

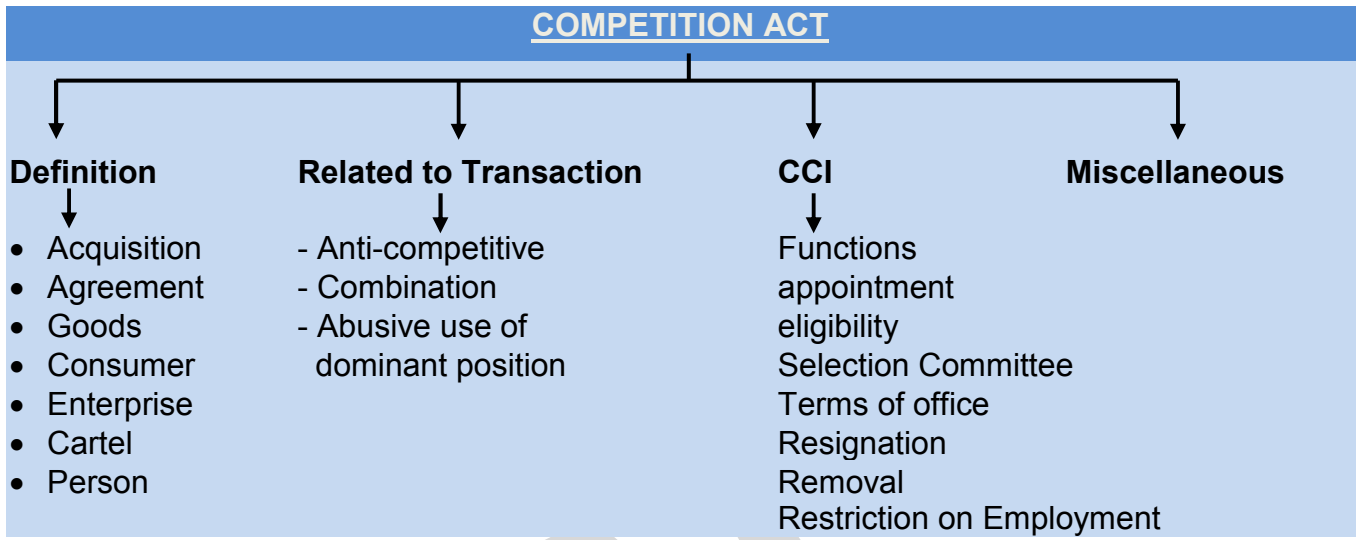
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CLASSES
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FINAL CA
MAY '19
REVISION NOTES
Corporate, Allied (Old)
& Economics (New) Laws

Part - I

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THE COMPETITION ACT, 2002



DEFINITIONS

ANALYSIS OF DEFINITION

ACQUISITION (Section 2(a) :

Acquiring or Agreeing to Acquire directly or indirectly

- Shares, voting rights
- assets
- control over management

AGREEMENT (Section 2(b) :

Any arrangement or understanding whether in writing or not
Whether enforceable by law or not.

GOODS (Section 2(i) : (Sale of Goods Act. 1930)

Goods include :

- Produced, manufactured, processed or mined;
- Shares, Debentures after Allotment;
- Goods distributed or imported in India;

CONSUMER(Section 2(f) :

As discussed in Consumer Protection Act however, It includes commercial as well as personal purpose.



(Goods and Service)



Consideration

paid | promised | partly paid | partly promised | deferred payment

ENTERPRISE (Section 2(h) :

It includes branch, agency, office etc.

It includes Government enterprise involved in manufacturing production trading or such other businesses activities.

Does Not Include

- Atomic
- Currency
- Defence
- Space

CARTEL(Section 2(c) :

It is a group created for

- obstructing Supply;
- restricting output;
- and thereby, manipulating priceo

PERSON (Section 2(l) :

- | | | | |
|--------------|-----------|------------------|-----------|
| - individual | - company | - AOP/BOI | } whether |
| - HUF | - firm | - body corporate | |
- in India are not
- corporation : CG/SG/Provisional Act
 - co-operative Society
 - artificial juridical person
 - Government Co.

SECTION 3 : ANTI COMPETITIVE AGREEMENT

Any agreement which is having appreciable adverse effect on competition will be termed as anti-competitive agreement.

Following agreement will be treated as anti-competitive agreement

1. Tie- up agreement

Condition to purchase one good for purpose of buying another good.

2. Exclusive Supply Agreement:

Putting condition on purchaser not to buy goods from another person.

3. Exclusive Distribution Agreement;

Putting condition Not to Sale Goods beyond particular local limit, municipal limit etc. i.e. putting condition on area of distribution.

4. Refusal to Deal :

Putting condition restraining to deal with any particular person.

5. Resale Price Maintenance :

Putting condition for maintaining minimum price for sale. In other words minimum price below which goods cannot be sold.

Some related concept

Bid Rigging :

Bidder enter into an understanding not to bid against each other in the bidding process.
(adversely affect or manipulate process of bidding)

"PREDATORY PRICE"

means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Horizontal agreements refer to agreements among competitors and vertical agreements refer to an actual or potential relationship of buying or selling to each other. Horizontal agreements relating to prices, quantities, bids and market sharing are particularly anti-competitive. Vertical agreements like tie in arrangements; exclusive supply/distribution agreements and refusal to deal are also generally anti-competitive. Section 3 of the Competition Act, 2002 regulates and prohibits all types of agreements, which have the effect to restrict competition, and prevent those, which have such likely effect.

Here, horizontal agreements are those agreements among competitors operating at the same level in the economic process i.e. enterprises engaged in the same activity.

Example: The agreements between producers or between wholesalers or between retailers, dealing in similar kind of products.

Vertical agreements are those agreements between Non-competing undertakings operating at different levels of manufacturing and distribution process.

Example: The agreements between manufacturers of components, manufacturers of products, between producers and whole-sellers or between producers, whole-sellers and retailers.

Horizontal agreements are agreements between two or more enterprises that are at the same stage of the production chain and in the same market. Horizontal agreements and membership of cartels lead to unreasonable restrictions of competition and may be presumed to have an appreciable adverse effect on competition.

Vertical agreements are agreements between enterprises that are at different stages or levels of the production chain and therefore in different markets. An example of this would be an agreement between a producer and a distributor. This includes, Tie in arrangements, Exclusive Supply Agreements, Exclusive Distribution Agreements, Refusal to Deal and Resale Price Maintenance (RPM).

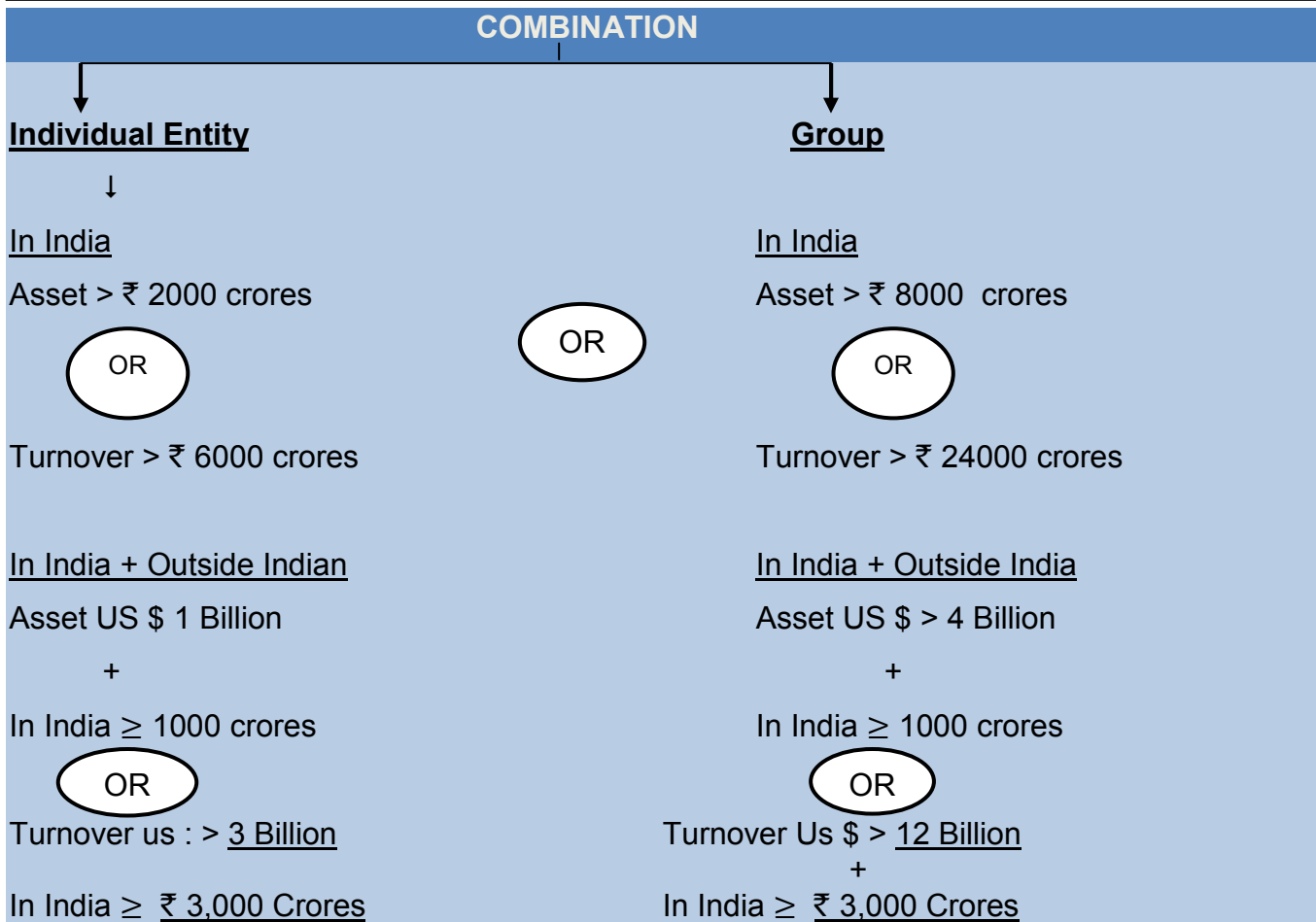
COMBINATION

Combination can be by way of 3 types:

- a) Acquisition
- b) Control by any person : one person having control over 1 entity takes control over other entity.
- c) Amalgamation / Merger

Acquisition → Separate identity

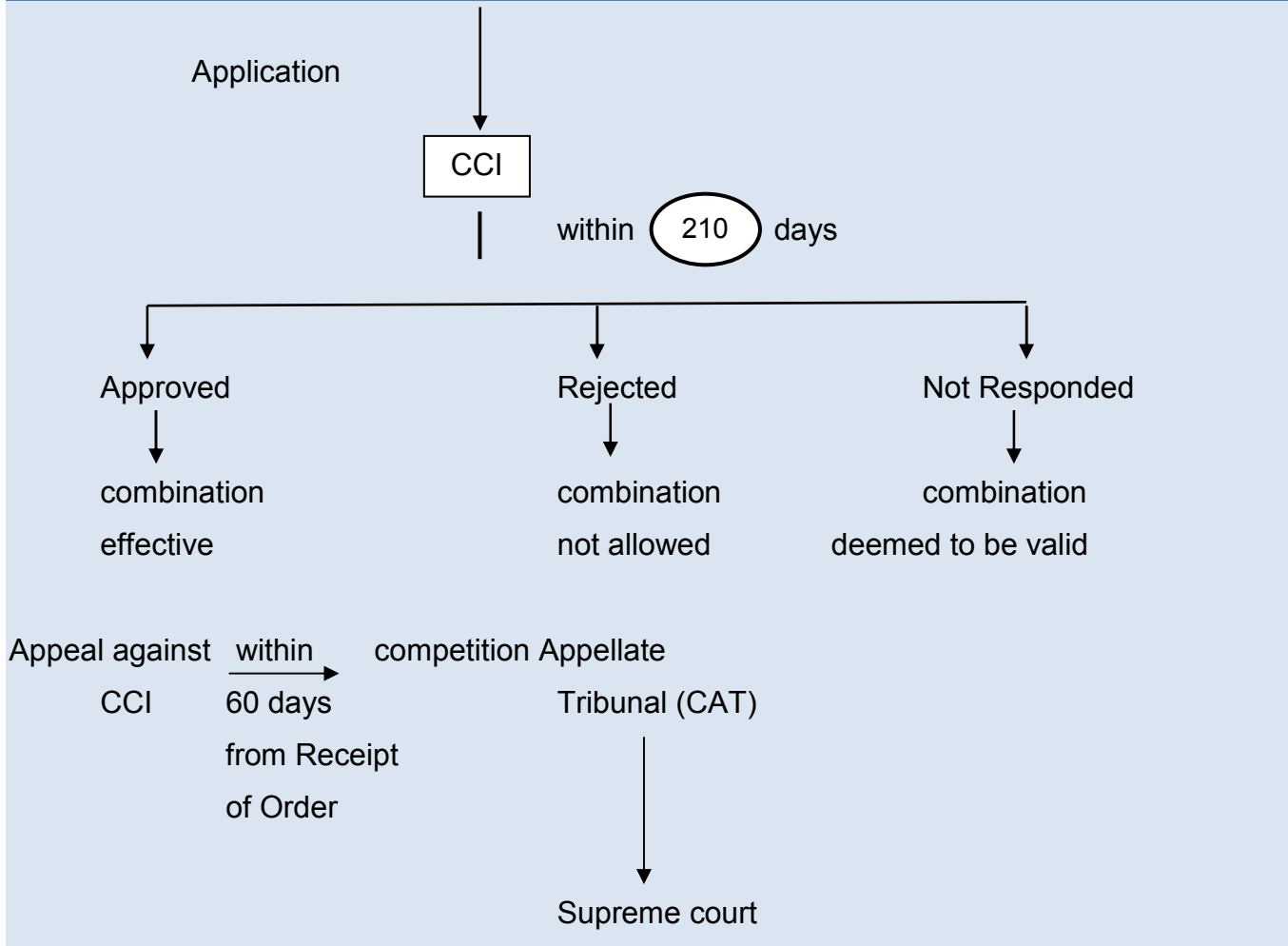
Amalgamation | Merger → No Separate identity



As per notification if a company being acquired does not exceed
 Assets ₹ 350 crores or
 Turnover ₹ 1000 Crores
 In that case it is exempt from Requirement of Section 5 (combination)

Group means holding of more than of voting power of company.
 However as per notification if they acquired less than 50% than they are exempt from Requirement of Section 5

Note : PROPOSAL (FOR COMBINATION)



DOMINANT POSITION

Factors determining Dominant position will be determined by

CCI

- Market share :
- Size and resources :
- Size and importance of competition;
- Economic power including commercial advantages over competitors;
- vertical integration;
- dependence of consumers;
- Monopoly | dominant position due to Statue |

Entry barriers – regulatory – high capital cost of entry

- Financial – marketing entry
- Technical entry – economics of scale
- High cost of substitutes
- countervailing buying power.
- market structure and size of market.
- Social obligation and social costs;

CASES AND FACTOR WHICH WILL DETERMINE ABUSIVE USE

1. Imposes unfair or discriminatory
 - Purchase | sale of goods or services
 - Price | predatory price in purchase | sale of goods or services

2. Limits or Restricts
 - Production of goods
 - Provision of services
 - Technical + scientific development

3. practices → Denial market access any member

4. Was dominant position → Enter other Relevant in 1 relevant market Protect market

COMPETITION COMMISSION OF INDIA

It's a Body corporate established by Central Government.

FUNCTIONS :

1. Protect interest of consumers.
2. To control practices against competition
3. Promote competition
4. Empire freedom of Trade

APPOINTMENT :

CCI consists of :

Chairperson	}	whole time members
+		
Number		
(Minimum : 2 member Minimum : 6 member)		

Such members shall be appointed by CG on Recommendation of Selection committee.

ELIGIBILITY

At least 15 years' experience in international trade, business, commerce, finance, law economics, accountancy, competition, Any other matter considered relevant by CG.

SELECTION COMMITTEE

Constitution :

- | | |
|---|---------------|
| 1. Chief Justice of India or his Representative. (SC) | - chairperson |
| 2. Secretary of Ministry of Law. | - Member |
| 3. Secretary of Ministry of Corporate Affairs. | - Member |

TERM OF OFFICE FOR CCI's CHAIRMAN MEMBERS

Maximum 5 Years

Can be re-appointed for any number of times. However he should not attain age of 65 years or more.

RESIGNATION

1. 3 months from date of Receipt of Notice by CG.
2. Successor appointed
3. Relived by CG
4. Completion of his Tenure
whichever is Earlier

REMOVAL

In the following cases it can be removed from CCI:

1. Declared Insolvent
2. Paid employment
3. Moral Turpitude
4. Develop Financial Interest.
5. Abuse his position.
6. Physically or mentally incapacitated

In these cases members can be removed only after Investigation which is ordered by Supreme Court and SC is satisfied that the Removal is valid.

RESTRICTION ON EMPLOYMENT OF MEMBER/CHAIRMAN OF CCI

No Member of CCI can take-up employment in any company which was party of proceeding during his tenure, for the period of 2 years.

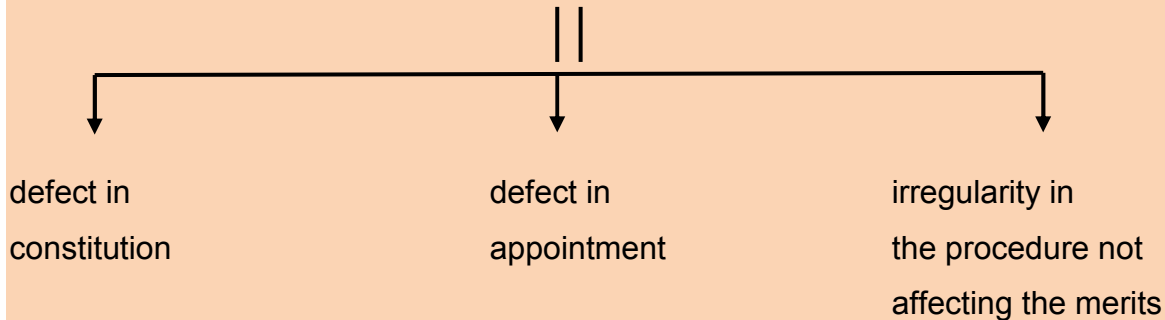
However in the following cases he can become employee even before 2 years.

Exceptions:

1. Central Government
2. State Government
3. Local Authority
4. Statutory Corporation
5. Corporation formed under central | State | Provisional Act.
6. Government company

DEFECT IN APPOINTMENT SHALL NOT INVALIDATE THE PROCEEDINGS

Any defect in appointment of any member shall not invalidate any proceedings in which such member was the part.

**MISCELLANEOUS****1. Penalty**

- Cease and Desist order will be passed if company proved to be Guilty.
- Penalty will be levied and CCI may order sale of asset or sale of shares
- Not more than 10% of avg. T/o of last 3 preceding financial year

2. Financial power of CCI is based with Chairperson**3. Director General of CCI shall be appointed by CG and for his assistance other officers shall be appointed by director general.****4. Power of Commission to regulate its own procedure.****5. Central Government can Supersede commission if commission is NOT complying with Act.****6. All members, employees of CCI is public servant and have protection for action taken in Good faith.****7. CCI have an overriding effect over other courts and civil court cannot entertain any case of CCI.****Section 49 : Competition Advocacy**

CCI can take any suggestion over any matters related to competition.

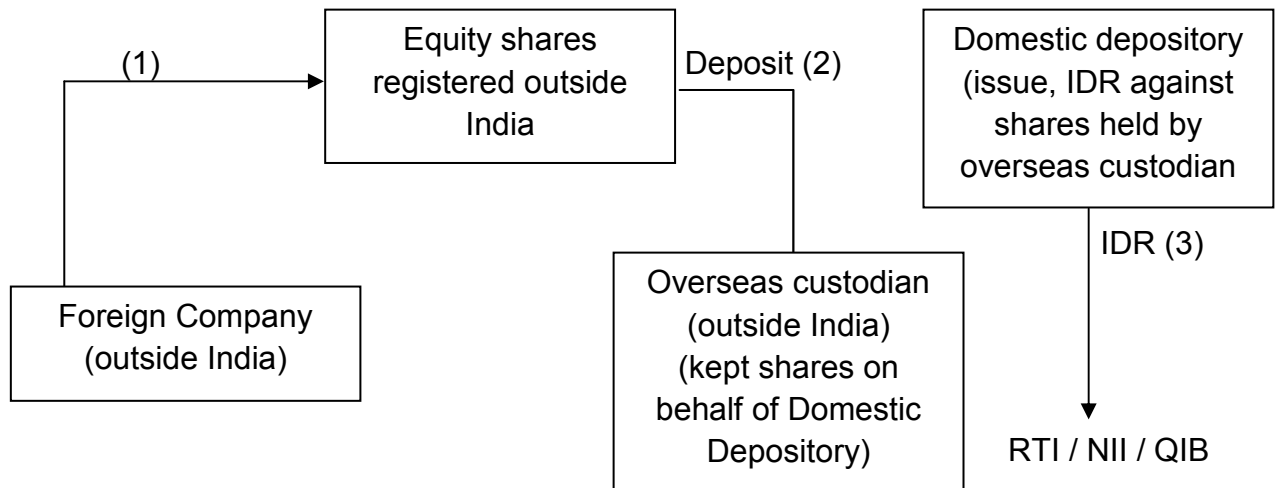
SEBI (ICDR), 2009**GREEN SHOE OPTION (GSO)**

In case of public issue due to short term investors and market sentiments there is an excess supply without demand due to which prices of the shares fall and hence in case of GSO artificial demand is created to control fall in price.

PROCESS OF GSO

1. Resolution in general meeting : Issuer should be authorized by resolution passed in GM approving to allot specified securities to stabilizing agent on expiry of stabilizing period.
2. Stabilizing agent : SA shall be appointed who will be responsible for price stabilization process
3. Issue 15% of excess securities in IPO / FPO (borrowed from promoter or shareholder 5% or more holding)
Shares can be borrowed from promoter or shareholder having at least 5% of its pre-issue capital
4. Stabilizing period : stabilizing period will be at least for maximum 30 days from listing
5. Stabilizing agent shall open – GSO Bank A/c and GSO Demat A/c
In GSO Bank A/c money collected by issuing extra 15% shares / securities will be held.
In GSO Demat A/c promoter has lended extra shares and to return their shares it will be purchased from market by SA and it will be kept in this account.
In case of any deficit fresh issue will be made by the company after expiry of 30 days.
6. Returning back securities to promoter after the stabilizing period within 2 days
7. GSO Demat A/c (after expiry period) : In GSO Demat A/c there cannot be surplus. The company has issued 15% excess shares during IPO / FPO now the SA (merchant banker) cannot buy more than 15% shares during stabilizing period. So there can never be surplus in this A/c.
8. GSO Bank A/c (after expiry period) there can never be deficit in GSO Bank A/c
9. After stabilization period stabilizing agent SA should file the statement with SEBI
10. Register : Register for stabilizing process should be maintained by company and it should be kept at registered office

Note : balance in GSO Bank A/c shall be transferred to IEPF

INDIAN DEPOSITORY RECEIPT**ADVANTAGES :**

1. It helps to integrate indian market to the world market
2. It gives an opportunity to an indian investor to buy shares of foreign company without complaining strict provision of FEMA

DISADVANTAGES :

1. Indian companies have to compete with foreign companies to raise funds in stock market
2. It leads to negative capital outflow

CONDITIONS FOR RAISING IDR

1. The issuer should be listed in its home country
2. The issuer company is not prohibited to issue securities by any regulatory body worldwide.
3. The issuer company has track record of complying securities market regulation in its home country
4. The issue size should be at least Rs.50 crores
5. The prospectus for buying IDR should be issued and it should contain entire procedure for buying IDR
6. Application size should be at least Rs.20,000
7. At least 50% IDR should be subscribed by QIB and RII is eligible for minimum 30% .

However, if it is not subscribed, then it will be 'spill-over' (spread) to the other categories (NII and QIB).

FAST TRACK ISSUE (FTI)

In case of fast track issue company can make FTI without satisfying regulations 6,7 and 8 (lot of forms required to be filed under these regulations which is not required under FTI).

In order to make FTI following conditions need to be satisfied

1. Issuer should be listed on recognized stock exchange for at least 3 years (i.e. FPO)
2. Average market capitalization of the issuer should be at least Rs.1000 crores in case of public issue And it should be at least Rs.250 crores in case of right issue
3. Annualized trading turnover of the issuer in preceding 6 calendar month should be at least 2% of weighted average trading turnover of its shares listed
4. Atleast 95% of investors grievance till preceding quarter should be redressed, by the issuer
5. Issuer should be in compliance with equity listing agreement for atleast 3 years

Note :

- a) If company has not satisfied criteria of board contribution, then it is permitted if it is satisfied at time of FTI
 - b) In case of equity listing agreement any monetary fine, will not disqualify from FTI
6. All promoters holding should be in Demat form
 7. Auditors qualification should not be more than 5% of total profit in the offer document
 8. Any show cause notice should not be issued to any promoter or director as well as there should be not be any proceeding pending against them
 9. Due diligence certificate should be taken before FTI from Auditor
 10. No matter should be settled through settlement commission
 11. Issue should not be suspended from listing in preceding 3 years
 12. No promoter or director should renounce their right issue

INTERPRETATION OF STATUTES, DEEDS AND DOCUMENTS



→ Written will
of the legislation

Finding an
Intention

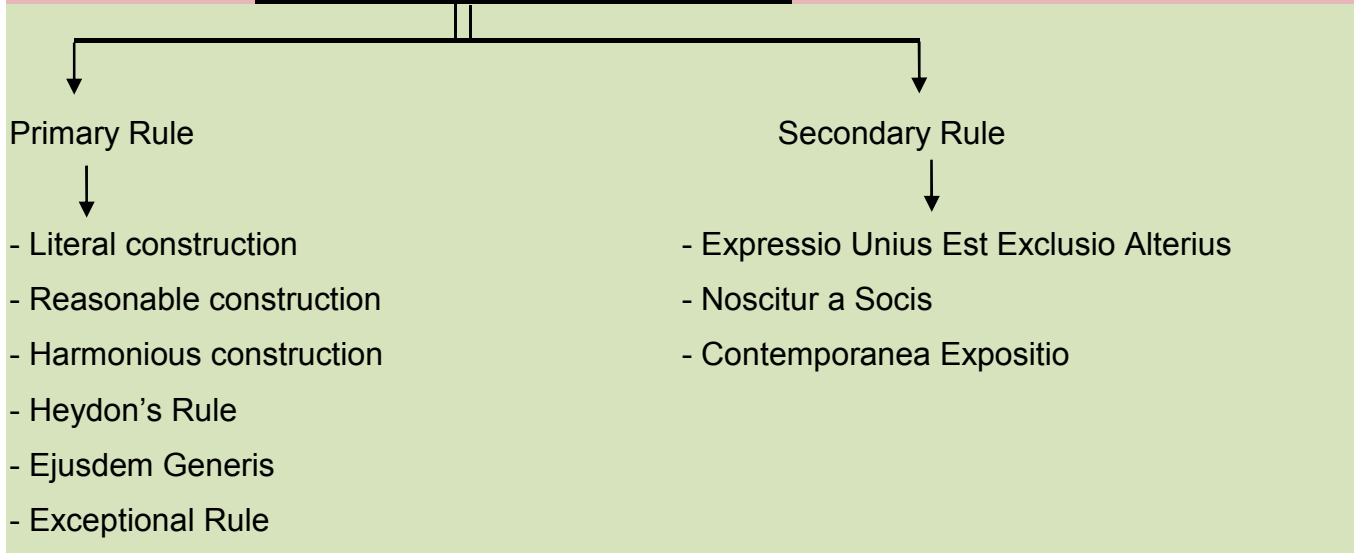
Rules Law,
Section (Force of Law)

Why Interpretation is Required ?

Law is formed immemorial (long-back) and due to change in circumstances interpretation is required.

Everything cannot be covered in the Act and hence interpretation is required.

RULE OF INTERPRETATION



PRIMARY RULE

LITERAL CONSTRUCTION

It is a primary rules of interpretation in which no word can be added or deleted or substituted.

Every word should be assigned some meaning and this is caused Literal Construction.

Reason → Since Law formed with great care and hence words are very important in their content.

It can be used when words are clear, language is plain and there is only one meaning;

REASONABLE CONSTRUCTION

When the Literal construction is creating Absurdity, then, Law should be applied in such a manner than object of the law can be achieved.

In that case, words can be added deleted or substituted to find Intention of Law.

e.g. : - ICAI V/s PWc.

HEYDON'S RULE / BENEFICIARY RULE / MISCHIEF RULE

When the Law is new in case of any Absurdity this law can be applied.

How Law can be Applied ?

- Find out what are the mischief's far which law has been framed.
- Identify remedies given in Law.
- Find out the shortcoming of Law.
- Apply the law in such a way that mischiefs are suppressed and remedies are advanced.

e.g. : Smith v/s Hughes

HARMONIOUS CONSTRUCTION

Sections are the part of Act following 1 Section is not the appropriate ground to contravene another Section, hence. It should be applied in such a way that all Section are complied with. However in case of "Notwithstanding" section it will override "Subject to" section.

e.g.:

1. Section 36 and 43B of Income tax Act
 2. Rule of AGM of 15 months from last AGM and 6 months from end of F.Y.
- **Impossible** → provision enacted later prevails.

To Harmonize – more general and specific provision.

EJUSDEM GENERIS – Same class or species

It means

Equal shall be treated Equally

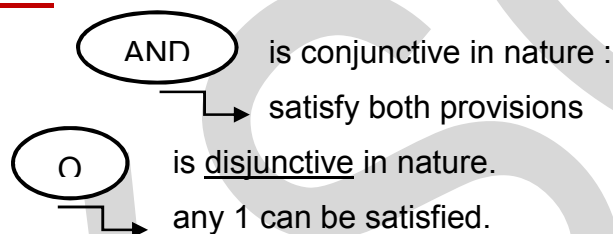
If definition is Inclusive in nature, then this Rule will be applied.

If any Example is covered in definition then, anything not covered in definition but satisfy the conditions already covered in definition, then it shall be included in definition.

- under negotiable instrument act, DD is not specifically included, however since it satisfies criteria of BOE it shall be included in definition.

Cat Dog etc, will include cow (domestic animal) but it not include Lion (wild animal)

EXCEPTIONAL RULE



However, in case of **Absurdity** it can be used otherwise.

MA is discretionary in nature.

Exception

1. If power is coupled with duty, then, it will treated as mandatory.
 → (Essential commodity Act Perishable goods may be sold by custom officer)
2. If “may” is used in purely conventional courtesy, it will taken as mandatory in nature (e.g. Maharashtra Government may consult MPSC for the appointment of Government officer)

SHALL is mandatory specific penalty in nature.

However if it is used against Central Government then it may be taken as discretionary in nature.

(e.g. CG shall issue DIN within 1 month but there is No penalty)

SECONDARY RULE

EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS

- Express mention of one thing silently excludes others.
- If in Act, anything has been specifically specified then it will exclude other things.
e.g.: Land Building, Coal mines excludes other mines.

NOSCITUR A SOCIIS (CONSTRUCTION OF ASSOCIATED WORDS)

Construction of Associated words.

While interpreting word meaning can be assigned by its associated words.

- **Plant and Tree;**
Plant and Machinery
- **Toiletry and Perfumery:**
Cosmetics and Perfumery;

CONTEMPORNEA EXPOTIO

It implies Meaning assigned by contemporary authority

When the Act is old then in case of any Ambiguity meaning can be assigned from the authority who deal in such things.

e.g. : committee who were involved in dealing with such Act,
People dealing with such Act. etc.

Note : Secondary Rule can be used only if plain meaning is Not clear.

AIDS OF INTERPRETATION

A) INTERNAL AIDS

1. SHORT TITLE

It cannot be used for interpretation

- Company's Act. 2013.

2. LONG TITLE

It is given after short title.

It starts from "An Act....."

It can be used for purpose of interpretation.

If the Plain meaning is not clear it is generally used for interpretation.

3. PREAMBLE

It is scope of the act.

It is similar to long Title it helps to understand scope of Act.

It help to understand interpretation.

4. HEADING AND CHAPTERS

It is group of Sections. It is created due to something common between Sections

- XI – Director : created consists of common section sections applicable to director.

MARGINAL NOTE

It is Foot Note. It consists of form No, Amendment, Date of Amendment, Rule No. etc.

ILLUSTRATION

It is calculation based example given in Act.

Generally it is used for purpose of interpretation however it cannot override plain meaning.

PROVISO

It starts with "Provided that...."

It creates an exception

Restricts the main section provide any clarification.

Provision Specify the condition given an Exemption

EXPLANATION

It is used to give any specific meaning to any particular section which may be different from General use.

e.g.: Section 185 Definition of undertaking.

SCHEDULE

It is having a legal binding It specific various form, rates etc which may be reference to various sections.

B) EXTERNAL AID

HISTORICAL SETTING: The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act. We have also to consider whether the statute in question was intended to alter the law or leave it where it stood before.

CONSOLIDATING STATUTES AND PREVIOUS LAW

e.g:- GST formed after consolidation of VAT Service Tax excise etc. So in case of confusion old Act can be Referred.

EARLIER AND LATER ACT AND ANALOGS ACT.

Consumer Protection Act
and competition Act
both deal with consumers

Similar Act
IT Act and wealth Tax so, if
there is any confusion about definition'
etc. in wealth tax then matter can be
referred to IT

EARLIER ACT REPEALED BY NEW ACT.

FERA - FERA

MRTP – competition Act

REFERENCE TO REPEALED PART OF ACT.

If any section has been repealed in any act then it can be referred for the purpose of reference

DICTIONARY

Any meaning assigned by the course can also be referred for the purpose of interpretation.

FOREIGN JUDGEMENT

It can be referred only if foreign law is on same line.

THE BANKING REGULATION ACT, 1949

➤ Banking Co. :- It is a company which is engaged in Business of Banking in India.



Accepting deposits from Public for the purpose of lending (+)

Sec 6(1):

- Borrowing
- Lending
- Draw / Render Bills of Exchange
- Traveller's cheque
- Deal in Foreign exchange
- Deposit vault
- Trustee
- Custodian
- Acquire any asset against loan (i.e. Mortgage).
- Maintain Building used for Business purpose.
- Any other function as approved.

➤ **Small scale Industry : -**

Investment in Plant & Machinery

Upto ₹ 5 lac

It can be increased upto ₹ 20 lac

➤ **Bank / Banking / Banker**

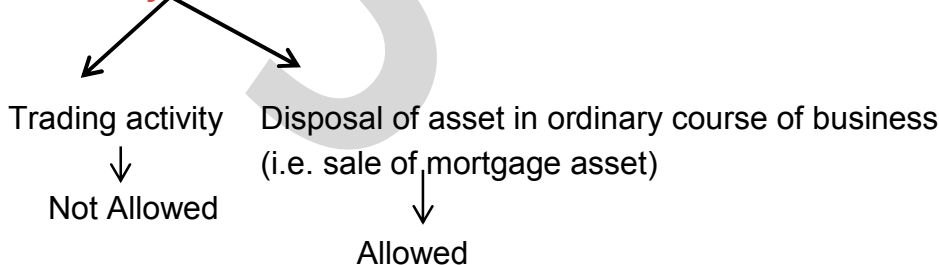


Above words mandatory to use

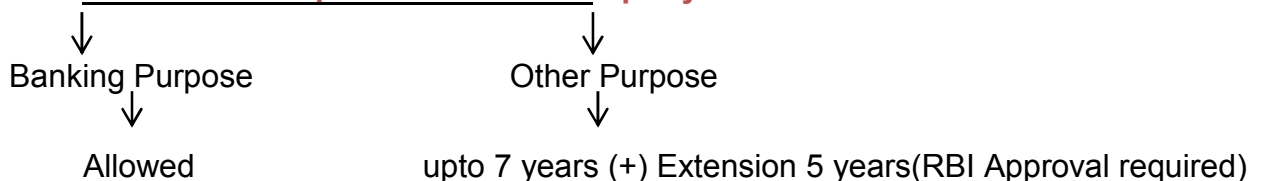
Mandatory: - not to use above words

Exception: sec 8 (may not use Bank / Banking / Banker)

➤ **Activity of Bank :**

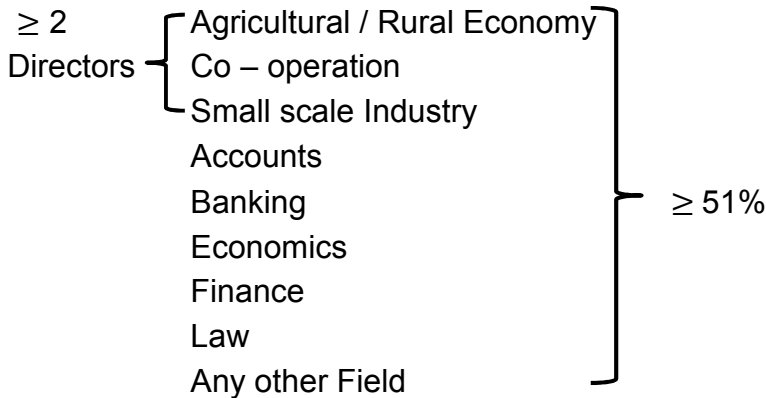


➤ **Can Bank Hold / Acquire Immovable Property?**



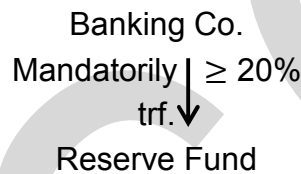
➤ **Board of Directors :-**

Directors should have the following :-



Note: In case BOD is not as per requirement then BOD should be reconstituted & directors may be removed on lot basis.

➤ **Reserve Fund :**



Exception : RBI can exempt from Requirement if following conditions are satisfied :-

1. Paid up share capital (+) Free Reserves : It should be sufficient enough to meet its Deposit Liability.
2. Reserve Fund + Securities Perm \geq Paid up Share Cap share capital

➤ **Advancing Money :**

RBI may determine policy in general or special order any policy for the purpose of :-

- a. Public interest
- b. Int. of the deposit holder
- c. Int. of banking co.

Certain directions can be given by RBI on advance made by Banking Co. :-

- (i) Purpose of loan
- (ii) Margin of advance
- (iii) Max amt.
- (iv) Max guarantee
- (v) Rate of interest

➤ **Higher Rate of Return :-**

No case can be filled in any court of law on the ground of higher rate of interest charged by the bank due to any act or provision applicable in any state.

➤ **Books of Accounts & Financial Statement : (Banking Co.)**

Form : As per Banking Regulation Act } In case of contravention Banking Regulation
 (+) } Act will override
 Companies Act, 2013 }

Signed by : Manager / Principal officer

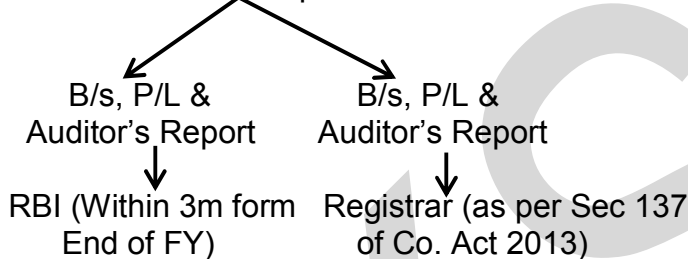
(+)

≥ 3 Directors / All Directors (in case Co. has < 3 Directors)

Audit: Any person who is competent & qualified under any act can be appointed as Auditor of Banking co. with prior approval of RBI.

Special Audit : RBI may order special audit of various transactions in any banking co. to the auditor of the Banking Co. or any other person who is competent under any law. Expense of such special audit shall be borne by the Banking Co.

➤ Submission of Report :



Note : Extension of 3 by RBI is permitted

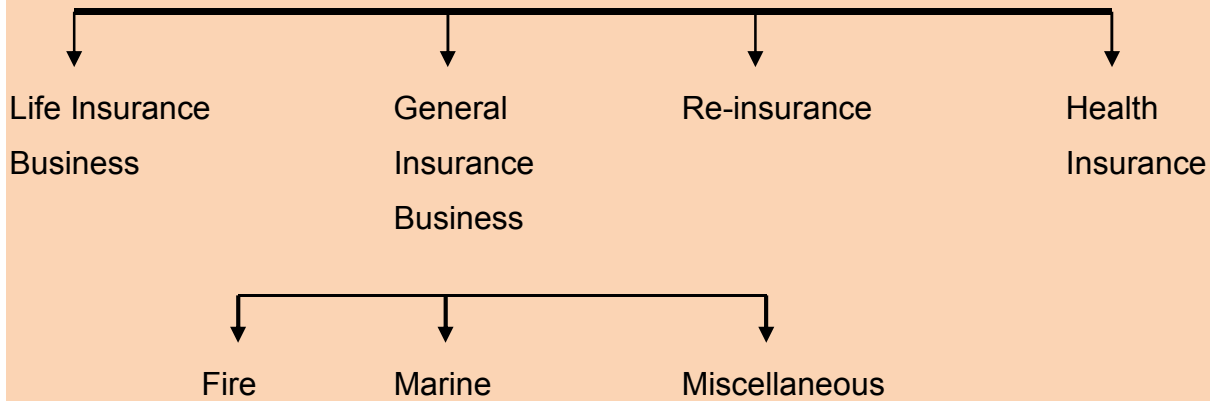
- Section 35 : RBI has the power to inspect BOA & such other documents.
- Section 35A : RBI has the power to give any directions to Banking Co.
- Section 36B : Prior approval of RBI is required for appointment, reappointment, remuneration or termination of MD, etc. of Banking Co.
- Sec 36 : RBI can regulate any of its transaction related to giving assistance.
- Sec 36AA : RBI can remove MD, etc. of Banking co. However, within 30 days appeal can be filed to central Govt.
- Section 36AB : RBI can appoint additional director for the period of 3 + 3 years.
- Section 36 AE : CG can acquire the undertaking of any Banking Co. from the date as may be specified if the Banking Co. is working in a manner detrimental to the depositor.
- Section 36 AF : any such acquisition of Banking Co. will be settled by payment of compensation to shareholder of such co. as may be decide by central Govt.
- Section 36AG : If shareholder is not satisfied with compensation then appeal can be filed to tribunal after requesting to CG & such appeal can be filed only if appeal is supported by 1/4th in value as well as in number of the shareholders.
- Cash Reserve : CRR → atleast 4% of Demand & Time liability
Banking Co. should maintain CRR for every alternate Friday.

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Part - II

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INSURANCE ACT

Health Insurance Business: Section 2(6C): "Health Insurance Business" means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover.

Indian insurance company: section 2(7a): "indian insurance company" means any insurer, being a company which is limited by shares, and,—

- (a) Which is formed and registered under the companies act, 2013 as a public company or is converted into such a company within one year of the commencement of the insurance laws (amendment) act, 2015;
- (b) In which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not exceed forty-nine per cent. Of the paid up equity capital of such indian insurance company, which is indian owned and controlled, in such manner as may be prescribed.

explanation.—for the purposes of this sub-clause, the expression "control" shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

- (c) Whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business.

insurer: section 2(9): "insurer" means (a) an indian insurance company, or (b) a statutory body established by an act of parliament to carry on insurance business, or (c) an insurance co-operative society, or (d) a foreign company engaged in re-insurance business through a branch established in india. The expression "foreign company" shall mean a company or body established or incorporated under a law of any country outside india and includes lloyd's established under the lloyd's act, 1871 (united kingdom) or any of its members.

SECTION 6

Business (Exclusively)	Minimum
Life Insurance	₹ 100 Crores
General Insurance Business	₹ 100 Crores
Health Insurance Business	₹ 100 Crores
Re-insurance	₹ 200 Crores

(Net owned fund > 5000 only for foreign insurer)

SECTION 6A : CHARACTER OF CAPITAL

<u>Share Capital</u>	<u>Voting</u>	<u>Paid-up Capital</u>
Same class ✓ and same value ✓	only Equity Shares	same (except for 1 year)

SECTION 13 : ACTUARIAL VALUATION REPORT

Every “Life Insurance Co.” Should make	—————→ IRDA
Actuarial valuation Report Can the basis of future liabilities)	Auctorial Report (Liabilities) (1 year to 3 years) ↓ Decided by IRDA (prepared by Actuary) Report to be filed every 2 nd year with IRDA.

AUDIT OF ACCOUNTS OF INSURANCE COMPANIES (SECTION 12) & SUBMISSION OF RETURNS (SECTION 15)

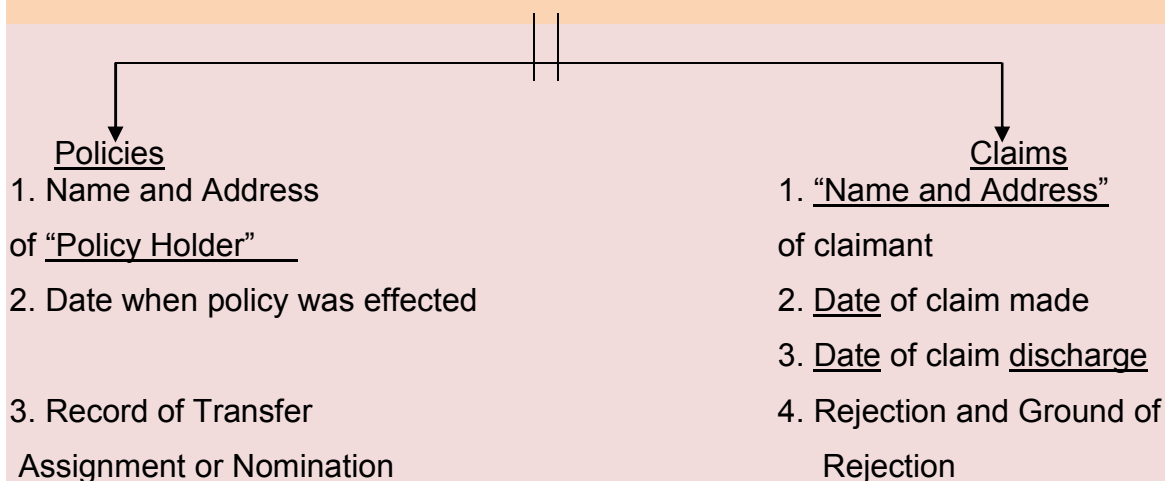
Unless subject to audit under the companies act, 2013, the balance sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in respect of all insurance business transacted by him, shall be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 147 of the companies act, 2013.

The audited accounts and statements and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the authority within six months from the end of the period to which they refer. of the four copies so furnished, one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director by that managing director and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

AUDIT OF INSURER

Appointment of Auditor _____ as per companies Act. 2013 (Sec. 139)	Function Auditor <u>Shall</u> annually audit _____ 1. B/s. 2. P/L 3. Receipt and payment A/c. 4. Appropriation A/c.	Auditor Sec. { 143 { (Power and Responsibility and Penalty) – Sec. 147 } } as per companies Act. 2013
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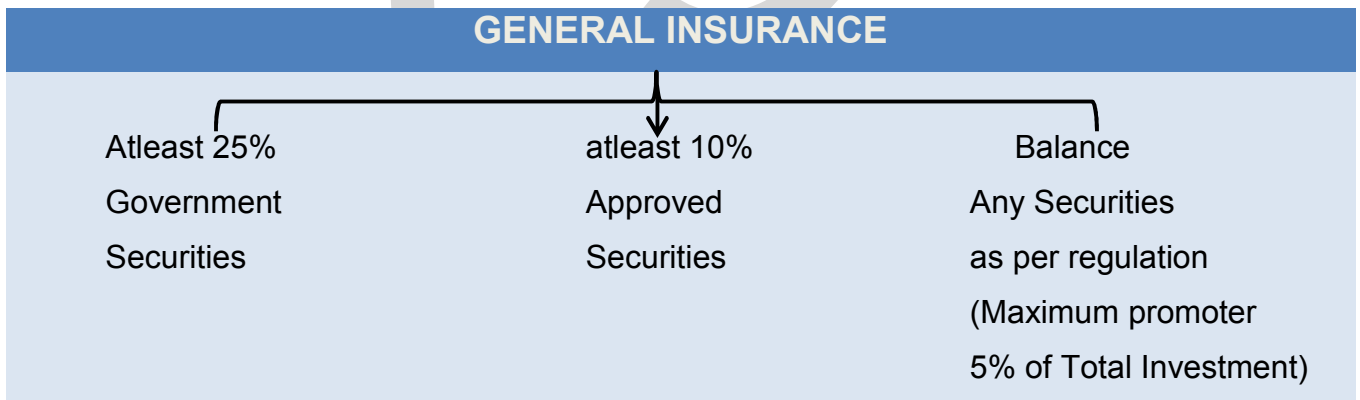
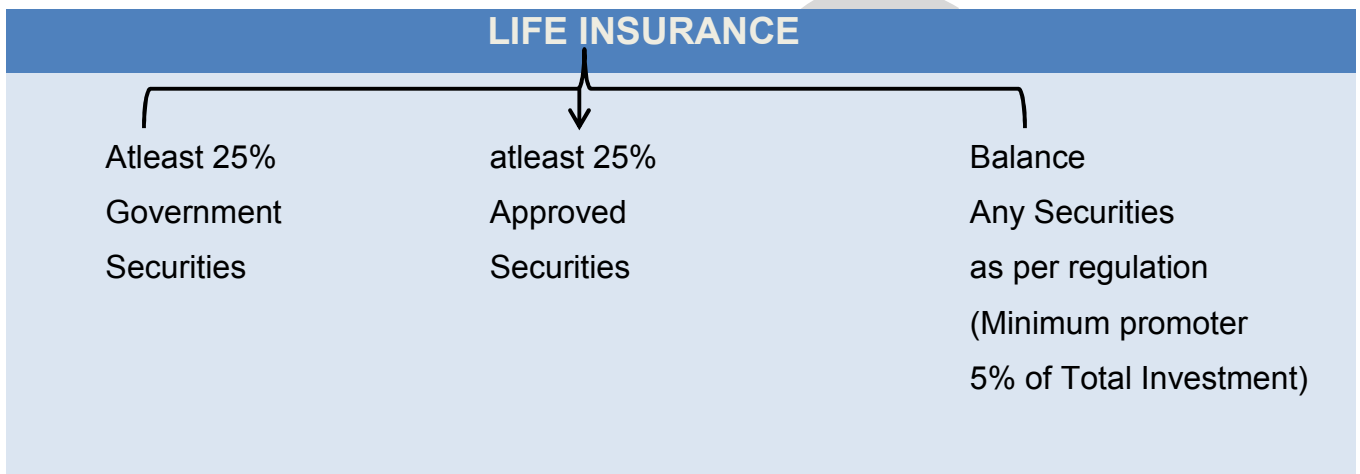
SECTION 14 : RECORD OF POLICIES AND CLAIMS



SECTION 27 : INVESTMENT BY INSURER

Amount due but not paid

(-) Future Liability payable in India	xx
(-) Premium not received	xx
(Grace of days not expired)	xx
(-) Amount due to insurer	xx
(-) Amount of Loan payable to insurer	xx
Investment Amount	xx



SECTION 29 : LOAN TO DIRECTOR | MANAGER | ACTUARY | AUDITOR

- Normally Loan cannot be paid to these people or their company or firm.
- However loan given against surrender value is permitted.
- Provided it does not exceed surrender value.
- It Shall not be treated as contravention of Section 185 of companies Act.

Exceptions:

1. Insurance co can give loan to Banking Co.
2. Holding co can give loan to subsidiary co.

SECTION 30 : LIABILITY OF DIRECTOR FOR CONTRAVENTION U/s. 27 AND U/s. 29

Along with other penalties they are liable to compensate the losses individually or severally.

SECTION 32D : OBLIGATION OF INSURER IN RESPECT OF 3RD PARTY RISK OF MOTOR VEHICLE

Such insurer should underwrite such percentage as may be proscribed otherwise it is liable for penalty upto Rs. 25 crores.

Exception :

1. Company involved in primarily re-insurance, health insurance, agriculture or export credit.

SECTION 45 : POLICY NOT TO BE CALLED IN QUESTION AFTER 3 YEARS

Any fraud or misstatements cannot be called in question after the expiry of 3 Years.

It can be called in question within 3 years only from the date of policy or revival or rider of the policy.

PROHIBITION OF PAYMENT BY WAY OF COMMISSION OR OTHERWISE FOR PROCURING BUSINESS

Any insurer can procure or solicit business and pay commission for such businesses only to Insurance Agent.

Intermediary or

Insurance Intermediary

APPOINTMENT OF INSURANCE AGENT

Insurance company can appoint Insurance Agent for soliciting the business only to person who is Not Disqualified

Any Insurance Agent can be appointed for

1. Life Insurer
1. General Insurer
1. Health Insurer and

1. Monoline Insurer (eg. fire Marine etc.)

Note : A person can be appointed in 2 different companies but not for the same businesses.

INSURANCE BUSINESS THROUGH MULTI LEVEL MARKETING

Insurance business cannot be carried out through Multi-level Marketing

In case of Insurer business can be done only through Insurance Agent and further it cannot appoint Special agent principal agents or any other multi-level marketing.

INTERMEDIARY NOT TO BE DIRECTOR

No insurance agents can be appointed as a director and insurance agent at the same point of time.

However after the commencement of this law, he can continue for 6 months and after 6 months his office will be vacated automatically.

PROHIBITION ON DIVIDING BUSINESS

No Insurer can provide policy whose benefits and premium is dependent on future event i.e. amount of claim and amount of premium is depended on future event

SUFFICIENCY OF ASSETS (SECTION 64VA)

Every insurer and re-insurer shall at all times maintain an excess of value of assets over the amount of liabilities of, not less than fifty per cent of the amount of minimum capital as stated under section 6 and arrived at in the manner specified by the regulations. An insurer or re-insurer, as the case may be, who does not comply with shall be deemed to be insolvent and may be wound-up by the court on an application made by the Authority. The Authority shall by way of regulation made for the purpose, specify a level of solvency margin known as control level of solvency on the breach of which the Authority shall act in accordance with without prejudice to taking of any other remedial measures as deemed fit.

Thus, the amendments Act incorporate enhancements in the Insurance Laws in keeping with the evolving insurance sector scenario and regulatory practices across the globe. The amendments will enable the Regulator to create an operational framework for greater innovation, competition and transparency, to meet the insurance needs of citizens in a more complete and subscriber friendly manner. The amendments are expected to enable the sector to achieve its full growth potential and contribute towards the overall growth of the economy and job creation.

ACCOUNTS OF COMPANY

- **Section 128**
Every company shall maintain books of accounts books and papers 2(12), financial statement for every financial year at its registered office.

- **Section 2(13) books of accounts**
 - Assets and liabilities
 - Purchase and sales
 - Income and expenditure A/c
 - Cost record u/s 148 → for manufacturing company and those prescribed by CG

- **Section 2(12) books and papers**
 - Document
 - Deeds
 - Writings
 - Vouchers
 - Agreements
 - Minutes
 - Register

- **Section 2(40) financial statement**
 - Balance sheet } Schedule III
 - P&L } Schedule III
 - Depreciation → Schedule II
 - Cash flow statement → as per AS3 (except one person Co., small co. and dormant co.)
[Small co. whose PUSC < 50lacs and (turnover) < 2 cr.]
 - Changes in equity (if any)
 - Notes to accounts

Section 2(41) financial year

- Normally April – Mar
- Exception
 1. Transitional period – 2 years
 2. Year of incorporation

Started before 1 Jan From date of incorporation till 31 Mar	Started after 1 Jan From date of incorporation to 31 st March of next year
--	--
 3. Foreign subsidiary (Prior approval of required) NCLT

Place of maintaining books of accounts

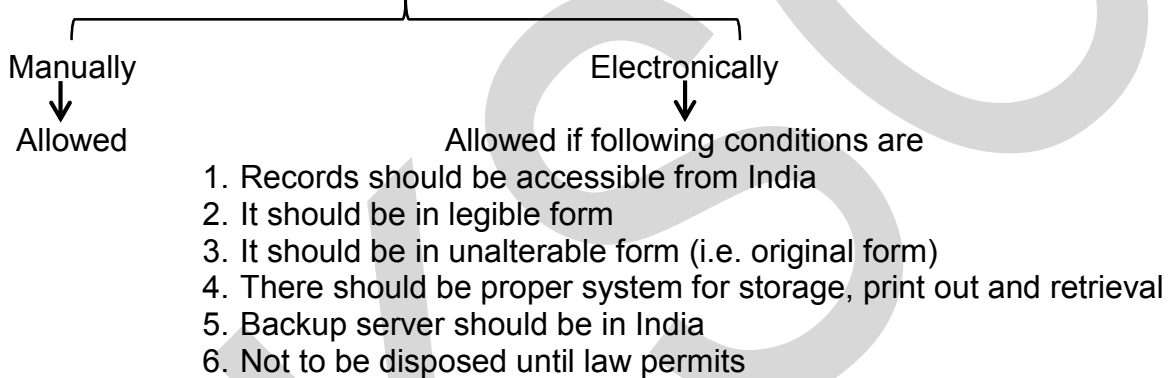
- | | |
|---|---|
| <p>Normally</p> <ul style="list-style-type: none"> - Registered office | <p>Other place</p> <ul style="list-style-type: none"> - Permitted (if following conditions are satisfied) - Such place should be "In India" - BM by Resolution (not circulation) - Intimate ROC within 7 days - Full address |
|---|---|

Branch office – books of accounts of branch can be maintained at branch office only. However, summarized returns shall be sent to registered office at a interval of not more than 3 months

Manner of maintaining books of account

- Give true and fair view
- Explain transaction
- As per double entry system
- On accrual basis

Mode of maintaining books of accounts



Period of maintaining books of account

It should be maintained for 8 years if company is in existence for less than 8 years, then it should be maintained for the period for which company is in existence. Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

Person responsible to maintain BOA

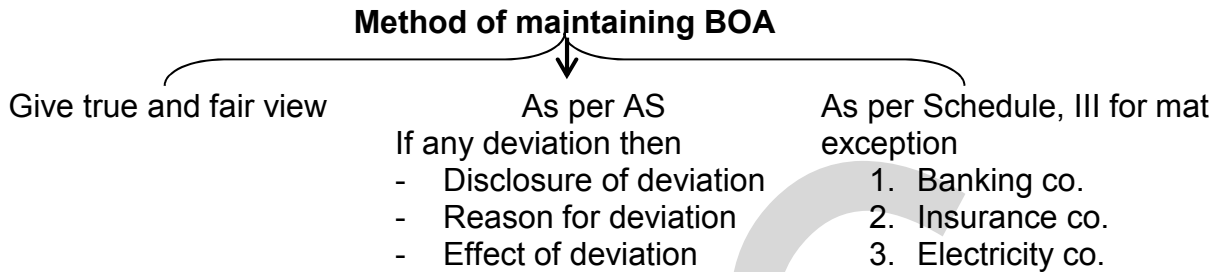
1. MD
2. WTD (in charge of finance)
3. CFO
4. Or any person charged with BOD

Inspection

<p>Normally</p> <p>↓</p> <p>Any director can inspect</p>	<p>Subsidiary</p> <p>Can be inspected by taking prior approval of BOD</p>	<p>Foreign subsidiary</p> <p>↓</p> <p>BOA of foreign subsidiary can be maintained outside India. However summarized return should be sent to India, such return can be inspected by Director. Director can demand further information (not by agent) to foreign subsidiary which shall be given within 15 days</p>
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Punishment
 Imprisonment upto 1 year
 or
 Fine min. 50,000 max 5,00,000
 or both

Section 129

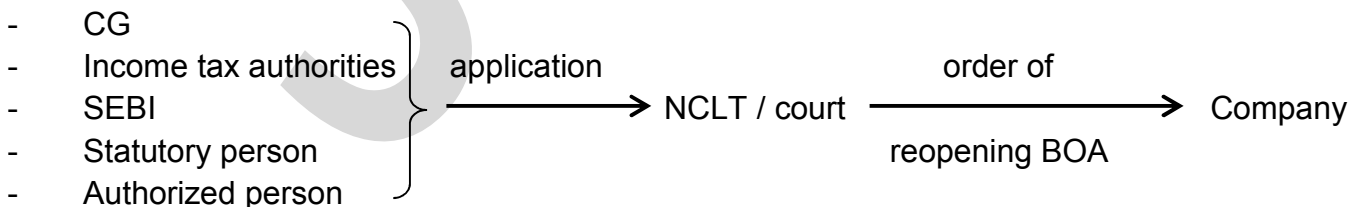


Notes

1. Notes to accounts shall form part of financial statement
2. If company is having joint venture / subsidiary / association then it is required to maintain consolidated financial statement in the same manner in which it has prepared its own standalone financial statement
3. Salient features of subsidiary shall be filled in AOC 1 along with financial statement
4. At AGM BOD shall lay financial statement
5. The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, also apply to the consolidated financial statements.
6. **Penal provisions** : If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Section 130

Reopening of BOA (compulsory)



Note :

Normally reopening order can be made for maximum preceding for financial year, however where direction has been issued by CG to maintain BOA for a longer period than reopening order can be made for such period.

Section 131 Revision of F.S., Board Report

In case of non-compliance of section 129 or section 134 F.S. can be revised any of the 3 preceding financial years voluntarily after taking prior approval of NCLT.

1. Revise financial statement or report can be filed only once in a financial year.
2. NCLT shall refer to CG / Income tax authority and consider representation made by them.

Section 132 : - National financial reporting authority (NFRA)

Power of NFRA

1. It has power to recommend, enforce and monitor the policies related to AS & SA
2. NFRA can initiate investigation against member of ICAI either : - Suo moto or
- On reference by CG.

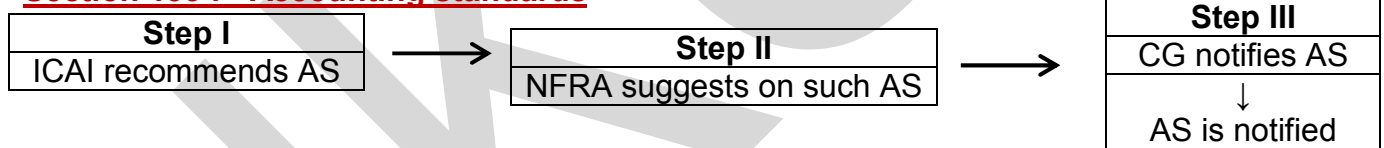
In case of investigation it may be required to maintain BOA for a longer period of time if it is required by CG or SFIO (serious fraud investigation office)

In case of investigation by NFRA, then it has overriding power and no other body can initiate proceedings against member of the institute or firm of CA till the time NFRA is conducting investigation

It can debar member of institute / firm in practice for minimum 6 months and max 10 years. Authorities appointed for investigation under this section have civil court power

Individual	Firm
Min. 1,00,000 Rs. Max. 5 times of amount involved	Min Rs.5 Lac Max 10 times of amount involved

Section 133 : - Accounting standards



Section 134 : - Financial statements , Board reports

Financial Statement → it shall be approved by BOD before signing on behalf of BOD

Signing on financial statement

1. Chairperson (if authorized) or atleast 2 directors (one shall be MD)
2. CEO
3. CFO
4. CS

OPC : If there is one Director then Such Director shall sign financial statement.

Note : Auditors Report shall be attached to financial Statement

Board Report :

- i) Signing : chairperson (if Authorised) OR atleast 2 Director [\geq 1 MD]

Section 135 : - Corporate social responsibility

It is applicable to every co. if.

- NP \geq 5cr. or
- Net worth \geq 500 cr. or
- Turnover \geq 1000 cr.

- Constitute CSR Committee
Atleast 3 director out of which atleast one should be independent director. However, if there is no independent director in the company then appointment of independent director will not be applicable and CSR committee should have Atleast 2 directors

Amount of CSR

≥2% of Avg N. P.

Preceding 3 F. Y.

Net profit shall be calculated as per section 198, however it will not include amount as may be prescribed

- Purpose : Any Purpose specified in schedule VII.
- Preference should be given to local Areas for spending

CSR cannot be given for following purpose –

1. For any activity outside India
2. Benefit which is only given for the employee
3. For business purpose and political party

- Non contribution of CSR: - In this case, such non-contribution of CSR shall be disclosed in director responsibility statement

Section 136 : - Right to receive financial statement

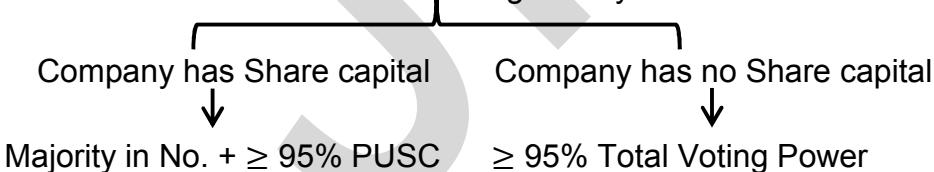
1. Following person is eligible to receive F.S. including consolidated financial statement
 - Shareholder (equity + preference)
 - Debenture trustee
 - Debenture holder
 - Legal representative of any of the person mentioned above

Note:

For Nidhi Co. No need to send financial Statement (if intimation is made in new paper) if members holds

{ ₹ 1000 FV
1 % of PUSC } ↓

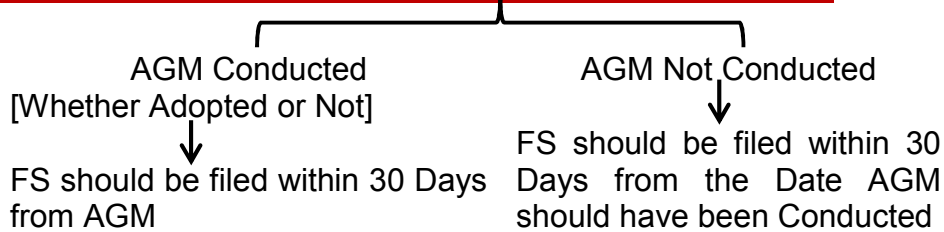
2. Financial statement shall be send at least 21 days (21 days clear notice) before GM
However short notice is allowed if agreed by members



3. Following companies are eligible to send financial statement through email to any shareholder who maintained securities in demat form and has supplied registered E-mail ID to company –
 - Listed company
 - Unlisted public company, net worth more than 1cr. and turnover more than 10 cr.
4. Listed company who is having subsidiary shall place separate audited accounts in respect of each of subsidiary on its website.

Note:

In case of foreign subsidiary if consolidated financial statement is prepared then it should be placed on website.

Section 137 :- Filing of financial Statement including CFS with ROC

- In case of foreign subsidiary attach accounts of such subsidiary
- OPC : It should be filed within 180 days from the end of FY.
- Punishment : The company shall be punishable with fine of `1,000 for every day during which the failure continues but which shall not be more than `10 Lacs, and The managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of one lakhs rupees and in case of continuing failure with further penalty of one hundred rupees for each day after the first during which such failure continues. Subject to maximum of five lakhs rupees.

Section 138 :- Internal Audit

Applicability for following companies –

1. Listed company
2. Unlisted public company whose
 - Deposits \geq 25 cr.
 - Or
 - Capital \geq 50 cr.
 - Or
 - Loan $>$ 100 cr.
 - Or
 - Turnover \geq 200 cr.
3. Private Company
 - Borrowing $>$ ₹ 100 crores OR
 - Turnover \geq 200 crore

Who can conduct Internal Audit?

- C.A. (Whether in Practice or Not)
- Cost Accountant
- Any person authorized

DECLARATION AND PAYMENT OF DIVIDEND

(Sec. 123 to 127)

★ **Introduction:** Dividend is the Surplus profit distributed among shareholders. In case of winding up surplus asset is also treated as Dividend.

★ **Proposed Dividend & Declared Dividend:**

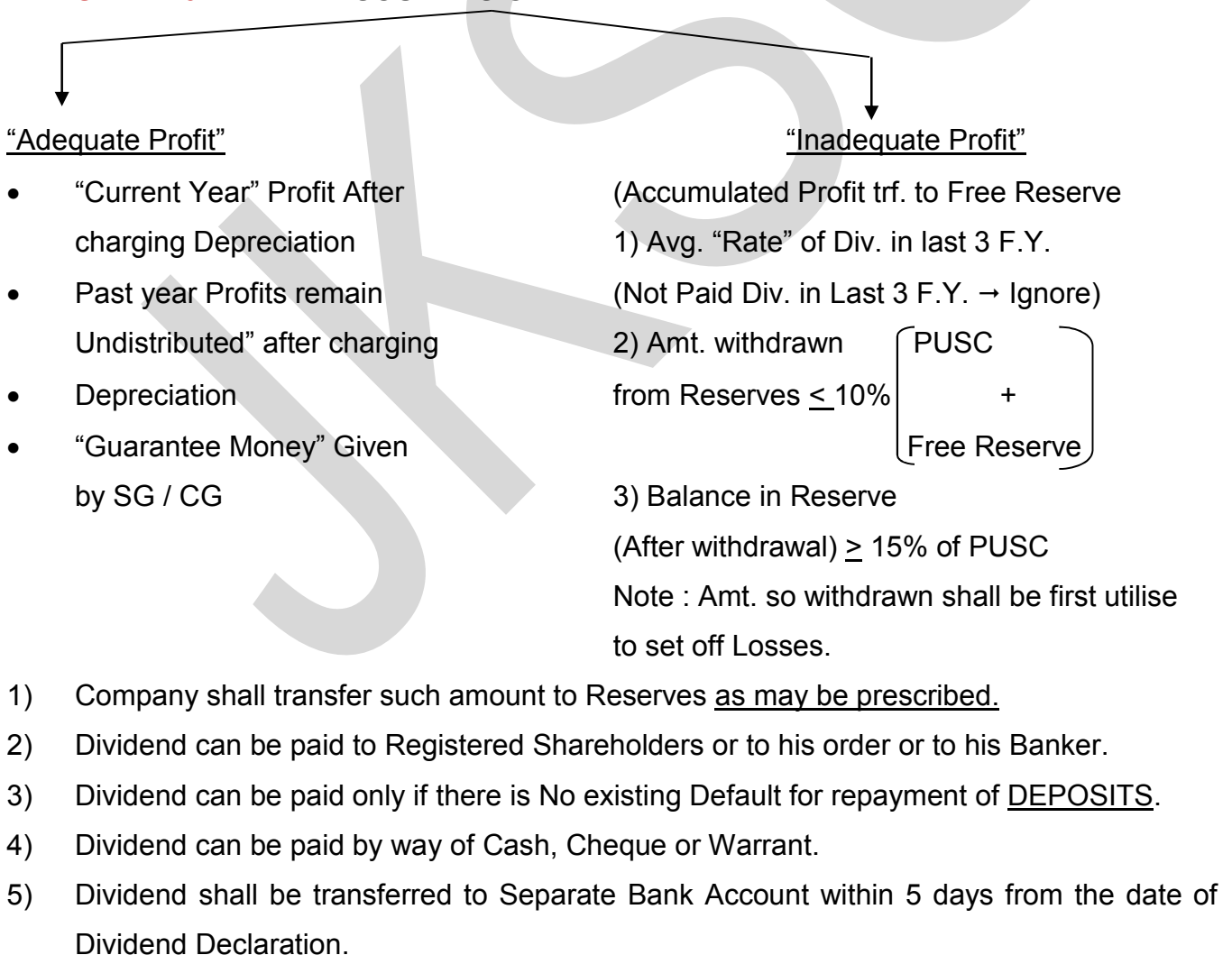
A. Dividend is proposed by BOD & it is declared by Shareholders. Shareholders can reduce the rate of dividend. However, they cannot increase the rate of dividend.

B. Interim Dividend is declared by BOD.

★ **Sec. 2 (39) :** Dividend includes Interim Dividend. It means that all the provisions which are applicable to Dividend shall be equally applicable to interim Dividend except if otherwise expressly given in the Act.

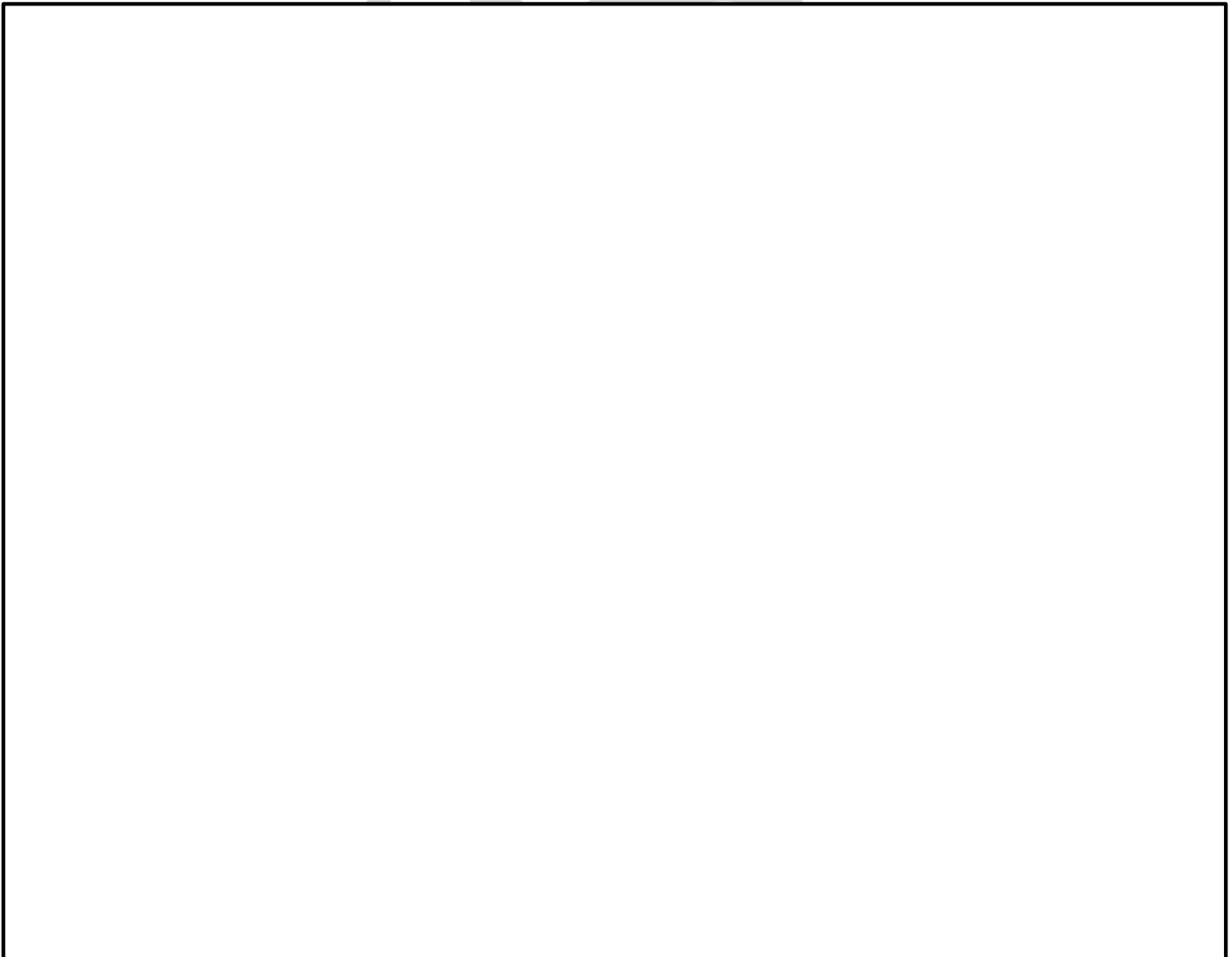
★ **SEC. 123**

SOURCES OF DIVIDEND



- 6) Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair values shall be excluded;
- 7) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account and out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend :

Provided that 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 three financial years.

SECTION 124 :

- ⇒ If Dividend is not Claimed on any shares for consecutive 7 Years, then such shares also will be transferred to IEPF.
- ⇒ However, It can be claimed by making a proper application to Central Govt.
- NOTE : Once amt. is transferred to IEPF A/c. Company ceases its liability on such amount.

★ **Sec. 125 : Investor Education and Protection Fund**

Constituents of IEPF

CODE : D₂ A D D I₂ G F PU₂O₂

D	:	Donation	
D	:	Disgorgement (Unjust Enrichment)	
A	:	Application Money	} Interest there on
D	:	Deposit	
D	:	Debenture	
I	:	Interest on A, D, D	
I	:	Interest on Investment	
G	:	Grant	
F	:	Fractional Shares	
P	:	Preference Shares	
U	:	Unpaid Dividend A/c	(Old fund)
U	:	Unpaid Dividend A/c	(New fund)
O	:	Old IEPF	
O	:	Other Amount	

* **Amt. in IEPF A/c. shall be utilized for :**

- 1) Refund of Unclaimed Dividend
 - Deposits (Matured)
 - Debentures (Matured)
 - Application Money due for refund
 - 2) Investor Education
 - 3) Disgorged Amt.
 - 4) Legal Expenses Incurred for Class Action
- (+) } Interest there on

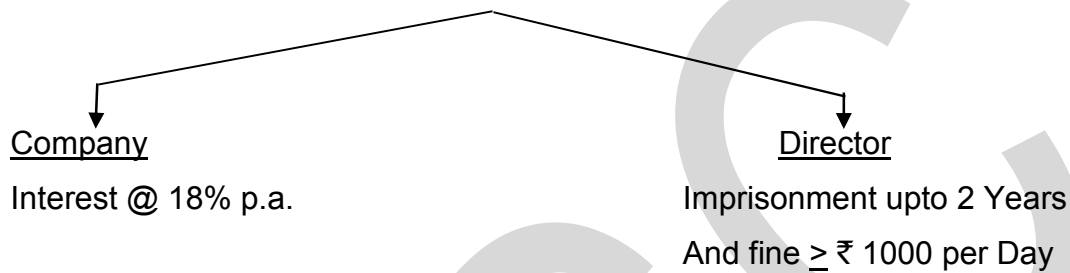
★ Sec. 126 : Dividend, Right, Bonus Shares to be Held in ABEYANCE :

If Registration on any share is pending, then any dividend, bonus or right offer on such shares will be held in Abeyance & it will be given only after Registration.

However, if the Transferor has given permission to the Co. in writing then it can be transferred to Transferee.

★ Sec. 127 : Punishment for Failure to Distribute Dividend.

If the Dividend is not paid within 30 Days, the Directors & the Company are liable for following punishment.

**Exceptions: No punishment in following cases**

- 1) Operation of Law (Eg → Restricted by Govt.)
- 2) Direction given by Shareholders which cannot be complied with and the same have be communicated to him.
- 3) Disputed Title (E.g. Right of ownership)
- 4) Legally Adjusted (E.g. Adjusted against Calls-in-Arrears)
- 5) Any reason beyond the control of the Company or delay due to Post.

DIRECTORS AND BOARD MEETING [BOTH]**Directors**

- Definition of Director : Sec. 2(34)
Director means a director appointed to BOD

➤ **Section 149(1) : Membership**

	Public Co.	Pvt. Co.	O.P.C.
Members			
Minimum	7	2	1 member + 1 nominee
Maximum	Unlimited	200	1 member + 1 nominee
Directors			
Minimum	3	2	1
Maximum	15*	15*	15*

- Company can appoint more than 15 directors by passing special resolution of the shareholders

Exception : Section 8 & Govt. Co. can have more than 15 Directors without SR

➤ **Section 149 (1) Proviso 2 : Women Director**

- Listed Co.
- Unlisted Public Company

↓

Paid-up share capital \geq 100 crore	}	to be checked on latest audited financial statement
OR Turnover \geq 300 crore		

Above company should have at least one woman director

Intermittent vacancy shall be filled in 3 months or next BM WIL

➤ **Section 149 (3) : Resident Director**

Every company should have at least 1 resident director

Director who stays in India in for atleast 182 days during financial year

- **Section 165** : maximum number of directorships a person can become director in maximum 20 companies out of which it can be maximum 10 public companies

Note :

- Company can reduce the limit of 20 companies by amending articles of association. However, co. cannot increase the limit by amending AOA
- Private Co. which is holding or subsidiary of public co. is a public co.

Exception : section 8

Dormant company

Fine : 5000 per day

➤ **Section 162 : appointment of two or more directors by passing single resolution**

- Normally appointment of each director requires separate resolution. However, in following situation two or more directors can be appointed by passing single resolution
- Unanimous resolution passed to appoint two or more directors by single resolution
- If two or more directors appointed without U.R. then such appointment is void-ab-initio even if no. shareholder object against to.
 - 1) Private company
 - 2) 100% holding government company or its subsidiary

➤ **Section 164(1) : disqualification of directors**

- I. Unsound mind declared by court
- II. Un-discharged insolvent
- III. Applied himself to be declared as insolvent
- IV. Convicted by court on moral turpitude ground or otherwise for a continuous period of 6 months or more and (5 years not elapsed from the date coming out of jail)
Convicted by court on moral turpitude ground or otherwise for continuous period of 7 years or more (disqualification is for life time).
- V. Disqualified by Court / NCLT
Eg : fraud / misfeasance etc.
- VI. Calls in arrears for continuous period of 6 months or more
- VII. Contravention under section 188 (Related party transaction) (5 years disq.)
- VIII. No DIN (director identification number) or UIN

Note 1 : IV, V, VII shall continue even if the appeal is filed

Note 2 : In all other cases, there will be immediate disqualification

➤ **Section 164(2) : disqualification of director**

Any person who is a director of a company which fails to.

- a) File financial statements or annual return for a continuous period of 3 years
- or**
- b) Not paid dividend or deposit or interest on deposit or debenture or interest on debenture for a continuous period of 1 year NOR

Note 1 : In that case person disqualified to get appointed as director of any company (public + pvt.) for a continuous period of 5 years from the date of disqualification

Note 2 : Director shall not incur disqualification for 6 months from the date of his appointment. Dividend will be treated as paid if it is transferred to separate account

- 1) Debenture / deposit interest on debenture, interest on deposit will be treated as not paid if holder claims the money and company refuses to make the payment
- 2) If any person ceases to hold the office before the date of disqualification he will not attract disqualification

➤ **ROC forms**

Director Director 8 Company
 Whether disqualified u/s 164(2) or not

Company _____ Director 9 → ROC
 Whether any director is qualified or not

Director/ _____ Director 10 → Central Govt.
 Co. on his behalf for removal of disqualification
 Applicability to all companies

Note: - private company can have any additional ground of disqualification

Exception : this section is not applicable to Govt. Co.

➤ **Selection 152 (6) : rotational director**

Applicability public company

Atleast $2/3^{rd}$ directors should be rotational directors (AOA can increase limit)

Rotational director $\geq 2/3^{rd}$ of total directors (not included independent director)

Fraction will be rounded off to next full figure

Eg : 5.1. ≈ 6

Retirement by Rotation :

Out of total rotational directors, at least $1/3^{rd}$ should retire by rotation who are eligible to get reappointed

(Retirement by rotation $\geq 1/3^{rd}$ of rotational directors)

Note : any fraction will be rounded off to nearest figure

- 1) Person who is holding office longest will retire first
- 2) If two or more persons are appointed at the same point of time than retirement will be by their mutual consent or lot basis

➤ **Section 160 : nomination for appointment of regular director**

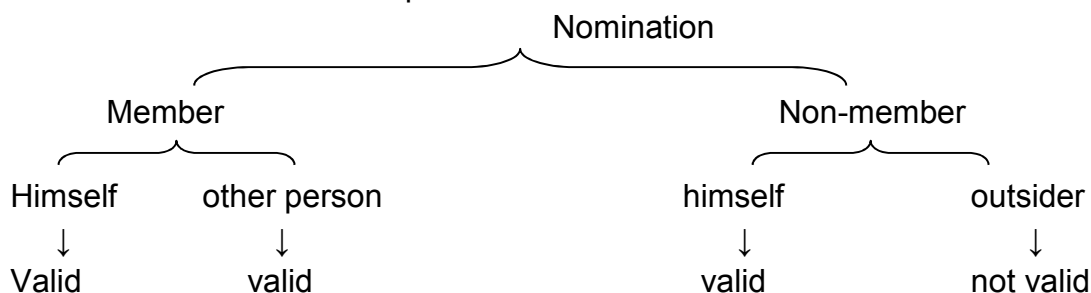
1. This is not applicable when the appointment is made by BOD
2. If any person other than retiring director wants to become regular director, shall file nomination under this section

Note : retiring director need not file nomination under this section as it is statutory obligation of BOD to file nomination for re-appointment of retiring directors.

3. in case co. appointing independent director or director recommended by NRC or board deposit not require

A person has to file nomination to the company along with:

- Consent letter to act as director if appointed
- Security deposit of Rs. 100,000
- Declaration that he is not disqualified u/s 164



If a person get appointed as director or secure at least 25% of total vote cast then security deposit will be refunded, otherwise it will be forfeited

This section does not apply to:

- Section 8 company (if election is by ballot)
- Private company
- 100% controlled govt. company or its subsidiary
- Nidhi Company → deposit amount shall be Rs.10,000

Section 161 (1) : additional director (Applicability to all companies)

Meaning : he is a director appointed by B.O.D. between two AGM

Condition :

- 1) after appointment of additional director, total number of directors in the company increases, therefore co. should ensure it does not exceed limit in AOA
- 2) additional director can be appointed only if it is authorized by the AOA if it is prohibited, then BOD cannot appoint additional director

Restriction: any person who is rejected by the shareholders in GM cannot be appointed as A.D

Tenure:

- 1) additional director will continue upto next AGM
- 2) if AGM is not held, then till the period, AGM should have been held
- 3) if AGM is legally extended, then term of additional director will be extended accordingly

Note: additional director is not at par with other directors except the tenure of office (term)

➤ **Section 161(4) : casual vacancy director (C.V.D)**

Casual vacancy: vacancy created by

- directors appointed by
- shareholders in GM
- cease to hold the office
- due to any reason (resign/death etc.)
- before / prior to completion
- of his terms

➤ condition : casual vacancy director (CVD) can be appointed only by board meeting resolution

(circulation not allowed)

- 1) filing of casual vacancy is power of BOD and not the obligation
- 2) casual vacancy created by one person can be filled by the same person
- 3) vacancy created by CVD cannot be filled by BOD as per strict reading of the Act however, as per the MCA's view, it can be filled up by BOD
- 4) CVD is at par with other directors in terms of power, duties and responsibilities except his tenure in office

Tenure: CVD will continue in the office upto the period original director would have continued if he would have not vacated the office

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MAY '19
REVISION NOTES
Corporate, Allied (Old)
& Economics (New) Laws

Part - III

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DIRECTORS AND BOARD MEETING [BOTH]**Directors**

- Definition of Director : Sec. 2(34)
Director means a director appointed to BOD

- **Section 149(1) : Membership**

	Public Co.	Pvt. Co.	O.P.C.
Members			
Minimum	7	2	1 member + 1 nominee
Maximum	Unlimited	200	1 member + 1 nominee
Directors			
Minimum	3	2	1
Maximum	15*	15*	15*

- Company can appoint more than 15 directors by passing special resolution of the shareholders

Exception : Section 8 & Govt. Co. can have more than 15 Directors without SR

- **Section 149 (1) Proviso 2 : Women Director**

i) Listed Co.

ii) Unlisted Public Company



Paid-up share capital \geq 100 crore } to be checked on latest audited financial
OR } statement

Turnover \geq 300 crore

Above company should have at least one woman director

Intermittent vacancy shall be filled in 3 months or next BM WIL

- **Section 149 (3) : Resident Director**

Every company should have at least 1 resident director

Director who stays in India in for atleast 182 days during financial year

- **Section 165** : maximum number of directorships a person can become director in maximum 20 companies out of which it can be maximum 10 public companies

Note :

- 1) Company can reduce the limit of 20 companies by amending articles of association. However, co. cannot increase the limit by amending AOA
- 2) Private Co. which is holding or subsidiary of public co. is a public co.

Exception : section 8

Dormant company

Fine : 5000 per day

➤ **Section 162 : appointment of two or more directors by passing single resolution**

- Normally appointment of each director requires separate resolution. However, in following situation two or more directors can be appointed by passing single resolution
- Unanimous resolution passed to appoint two or more directors by single resolution
- If two or more directors appointed without U.R. then such appointment is void-ab-initio even if no. shareholder object against to.
 - 1) Private company
 - 2) 100% holding government company or its subsidiary

➤ **Section 164(1) : disqualification of directors**

- I. Unsound mind declared by court
- II. Un-discharged insolvent
- III. Applied himself to be declared as insolvent
- IV. Convicted by court on moral turpitude ground or otherwise for a continuous period of 6 months or more and (5 years not elapsed from the date coming out of jail)
Convicted by court on moral turpitude ground or otherwise for continuous period of 7 years or more (disqualification is for life time).
- V. Disqualified by Court / NCLT
Eg : fraud / misfeasance etc.
- VI. Calls in arrears for continuous period of 6 months or more
- VII. Contravention under section 188 (Related party transaction) (5 years disq.)
- VIII. No DIN (director identification number) or UIN

Note 1 : IV, V, VII shall continue even if the appeal is filed

Note 2 : In all other cases, there will be immediate disqualification

➤ **Section 164(2) : disqualification of director**

Any person who is a director of a company which fails to.

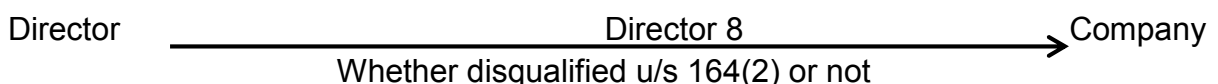
- a) File financial statements or annual return for a continuous period of 3 years
- or**
- b) Not paid dividend or deposit or interest on deposit or debenture or interest on debenture for a continuous period of 1 year NOR

Note 1 : In that case person disqualified to get appointed as director of any company (public + pvt.) for a continuous period of 5 years from the date of disqualification

Note 2 : Director shall not incur disqualification for 6 months from the date of his appointment. Dividend will be treated as paid if it is transferred to separate account

- 1) Debenture / deposit interest on debenture, interest on deposit will be treated as not paid if holder claims the money and company refuses to make the payment
- 2) If any person ceases to hold the office before the date of disqualification he will not attract disqualification

➤ **ROC forms**



Company _____ Director 9 → ROC
 Whether any director is qualified or not

Director/ _____ Director 10 → Central Govt.
 Co. on his behalf for removal of disqualification

Applicability to all companies

Note: - private company can have any additional ground of disqualification

Exception : this section is not applicable to Govt. Co.

➤ **Selection 152 (6) : rotational director**

Applicability public company

Atleast $2/3^{rd}$ directors should be rotational directors (AOA can increase limit)

Rotational director $\geq 2/3^{rd}$ of total directors (not included independent director)

Fraction will be rounded off to next full figure

Eg : 5.1. \approx 6

Retirement by Rotation :

Out of total rotational directors, at least $1/3^{rd}$ should retire by rotation who are eligible to get reappointed

(Retirement by rotation $\geq 1/3^{rd}$ of rotational directors)

Note : any fraction will be rounded off to nearest figure

- 1) Person who is holding office longest will retire first
- 2) If two or more persons are appointed at the same point of time than retirement will be by their mutual consent or lot basis

➤ **Section 160 : nomination for appointment of regular director**

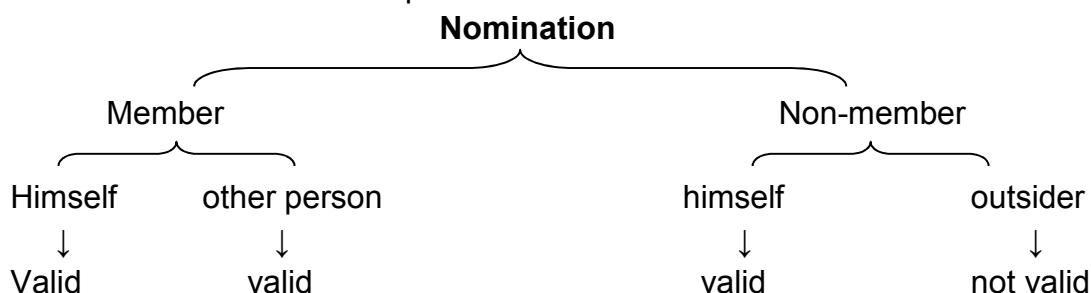
1. This is not applicable when the appointment is made by BOD
2. If any person other than retiring director wants to become regular director, shall file nomination under this section

Note : retiring director need not file nomination under this section as it is statutory obligation of BOD to file nomination for re-appointment of retiring directors.

3. in case co. appointing independent director or director recommended by NRC or board deposit not require

A person has to file nomination to the company along with:

- Consent letter to act as director if appointed
- Security deposit of Rs. 100,000
- Declaration that he is not disqualified u/s 164



If a person get appointed as director or secure at least 25% of total vote cast then security deposit will be refunded, otherwise it will be forfeited

This section does not apply to:

- Section 8 company (if election is by ballot)
- Private company
- 100% controlled govt. company or its subsidiary
- Nidhi Company → deposit amount shall be Rs.10,000

Section 161 (1) : additional director (Applicability to all companies)

Meaning : he is a director appointed by B.O.D. between two AGM

Condition :

- 1) after appointment of additional director, total number of directors in the company increases, therefore co. should ensure it does not exceed limit in AOA
- 2) additional director can be appointed only if it is authorized by the AOA if it is prohibited, then BOD cannot appoint additional director

Restriction: any person who is rejected by the shareholders in GM cannot be appointed as A.D

Tenure:

- 1) additional director will continue upto next AGM
- 2) if AGM is not held, then till the period, AGM should have been held
- 3) if AGM is legally extended, then term of additional director will be extended accordingly

Note: additional director is not at par with other directors except the tenure of office (term)

➤ **Section 161(4) : casual vacancy director (C.V.D)**

Casual vacancy: vacancy created by

- directors appointed by
- shareholders in GM
- cease to hold the office
- due to any reason (resign/death etc.)
- before / prior to completion
- of his terms

➤ condition : casual vacancy director (CVD) can be appointed only by board meeting resolution

(circulation not allowed)

- 1) filing of casual vacancy is power of BOD and not the obligation
- 2) casual vacancy created by one person can be filled by the same person
- 3) vacancy created by CVD cannot be filled by BOD as per strict reading of the Act however, as per the MCA's view, it can be filled up by BOD
- 4) CVD is at par with other directors in terms of power, duties and responsibilities except his tenure in office

Tenure: CVD will continue in the office upto the period original director would have continued if he would have not vacated the office

➤ **Section 161 (2) : Alternate Director**

Applicability : All companies

Alternate director can be appointed in case of absence of original director in India for a continuous period of 3 months or more

Conditions:

- 1) Alternate director can be appointed only if it is authorized by AOA or by shareholders in GM

Tenure:

- 1) Alternate director will vacate his office if original director returns to India (for any reason)
- 2) If original director attracts disqualification then alternate director should vacate immediately
- 3) If original director get retires and re-appointed then alternate directors can't be re-appointed immediately he can be re-appointed only after the expiry of 3 months

Note:

- 1) If company is appointing alternate director of independent director than he should also satisfy the criteria of independent director
- 2) Alternate director is at par with other directors except in the tenure of office
- 3) No person holding directorship in the company in any capacity can stand for alternate directorship in the same company.
- 4) That person should not hold alternate directorship for any other director in the company.
- 5) CVD will continue in the office upto the period original director would have continued if he would have not vacated the office

➤ **Section 151 : small shareholder director (SSD)**

Applicability: listed company

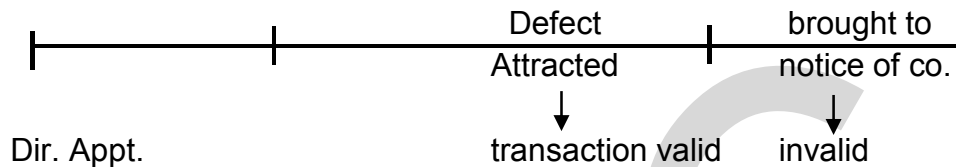
SSD = means person holding share upto Rs. 20,000 (nominal value)

1. Company can appoint SSD either suo-moto or on the notice by small shareholder at least 14 days' notice is to be given to the company by small shareholder along with →
 - Details of small shareholders (name, address, shareholding, folio no.)
 - Details of shareholding (if any) of proposed SSD
 - Consent to Act as director by proposed SSD
 - Declaration of proposed SSD
 - DIN of proposed SSD
2. SSD will be appointed if ordinary resolution (OR) is passed by small shareholder
3. SSD can be appointed for maximum tenure of 3 years and on expiry of 3 years he can never be re-appointed as SSD for lifetime in that company.
4. SSD is always treated as non-rotational director.
5. On expiry of tenure, SSD should not be associated with Co. in any capacity for next 3 years.
6. A person can become SSD in max 2 companies provided they are not into competing business SSD should satisfy criteria of independent director
7. A company can appoint max 1 SSD
8. A SSD is liable to vacate the office in the following cases :
 - Disqualified u/s 164
 - Disqualified u/s 167
 - Fails to satisfy the criteria of independent director

9. Notice: should be given by $1/10^{\text{th}}$ of SSH or 1000 small shareholder whichever is lower
 $1/10^{\text{th}}$ of small shareholders
 or
 100 small shareholders
 ↓ Whichever is lower

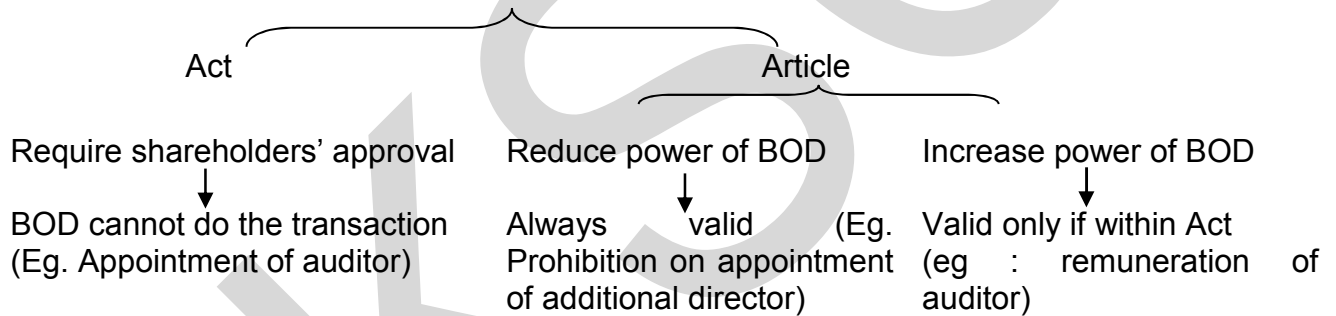
➤ **Section 176 : validity of the act of director**

After proper appointment if any defect is attracted to the appointment of director, then any transaction done by such director will be valid till the period such defect is brought to the notice of the company. However, after such date transaction will be invalid.



➤ **Section 179 : powers of company**

Unless otherwise specifically stated in the Act or AOA of the company, all the powers of company shall be exercisable by BOD



➤ Certain powers exercisable only by board meeting resolution (circular → not allowed)

1. Making calls on shares
2. Authorizing buy-back
3. Issuing debentures
4. Borrowing money otherwise then on debentures
5. Investing funds of the company
6. Making loan
7. Approving financial statement
8. Diversification
9. Amalgamation, merger or reconstruction
10. Making political contribution
11. Appointing or removing KMP
12. Appointing internal auditor and secretarial auditor (cant remove)
13. Takeover or substantial stake in another co.

➤ Normally, transaction has to be done in board meeting, however, in case no. 4,5,6 it can be delegated to any MD, committee by passing O.R after satisfying following conditions :
 Max amt. which can borrowed should be specified nature and max limit for investment should be specified.

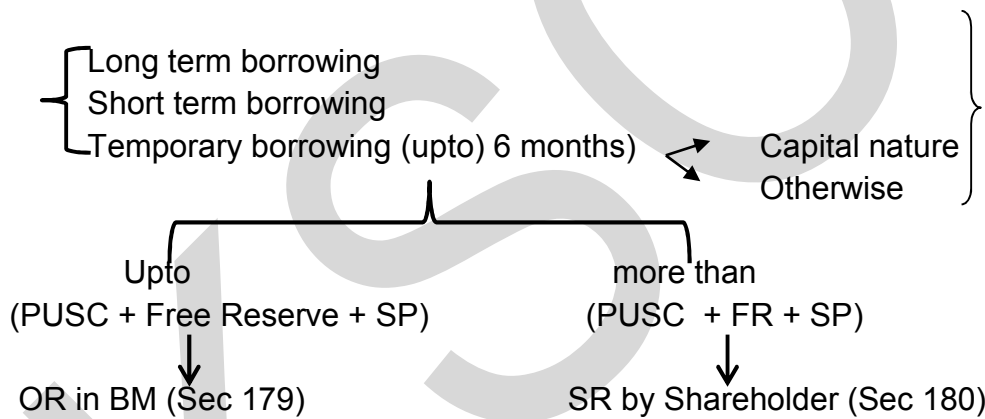
➤ In case of section 8 company transaction 4, 5 & 6 can be done by way of circular

- Transaction in the ordinary course of business by banking company not required approval.
- **Section 180 (1) : certain transaction require special resolution of shareholders**
 - Sale, lease or otherwise disposal of whole or substantially whole of the undertaking and if the company is having more than 1 undertaking, than any of the whole or substantially whole of the undertaking

Undertaking

- Co. has invested > 20% of its net worth
earning ≥ 20% of its total income
- Substantially whole : ≥ 20% of total value of undertaking
 Net worth will be taken of latest audited balance sheet date total income will be taken of preceding financial year
 - Invest in otherwise than trust securities of amt. received by way of compensation on amalgamation / merger

Borrowing (present + proposed)



If lender provides loan without the knowledge of contravention and in good faith, then it will not affect validity of transaction. In other words, he will get good title
 This provisions is not applicable if it done in the ordinary course of business

- Giving time for repayment of loan taken by the Director of the company (extension for repayment)

Note :

- (1) If assets are sold, leased in the ordinary course of business, i.e. business activity of the company, then this clause would not be applicable.
- (2) If any person acquire asset without knowledge of contravention and in good faith, then this transaction will remain valid and he will get good title of the asset

Non-applicability – private companies

➤ **Sec. 181 – Charitable Contribution**

Applicable: to all companies

If company propose to make charitable contribution exceeding 5% of average net profit (average of preceding 3 f.y.)

Requirement – prior approval of shareholders required by passing ordinary resolution in general meeting

➤ **Section 182 : Political Contribution**

Not applicable to

- 1) Govt. company
- 2) Any company which is in existence for less than 3 years

Political contribution means

Contribution to any local party	Contribution for benefit of political party	Advertisement in souvenir. Brochure etc. of political party	Payment to any person who is likely to support any political party
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Note 1: Payment should be made by A/C payee cheque

Note 2: Political party means any party registered under “Representative of people’s Act 1951”

Requirement: board meeting resolution

Disclosure: political contribution is to be disclosed in the profit and loss A/c

Penalty

Company ↓ Upto 5 times of amt. contributed	Officer – in – default ↓ Upto 5 times of amt. contributed and Imprisonment upto 6 months
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➤ **Section 183 : contribution to national defence fund**

Notwithstanding anything contained in section 180, 181 or 182 Act or article, company may contribute any amount national defence fund (NDF)

Shareholder’s approval not required

Note : contribution made to NDF should be disclosed in profit and loss

➤ **Section 185 : loan etc. to director or interested person**

Loan, security or guarantee in connection of loan cannot be given by company to director or other interested person as given below :

- 1) Director of that company or its holding company, or their partner or their relative
- 2) Any partnership firm in which such director or their relative is partner (partner of relatives is not covered)

Allowed if following conditions are satisfy : -

- SR by shareholders
 - Explanatory note
 - Use for principle Activity
- 1) Any private company in which such director is a director or member (relative of director is not covered)
 - 2) Any Body corporate in which one or more director at general meeting holds at least 25% of voting rights either individually or cumulatively
 - 3) Any Body corporate whose MD or BOD is accustomed to act as per directions of one or more director of the lending company.

➤ **Exceptions :**

In the following cases, loan, security or guarantee can be given :

- 1) To MD / WTD if it is given under service which is extended to all the employees
- 2) Under scheme approved by shareholders by passing special resolution
- 3) In case of Nidhi Co. loan given to member in capacity of director is not prohibited if disclosure for the same has been made

Note :

A company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan;

Penalty

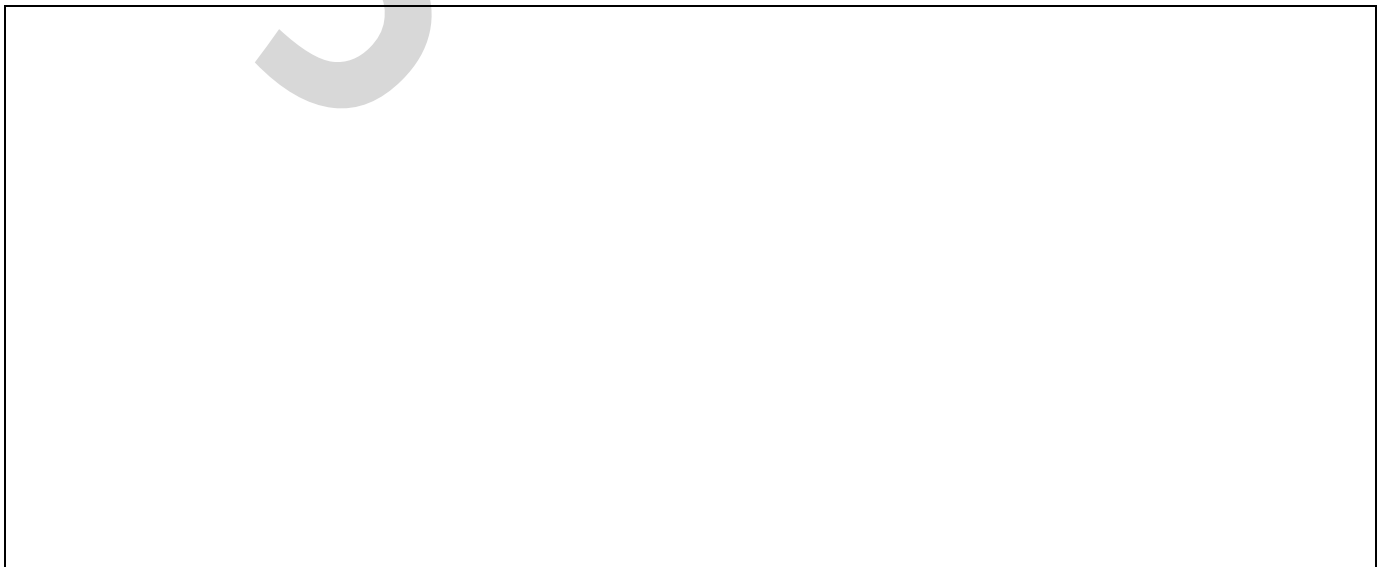
Company Minimum 5,00,000 Maximum 25,00,000	Director, interested person etc. Minimum 5,00,000 Max. 25,00,000 OR Imprisonment upto 6 months OR Both Compoundable offense
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Applicability :

1. Not applicable to pvt. Co. if all the following conditions satisfies :
 - No Body corporate should invest in share capital of such pvt. Co. (no Body corporate should be its shareholder)
 - Borrowing from bank, financial institutions or Body Corporate should be less than twice of paid up share capital or Rs.50 crore whichever is lower
 - There should not be subsisting default of such borrowing (on the day of giving loan)
2. Government company if approved by department :

➤ **Section 2(77) Relative :**

- 1) Husband and wife
- 2) All members of HUF
- 3) Relation given in rule 4 as follows :



➤ **Section 173 : board meeting**

<p><u>Every Co. normally</u> 1) At least 4 Board Meetings 2) Difference between two B.M. → max 120 days</p>	<p><u>Sec. 8 Co.</u> Atleast 1 B.M in every half of calendar year</p>	<p>OPC / small / dormant at / Pvt. Co. (start-up) Atleast 1 B.M. in every half of calendar year Difference between 2 BM minimum 90 days</p>
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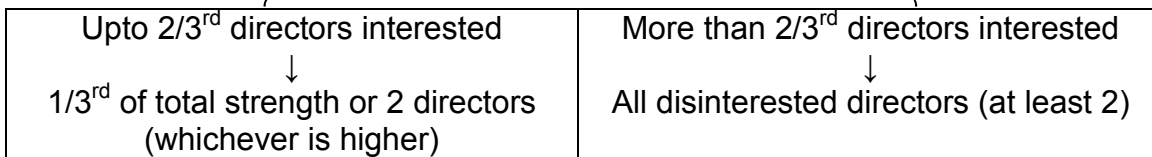
- Provisions relating to but notice of BM
- Notice should be given to whom every director (Alternate, additional, CVD, interested, disinterested etc.)
- Mode : writing only
 Post, hand delivery, fax, email etc.
 Place : at registered address of director which is provided by director to the company
- Length of the notice : at least 7 days
 Shorter notice is allowed if BM attended by one independent director otherwise it should be circulated among all directors and should be approved by at least one independent director
- Specific notice (Agenda of meeting should be given)



Various terms of Notice

<p>Calling ↓ Issuing notice</p>	<p>Holding ↓ Validity starting the meeting</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"> <p>Quorum not present ↓ Section 174 compulsory adjourned to next week same day, time and place ↓ If national holiday succeeding working day</p> </td> <td style="width: 50%;"> <p>Voluntary adjournment ↓ Any day, time and place</p> </td> </tr> </table>	<p>Quorum not present ↓ Section 174 compulsory adjourned to next week same day, time and place ↓ If national holiday succeeding working day</p>	<p>Voluntary adjournment ↓ Any day, time and place</p>	<p>Conducting ↓ Discussion (voting etc.)</p>
<p>Quorum not present ↓ Section 174 compulsory adjourned to next week same day, time and place ↓ If national holiday succeeding working day</p>	<p>Voluntary adjournment ↓ Any day, time and place</p>			

➤ **Section 174 : Quorum**



Total directors	10	10	10	10	10	10	10	10	10	10	10
Interested	0	1	2	3	4	5	6	7	8	9	10
Disinterested	10	9	8	7	6	5	4	3	2	1	-
Quorum	4	4	4	4	4	4	4	3	2	#	#

Appoint additional director or shareholders GM

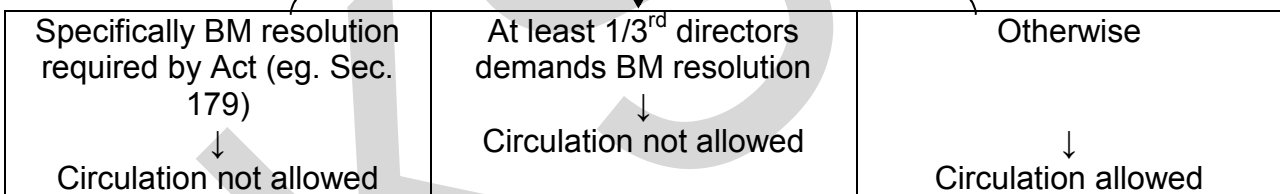
Note: if total no. of directors in the company fall below the limit fixed by the Act for the purpose of quorum then board meeting is valid only for :

- 1) Appointing director to increase the number of directors
- 2) For the purpose of calling shareholders GM

➤ **Section 175 : resolution by circulation**

In case of circulation, necessary documents are circulated among the directors and if it is approved by majority then transaction will be treated as approved.

CIRCULATION



Any transaction approved by circulation shall be records in the next board meeting (i.e. recording of minutes)

➤ **Section 167 : Vacation of director**

In the following case, director is liable to vacate office :

- i. Disqualified U/s 164 (1&2)

Note: In section 164 (2) office shall vacate from all company except in which he is director.

- ii. Not attended board meeting for continuous period of 12 months or more (with or without seeking leave)
- iii. Failure to disclose interest u/s 184
- iv. Contravention by entering into transaction u/s 184
- v. Disqualified by Court or NCLT
- vi. Convicted by Court on moral turpitude ground or otherwise for a period of 6 months or more

Note: In point v and vi for 30 days office shall not vacate if applied is filed.

- vii. Removed by shareholder u/s 169
- viii. Ceases to hold the office **in holding / subsidiary / associates** company by virtue of which he is appointed as director in the company

- If all directors vacate the office than promoters shall manage the company
- If there are no promoters, central government will manage the company till the period directors are appointed by shareholders in general meeting

Penalty : only if he does not vacate the office

Imprisonment upto 1 year

or

Fine – min 1,00,000 or max. 5,00,000

or

Both

➤ **Section 188 : related party transaction**

Certain transaction will relate party requires few approval

Section 2(76) : **related party**

<ol style="list-style-type: none"> 1. Director + relative 2. KMP + relative 3. Any person on whose advise directors of the company are accustomed to act <ul style="list-style-type: none"> ➤ If person gives direction in professional capacity he will not be treated as related party 	<ul style="list-style-type: none"> - Any partnership firm in which director or manager or their relative are partner - Any pvt. Co. in which director / manager or their relative is director / member - Any public co. in which director / manager is director and holds more than 2% of PUSC (along with relative) - Any Body corporate whose BOD / MD / manager is accustomed to as per direct of directors of that co. - Holding / subsidiary / associate/ fellow subsidiary companies
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Certain transaction requires certain approvals as given below

Transactions	BM resolution	OR by shareholders if exceeds
i. Sale, purchase or supply of goods or materials directly or through agent	Always required	10% of annual turnover or 100 cr. WIL
ii. Selling or otherwise disposing or acquiring property of any kind directly or through agent	Always required	10% of net worth or 100 crore WIL
iii. Leasing of property in any kind agent	Always required	10% of annual turnover 10% of net worth WIL
iv. Availing or rendering services directly or through	Always required	100 crore 10% or annual turnover 50 crore WIL
v. (already combined with a,b and d) AGENT		
vi. Appointment at office or place of profit (in holding / subsidiary associate)	Always required	>250,000 per month
vii. Appointment of underwriter) payment of underwriting commission	Always required	>1% of net worth

Office of place of Profit:

- In case director, receiving any remuneration other than in capacity of director.
- In case of any person other than director, receiving any remuneration will be treated as office or place of profit.

➤ **Interested director and interested member**

They cannot participate in discussion and cannot vote

Amendment

Exception Note : - However, in case of Pvt. Company, interested member can vote

- If loss occurred to company due to any director or related party due to their default, then in that case company can initiate legal proceedings against them.

Penalty :

<p><u>Listed Company</u> Imprisonment upto 1 year OR Fine : Min 25,000 to Max. 5,00,000 OR Both</p>	<p>Other company (Pvt. + unlisted company) Fine : Min. 25,000 Max. 5,00,000</p>
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- If transaction is between holding co. and its wholly owned subsidiary co. and if approval is taken at holding co. then O.R. of shareholders is not required in wholly owned subsidiary company

Disclosure in notice

BM Notice	GM Notice
<ul style="list-style-type: none"> - Name of related party - Nature of relation - Nature of contract - Material term (e.g. Value of transaction) - Other important information 	<p>Same as board meeting + name of related <u>“director / KMP”</u></p>

- **Applicability : All companies**
Exception : Section 188 approval is not required if the transaction is done at “arm’s length price” in the ordinary cause of business : price applicable to unrelated party
- **Section 163 : Proportionate Director**
 - Company can appoint proportionate director suo-moto by inserting in the articles of association oppression and mismanagement



- This section is not mandatory but driven by AOA therefore proportionate director can be appointed by 'PR' (proportion representation) only if it is inserted in AOA
- This is overriding section, hence section 152(6) rotational director will not be applicable in this case

Tenure : maximum 3 years

Casual vacancy : shall be filled by BOD u/s 161(4)

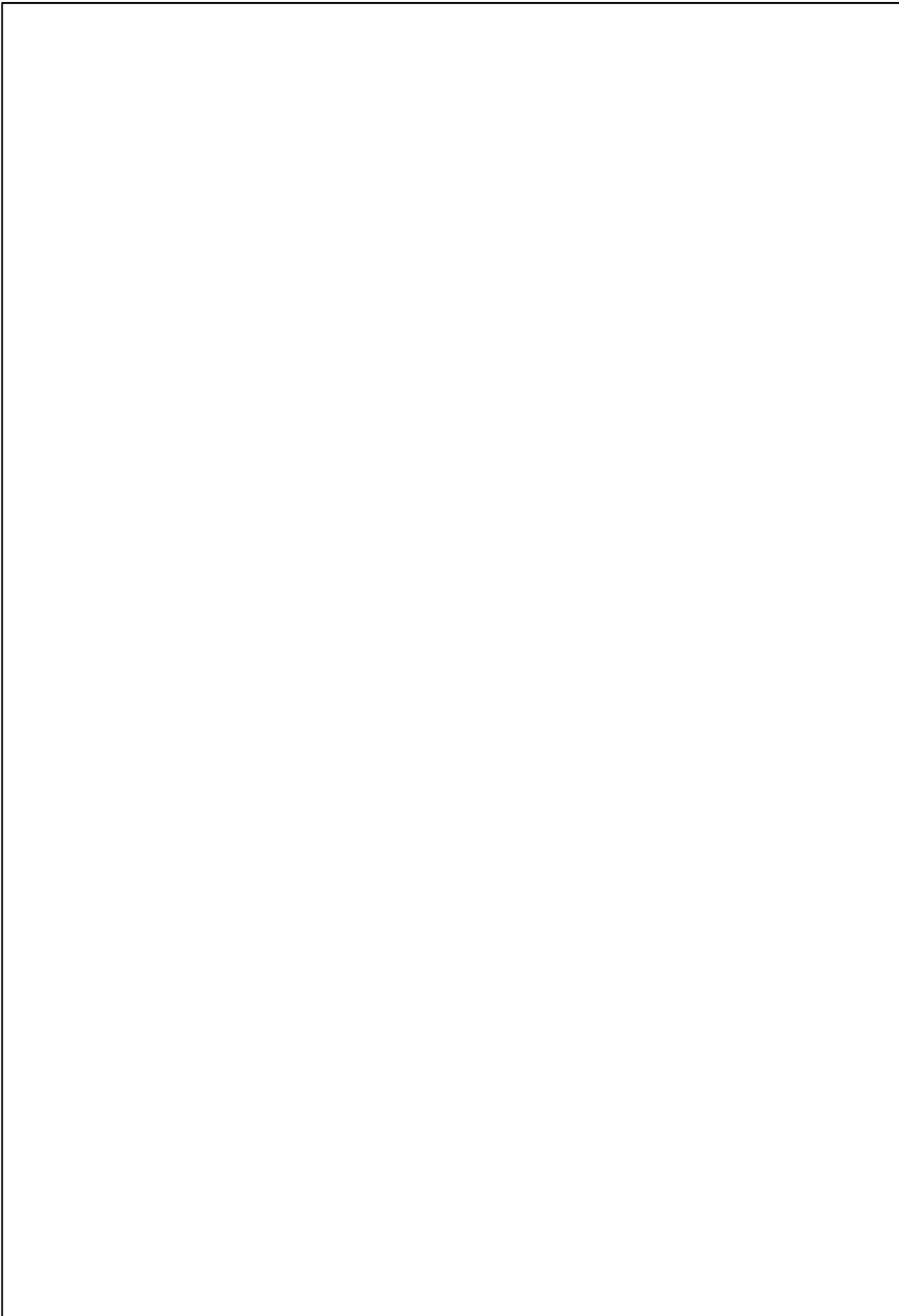
If this method is followed, at least 2/3rd directors shall be appointed by this method

Directors under this method can be appointed by

- 1) Single transferable vote or
 - 2) Cumulative voting method or otherwise
- **Non – applicability:** this section does not applicable to 100% holding government co. or its subsidiary Co.
 - **Section 166 : Duties of Directors**
 - 1) Director should work as per article of company
 - 2) Director should work in the best interest of members, employees, society, community and environment
 - 3) Director should not enter into any transaction which creates conflict of interest
 - 4) Director should not enter into any transaction for undue advantage
 - 5) Director should perform his work on due diligence
 - 6) Director should not assign his office
 - **Section 168 : Resignation of Director**
 - Director can resign in writing to company which will be effective from the date of receipt of notice or the date mentioned in notice whichever is later
 - Director should file notice along with reason of resignation in form DIR 11 to ROC within 30 days from the date of notice
 - Company should file in DIR 12 notice of resignation to ROC within 30 days from the date of receipt of notice
 - Company should lay the details of director's resignation in the director's report in next general meeting
 - **Section 169 : Removal of Directors by Shareholders**

Following directors cannot be removed by shareholders

 - Directors appointed u/s 163 (PR directors)
 - Directors appointed by NCLT



If notice is being circulated for abusive / defamatory matter, then company may make an application to NCLT and if NCLT satisfied, then it may give an order not to circulate such representation.

➤ **Section 186 : loan, investment, security, guarantee made by a company**

If company wants to give loan / security / guarantee or company wants to make investment, then certain conditions are required to be satisfied

1) Approval of all directors present in the meeting should be in favour loan / investment / sec./ guarantee

2) Special resolution on of shareholders required if L/I/S/G (present + proposed) exceeds ceiling limit :

Ceiling limit 60% [PUSC + FR + SP] ↑
OR
100% [FR + SP]

In shareholders meeting, shareholder should specify amount upto which L/I/S/G is permitted

Therefore, blanket approval is not allowed (H → WOS) Approval not required

3) If loan is taken from PFI then prior approval of **PFI** is also required

➤ **Exception : if following conditions are satisfied, then approval of PFI is not required**

- L/I/S/G to Body Corporate (any person) (does not) exceeds ceiling limit (as mentioned above)

- There is no existing default in repayment to PFI (principal + interest)

4) There should not be any subsisting default in repayment of "public deposit"

5) Interest rate for loan made should be atleast interest rate of government securities which is closest to the tenure, of 1,3,5 or 10 years

- Register: company should maintain register in form : MBP2 at its registered office in which entry shall be made within 7 days of entering into transaction.

- The register shall be open for inspection by member of the company in office hours (free of cost)

- Every member can take extract of register as may be prescribed for payment (max. Rs. 10 per page)

- Disclosure : in notice

- Loan given
- Investment made
- Guarantee given
- Securities provides
- Purpose for which receipt is utilized

➤ **Exception :**

If L/I/S/G is made by holding co. wholly owned subsidiary, then approval of shareholders (S.R) is not required

However, company should make disclosure of such L/I/S/G in its financial statements.

➤ **Non – applicability :**

Note: Loan, security or guarantee to employee is not covered under this section

➤ **Applicability : private and public companies**

➤ **Section 186(1) :**

Any company cannot make investment through more than 2 layers of Investment Company (as per Section 2 (87), layer means subsidiary(s))

It means that a company cannot have more than 2 layers of investment subsidiary(s)

However, in following cases, co. can have more than 2 layers of investment subsidiaries

- 1) A co. may acquire any company which is incorporated outside India and such layer is permitted as per law of that country
- 2) Subsidiary company may have more than 2 layers if it is due to requirement if some law

INDEPENDENT DIRECTORS - [PUBLIC COMPANY ONLY]

- **Section 149(4)** every listed public company shall have at least 1/3 of the total number of directors as independent directors.

Explanation.—for the purposes of this sub-section, any fraction contained in such one third number shall be rounded off as one.

Number of independent directors.-

The following class or classes of companies shall have at least 2 Independent directors –

- (i) The Public Companies having paid up share capital of 10 crore rupees or more;
or
- (ii) The Public Companies having turnover of 100 crore rupees or more; or
- (iii) The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees:

Following Unlisted Public companies shall be Exempt: [W.E.F JULY 2017]

1. A Joint Venture Company.
2. A Wholly Owned Subsidiary Company
3. A Dormant Company.

DON'T FORGET:

Limits to be checked at the time of Appointment and Not during the pendency of Tenure.

Provided further that any intermittent vacancy of an independent director shall be filled up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later:

Provided also that where a company ceases to fulfill any of 3 conditions laid down in sub-rule (1) for 3 consecutive years,

It shall not be required to comply with these provisions until such time as it meets any of such conditions;

Explanation. - The paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

(5) Every company existing on or before the date of commencement of this Act shall, **within 1 year from such commencement** or from the date of notification comply with the requirements of this provisions

(6) An independent director in relation to a company, means a director other than a MD or a WTD or a nominee director,—

- (a) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who **is or was not a promoter of the company** or its holding, subsidiary or associate company;
- (ii) Who **is not related to promoters or directors in the company**, its holding, subsidiary or associate company;
- (c) Who **has or had No** pecuniary relationship, other than remuneration as such director or having transaction **not exceeding ten per cent.** of his total income or such amount as may be prescribed **with the company**, its holding, subsidiary or associate company, ***[Companies Amendment Act, 2017]*** **or their promoters, or directors**, during the 2 immediately preceding financial years or during the current financial year;
- (d) None of whose relatives - [Companies Amendment Act, 2017]
- (i) **Is holding any security of or interest** in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:
Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;
- (ii) **Is indebted** to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; [prescribed amount = 50 lakhs].
- (iii) **Has given a guarantee or provided any security** in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or [prescribed amount = 50 lakhs].
- (iv) **Has any other pecuniary transaction or relationship** with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);
- (e) **Who, neither himself nor any of his relatives —**
- (i) holds or has held the position of a KMP or is or has been employee of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed;
Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.
[Companies Amendment Act, 2017]

- (ii) **Is or has been an employee or proprietor or a partner,** in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed, of—
- (A) **A firm of auditors or CS in practice or cost auditors of the company** or its holding, subsidiary or associate company; or
- (B) **any legal or a consulting firm that has or had any transaction with the company,** its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
- (iii) **Holds together with his relatives 2% or more of the total voting power of the company;** or
- (iv) **Is a CEO or director, by whatever name called, of any NPO that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company;** or
- (f) Who possesses such other qualifications as may be prescribed. – Disclosure in BOD Report regarding his appropriate skills.
- (7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence.
- (8) The company & Independent directors shall abide by **Schedule IV.**
- (9) Notwithstanding anything contained in any other provision of this Act, **an independent director shall not be entitled to any stock option - [subject to section 197& 198].**
- (10) Subject to the provisions of section 152, an **independent director shall hold office for a term up to 5 consecutive years on the Board of a company,** but shall be eligible for re-appointment on **passing of a special resolution** by the company and disclosure of such appointment in the Board's report.
- (11) Notwithstanding anything contained in sub-section (10), **No independent director shall hold office for more than two consecutive terms,** but such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director: **[Cooling Period]**
Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, directly or indirectly.
- **Section 152: Appointments of directors**
- (1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

- (2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.
- Amended w.e.f.9th February, 2018
- (3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154 or any other number as may be prescribed under section 153.
- Amended w.e.f.9th February, 2018
- (4) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number or such other number as may be prescribed under section 153 and a declaration that he is not disqualified to become a director under this Act.
- (5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed:
Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.
- Exemption to Section 8 Company
- (7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.
- (b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and them
- **Section 184 : Disclosure of interest by director**
- (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.
- (2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into-
- (a) With a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

- (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting: Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

Exemption to Private company or apply with the exception that the interested director may participate in such meeting after disclosure of his interest.

Exemption to Section 8 Company.

- (3) A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

Amended w.e.f.9th February, 2018

- (4) If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which [*] may extend to one lakh rupees, or with both.
- (5) Nothing in this section-
- (a) Shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
- Substituted by Companies (Amendment) Act, 2017**
- (b) Shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.

➤ **Section 192 : Restriction on non-cash transactions involving directors**

- (1) No company shall enter into an arrangement by which-
- (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
- (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected, unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

- (2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.
- (3) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless-
- (a) the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
 - (b) Any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

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DIRECTORS AND BOARD MEETING [BOTH]**Directors**

- Definition of Director : Sec. 2(34)
Director means a director appointed to BOD

➤ **Section 149(1) : Membership**

	Public Co.	Pvt. Co.	O.P.C.
Members			
Minimum	7	2	1 member + 1 nominee
Maximum	Unlimited	200	1 member + 1 nominee
Directors			
Minimum	3	2	1
Maximum	15*	15*	15*

- Company can appoint more than 15 directors by passing special resolution of the shareholders

Exception : Section 8 & Govt. Co. can have more than 15 Directors without SR

➤ **Section 149 (1) Proviso 2 : Women Director**

i) Listed Co.

ii) Unlisted Public Company



Paid-up share capital \geq 100 crore } to be checked on latest audited financial
OR } statement

Turnover \geq 300 crore

Above company should have at least one woman director

Intermittent vacancy shall be filled in 3 months or next BM WIL

➤ **Section 149 (3) : Resident Director**

Every company should have at least 1 resident director

Director who stays in India in for atleast 182 days during financial year

- **Section 165** : maximum number of directorships a person can become director in maximum 20 companies out of which it can be maximum 10 public companies

Note :

- 1) Company can reduce the limit of 20 companies by amending articles of association. However, co. cannot increase the limit by amending AOA
- 2) Private Co. which is holding or subsidiary of public co. is a public co.

Exception : section 8

Dormant company

Fine : 5000 per day

➤ **Section 162 : appointment of two or more directors by passing single resolution**

- Normally appointment of each director requires separate resolution. However, in following situation two or more directors can be appointed by passing single resolution
- Unanimous resolution passed to appoint two or more directors by single resolution
- If two or more directors appointed without U.R. then such appointment is void-ab-initio even if no. shareholder object against to.
 - 1) Private company
 - 2) 100% holding government company or its subsidiary

➤ **Section 164(1) : disqualification of directors**

- I. Unsound mind declared by court
- II. Un-discharged insolvent
- III. Applied himself to be declared as insolvent
- IV. Convicted by court on moral turpitude ground or otherwise for a continuous period of 6 months or more and (5 years not elapsed from the date coming out of jail)
Convicted by court on moral turpitude ground or otherwise for continuous period of 7 years or more (disqualification is for life time).
- V. Disqualified by Court / NCLT
Eg : fraud / misfeasance etc.
- VI. Calls in arrears for continuous period of 6 months or more
- VII. Contravention under section 188 (Related party transaction) (5 years disq.)
- VIII. No DIN (director identification number) or UIN

Note 1 : IV, V, VII shall continue even if the appeal is filed

Note 2 : In all other cases, there will be immediate disqualification

➤ **Section 164(2) : disqualification of director**

Any person who is a director of a company which fails to.

- a) File financial statements or annual return for a continuous period of 3 years

or

- b) Not paid dividend or deposit or interest on deposit or debenture or interest on debenture for a continuous period of 1 year NOR

Note 1 : In that case person disqualified to get appointed as director of any company (public + pvt.) for a continuous period of 5 years from the date of disqualification

Note 2 : Director shall not incur disqualification for 6 months from the date of his appointment. Dividend will be treated as paid if it is transferred to separate account

- 1) Debenture / deposit interest on debenture, interest on deposit will be treated as not paid if holder claims the money and company refuses to make the payment
- 2) If any person ceases to hold the office before the date of disqualification he will not attract disqualification

➤ ROC forms

Director Director 8 Company
 Whether disqualified u/s 164(2) or not

Company _____ Director 9 → ROC

Whether any director is qualified or not

Director/ _____ Director 10 → Central Govt.

Co. on his behalf for removal of disqualification

Applicability to all companies

Note: - private company can have any additional ground of disqualification

Exception : this section is not applicable to Govt. Co.

➤ **Selection 152 (6) : rotational director**

Applicability public company

Atleast $2/3^{rd}$ directors should be rotational directors (AOA can increase limit)

Rotational director $\geq 2/3^{rd}$ of total directors (not included independent director)

Fraction will be rounded off to next full figure

Eg : 5.1. \approx 6

Retirement by Rotation :

Out of total rotational directors, at least $1/3^{rd}$ should retire by rotation who are eligible to get reappointed

(Retirement by rotation $\geq 1/3^{rd}$ of rotational directors)

Note : any fraction will be rounded off to nearest figure

- 1) Person who is holding office longest will retire first
- 2) If two or more persons are appointed at the same point of time than retirement will be by their mutual consent or lot basis

➤ **Section 160 : nomination for appointment of regular director**

1. This is not applicable when the appointment is made by BOD

2. If any person other than retiring director wants to become regular director, shall file nomination under this section

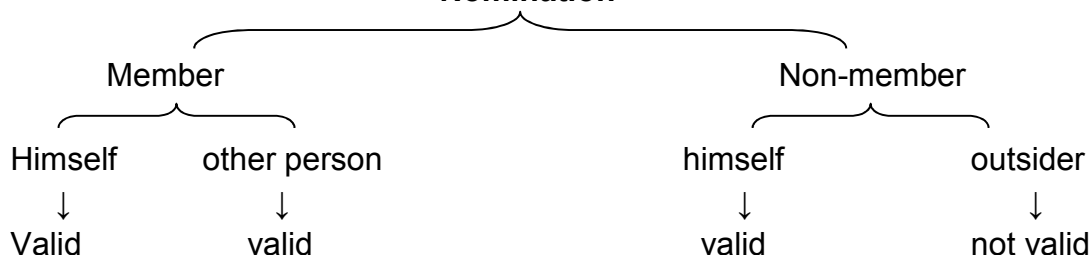
Note : retiring director need not file nomination under this section as it is statutory obligation of BOD to file nomination for re-appointment of retiring directors.

3. in case co. appointing independent director or director recommended by NRC or board deposit not require

A person has to file nomination to the company along with:

- Consent letter to act as director if appointed
- Security deposit of Rs. 100,000
- Declaration that he is not disqualified u/s 164

Nomination



If a person get appointed as director or secure at least 25% of total vote cast then security deposit will be refunded, otherwise it will be forfeited

This section does not apply to:

- Section 8 company (if election is by ballot)
- Private company
- 100% controlled govt. company or its subsidiary
- Nidhi Company → deposit amount shall be Rs.10,000

Section 161 (1) : additional director (Applicability to all companies)

Meaning : he is a director appointed by B.O.D. between two AGM

Condition :

- 1) after appointment of additional director, total number of directors in the company increases, therefore co. should ensure it does not exceed limit in AOA
- 2) additional director can be appointed only if it is authorized by the AOA if it is prohibited, then BOD cannot appoint additional director

Restriction: any person who is rejected by the shareholders in GM cannot be appointed as A.D

Tenure:

- 1) additional director will continue upto next AGM
- 2) if AGM is not held, then till the period, AGM should have been held
- 3) if AGM is legally extended, then term of additional director will be extended accordingly

Note: additional director is not at par with other directors except the tenure of office (term)

➤ **Section 161(4) : casual vacancy director (C.V.D)**

Casual vacancy: vacancy created by

- directors appointed by
- shareholders in GM
- cease to hold the office
- due to any reason (resign/death etc.)
- before / prior to completion
- of his terms

➤ condition : casual vacancy director (CVD) can be appointed only by board meeting resolution

(circulation not allowed)

- 1) filing of casual vacancy is power of BOD and not the obligation
- 2) casual vacancy created by one person can be filled by the same person
- 3) vacancy created by CVD cannot be filled by BOD as per strict reading of the Act however, as per the MCA's view, it can be filled up by BOD
- 4) CVD is at par with other directors in terms of power, duties and responsibilities except his tenure in office

Tenure: CVD will continue in the office upto the period original director would have continued if he would have not vacated the office

➤ **Section 161 (2) : Alternate Director**

Applicability : All companies

Alternate director can be appointed in case of absence of original director in India for a continuous period of 3 months or more

Conditions:

- 1) Alternate director can be appointed only if it is authorized by AOA or by shareholders in GM

Tenure:

- 1) Alternate director will vacate his office if original director returns to India (for any reason)
- 2) If original director attracts disqualification then alternate director should vacate immediately
- 3) If original director get retires and re-appointed then alternate directors can't be re-appointed immediately he can be re-appointed only after the expiry of 3 months

Note:

- 1) If company is appointing alternate director of independent director than he should also satisfy the criteria of independent director
- 2) Alternate director is at par with other directors except in the tenure of office
- 3) No person holding directorship in the company in any capacity can stand for alternate directorship in the same company.
- 4) That person should not hold alternate directorship for any other director in the company.
- 5) CVD will continue in the office upto the period original director would have continued if he would have not vacated the office

➤ **Section 151 : small shareholder director (SSD)**

Applicability: listed company

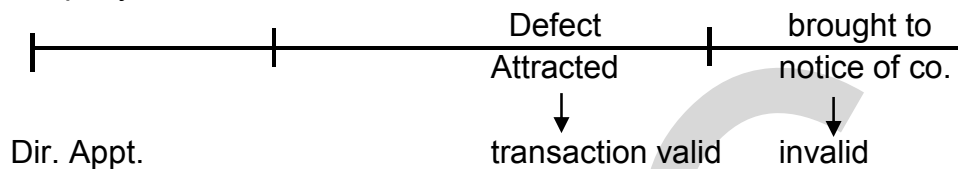
SSD = means person holding share upto Rs. 20,000 (nominal value)

1. Company can appoint SSD either suo-moto or on the notice by small shareholder at least 14 days' notice is to be given to the company by small shareholder along with →
 - Details of small shareholders (name, address, shareholding, folio no.)
 - Details of shareholding (if any) of proposed SSD
 - Consent to Act as director by proposed SSD
 - Declaration of proposed SSD
 - DIN of proposed SSD
2. SSD will be appointed if ordinary resolution (OR) is passed by small shareholder
3. SSD can be appointed for maximum tenure of 3 years and on expiry of 3 years he can never be re-appointed as SSD for lifetime in that company.
4. SSD is always treated as non-rotational director.
5. On expiry of tenure, SSD should not be associated with Co. in any capacity for next 3 years.
6. A person can become SSD in max 2 companies provided they are not into competing business SSD should satisfy criteria of independent director
7. A company can appoint max 1 SSD
8. A SSD is liable to vacate the office in the following cases :
 - Disqualified u/s 164
 - Disqualified u/s 167
 - Fails to satisfy the criteria of independent director

9. Notice: should be given by 1/10th of SSH or 1000 small shareholder whichever is lower
 1/10th of small shareholders
 or
 100 small shareholders
 ↓ Whichever is lower

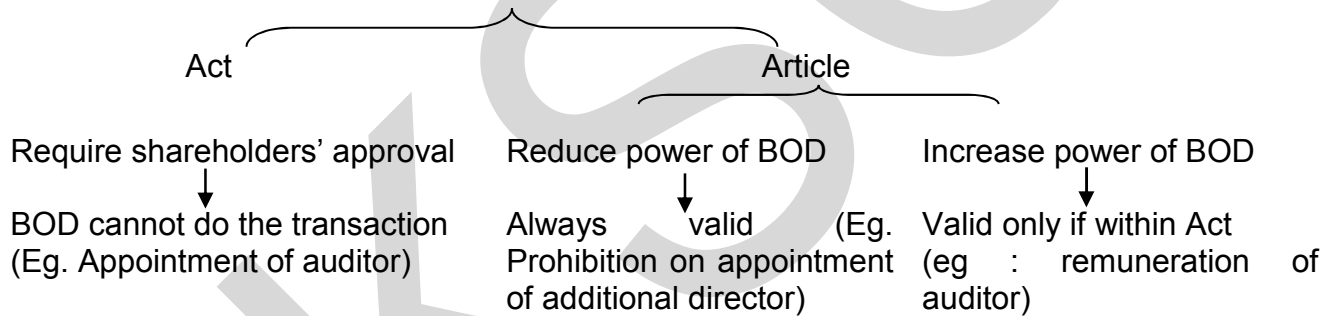
➤ **Section 176 : validity of the act of director**

After proper appointment if any defect is attracted to the appointment of director, then any transaction done by such director will be valid till the period such defect is brought to the notice of the company. However, after such date transaction will be invalid.



➤ **Section 179 : powers of company**

Unless otherwise specifically stated in the Act or AOA of the company, all the powers of company shall be exercisable by BOD



➤ Certain powers exercisable only by board meeting resolution (circular → not allowed)

1. Making calls on shares
2. Authorizing buy-back
3. Issuing debentures
4. Borrowing money otherwise then on debentures
5. Investing funds of the company
6. Making loan
7. Approving financial statement
8. Diversification
9. Amalgamation, merger or reconstruction
10. Making political contribution
11. Appointing or removing KMP
12. Appointing internal auditor and secretarial auditor (cant remove)
13. Takeover or substantial stake in another co.

➤ Normally, transaction has to be done in board meeting, however, in case no. 4,5,6 it can be delegated to any MD, committee by passing O.R after satisfying following conditions :
 Max amt. which can borrowed should be specified nature and max limit for investment should be specified.

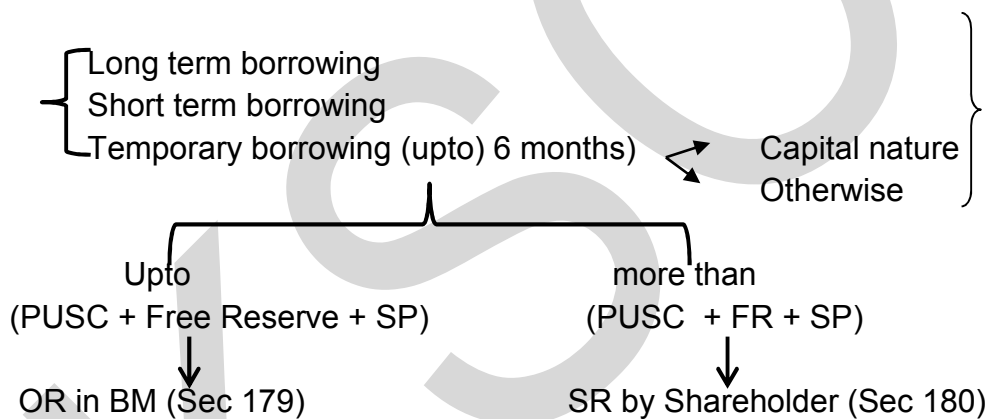
➤ In case of section 8 company transaction 4, 5 & 6 can be done by way of circular

- Transaction in the ordinary course of business by banking company not required approval.
- **Section 180 (1) : certain transaction require special resolution of shareholders**
 - Sale, lease or otherwise disposal of whole or substantially whole of the undertaking and if the company is having more than 1 undertaking, than any of the whole or substantially whole of the undertaking

Undertaking

- Co. has invested > 20% of its net worth
earning ≥ 20% of its total income
- Substantially whole : ≥ 20% of total value of undertaking
Net worth will be taken of latest audited balance sheet date total income will be taken of preceding financial year
 - Invest in otherwise than trust securities of amt. received by way of compensation on amalgamation / merger

Borrowing (present + proposed)



If lender provides loan without the knowledge of contravention and in good faith, then it will not affect validity of transaction. In other words, he will get good title
This provisions is not applicable if it done in the ordinary course of business

- Giving time for repayment of loan taken by the Director of the company (extension for repayment)

Note :

- (1) If assets are sold, leased in the ordinary course of business, i.e. business activity of the company, then this clause would not be applicable.
- (2) If any person acquire asset without knowledge of contravention and in good faith, then this transaction will remain valid and he will get good title of the asset

Non-applicability – private companies

➤ **Sec. 181 – Charitable Contribution**

Applicable: to all companies

If company propose to make charitable contribution exceeding 5% of average net profit (average of preceding 3 f.y.)

Requirement – prior approval of shareholders required by passing ordinary resolution in general meeting

➤ **Section 182 : Political Contribution**

Not applicable to

- 1) Govt. company
- 2) Any company which is in existence for less than 3 years

Political contribution means

Contribution to any local party	Contribution for benefit of political party	Advertisement in souvenir. Brochure etc. of political party	Payment to any person who is likely to support any political party
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Note 1: Payment should be made by A/C payee cheque

Note 2: Political party means any party registered under “Representative of people’s Act 1951”

Requirement: board meeting resolution

Disclosure: political contribution is to be disclosed in the profit and loss A/c

Penalty

Company ↓ Upto 5 times of amt. contributed	Officer – in – default ↓ Upto 5 times of amt. contributed and Imprisonment upto 6 months
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➤ **Section 183 : contribution to national defence fund**

Notwithstanding anything contained in section 180, 181 or 182 Act or article, company may contribute any amount national defence fund (NDF)

Shareholder’s approval not required

Note : contribution made to NDF should be disclosed in profit and loss

➤ **Section 185 : loan etc. to director or interested person**

Loan, security or guarantee in connection of loan cannot be given by company to director or other interested person as given below :

- 1) Director of that company or its holding company, or their partner or their relative
- 2) Any partnership firm in which such director or their relative is partner (partner of relatives is not covered)

Allowed if following conditions are satisfy : -

- SR by shareholders
 - Explanatory note
 - Use for principle Activity
- 1) Any private company in which such director is a director or member (relative of director is not covered)
 - 2) Any Body corporate in which one or more director at general meeting holds at least 25% of voting rights either individually or cumulatively
 - 3) Any Body corporate whose MD or BOD is accustomed to act as per directions of one or more director of the lending company.

➤ **Exceptions :**

In the following cases, loan, security or guarantee can be given :

- 1) To MD / WTD if it is given under service which is extended to all the employees
- 2) Under scheme approved by shareholders by passing special resolution
- 3) In case of Nidhi Co. loan given to member in capacity of director is not prohibited if disclosure for the same has been made

Note :

A company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan;

Penalty

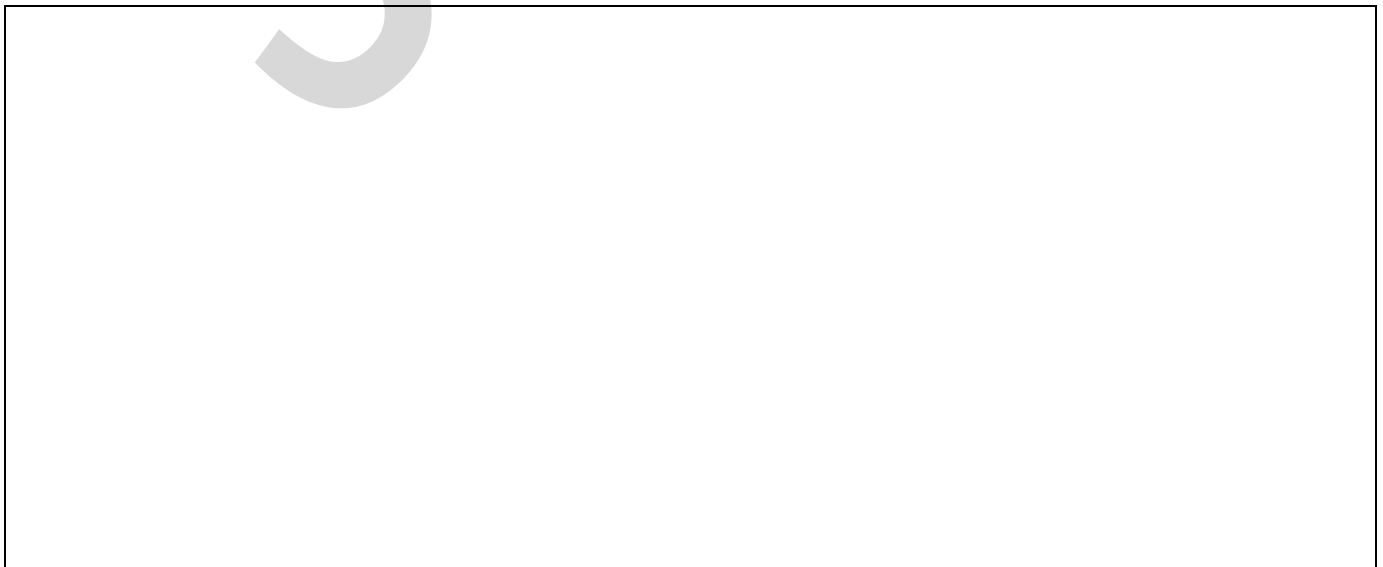
Company Minimum 5,00,000 Maximum 25,00,000	Director, interested person etc. Minimum 5,00,000 Max. 25,00,000 OR Imprisonment upto 6 months OR Both Compoundable offense
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Applicability :

1. Not applicable to pvt. Co. if all the following conditions satisfies :
 - No Body corporate should invest in share capital of such pvt. Co. (no Body corporate should be its shareholder)
 - Borrowing from bank, financial institutions or Body Corporate should be less than twice of paid up share capital or Rs.50 crore whichever is lower
 - There should not be subsisting default of such borrowing (on the day of giving loan)
2. Government company if approved by department :

➤ **Section 2(77) Relative :**

- 1) Husband and wife
- 2) All members of HUF
- 3) Relation given in rule 4 as follows :



➤ **Section 173 : board meeting**

<p><u>Every Co. normally</u> 1) At least 4 Board Meetings 2) Difference between two B.M. → max 120 days</p>	<p><u>Sec. 8 Co.</u> Atleast 1 B.M in every half of calendar year</p>	<p>OPC / small / dormant at / Pvt. Co. (start-up) Atleast 1 B.M. in every half of calendar year Difference between 2 BM minimum 90 days</p>
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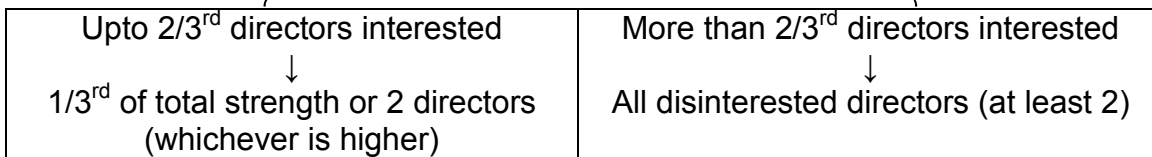
- Provisions relating to but notice of BM
- Notice should be given to whom every director (Alternate, additional, CVD, interested, disinterested etc.)
- Mode : writing only
 Post, hand delivery, fax, email etc.
 Place : at registered address of director which is provided by director to the company
- Length of the notice : at least 7 days
 Shorter notice is allowed if BM attended by one independent director otherwise it should be circulated among all directors and should be approved by at least one independent director
- Specific notice (Agenda of meeting should be given)



Various terms of Notice

<p>Calling ↓ Issuing notice</p>	<p>Holding ↓ Validity starting the meeting</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"> <p>Quorum not present ↓ Section 174 compulsory adjourned to next week same day, time and place ↓ If national holiday succeeding working day</p> </td> <td style="width: 50%;"> <p>Voluntary adjournment ↓ Any day, time and place</p> </td> </tr> </table>	<p>Quorum not present ↓ Section 174 compulsory adjourned to next week same day, time and place ↓ If national holiday succeeding working day</p>	<p>Voluntary adjournment ↓ Any day, time and place</p>	<p>Conducting ↓ Discussion (voting etc.)</p>
<p>Quorum not present ↓ Section 174 compulsory adjourned to next week same day, time and place ↓ If national holiday succeeding working day</p>	<p>Voluntary adjournment ↓ Any day, time and place</p>			

➤ **Section 174 : Quorum**



Total directors	10	10	10	10	10	10	10	10	10	10	10
Interested	0	1	2	3	4	5	6	7	8	9	10
Disinterested	10	9	8	7	6	5	4	3	2	1	-
Quorum	4	4	4	4	4	4	4	3	2	#	#

Appoint additional director or shareholders GM

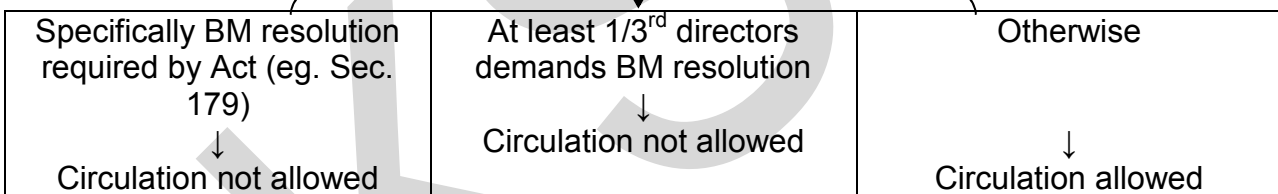
Note: if total no. of directors in the company fall below the limit fixed by the Act for the purpose of quorum then board meeting is valid only for :

- 1) Appointing director to increase the number of directors
- 2) For the purpose of calling shareholders GM

➤ **Section 175 : resolution by circulation**

In case of circulation, necessary documents are circulated among the directors and if it is approved by majority then transaction will be treated as approved.

CIRCULATION



Any transaction approved by circulation shall be records in the next board meeting (i.e. recording of minutes)

➤ **Section 167 : Vacation of director**

In the following case, director is liable to vacate office :

- i. Disqualified U/s 164 (1&2)

Note: In section 164 (2) office shall vacate from all company except in which he is director.

- ii. Not attended board meeting for continuous period of 12 months or more (with or without seeking leave)
- iii. Failure to disclose interest u/s 184
- iv. Contravention by entering into transaction u/s 184
- v. Disqualified by Court or NCLT
- vi. Convicted by Court on moral turpitude ground or otherwise for a period of 6 months or more

Note: In point v and vi for 30 days office shall not vacate if applied is filed.

- vii. Removed by shareholder u/s 169
- viii. Ceases to hold the office **in holding / subsidiary / associates** company by virtue of which he is appointed as director in the company

- If all directors vacate the office than promoters shall manage the company
- If there are no promoters, central government will manage the company till the period directors are appointed by shareholders in general meeting

Penalty : only if he does not vacate the office

Imprisonment upto 1 year

or

Fine – min 1,00,000 or max. 5,00,000

or

Both

➤ **Section 188 : related party transaction**

Certain transaction will relate party requires few approval

Section 2(76) : **related party**

<ol style="list-style-type: none"> 1. Director + relative 2. KMP + relative 3. Any person on whose advise directors of the company are accustomed to act <ul style="list-style-type: none"> ➤ If person gives direction in professional capacity he will not be treated as related party 	<ul style="list-style-type: none"> - Any partnership firm in which director or manager or their relative are partner - Any pvt. Co. in which director / manager or their relative is director / member - Any public co. in which director / manager is director and holds more than 2% of PUSC (along with relative) - Any Body corporate whose BOD / MD / manager is accustomed to as per direct of directors of that co. - Holding / subsidiary / associate/ fellow subsidiary companies
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Certain transaction requires certain approvals as given below

Transactions	BM resolution	OR by shareholders if exceeds
i. Sale, purchase or supply of goods or materials directly or through agent	Always required	10% of annual turnover or 100 cr. WIL
ii. Selling or otherwise disposing or acquiring property of any kind directly or through agent	Always required	10% of net worth or 100 crore WIL
iii. Leasing of property in any kind agent	Always required	10% of annual turnover 10% of net worth WIL
iv. Availing or rendering services directly or through	Always required	100 crore 10% or annual turnover 50 crore WIL
v. (already combined with a,b and d) AGENT		
vi. Appointment at office or place of profit (in holding / subsidiary associate)	Always required	>250,000 per month
vii. Appointment of underwriter) payment of underwriting commission	Always required	>1% of net worth

Office of place of Profit:

- In case director, receiving any remuneration other than in capacity of director.
- In case of any person other than director, receiving any remuneration will be treated as office or place of profit.

➤ **Interested director and interested member**

They cannot participate in discussion and cannot vote

Amendment

Exception Note : - However, in case of Pvt. Company, interested member can vote

- If loss occurred to company due to any director or related party due to their default, then in that case company can initiate legal proceedings against them.

Penalty :

<p><u>Listed Company</u> Imprisonment upto 1 year OR Fine : Min 25,000 to Max. 5,00,000 OR Both</p>	<p>Other company (Pvt. + unlisted company) Fine : Min. 25,000 Max. 5,00,000</p>
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- If transaction is between holding co. and its wholly owned subsidiary co. and if approval is taken at holding co. then O.R. of shareholders is not required in wholly owned subsidiary company

Disclosure in notice

BM Notice	GM Notice
<ul style="list-style-type: none"> - Name of related party - Nature of relation - Nature of contract - Material term (e.g. Value of transaction) - Other important information 	Same as board meeting + name of related <u>"director / KMP"</u>

- **Applicability : All companies**
Exception : Section 188 approval is not required if the transaction is done at "arm's length price" in the ordinary cause of business : price applicable to unrelated party
- **Section 163 : Proportionate Director**
 - Company can appoint proportionate director suo-moto by inserting in the articles of association oppression and mismanagement



- This section is not mandatory but driven by AOA therefore proportionate director can be appointed by 'PR' (proportion representation) only if it is inserted in AOA
- This is overriding section, hence section 152(6) rotational director will not be applicable in this case

Tenure : maximum 3 years

Casual vacancy : shall be filled by BOD u/s 161(4)

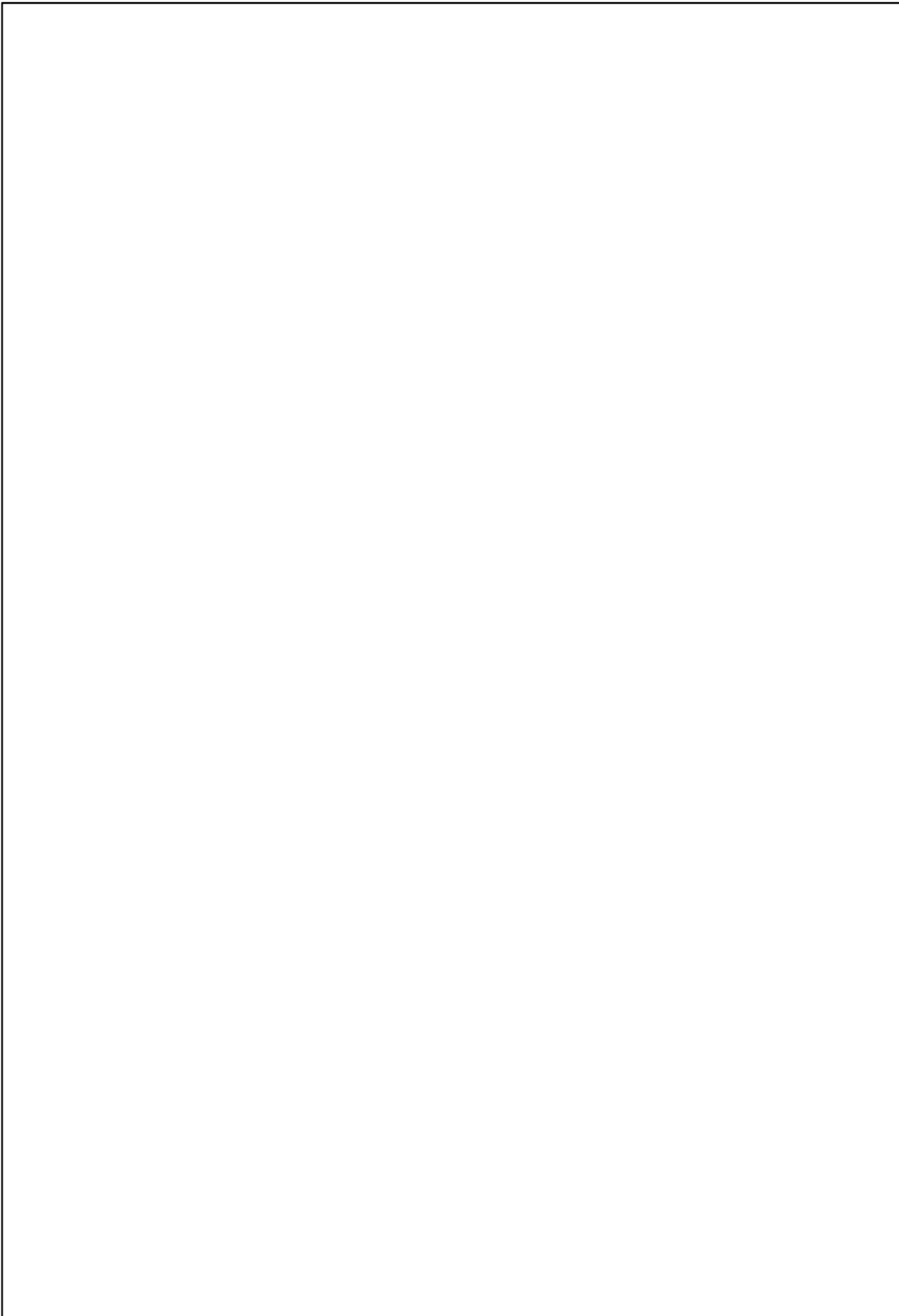
If this method is followed, at least 2/3rd directors shall be appointed by this method

Directors under this method can be appointed by

- 1) Single transferable vote or
 - 2) Cumulative voting method or otherwise
- **Non – applicability:** this section does not applicable to 100% holding government co. or its subsidiary Co.
 - **Section 166 : Duties of Directors**
 - 1) Director should work as per article of company
 - 2) Director should work in the best interest of members, employees, society, community and environment
 - 3) Director should not enter into any transaction which creates conflict of interest
 - 4) Director should not enter into any transaction for undue advantage
 - 5) Director should perform his work on due diligence
 - 6) Director should not assign his office
 - **Section 168 : Resignation of Director**
 - Director can resign in writing to company which will be effective from the date of receipt of notice or the date mentioned in notice whichever is later
 - Director should file notice along with reason of resignation in form DIR 11 to ROC within 30 days from the date of notice
 - Company should file in DIR 12 notice of resignation to ROC within 30 days from the date of receipt of notice
 - Company should lay the details of director's resignation in the director's report in next general meeting
 - **Section 169 : Removal of Directors by Shareholders**

Following directors cannot be removed by shareholders

 - Directors appointed u/s 163 (PR directors)
 - Directors appointed by NCLT



➤ **Applicability : private and public companies**

➤ **Section 186(1) :**

Any company cannot make investment through more than 2 layers of Investment Company (as per Section 2 (87), layer means subsidiary(s))

It means that a company cannot have more than 2 layers of investment subsidiary(s)

However, in following cases, co. can have more than 2 layers of investment subsidiaries

- 1) A co. may acquire any company which is incorporated outside India and such layer is permitted as per law of that country
- 2) Subsidiary company may have more than 2 layers if it is due to requirement if some law

INDEPENDENT DIRECTORS - [PUBLIC COMPANY ONLY]

- **Section 149(4)** every listed public company shall have at least 1/3 of the total number of directors as independent directors.

Explanation.—for the purposes of this sub-section, any fraction contained in such one third number shall be rounded off as one.

Number of independent directors.-

The following class or classes of companies shall have at least 2 Independent directors –

- (i) The Public Companies having paid up share capital of 10 crore rupees or more;
or
- (ii) The Public Companies having turnover of 100 crore rupees or more; or
- (iii) The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees:

Following Unlisted Public companies shall be Exempt: [W.E.F JULY 2017]

1. A Joint Venture Company.
2. A Wholly Owned Subsidiary Company
3. A Dormant Company.

DON'T FORGET:

Limits to be checked at the time of Appointment and Not during the pendency of Tenure.

Provided further that any intermittent vacancy of an independent director shall be filled up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later:

Provided also that where a company ceases to fulfill any of 3 conditions laid down in sub-rule (1) for 3 consecutive years,

It shall not be required to comply with these provisions until such time as it meets any of such conditions;

Explanation. - The paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

(5) Every company existing on or before the date of commencement of this Act shall, **within 1 year from such commencement** or from the date of notification comply with the requirements of this provisions

(6) An independent director in relation to a company, means a director other than a MD or a WTD or a nominee director,—

- (a) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who **is or was not a promoter of the company** or its holding, subsidiary or associate company;
- (ii) Who **is not related to promoters or directors in the company**, its holding, subsidiary or associate company;
- (c) Who **has or had No** pecuniary relationship, other than remuneration as such director or having transaction **not exceeding ten per cent.** of his total income or such amount as may be prescribed **with the company**, its holding, subsidiary or associate company, ***[Companies Amendment Act, 2017]*** **or their promoters, or directors**, during the 2 immediately preceding financial years or during the current financial year;
- (d) None of whose relatives - [Companies Amendment Act, 2017]
- (i) **Is holding any security of or interest** in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:
Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;
- (ii) **Is indebted** to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; [prescribed amount = 50 lakhs].
- (iii) **Has given a guarantee or provided any security** in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or [prescribed amount = 50 lakhs].
- (iv) **Has any other pecuniary transaction or relationship** with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);
- (e) **Who, neither himself nor any of his relatives —**
- (i) holds or has held the position of a KMP or is or has been employee of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed;
Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.
[Companies Amendment Act, 2017]

- (ii) **Is or has been an employee or proprietor or a partner,** in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed, of—
- (A) **A firm of auditors or CS in practice or cost auditors of the company** or its holding, subsidiary or associate company; or
- (B) **any legal or a consulting firm that has or had any transaction with the company,** its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
- (iii) **Holds together with his relatives 2% or more of the total voting power of the company;** or
- (iv) **Is a CEO or director, by whatever name called, of any NPO that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company;** or
- (f) Who possesses such other qualifications as may be prescribed. – Disclosure in BOD Report regarding his appropriate skills.
- (7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence.
- (8) The company & Independent directors shall abide by **Schedule IV.**
- (9) Notwithstanding anything contained in any other provision of this Act, **an independent director shall not be entitled to any stock option - [subject to section 197& 198].**
- (10) Subject to the provisions of section 152, an **independent director shall hold office for a term up to 5 consecutive years on the Board of a company,** but shall be eligible for re-appointment on **passing of a special resolution** by the company and disclosure of such appointment in the Board's report.
- (11) Notwithstanding anything contained in sub-section (10), **No independent director shall hold office for more than two consecutive terms,** but such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director: **[Cooling Period]**
Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, directly or indirectly.
- **Section 152: Appointments of directors**
- (1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

- (2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.
- Amended w.e.f.9th February, 2018
- (3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154 or any other number as may be prescribed under section 153.
- Amended w.e.f.9th February, 2018
- (4) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number or such other number as may be prescribed under section 153 and a declaration that he is not disqualified to become a director under this Act.
- (5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed:
Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.
- Exemption to Section 8 Company
- (7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.
- (b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and them
- **Section 184 : Disclosure of interest by director**
- (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.
- (2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into-
- (a) With a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

- (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting: Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

Exemption to Private company or apply with the exception that the interested director may participate in such meeting after disclosure of his interest.

Exemption to Section 8 Company.

- (3) A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

Amended w.e.f.9th February, 2018

- (4) If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which [*] may extend to one lakh rupees, or with both.
- (5) Nothing in this section-
- (a) Shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
- Substituted by Companies (Amendment) Act, 2017**
- (b) Shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.

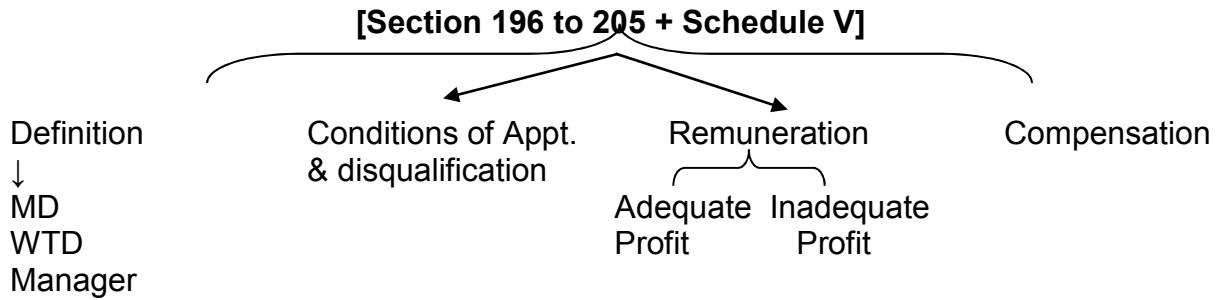
➤ **Section 192 : Restriction on non-cash transactions involving directors**

- (1) No company shall enter into an arrangement by which-
- (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
- (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected, unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

- (2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.
- (3) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless-
- (a) the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
 - (b) Any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

JKSSC

MANAGERIAL REMUNERATION



➤ **Section 2(54) : Managing Director (MD)**

MD is a director who is entrusted with substantial power of management which is entrusted by

- Article
- Agreement
- Resoslution by shareholders in GM
- BOD
 - 1) MD has to be a Director
 - 2) If MD ceases to be director, he ceases to be MD
 - 3) MD is subordinate to BOD

➤ **Section 2(53) : Manager**

Manager is an individual (which is includes director) who have control of whole or substantially whole affairs of the company.

Manager may be or may not be Director

➤ **Section 2 (94) : Whole Time Director**

Whole time director is a director in whole time employment of a company

WTD = director + employee



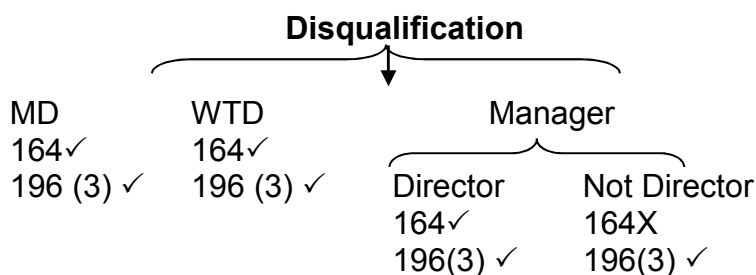
➤ **Section 196 :**

196 (1) MD and manager cannot be appointed simultaneously

196 (2) tenure

Managerial personnel can be appointed for a maximum period of 5 years. However, he is eligible for re-appointment of any number of times but only in last one year of tenure

196(3)



- Age should not be below 21 years and should not attain the age of 70 years or more

Exception → can be appointed if following conditions satisfied

a) Explanatory statement annexed with the notice
AND

b) Special resolution passed by the shareholder
Or CG + OR of shareholder

- Un-discharge insolvent at any time
- Compounded his creditors in personal capacity at any time
- Compounded means settlement at lower value due to financial adversity
- Convicted by Court for continuous period of imprisonment for more than 6 months at any time

	164	196(3)
- Moral turpitude or otherwise		
= 6 months	5 years	No disqualification
> 6 months < 7 years	5 years	Lifetime
≥ 7 years	Lifetime	Lifetime
- any other ground (> 6 months)	No disqualification	Lifetime

➤ **Section 196 (4) : Managerial**

Appointment of managerial personnel requires prior approval of BOD and subsequent approval of shareholders in next general meeting

196(5) – If it does not approve by shareholders in GM, then appointment is CEASES to be valid

➤ **Non applicability of Sec. 196**

- Section 196(4) and 196(5) not applicable to private company
- Section 196(2), 196(4) and 196(5) not applicable to Government Company

➤ **Schedule V [Part – I] : conditions for appointment of managerial personnel**

1. No imprisonment or fine exceeding Rs.1000 under economic offenses
2. No detention under COFEPOSA (Conservation Of Foreign Exchange And Prevention Of Smuggling Activities) Act, 1974

Note : In case of above two conditions, if managerial personnel is appointed with the approval of CG then at the time of reappointment, approval is not required again provided he does not attract further defect after appointment

3. Age : should not be below 21 years and it should not have attained 70 years of age



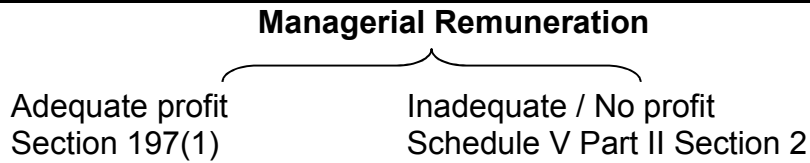
Exception: can be appointed by special resolution of shareholder for which explanatory statement attached to notice is

4. Managerial personnel should be Resident



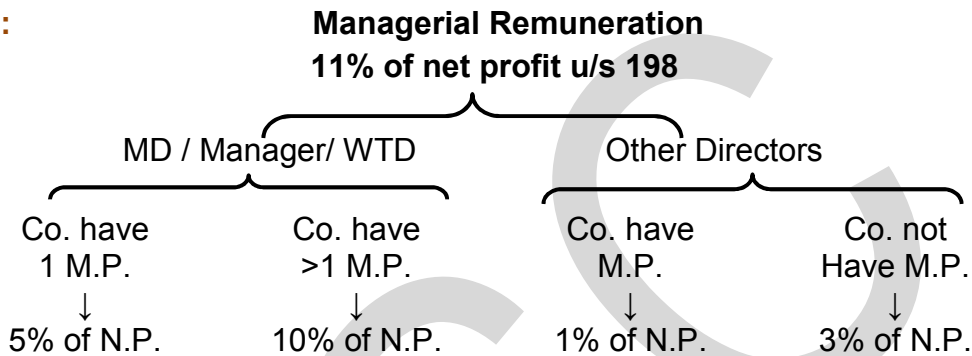
Stay in India in last 12 months before the date of appointment for business / vocation / employment.

Exception: In case of SEZ, a non-resident can be appointed as managerial personnel, provided he enters with proper, employment visa.



If profit is 7 crore then any remuneration upto 35 lakhs [7cr. x 5%] will be adequate profit and can paid u/s 197(1) if co. proposes to pay more than 35 lakhs then it should be accommodated under limit given under Schedule V, part II and Section 2 if it exceeds both the limits 197(1) and Schedule, then CG approval is required.

➤ **Section 197 :**
197(1) :



➤ **197(5)(2) : Sitting fees**

- a) Sitting fees shall be excluded from managerial remuneration
- b) Sitting fees can be paid maximum upto Rs.100,000 per director per meeting
- c) Sitting fees paid to women / independent director should not be less then as paid to other directors

➤ **197(3) : inadequate / No profit**



➤ **197 (4) : Determination of managerial remuneration (M.R.) subject to other provisions of the Act, M.R. shall be determined by :**

- Article Or
O.R. by shareholder or
S.R. by shareholders (if required by AOA)

Note: Remuneration paid to Directors in other capacity
Shall be included in M.R.

Exception: If such remuneration is paid in **“Professional Nature”** then it will not be included provided certain conditions satisfied:

- 1) Approval of BOD / nomination and remuneration committed (if any) is required AND
- 2) Such director possess appropriate qualification or experience

➤ **197 (6) : Mode of M.R.**

- Either Monthly
Or in % form
Or partly monthly and partly % form

- **197 (7) : Various benefits to independent director**
 - a) Company is not allowed to give stock option to independent director
 - b) Independent director is eligible for sitting fees
 - c) Independent director is eligible for reimbursement of expenses for attending board meeting
 - d) Independent director is eligible for profit related commission only if it is approved by shareholders

- **197 (8) : Net profit shall be calculated as per Section 198**

- **197 (9) : Excess remuneration**

Any excess remuneration paid to Director shall be refunded to company and until it is refunded it shall be held in separate trust until refund within maxi 24 years

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company [Companies Amendment Act, 2017]

- **197 (10) :**

The company shall not waive the recovery of any sum refundable to it unless approved by the company by special resolution within two years from the date the sum becomes refundable. [Companies Amendment Act, 2017] Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver. [Companies Amendment Act, 2017]

- **197 (11) : increase in M.R.**

M.R. can be increased within limit u/s 197(1) as per

 - Agreement
 - AOA
 - MOA
 - Shareholders
 - BOD

- **197 (12) :** ratio of remuneration of director shall be disclose in relation to median employee

- **197(13) :** Insurance premium paid for indemnification of loss due to Act of KMP shall be included in M.R. If such KMP is guilty excluded if such KMP is not guilty.

➤ **Key words to remember section 197**

197	(1)	Limit
197	(2)(5)	Sitting fees
197	(3)	Inadequate / no profit
197	(4)	Determination of MR
197	(6)	Mode of payment
197	(7)	Independent director
197	(8)	198
197	(9)	Excess remuneration
197	(10)	Waiver of excess remuneration
197	(11)	Increase in remuneration
197	(12)	Ratio to median employee
197	(13)	Insurance premium

➤ **Schedule V :**

- Part I : already discussed
- Part II :
 Section 1 : if the co. is having adequate profit then remuneration shall be paid as per section 197
 Section 2 : if co. is having inadequate / no profit then remuneration to managerial / personnel shall be paid in the following manner :

Limit A: effective capital

Effective capital	Per director p.a. O.R. of shareholder
Negative or < Rs.5 cr.	Rs. 60 lakhs
≥ Rs. 5 cr. < Rs.100 cr.	Rs. 84 lakhs
≥ Rs. 100 cr. < Rs. 250 cr.	Rs. 120 lakhs
Rs. 250 cr. or more	Rs. 120 lakhs + 0.01% [E.C. – 250 cr.]

Note: If company wants to pay exceeding the limit specified above then its requires special regulation of shareholders.

Effective Capital:

	Share capital [excluding share application money] & advance against shares	xxx
+	Reserves and surplus (excluding revaluation reserve)	xxx
+	Long term borrowings	xxx
+	Deposits (repayable after 1 year)	xxx
(-)	Investments (except for investment company)	xxx
(-)	Accumulated losses	xxx
(-)	Preliminary expenses	xxx
	Effective Capital	xxx

Limit B: Remuneration to managerial personnel can be paid without CG approval in professional capacity if following conditions are satisfied :

1. Managerial personnel should not have interest in capital of that company or its holding or subsidiary co.
Note : interest in capital means holding 0.5% or more paid up share capital
2. M.P. should not be related to director / promoters of that company or its holding or subsidiary company in last 2 years before the date of his appointment
3. Such MP should possess graduate level qualification and appropriate qualification or experience as may be required.

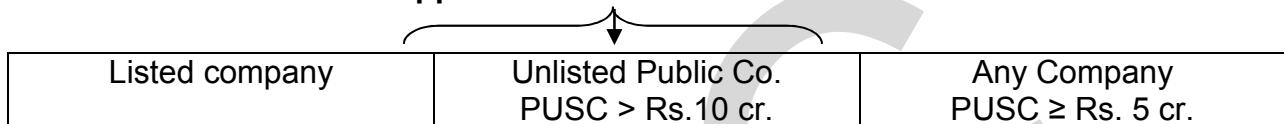
Common Conditions [Limit A and Limit B]

1. Approval of BOD / nomination and remuneration committee (if any) is required.
2. There should be no default in repayment of DEBT (including debentures, deposits, loans etc.)
3. Approval of secured creditors is required
4. OR / SR of shareholder is validated for 3 years

Section 3 : CG can exempt certain companies from complying with Section 1 and Section 2 without CG approval

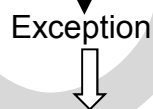
➤ **Section 203 : Whole Time KMP**

Appointment of Whole Time KMP



- 1) MD / WTD / Manager / CEO
 - +
 - 2) Company Secretary
 - +
 - 3) CFO
- whole-time company secretary

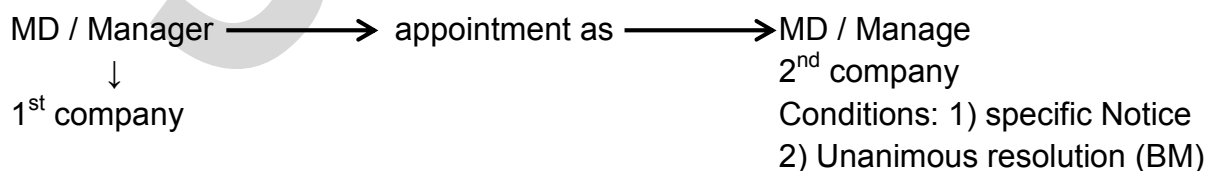
A person can become whole time KMP in maximum 1 Co,



- Can become whole time KMP in subsidiary company
- Can become other director in other co. with permission of BOD

Casual vacancy in case of whole time KMP :
It is mandatory to fill casual vacancy within 6 months

Appointment of M.D. who is already MD / Manager :



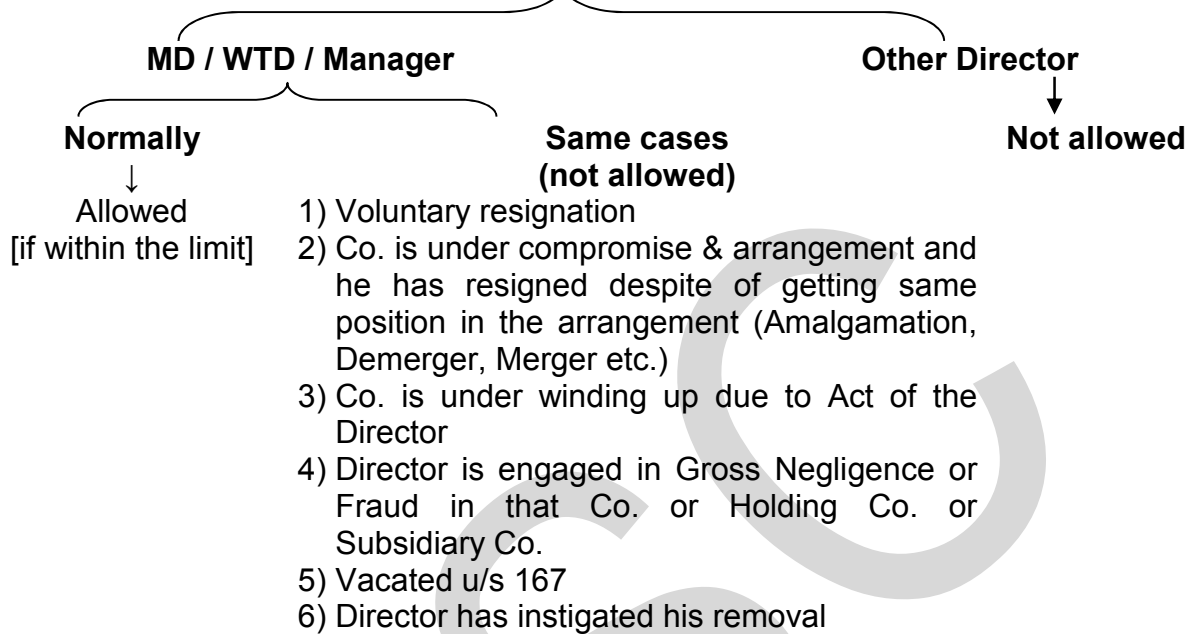
➤ **Same person ≠ chairperson + MD / CEO**

- 1) Approved by AOA
- 2) Co. carries single business
- 3) Co. carries multiple business

Conditions –

- 1) Separate CEO appointed for each business
- 2) Company's PUSC ≥ 100 crore
AND annual turnover ≥ 1000 crore

➤ **Section 202 : Compensation for loss of office**



➤ **Ceiling Limit**

- a) Period of unexpired term X Average remuneration
- b) Maximum 3 years X average remuneration

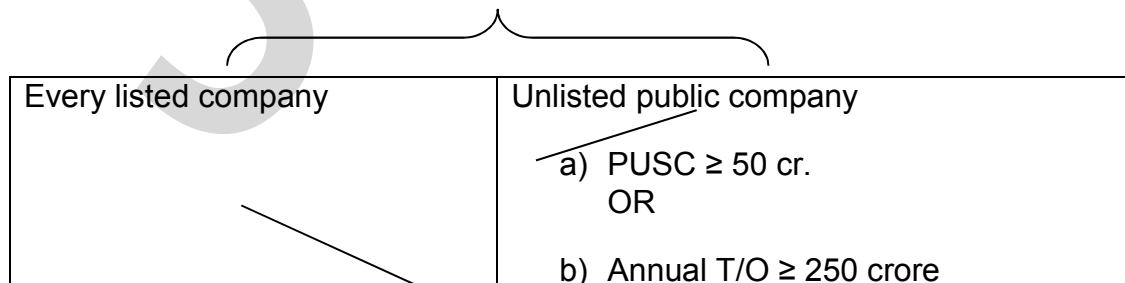
Avg. remuneration :

Remuneration earned in last 3 years

OR completed term whichever is less

➤ **Section 204 : Secretarial Audit**

Applicability



Secretarial audit by 'CS' in practice
To be annexed with board report

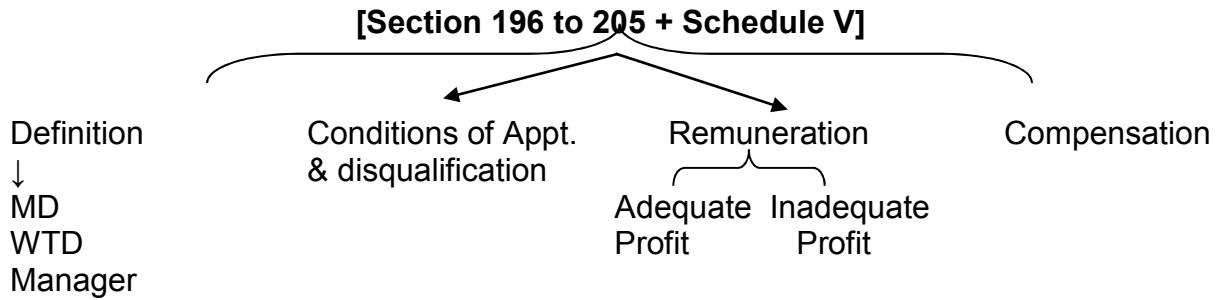
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Part - V

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MANAGERIAL REMUNERATION



➤ **Section 2(54) : Managing Director (MD)**

MD is a director who is entrusted with substantial power of management which is entrusted by

- Article
- Agreement
- Resoslution by shareholders in GM
- BOD
 - 1) MD has to be a Director
 - 2) If MD ceases to be director, he ceases to be MD
 - 3) MD is subordinate to BOD

➤ **Section 2(53) : Manager**

Manager is an individual (which is includes director) who have control of whole or substantially whole affairs of the company.

Manager may be or may not be Director

➤ **Section 2 (94) : Whole Time Director**

Whole time director is a director in whole time employment of a company

WTD = director + employee



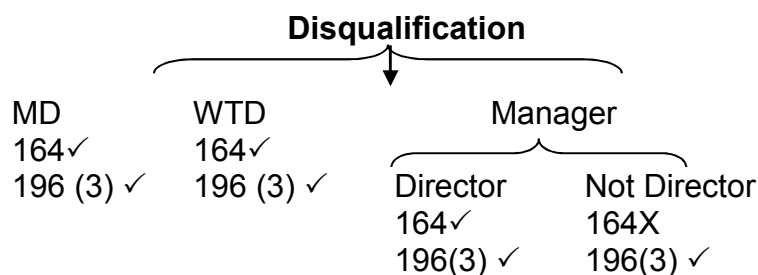
➤ **Section 196 :**

196 (1) MD and manager cannot be appointed simultaneously

196 (2) tenure

Managerial personnel can be appointed for a maximum period of 5 years. However, he is eligible for re-appointment of any number of times but only in last one year of tenure

196(3)



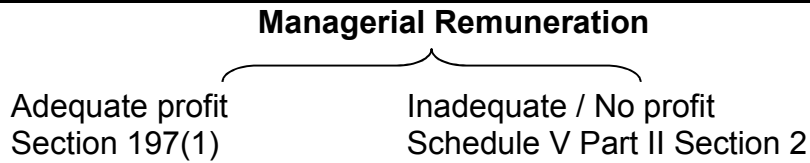
- Age should not be below 21 years and should not attain the age of 70 years or more
Exception → can be appointed if following conditions satisfied
 - a) Explanatory statement annexed with the notice
 AND
 - b) Special resolution passed by the shareholder
 Or CG + OR of shareholder
- Un-discharge insolvent at any time
- Compounded his creditors in personal capacity at any time
- Compounded means settlement at lower value due to financial adversity
- Convicted by Court for continuous period of imprisonment for more than 6 months at any time

	164	196(3)
- Moral turpitude or otherwise		
= 6 months	5 years	No disqualification
> 6 months < 7 years	5 years	Lifetime
≥ 7 years	Lifetime	Lifetime
- any other ground (> 6 months)	No disqualification	Lifetime

- **Section 196 (4) : Managerial**
 Appointment of managerial personnel requires prior approval of BOD and subsequent approval of shareholders in next general meeting
 196(5) – If it does not approve by shareholders in GM, then appointment is CEASES to be valid
- **Non applicability of Sec. 196**
 - Section 196(4) and 196(5) not applicable to private company
 - Section 196(2), 196(4) and 196(5) not applicable to Government Company
- **Schedule V [Part – I] : conditions for appointment of managerial personnel**
 1. No imprisonment or fine exceeding Rs.1000 under economic offenses
 2. No detention under COFEPOSA (Conservation Of Foreign Exchange And Prevention Of Smuggling Activities) Act, 1974

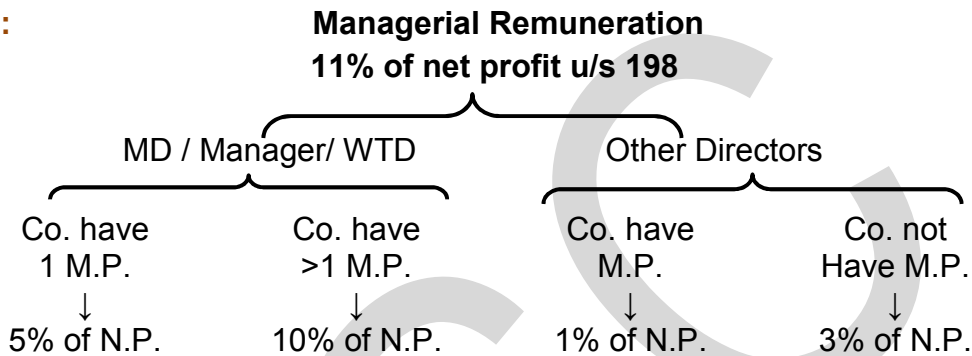
Note : In case of above two conditions, if managerial personnel is appointed with the approval of CG then at the time of reappointment, approval is not required again provided he does not attract further defect after appointment

 3. Age : should not be below 21 years and it should not have attained 70 years of age
 ↓
Exception: can be appointed by special resolution of shareholder for which explanatory statement attached to notice is
 4. Managerial personnel should be Resident
 ↓
 Stay in India in last 12 months before the date of appointment for business / vocation / employment.
Exception: In case of SEZ, a non-resident can be appointed as managerial personnel, provided he enters with proper, employment visa.



If profit is 7 crore then any remuneration upto 35 lakhs [7cr. x 5%] will be adequate profit and can paid u/s 197(1) if co. proposes to pay more than 35 lakhs then it should be accommodated under limit given under Schedule V, part II and Section 2 if it exceeds both the limits 197(1) and Schedule, then CG approval is required.

➤ **Section 197 :**
197(1) :



➤ **197(5)(2) : Sitting fees**

- a) Sitting fees shall be excluded from managerial remuneration
- b) Sitting fees can be paid maximum upto Rs.100,000 per director per meeting
- c) Sitting fees paid to women / independent director should not be less then as paid to other directors

➤ **197(3) : inadequate / No profit**



➤ **197 (4) : Determination of managerial remuneration (M.R.) subject to other provisions of the Act, M.R. shall be determined by :**

- Article Or
O.R. by shareholder or
S.R. by shareholders (if required by AOA)

Note: Remuneration paid to Directors in other capacity
Shall be included in M.R.

Exception: If such remuneration is paid in **“Professional Nature”** then it will not be included provided certain conditions satisfied:

- 1) Approval of BOD / nomination and remuneration committed (if any) is required AND
- 2) Such director possess appropriate qualification or experience

➤ **197 (6) : Mode of M.R.**

- Either Monthly
Or in % form
Or partly monthly and partly % form

- **197 (7) : Various benefits to independent director**
 - a) Company is not allowed to give stock option to independent director
 - b) Independent director is eligible for sitting fees
 - c) Independent director is eligible for reimbursement of expenses for attending board meeting
 - d) Independent director is eligible for profit related commission only if it is approved by shareholders

- **197 (8) : Net profit shall be calculated as per Section 198**

- **197 (9) : Excess remuneration**

Any excess remuneration paid to Director shall be refunded to company and until it is refunded it shall be held in separate trust until refund within maxi 24 years

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company [Companies Amendment Act, 2017]

- **197 (10) :**

The company shall not waive the recovery of any sum refundable to it unless approved by the company by special resolution within two years from the date the sum becomes refundable. [Companies Amendment Act, 2017] Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver. [Companies Amendment Act, 2017]

- **197 (11) : increase in M.R.**

M.R. can be increased within limit u/s 197(1) as per

 - Agreement
 - AOA
 - MOA
 - Shareholders
 - BOD

- **197 (12) :** ratio of remuneration of director shall be disclose in relation to median employee

- **197(13) :** Insurance premium paid for indemnification of loss due to Act of KMP shall be included in M.R. If such KMP is guilty excluded if such KMP is not guilty.

➤ **Key words to remember section 197**

197	(1)	Limit
197	(2)(5)	Sitting fees
197	(3)	Inadequate / no profit
197	(4)	Determination of MR
197	(6)	Mode of payment
197	(7)	Independent director
197	(8)	198
197	(9)	Excess remuneration
197	(10)	Waiver of excess remuneration
197	(11)	Increase in remuneration
197	(12)	Ratio to median employee
197	(13)	Insurance premium

➤ **Schedule V :**

- Part I : already discussed
- Part II :

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Rs. 250 cr. or more	Rs. 120 lakhs + 0.01% [E.C. – 250 cr.]

Note: If company wants to pay exceeding the limit specified above then its requires special regulation of shareholders.

Effective Capital:

	Share capital [excluding share application money] & advance against shares	xxx
+	Reserves and surplus (excluding revaluation reserve)	xxx
+	Long term borrowings	xxx
+	Deposits (repayable after 1 year)	xxx
(-)	Investments (except for investment company)	xxx
(-)	Accumulated losses	xxx
(-)	Preliminary expenses	xxx
	Effective Capital	xxx

Limit B: Remuneration to managerial personnel can be paid without CG approval in professional capacity if following conditions are satisfied :

1. Managerial personnel should not have interest in capital of that company or its holding or subsidiary co.

Note : interest in capital means holding 0.5% or more paid up share capital

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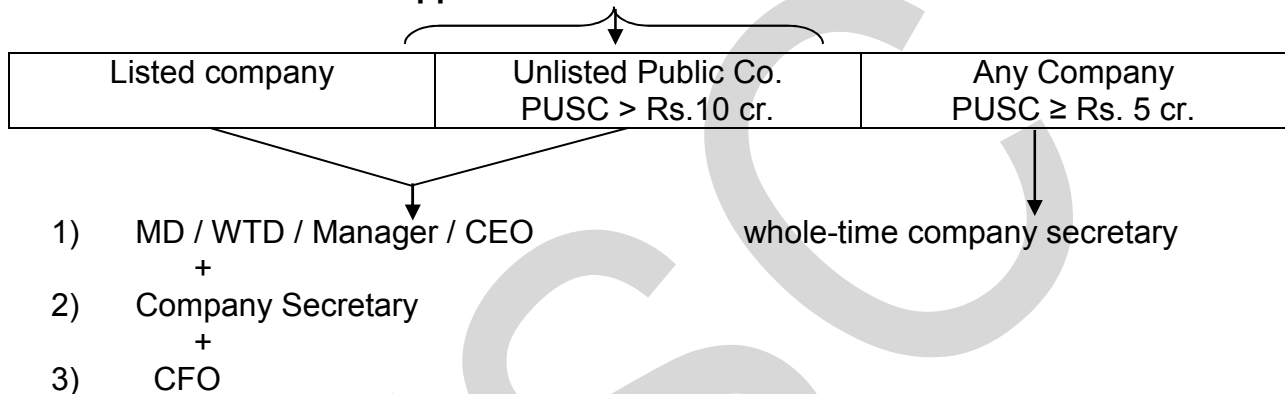
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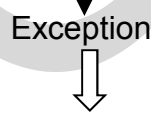
Section 3 : CG can exempt certain companies from complying with Section 1 and Section 2 without CG approval

➤ **Section 203 : Whole Time KMP**

Appointment of Whole Time KMP



A person can become whole time KMP in maximum 1 Co,

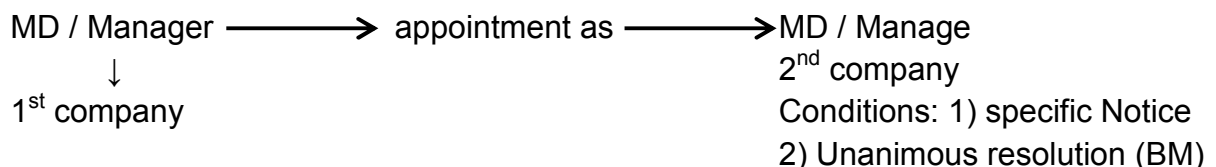


- Can become whole time KMP in subsidiary company
- Can become other director in other co. with permission of BOD

Casual vacancy in case of whole time KMP :

It is mandatory to fill casual vacancy within 6 months

Appointment of M.D. who is already MD / Manager :



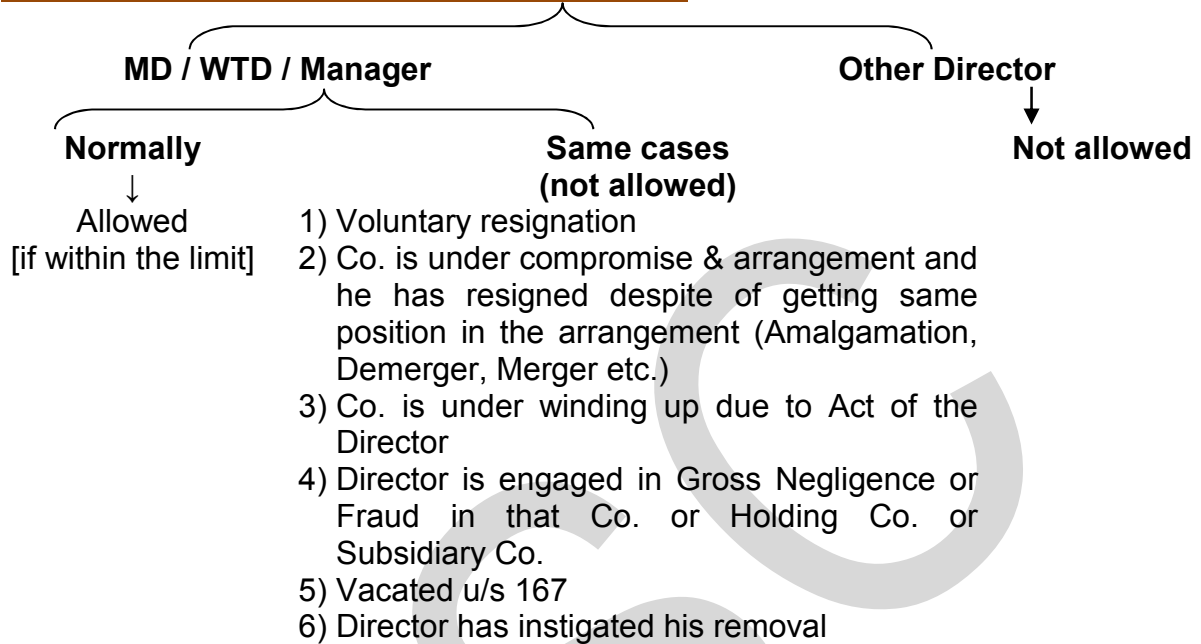
➤ **Same person ≠ chairperson + MD / CEO**

- 1) Approved by AOA
- 2) Co. carries single business
- 3) Co. carries multiple business

Conditions –

- 1) Separate CEO appointed for each business
- 2) Company's PUSC ≥ 100 crore
AND annual turnover ≥ 1000 crore

➤ **Section 202 : Compensation for loss of office**



➤ **Ceiling Limit**

- a) Period of unexpired term X Average remuneration
- b) Maximum 3 years X average remuneration

Avg. remuneration :

Remuneration earned in last 3 years
OR completed term whichever is less

➤ **Section 204 : Secretarial Audit**

Applicability

Every listed company	Unlisted public company
	a) PUSC ≥ 50 cr. OR
	b) Annual T/O ≥ 250 crore

Secretarial audit by 'CS' in practice
To be annexed with board report

OPPRESSION AND MISMANAGEMENT

Section 241 to Section 246

➤ **Oppression** – when the act of company is conducted in such a manner which is oppressive / harsh or burdensome in such a nature which is affecting basic rights of the members, is termed as oppression. For e.g.

1. Converting majority SH into minority, vice versa
2. Refusing to register shares of SH, so as to keep control over the company

Following will not be treated as oppression

1. Non-payment declaration of dividend
2. Company is exercising legal rights, for e.g. Forfeiture of shares having calls in arrears

➤ **Mismanagement** – when affairs of company is conducted in such a way that it is harmful to an against the interest of company.

For e.g.

1. MD is continuing even after expiry of his tenure
2. Diversion of fund
3. No serious effort to recover embezzled amount
4. Not conducting GM can be mismanagement)

Following grounds will not be treated as mismanagement

1. Incurring loss
2. Non declaration of dividend

Section 244

Application by member to NCLT on Q&M

Company has share capital

1. ≥ 100 members
2. 1/10th of total no. of members
3. 1/10th of issued SC or whichever is lower

Company does not have share capital

↓
1/5th of total no. of members

Note :

1. CG can also file an application to NCLT for O&M
2. Any member who is having calls in arrears is not eligible to file an application
3. Once application made then they cannot withdraw
4. Tenability of application will be required at the time of filing the application

Section 241

Grounds of oppression or mismanagement

Members	Central government
↓ (1) Affairs of company conducted (whether present or past) in a manner which is prejudicial (i.e. harmful) to - Public interest (eg. Employee, creditor etc.) - Interest of member (i.e. oppression) - Interest of company (i.e. mismanagement)	↓ Affairs of company conducted in a manner prejudicial to interest of public

- (2) There is material charge (substantial)
- In management (e.g. alternation in BOD, manager)
- OR
- Control of the company (e.g. Change in ownership or membership) due to which it is likely (probable) that affairs of the company can be conducted in a manner prejudicial to interest of members.
- Change in class of debenture holder or shareholder / creditor should not be treated as oppression

Section 242

Powers of NCLT (Tribunal)

Grounds of which NCLT may pass an order – NCLT has opinion that –

1. Affairs of the company conducted (past + present) in manner “prejudicial” to public interest or interest of member or interest of company
- AND
2. Conduct is just and equitable ground for winding up but winding up is prejudicial to such members

Power of NCLT

General Power

NCLT may take such action by which oppression may come to end

Specific power (R₃T₃P) (M₄I)

R₁ Regulation of affairs of the company to be conducted in future (eg how to run company in future)

R₂ Reduction in share capital

(eg. Passing order to buy shares of minority which is ultimately reducing entire SC, it can be done without approval of court)

R₃ Restriction on transfer of shares

(eg : restricting allotment by which majority become minority)

T₁, T₂, T₃ Terminating, selling aside or modification

Cancelling

Changing

Contract with MD / Manager	↓	Contract with other person		
Contract → MD / Manager (Eg salary of MD)	↓	It can be cancelled with prior approval of such person (e.g. Contract with consultant)	↓	Contract of delivering goods etc. in last 3 months which results in fraudulent preferences in case of insolvency (e.g. Create preference for creditor over other creditors)

P - Purchase of shares of one shareholder by another shareholder

(eg. Majority shareholder may be ordered to buy shares of minority)

M₁ – Managing Director, Manager & Other Directors

Removal	Undue gain made by them then it may be ordered to return it to victim / IEPF ↓ (if victim not identifiable)	Manner in which (current) MD/ Manager/ Director can be appointed after removal of existing one	Appoint such director who will report to NCLT ↓ Proportionate representative / director
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I Imposition of cost

Power to pass interim order

NCLT is having power to pass any interim order during any proceedings.

Power to alter MOA or AOA – if MOA or AOA is amended by NCLT and company wants to make any variation in that changes (by NCLT), prior approval of NCLT is required. After such changes it should be filed to ROC within 30 days.

Section 243

Consequences of termination or modification of agreements (contract)

1. No company can provide compensation for loss which has occurred due to cancellation of contract
2. MD, Manager or director cannot be appointed in that company for 5 years provided approval of tribunal is taken

Section 246

Section 337 – 341 (i.e. winding up) shall be applicable mutatis mutandis from section 241 – Section 245

Section 245 : Class Action

Class action – when there is a common injury and lawsuit is a civil legal action in which one or more individual sue a person or entity or on behalf of a larger group or a class of people

Application by member

Company has share capital

1. ≥ 100 members
2. Such % of total no. of members
3. Such % of issued SC

No share capital 1/5th of total no. of members

Note :

1. Applicant should not have calls in arrears
2. Application cannot be withdrawn once filed
3. Applicant can be member as well as depositor

Merit of Application

NCLT will consider following factors before accepting application –

1. Application should be in good faith
2. Evidence of contravention should be provided
3. Act should be affecting the entire class and not to that particular member or depositor
4. Evidence of not having personal interest should be provided
5. NCLT will verify probability of ratification of act

Relief sought under Section 245

Restrained from following acts –

1. Ultra vires to memorandum.
2. Breach of provision of memorandum.
3. Acting on resolution obtained by suppression of fact and if already acted, then cancelation of such suppression.
4. Acting in contravention of resolution passed by member.
5. Acting on transaction ultra vires to act.
6. Claiming damage from director, auditor or expert, if damage occurred due to their statement or omission of Act.

Action / Order NCLT may provide after acceptance of application

1. Public notice will be served.
2. If there are more than 1 application, then NCLT may decide one applicant as lead applicant.
3. Cost of expenses shall be initially form by company. however, later on it will be reimbursed by person who has conducted oppression.

***NCLT order shall be binding on all members, depositors, company and directors**

Punishment	
Company Min 5 lakhs or maximum 5 lakhs	Officer in default imprisonment upto 3 years & fine minimum Rs. 25,000 maximum 1 lac

Note :

Any application which is vexatious (out of envy) or frivolous, the applicant has to pay cost, any amount upto Rs. 1,00,000

PRODUCER COMPANY (PART TITLE IX A)

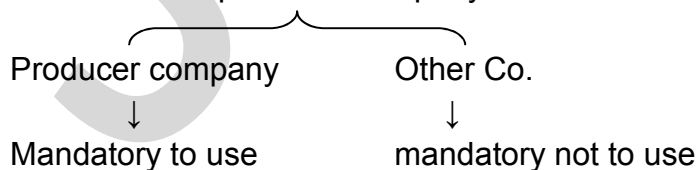
1. Introduction
2. Memorandum
3. Article
4. Amendment in article
5. Limited return withheld price
6. Patrons
7. Patronage bonus
8. Formation –
 - i) Direct
 - ii) Conversion
9. Membership –
 - i) Nomination
 - ii) Surrender
 - iii) Transfer
 - iv) Expulsion
 - v) Benefits
 - vi) Voting rights
10. Directors
11. Board meeting
12. General meeting
13. Vacation
14. Investment
15. Miscellaneous

Introduction

1. Producer ≠ Public Company

≠ Private Company
= Producer Company

- Name ends with “producer company ltd.”



Contravention – Max. Rs.10,000

2. Producer company Applicability

Part title IX A
(Overriding)

Companies Act

Memorandum

In memorandum of producer company, it shall be same provision as that of other company but its object clause should contain provision of section 581B

↓

Producer company shall exclusively engage in activities related to “primary produce” or “producer”	
<p style="text-align: center;">Primary Produce</p> <ul style="list-style-type: none"> - Agriculture - Floriculture - Horticulture - Animal husbandry - Bee farming - Handloom - Handicraft - Cottage industry 	<p>Producer (Any person engaged in primary produce activity)</p>

Activities related to primary produce

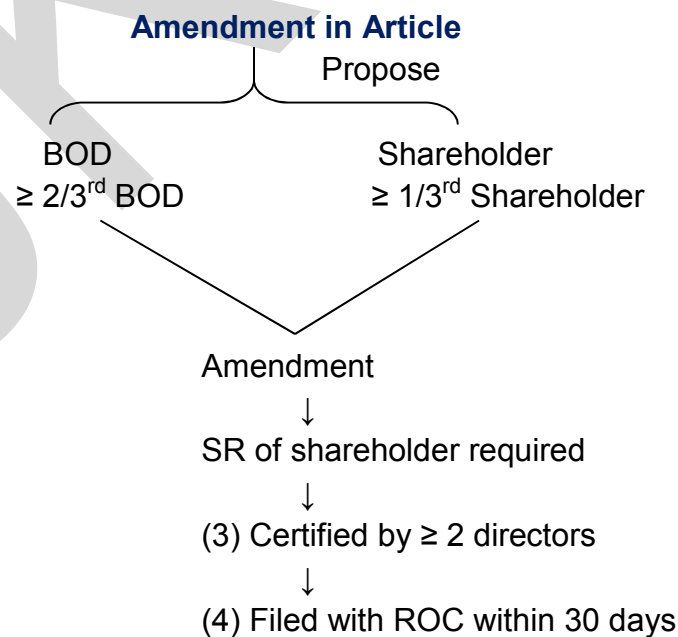
Harvesting, ploughing, brewing, drying, marketing etc.

Activity related to producer

Education, awareness finance power etc.

Article of Association

- AOA should contain principle of mutual assistance
- Membership in producer company should be voluntarily
- Producer company cannot make political contribution
- Producer company can make contribution to other co-operative society or producer company, maximum 3% of net profit of preceding F.Y.



Limited Return

Maximum rate of return of dividend as per AOA of company

Withheld price

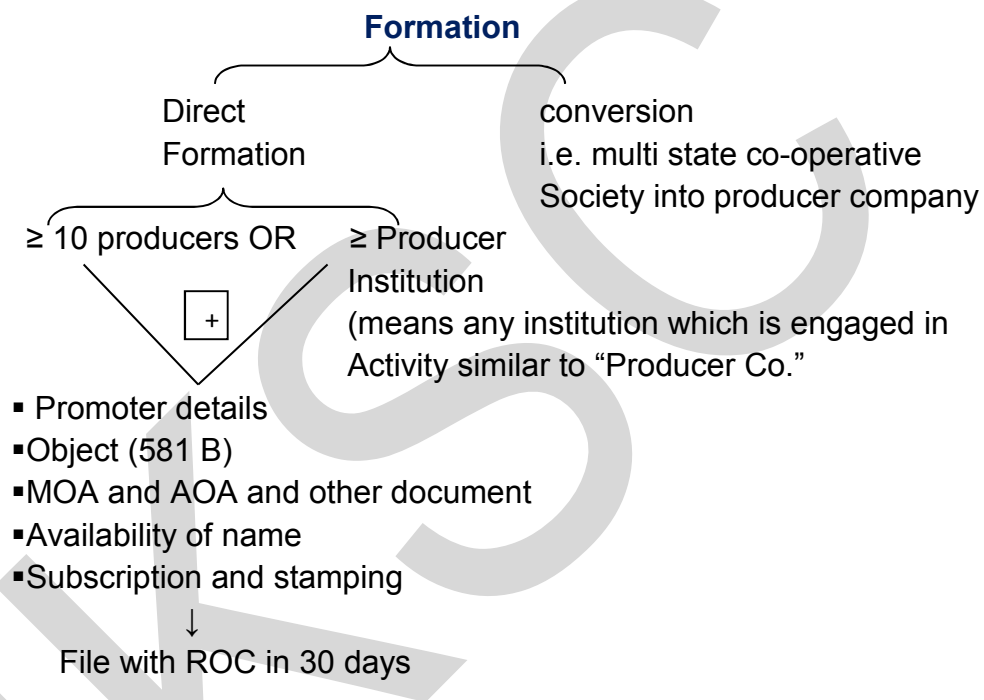
When producer company buy primary produce from producer then it may retain certain % of transaction as per article which is termed as withheld price. It is paid to produce either lump sum or in the form of shares after certain interval.

Patrons

When producer avails services from Producer Company then producer will be termed as patron

Patronage bonus

Apart from limited return, producer is eligible for additional benefit for being patron, this is called patronage bonus

**Conversion of MSCS into Producer Company**

1. Approval $\geq 2/3^{\text{rd}}$ of total members required for conversion
2. Copy of notice / minutes/ resolution by member
3. Details of embers / director / CEO
4. Document i.e. MOA, AOA and other document of producer company
5. Declaration that business activity of producer company shall be within the scope of section 581B

Note : after conversion

All assets, liabilities, receivables, payable, licence of MSCS shall vest in Producer Company
All employees of MSCS will become employers of Producer Company, however they can resign without compensation

Membership

- Nomination - within 3 months member should appoint nominee who will receive shares after death of producer. However at the time of nomination, nominee may not be producer. But after death when shares are getting transfer, such nominee must be producer otherwise nominal value of such shares shall be given (i.e. not admitted as member)

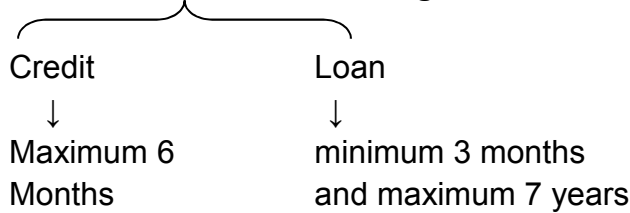
- Surrender – producer can surrender its shares at nominal value to producer company
- Transfer – producer can transfer its shares to producer at nominal value
- Expulsion – special resolution (SR) of shareholders required to expel producer

Producers can be expelled on following ground

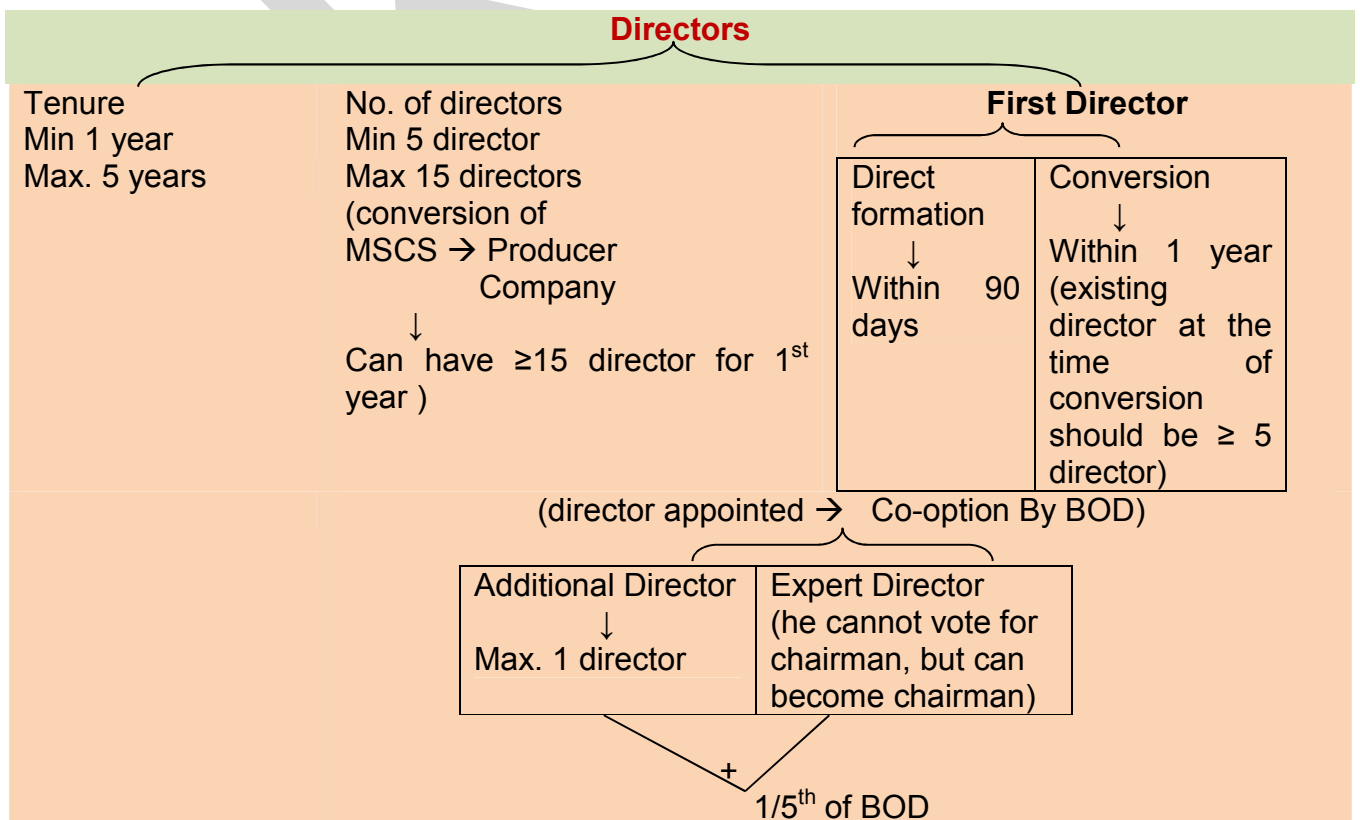
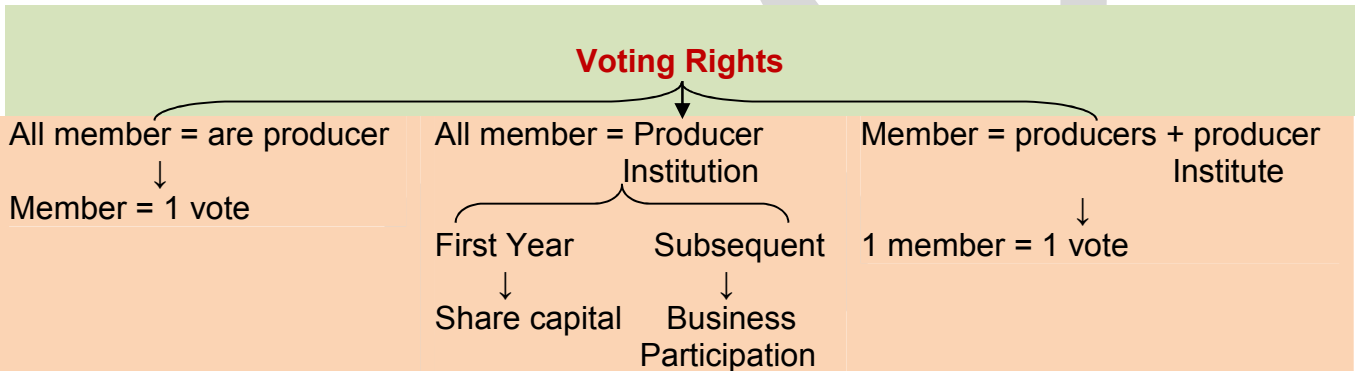
- Producer has entered into competing business
- Members ceases to be producers

Members will be expelled after receiving nominal value of shares

Benefits – members are eligible for credit and loans

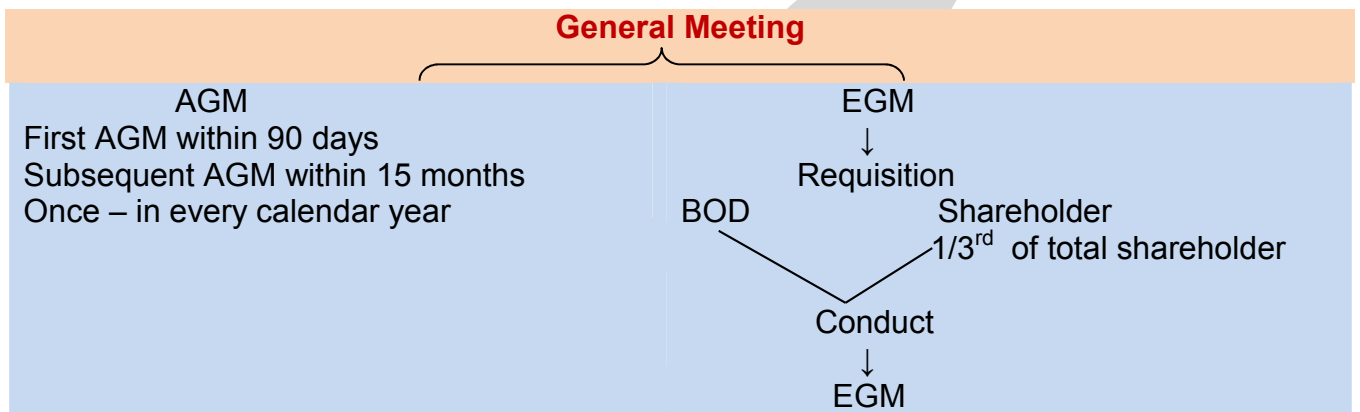


Note : credit and loan can be given to directors after PRIOR approval of shareholder



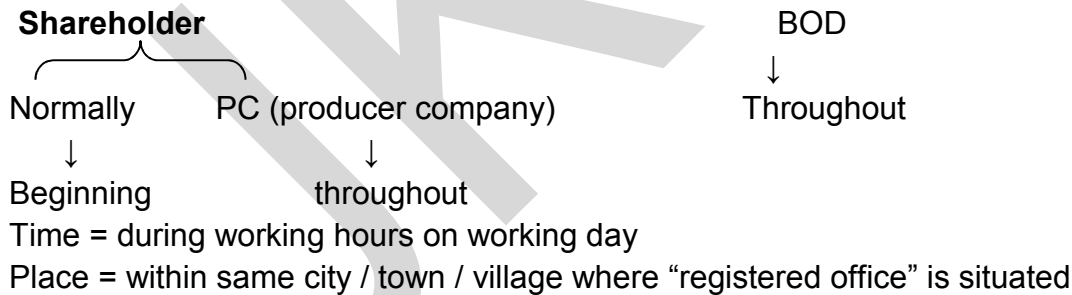
Board Meeting

	Companies Act	Producer Company										
1. No. of Board Meeting	≥ 4 BM in a year max. gap- 120 days	≥ 4 BM in a year, atleast 1 in a quarter <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>A</td> <td>J</td> <td>S</td> <td>D</td> <td>M</td> </tr> <tr> <td></td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> </table>	A	J	S	D	M		1	2	3	4
A	J	S	D	M								
	1	2	3	4								
2. Length of notice	Atleast 7 days short notice in case of short notice – attended / ratified by one independent director	Atleast 7 days Short notice – allowed in reasonable case										
3. Quorum	1/3 rd of total director or 2 directors which is higher	1/3 rd of total director or 3 directors which is higher										



General Meeting

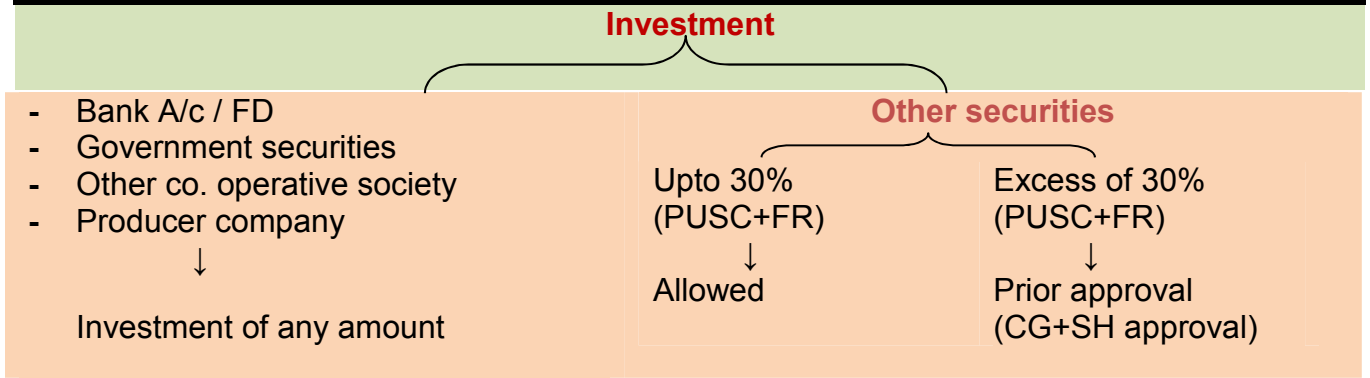
Length of notice = 14 days
 Quorum – 1/4th of total shareholders
 It should be present throughout shareholder meeting



Vacation

- 1) Convicted imprisonment ≥ 6 months on moral turpitude ground
- 2) Not filed – annual Account & annual return for continuous period of 3 years
- 3) Producer Company ← Loan any person
Default ≥ 90 days
- 4) Director ← Loan Producer Company
Default
- 5) Not conducting meeting for election of appointment of director
- 6) Not conducted AGM / EGM

Exception – not conducted due to natural calamity



Matter to be discussed at general meeting

1. Issue of bonus shares
2. Adoption of annual accounts
3. Issue of patronage bonus
4. Declaration of limited return and patronage
5. Approval (general approval) of any other matter which is to be discussed in general meeting
6. Approval of limit of loan to director

Company Secretary

Annual turnover ≥ 5 crore in all preceding 3 FY

↓
1 whole time CS

Bonus Shares

Recommend – BOD

Declare – shareholder

↓

Capitalization of reserve