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Vaibhav Vinita Taparia	68
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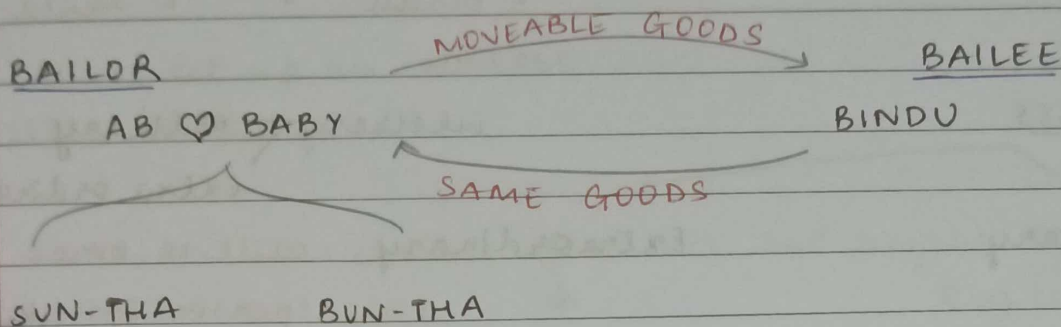
CA INTER LAW - NOV 23

INDIAN CONTRACT ACT, 1872	01 - 18
NATURE OF COMPANY	19 - 22
MEMBERSHIP IN A COMPANY	23 - 25
KINDS OF COMPANY	26 - 36
DIVIDENDS	37 - 42
INCORPORATION OF COMPANY	43 - 50
REGISTRATION OF CHARGES	51 - 57
DEPOSITS	58 - 63
MEMORANDUM OF ASSOCIATION/ ARTICLES OF ASSOCIATION	64 - 70
PROSPECTUS	71 - 80
ACCOUNTS OF COMPANY	81 - 96
AUDIT AND AUDITORS	97 - 107
MEETINGS AND GENERAL	108 - 120

INDIAN CONTRACT ACT, 1872 (12-16m)

BAILMENT

Q1. Explain bailment and its element.

* Specific
purpose

As per Sec 148 of Indian contract Act, 1872 bailment is a contract where goods are delivered by one person to another for some specific purpose and when the purpose is over it is to be returned or disposed off as per the directions of person delivering the goods.

The person who gives the goods is called as Bailor and to whom the goods is given is called as Bailee.

ELEMENTS

- C - Contract / consideration { may be there
- O - Ownership - Bailor { may not
- M - Moveable goods
- P - Possession changes { Bailee
- S - Same goods should be returned.

Q2. What are the types of Bailment?

NON GRATITOUS

(with consideration)

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GRATITOUS

1

(without consideration)

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- (iv) TO return any ACCRETION (extra benefit) in the goods to bailor.
- (v) TO return the same goods to the bailor.
- (vi) NOT to set up an ADVERSE title to the goods.

Q4. What are the duties of bailor and rights of bailee?

Duties of bailor

Rights of bailee

(i) Duty to compensate for faults

NGB

GB

- known & unknown faults.

- known faults

(ii) Duty to bare expenses

NGB

GB

- extraordinary expenses

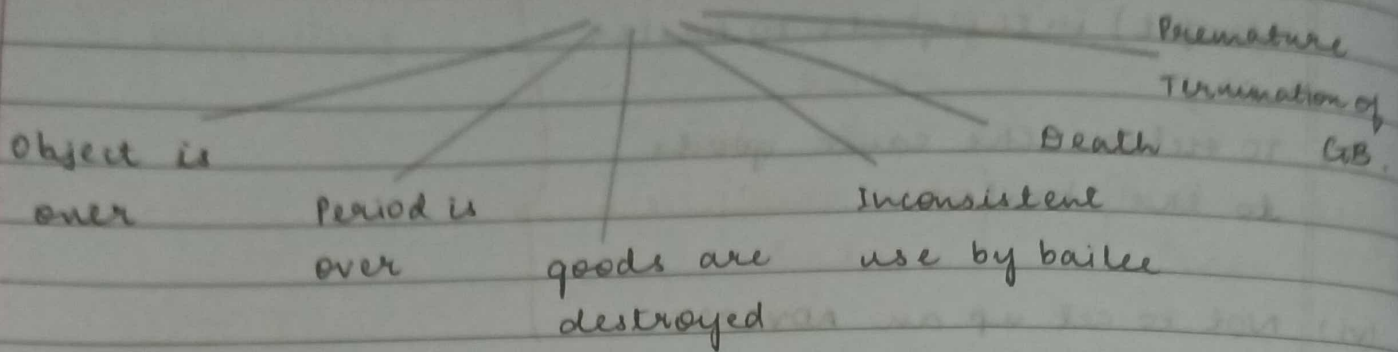
- ordinary & extraordinary expenses if the bailment is for the exclusive benefit of bailor.

If bailor is negligent, bailee has a right to sue the bailor to recover these expenses.

(iii) Duty to accept the goods when bailee returns it.

(iv) Duty to compensate bailee for any loss suffered due to his defective title.

Q.5 When does bailment come to an end?



Q.6 Explain rights and duties of finder of goods. Sec 71

Duties

1) Same as bailee

i.e.

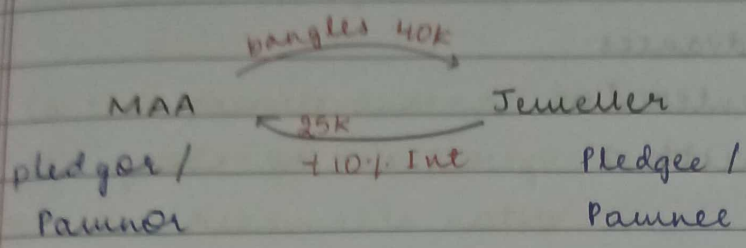
- (i) To take proper care of the goods.
- (ii) Not to use the goods for own purpose.
- (iii) Not to mix them with his own goods.
- (iv) Make efforts to find the true owner.

Rights

- (i) Right to retain the goods for expenses incurred, but he cannot sue (right of lien)
 - (ii) He has a right to sue for reward provided he was aware.
 - (iii) Right of sale.
 - If the true owner not found
 - Does not accept the goods.
 - Goods are perishable
 - Lawful charges are \geq $\frac{2}{3}$ of its market value.
- (66-67.1)

PLEDGE

Q.7 Explain Pledge.



As per Sec 172 of Indian Contract Act, 1872 Pledge is a bailment of goods given as a security for repayment of debt or performance of promise.

The person who gives the goods is called as **Pledgor/Pawnor** and to whom it is given is called as **pledgee / pawnee**.

Q.8 Distinguish between Bailment and Pledge.

Bailment	Pledge
(i) Definition :	(i) Definition
(ii) Bailee can use the goods	(ii) Pledgee cannot use the goods
(iii) It can be done only by owners.	(iii) It can be done even by non owners. Ex: Agent, co-owners.
(iv) Every bailment is not a pledge.	(iv) Every pledge is a bailment

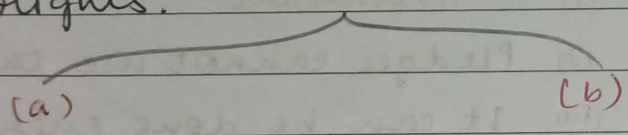
Q.9 Explain rights and duties of pawnee.

Rights	Duties
(i) The pawnee can retain the goods until the principle amt, interest and all necessary expenses in respect of goods pledged are repaid to him.	Same as bailee (Refer Q.3)

(ii) If there is a subsequent advance without any security, the right to retain also extends to such subsequent advances unless parties have entered in a specific agreement with a contrary view.

(iii) In case of extra ordinary exp the pledgee has no right of lien to claim such expenses but he can file a suit to recover them.

(iv) If pawnor makes default pawnee has two alternative rights.



(a) He can retain the goods & file a suit for repayment

(b) He can sell the goods after giving a reasonable notice to the pawnor.

(a) If deficiency can be recovered from pawnor if surplus should be paid to pawnor

3.10 Rights and duties of pawnor

Rights

Duties

(i) The pawnor has a right to redeem the goods i.e he has a right to

claim back the securities pledged on repayment of debt, interest and other charges. (3 years)

Same as bailor
(Refer Q.4)

(ii) In case pawnnee intends to sell the goods he has a right to receive reasonable notice.

If he does not receives notice, he shall have a right to claim any loss from such sale

(iii) In case of a sale of goods, if there is a surplus he has a right to receive that surplus.

(iv) He has a right to claim any accruals (accretion) to the goods pledged.

(v) If there is a negligence on part of pawnnee, he has a right to claim the same

Q.11 When is a pledge by non-owner valid?

Very Imp - ACSV

Generally, an owner can create a valid pledge.

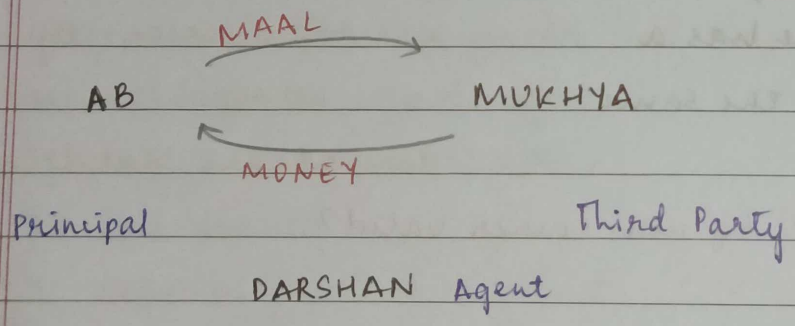
But in the following cases even a non-owner can create a valid pledge.

(i) By mercantile agent: A pledge created by agent in the ordinary course of business is valid provided pawnnee acts in good faith.

- (ii) By co-owner: One of the joint owner of the goods can create a valid pledge with the consent of other co-owners.
- (iii) By seller or buyer in possession: A seller in possession of goods after sale and a buyer in possession of goods before sale can create a valid pledge if the pawnee acts in good faith.
- (iv) By a person in possession under voidable contract: If person obtains possession of goods under voidable contract, a pledge created by him is valid if the contract was not been cancelled (rescinded) before the contract on pledge and the pawnee acts in good faith.

AGENCY

B.12 Explain agency and its elements.



RISHTI

1) As per Sec 182 Agency is a relationship that arises when agent is appointed by principal to represent principal in dealing with third party.

2. Acts of Agent are deemed to be acts of principal.
Act of Agent are binding on principal.

3. Principal ← major sound mind / Agent ← Major sound mind

If agent = Incompetent, he can be appointed but principal cannot recover anything from incompetent agent.

4. Agent is responsible to third party even if no consideration is received from third party.

Q.13 Agency by estoppel

Principal by estoppel

A person either by his conduct or statement leads another person to believe that a certain person is his agent then he is estopped from denying the liability.

Agency by estoppel

where a person by his words or conduct leads another person believes that he is the agent of a certain person, then he is estopped from denying the liability.

Q.14 Agency by holding out

- (i) It is a variation of agency by estoppel,
- (ii) A positive / affirmative act by principal is required.
- (iii) Acts should be done within principal's authority.

Q.15 Agency by necessity.

Sometimes in extra ordinary circumstance a person may be required to act as agent for another

without obtaining the consent of that other person.
Such agency is called agency by necessity.

(ii) Following conditions should be satisfied:

There should be
real & definite
necessity.

It is impossible
to communicate
with the principal
within time available

The person acting
as agent should
act in the
bonafide interest
of principal.

S.16 Agency by legal presumption

When a married woman is co-habiting with her husband, she can pledge her husband's credit for her necessities.

[Applicable only if co-habiting (staying together)]

S.17 Agency by ratification

If agent acts $\left\{ \begin{array}{l} \text{outside} \\ \text{without} \end{array} \right\}$ authority, then
principal has option $\left\{ \begin{array}{l} \text{Accept} \\ \text{Rejects his Acts} \end{array} \right.$

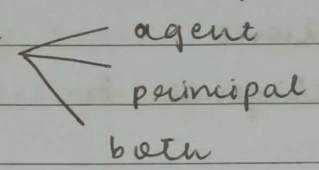
If $\left\{ \begin{array}{l} \text{Accepted} \\ \text{Rejected} \end{array} \right. \rightarrow$ Agency by ratification is in existence;
principal is liable to third party
 \rightarrow Agent is personally liable to third party

ELEMENTS :

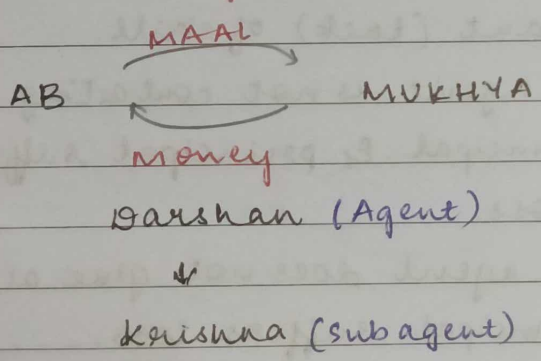
- R - Retrospective effect.
- A - Assumed to be accepted reasonable time is over.
- T - Third party is never put to a loss.
- I - (P) - Identifiable = competent
- F - (P) - full knowledge of all material facts

- I - illegal acts \times only legal acts = ratified
- E - (P) - Existence
- D - (D)ivisible transactions - Partial ratification \checkmark Ex: Fan, Light
- Indivisible transactions - Partial ratification \times

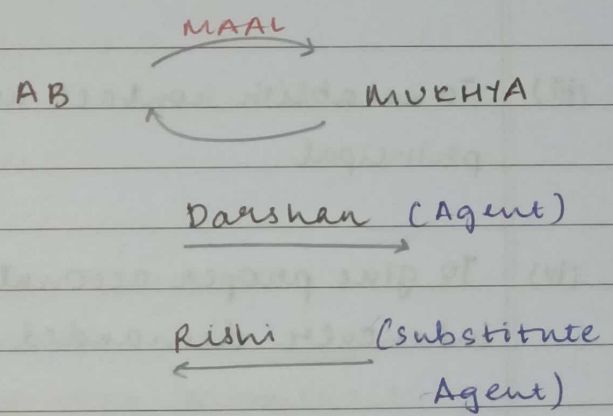
Q. 18 Undisclosed principal

- (i) Principal is in existence but does not disclose himself, therefore agent contracts with third party as if he is principal.
- (ii) This is like a fraud.
Therefore voidable at the option of third party
- (iii) The third party may sue 
 - agent
 - principal
 - both
- (iv) Third party can also refuse the performance if third party proves that they would not have entered into the contract had they known the principal.

Q. 19 Sub-Agent



Substituted Agent



- | | |
|---|---|
| <ul style="list-style-type: none"> (i) He is appointed by the agent. (ii) There is no privity of contract b/w the principal & sub-agent. (iii) Agent is responsible for the acts of sub-agent. | <ul style="list-style-type: none"> He is named by the agent. There is a privity of contract b/w principal & substituted agent. It is the duty of agent to name a efficient / competent person. If such person is |
|---|---|

not efficient and principal suffers a loss, principal can recover from the agent. But the agent cannot guarantee the character of substituted agent.

Q.20 What are the duties of Agent and Rights of Principal

Duties of Agent

- (i) To follow expressed / implied instructions.
- (ii) To Act with diligence & skill.

Rights of principal

- (i) If instructions are not followed, principal suffers loss; he can sue agent to recover loss.

- (ii) If Agent is not acting with diligence and skill, principal suffers.

Recovery is not possible.

If principal was aware of want (lack) of skill.

- (iii) To establish contact with principal.

- (iii) If agent is not contacting the principal & principal suffers loss.

- (iv) To give proper accounts whenever demanded.

- (iv) If agent does not give accounts principal suffers loss.

Q.21 Duties of Principal

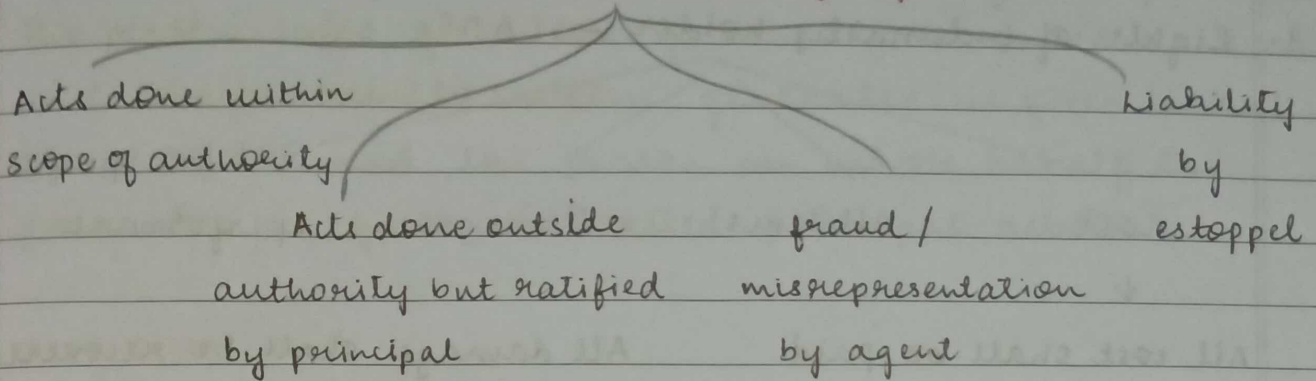
- (i) To indemnify for acts done in good faith.
- (ii) To indemnify for any injury caused due to his neglect.
- (iii) To pay remuneration / comm / fees to agent.

Rights of Agent

To claim from principal.

(iv) TO indemnify for legal acts.

Q.22 When is principal liable for acts of agent?

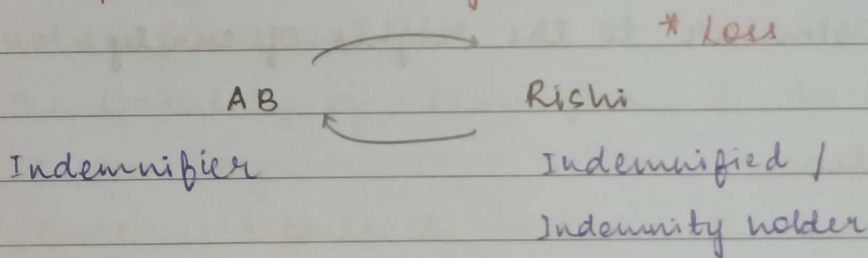


Q.23 When is agent personally liable?

- L - Lack of instructions / diligence / contact / accounts
- I - Illegal acts
- A - Acting in his own name / without authority
- B - (Bhood) undisclosed principal
- L - Agent accepts liability by signifying a negotiable instrument.
- E - Existence of custom / usage of trade.

GUARANTEE

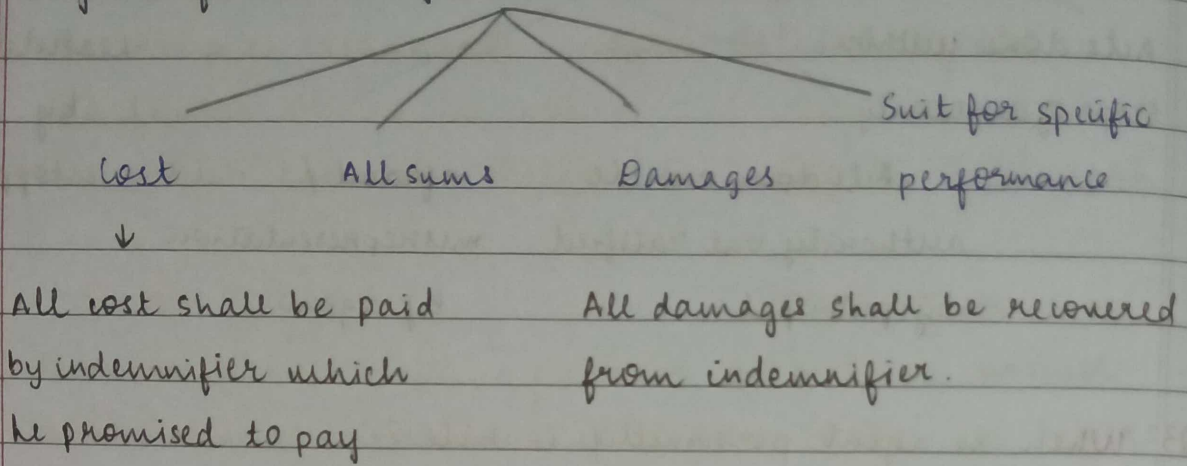
Q.24 - Explain indemnity



As per Section 124, of Indian contract 1872, A contract of indemnity is a contract where one party (indemnifier) save the other (indemnified / indemnity holder) from loss caused to him by conduct of promisor himself or by the contract conduct of any other person.

2 Elements : $\left\{ \begin{array}{l} \text{All essentials of a valid contract} \\ \text{Indemnity - holder must have suffered a loss} \end{array} \right.$

3. Rights of indemnity holder - LADS

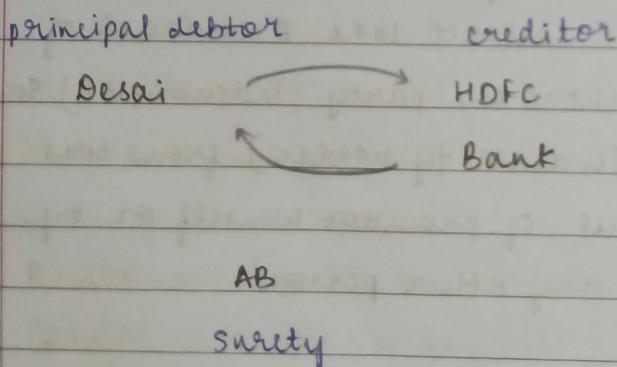


All sums shall be recovered from indemnifier.

Suit for specific performance: The indemnified can file a suit for specific performance within 3 years on the indemnifier.

4. Rights of indemnifier - There are no rights mentioned in the contract act. However, as per decided case law his rights are similar to the rights of surety.

3.25 Explain guarantee



As per Sec 126 of Indian Contract Act, A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of a default. The person who gives the guarantee is called as surety and the person to whom guarantee is given is called the creditor and the person on whose behalf the guarantee is given is called principal debtor.

ELEMENTS:

- (i) There must be debt existing, which should be recoverable
- (ii) There are three agreements between principal debtor, creditor and surety.
- (iii) The liability of principal debtor is primary and surety's liability is secondary.
- (iv) It must have all essentials of valid contract.

Q. 26 Distinguish between indemnity and guarantee.

Indemnity

- (i) There are 2 parties i.e Indemnifier and Indemnity holder/Indemnified.
- (ii) The liability of indemnifier is primary.
- (iii) There is 1 contract
- (iv) Security is given for reimbursement of loss.
- (v) Indemnifier cannot sue third party for the loss.

Guarantee

- (i) There are 3 parties i.e principal debtor, creditor, surety.
- (ii) The liability of surety is secondary.
- (iii) There are 3 contracts.
- (iv) Guarantee is given by surety to the creditor.
- (v) Surety can sue principal debtor.

Q.27 Explain surety's liability.

- (i) The liability of surety is co-extensive combined with the liability of principal debtor.
- (ii) The liability of surety is secondary i.e. his liability arises only if there is a default by the principal debtor.
If the creditor holds security from principal debtor, the creditor need not first exhaust his remedies against the securities before suing the surety unless the contract specifically so provides.
- (iii) If there is a condition precedent to the surety's liability he will not be liable unless the condition is first fulfilled.
- (iv) The surety may declare his guarantee to be limited to a fixed amount.

Q.28 Explain surety's right.

(a) Right against principal debtor:

Right of subrogation



If the principal debtor has defaulted & surety has paid the amount, he has a right to claim the same from principal debtor. This right is called subrogation.

Right of indemnity



In contract of guarantee there is always an implied promise by the principal debtor to indemnify the surety.

(b) Right against the creditor:

- (i) If the surety has paid all the liabilities of principal debtor he is entitled to claim all the securities which were given by the principal debtor to the creditor.

It is immaterial whether the surety has knowledge of those securities or not.

If the creditor parts with such securities (sell), the surety is discharged to the extent of value of the security. 120,000 Ex:

(ii) The surety can claim set off or counter claim if any which the principal debtor had against the creditor.

X (iii) In case of fidelity guarantee the surety can direct the creditor to dismiss the employee whose honesty he was guaranteed, in the event of proved dishonesty of the employee.

The creditor's failure to do so will exempt the surety from his liability.

(iv) The surety has a right to file Quia timet action i.e. to ask the creditor to sue the principal debtor and recover the debt before it has become due.

(c) Right against co-sureties:

When a surety has paid more than his share he has a right of contribution from other sureties who are equally bound to pay with him irrespective of the agreement between them.

Q.29. Explain continuing guarantee and when it is revoked.

A guarantee which extends to series of transaction is called continuing guarantee.

It can be revoked in following cases:

(i) By notice - surety will be liable for earlier transaction i.e. prior to the notice.

- (ii) By death of surety: The legal heir will be liable only if it was expressly provided in the contracts and to the extent of inherited property.
- (iii) By any variance in the terms without the consent of surety
- (iv) By discharge of principal debtor by an act / omission of the creditor.
- (v) By misrepresentation / concealment of material facts by the creditor.
- (vi) Failure of co-surety to join the guarantor

Q. 30 Explain irrevocable agency. «ILA»

An agency which cannot be revoked is called as irrevocable agency.

- (i) Agency coupled with interest, i.e. agent has interest in the property which forms the subject matter of the agency.

Agency will be valid even if the principal dies / becomes insane / becomes insolvent

- (ii) where agent has incurred personal liability

- (iii) where agent has partial authority

Refer Q. 7, Q. 8, Q. 9 pg no. 1.53 - module

Refer Q. 6, Q. 8, Q. 9, Q. 10, Q. 11 - pg. 1.25

Refer Q. 7 and Q. 6 - pg no - 1.85 - module

NATURE OF COMPANY (2-4m)

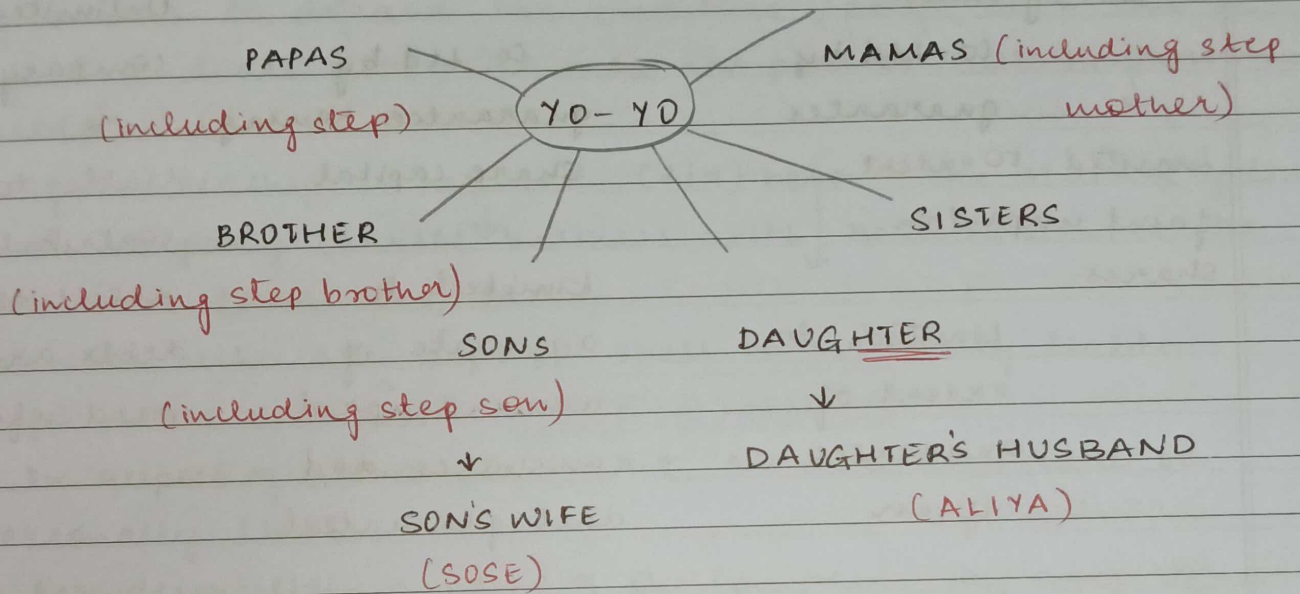
2(77)

2(20) Q.1 Explain relatives - 2(77)

44

453

- AB ♥ Baby
(Husband & Wife)
- Members of HUF
- Others



Q.2 Define Co & its characteristics

As per Sec 2(20) of companies Act, 2013 company is formed and registered under COA 2013 or any previous law

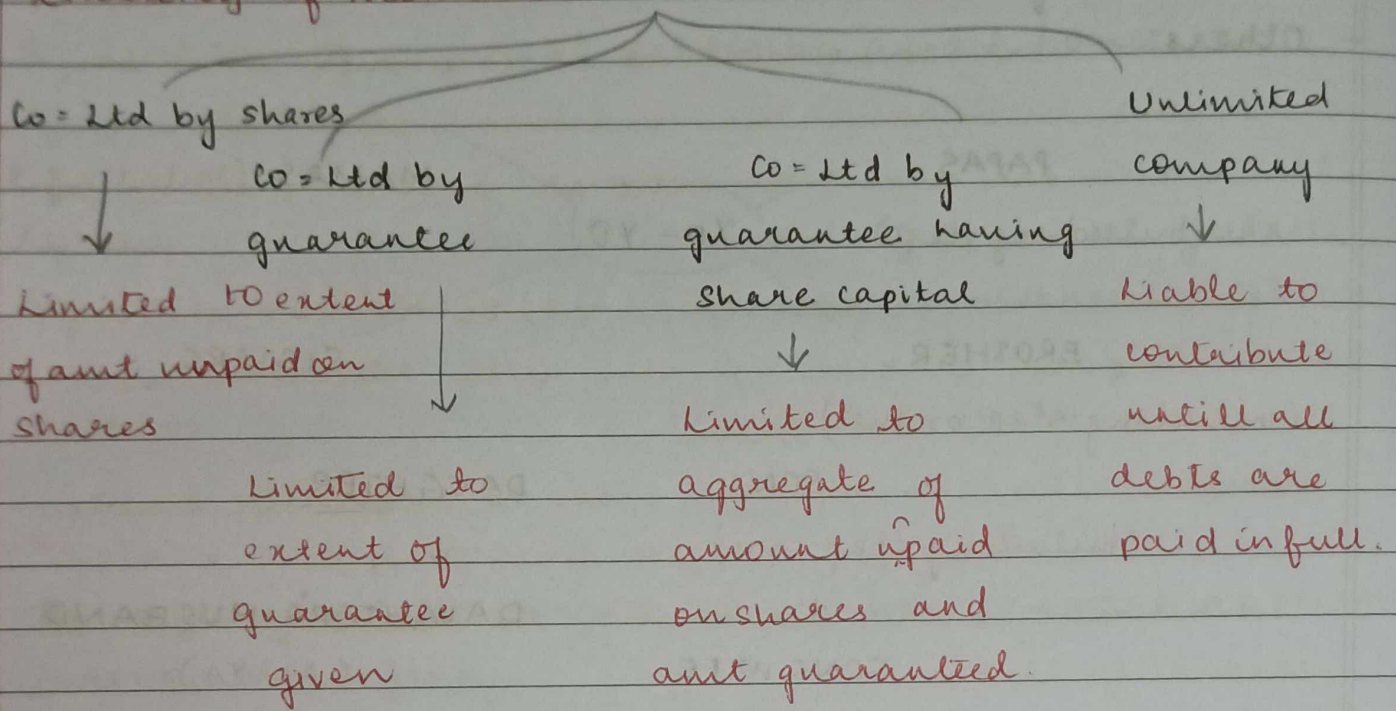
Characteristics :

- 1) Separate legal entity : Imp [Salomon v/s Salomon Co Ltd]
 - (i) The property of the Co is separate from property of members (directors).
 - (ii) A Co can sue others and be sued only in its own name.
 - (iii) Members / directors are not the agent of the Co.
 - (iv) There is a fictional veil b/w the members and the BOD which is called corporate veil.

2. Perpetual succession:

- (i) It is an artificial person formed by law and therefore can be wound only as per law.
- (ii) Member may come and go but the co. goes on forever. Therefore a company never dies.

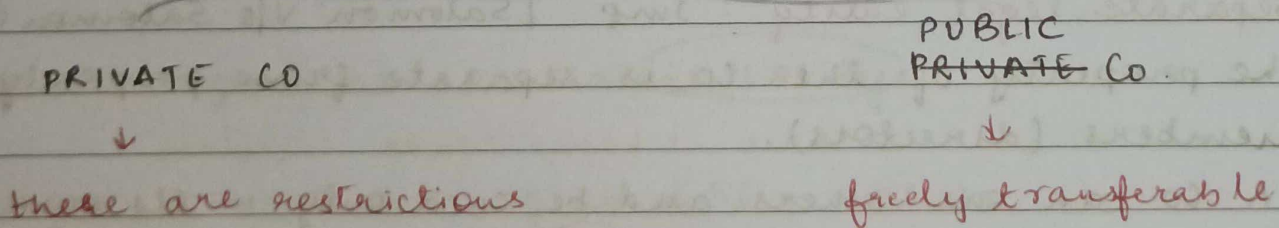
3. Liability of members:



4. Common Seal

- (i) A company MAY have common seal.
- (ii) It is the official signature of co.
- (iii) It should contain the name of place where it is used.

5. Transferability of shares



6. Co. is an artificial person, but managed by natural persons called BOD

7. A Co can sue and can be sued by others

9.3 Lifting of corporate veil

(A) Statutory Provisions

(B) Judicial decisions

(A) Statutory provisions

- (i) If at the time of winding up it is proved that the intention of Co was to defraud the creditors / other, LOCV can be lifted and all directors who are parties will be personally liable.
- (ii) If membership is reduced (2/7) below the statutory limit, and company carries business with reduced membership for more than 6m, then, member who are aware shall be personally liable for debts contracted **AFTER 6 MONTHS**
- (iii) In respect of ultra vires Act, all directors will be personally liable.
- (iv) Mis-description of name of the Company, by any officer shall make him personally liable.

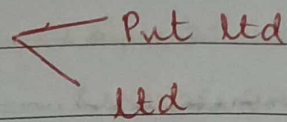
(B) Judicial decisions : « FRAUD »

- (i) LOCV can be done for prevention of fraud.
- (ii) LOCV can be done for protection of revenue.
- (iii) LOCV can be done for checking avoidance of welfare legislation.
- (iv) LOCV can be done for determining whether the Co is genuine or just a sham / bogus / fake / useless.
- (v) LOCV can be done for determining the true character of Co. i.e whether it is an enemy Co.

Q.4 Is Co a citizen?

No citizenship under citizenship act is available only to an individuals.

Q.5 Use of word limited? [Sec 453]

A person shall use the word 

only if BOTH conditions are satisfied

Such Association
is a company

AND

Such company in
a limited Co.

If S. 453 : contravened → Penalty → min Rs. 500

max Rs. 2000

Case law 1): Saloman vs Salomon Co. Ltd } for separate
Case law 2): Lee vs Lee Air Farming Co Ltd } legal entity

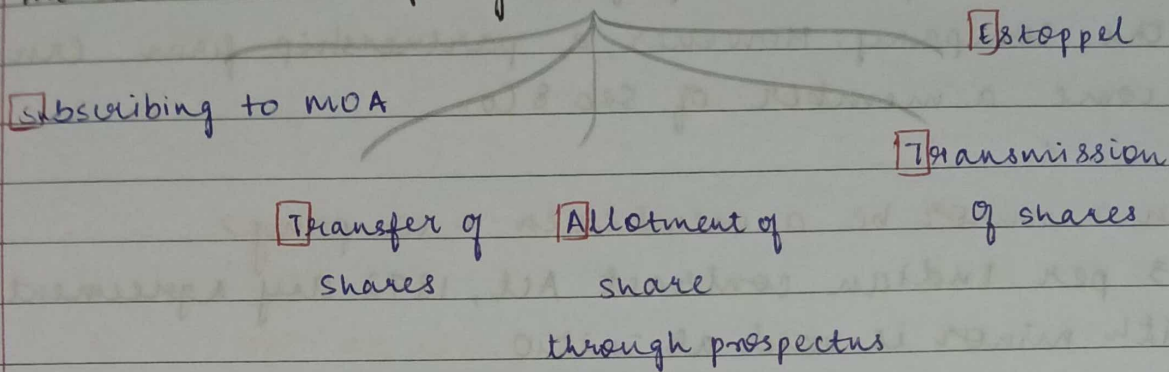
MEMBERSHIP IN A COMPANY (2-um)

2(55)

19

Q1 Define member and ways of acquiring membership

As per sec 2 (55) member does not include bearer of share warrant. Following are the ways of becoming a member in a company



X Q2 Can a company become a member of another company?

- (i) A company can become member of another company provided it is authorized by object clause of memorandum of association.
- (ii) A company cannot buy its own shares. It cannot become member of its own.
- (iii) Subsidiary Co. cannot become member of its holding Co. -

Sec 19.

Any allotment of shares by holding Co. to its subsidiary is void. However there are exceptions:

If a subsidiary Co. became a member of holding Co. before it became its subsidiary

Where subsidiary Co. holds such shares as a trustee

Where subsidiary Co. holds as legal representative of a deceased member of the holding Co.

#

A co But subsidiary Co will not have any rights in the

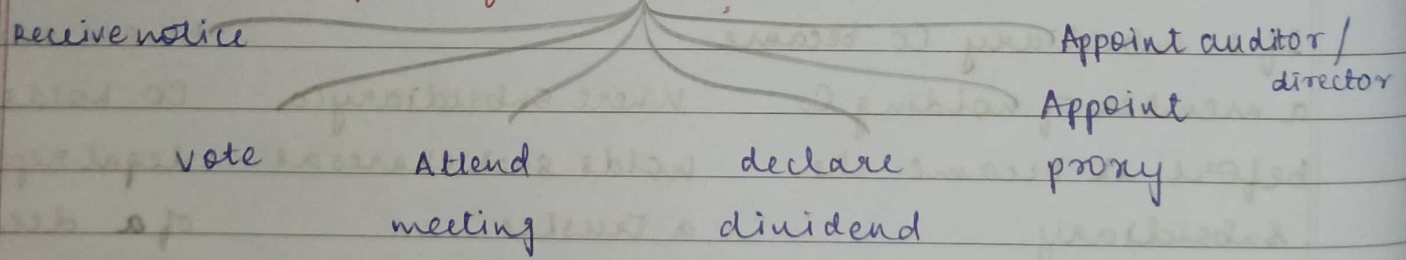
holding co in respect of shares held by it.

A co-operative society, trade union, foreigner, government, insolvent (who was already a member), joint share holder can be a member in the Co. Trust, HUF, partnership firm cannot be a member in the company. However, a partnership firm can become a member of sec 8 Co.

Q.3 Can a minor be a member in a company?

- (i) AS per Indian contract Act, 1872 any agreement with minor is void ab initio.
- (ii) Companies Act 2013 does not contain any disqualification for minor to be a member.
- (iii) In Mehribibi VS Dharamdas Ghosh it was held that a minor can be a beneficiary.
- (iv) Minor cannot subscribe to MOA as any agreement with minor is void.
- (v) Minor can become ^{member} minor by transfer or transmission provided the shares are fully paid up.
- (vi) The co. should take care to enter the name of guardian in the register of members.

Q.4 What are rights of member?



Q.5 How can a membership be terminated in a Company? FIS, I

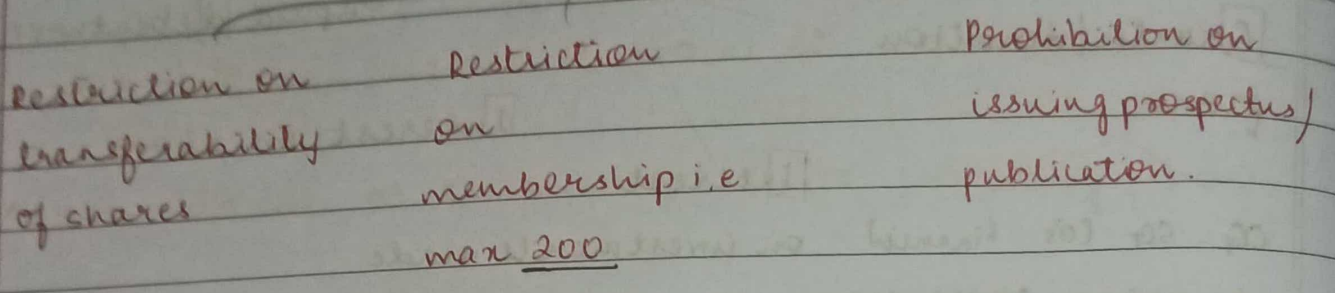
- (i) Forfeiture of shares
- (ii) Issue of share warrants in exchange of share certificate

- (iii) Surrender of shares
- (iv) Sale of shares
- (v) Transfer of shares
- (vi) Transmission of shares

KINDS OF COMPANY (4-8m)

Q.1 Define Private Co. - Sec 2(68)

A company having min paid up share capital which as may be described with full restrictions is a private Co.



- Employee member &
- Ex-employee member shall be excluded.
- Joint share holder shall be counted as one.

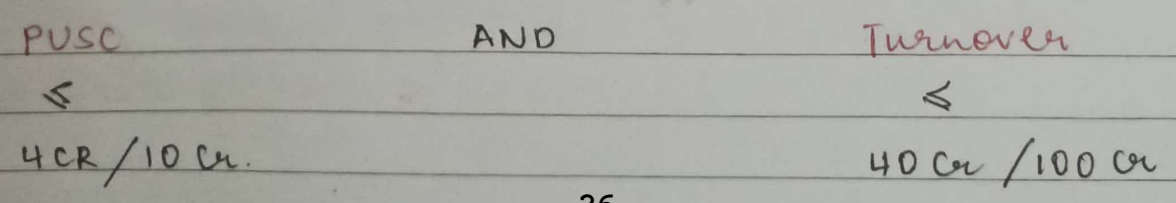
Q.2 Define public Co - Sec 2(71)

- (i) It is a Company which is other than a private Co.
- (ii) The minimum paid up share capital shall be as may be as prescribed.

A subsidiary of a public Co. shall be deemed to be a public Co. even when such company continues to be a private Co. in its articles.

Q.3 Define Small Co. - 2(85)

Small Co = Private Company



Nothing in this clause shall apply to

Holding /
Subsidiary Co

Sec 8 Co.

Co's governed by
any special Act.

8.4 Government company - 2(45)

A Government Co is one in which min 51% PUSC is held by CG / SG / both.

A subsidiary of a government Co. is also a government Co.

Auditor of govt. Co is appointed by comptroller and auditor general of India.

If is a government Co - member is

CG

SG

CG + SG

CG = cause

copy of annual report
on working of G.Co
to be prepared

≤ 3m of AGM &

laid before both
the house of
parliament

same

laid before both
the house of
state legislative

same

laid
both house
of parliament
both house
of state
legislature

S.5 Foreign CO - Sec 2(42)

A Foreign CO is a CO

Incorporated
outside India

having a place of
business in India
established

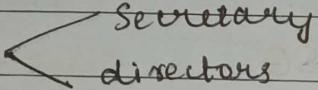
Conducts
any
business
activity in
India

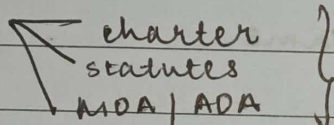
by itself

Agent

whether < Physically
electronically

2. Every Foreign CO. will give following to ROC of New Delhi within 30 days of establishment of business.

S - details of  like Name, Add, occ, nationality

C - details of  in english.

- If NOT in english → certified translated copy.

R - Full address of registered office (foreign)

A - details of authorized person resident in India.

P - details of place of business in India.

E - Eligibility - None of the Director / promoters / authorized person is even debarred whether in India / Abroad.

Sec 379: If in a foreign Co.

↓

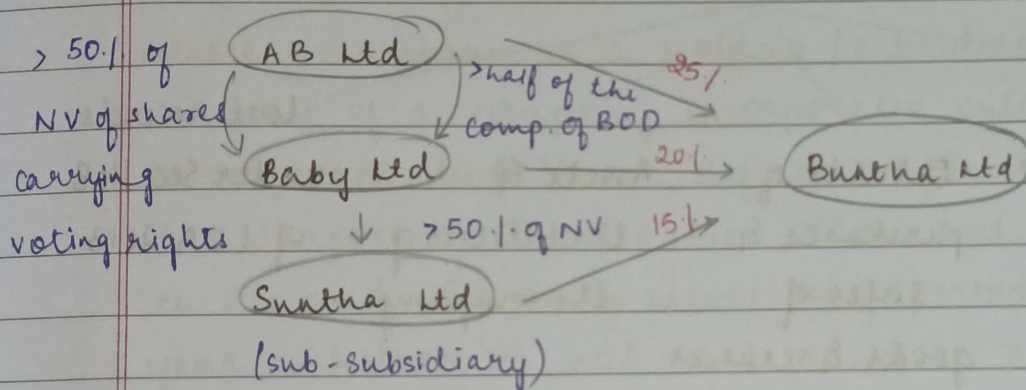
min 50% PUSC $\left\{ \begin{array}{l} \text{equity share capital} \\ \text{pref. share capital} \end{array} \right.$

held by $\left\{ \begin{array}{l} \text{Indian citizen} \\ \text{Indian company} \end{array} \right. \left\{ \begin{array}{l} \text{singly or} \\ \text{jointly} \end{array} \right.$

then,

such foreign Co = deemed to be incorporated in India.

Q.6 Holding Co and subsidiary Co. i.e 2(46) and 2(37)



Refer Q.8 p.g 141 main book.

Q.7 Dormant Company (Sec 455):

If a company is formed and registered under companies Act, 2013 for future project or to hold an asset or intellectual property and has no significant accounting transactions, such a company is called as dormant company or inactive company.

Significant accounting transactions means any transaction other than

Payment of fees
by Co. to ROC

Payment made
by Co. for fulfilling
requirements of
the act

Allotment of
shares to
fulfill req.
of the act

Payment for
maintenance of
office & record.

8.8 Authorized capital or Nominal Capital is the maximum amount of share capital of the Co. as is authorized by the MOA of the Co.

8.9 Books of A/c's includes

Details of
Income & Exp

Details of
purchases &
sales of
goods & services

Assets &
Liabilities of
the company

lost records
under Sec 148
of LOA, 2013

8.10 Net worth means

PUSC	X
+ Free Reserves	X
+ Security Premium	X
+ Cr. Bal in P&L	X
	XX
(-) All losses	(X)
(-) Deferred Expenses	(X)
(-) Misc expenses not w/off	(X)
Net worth	XX

Q.11 Explain financial year

- (i) It means period ending on 31st March every year
However, if company is

Incorporated bfr

1st Jan

Inc = 2/6/23

then FY =

2/6/23 - 31/3/24

↓

then FY

will end on coming 31st March

Incorporated on or

after 1st Jan

Inc = 05/1/24

then FY

= 05/1/24 - 31/3/25

↓

then FY

ends on next year's
31st March

where a company is a holding / subsidiary / associate company of a company incorporated outside India and is required to follow a different financial year for the purpose of consolidation, then such Co. shall apply to CG and CG may allow any period as its financial year whether or not that period is a year.

Q.12 Explain officer in default.

OID means :

- (i) Whole time DIR (WTD)
- (ii) Key managerial person (KMP)
- (iii) If KMP is not there,
then any Director who is authorized
If no such director authorized,
then → all the DIRECTORS
- (iv) Any person under immediate authority of Board / KMP.
- (v) Any person on whose instructions / directions / advise
→ Board is accustomed to act.

- (vi) Every director
- (vii) IRO → shares, share transfer agent, registers, merchant banker.

Q 13 Listed company

A company which has any of its securities listed on any recognized stock exchange in a listed Co.

However following cannot be listed Co.

(i) Public Co. which have not listed their equity shares on recognised stock exchange (RSE) but listed their

Non convertible debt securities issued on private placement as per SEBI regulations, 2008.

Non convertible redeemable preference shares issued on RSE, 2013.

(ii) Private companies which have listed their non convertible debt securities on private placement on RSE as per SEBI regulations, 2008.

(iii) Public companies which have not listed their equity shares on RSE, but listed on stock exchange as per Sec 23(3) of Act.

Q.14 Procedure for conversion of public Co into Private Co vice-versa
Sec 14

Pub Co \rightarrow Public

Public \rightarrow Pvt Co.

- | | | |
|----|---|-------------------------------|
| 1. | BOD \rightarrow BM \rightarrow BR | ✓ |
| 2. | GM \rightarrow SR should be passed | ✓ |
| - | \uparrow member to 7 | x |
| - | \uparrow Director to 3 | x |
| - | delete Pvt Ltd and add
Ltd | Add Pvt Ltd and
delete Ltd |
| - | delete TRP | Add TRP |
| 3. | CG = approved | ✓ |
| 4. | SR copy + CG app + altered
MOA \rightarrow sent \neq ROC within
15 days | ✓ |
| 5. | ROC \rightarrow check and issue
COI \rightarrow all legal formalities
have been complied with | ✓ |

Refer Q14 and Q6 \rightarrow pg 139 main book

Q.15 Explain Sec 8 Co / licensed Co

1. Generally, every Co is registered with \leftarrow Pvt Ltd
Ltd

But, Sec 8 gives power to CG to grant license to certain
NPO's to be registered without the word \leftarrow Pvt Ltd
Ltd

2. NPO should have following objectives.

Promotion of commerce, arts, science, charity or any other useful objects.

Income should be applied for promoting the object and not for payment of dividends.

3. NPO can alter object clause / registered office only with the approval of CG.

4. If NPO does not follow objectives, license will be revoked by CG. but before cancelling, CG will give opportunity of being heard.

5. CG also has the power to order for amalgamate Sec 8 Co with another Sec 8 Co with similar / same objects.

6. If on winding up, any assets are sold and after paying liabilities any surplus is left,

the proceeds will be credited to insolvency and bankruptcy fund formed under IBC, 2016.

7. If any provision is contravened

Co = liable

officer = liable

Rs. 10 L - Rs 1 Cr

Rs. 25 K - Rs. 25 L

(+)

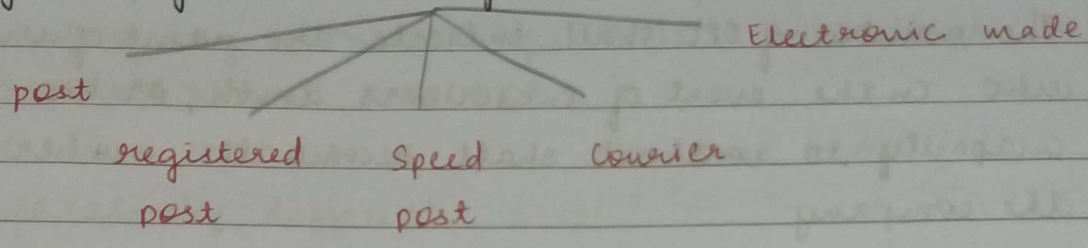
If affairs of Co = conducted fraudulently then every officer in default shall be liable u/s 447.

Q.16 Procedure for registered for Sec 8 Co
 ↳ Refer Q.14 - pg 143 (main book)

Q.17 service of documents - Sec 20.

1) A document may be served on \leftarrow ROC Member

by sending it to him by



2) If a member has requested for delivery of any document through a particular mode for which he shall pay such fees as may be determined by Co. in its AGM, then Co is bound to serve him by such mode otherwise service will not be deemed to have been served.

Q.18 Explain entrenchment - Sec 5 - Imp.

1 Article of Co may contain provisions for entrenchment to the effect that, articles can be altered only if **MORE RESTRICTIVE CONDITIONS** than a SR are met.

a. Provision for entrenchment shall be made either on formation of Co **or** by amendment in articles.

In case of Pvt Co
 In case of Public Co.

Date _____
Page 48

3. If Articles contain provision for entrenchment → (D → ROC)
→ notice → ROC

Q.19 OPC - Sec 2(62)

- (i) In OPC there can be minimum one member, maximum one member i.e. only one member.
- (ii) OPC can have more than one director.
- (iii) The member of OPC shall indicate the name of nominee who in the event of subscribers death, or his incapacity to contract shall become the member of the company.
- (iv) The nominee shall give prior return consent which can also be withdrawn by the nominee.
- (v) The member of OPC may also change any time its nominee by giving notice to the company and company shall intimate the same to ROC. Such change shall not be deemed to be ^{an} alteration of MOA. Only a natural person who is an Indian citizen whether resident in India or otherwise shall

Incorporate OPC

AND

Be a nominee for the soul member of OPC.

(vi) A person can be a member of one OPC at any point of time and the said person shall also be a nominee of one OPC.

NO minor shall become member or nominee of OPC or can hold shares with beneficial interest.

(vii) Such OPC cannot enter into the business of non banking financial investment activities including investment in securities of any body corporate. Such OPC cannot be

DIVIDENDS (4m - 8m)

	FINAL	INTERIM
Sec 123	Prop by: BOD	Prop by: BOD
Sec 124	decl by: Members	decl by: BOD
Sec 125	at AGM by OR	at BM by BR
2(35)	ordinary resolution	Board resolution

91 (2) Sources: 123

51

- | | |
|---|-------------------------|
| (i) Free reserve | (i) CY's profit |
| (ii) CY's / PY's / Acc profit
* Dep ⁿ * Losses: Set off | (ii) surplus in P&L A/c |
| (iii) Money given by CG/SG
if payment of div =
guarantee by CG/SG | |

(3) Transfer to Reserves → voluntary

(4) Time limit - Sec 127

Div - declared at AGM - paid ≤ 30 days of declaration

30D = passed

Co = SI @ 18% p.a

Director = 1000/day + Max 2 year imp

However penalty × DDLJ ✓

1. NO default of Co
2. Directions given by SH could not be complied

AND

same is communicated to SH

3. Operation of Law.

4. [Thagda (dispute) for receiving dividend / Amt is lawfully adjusted against any limit due by SH.

5) Div → declared at AGM
↳ claimed ≤ 30 days

30 Days : passed
SH ≠ claimed

CO
| ≤ 7 days → Unpaid 124
after 30 days div a/c
@ 12%

| ≤ 30 days → Investor 125
after 7 yrs Education
money + Protection
shares Fund (IEPF)

If Sec 124 = contravened

CO
Rs. 1L + 500/day
↳ Rs. 10L

Officer
Rs. 25k + 100/day
↳ 2 Lakh

6) Dividend declared ≤ Proposed

7) Revocation

Dividend once declared; cannot be revoked.

Exceptions:

Ultra vires

Going concern
affected.

⑧ Interim dividend

- (i) Interim dividend is recommended and declared by BOD at board meeting by passing board resolution out of current year's profit and surplus in P&L A/c
- (ii) In case company has losses in the current FY up to the end of quarter immediately preceding the date of declaration of interim dividend then,

Rate of interim dividend \leq Average rate of last 3 years.

- (iii) The amount of dividend including interim dividend should be deposited in a schedule bank within 5 days of declaration.
This rule of 5 days is not applicable to a wholly owned government company.

- (iv) Interim div should be paid within 30 days of board resolution else there is penalty + exemption (DD45)

⑨ Closure of register - Sec 91.

- (i) It means the period during which the Co lawfully refuses to accept the application for transfer of shares or debentures or other securities.
It can be closed for maximum 45 days in a year and 30 days at any one time.
Minimum 7 days notice shall be given by the Co. before closure of such register.

If Sec 91 is contravened, there is a penalty of Rs. 5000 per day subject to a max of ₹1,00,000.

10. Conditions for paying dividend out of past profits which are transferred to Reserves

In respect of inadequate profit or absence of profit, company may declare dividend out of past profits which are transferred to reserve by complying with Rule 3 companies (declaration and payment of dividend) rules, 2014.

(i) $ROD \leq$ Average rate of last three years.

The above rule shall not apply to a company which has not declared dividend in each of preceding / last 3 years.

AND

(ii) Amount withdrawn from reserves \leq 10% of (paid up share capital + free reserves).

This amount should be first used to set off losses of current year.

AND

(iii) Balance of reserves ~~is~~ after withdrawal \geq 15% of (paid up share capital).

NOTE!

(i) If the Co. has declared dividend out of the profit which is not transferred to reserves, then company can declare dividend without any restrictions.

(ii) Rule 3 is not applicable to wholly owned govt. company i.e they can declare dividend out of past profits which are trf to reserves without any restriction.

11. Section 126 - Abeyance

Where any instrument of transfer of shares
has been delivered

↓
to any company for registration

↓
But not registered

transfer the dividend

↓
to unpaid div account
(Sec 124)

↓
unless authorised by
registered holder in
writing to transfer to
transferee

Keep in abeyance in
relation to such shares

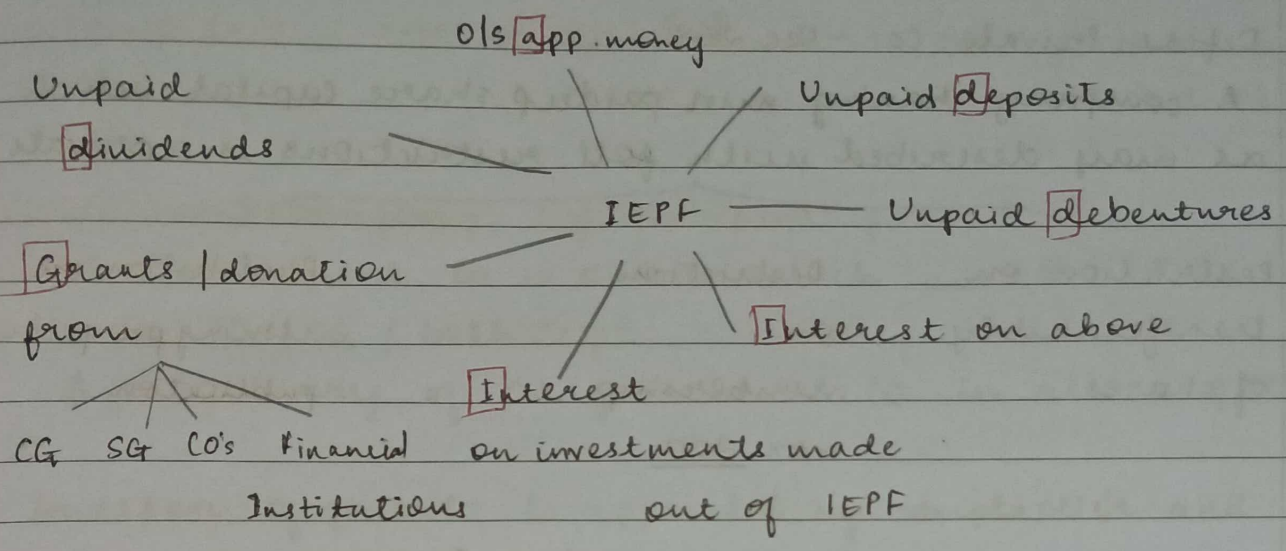
↓
any offer of right shares
+ any issue of fully
paid up bonus shares.

12. Important points

- (i) Dividend may be paid in cash / cheque / warrant / electronic mode.
- (ii) If a company fails to comply with Sec 73 and 74 i.e prohibition on acceptance & repayment of public deposits shall not declare dividend so long as the failure continues.

13. Sources of IEPP - Section 125

<<DADDJ IS GRB>>



14. Utilization of IEPF.

- (i) Refund of unclaimed dividends, matured deposits, matured debentures, application money due for refund.
- (ii) Promotion of investors education, awareness and protection
- (iii) Distribution of any disgorged amount (compensation) to eligible applicants for shares or debentures.
- (iv) Reimbursement of legal expenses incurred as per Sec 37 and 245 of companies Act, 2013
- (v) Any other purpose which is incidental.

If any person wants to claim the refund of dividend and shares shall apply to investor education protection fund authority. (IEPFA)

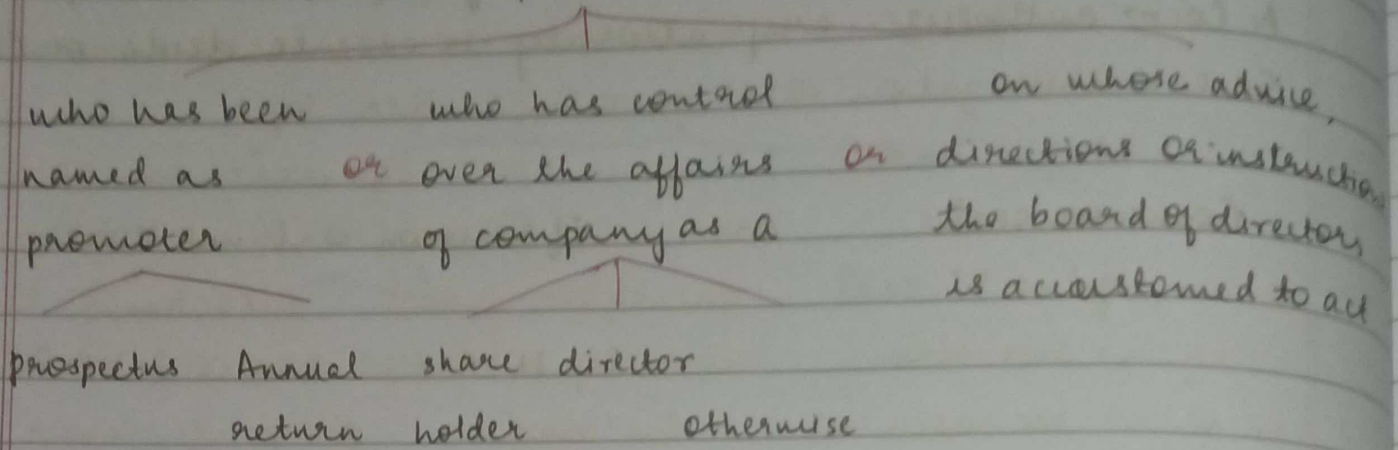
Refer Q. 5, 6, 8 - module pg. 8.32
Refer Q. 2(b) NOV 22 suggested.

INCORPORATION OF COMPANY

Sec 2(69)

Q 1 Explain promoters and their right to receive remuneration.

(i) Promoter means a person

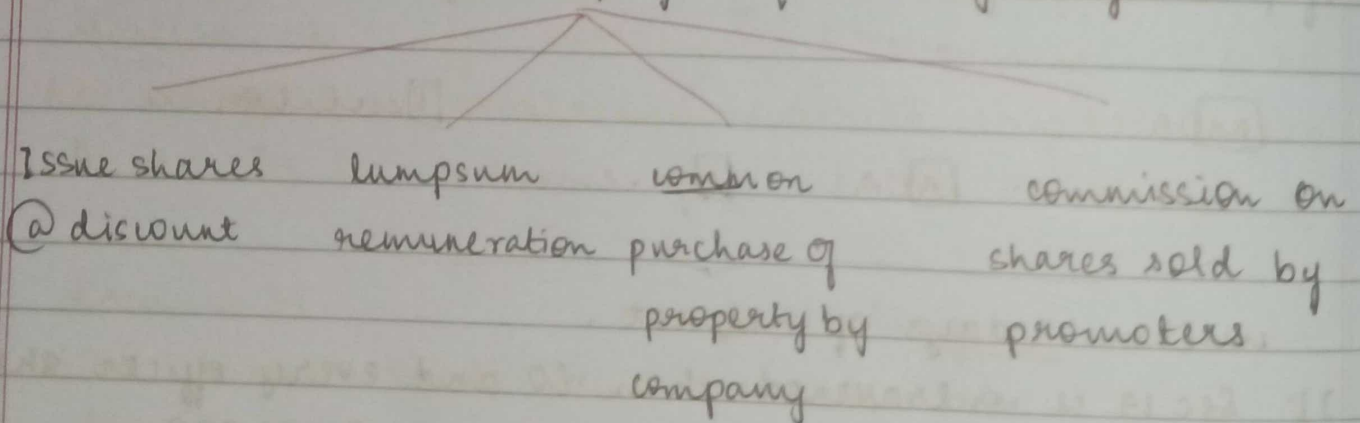


(ii) Promoter is not the agent of the company since the company has not yet come into existence.

(iii) He should not make a secret profit i.e he should give full and fair disclosure of such profit to the board if ^{secret profit} then, Co → Can recover from promoters.

Promoters do not have a right to receive remuneration or recover expenses.

Even if the AOA provides for such payment it is not binding the company. However, if company wants to give remuneration, it can pay in following ways:



Q.2 What are the documents to be filed with ROC at the time of incorporation.

- (i) MOA
- (ii) AOA
- (iii) declaration from each subscribers and first directors stating that

he is not convicted for any offence regarding promotion, management of company.

he is not found guilty for fraud or breach of duty in the last 5 years.

All the documents filed with ROC are true & correct.

- (iv) Address for correspondence until the registered office is established.
- (v) Particulars of every subscribers like name, address, nationality etc
- (vi) Particulars of the person mentioned as first directors of the company in other firm.
- (vii) Particulars of the interest of persons mentioned as first directors in other forms
- (viii) A company shall within 30 days of incorporation shall at all times have a registered office for receiving and acknowledging all communications and notices as may be addressed to it.

Q.3. Explain commencement of business - Sec 10 A

A company incorporated with share capital shall not commence business or exercise borrowing power unless -

- (i) a declaration is filed by the director within 180 days stating that to ROC

every subscriber has paid the value of shares agreed to be taken by him to MOA

or

company has filed with ROC a verification of its registered office as per Sec 12(2)

(ii) If company has defaulted in Sec 10A then, the

Co = liable
Rs. 50,000

AND

Officer = liable
Rs. 1000/day and subject to max upto 1,00,000

(iii) If the declaration is not filed within 180 days and ROC has a reasonable cause to believe that Co is not carrying on any business or operations, he may remove the name of Co from the register of companies.

B.4 Penalty for submitting false information while incorporating a company.

(i) If any person → furnishes false particulars in correct

while incorporating a Co.

or

After incorporation of Co it is proved that info is false / untrue.

1. Then all the subscriber / first directors who are guilty shall be liable U/s 447.

2. If Co is incorporated by submitting false info, then the tribunal on an application submitted to it may pass following orders.

regulation of mgt/
changes in MOA/
AOA for public
interest

direct
that liability
of members
shall be
unlimited

direct
removal of
name of co
from ROC

pass an
order for
winding
up

pass such
order as
it thinks
fit.

Q.5 Pre-Incorporation contracts.

20/5/23

pre-incorporation date of
contracts incorporation

- (i) These are entered by promoters on behalf of the company.
- (ii) These are entered before incorporation.
- (iii) These are void w.r.t to Co.
- (iv) Co. cannot ratify pre-incorporation contract as Co. was not in existence.
- (v) Co. can adopt (novation) pre-incorporation contract.

If Co = adopts
↓

Co = liable

If Co ≠ adopts
↓

Co ≠ liable, promoters
will be liable.

Q.6 Illegal associations → Sec 464

- (i) Any persons associations / partnerships doing any business with more than 50 persons.

↓

should convert it into a co; else it will be illegal
association.

(ii) Effects

1. Every member liable for penalty of Rs. 4L.
2. Member are personally liable for all debts of such business.
3. Association cannot enter into any contract in its own name.
4. Even a subsequent reduction cannot make it legal.

(iii) Exceptions:

Association of partnership
formed by professionals
governed by special Act

CA CS CMA

↓ HUF

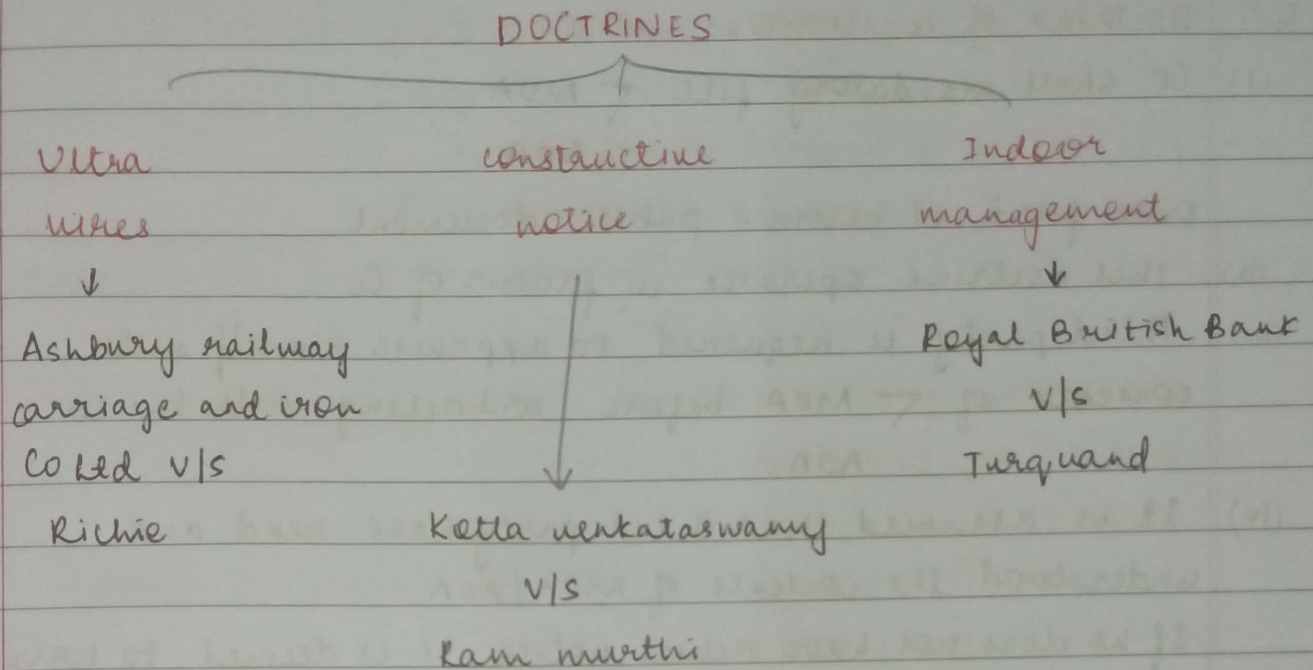
only HUF

male + female

Q.7. Binding force of MOA / AOA - sec 10

1. Co is bound to its members
for all rights. If rights are deprived
Member → can sue → Co.
2. Member bound to Co.
for paying call money.
if money ≠ paid, Co → can sue → member
3. Member bound inter se (with each other)
Member can enforce his rights against another
member through the Co but not directly.
4. Co is not bound to outsider
outsider cannot establish contract only on basis of MOA

If there is a contract which is independent of AOA then third party can sue the company i.e. company will be liable.



Q. 8 Doctrine of ultra vires

- (i) It means beyond power of Co
- (ii) An act is ultra vires of

not permitted by
COA 2013

falls outside
object clause
of MOA

Not incidental /
ancillary to the
attainment of
main object.

(iii) Effects

- (i) It is void ab initio
- (ii) directors will be personally liable
- (iii) Third party can sue directors for breach of loss
- (iv) If cannot be ratified
- (v) Third party can obtain injunction order i.e. an

ultra vires Act.

(vi) Act can be legally exercised by the Co only by altering object clause of MOA.

Q 9 Doctrine of constructive notice.

(i) Co shall mandatory file ∇ MOA
AOA

once filed, it becomes public document.

(ii) This doctrine operates in favour of Co.

(iii) Third party is required to appraise himself with contents of ∇ MOA before contracting with the Co.
AOA

(iv) It is assumed that third party have read and understood the contents of MOA/AOA.

If he does not have actual notice, he is deemed to have constructive (implied) notice.

(v) The only exception is doctrine of indoor management.

Q 10 Doctrine of Indoor management

(i) Any outsider dealing with Co is entitled to assume that internal management was done regularly where third party (TP) enters into contract with any director / officer of Co.

(ii) If there is some irregularity in internal proceedings, the contract is valid and enforceable against the Co.

(iii) The TP is required to be satisfied that contract is within the scope of MOA/AOA, he need not enquire into the internal management of the Co.

(iv) Exception to DOIM: FRISK

- Forgery
- Knowledge of internal irregularity
- Illegal transaction

- Suspicious circumstances / negligence of third party.
- No knowledge of AOA.

REGISTRATION OF CHARGES

Sec 77

78 Q1 Explain charges and procedure for registration. Sec 77

79 Charge means an interest ^{or} and lien created on the
80 property or assets or undertakings or both as a
81 security and includes a mortgage.

82 If a charge is created on or after 02-11-2018

83 ↓ within 30 days + Fee
84 Register charge - in form $\left\{ \begin{array}{l} \text{CHG-1 - assets} \\ \text{CHG-9 - debentures} \end{array} \right.$

85 ↓ If not registered in 30 days
86 Register in next 30 days (i.e. within 60 days from
87 creation) with additional fees

↓ If not registered in next 30 days
Register within a further period of sixty days
with advalorem fees

ROC will issued certificate of charge in form CHG-2 which shall be a conclusive evidence that all requirements of charges have been complied with. If the charge is not registered within the actual 30 days and registered in the extended period, the rights of lender or charge holder shall not get affected.

If a charge was not registered, it shall not be taken into accounts by the liquidator appointed under Companies Act, 2013

Non-registration of charge will not impact the obligation for repayment of money.

Q.2 Explain verification of instrument evidencing creation or modification of charge.

Every instrument evidencing creation or modification of charge shall be verified as follows:

If the property is solely outside India

↓

verified by

common seal
DIR CS

- Authorized officer of charge holder
- Person interested in mortgage (purchaser)

If property is partly / wholly in India.

verified by

DIR or company secretary

- Authorized (purchaser)

Q.3 Procedure for registration by chargeholder (Sec 78)

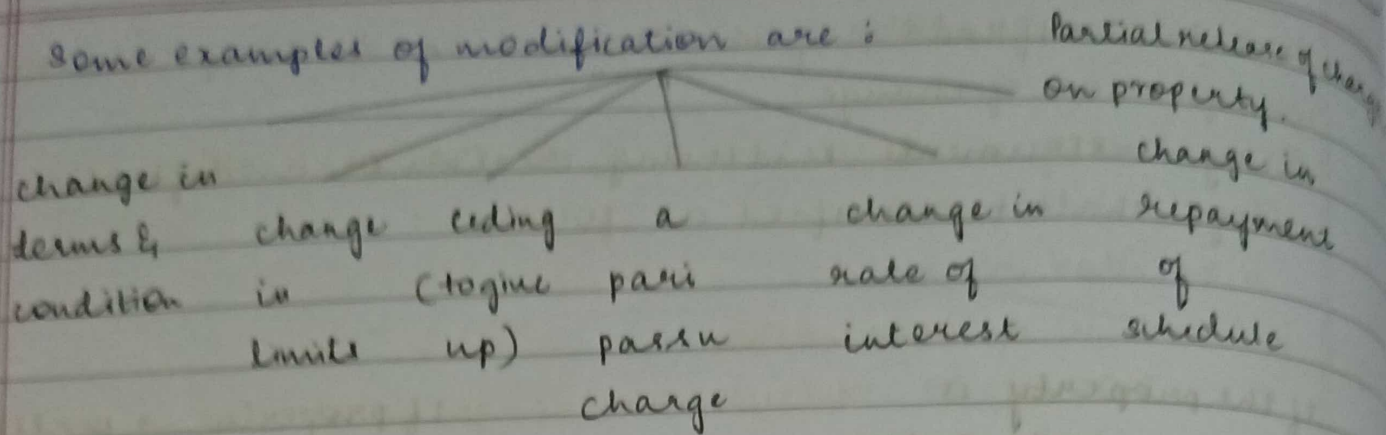
If a company fails to register the charge, then, charge holder (Bank) ~~may~~ ^{shall} apply ROC for registration.

- ROC → ≤ 14 days of such application → notice → Co explaining why charge should not be registered.
- If charge holder → has registered the charge, all expenses → can be recovered from the company i.e. fees / additional fees.

Q.4 Modification of charge - Sec 79.

It means variation of any terms including variation in rate of interest by mutual agreement operation of law.

Some examples of modification are:



Every company applying for modification shall make an application in CHG-1 to ROC.

ROC will issue a certificate of modification of charge in form no. CHG-3

XB5 Date of notice of charge - Sec 80. (Imp)

where any charge on any
 Property assets } is registered U/S 77, then
 undertaking } any person
 acquiring such
 property asset } shall be deemed to
 undertaking } have notice of the charge
 from the date of such registration.

Q.6 Register of charges by ROC - Sec 81

- (i) The ROC shall keep a register containing details of charges for every company in such form and in such manner as may be prescribed.
- (ii) This register shall be open for inspection by any person on payment of such fees as may be prescribed.

Q.7 Procedure for satisfaction of charges. Sec - 82

- (i) Co → intimate → ROC → on payment or satisfaction in full payment within 30 days of such payment or satisfaction.
 inform CHG-4

(ii) Period of 30 days can be extended to 300 days from date of such payment.

For IFSC \leftarrow public \rightarrow days to intimate - 300 days
put co

(ii) on receipt of information

ROC \rightarrow notice \leq 14 days \rightarrow charge holder as to why payment of receipt or satisfaction in full should not be recorded.

NO notice should be sent if intimation is given by charge holder.

(iv) If charge holder

does not show cause

\downarrow

ROC \rightarrow issue certificate of registration of satisfaction of charge - **CHG-5**

show cause

\downarrow

ROC \rightarrow inform the Co about the same.

Q.8 Power of ROC to make entries of satisfaction in absence of intimation from the company. Sec 83

(i) If an evidence is shown to the ROC that the debt secured by charge has been paid or satisfied in full or in part or the property or undertaking has been released or ceased to form part of the companies properties then, ROC may enter in the register of charges a memorandum of satisfaction that

Debt has been paid in whole (OR) part of the property is released or ceased to form part of co's property or in part

- (ii) This power can be exercised by ROC even if no intimation is received by him from the company
- (iii) The ROC will inform the affected parties within 30 days of making entry in the register of charges
- (iv) ROC will issue certificate of registration of satisfaction of charge in form **CHG-5.**

Q.9 Intimation of appointment / of receiver / of manager. Sec 84

- (i) If a person obtains the order to appoint receiver / manager of ~~ma~~ property

OR

If any person appoints such receiver or manager of the property

then,

he shall inform $\left\{ \begin{array}{l} \text{company} \\ \text{ROC} \end{array} \right\}$ about such appointment within 30 days of passing of order or making of the appointment.

- (ii) Any person appointed above on ceasing to hold such appointment shall give notice $\left\{ \begin{array}{l} \text{ROC} \\ \text{company} \end{array} \right\}$.
- (iii) The notice for appointment or cessation shall be given to ROC in form **CHG-6**

Q.10 Company's register of charges. Sec 85

- (i) Every company shall keep at its register office a register of charges in form **CHG-7** which shall include such particulars as may be prescribed.
- (ii) A copy of the instrument creating the charge shall also be kept at register office along with register of charges.

(iii) The register of charges and instrument of charges shall be open for inspection during business hours.

member, creditor
without any fees

by any other person
on payment of such
fees as may be
prescribed.

Q.11 Penalty for contravention - Sec 86

(i) If any provision of this chapter is contravened then,

Co = liable
for Rs. 5,00,000

AND

Office = liable
for Rs. 50,000

(ii) If any person furnishes

← false
incorrect w.r.t
info

registration of charges ;

shall be liable U/S 447.

Q.12 Rectification of charges - Sec 87.

The CG on application filed in form CHG-8

direct rectification of

omission

misstatement
of any particulars

direct extension
for satisfaction of
charge, beyond 300
days from the date
of such payment.

w.r.t

creation
modification
satisfaction } of charges

- CHG - 1 registration of charge
- CHG - 2 certificate by ROC
- CHG - 3 modification by ROC certificate
- CHG - 4 application for satisfaction
- CHG - 5 certificate for satisfaction by ROC
- CHG - 6 Notice \leftarrow ^{APPT} cessation of appt of receiver
- CHG - 7 Register of charges by CO.
- CHG - 8 Rectification application to CG.
- CHG - 9 Registration for debentures of charges.

NOTE: It shall be the duty of every company creating a charge \leftarrow within
outside India on any \leftarrow Property
asset
undertaking
whether \leftarrow tangible
intangible situated \leftarrow In India
outside India

shall register the particulars of charge as per Sec 77.

Refer Q.6, 7 pg - 6.22 - module

DEPOSITS

- Sec 73 Prohibition on Acceptance of deposits from public.
- 74 Repayment of deposits before commencement of Act.
- 75 Damages for fraud
- 76 Acceptance of deposits from public by certain companies
- 76(A) Punishment for contravention of Sec 73 or Sec 76.

Q.1 Define deposits.

It means any receipt of money by way of

Deposits loan any other form by Co.
AND

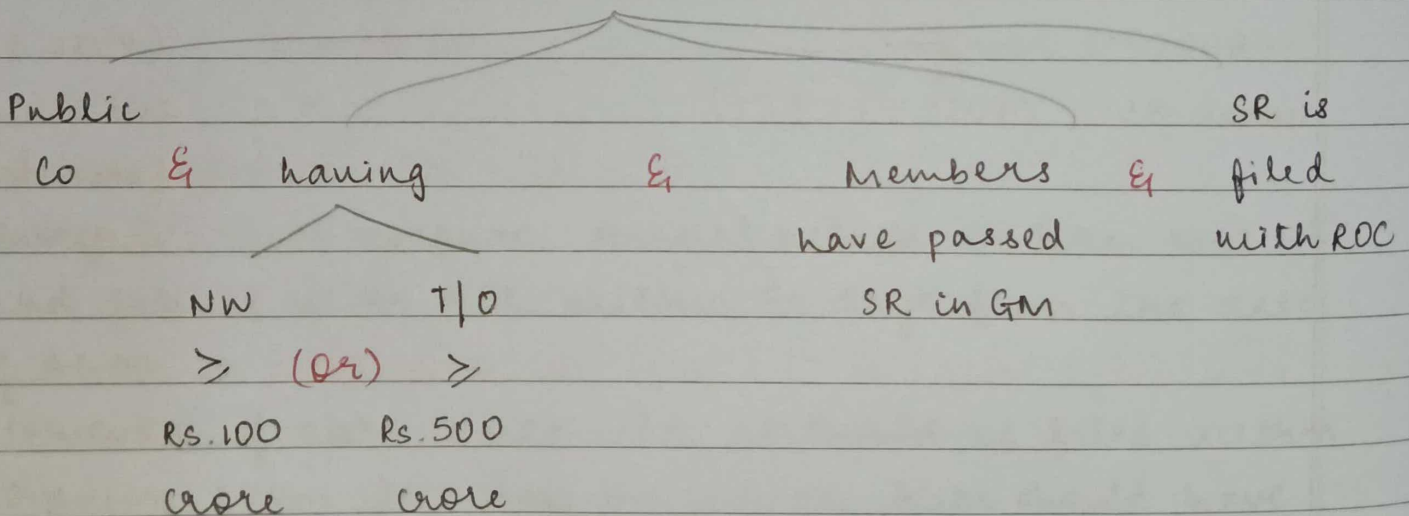
- does not include such categories of amount as prescribed by RBI.

Q.2 What are exempted deposits?

Refer pg 372 (f) (g) (h) (i) (k) (r) - very imp - X

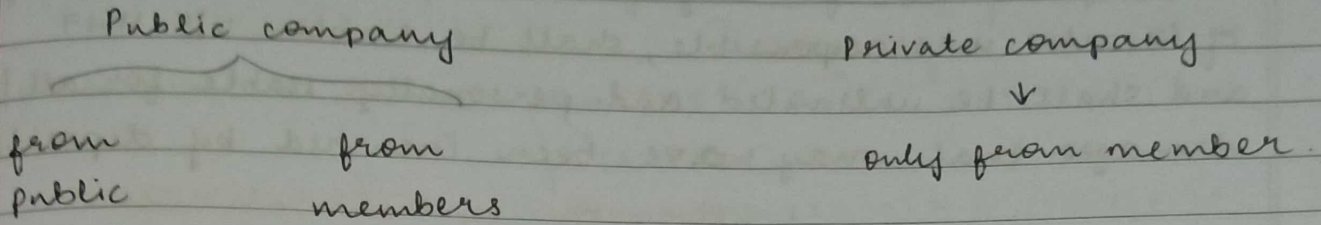
Q.3 Explain eligible company.

- It means



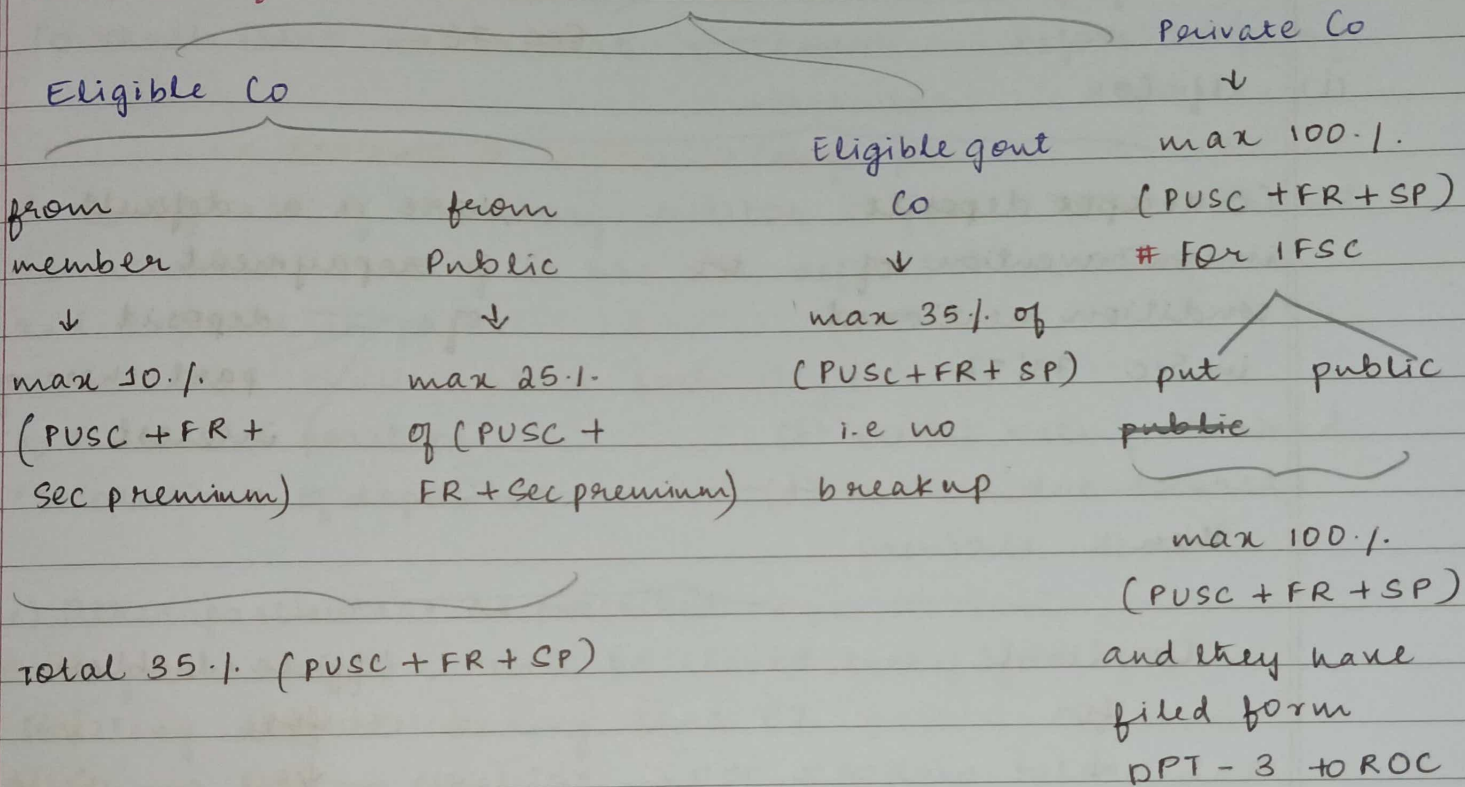
- An eligible company which is accepting deposits within limits of Sec 180(1)(c) \rightarrow deposit can be accepted by CR

Q.4 From whom deposits can be accepted?



The person / members who give money is called as depositors.

Q.5 What is the limit for max amount of deposits from members?



Q.6 Repayment of deposits before commencement of Act. Sec-74
↳ irrelevant section.

Q.7 Damages for fraud. Sec 75
(i) If a Co fails to repay deposit part interest within time specified or extended time by tribunal

and it is proved that deposits were accepted to defraud the depositors or for any fraudulent purpose, then every officer of Co who was responsible, shall be liable v/s 447 and shall be unlimited and personally liable for all any damages that may have been incurred by depositors.

(ii) Any suit, proceeding or action may be taken by person or group of persons who has suffered loss on account of non payment of deposits.

Q. 8 Penalty for contravention ← Sec 73 → Sec 76A
Sec 76

(i) If Co

Co accepts deposits in contravention of condition mentioned in Sec 73/76

or

there is a default in repayment of deposit part thereof interest.

then,

Co = liable for ↓

Officer = liable for ↓

Repayment of deposit +

Imp upto 7 years and

Penalty of Rs. 1 Cr

min 25 L - max 2 Cr

or

2x Amt of deposits Subject to max Rs 10 Cr

- (ii) If it is proved that officer of Co who is in default, contravened such provisions \leftarrow knowingly with wilfully intention to deceive \leftarrow SHS creditors depositors ; he shall be liable u/s 447.

Q 9 Procedure for acceptance of deposits from ~~from~~ Sec-73

- (i) A Co is required to pass a resolution at GM for accepting deposits.
- (ii) Co shall issue \rightarrow circular \leftarrow English vernacular language before accepting deposits.

Certificate of statutory Auditor in form DPT-1 should be attached stating Co has not defaulted in repayment and deposits in past.

Circular shall contain following:

- | | |
|--------------------------------------|---|
| (a) Financial position | (b) credit rating obtained |
| (c) Total no. of depositor | (d) Amount due towards previous deposits. |
| (e) Other particulars as prescribed. | |

A fresh circular shall be issued every year for inviting deposits during that FY.

Co \rightarrow file \rightarrow circular \rightarrow ROC \leq 30 days before date of issue of circular.

- (iii) Co \rightarrow deposit \rightarrow min 20% of amount of deposits maturity during the following financial year.

- It shall be deposited in a separate bank in a schedule bank called deposit repayment reserve bank account (DRRA)
- It should be deposited on/ before 30th April each year.
- It cannot be used for any other purpose except repayment

of deposit.

(iv) CO → certify that there is no default for repayment of deposits interest.
If defaulted ✓, defaulted rectified ✓ and 5 years passed ✓ then only they can accept deposits.

(v) CO → provide security for repayment of deposits and for this they will create charge on assets.
If deposits are unsecured, all circular, advertisement shall state it as "unsecured deposits."

(vi) If deposits are unpaid → the depositors can apply to Tribunal.

Tribunal will taken necessary action.

(vii) Deposits can be accepted for ← min 6m
max 36m

If can be less than for 6m also if

Such deposits are max 10%. (PUSC + FR + SP)

and

Such deposits are accepted for min 3m

(viii) If CO fails to repay deposits (secured/unsecured) they are liable for 18% interest p.a for overdue period.

(ix) A CO can pay ← brokerage but it shall not exceed Interest

the max rate prescribed by RBI in case of NBFC for acceptance of deposits.

(x) Max limit of deposits (As per BS) is not applicable to followings:

Start up private
Co for 10 years

and

private company
fulfilling 3 conditions

Not an

loan

NO

Associate and subsidiary

and

taken

and

default

<

existing

2 x PUSC ↓

for

50 Cr

such loan.

Co → file → PPT - 3 to ROC (i.e. they can accept more than 100%).

NOTE: Point (i) to (iv) are not applicable to (i.e. they can accept deposits without following (i) and (iv))

Private Co
accepting deposits
upto 100%. (PUSC + FR + SR)

Startup
Pvt Co
for 10 years

Pvt Co following
3 conditions
(Refer point 10)

Q.10 Appointment of trustee → Refer Q.8 } Main Book

Q.11 Register of depositors → Q.13
Refer Q.5, Q.7, Q.8 → module - pg. 5.33

Sec 12(5)

MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION (4-6m)

Sec 13

Sec 14

15 Q.1 Distinguish between MOA and AOA.

16

MOA

AOA

17

(i) It is the constitution of the company. (i) These are rules and regulations of the company.

19

(ii) In case of any inconsistency, MOA shall prevail over AOA. (ii) It is subordinate to MOA.

20

21

(iii) Alteration of MOA is comparatively difficult. (iii) It is easy.

(iv) It cannot be amended retrospectively. (iv) AOA can be amended retrospectively.

(v) There are 6 clauses in MOA i.e. Name, object, registered office, liability, capital, association or subscription, nomination (DPL) (v) These are rules and regulations for internal management of the company

Q.2 Clauses of MOA.

↳ Refer Q.2 → pg 203 - mainbook.

Q.3 Forms of MOA

Table A - Co Ltd by shares

Table B - Co Ltd by guarantee without share capital

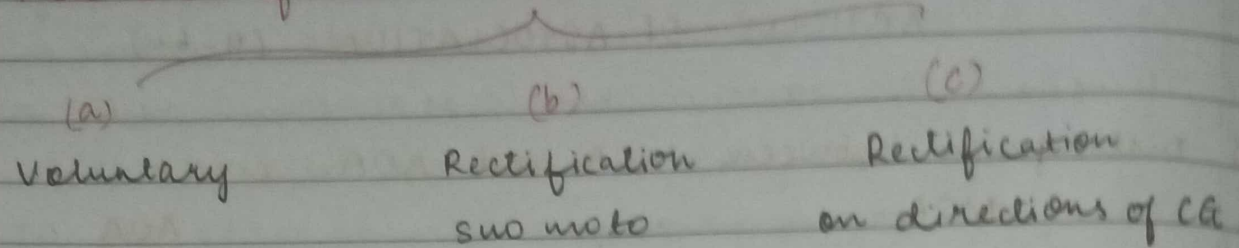
Table C - Co Ltd by guarantee with share capital.

Table D - Unlimited Co without share capital

Table E - Unlimited Co with share capital.

k

8.4 Alteration of Name clause - Sec 13



(a) Voluntary:

- (i) Co → apply → CG for approval to alter its name.
- (ii) Change of name is not allowed if

Co = defaulted in filing \swarrow Financial statement
Annual return to ROC

defaulted in repay \swarrow deposits interest debentures

- (iii) Co → shall pass SR at GM to alter name clause of MOA.
- (iv) Copy of SR; CG order copy and altered MOA

↳ sent to ROC within 30 days of SR.

- (v) 'ROC will check and issue COI which is a conclusive evidence that all legal formalities have been complied with.
- (vi) All rights, liabilities, obligations, legal cases will remain same.
No new legal entity comes into existence.

(b) Rectification suo-moto - Sec 16

- (i) A Co may be registered with undesirable name.
An undesirable name is one which contains any unnecessary or fancy word or which is too similar to an existing Co in related business which may mislead the public.
- (ii) Co → obtain prior approval of CG.
- (iii) Co → pass ordinary resolution

(C) Rectification on directions of CG - Sec 16.

- (i) If CG is of the opinion that Co is registered with an undesirable name, CG is empowered to direct that company should rectify its name.
- (ii) Same as point (b) → 1,2,3
- (iii) A registered proprietor of trademark can also apply to CG within 3 years of incorporation or change of name of Co if it resembles to a registered trademark of such proprietor.
- (iv) If such direction is issued, Co shall make changes and inform to ROC within 15 days of such change.
- (v) If Co does not make changes, then CG will allot a new name to the Co within 3 months.
- (vi) For Sec 8 Co → If Co has changed its activities which is not in line with its name.
↳ it should change its name within 6m from change of its activities.

Q.5 Procedure for altering object clause of MOA - Sec 13.

- (i) Company shall call for a board meeting and pass BR for convening the meeting of members.
- (ii) At GM - SR should be passed.
- (iii) SR copy along with altered MOA should be filed with ROC.
- (iv) ROC will register the changes within 1 month from the date of filing SR and altered MOA copy.

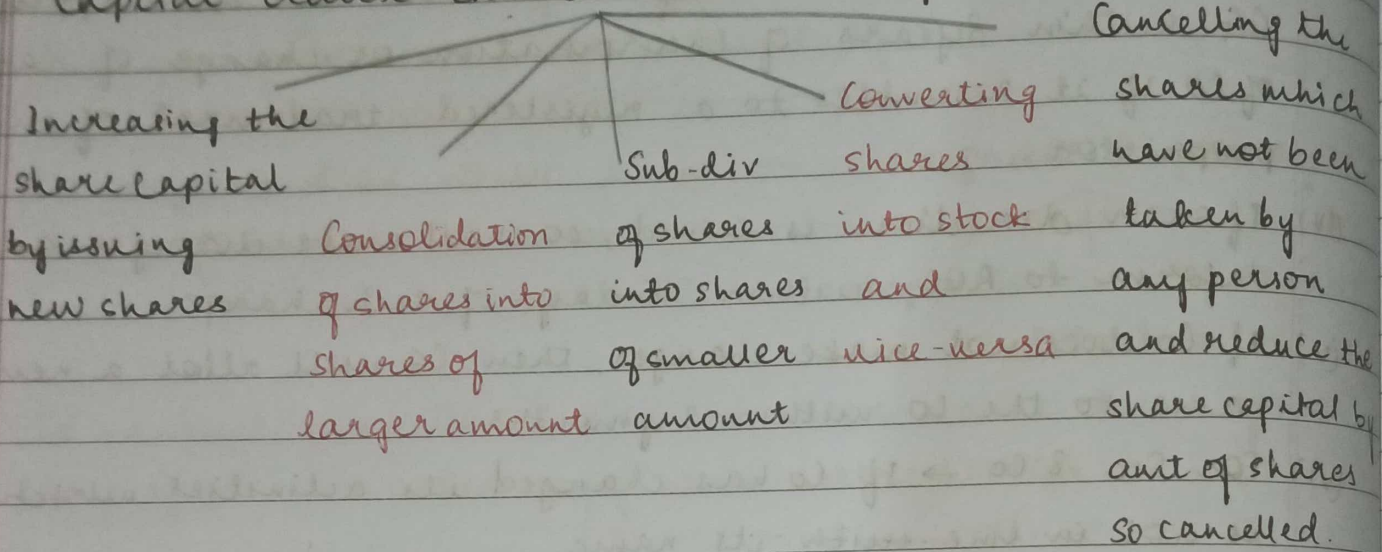
Q.6 Procedure for altering liability clause of MOA

NO member shall be liable by an alteration in MOA/ AOA which states that

he is liable to subscribe for more no. of shares than he already holds

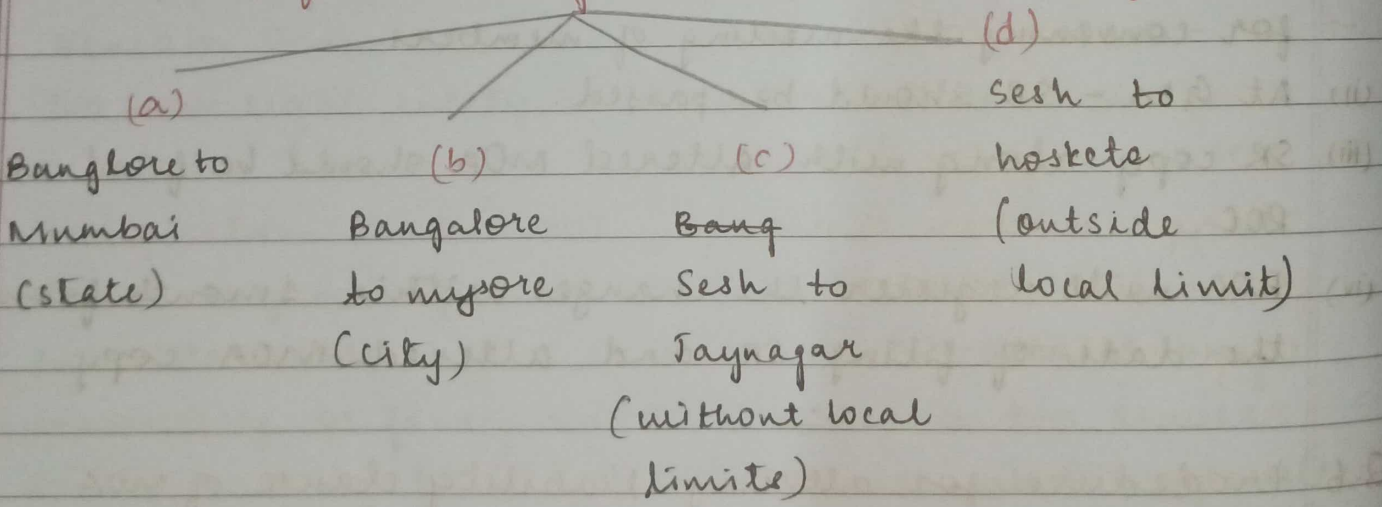
(OR) he liability on the nominal value of share to contribute more than

Q.7 Modes of altering capital clause.
Capital clause can be altered by



The alteration should be authorized by AOA. Members should pass AOA and inform ROC within 30 days of passing AOA.

Q.8 Procedure for altering situational clause of MOA.



a) change of state → Sec 13

1. BOD → call BM → pass board resolution
 2. At GM → Member → pass special resolution.
 3. Co → apply to Cr for approval.
 4. Cr → approval within 60 days after obtaining consent of
 - ← creditors
 - ← debenture holder
 - ← other persons concerned
 5. Copy of Cr order → filed with both ROC.
 6. New state ROC → issue fresh COI which is a conclusive evidence have been complied.
- that all legal formalities.

b) Change of city (within same state)

ROC = changed

ROC ≠ changed

→ Co → pass → SR

Co → pass → SR

→ Co → obtain approval of regional director

Co → inform to ROC

approval ≤ 30 days

≤ 30 day of SR.

→ Co → apply to ROC for confirmation ≤ 60 days

→ ROC → register the changes within 30 days from filing of such confirmation

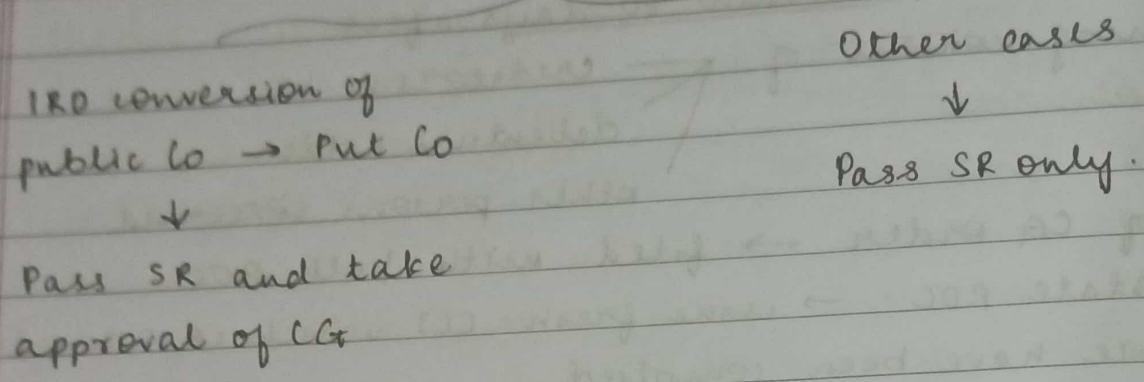
(c) within local limits

Co → pass board resolution

Co → notify to ROC with 30 days of change.

- (d) Outside local limits
 Co → Pass SR
 Co → notify to ROC within 30 days of change.

Q.9 Procedure for altering AOA → Sec 14

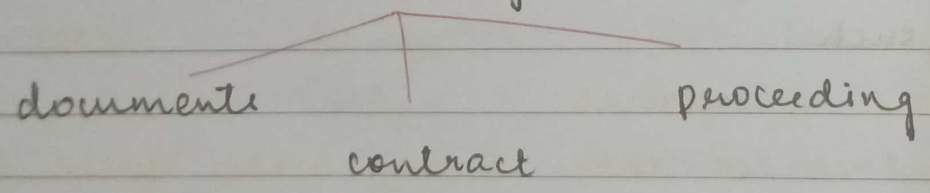


Conditions : LIMITS

- (i) It should be lawful and not unlawful / opposed to public policy.
- (ii) It should not be inconsistent with provisions of COA 2013 / MOA / orders of Tribunal.
- (iii) It should not be oppressive (harmful) on any member.
- (iv) It should not increase the liability of any member.
- (v) Time → It will have retrospective effect.
- (vi) It should be bonafide and in interest of Co as a whole.

Q.10 Authentication of documents → Sec 21

As per Sec 21 → Any



shall be signed by key managerial person
 or

any officer of Co duly authorized by Board.

Q.11 Execution of deeds → Sec 22

made

- (i) A Bill of exchange, hundi, promissory note, on behalf of Co
 ↳ shall be deemed to be made if signed by any person acting under its authority expressed or implied.
- (ii) A Co → authorize any attorney to execute deeds on Co's behalf
 Such authorization shall be done either by

Common seal

or

If common seal not there

By IDIR

2 DIR

and

or

ICS

Q.12 Notice of alteration of MOA and AOA. (Section 15)

Every alteration made in MOA and AOA shall be noted in every copy of MOA and AOA. If there is a default company and every officer shall be liable for ₹1000 for every copy of MOA/AOA issued there after.

Q.13 Copies of MOA and AOA to members (Sec 17)

Every company on requested by member and on payment of prescribed fees shall send copies of

MOA

AOA

Agreement

Resolution

within 7 days of request.

If Sec 17 is contravened then Co. and every officer shall be liable for ₹1000/day subject to max ₹1,00,000.

refer Q.8, 9, 11 - pg. no 251 - module.

of a body corporate.

(ii) Prospectus should be filed with ROC before its publication. It shall be signed by every person who is named in the prospectus as the director or proposed director or his duly authorized agent.

X (iii) Following docs should be attached with prospectus:

Expert consent if his report is included in prospectus	consent of auditor, lawyer, attorney, broker.	Copy of underwriting agreement.
--	---	---------------------------------

(iv) Prospectus shall be issued within 90 days of filing of a copy of the same to the ROC either through a newspaper or by an advertisement.

(v) If there is a default in complying with above provision

Co = 50,000 - 3,00,000 AND every person who is party to prospectus

50,000 - 3,00,000

(vi) The prospectus shall state such information and set out such reports on financial information as may be specified by SEBI in consultation with CG.

The prospectus shall also contain a statement that company has complied with companies Act 2013, SEBI Act 1992, Securities contract regulation Act 1956. (Refer Q.3 module p.g. 3.45)

Q.3 Liability for misstatement in prospectus - Sec 34/35/447.

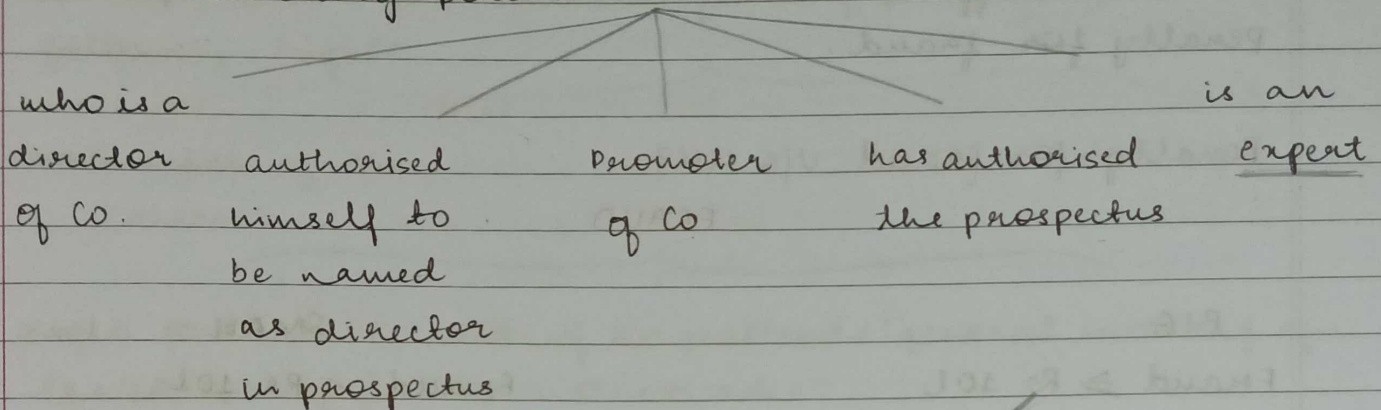
Liability

Civil Sec 35	Criminal Sec 34
-----------------	--------------------

(A) Civil liability

If a person who has subscribed for securities of a company and which contains any statement which is misleading and has sustained \leftarrow loss then the damage,

Co and every person



^{be} shall personally and unlimited liable to every person who has sustained such loss or damage.

2- NO person shall be liable if he proves that

he withdrew his consent before issue of prospectus

he gave a reasonable public notice stating that it was issued without his knowledge / consent

3. There will also be NO LIABILITY if prospectus contain any misleading statement if it is an extract from a report / valuation of an expert and it was a correct and fair representation of statement and the expert believe and did upto the time of issue of prospectus and has not withdrawn the statement.

(B) CRIMINAL LIABILITY: (SEC 34)

If it is proved that prospectus is issued with intent to defraud the applicants of securities of Co or any other person, then every person referred in Sec 35(1) shall be personally and unlimited liable to compensate the loss suffered and shall also be liable v/s 447 - Penalty for fraud.

Penalty for fraud v/s 447

FRAUD

BIG

SMALL

Fraud \geq Rs. 10L

Fraud $<$ Rs. 10L

or \downarrow

or \downarrow

1% of T/O

1% of T/O

and

min max

does not involve

Imp 6m 10yrs

public interest

(Normally)

\downarrow

3yrs 10yrs

Imp upto 5 years

(Public interest)

or

AND

upto 50 lakh

fine Amt of fraud 3x amt of fraud

or

both

There will be no criminal liability on the person if he proves that

such statement or omission was immaterial

OR

he had reasonable grounds to believe and did believe upto the time of issue of prospectus

that such statement was true or the inclusion or omission was necessary.

If there is a misstatement in the prospectus then allottee (person who buys shares on faith of prospectus) will have following rights

Cancellation of the contract

claim damages

Right to reject is lost if he attends general meeting of the company / accepts dividend.

B.4 Advertisement of prospectus Sec-30

If a prospectus is issued it shall contain following details :

- (i) Objects of the company
- (ii) Liability of the members.
- (iii) Amount of the share capital and its capital structure
- (iv) The name of signatories to MOA and the no. of shares subscribed by them.

B.5 Explain the offer of sale of shares by members. Sec - 28

- (i) If the members of the company propose in consultation with BOD to offer whole or part of their holding of shares to public they can do so by following the prescribed procedure
- (ii) Any document for such offer of sale to the public shall be deemed to be a prospectus issued by the company and all the rules regarding prospectus shall be applicable to such offer of prospectus.
- (iii) The members whether individuals or bodies corporate or both whose shares are proposed to be offered to the

public shall authorize the co. and shall take all option for such offer of sale and they shall re-imburse the company for all the expenses incurred by it on this matter.

Q.6 Provisions for variation in terms of prospectus - Sec 87.

- (i) A co can vary terms / objects in prospectus only by passing SR in GM.
- (ii) Notice for such resolution → published in 2 newspaper
 ↙ 1 → in english
 ↘ 1 → in regional language (of city where registered office is situated)
- (iii) The money raised through prospectus cannot be used for

←	buying	} in equity shares of any other listed Co.
	trading	
	dealing	
- (iv) The dissenting shareholder who are not agreeing to varying of terms shall be given an exit after by promoters / shareholder at such exit price in such exit price in such manner as prescribed by SEBI.

Q.7 Explain Abridged Prospectus. Sec 33

- (i) It is a summarized form of prospectus
- (ii) An application form should be attached to the prospectus
- (iii) Application form is not required if shares are given

Not given to public

OR

given to underwriter

- (iv) If sec 33 = contravened,
Penalty = Rs. 50,000 for each default.

Q.8 Explain shelf prospectus - Sec 31 (SP)

- (i) It is issued by a company proposing multiple issue of securities.
- (ii) Once SP is filed with ROC - fresh prospectus for every issue is not required.
- (iii) SP has a validity of 1 year from date of opening + first offer of securities.
- (iv) If there is any changes prior to the issue of second issue, the CO will file information memorandum (IM) to the ROC.
- (v) The SP and IM makes the final prospectus.

Q.9 Red Herring Prospectus - Sec 32 - RHP

- (i) RHP is a draft prospectus which does not contain any detail regarding \leftarrow price of issue
Size
- (ii) CO will issue info memorandum (IM) prior to issue of prospectus in order to explore demand for securities.
- (iii) At least 3 days prior to opening of offer, CO files RHP with ROC
- (iv) RHP has same obligation as applicable to a prospectus.
- (v) On basis of ~~prospectus~~ response, CO finalises the price & size, close the offer. After closure of offer CO \rightarrow will offer file final prospectus with ROC.

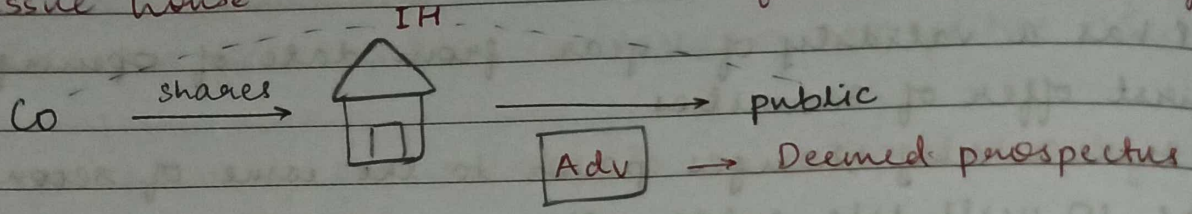
Q.10 Explain deemed prospectus - Sec 25

- (i) Earlier, CO \rightarrow issued ^{shares} to issue house and issue house offered same shares to public by \rightarrow Advertisement.
- (ii) It helped the companies to avoid the strict requirements of prospectus.
- (iii) Any document containing such offer of sale of shares issued by issue house shall be termed as DEEMED PROSPECTUS.

(iv) Such advertisement will not be deemed prospectus if

Co receives full consideration from Issue house

shares are offered to public by IH after 6ms from allotment by Co



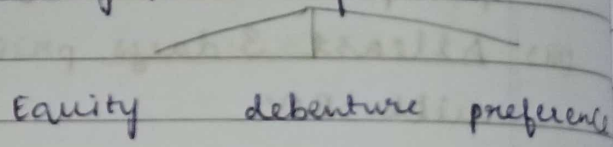
Q.11 Private placement - Sec 42

(i) Any Co \leftarrow Public \rightarrow can offer shares to identified private by private placement persons.

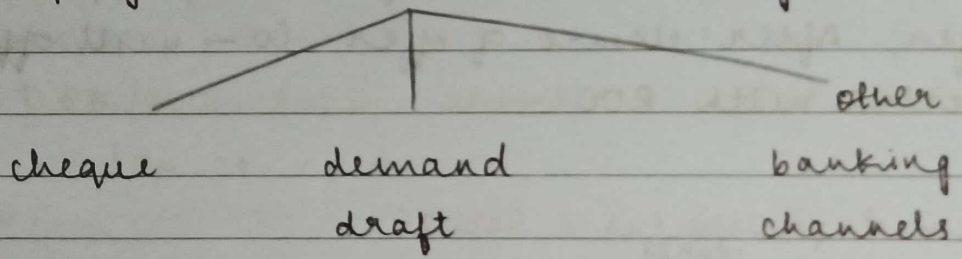
(ii) This offer can be made to maximum 200 persons in a financial year.

(Qualified Institutional buyers and employees offered under ESOP shall be excluded in 200)

This limit is applicable per security i.e. 200 for each



(iii) The payment shall be made only



NOT BY CASH.

Money raised cannot be used until shares are allotment and return and of allotment is filed with ROC.

(iv) NO fresh invitation / offer can be made unless

Earlier offer
is completed

that offer is
withdrawn or abandoned
by Co.

Co → can offer multiple offers of private placement in a FY subject to aggregate limit of 200 percent (per security)

This rule is applicable for each security.

(v) Co → allot securities within 60 days from receipt of application money

If allotment is not done → refund ≤ 15 days from expiry of 60 days

If not refunded within 15 days → refund along with 12% simple interest from expiry of 60th day.

(vi) After allotment,

Co → file return of allotment → ROC ≤ 15 days.

If not filed,

Co / promoter / director → liable upto Rs. 1000/day subject to max Rs. 25L.

(vii) If any provision = contravened,

Co / promoter / director = liable for

Amount realised through private placement

↓

Rs. 2 crore

AND

Refund the amount with 12% S-I within 30 days

of order imposing penalty.

AND

Such offer will be termed as public offer
and requirement of

COA 2013

SCRA 1956

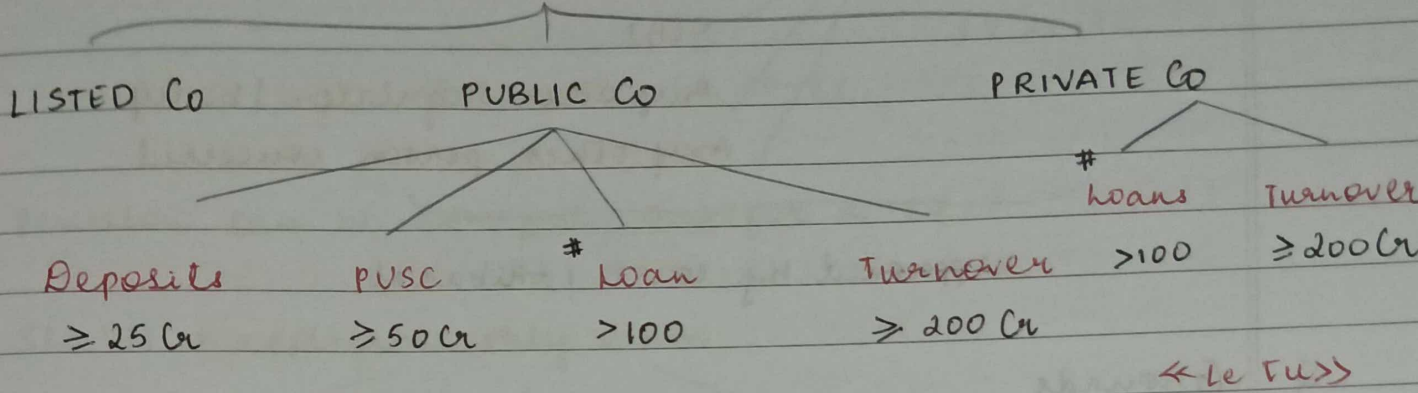
SEBI 1992

} apply

Refer Q.3, 5, 7, 9 p.g 3.45 module

ACCOUNTS OF COMPANY

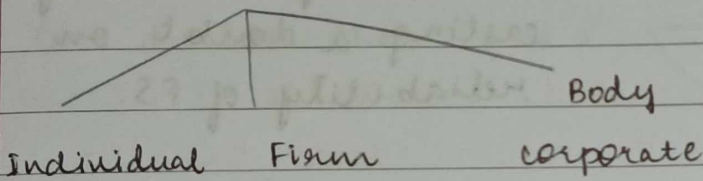
1. Section 138 - Internal audit



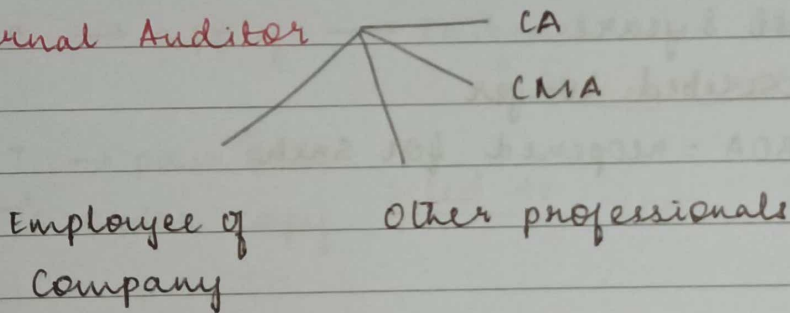
« DP. le Tu »

Deposits / loans → at any point of time.

Internal Auditor



Internal Auditor

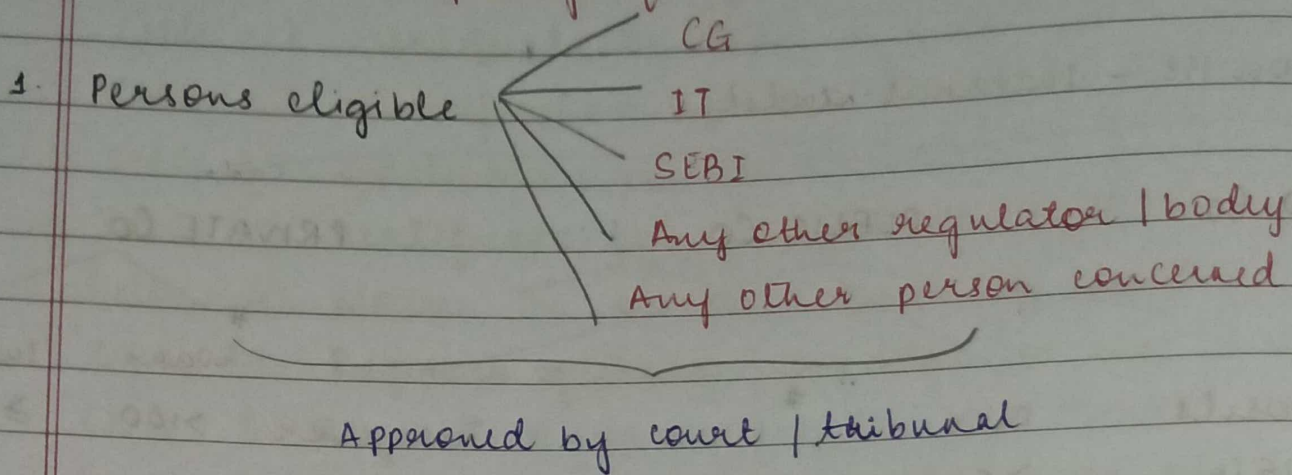


- Appointment of Internal Auditor by BOD at Board meeting through Board resolution.
- Manner and Interval of Internal audit = prescribed by CG.

Q.2. Sec 133 = Accounting Standards

CG = prescribe → AS + addendum as recommended by ICAI in consultation with national financial Reporting Authority (NFRA)

Q.3 Sec 130 : Re-opening of A/c



2. Grounds

Earlier A/c

= prepared in a fraudulent manner

Affairs of Co

=
mismanaged thereby casting a doubt on reliability of FS.

3. Period (Sec 128)

- Any of the last 8 years
- But if CG = prescribed longer during, then BOA = reopened for such longer period.

Q.4 Voluntary Revision - Sec 131

Voluntary Revision $\begin{cases} \text{FS - Financial statement} \\ \text{BR - Board Report} \end{cases}$

1. 131 : Voluntary revision ✓ Non compliance

Sec 129

↓
CA ABHISHEK BANSAL
FS

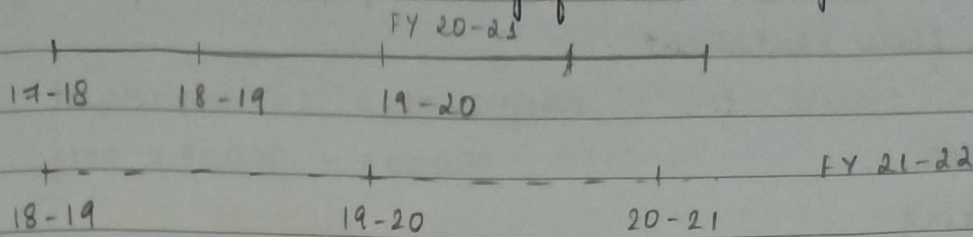
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www.letslearnindia.in / 8448448919

Sec 134

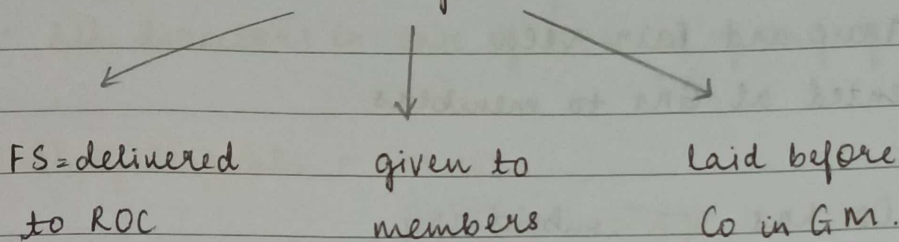
↓
BR

2. Revision can be done in any of the last 3 years



3. Revision can be done only once for a FY.

4. Sec 131 = applicable only when



5. Co = disclose that it is a
{

 "Revised FS"
 "Revised BR"

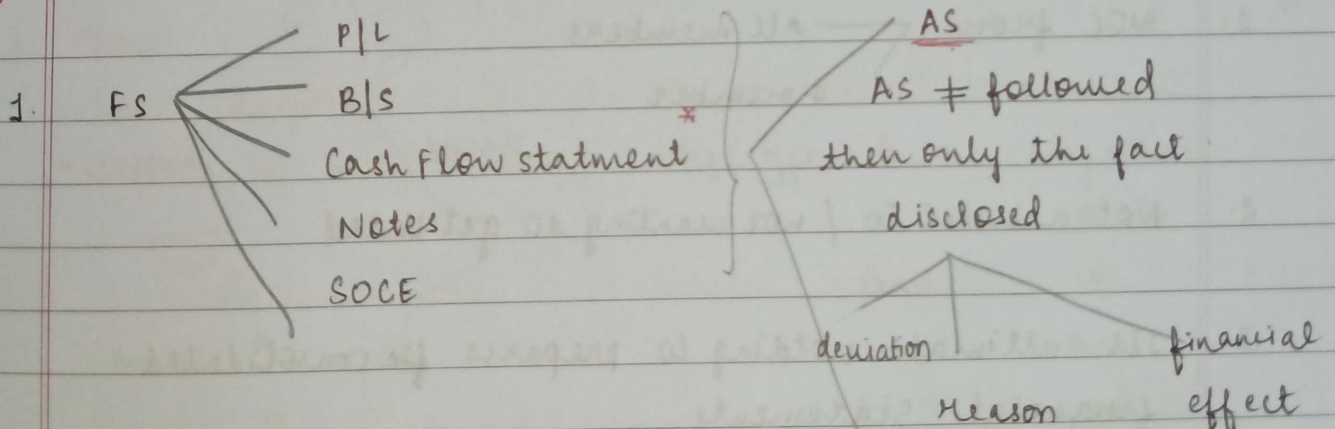
6. Procedure:

(i) Co → apply → Tribunal → CA / IT
↖ representation

(ii) T → pass order

(iii) T's order copy ↑ filed to ROC

Q.5 Sec 129 = Financial statements



* OPC, small Co, Dormant Co, startup pub Co ≠ prepare cash flow statement.

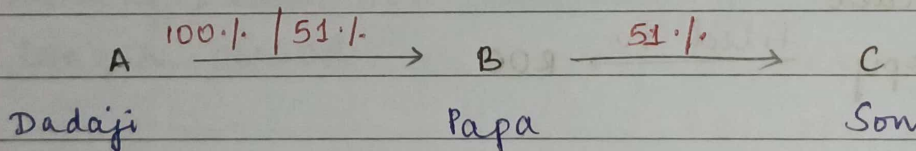
Except:

- Banking
- Insurance
- Electricity
- Any other → prescribed by CG.

2. FS = True and Fair view presented at GM to members

3. If a Co. has
 subsidiary
 Associate
 Jointventure
 = mandatorily prepare cash flow consolidated financial statement

Exemption from preparing Consolidated financial statement:



* 1. NOC from
 All members
 1 member

and
 2. Not a listed Co / not wanting to get listed
 and

3. Its ultimate holding Co. prepares consolidated financial statements.

4. If Sec 129 = contravened

a. Imprisonment upto 1 year
fine = 50,000 - 5,00,000

OR Both

b. Person responsible

- MD, whole time director (finance), CFO
- Any person authorized by BOD
- All directors in case of absence of any of the above.

Q.6 Books of Accounts - Sec 128

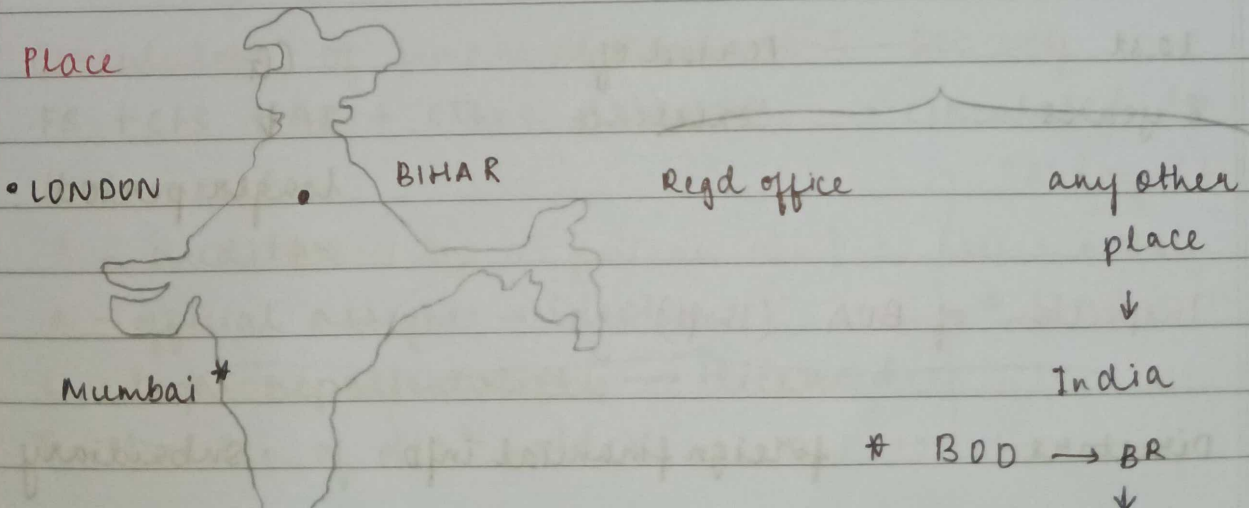
1. Proper BOA ?

- True and fair
- Accrual Basis
- Double entry system

2. BOA includes

- Assets and liabilities
- Purchase and sales
- Income and expenses
- Costing records u/s 148

3. Place

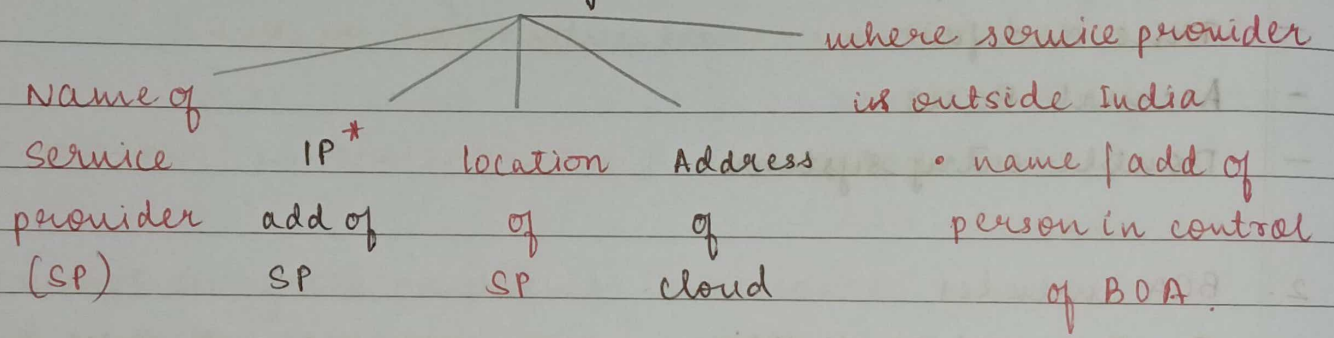


Branch - Summarized return

↓
Regd office at quarterly intervals

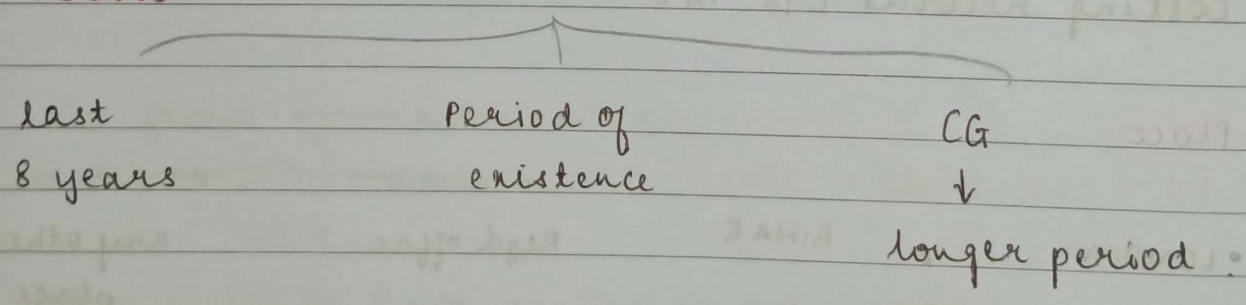
4. Electronic form

- (i) Remain accessible in India → for subsequent reference
- (ii) Remain completely in the original format in which they were received.
- (iii) in legible form
- (iv) Proper system for
 - retrieved
 - storage
 - display
 - printout
- (v) At the time of filing annual FS → ROC
full details will be given

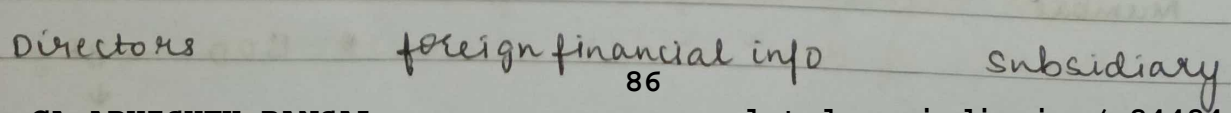


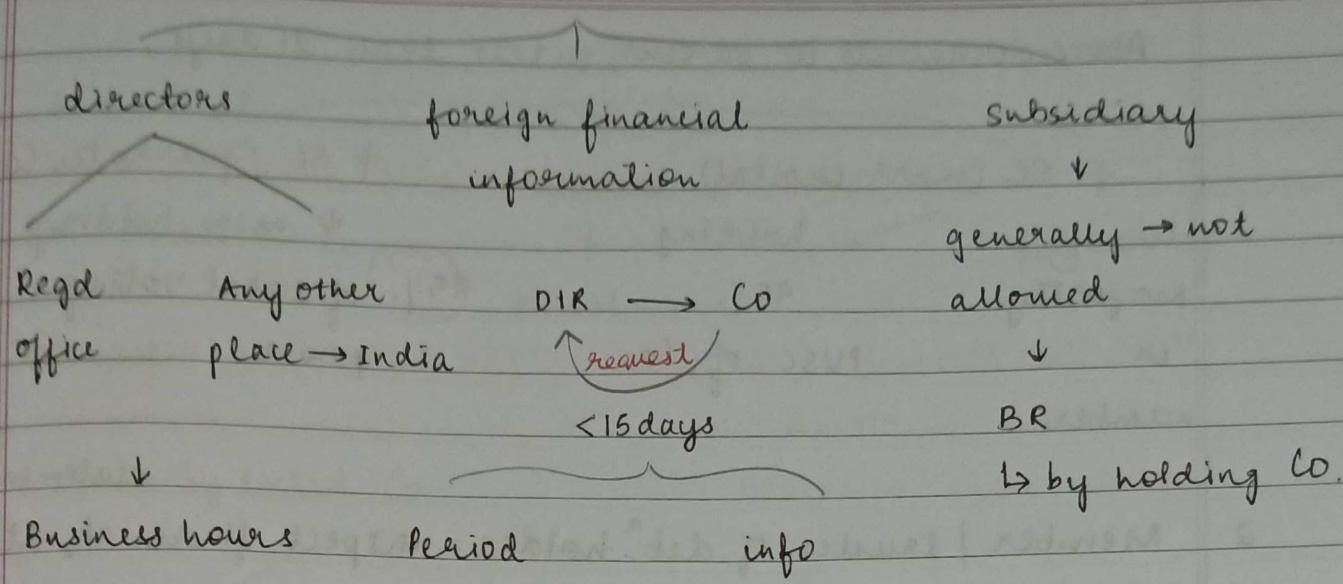
* Internal Protocol

5. Period



6. Inspection of BOA (Imp)





Q. 7. Contravened - Sec 128

Minimum 50,000 - maximum 5,00,000

Q. 8. Persons responsible

MD, WTD, CFO, any person authorized by BOD

9. NO member (irrespective of his shareholding / agent of director can inspect BOA

10. w.e.f 1st April 23 - every company shall use only those accounting software which has a feature of audit trail (sequence) creating and edit log of each change made in BOA.

Q. 7. Circulation of financial statement - Sec 136

1. FS + CFS + AR + other document -> circulated to

M - member

A - auditor

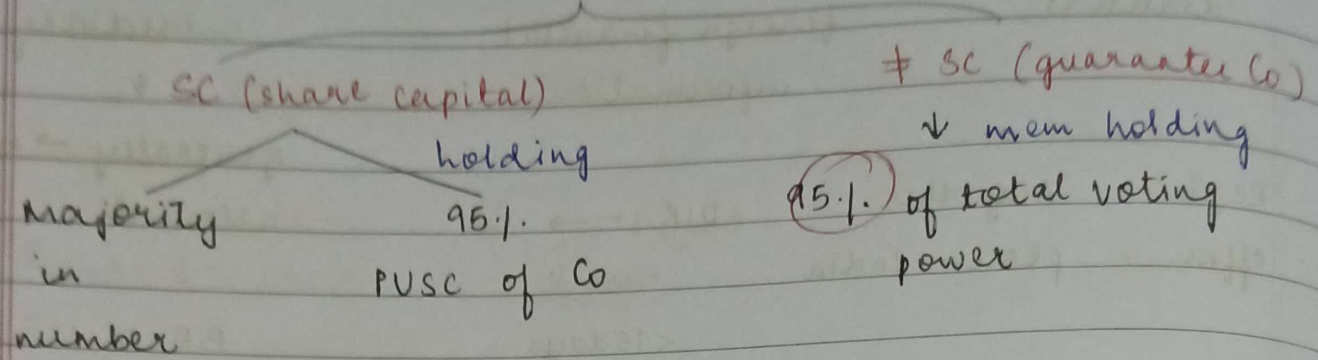
A - official assignee -> insolvent

L - legal representative -> deceased

T - trustee of debⁿ holder

} "21 days" before GM
Sec 8 Co "14 days"

Above documents to be sent in less than 21 days,



2. Member / trustee of debⁿ holder = inspect financial statement at Regd office → business hours.

Non compliance Co = 25000/-
officer = 5000/-

3. For listed Co.

Above docs = available for inspection at regd office during business hours for 21 days.

- Unless the shareholder ask for full financial statement, listed Co = send summarized FS 21 days before GM.

Salient features

- form NO AOC - 3
- other docs

Member / trustee of debⁿ holder

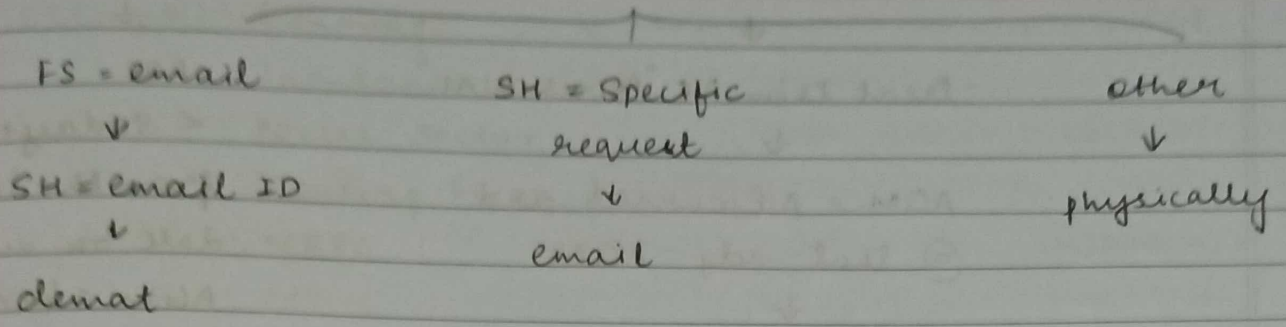
4. Special point

LISTED Co

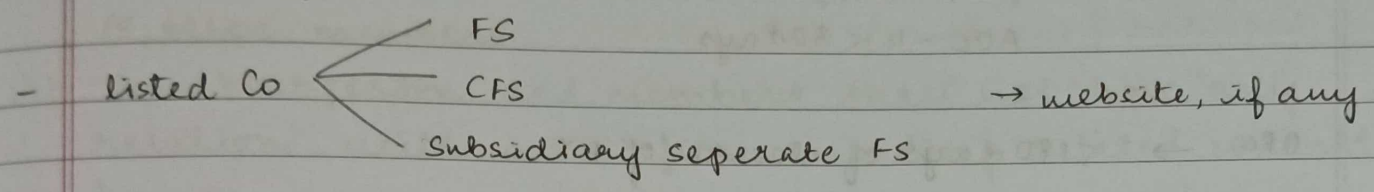
PUBLIC Co

networth > 1Cr

T/O > 10Cr



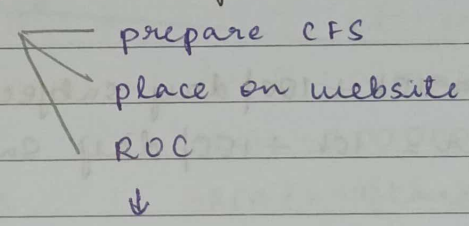
5. Website by listed Co



- If listed Co → foreign subsidiary

If foreign subsidiary = prepare CFS = laws of foreign country and if that CFS is placed on the website → it will be allowed.

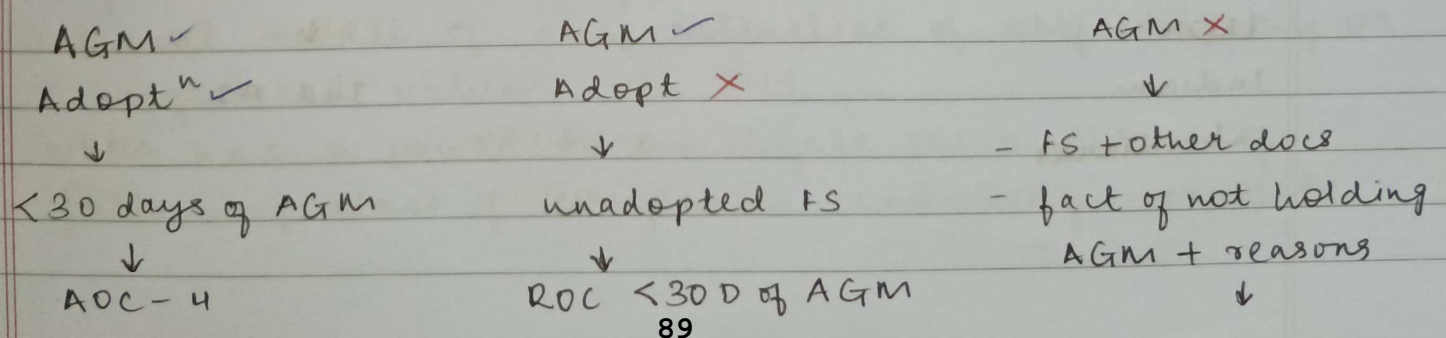
- If foreign subsidiary not required to get its account audited. then still Indian holding Co



that unaudited FS

Q.8 Filing of FS with ROC - Sec 137

1. FS + CFS + other documents → deliver to ROC



↓
treat them as "PROVISIONAL"

↓
AGM = Adjourned and
@ that adj. AGM

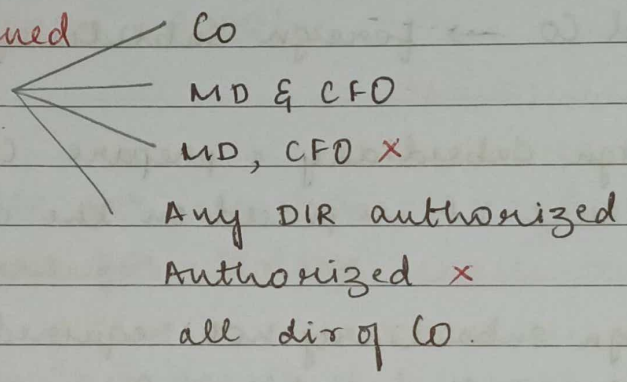
↓
FS → ROC

↓
AOC - 4 < 30 days

↓
ROC
< 30 days
from the last
date on which
AGM = have
been held.

2. OPC → < 180 days of closure of FY.

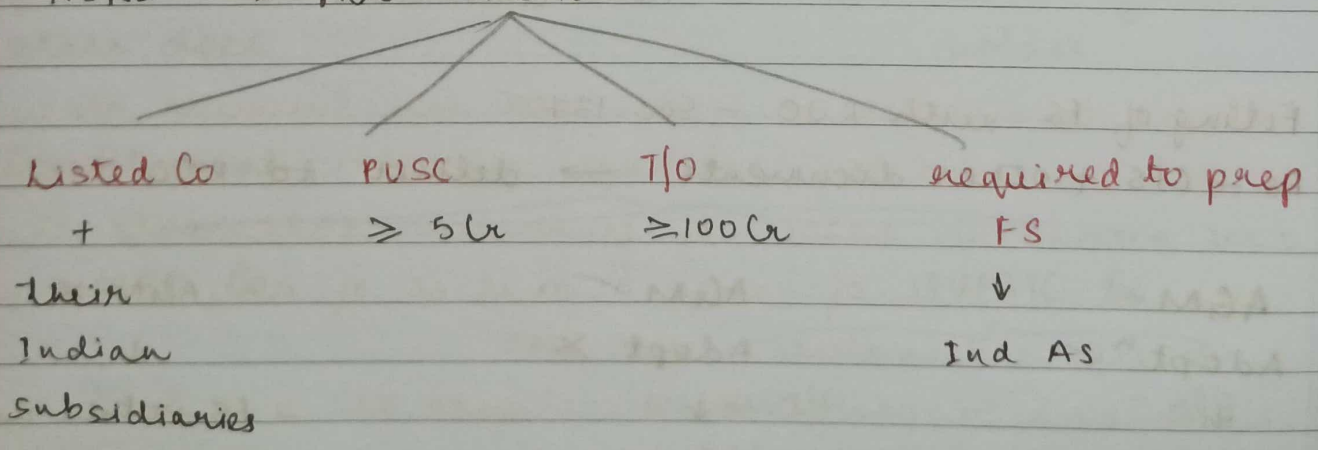
3. If Sec 137 - contravened
Persons responsible



CO = 10K + 100/day subject to max ₹ 2L

officer = 10K + 100/day subject to max ₹ 50,000

4. XBRL → AOC - 4 x BRL



- Exempt:
- Banking
 - Insurance
 - Power sector
 - Housing Finance
 - NBFC

8.9 National Financial Reporting Authority. Sec 132

- (i) CG will constitute NFRA comprising of a chairperson & 15 other members.
- (ii) The chairperson and members shall not have any relation with audit firm including related consultancy firm

during the course of **AND** 2 years after ceasing to hold such appointment

- (iii) If a professional or other misconducted is proved, NFRA will order for penalty

Individual	Firm
Min - 1,00,000	Min - 5,00,000
Max - 5 times of remuneration	Max - 10 times of rem.

AND

Debar the member or firm for min 6 months max 10 years to be an auditor, internal auditor or undertaking any audit in respect of financial statements or internal audit of any activities of any company or a registered valuer v/s 247.

- (iv) NFRA has a power to investigate the auditors of following class of companies and body's corporate.

1. Listed Co \leftarrow In India or outside India

2. Unlisted Public Co

PUSC
 ≥ 500 Cr

Turnover
 ≥ 1000 Cr

Loans, deposits, debentures
 ≥ 500 Cr

as on 31st march of last FY.

3. Banking Co, Insurance Co, Electricity Co, Special Act Co

4. Any other prescribed by CG.

5. Foreign \leftarrow subsidiary of 1 to 4 if Associate

Income $\geq 20\%$ consolidated Income

Networth $\geq 20\%$ consolidated networth

Q.10. Signing of FS / Board report. Sec - 134

(1) Signing of FS

CM = authorised

CM \checkmark

AND

CEO

CFO

CS

whenever they are appointed

CM \times

2 DIRS \rightarrow JMD

Should

- OPC → 1 Director → sole member of OPC

(ii) Signing of Board Report

CM - authorised

CM ✓

CM ✗

- 2 director → 1 MD

- OPC → 1 Director

(iii) Contents of board report and director's responsibility statement

Refer p.g no 347 and 348.

Q. 11 Corporate Social Responsibility - Sec 135

1. Every Co.

NP #
≥ 5CR

Net worth
≥ 500 Cr

Turnover
≥ 1000 Cr

during
immediate
PY

NP means NP as per Sec 198 excluding

Profit from overseas
branches whether operating
as a separate company
or otherwise

dividends received from
other Co's in India

↓

which Sec 135 = applicable

2. CSR committee

(i) Min 3 directors → 1 should be independent director

(ii) If ID is not there → min 2 directors

(iii) Pvt Co's with 2 directors → min 2 directors

(10) If CSR amount is upto Rs. 50 L; NO CSR committee is required.

3. Duties of CSR committee
↳ activities → schedule VII

4. Following activities ≠ CSR

(i) activities undertaken outside India.

(ii) donation to political party.

(iii) Activities taken in normal course of business.

(iv) Activities taken for benefit of employees and their families.

(v) Activity not as per Schedule VIII

5. Manner of CSR activities

(i) CSR activities → as per Co's CSR policies

Sec 8 / Reg. Trust

(a) society → established by Co
either singly / other Co's

other Sec 8 Co / Reg. Trust /
Society

min 3 years track
record.

(b) Sec 8 / Reg. Trust /
societies → established CG / SG /
any other established under
parliament

NO condition

(ii) One Co → combine with other Co for CSR.
Report → separate

(iii) CSR spent = As per Co's CSR policy ∩ Project

& Program

- (iv) CO = build its own CSR capacities
+ agencies track record of min 3 years
↓

Administrative - overheads = Max 5% of total CSR expenditure
in one FY.

6. CSR spending

Min 2% of Avg net profit → 3 years

local area = preference

If Incorporation ≤ 3 yrs = Avg NP of the immediately
preceding FY's.

7. Foreign Co.

Applicable - Yes, if it falls within limit.

- Committee → Min 2 director

1 authorized
person u/s 380(1)d

Other nominated by F.Co

8. If a company spends an amount in excess of the requirement
i.e more than 2% then such company may set off excess
amount against the requirement to spend in such number
of succeeding financial year as may be prescribed.

9. If the company fails to spend minimum 2% in the FY,
it shall specify the reasons for not spending in the board
report and if the amount related to

ONGOING Project

↓

≤ 30 days of close of FY

↓

NOT ONGOING Project

↓

unspent CSR fund

A/c

transfer to unspent CSR A/c
in schedule bank (for 3 yrs)

↓

If in 3 yrs amount not spent
then,

≤ 30 days from completion
of 3rd years

↳ tfr to unspent CSR fund

↳ Sch vii

Sch vii

↓

≤ 6m of close of FY

point 6 and 9:

If contravened

(200%)^{Co.}

2x amt to be tfr ↓

or Rs. 1 Cr

(10%)^{Officer}

1/10th of amt ↓

or 2L

AUDIT AND AUDITORS

- 139 Appointment of Auditors
- 140 Removal / Resignation of Auditors
- 141 Eligibility, qualification & disqualification of auditors
- 142 Remuneration to the Auditors
- 143 Powers and duties of Auditor
- 144 Prohibited services
- 145 Duty of the Auditor to sign the Audit report
- 146 Right to receive notice and attend the AGM.
- 147 Contravention
- 148 Cost Audit
- 2(77) Relatives
- 143(12) Fraud

Q

Q.1 Relatives. 2(77) - Refer nature of Company.

Q.2 Signing of Audit report. Sec - 145

- (i) The person appointed as the auditor shall sign the audit report.
- (ii) If a firm is appointed, then the CA's who are the partners and holding COP can sign the audit report.

Q.3 Penalty. Sec - 147

Company		Auditor	
Sec 139-146		Sec 139, 144, 145	
	officer	Normally	wilfully
Min 25K	min 10,000	Min 25000	Imp upto 1yr
Max 5L	Max 1,00,000	Max 5,00,000 or ↓ 4 times Rem	Min 50,000 ↓ Max 25,00,000 8 times Rem

Q.4 Prohibited Services - Sec - 144 < MAAARDI₃ >

M = Management consultancy services

A = Accounts and Book keeping services

A = Actuarial Services A = Any other services

R = Rendering of outsourced financial services

D = Design and implementation of financial info system

I = Internal audit

I = Investment advisory services

I = Investment banking services.

Q.5 Qualification. Sec - 141(1)(2)

(i) For individual he should be a CA holding COP issued by the ICAI.

For firm majority of partners should be CA + COP.

Q.6 Disqualification. Sec - 141(3)(4) X-X

(a) Body corporate other than LLP

(b) Officer / employee

(c) Partner / employee

(d) Person / firm / relative

ANY SECURITY

INDEBTEDNESS

GUARANTEE

C

H

A

S

S

Rel → upto 1L = allowed

>

>

60 days

5L

1L

(e) Person / firm → Business relationship → CHASS < Prof services

@ ALP-HATHA

(f) Person → Relative → DIR / KMP → company

(g) > 20 Co's

excluding : OPC, small company, Dormant Co, Pvt Co

→ PUSC < Rs. 100 Cr

(b) convicted for frauds, 10 years have not elapsed from expiry of conviction.

(1) Sec 144 - CHASS

Chass has to be seen in d/life.

Q.7 Remuneration - Sec 142

FIRST



BOD

SUBSEQUENT



Member → in GM

← delegate →

The Auditor can reduce his fees, but he cannot reduce his scope.

If he reduces scope → he will be guilty of professional misconduct.

Q.8 Audit of Branches. Sec - 143(8) - Refer p.g 286 - main book.

Q.9 Appointment of Auditor → Sec - 139

FIRST

SUBSEQUENT

Gent.
Co

Non-gent
Co

- CAG < 60 days
from registration

- BOD < 30 days
from registration

- CAG x

- BOD x

BOD < 30 days

Mem < 90 days at EGM

- BOD x

- till 1st AGM

Member < 60 days at EGM

- till 1st AGM

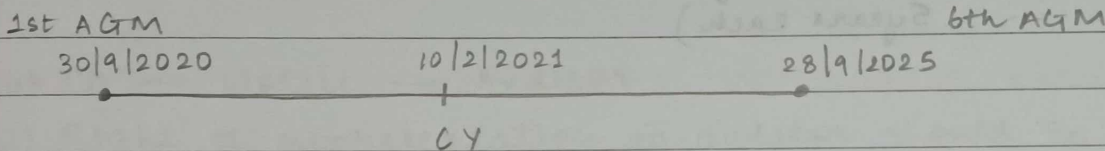
SUBSEQUENT

Government
Company
↓ CAG

Non-government
company

- <180 days from the commencement of FY
- till next AGM
- Members at 1st AGM by passing OR till 6th AGM and thereafter
- Imprisonment
 - Individual = 5 years
 - Firm = 2 term of 5 year each
- Co → declaration → Auditor
 ↗ \neq disq u/s 141(3) a to i
- Co → file → ROC → ADT-1 <15 days of app't

CASUAL VACANCY - Sec 139(8)



Government
Company
↓

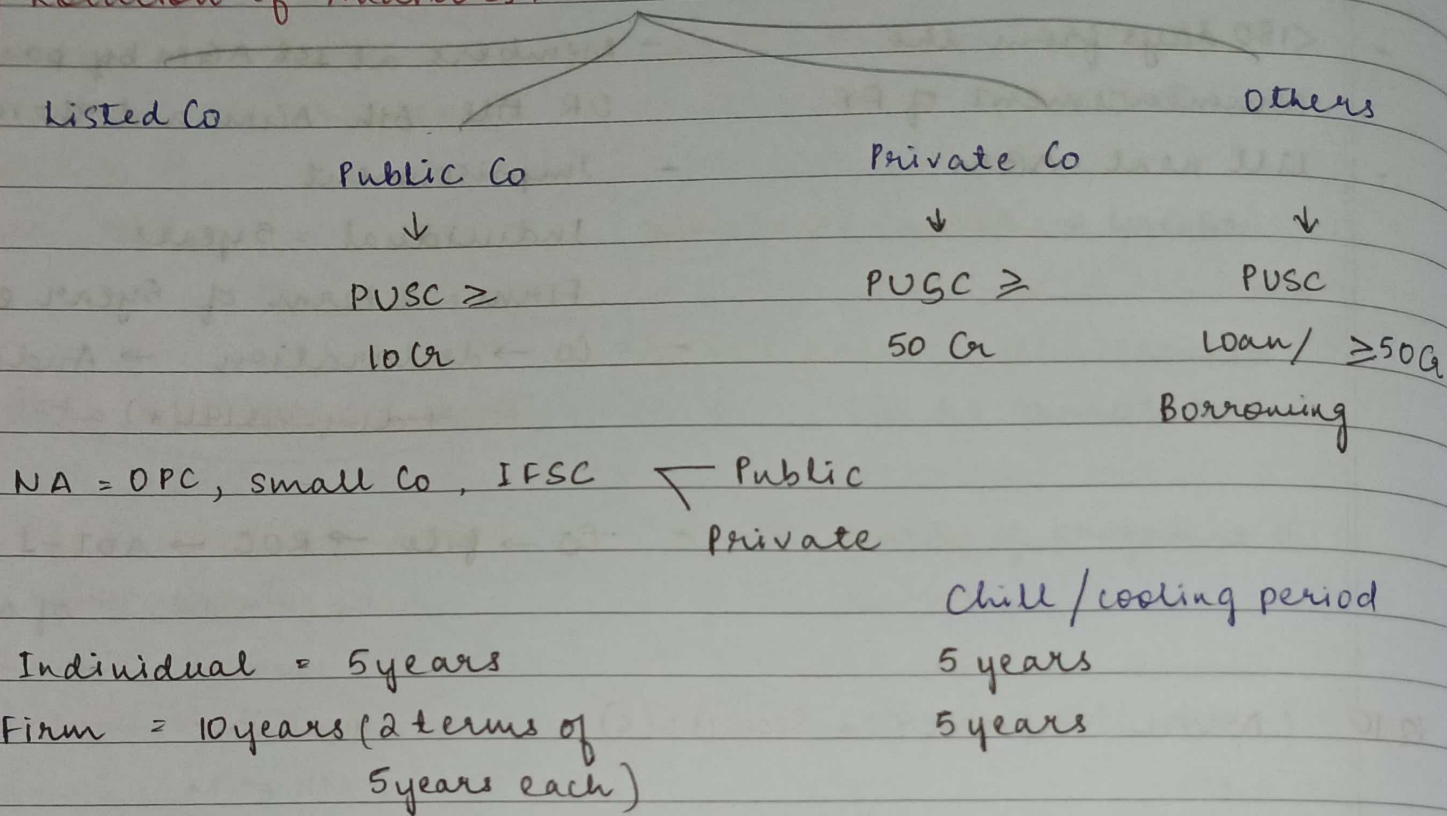
Non-Government
Company

- | | Resignation | Others |
|----------------------|------------------------------|--------|
| - CAG <30 days of CV | | |
| - CAG X | ↓ | ↓ |
| - BOD <30 days | - BOD <30 days of CV | ✓ |
| - till next AGM | - Member → confirm <3 months | X |
| | - till next AGM | ✓ |

~~8.11~~ Reappointment of retiring Auditor - Sec 139 (9)

- (a) ≠ disqualified
- (b) ≠ resign
- (c) No new auditor is appointment

8.10 Relation of Auditors.



NOTES:

- (i) If there is a common partner on the date of appointment the new firm will also be disqualified for 5 years.
- (ii) If a partner shifts from old firm to new firm, then the new firm will also be disqualified for 5 years provided the partner who shifts is a certifying partner.
- (iii) If a firm is a part of a network, brandname (EY, PWC) then all the firms of that brand or network will also be disqualified for 5 years.

Q.11 Removal of auditor. Sec - 140

A) Before expiry of term

~~At~~ 6th

B) At AGM

- (i) BOD → Board resolution
→ Board meeting
- (ii) Application → CG → ADT-2
< 30 days of BR
- (iii) CG = approval
- (iv) General meeting ✓ < 60 days
- (v) Special resolution ✓
- (vi) Opportunity of being heard

New auditor is appointed providing expressly that retiring auditor ≠ be re-appointed

STEPS:

(i) Mem → Special →

STEPS for 6th AGM:

(i) Members → Special → Co
Notice

Retiring auditor not be reappointed or new auditor should be appointed.

(ii) Co → Notice → Auditor

(iii) Right of representation to auditor should be given by management.

Q.12 Resignation of Auditor - Sec 140

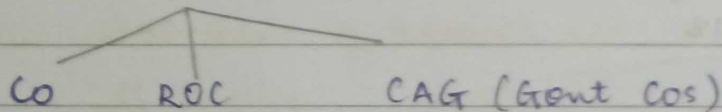
1st AGM

6th AGM

ANYTIME

(i) Auditor → Resign → Anytime

(ii) He → file → ADT-3 < 30 days of resign



(iii) ADT - 3

(111) ADT - 3
 LESS
 ↓
 Min 50,000 + continuing default → Max RS. 2L
 Rem of auditor 500/day

Q.13 Change of auditor based on tribunal's direction.
 Sec 140 (sub section 5)

(i) The Tribunal either

Suo moto

or

Application
 by CG

or

Application
 by any person
 concerned

shall pass an order for changing the auditor if the auditor has acted or abetted or colluded in a fraudulent manner.

(ii) If the application is made by CG the tribunal shall pass an order within 15 days of receipt of application.

(iii) The tribunal will pass an order that the person / firm shall be disqualified for 5 years to be an auditor in any company.

(iv) The guilty auditors shall also be liable U/S 447.

(v) The civil liability will be of the firm and the criminal liability will be only of the partner who has acted in the fraudulent manner.

Q.14 Rights and duties of auditor. Sec-143

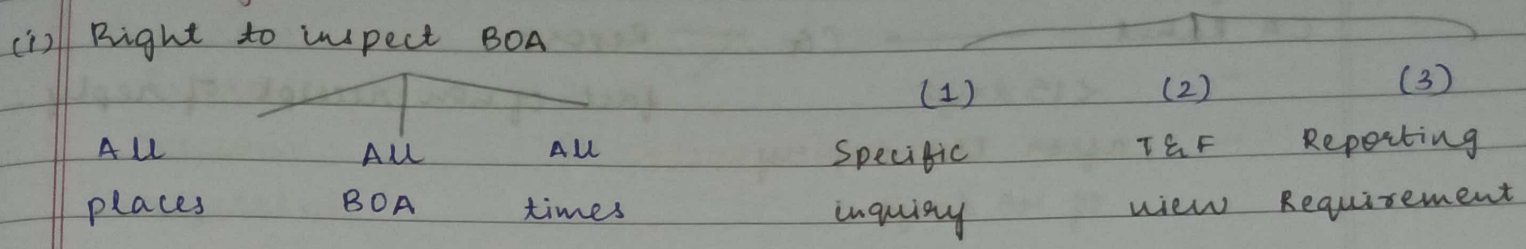
143

Right

duty

Rights

Duties



(ii) Right to receive remuneration - Sec 142 << LT-DIES >> << ABCDE - D >>

(iii) Right to visit branches - Sec 143(8)

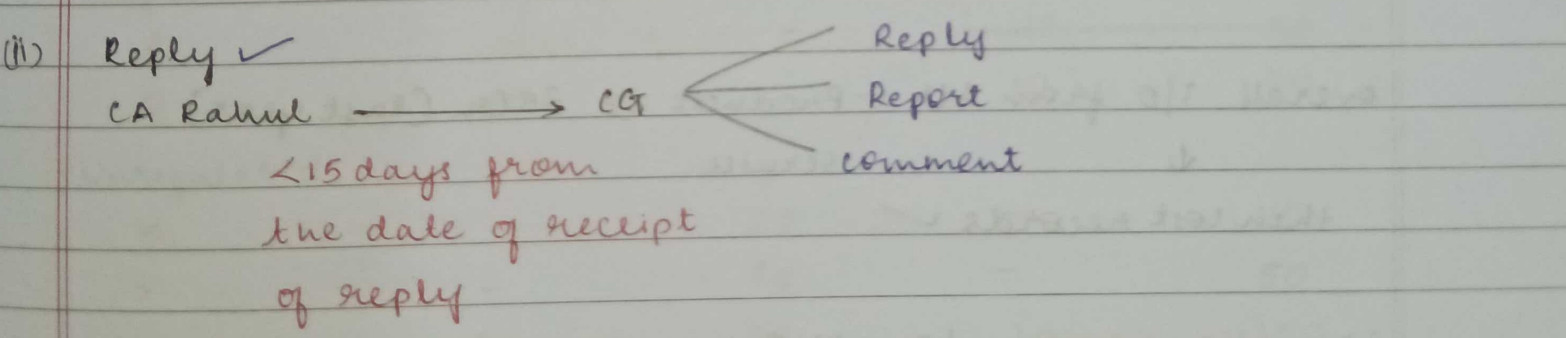
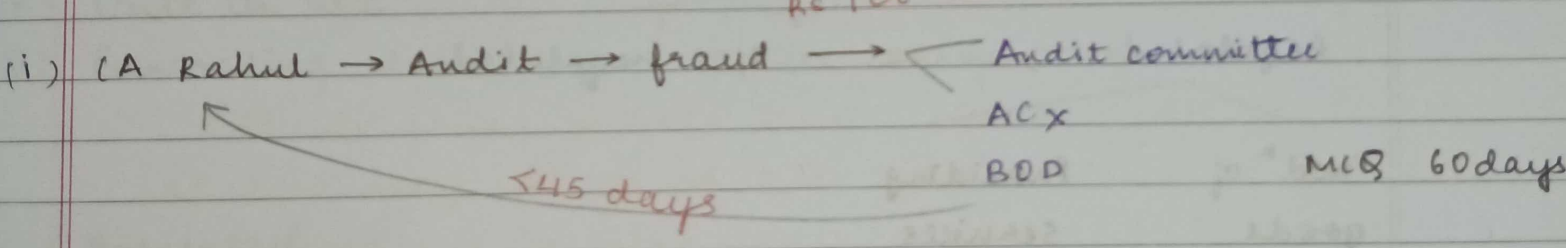
- Loans
- Transaction
- deposits
- Investment

(iv) Right to receive notice and attend GM

Right and duty } Sec 146

Shares : The auditor will report under 143(1) i.e LT-DIES only when he is not satisfied. If he has not reported it is assumed that he is satisfied.

Q.15 Reporting of frauds. Sec 143(12) - X



(iii) Reply X
CA Rahul → CG Report
 < 15 days after the expiry of 45 days
 fact of non receipt of reply

(iv) ADT - 4
 (v) Applicable to
 Statutory Auditor
 Cost Auditor
 Secretarial Auditor
 Branch Auditor

(vi) If Sec 143(12) X
 Listed → 5,00,000
 Other Co → 1,00,000

Q.16 Cost records / Audit. Sec - 148
 Rule 3 + Sec 148 = cost records
 Domestic / Foreign
 Regulated / Non regulated
 Prodⁿ of goods / Providing services
 overall T/O from All Products ≥ 35 Cr (last year) service
 then cost records ✓

Exemption: Micro / small Enterprise → MSMED, 2006.

	A	B	C
Regulated			
Sugar	2	-	-
Telecom	5	-	-
Unregulated			
x	-	40	-
y	-	15	-
Others	30	5	80
Overall T/O	37	60	80
cost records	✓	✓	✗

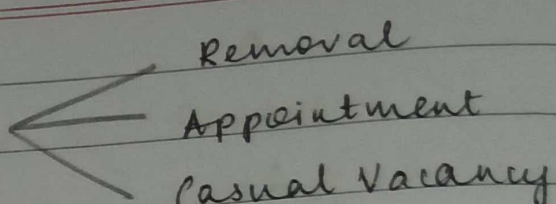
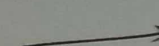
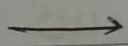
Rule 4 + Sec 148 = cost audit

Regulated	Non Regulated
Individual T/O = 25 Cr	Individual T/O = 35 Cr
AND	AND
Overall T/O = 50 Cr	Overall T/O = 100 Cr

Exemption:

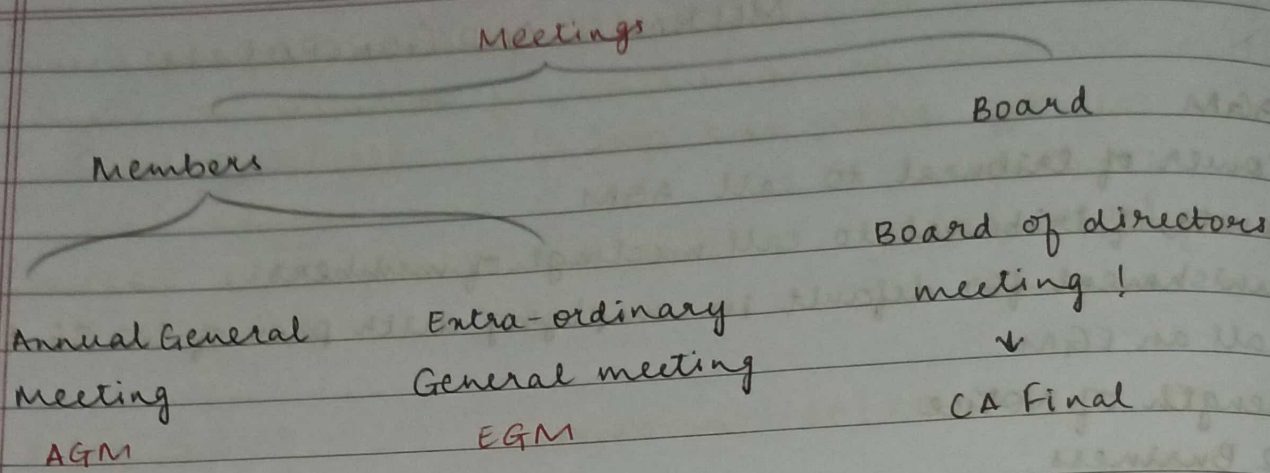
- (i) CO = Revenue from exports > 75% of total revenue
- (ii) Unit in SEZ (self)
- (iii) Generating electricity → captive consumption.

	A	B	C	D
Regulated				
P	5	-	15	20
Q	10	-	10	30
Unregulated				
x	-	20	-	40
y	-	30	-	50
Others	60	60	20	100
Overall T/O	75	110	45	240
	✗	✓	✗	✓

CRA1 - Cost records
CRA2 - Cost Auditor 
CRA3 - Cost Auditor  BOD
report
CRA4 - BOD  CG
XBRL *report*

MEETINGS AND GENERAL

- 96 AGM
- 97 Power of Tribunal to call AGM
- 98 Power of Tribunal to call meetings of members
- 99 Punishment for default in complying with prov of Sec 96 to 98.
- 100 Call an EGM
- 101 Length of Notice
- 102 2 Business
- 103 Quorum
- 104 Chairman
- 105 Proxy
- 106 Voting and rights to demand a poll
- 107 Voting by show of hand
- 108 Voting through Electronic means
- 109 Demand for Poll
- 110 Transaction of business through postal ballot
- 112 Representation of President and Governors in meetings
- 114 Ordinary Resolution and Special Resolution
- 115 Resolution requiring special notice
- 116 Resolution at adjourned meeting
- 117 Resolution and agreements to be filed with ROC
- 118 Minutes
- 119 Inspection of Minutes.



Q.1 Annual General Meeting - Sec 96 - 99

- | FIRST | SUBSEQUENT |
|--|--|
| <p>↓</p> <p>≤ 9m from the close of first financial year
i.e 31/12</p> <p>ROC cannot give extension</p> | <p>1. Every year and</p> <p>2. Max gap b/w 2 AGM can be 15m and</p> <p>3. Max gap b/w year ending and date of ensuing AGM can be 6m.</p> <p>ROC = 3m extension</p> |

(ii) As per Sec 98, if there is a default in calling AGM, then the tribunal on application by any member of the company call AGM and give such directions as the tribunal may thinks fit. The directions can also include that one member in person or proxy shall constitute a valid quorum. A general meeting held as above shall be deemed to be AGM of the company.

- (iii) If AGM cannot be held due to any reason, the Tribunal either suo moto^{or} on application by director or member shall call the EGM and give Sec 98 the directions.

A general meeting shall be deemed to be EGM of the company.

- (iv) Sec 99 - If 96/97/98 : contravened then,

Co / officer = liable for

upto Rs. 1 lakh and 5000/day till default continues.

- (v) AGM should be held during the business hours i.e 9am - 6pm. It can be held on any day other than National holiday. It shall be held at registered office or any other place in same city, town, village. However, AGM of unlisted Co. may be held at any place in India if consent is given by all members in writing / electronic mode in advance.

Q.2 Extra-ordinary general meeting - Sec 100.

(1)

BOD ✓

Members ✓

Tribunal ✓



Co = Share capital

Request

Co ≠ Share capital
(guarantee Co)

Members 1/10 PUSC
holding

1/10 VP

members having

EGM can be held on any day except National holiday during business hours and anywhere in India. If it is a wholly owned subsidiary of a company incorporated outside India, then the EGM can be held even outside India.

Date _____
Page _____

(ii) If members → request to the BOD.

- Call EGM with 21 days request.

- Max 45 days

If not call / not held, then,

Member will themselves hold the meeting within 3 months from the date of request.

(iii) Any reasonable expenses incurred by requisitionists shall be reimbursed to them by the company and the company shall deduct the same from the remuneration payable to the directors who defaulted in calling the EGM.

Q 3 Length of Notice - Sec 101.

(i) A general meeting shall be called by giving 21 days clear notice.

(ii) For calculation of 21 days follow the following:

Date of sending notice + 21 days + 2 days of post = date of meeting i.e 25th day.

(iii) Receipt or non-receipt of notice is immaterial.

(iv) Shorter notice - valid if consented by

For AGM

↓

Members holding ^{95%} 95% paid up share capital

carrying voting rights

For EGM

Co = SC

Co ≠ SC

Majority member in ₹ holding 95% of member PUSC carrying

voting rights

mem holding 95% PUSC

carrying of voting power.

Secy

SHARES

39
40 Q1 Minimum Subscription Section 39

43 ① No allotment of shares shall be made to public
48 unless minimum amount as stated in prospectus
51 has been subscribed.

52 ② The application money on every security shall be
53 minimum 5% of the nominal value of the security
54 or such percentage as may be specified by SEBI.

55 ③ If minimum subscription not achieved within 30 days
56 from the date of issue of prospectus, then refund
62 the money within 15 days. If it is not refunded
63 within 15 days, then the directors and officers
65 shall be liable to repay the money with 15%
66 interest p.a.

67
68 If minimum x ≥ 30 days | ≤ 15 day | If not refunded
69 Subscription | refund | Refund + 15% p.a
70 | | Interest

71 ④ Whenever Company makes allotment company shall
file a return of allotment with ROC.

⑤ In case of default the officer shall be liable
minimum ₹1,000 maximum ₹1 lakh.

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If shares are issued for cash or for other than
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in form ~~pe~~ PAS-3 within 30 days along with
prescribed fees. (Prospectus and allotment of
Securities)

Q3 Section 40: Explain Underwriting Commission.

M - Meaning

In an underwriting contract the underwriters guarantee the minimum subscription for which they are paid a commission called as underwriting commission. It can be paid only for the shares & debentures which are offered to public.

A - It should be authorised by AOA

R - Rate

for shares



Maximum

5% of

AOA

for debentures



max. 2.5%

or

AOA

K - (K) Copy of underwriting agreement shall be filed with ROC along with prospectus.

E - Eligibility

Underwriters will be paid even if single share / debenture is not subscribed by underwriters. It can be paid out of Profit & loss A/c as well as share capital A/c.

D - Details of underwriters, no. of shares / debentures underwritten, rate should be disclosed in prospectus. It may be paid in cash or lumpsum or kind.

Q4 What is Irregular Allotment

Refer Q5 Page 180

Q5 Section 52: Securities Premium Reserve

It can be used only for 5 purposes ; i.e :

R - Premium on Redemption of preference share & debenture

R - Written off Preliminary Expense

I - Written off shares and debenture issue expense

B - Issuing fully paid up Bonus shares.

B - Buy back

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① No company shall issue shares at discount and if it has issued, such issued shall be void.

② If section 53 is contravened

(2) ↓ Amount raised through discount issue
or ₹ 5,00,000

⊕

Refund @ 12% interest p.a.

③ Exceptions -

Sweat Equity
shares U/S 54

Shares given to
creditors when debt is
converted into equity as
per scheme approved by RBI

Q7 Section 54: Explain Sweat Equity Shares

Some company may issue sweat equity share at discount or for consideration other than cash to their employees or director for their value

addition, intellectual property, technical know how, etc. Q9

② Conditions:

S — shares should be of a same class already issued

W — When? Any time

E — Employee and director details like no. of shares, current market price, consideration if any and class should be disclosed in the resolution. Q

A — Authorised by special resolution by shareholders.

T — Terms and Conditions

listed Co. → SEBI

unlisted Co. → CG Rules

Amendment:

The company can issue sweat shares for maximum 15% of its paid up capital (equity share) in a year or shares of ₹5 crore whichever is higher subject to maximum 25% of paid up share capital at any time.

However a startup company may issue sweat equity shares of maximum 50% of its paid up share capital upto 10 years from the date of incorporation.

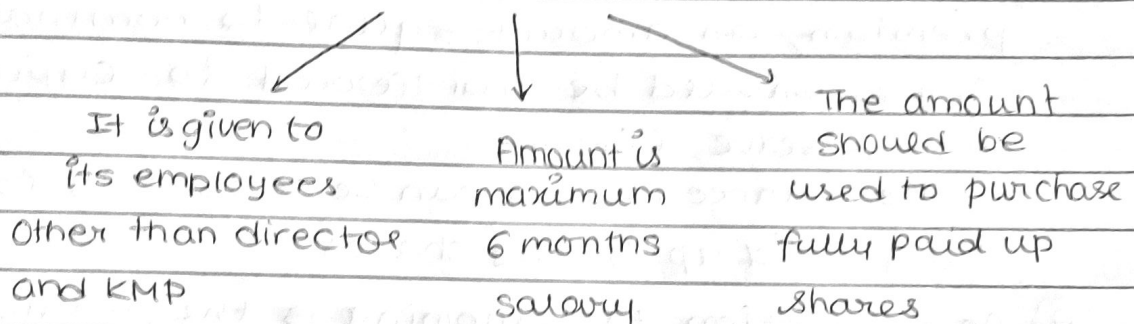
Q8 Section 55: Redemption of Preference Shares
Page 184, Question 16.

Q9 $\frac{\circ}{\circ}$ Diminution of Capital and Reduction of Capital
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Refer Q24, Pg 186

Q10 Purchase of Own Shares \rightarrow Section 67

- ① No company can buy its own shares or give loan, guarantee, security to any person for buying shares in it or in its holding company
- ② However, company can give loan for buying shares in it or in its holding company, provided all three conditions are fulfilled.



- ③ The shares held by the employee will be in the capacity of beneficial owner.

Q11 Section 68 Buy Back of Shares

- ① Company can buy back maximum 25% of equity share capital.
- ② Only fully paid up shares can be bought back
- ③ Special Resolution is required for buy back. However, either buy back is upto 10% then Board Resolution is required.

Sources of buy back are

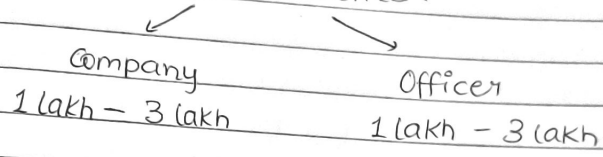
Free Reserves

Securities Premium Proceeds of Fresh Issue.

- ④ Buy back should be authorised by AOA
- ⑤ The entire buy back shall be completed within 12 months of passing SR/BR
- ⑥ The company is prohibited from issuing same class of shares for next 6 months.
- ⑦ Post buy back, the debt equity ratio should be 2:1
- ⑧ As per section 69, if a company buy backs the shares out of free reserves or out of securities premium, an amount equal to nominal value of shares should be transferred to Capital Redemption Reserve (CRR).
The balance in CRR can be used only for issuing fully paid up bonus shares.
- ⑨ As per section 70, following is the prohibition for buy back:
 - (a) Through any subsidiary company including its own subsidiaries
 - (b) Through investment or group of investment companies.
 - (c) If the company ~~has~~ has defaulted in repayment of deposits, interest, redemption of debenture, preference share, payment of dividend, repayment of loan or interest.
This prohibition is lifted if the company has rectified the default and the period of 3 years is passed after the rectification of such default.
 - (d) Company has defaulted in filing annual return (Sec 92 Dividend (section 123)), penalty for failure to

distribute dividend (Sec. 127) and financial statement (Sec 129).

If 68, 69, 70 is contravened.



28

Q12 Right Issue — Section 62

- ① If a company goes for public offer the shares should be first offered to existing shareholders only by a notice,
- ② The notice shall contain all the particulars, like, no. of shares offered, time i.e, minimum 15 days and maximum 30 days (15 days can be reduced but atleast 7 days are required)
- ③ The above right is given only to equity shareholders and not to preference shareholders
- ④ Right of renunciation is available to existing shareholders
- ⑤ Issue can be offered to outsiders:
 - (a) SR is passed by Shareholders.
 - (b) OR passed by Shareholders along with sanction of CG
 - (c) If it is declined by existing shareholders.
 - (d) Conversion of debenture into shares
 - (e) Re-issue of forfeited shares.

Q13 Issue of Bonus Shares — Section 63

Refer Q31 Pg 190

- (v) Notice should be sent to MAALT Refer Sec 136 notes - AOC.
- (vi) The notice shall contain the place, date, time of the meeting and the business to be transacted i.e. agenda.
- (vii) Directors / Secretary must be authorized by the Board to send the notice.
- (viii) If omission to send notice is willful then notice is invalid, meeting is invalid. However, if it is accidental notice is valid, meeting is valid (always assume it is accidental omission)

Q.4 2 Business - Sec 102.

- (i) AGM EGM
 Ordinary Special

« ADDA »

- Any business other than ADDA - SB

- A - Adopting of Ac + AR + BR
- D - declaration of dividend
- D - Appt of directors + remuneration
- A - Appt of auditors + remuneration

↓ (114)

ORDINARY	RESOLUTION
> 50%.	YES
Bal	NO

ordinary
resolution

special
resolution

↓

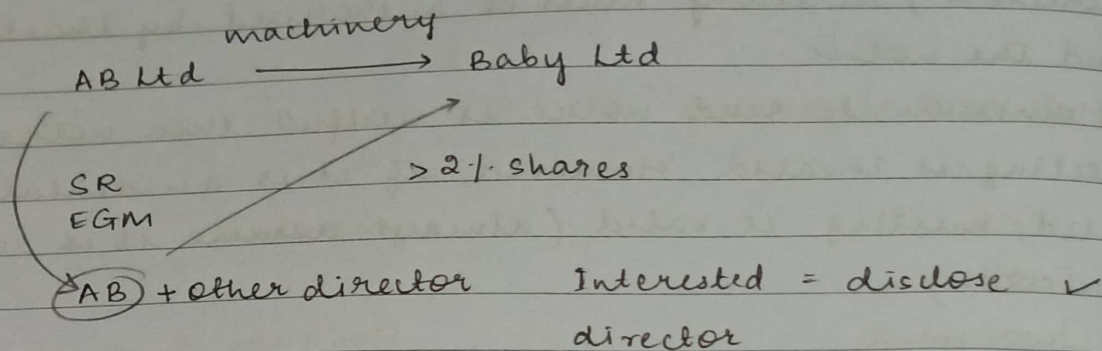
75% Yes
Bal NO

- (ii) If any item of special business is to be transacted at meeting of Co → explanatory & statement should be attached to the notice.

It shall disclose interest of every
 promoter
 director
 manager
 KMP

Preference share holders & proxy are not counted for Quorum.

in the other company if it is more than 2% PVSC of that other company.



In case of non-disclosure / insufficient disclosure such directors, managers, promoters, KMP shall be liable for penalty.

* Following shall be disclosed:

- (a) The nature of concern or interest, financial or otherwise of every director, manager, KMP and their relatives.
- (b) Any other information and facts that may enable the member to understand the meaning, scope and implication of items of business to take decision there on.

Q.5 Quorum - Sec 103

(i)

Priv Co	Public Co	
Min 2	5 \rightarrow 1 - 1000	} or AOA whichever is higher.
	15 \rightarrow 1001 - 5000	
	30 \rightarrow \geq 5000 + 1	

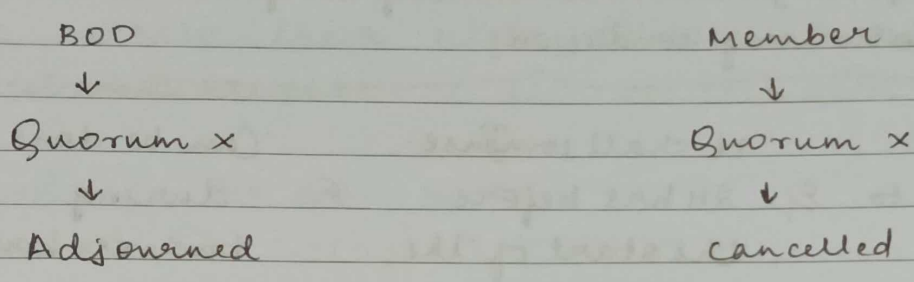
within

(ii) If $< 1/2$ half hour, Quorum is not achieved,

\rightarrow meeting \rightarrow adjourned by 1 week

meeting → adjourned by 1 week → same ← Day
 → some other ← place
 D/P/T as BOD may decide

(iii) If EGM = called by



(iv) Adjourned meeting = 3 days notice

At adjourned meeting,
 within 1/2 hr → Quorum not achieved
 ↳ members present will be valid quorum.

Q.6 Chairman - Sec 104

Chairman shall be elected among members themselves by show of hands.

However, if a Poll is demanded on election of chairman then the person so elected as chairman as a result of poll shall be the chairman for rest of the meeting.

Q.7 Proxy - Sec - 105

- (i) Any member can appoint proxy and proxy need not be a member.
- (ii) A proxy is not entitled to vote except on poll.
- (iii) An individual can be appointed as proxy on behalf of maximum 50 persons subject to the holding of maximum 10% of total share capital carrying voting rights by

such 50 persons.

Then proxy form shall be deposited max 48 hours before the meeting.

The proxy can be changed by member subject to the time limit of 48 hrs. The latest proxy will supersede the earlier proxy.

- (v) Inspection of proxy can be done by any member subject to following conditions

3 days notice should be given to the company	Et	it shall com ^m ense 24 hrs before the start of the meeting till conclusion of the meeting	Et	Can be done only - during business hours
--	----	--	----	--

- (vi) Sec - 112 - A body corporate, president of India and governor of state can appoint a person as representative on their behalf to vote at the meeting. Such representative will be counted for quorum as no. of persons he represents.

Q.8 Voting. Sec 106

- (i) No company can restrict the voting right of any member except if the calls have not been paid. There is no other ground for the company to restrict voting rights.

Q.9 Voting by show of hands Sec - 107

All the resolutions at general meeting shall be decided by show of hands, except when police demanded or voting is carried out electronically.

The declaration by chairman of passing the resolution or otherwise by show of hands and the entry in minutes book shall be a conclusive evidence of passing such resolution.

Q.10 Voting by electronic means. Sec-108

- (i) Every listed company or company having minimum 1000 shareholders shall provide to its members a facility to exercise their right to vote at general meeting by electronic means.

Read page 218 main book.

Q.11 Demand for Poll. Sec-109

- (i) A Poll can be ordered either before or after the declaration of the result on the voting by show of hands.
- (ii) Poll can be demanded by

Chairman

Members

Proxy

- (iii) The chairman shall order a poll if a demand is made by

CO = share capital
member + member present
in person or by proxy



holding $\frac{1}{10}$ th or Aggregate
of voting power sum of
on resolution Rs. 5 lakh
have been
paid up

CO ≠ share capital
member + member
present in person or by proxy



member holding $\frac{1}{10}$ th
of voting power on
resolution

- (iv) Demand for poll can be withdrawn at any time by the persons who made the demand.
- (v) A poll for adjournment of the meeting and on election of chairman must be taken immediately and any other question shall be taken within 48 hours of the making the demand.

Q.12 Resolution by postal ballot. Sec-110

- (i) OPC / other companies having members upto 200 are not required to transact any business through postal ballot.
- (ii) A company has a discretion to pass any resolution by postal ballot except for

Ordinary business items

Any business in respect of which director / auditor have a right to be heard at the meeting.

Read (a) to (j) transactions - pg. 219 main book.

Q.13 Resolutions requiring special notice. Sec-115

Following are the resolutions requiring special notice :

Sec 140

Sec 169

A resolution appointing an auditor other than retiring one.

A resolution providing that retiring auditor shall not be reappointed.

A resolution director

A resolution director

The request for special notice shall be given to the Co. by
 members holding min 1% of total voting power **or** members holding shares on which max Rs 5L has been paid up.
or

Q.14 Resolutions at adjourned meeting. Sec - 116

- (i) If a resolution is passed at the adjourned meeting it shall be treated i.e. effective from the date on the date it was actually passed and not on any earlier date.

Q.15 Resolutions and agreements to be filed with ROC. Sec - 117

- (i) A copy of every resolution, any agreement, explanatory statement u/s 102 shall be filed with ROC within 30 days of passing such resolution or making such agreement.
 (ii) A copy of every resolution for altering the articles shall be embodied in every copy of the articles issued after passing such resolution.
 (iii) If not filed then,

Co
 10k + 100/day
 max 2L

Officer
 10k + 100/day
 max 50,000

Q.16 Sec 118 / Sec 119 - Minutes and Inspection of minutes

refer Q.9 and Q.10 ^{Q.23 - 232} p.g 222 of main book.

Q.17 Register of members - Sec - 88

- (i) Every company limited by shares shall maintain a register of its members in Form MGT-1.
 For debenture / other securities register in Form MGT-2
 (ii) Entries & should be made in register within 7 days of

- the board / committee approving the allotment or transfer
- (iii) Such registers shall be maintained at the register office of company.
However, it can ^{also} be kept at any other place in India where more than 1/10th of total members enter in the register of members reside, provided a special resolution in general meeting is passed.
 - (iv) All the changes regarding the status of member shall be updated in the register.
 - (v) If the no. of members is minimum 50, then maintenance of Index is mandatory.
 - (vi) A company if authorized by articles can keep a part of the register outside India continuing the names and particulars of members, debenture holders, security holder, beneficial owners, residing outside India. The company shall transmit to the Registered office in India a copy of entry in foreign register within 15 days after the entry is made and such register shall be deemed to be a part of principle register.
 - (vii) If register is not maintained as above then

60 = 3,00,000

Officer = 50,000

B. 18 Annual return. Sec - 92

(i) Every Co. shall prepare Annual return in Form MGT - 7 and file it with ROC within 60 days from the date of AGM.

However if AGM is not held it should be filed within 60 days from the day on which AGM should have been held.

(ii) Annual return shall be signed by a director and a company secretary. If no Company Secretary then a

CS in practice

- (iii) Every listed Co. shall certify the annual return in form MGT-8 by another company secretary in practice.
- (iv) Copy of annual return shall be placed on the website and the weblink of the same shall be given in Annual report.
- (v) If it is not filed within 60 days then

CO
10K + 100/day
max 2L

officer
10K + 100/day
Max 50,000

If CS in practice certifies the annual return without conformity of the requirements of Sec 92 then he is liable for 2,00,000.

All the records and register shall be preserved for 8 years except register of members in India and foreign register shall be preserved permanently.

Secy

SHARES

Q1 Minimum Subscription Section 39

① No allotment of shares shall be made to public unless minimum amount as stated in prospectus has been subscribed.

② The application money on every security shall be minimum 5% of the nominal value of the security or such percentage as may be specified by SEBI.

③ If minimum subscription not achieved within 30 days from the date of issue of prospectus, then refund the money within 15 days. If it is not refunded within 15 days, then the directors and officers shall be liable to repay the money with 15% interest p.a.

If minimum subscription	≥ 30 days	≤ 15 days	If not refunded
		refund	Refund + 15% p.a Interest

④ Whenever company makes allotment company shall file a return of allotment with ROC.

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If shares are issued for cash or for other than cash, the company should file a return of allotment in form PAS-3 within 30 days along with prescribed fees. (Prospectus and allotment of Securities)

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In an underwriting contract the underwriters guarantee the minimum subscription for which they are paid a commission called as underwriting commission. It can be paid only for the shares & debentures which are offered to public.

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Refer Q5 Page 180

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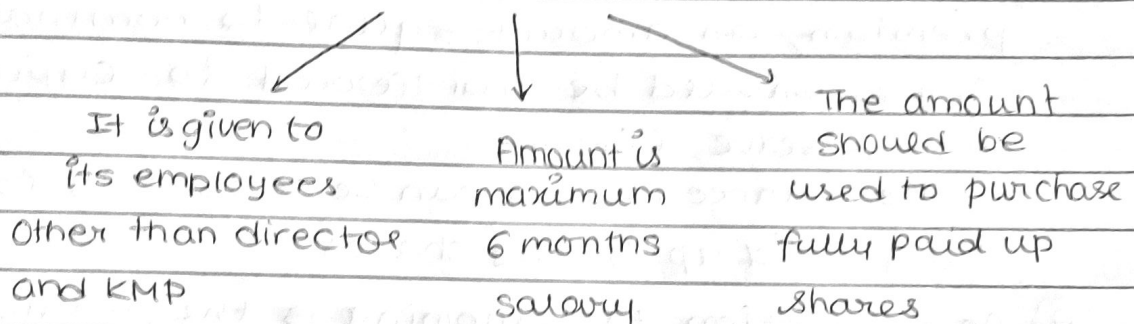
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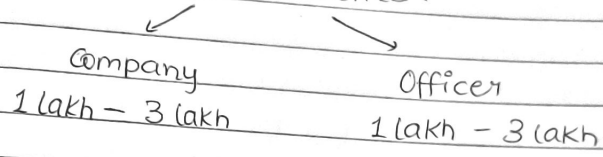
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