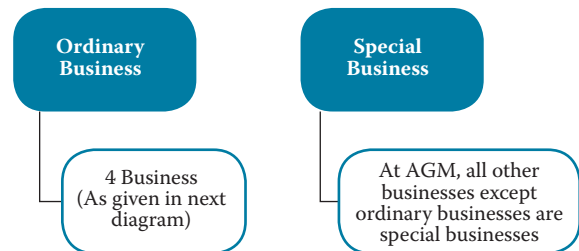
### Period of Holding EGM



## VI. NOTICE OF MEETING

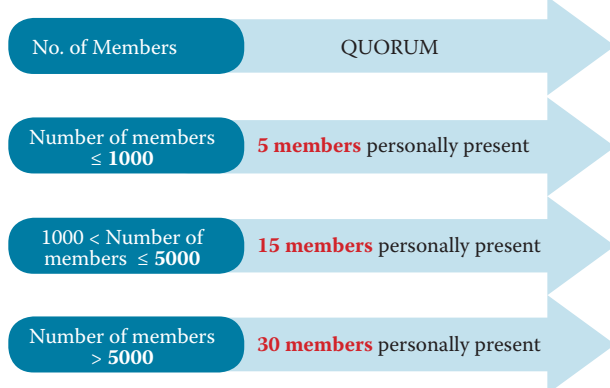


## VII. TYPES OF BUSINESS TRANSACTED IN AGM

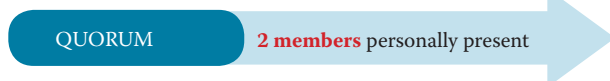


**VIII. QUORUM FOR MEETINGS**

**Public Company**



**Private Company**



**IX. PROXIES**

**PROXIES:** Any member of a co. entitled to attend and vote at a meeting of the co. shall be **entitled to appoint another person as a proxy** to attend and vote at the meeting on his behalf.

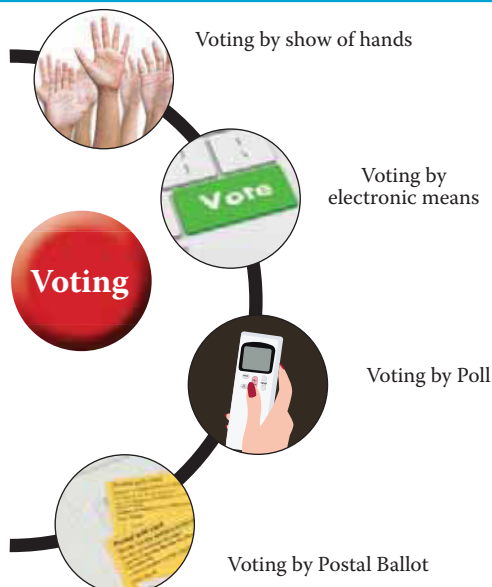
A proxy shall **not** have the **right to speak** at such meeting and shall **not be entitled to vote** except on a poll.

A person appointed as proxy shall act on behalf of such member or number of members **not exceeding fifty** and holding in aggregate not more than 10 per cent of the total share capital of the company carrying voting rights

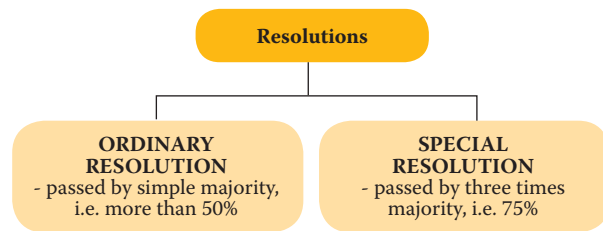
A proxy received **48 hours** before the meeting will be valid even if the articles provide for a longer period.

The instrument appointing a proxy shall be **in writing**.

**X. VOTING**



**XI. TYPES OF RESOLUTION**



**Characteristics of Special Resolution**

1. Specified Majority - 75%
2. Resolution shall be set out in the notice
3. Notice must state that resolution is to be passed as a special resolution and omission, would invalidate the resolution.
4. Proper notice of 21 days is given for holding the meeting
5. Explanatory Statement should be annexed to the notice for conducting special business

**XII. MINUTES**

Minutes of the **proceedings of meeting** shall be kept **within 30 days** of the conclusion of every such meeting concerned or passing of resolution by **postal ballot** in books.

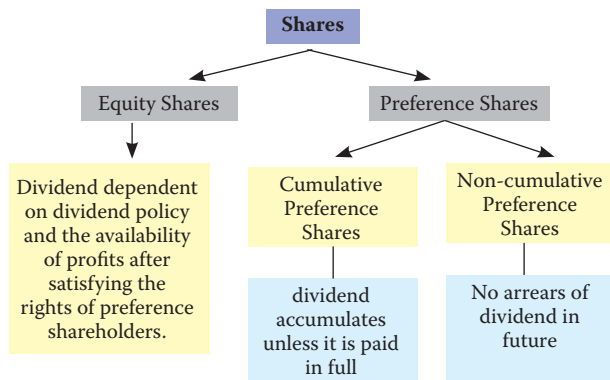
- The minute book shall be **consecutively numbered**.
- The minutes of each meeting shall contain a **fair and correct summary** of the proceedings that took place at the concerned meeting.
- **All appointments** made at any of the meetings shall be included in the minutes of the meeting.
- In the case of a Board Meeting or a meeting of a committee of the Board, the minutes shall also contain –
  - ❖ The names of the **directors present** at the meeting; and
  - ❖ In the case of each resolution passed at the meeting, the names of the **directors**, if any, **dissenting** from, or not concurring with the resolution.
- Any of the following matter shall **not be included** in the minutes of the meeting, which in the opinion of the **Chairman** of the meeting
  - ❖ Is or could reasonably be regarded as **defamatory** of any person; or
  - ❖ Is **irrelevant or immaterial** to the proceedings; or
  - ❖ Is **detrimental** to the interests of the company
- The matter to be **included or excluded** in the minutes of the meetings shall be at the **absolute discretion** of the Chairman of the meeting.
- The minutes kept in accordance with the provisions shall serve as the **evidence** of the proceedings therein.



# COMPANY LAW

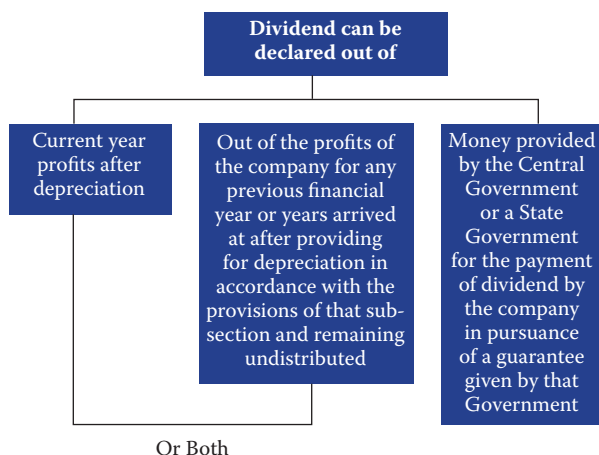
## DIVIDEND

### I. DIVIDEND PAYABLE ON DIFFERENT TYPES OF SHARES



Section 2(35) of the Companies Act, 2013, states that “dividend” includes any interim dividend

### II. DECLARATION OF DIVIDEND



#### Transfer to Reserve

Before declaration of dividend, transfer such % of its profit for that year, as it may consider appropriate (i.e. left at the discretion of the Co.)

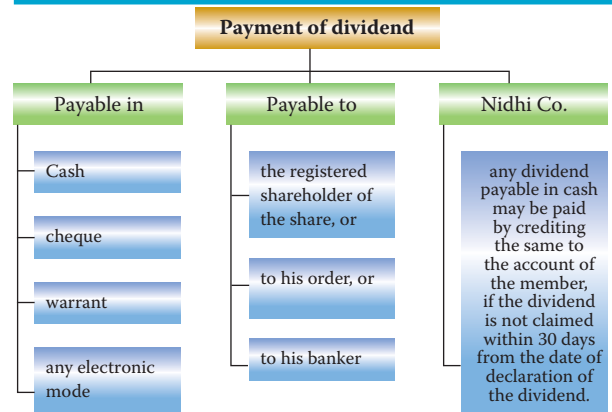
#### Depositing amount of Dividend

Amount of dividend including interim dividend shall be deposited in a scheduled bank in a separate bank account within 5 days from the date of declaration of such dividend

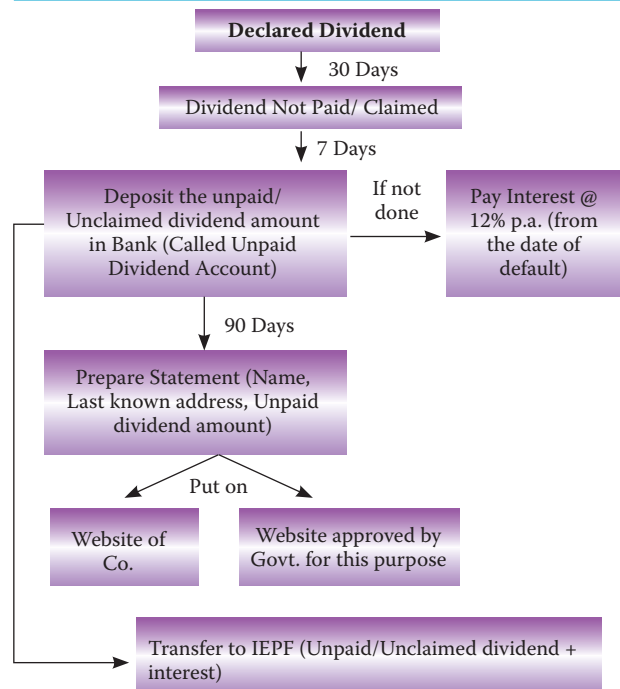
### III. RULES TO BE FOLLOWED WHILE DECLARING DIVIDEND OUT OF RESERVES

1.	Rate of Dividend $\leq (RD1 + RD2 + RD3) / 3$ Where, RD1, RD2, RD3 are rates at which dividend was declared by it in the 3 years immediately preceding that year.
However, this rule will not apply if a company has not declared any dividend in each of the 3 preceding financial years.	
2.	Total amount that can be drawn from accumulated profits $\leq$ 1/10 of (Paid up share capital + Free reserves) (as per latest audited Financial statement)
3.	Drawn amount be first utilized to set off losses incurred in FY in which dividend is declared
4.	Balance of Reserve (after drawal of Amt) $\geq$ 15% of Paid up capital (as per latest audited Financial statement)

### IV. PAYMENT OF DIVIDEND

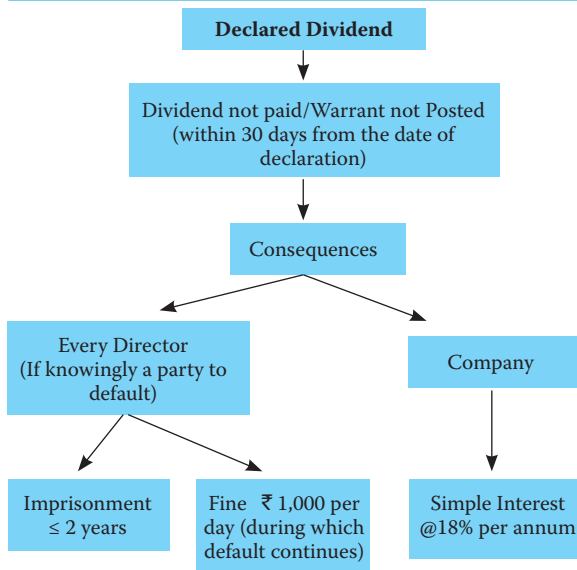


### V. UNPAID DIVIDEND ACCOUNT (UPA)

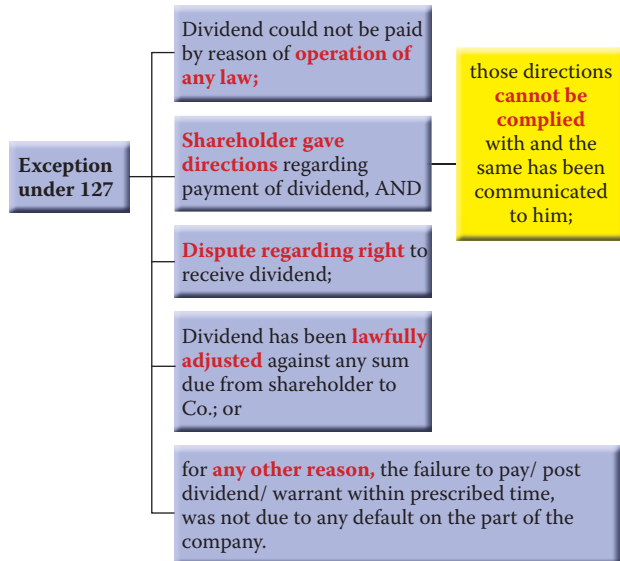


Any person claiming for the amount transferred in UPA may apply to Co. for the payment of money claimed

## VI. PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS



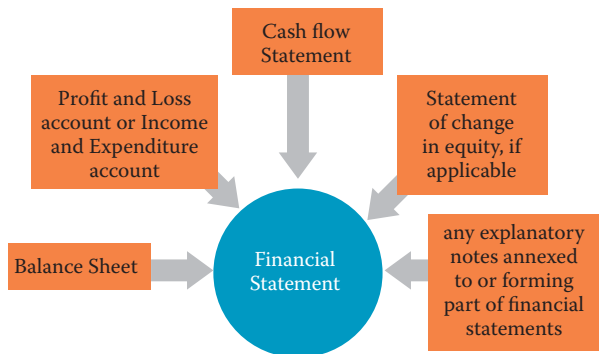
## EXCEPTIONS UNDER WHICH NO OFFENCE SHALL BE DEEMED TO HAVE BEEN COMMITTED



## ACCOUNTS OF COMPANIES

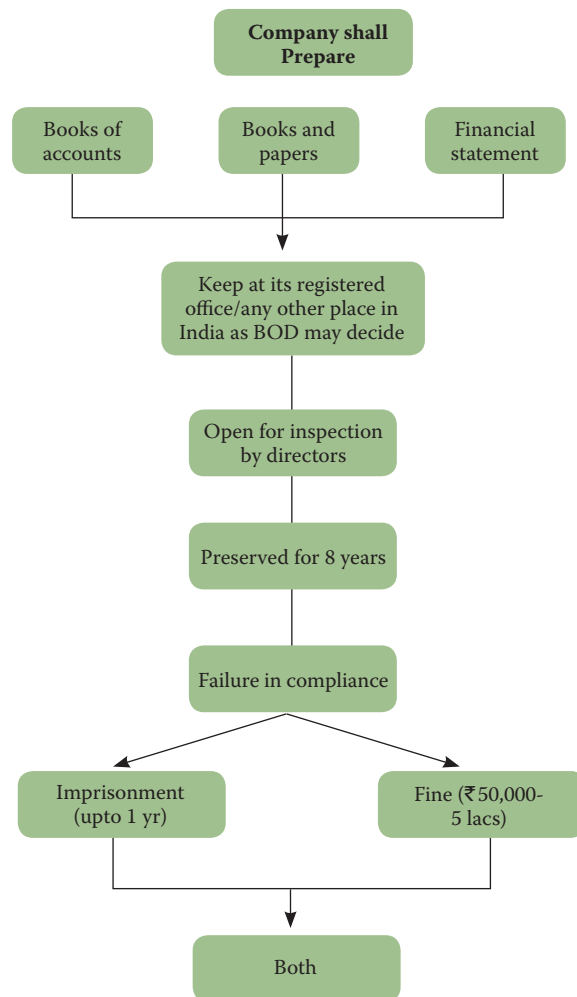
### I. FINANCIAL STATEMENT (FS)

Financial Statement is defined under Section 2 (40), to include –



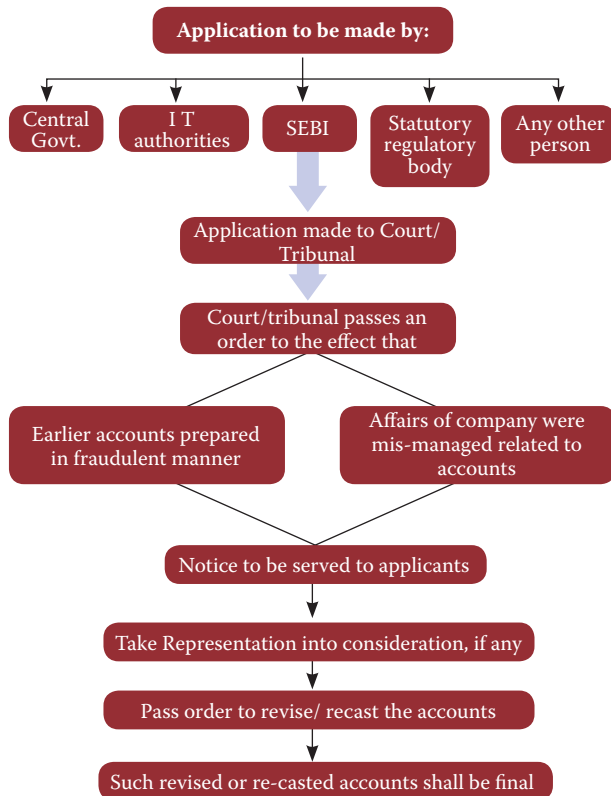
Financial statement shall:

- Give True & Fair view of state of affairs of the Co.
- Comply with AS
- Be in form as provided for different classes of Co.s in Schedule III
- At each AGM, the Board of Directors (BOD) shall lay the FS for the FY
- If the Co. has subsidiary or associate or Joint Venture, Consolidated Financial Statement (CFS) is also to be laid before AGM
- If FS Do not comply with AS, reasons for such deviation along with financial effects need to be disclosed in FS.



# COMPANY LAW

## II. RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL ORDERS



## III. VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT

If it appears to the Directors of the Co.

FS and Board report not in compliance with section 129 & 134

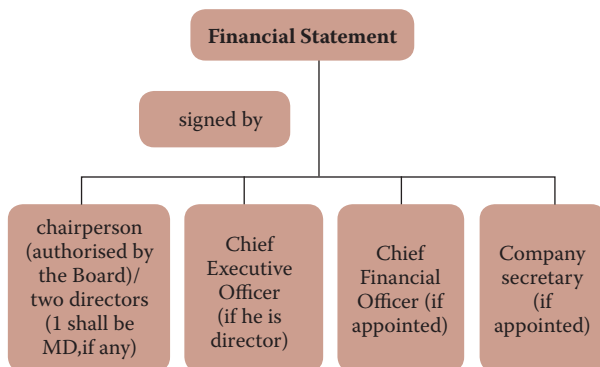
On approval and order of tribunal

Prepare revised FS

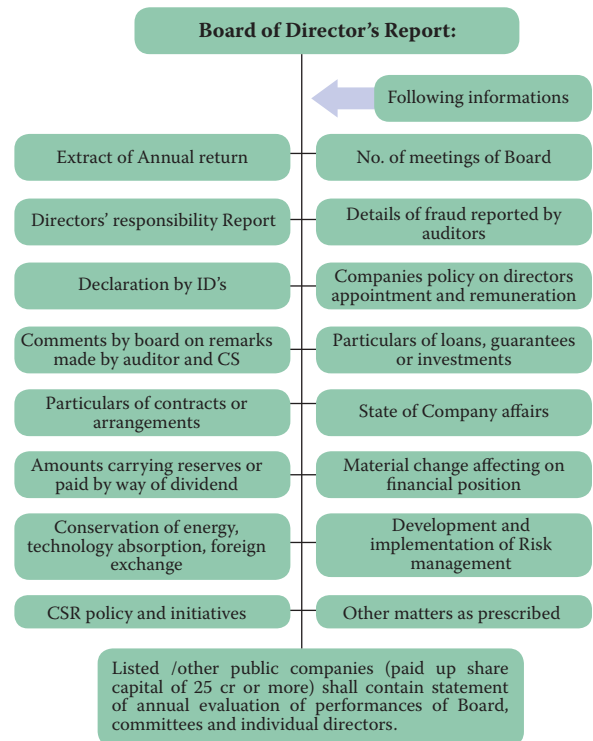
Revise report (any 3 P.F.Y)

Copy of order of revised FS & Report to be filed with Registrar

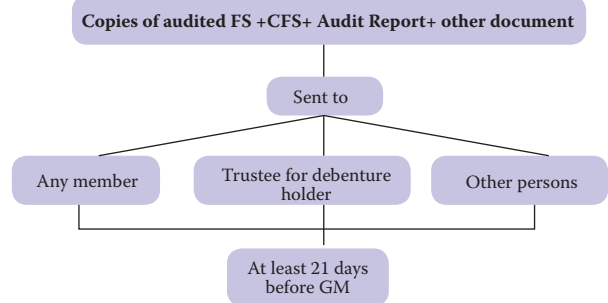
## IV. AUTHENTICATION OF FINANCIAL STATEMENTS



## V. CONTENTS OF BOARD REPORT

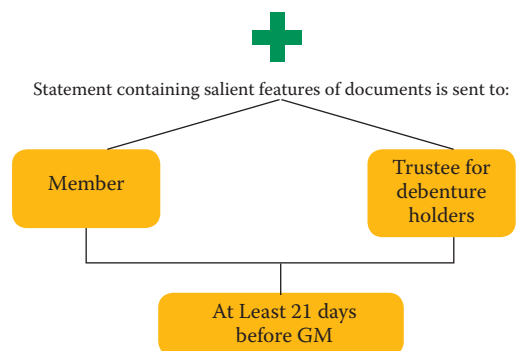


## VI. ENTITLEMENT TO RECEIVE FINANCIAL STATEMENT

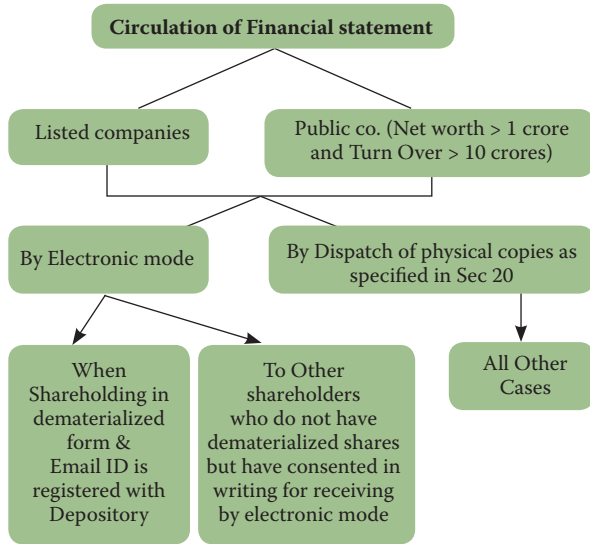


In case of Listed companies:

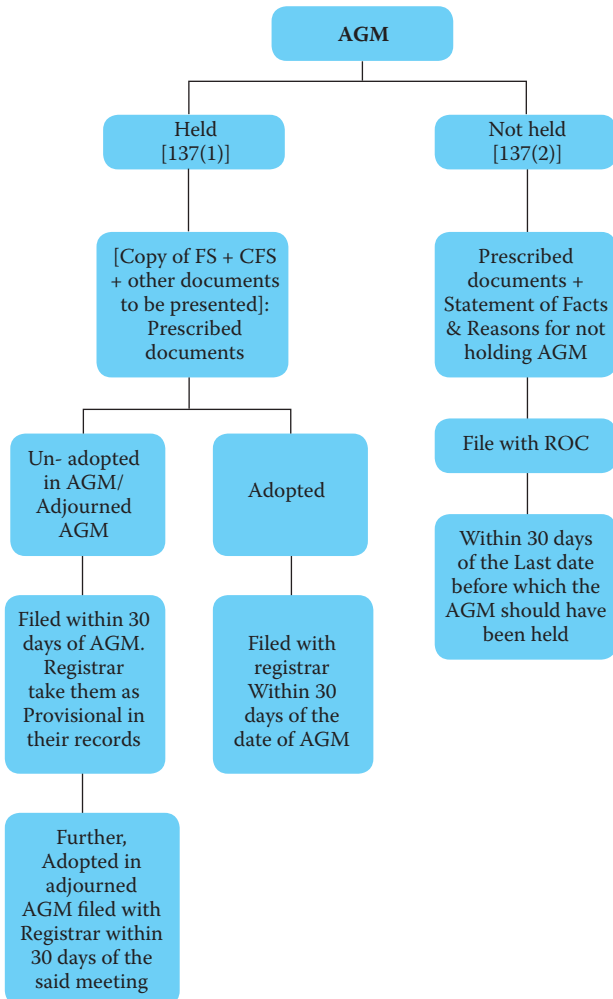
The above steps shall have deemed to be complied, if the copies of documents are made available for inspection at RO during Working Hours for a period of 21 days before the meeting



**VII. MANNER OF CIRCULATION OF FINANCIAL STATEMENTS**

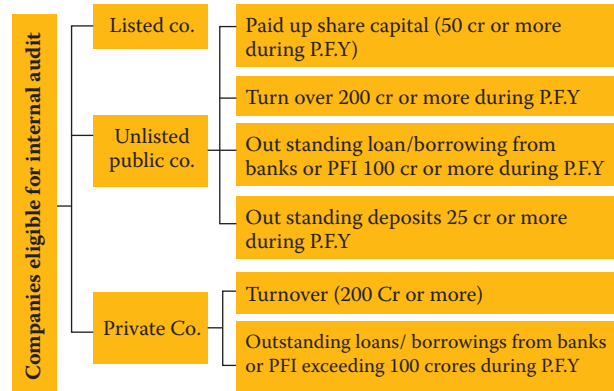


**VIII. FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR**



**IX. INTERNAL AUDIT**

Companies required to conduct internal audit

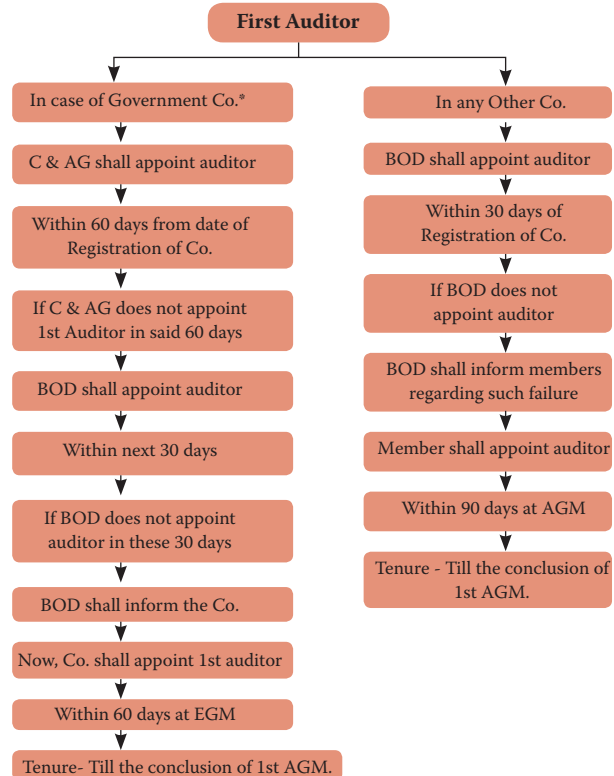


Who Can Be an Internal Auditor



**AUDIT AND AUDITORS**

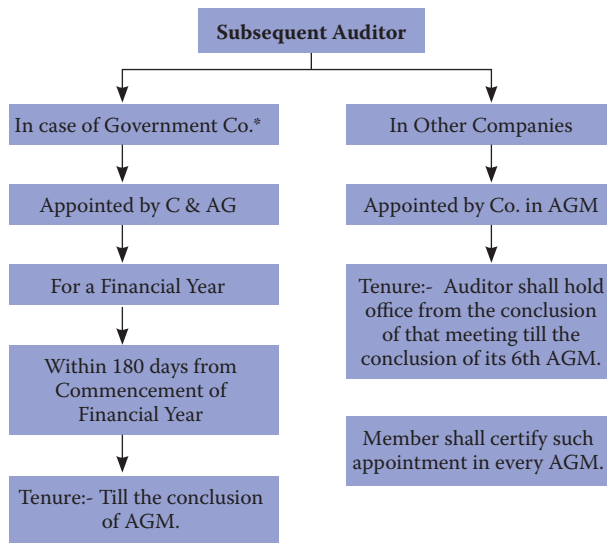
**I. APPOINTMENT OF FIRST AUDITOR**



\* Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments.

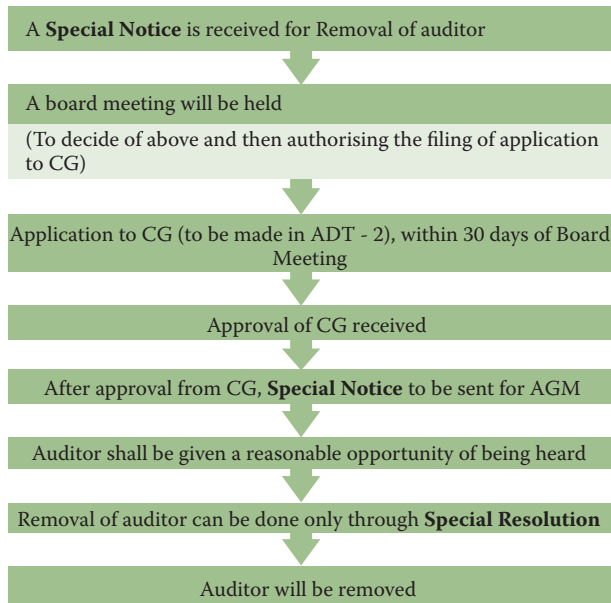
# COMPANY LAW

## II. APPOINTMENT OF SUBSEQUENT AUDITOR

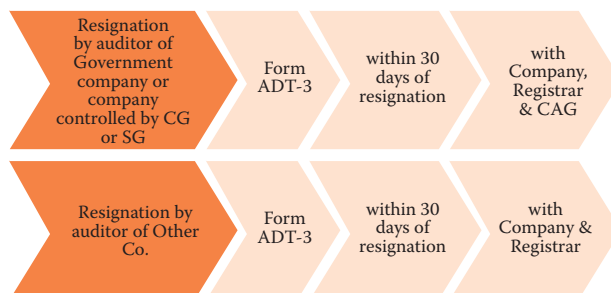


\* Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments.

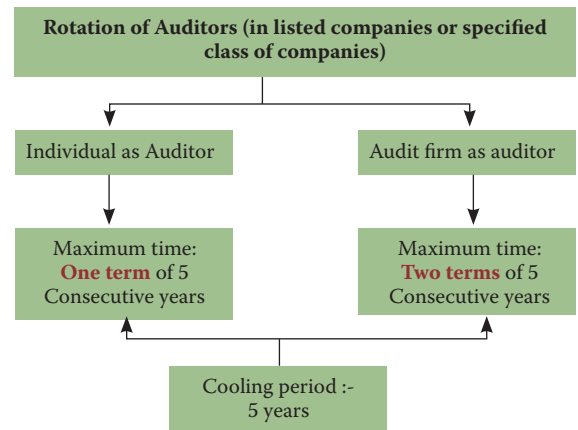
## IV. STEPS FOR REMOVAL OF AUDITOR



## V. RESIGNATION BY AUDITOR



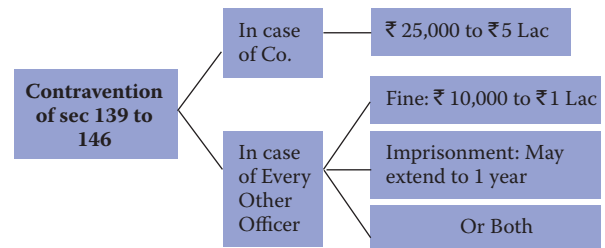
## III. ROTATION OF AUDITORS



Further, as on the date of appointment no audit firm which has common partner/s to the other audit firms whose tenure has expired in a company immediately preceding the Financial Year, shall be appointed as auditor of the same Co. for a period of 5 years.

## VI. PUNISHMENT UNDER SECTION 147

### IN CASE OF COMPANY AND OFFICER OF COMPANY



### IN CASE OF AUDITOR

