

CHARACTERISTICS OF A COMPANY

Incorporated association	Artificial person	Separate legal entity	Capacity to sue and to be sued	Separate ownership & management	Transferability of shares	Perpetual succession	Limited liability	Common Seal	Share capital
A company is a registered group of persons. Minimum 7 members are required in case of Public Company and 2 in case of Private Company	A company is artificial legal person created with the sanction of law. Thus a company is artificial person but not fictitious	Incorporation of a company renders it a separate legal entity. A company is legal person entirely distinct and independent from its members. It has its own rights and obligation. • (Salomon v Salomon & company Ltd-1897 • Lee v Lee Air Farming Ltd, Case • Bacha F. Guzdar v Commissioner of Income Tax, Case	A company is a legal person with an independent existence. A company acts in its own name. Thus, a company can sue others and be sued in its own name. The creditors can make their claim only against the company and cannot proceed against the shareholders of the company.	The members of a company do not participate in the day to day affairs of the company. The company is managed by elective representatives of the shareholders known as Board of Directors. The directors are appointed as well as removed by the shareholders	The shares of a company are transferable in the manner provided in the articles of the company. However, in case of Private Company there are certain restrictions but not prohibition on transfer of shares.	The term perpetual succession means continued existence. A company has a perpetual succession. Thus, death, insolvency or insanity of the members does not affect the existence of the company. Life of the company does not depend upon the life of its members.	1. Limited liability, Company limited by shares • Limited to the amount remaining unpaid on the shares held by them. 2. Company limited by Guarantee without share capital • Limited to the amount guaranteed by them. 3. Company limited by Guarantee having share capital • Limited to the aggregate of the amount remaining unpaid on the shares and the amount guaranteed by them 4. Company with unlimited liability Unlimited. i.e. they have to contribute till the entire debt of the company is paid	1. A company being an artificial person cannot sign a document as a natural person can do. The common seal is a substitute for a signature. 2. own name engraved on it. 3. binds the company on the document. 4. Common seal has been made optional under companies Amendment Act 2015	1. The entire capital of the company is divided into certain specified number of units of equal value and each such unit is called a share. 2. The concept of share capital enables the investor to participate in the ownership capital of the company. 3. Thus share capital enables the company to mobilize huge capital outlay from lakhs of investors, which would not be possible in any other form of business.

TYPES OF COMPANY										
MEMBERSHIP		CONTROL			LIABILITY			OTHERS		
PRIVATE COMPANY	PUBLIC COMPANY	HOLDING COMPANY	SUBSIDIARY COMPANY	ASSOCIATE COMPANY	COMPANIES LIMITED BY SHARES	COMPANIES LIMITED BY GUARANTEE	UNLIMITED COMPANY	NON PROFIT ORGANISATION	DORMANT COMPANY	NIDHI COMPANIES
SEC 2(68)	SEC 2(71)	SEC 2(46)	SEC 2(87)	SEC 2 (6)	SEC 2(22)	SEC 2(21)	SEC 2(92)	(Section 8)	(Section 455)	(Section 406)
Meaning of private company (Section 2(68)) 1. Restriction on the right to transfer its shares • The articles must contain a provision restricting the right of members to transfer its shares freely 2. Limitation of membership • The articles must contain a provision whereby the company limits the numbers of its members to 200. • Joint holders one member only • Persons in employment are excluded. • Ex-employees are excluded. 3. Prohibition on making an invitation to public • The articles must prohibit the company from making any invitation to the public to subscribe for any of its shares or debentures.	Meaning of public company (Section 2(71)) 1. A public company means a company which 2. Is not a private company 3. Is a private company and which is subsidiary of a public company.	Holding company (Section 2(46)) • "A company shall be deemed to be a holding company of another only if the other is its subsidiary"	Subsidiary company (Section 2(87)) a company in which the holding company • Controls the composition of the Board of Directors • Exercises or controls more than one-half of the total share capital either as its own or together with one or more of its subsidiary companies	Associate company (Section 2 (6)) • In relation to another company, means a company in which that other company has a significant influence, but where is not a subsidiary company of the company having such influence and includes a joint venture company. • Whereas the term 'significant influence' used in the definition means control of at least 20% of total share capital, or of business decisions under an agreement. • Shares held by a company in another company in a "Fiduciary Capacity" Shall not be counted for the purpose of determining relationship of associate company	Companies limited by shares (Section 2(22)) • It is a company where the liability of its members is limited by Memorandum of Association to the amount unpaid on the shares. The liability of the members shall arise when a valid call is made by the company during its lifetime or in the event of winding up.	Companies limited by guarantee (Section 2(21)) Having no share capital • It is a company where the liability of its members is limited by Memorandum Of Association to the amount that they have guaranteed to pay. The liability to pay the guaranteed amount shall arise only in event of winding up of the company.	Unlimited company (Section 2(92)) • every member is liable to contribute to the assets of the company until all the debts of the company are paid in full.	Non Profit Organisation (Section 8) 1. Registration of a non-profit organization as a company i. Object • promotion of commerce, arts, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other subject. ii. Application of profits • promoting its objects iii. Prohibition on payment of dividend 2. License to be granted by CG • CG may grant the company a license But if the CG feels fit he may revoke the delegation if in public interest. 3. No use of words 'Limited' or 'Pvt. Ltd'	Dormant Company (Section 455) 1. Definition • Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may take an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company. 2. Significant accounting transaction • Significant accounting transaction means any transaction other than • Payment of fees by a company to the Registrar • Payments made by it to fulfill the requirements of this Act or any other law • Allotment of shares to fulfill the requirements of this Act; • Payments for maintenance of its office and records	Nidhi Companies (Section 406) • Company incorporated as a nidhi with the object of cultivating the habit of thrift savings amongst its members
ONE PERSON COMPANY	SMALL COMPANY									
SEC 2(62)	SEC 2(85)									
1. 2(62) 'one person company', means a company which has only one person as a member 2. Who can be a member/nominee of an OPC • only a natural person who is an Indian citizen and resident in India • Shall be eligible to incorporate a one person company • Shall be nominee for the sole member of OPC 3. Miscellaneous provisions • No person shall be eligible to incorporate more than a one person company or become nominee in more than one such company • No minor shall become member or nominee of the one person company • Such company cannot be incorporated or converted into a company under section 8 of the act • OPC cannot carry out non-banking financial investment activities • OPC cannot invest in securities of a body corporate	Small company (Section 2(85)) means a company, other than a public company • Paid-up share capital of which does not exceed 50 lac not be more than 5 crore rupees • Turnover of which as per its last profit and loss account does not exceed 2 crore rupees • not be more than 20 crore rupees.									

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INCORPORATION OF COMPANY

PROMOTER SECTION

Promoter means a person (Section 2(69))

- Who has been named as such in a prospectus or is identified by the company in the annual return as a promoter, or
- Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- In accordance with whose advice, directions, or instructions the board of directors of the company is accustomed to act. But in this case, if a person is acting merely in a professional capacity he will not be treated as a promoter.

LEGAL POSITION

- They are neither the agents nor the trustee of the proposed company.
- stands in fiduciary relation

REMUNERATION

- The promoters cannot claim any remuneration
- Note: even where the articles provide that the company shall pay remuneration to the promoters after incorporation, such a provision is not binding.

DUTIES

- Not to make Secret profits.**
 - A promoter is not prohibited from making any profits or getting remuneration from the company.
 - However, promoter cannot make directly or indirectly, any secret profits
- Actions a company can take against its promoters, if they make secret profits.**
 - Rescind the contract
 - Recover the secret profits
 - Sue the promoters

INCORPORATION

- Application of reservation of name (INC 1)
- Approval of SEBI/ RBI
- Documents to be filed are
 - Memorandum of Association
 - Articles of Association
 - Declaration (INC 8)
 - Affidavit by subscribers & first directors (INC 9)
 - Address for correspondence
 - Particulars of every subscriber to the memorandum.
 - Particulars of first directors of the company
 - Declaration of interest & consent of first directors of the company. (DIR 12)

SPICE

- application for incorporation of a company - FORM No. INC-32, (e-MOA) in Form No. INC-33, (e-AOA) in Form no INC-34
 - section 8 of the Act, Form No. INC-32 (SPICe) shall be filed
- application for allotment of Director Identification Number upto three Directors, reservation of a name, incorporation of company and appointment of Directors shall be filed in Form No. INC-32 (SPICe), Registrar
 - an application has applied for reservation of a name been approved fill the reserved name as proposed name of the company.
- the particulars of maximum of three directors shall be allowed to be filled in Form No. INC-32 (SPICe)
- promoter or applicant propose only one name in Form No. INC-32 (SPICe). e) promoter or applicant prepare (eMOA) in Form No. INC-33, (e-AOA) in Form No INC-34
 - subscribers and witness affix their digital signatures
- furnish verification of its registered office - Form No. INC-32 (SPICe) documents referred to in sub-rule (2) of rule 25.
- Form No. INC-22 not be required to be filed company maintains its registered office at the given correspondence address.
- Registrar, on examining Form No. INC-32 (SPICe), call for further information defective or incomplete give intimation within fifteen days
 - registrar still finds that the document is defective or incomplete
 - he shall give one or more opportunity of fifteen days
 - total period not exceed thirty days.
- Certificate of Incorporation - Form No. INC-11

EFFECT OF CERTIFICATE OF INCORPORATION

- EFFECT OF CERTIFICATE OF INCORPORATION (Section 9)**
 - From the date of incorporation mentioned in the certificate of incorporation
 - body corporate.
 - a legal person separate from its members.
 - perpetual succession.
 - power to acquire, hold and dispose of property
 - power to contract - to sue and be sued
- Certificate of incorporation is a conclusive evidence**
 - Company's life commences from the date of incorporation and the date appearing on its conclusive, even if it is wrong.
 - Thus, the certificate is conclusive evidence on the following points:**
 - All the requirements under the act have been complied with in respect of registration of company and matters precedent and incidental thereto
 - The association is a company, authorized to be registered and duly registered under this act.

PREINCORPORATION OR PRELIMINARY CONTRACTS

- Ordinarily, pre-incorporation contracts are not binding on the company even after its incorporation. However, enforceable if the following conditions are fulfilled:
- Meaning of preliminary contracts**
 - A pre-incorporation contract means a contract entered into by the promoters on behalf of the proposed company before its incorporation.
 - Conditions for enforcement of preliminary contracts**
 - contracts entered into by promoters
 - on behalf of proposed company.
 - company has adopted such contract after incorporation and has communicated the same to the other party.
 - company has entered into a fresh contract with the third party



Category

Reception
For Product Information & How To Buy Product
For Online Order Status & Other Related Problem
For Software Installation & Other Technical Support

Contact No

Call 9011854340/020-24466748
Call 9130053767/020-24446749
Call 020-24446750/51/9130053767
Call 9011850298/9421668233/9011035011

MEMORANDUM OF ASSOCIATION

Meaning

- i) It is the charter of a company.
- ii) It contains the objects for which the company is incorporated.
- iii) It defines the possible scope of operations of the company.
- iv) It defines the power as well as limitations on the power of a company.
- v) It contains fundamental conditions upon which alone a company is allowed to be incorporated.

NAME CLAUSE

1. Name should not be undesirable
 - No company can be registered by a name which is undesirable in the opinion of the central government.
2. A name is to be undesirable if it is identical with, or too nearly resembles
 - The name of an existing company or
 - Infringes a registered trademark or
 - A trademark which is subject to an application for registration
3. Guidelines regarding name
 - should not deceive or mislead the public.
 - should not be prohibited under the Emblems and names Act, 1950.
 - should not be similar to the name of a famous person.
 - should not contain 'Co-operative'
 - The words 'Bank', 'Banking', 'Investments', 'Finance', 'Insurance', 'Trust', may be used only if use of such words is justified considering the objects and business carried on by the company.
 - The name including phrase 'Electoral Trust' may be allowed for registration of companies to be formed under section 8 of the Act

Procedure of change in name clause

Change in Name

Voluntarily

Compulsory (Directions given by CG)

Prior approval of CG + SR

Name similar to existing Company

Name infringes a registered trademark

OR + Comply directions within 3 months

OR + Comply directions within 6 months

SITUATION CLAUSE

1. Domicile of the company
 - This clause contains the name of the state in which the registered office of the company is to be situated
2. Mandatory to have registered office
 - The company must have its registered office within 15 days of the incorporation of the company.
3. Notice to registrar
 - Notice to the Registrar within 30 days Form No. 22.

procedure of change in situation clause

Change of Registered office (From one place to another within the same city)

Change of Registered office (From one town, city or village to another town, city or village within the same state)

Change of Registered office (From one jurisdiction of one ROC to the jurisdiction of another ROC within the same state)

Change of Registered office (From one state to another)

1. Special Resolution
2. Confirmation from regional director
3. Application to RD in prescribed form
4. Communication by RD in 30 days
5. Company shall file a certified confirmation with ROC with attested MOA
6. Within 30 days of filing, the ROC shall certify registration
7. Transfer of records by ROC
8. Shifting of the address
9. Notice by company to new registrar
10. No alteration of Memorandum of Association is required

OBJECT CLAUSE

- a) Object of the company
 - As per the new Act, the object clause should state the objects for which the company is proposed to be incorporated and any matter considered necessary is furtherance thereof.

Procedure for change in object clause

Change in object clause

1. Special resolution
2. Filing with ROC
3. Certification by ROC
4. The alteration shall be effective Only when it has been duly registered by the Registrar.
5. To protect the minority interest And exit option is given to the dissenting shareholders

LIABILITY CLAUSE

1. Nature of limitation of liability
 - a. In case of company limited by shares
 - The liability clause must state that the liability of members is limited by shares. Thus, the liability of the members is limited only to the extent of amount unpaid on shares
 - 2. Alteration of liability clause
 - Liability of the members cannot be increased

Requirements of alteration of capital clause

1. Powers in articles
2. Pass ordinary resolution
3. ordinary resolution
4. Notice to ROC within 30 days of alteration

CAPITAL CLAUSE

1. Contents of capital clause
 - number of shares,
 - nominal value of each share
 - total capital
2. Nature of alteration (Section 61)
 - Increase in authorized shares capital,
 - Consolidation and divide
 - fully paid up shares into stock
 - stock into fully paid up shares.
 - Sub-division
 - Cancellation

procedure for change in capital clause

1. Contents of capital clause
2. Pass ordinary resolution
3. ordinary resolution
4. Notice to ROC within 30 days of alteration

ASSOCIATION CLAUSE

1. Contents
 - It contains the name of the persons who subscribe to memorandum & state that they are willing to form themselves into a company
 - These persons are called subscribers
2. Legal requirements
 - a. 7 subscribers in case of public company and
 - b. 2 subscribers in case of private company
 - c. Shares to be taken
 - d. Number of shares to be shown
 - e. Particulars of subscribers
 - f. At least one witness

Requirements of alteration of capital clause

1. Powers in articles
2. Pass ordinary resolution
3. ordinary resolution
4. Notice to ROC within 30 days of alteration

NOMINATION CLAUSE

- a) Succession clause
 - This clause state the name of the person who, in the event of the death of subscriber, shall become the member of the company

procedure for alternation of nomination clause

Withdrawal of consent by the nominee himself

Removal of Nominee by Sole Member

1. Notice by nominee to

2. Within 15 days of notice of withdrawal of consent

3. Filing with ROC -

4. Pay fees as prescribed by the Companies Registration Office & Fee Rules 2014

1. Sole Member - Removal Intimation

2. Sole Member will appoint New Nominee + Written Consent of New Nominee in Form No. INC 3

3. Filing to ROC within 30 Days from date of intimation of change to company (Form No. INC 4)

4. Payment of fees

DOCTRINES

ULTRA VIRES

CONSTRUCTIVE NOTICE

INDOOR MANAGEMENT

MEANING

EFFECTS

MEANING & EFFECTS

EXCEPTIONS

1. Meaning of ultra vires act
 • The term 'ultra vires' means 'beyond' and the term 'vires' means 'powers'.
 Thus, term 'ultra vires' means doing an act beyond the powers.
2. An act will be ultra vires if
 • It is not permitted or authorized by the companies act, 2013 or if it falls outside the object clause of MOA.

1. Void-ab-initio
 a. Ultra vires acts are null and void
 b. company cannot sue or be sued upon ultra vires acts
 c. Even whole body of shareholders cannot ratify an ultra vires act even by an unanimous vote.
2. Injunction against the company
 a. Any member of the company can obtain an injunction order from the court
3. Personal liability of directors to the company
 a. directors of the company are personally liable to the company for ultra vires acts
4. Personal liability of directors to third company
 a. They will be personally liable for any loss suffered by the outsiders.

1. MOA and AOA are public documents and can be inspected by any person
 a. memorandum
 b. articles of association
2. Purpose of Doctrine of constructive notice
 a. It operates in the favour of the company and against the person dealing with the company.
3. Duty of persons dealing with the company
 a. It is duty of every person dealing with the company to inspect these documents and make sure that his contract with the company is in accordance with the provisions of these documents.
4. Presumption regarding knowledge of MOA and AOA
 a. It is presumed that he has read the memorandum and articles irrespective of the fact whether he has actually read or not
5. Person dealing with the company cannot plead ignorance

1. Effect of doctrine of constructive notice
 a. Every person dealing with the company is presumed to have read and understood the contents of company's memorandum and articles.
2. Purpose of doctrine of indoor management
 a. It operates in the favour of the person dealing with the company and against the company.
3. Internal proceedings are properly complied with
 a. The persons dealing with the company can safely presume that the internal proceedings regarding an act have been properly observed or complied with.
4. No need to enquire internal proceedings
 a. They need not enquire into the regularity of internal proceedings
5. Effect of doctrine of indoor management
 a. assume that if directors or other officers are entering into these transactions, they would have obtained the necessary sanctions.
6. When can persons dealing with company take benefit of doctrine of indoor management Only if,
 a. These persons have knowledge of MOA and AOA;
 b. Have no knowledge of internal irregularity

1. Knowledge of irregularity
2. Negligence
3. Forgery
4. No knowledge of the articles and MOA
5. Ultra vires or illegal acts
6. Acts outside the scope of apparent

Charts Designed By: CA Ankita Patni

- Qualified as a Chartered Accountant At the age of 21
- Teaching in Various cities in India Like Allahabad, Amritsar, Ahmednagar, Aurangabad, Aligarh, Ajmer, Amravati, Baroda, Bhiwara, Bharuch, Bhubaneswar, Chandigarh, Chittorgarh, Delhi, Dhanbad, Dehradun, Faridabad, Gwalior, Hansi, Hapur, Haldwani, Hyderabad, Jalgaon, Jannagar, Jodhpur, Kota, Kanpur, Mathura, Mandsaur, Nashik, Nagpur, Rudrapur, Udaipur, Vapi.
- Taught More Than 15,000 Student In very Short Span Of 5 years.



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Prepared By:
 Bhagyashri Kadam

PROSPECTUS

TYPES

MEANING

DEEMED PROSPECTUS

SHELF PROSPECTUS

RED HERRING PROSPECTUS

ABRIDGED PROSPECTUS

GOLDEN RULES OF FRAMING A PROSPECTUS

MISSTATEMENT IN THE PROSPECTUS

Liability for misstatement in the Prospectus

(Section 2(70))

(Section 25)

(Section 31)

(Section 32)

(Section 33)

"Prospectus" means any document, described or issued as a prospectus and includes a shelf prospectus or Red Herring prospectus or any notice, circular, advertise mentor or other document among others from the public for the subscription or purchase of any securities of a body corporate."

1. Where a company offers or agrees to allot any securities with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall be deemed to be a prospectus issued by the company.

2. All enactments and rules as to contents of prospectus, liability in respect of mis-statements and omissions in prospectus shall apply

3. Presumption as to deemed Prospectus

a. That an offer of the securities for sale to the public was made within 6 months after the allotment or agreement to allot; or

b. That the whole consideration had not been received by the company in respect of the securities issued by company

4. Document must be signed as follows:

a. company- 2 directors

b. firm- not less than one-half of the persons

1. "Shelf Prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without issue of a further prospectus.

2. Validity of shelf prospectus not exceeding one year

3. A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to

a. New charges created,

b. Changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities.

c. Such other changes as may be prescribed

1. It means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

1. memorandum containing such salient features of a prospectus

2. form of application accompanied by a abridged prospectus

3. A copy of the prospectus shall, on a regard being made be furnished

4. bonafide invitation underwriting agreement issued in relation to securities which were not offered to the public.

5. Rs. 50000 for each default.

1. Prospectus must present whole picture

2. Material facts should be disclosed

3. Should not contain any misstatement

4. Should not omit to disclose any material fact

5. Suppression of a fact, however remote, will make a prospectus 'misleading prospects', if inclusion of such fact might affect investor's decision to subscribe for the shares.

6. Eg., a prospectus stating that the company is paying dividend regularly but it was not mentioned that the dividend was paid out of past reserves and actually the company was incurring losses. Therefore the statement was held as misleading statement

Company

1. Rescind the contract

2. Claim damages

Civil Liability (Section 35)

Pay Compensation

U/s 447

Criminal Liability (Section 34)

Fraud Involves Public Interest

Any Other Case

Remedies

1) Withdrew consent before issue of Prospectus

2) Prospectus was issued without his knowledge (by giving a public notice)

Minimum Imprisonment

Maximum Imprisonment

3 years

10 years

Amount involved in Fraud

3 times amount involved in Fraud

SWAPNIL PATNI'S CLASSES

ARE YOU WORRIED ABOUT CA INTERMEDIATE LAW

CA ANKITA PATNI & CA SWAPNIL PATNI

HERE WE HAVE THE SOLUTION

TO GET BEST QUALITY OF EDUCATION

YOU CAN WATCH DEMO LECTURE ON

You Tube

Option 1: Buy Pen Drive

Option 2: Virtual Class Across India

ALLOTMENT

Allotment is the appropriation out of previously non-appropriated capital of the company of a certain number of shares to a person.

RULES RELATING TO ALLOTMENT

1. Proper authority

The allotment should be made by proper authority i.e. The BOD or committee properly authorized to allot shares on behalf of the BOD, otherwise the allotment will be invalid.

2. Communication of allotment

No binding contract is created until the allotment is properly communicated to the applicant

3. Reasonable time

The allotment of shares must be made within a reasonable period of time otherwise the application lapses.

4. Absolute and unconditional

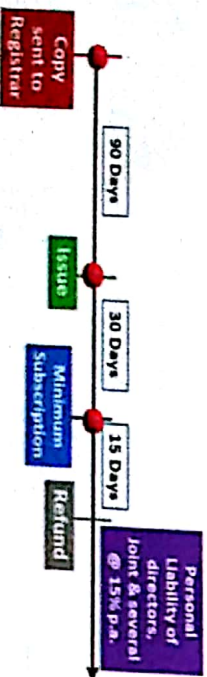
The allotment of shares must be absolute and in accordance with the terms and conditions of the application, otherwise the applicant may reject the allotment.

SECTION 40

Application money to be kept in separate bank account

1. All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than
 - a. For adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus
 - b. For the repayment of monies within the time specified by the SEBI, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities

Allotment of Shares



MINIMUM SUBSCRIPTION

SECTION 39

1. Minimum subscription

- The amount stated in the prospectus as the minimum amount has been subscribed and
- The sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument

2. Amount of application money

- The amount payable on the application on every security shall not be less than
- 5 % of the nominal amount of the security or
- Such other percentage or amount, as may be specified by the SEBI by making regulations in this behalf

3. Time limit for receiving subscription and application money

- Minimum amount stated in the prospectus must be prescribed and the sum payable on the application must be received within
- 30 days from the date of issue of the prospectus, or
- Such other period as may be specified by the SEBI

- Otherwise, the amount received by the company shall be returned within such time and manner as may be prescribed

4. Return of allotment

- Whenever a company having share capital makes an allotment of securities, it shall file with the registrar a return of allotment in such manner as may be prescribed

UNDERWRITING COMMISSION

SECTION 40

1. Meaning of Underwriter

Underwriter means an intermediary who undertakes to subscribe to the securities offered by the company in case these are not subscribed by the public, in case of an underwritten issue.

2. Conditions prescribed under the Rule 13 of Companies (Prospectus and Allotment of Securities) Rules, 2014 for payment of Underwriting commission:

- a. The payment of underwriting commission shall be authorized by the articles of the company.
- b. The underwriting commission may be paid out of proceeds of the issue or out of the profit of the company or both.
- c. The rate of commission paid or agreed to be paid shall not exceed,
 - in the case of shares, 5% of the price at which the shares are issued or the rate authorized by the articles, whichever is less;
 - in the case of debentures, 2.5% of the price at which the debentures are issued or the rate authorized by the articles, whichever is less.

PROCEDURE FOR ALLOTMENT

1. Resolution

Board of Directors or committee, as the case may be, should pass a resolution for allotment of shares

2. Allotment letter

On allotment, the company should post an allotment letter to each allottee mentioning therein the details of shares allotted to them

3. Return of allotment

Whenever a company having share capital makes an allotment of its shares, the company shall within 30 days of allotment file with the ROC a return of allotment, stating

- The number and nominal amount of the share allotted
- Names, addresses and occupations of the allottees
- The amount, if any, paid or due and payable on each share.

MEMBERSHIP

MODES OF ACQUIRING MEMBERSHIP

1. By subscribing to memorandum
 - a. Subscribers to the memorandum of a company are deemed to have agreed to become members of the company
 - b. The moment the company is registered, they become the members of the company
2. By agreement and registration
 - a. Where shares are applied by an applicant and the same are allotted to him, he becomes the shareholder of the company.
3. By Transfer
 - a. sale, gift
 - b. A transferee of shares becomes a member only when the transfer of shares is registered by the company
4. By transmission
 - a. Death
 - b. Insolvency
 c. legal representative/official assignee becomes a member in the company when he gives a notice
5. By estoppel/holding out or by acquiescence
 - a. A person who knowingly allows his name to be entered into the register of members, becomes a member by acquiescence

CAPACITY TO BECOME A MEMBER

- | MINOR | COMPANY | PARTNERSHIP FIRMS | INSOLVENT |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> 1. A general rule <ol style="list-style-type: none"> a. A minor is incompetent to enter into a contract b. Thus, an agreement by a minor to take shares in a company is void and hence he cannot be a member of the company 2. Allotment by mistake 3. Consequences <ol style="list-style-type: none"> a. Reputable the allotment b. company must repay all monies received from minor in respect of the allotted shares 4. No liability of minor <ol style="list-style-type: none"> a. the minor does not incur any liability on the shares during minority 5. Transfer of fully paid shares <ol style="list-style-type: none"> a. When a minor acquires fully paid shares by way of transfer or transmission, his name may be admitted in the Register of members | <ol style="list-style-type: none"> 1. A company may become a member of another company, if it is authorized by its memorandum to purchase or invest in shares of another company. 2. [A subsidiary cannot be a member of its holding company except in few exceptional cases where the subsidiary had become member of the holding company before it became subsidiary of holding, but in case subsidiary company shall not have right of voting in respect of shares held in holding company.] (Section 19) | <ol style="list-style-type: none"> 1. A partnership firm does not have a separate legal entity from its partners, it cannot be registered as a member the Register of members of a company 2. Partners, either individually or in their joint names (as joint members) may hold shares in a company as part of the partnership property 3. A company can become partner of a partnership firm 4. limited liability feature of a limited company does not restrict the company in becoming partner in partnership firm 5. may become partner if its Memorandum of Association specifically allows it. | <ol style="list-style-type: none"> 1. An insolvent continues as a member until his shares are sold by the official assignee. 2. Until the insolvent is discharged, he cannot purchase share in a company. |

CESATION OF MEMBERSHIP

1. Transfer
2. Forfeiture
3. Surrender
4. Death
5. Insolvency
6. Redemption
7. Recession
8. Courts order
9. Warrants
10. Winding up
11. Sale by company

REGISTER OF MEMBERS

- | PLACE OF KEEPING ROM | INDEX OF MEMBER | POWER TO CLOSE ROM | INSPECTION OF ROM |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> 1. Registered office or 2. Any other place within the city if such other place has been approved by a special resolution | <ol style="list-style-type: none"> 1. Every company having more than 50 members shall keep an index of the names of the members of the company. 2. If any alteration within 14 days necessary alteration in the index | <ol style="list-style-type: none"> 1. Closing of register periods not exceeding in the aggregate 45 days in each year, but not exceeding 30 days at any one time | <ol style="list-style-type: none"> 1. register must be kept open for inspection for atleast 2 hours on every working day during business hours |

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SHARES

SECTION 44 NATURE: Shares and Debentures are movable and transferable in nature

SECTION 45

Share Certificate: a) Meaning of share certificate

b) Every share in a company having capital shall be distinguished by distinctive numbers. If Sec 46 of the Act declares that a certificate, issued by the company under the common seal if any of the company or signed by two directors or by a director and the company secretary, wherever the company has appointed a company secretary, shall be prima facie evidence of the title of the person to such shares.

SECTION 47

EQUITY SHARE CAPITAL VOTING RIGHTS

Every member of a company limited by shares or holding equity shares capital therein, shall have a right to vote on every resolution placed before the company; and his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

1) EQUAL RIGHTS

2) VARIETIES

a. The Articles of Association of the company authorizes the issue of shares with differential right.

b. The issue of shares is authorized by an Ordinary Resolution Passed at a general meeting of the share holders. - Provided that where the equity shares of a company are listed on a Recognized Stock Exchange, the issue of such shares shall be approved by the shareholders through Postal Ballot.

c. The shares with differential rights shall Not Exceed 26% Of The Total Paid Up Equity Share Capital including equity share with differential rights issued at any point of time.

d. The company having consistent track record of distributable profits for The Last Three YEARS.

e. The company has Not Defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares.

f. The company has no outstanding Default in the payment of a declared Dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend.

g. The company has NOT DEFAULTED in payment of:

i. The dividend on preference shares or
ii. Repayment of any term loan from public financial institution or state level financial institution or scheduled bank that has become repayable or interest payable thereon or
iii. Dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the central Govt.

h. The company has Not Been Penalized By Court Or Tribunal during

i. The last 3 years of any offence under the Reserve Bank Of India Act 1934, the Securities and Exchange Board of India Act, 1992, the Foreign Exchange Management Act, 1999 or any other special Act.

j. The rules further provide that the company shall not convert its existing equity share capital carrying differential voting rights and vice versa.

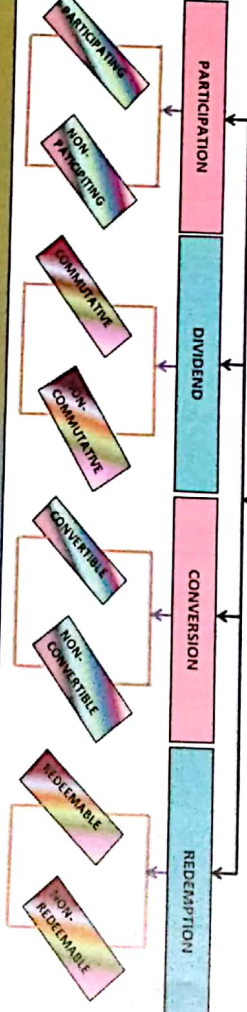
k. The rules provide that the holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, right shares etc., which the holder of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

l. The company issuing equity shares with differential rights, shall ensure that the registrar of members contains all the relevant particulars of the shares so issued along with details of the share holders.

SECTION 47

PREFERENCE SHARE CAPITAL VOTING RIGHTS

In case of member of a company limited by shares and holding preference share capital, shall have a right to vote only on
1. Resolution placed before the company which directly affect the rights attached to his preference shares and,
2. Any resolution for the winding up of the company or for the repayment or reduction of its share capital.



REDEMPTION SECTION 55

1. Issue and redemption of preference shares
According to sec. 55 of the act, company limited by shares cannot issue any preference shares which are irredeemable

2. Conditions for issue of preference shares
a. According to the rules a company having a share capital may, if so authorized by its articles, as may issue preference shares subject to the following conditions, namely:
b. The issue of such shares has been authorized by passing a special resolution in the general meeting of the company

3. Issue and redemption of preference shares by company in infra structural projects
A company engaged in the setting up and dealing with the infra structural projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, or proportionate basis, at the option of preference shareholders.

4. Conditions for redemption

a. Redemption can be made in any of the two procedures i.e. either out of the profits of the company which would otherwise be available for dividends; or, out of the proceeds of a fresh issue of shares made for the purpose of such redemption.
b. Preference shares shall be redeemed only when they are fully paid up.
c. In case the company proposes redemption of shares out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve, to be called the Capital Redemption Reserve Account, and the provisions of this act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve account were paid up share capital of the company.

ISSUE OF SHARES

AT PAR

AT PREMIUM

AT DISCOUNT

IP = FV

IP > FV

IP < FV

SECTION 52

SECTION 53

Issue Of Shares At Premium:

• Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a 'securities premium account'.

Issue Of Shares At Discount

• A company under sec.53 of the act has been prohibited to issue shares at discount, except in case of issue of sweat equity shares
• Any share issued by a company at a discounted price shall be void.

COMPANIES PRESCRIBED UNDER 133

Certain class of companies can utilize securities premium a/c only for specific purpose

1. In paying up unissued equity shares of the company to be issued to members of the company as **fully paid bonus shares**; or
2. In **writing off** the expenses of or the commission paid or **discount** allowed on any **issue of equity shares** of the company; or
3. For the **purchase of its own shares** or other securities under sec. 68.

OTHERS

The Securities Premium Account May Be Applied By The Company

1. Towards the issue of unissued shares of the company to the members of the company as **fully paid bonus shares**.
2. In **writing off** the **preliminary expenses** of the company;
3. In **writing off** the expenses of, or the commission paid or **discount** allowed on, any **issue of shares or debentures** of the company;
4. In providing for the **premium payable on the redemption** of any **redeemable preference shares** or of any debentures of the company; or
5. For the **purchase of its own shares** or other securities under sec.68.

EXCEPTION

SECTION 54

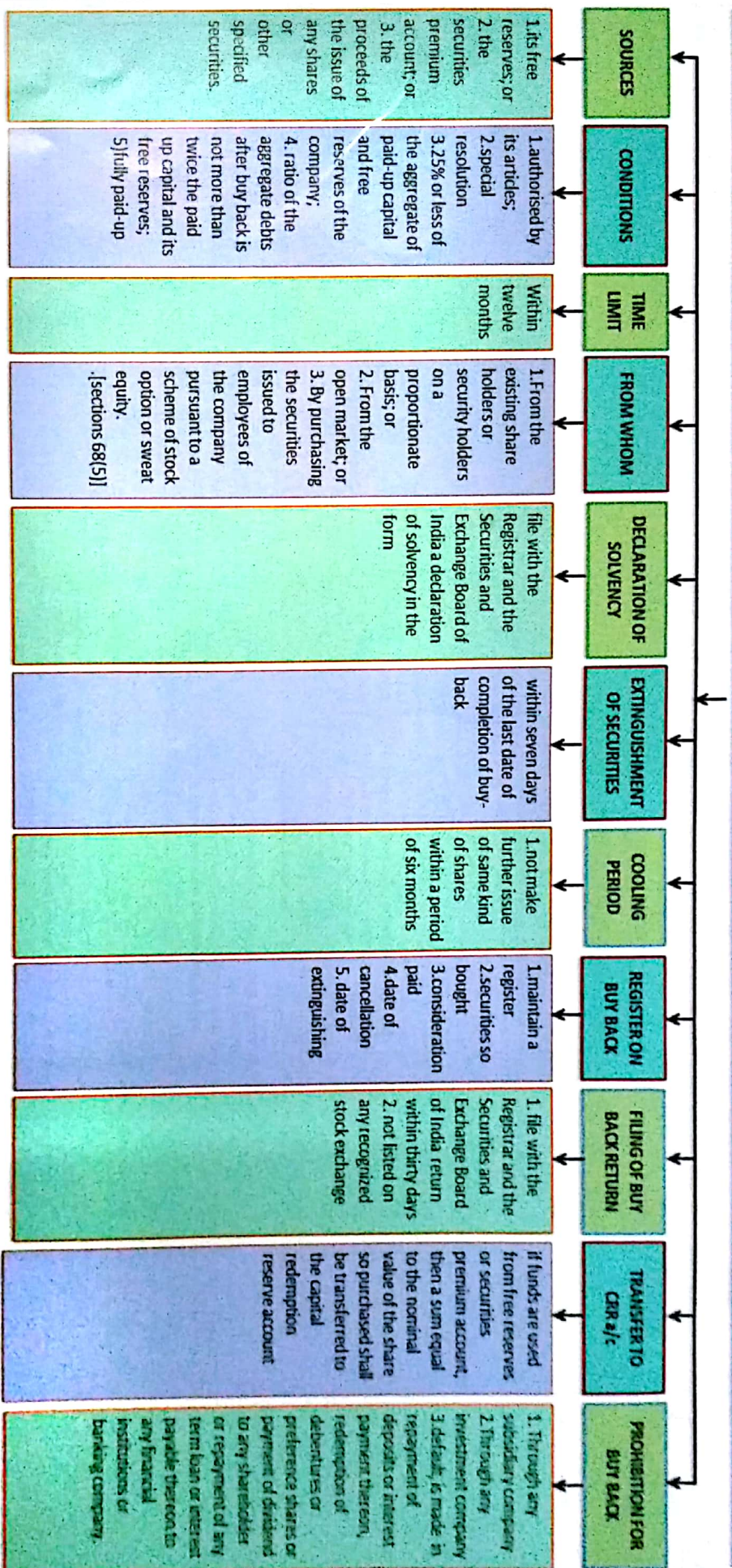
SWEET EQUITY SHARES

1. According to sec.2(88) of the act "sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know how or making available rights in nature of intellectual property rights or valuable additions, by whatever name called.

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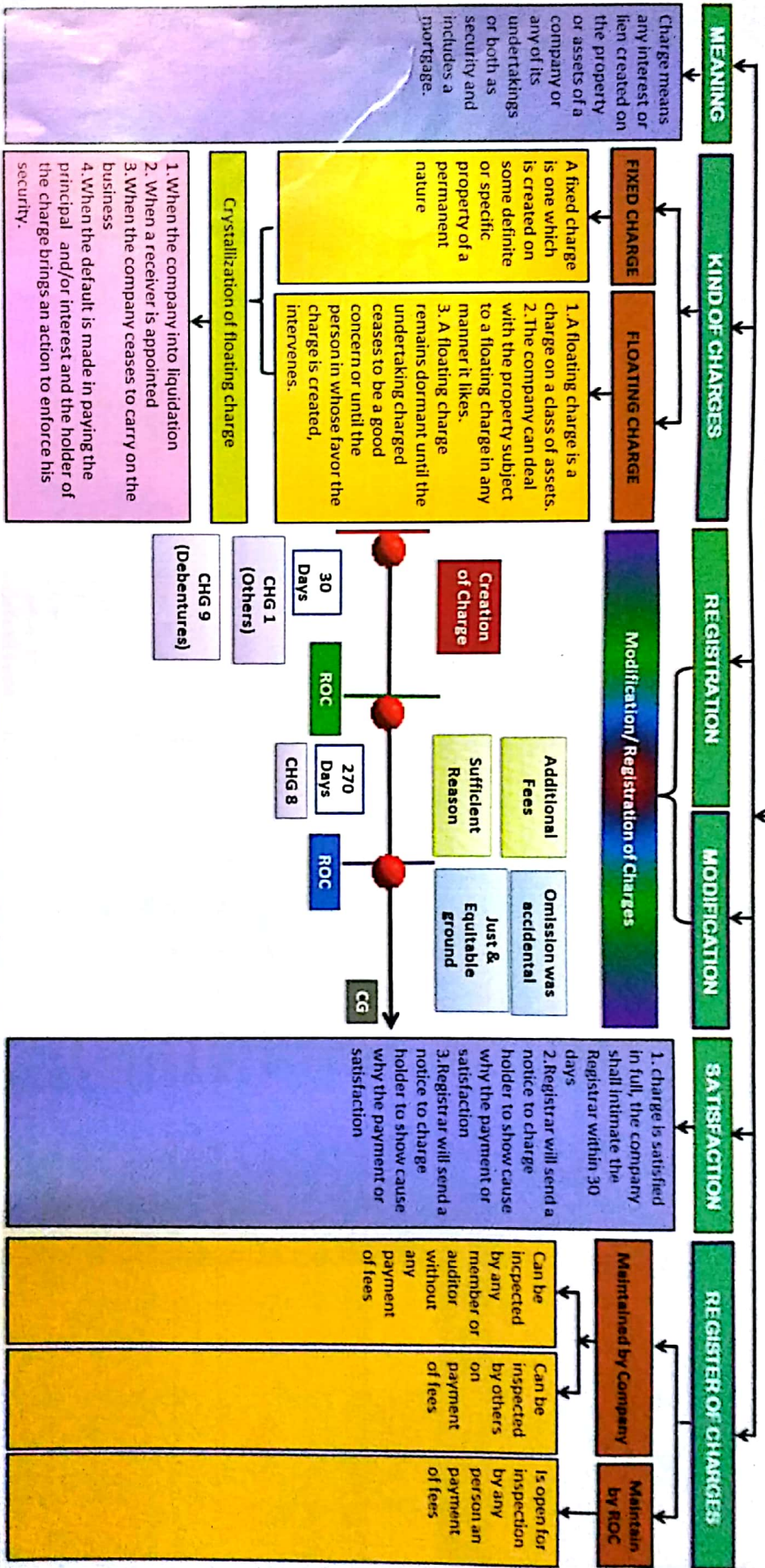
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SP CLASSES

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DEPOSITS

MEANING

1. **Meaning Of Deposit :** Section 2 (31) defines deposit as under
a. "deposit" includes any receipt of money
b. By way of deposit or loan or in any other form by a company

2. What is Not A Deposit?

- any amount received from Government
- amount received from any other source whose repayment is **Guaranteed by the Central Government or State Government**
- any amount received from
 - Foreign Governments,
 - Foreign / international banks,
 - Multilateral financial institutions,
 - Foreign Government owned development financial institutions,
 - Foreign export credit agencies,
 - Foreign collaborators,
 - Foreign bodies corporate and foreign citizens,
 - Foreign authorizes or
 - Person resident outside India subject to the provision of Foreign Exchange Management Act, 1999
- Local authority**
- Statutory authority**

f. amount Received as a loan or Facility from Any Banking Company
g. Amount Received as a loan or Financial Assistance From Public Financial Institutions, Amount Received Again Issues Of Commercial Paper.

- From Any Other Company; Towards Subscription To any Securities,
- Director Of The Company or a relative of the Director of a private Company or a relative of the Director of a Private Company.
- Issue Of Bonds or Debentures
- In the Course of or For The Purposes of The business of the Company.
- As an advance for the supply of goods or provision
- As advance received in connection with Consideration For property.
- Advance under long term Projects.
- Any amount brought in By the Promoters
- loan is brought in Pursuance of the stipulated imposed by the lending institutions
- Exemption available only till the loans repaid and Not there after

KINDS

MEMBER

(Section 73)

PUBLIC

(Section 76)

Acceptance Of Deposit From Members
1. Any company (whether private or public) can accept deposits from its members, subject to the passing of a resolution in **General meeting** and subject to certain specified condition

Acceptance Of Deposit From The Public
Section 2. Only a Public company, having a net worth of not less than Rs. 100 crores or a turnover of not less than Rs. 500 Crores, can accept deposits from the public.

INTEREST ON DEPOSITS

1. **Interest On Deposit**
• every deposit accepted by a company shall be repaid with interest

2. **Failure To Repay Deposit Or Interest Thereon Section 73 (4)**
• When a company fails to repay interest depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred

3. **Rule 17 – Penal Rate Of interest**
• Every company shall pay a penal rate of interest of 18% per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

ADVERTISEMENT AND CIRCULAR

1. **Issue Of Circular By Every Company Referred To In Sub-Section (2) Of Section 73**

- Every company shall issue a circular to all its members in Form DPT-1.
- may be published in English language in an English news paper and in vernacular language in a Vernacular news paper
- circular shall show the
- financial position of the company,
- credit rating obtained,
- total number of deposits
- amount due towards deposits in respect of any previous deposits

CREATION OF INSURANCE

1. Every company inviting secured deposits shall, within 30 days from the date of acceptance, provide for security by way of a charge on its assets, by the way of either mortgage or hypothecation only.

2. Ensure that the total value of the security on company's assets shall not be less than the amount or deposits accepted and the interest payable thereon.

DEPOSIT INSURANCE

1. Every company shall contract for deposit insurance
• At least 30 days before the issue of circular or circular in the form of advertisement
• Or at least 30 days before the date of renewal, as the case may be

2. Every company must compulsorily take an insurance for an amount of Rs. 20,000.
• The insurance premium shall be borne by the company and shall not be recovered from deposits

DEPOSIT REPAYMENT RESERVE

Every Company shall on or before 30 th April of each year deposit a sum not less than 15% of the amount deposits maturing, until the end of the current financial year and the next financial year with any schedule bank.

DEBENTURES

MEANING AND CHARACTERISTICS

- 1. Meaning**
a. Debenture means a document acknowledging a loan made to the company
b. And providing for the payment of interest on the sum borrowed
c. Until the debenture is redeemed

CONDITIONS TO ISSUE TO SECURED DEBENTURES

- 1. Maximum Time Of Redemption**
a. For companies other than infrastructure companies
- An issue of secured debentures may be made, provided the date of its redemption shall not exceed 10 years from the date of issue.
b. For infrastructure companies
- A company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding 10 years but not exceeding 30 years.
- 2. Creation Of Security**
i) Such an issue of debentures shall be secured by the creation of charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.
- 3. Appointment Of Debenture Trustee**
- The company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders.

DEBENTURE TRUSTEE

Restrictions On The Appointment Of A Debenture Trustee

1. Beneficially holds shares of the company
2. Is a promoter, director or key managerial personnel or any other officer or any employee of the company or its holding, subsidiary or associate company
3. Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
4. Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
5. Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
6. Has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or fifty lakhs rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year.
7. Is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

TRUST DEED

1. Meaning Of Debenture Trust Deed

i) When debentures are issued for public subscription, involving a considerable number of debenture holders, who do not have the time to look after their interests in the properties mortgaged or charged in them, a trustee may be appointed for the supervision of their common interest.

2. Inspection Of Trust Deed

- A trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company.

3. Copy Of Trust Deed

- A copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within seven days of the making thereof, on payment of fee.

4. Time To Execute Trust Deed

- The rules provide that a trust deed in Form No. SH-12 or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within 60 days of allotment of debentures in other cases.

DEBENTURE REDEMPTION RESERVE (DRR)

Sr. NO	Types Of Company	Types Of Debentures	DRR%
1	All India Financial Institutions Regulated by RBI	Public and Privately Placed Debentures	NIL
2	Banking Companies	Public and Privately Placed Deb's	NIL
3	NBFC's and Housing finance companies and other financial institutions as given U/S (72)	Publicly Issued Deb's Privately Issued	25 % NIL
4	Other Companies (Listed / Unlisted)	Public and Privately Placed Deb's	25%

CORPORATE VEIL

MEANING AND EFFECT

• A fiction is created by law by which the rights, powers, duties, functions, liabilities and property of a company is differentiated from the rights, powers, duties, functions, liabilities and property of the member, Directors, officers or employees of the company.

• This fiction of law is called Veil of Incorporation or Corporate Veil

• The effect of this corporate veil is that only company can be held liable for the acts and defaults done in the name of the company, even though members, directors, officers or employees had acted on behalf of the company.

LIFTING OF CORPORATE VEIL

• When a company has been formed and registered under the Act, all dealings with the company will be in the name of the company and the persons behind the company will be disregarded, however important they may be. This principle is called "Veil of Incorporation"

• "Lifting of corporate veil" means ignoring the separate legal entity of the company and looking behind the company to identify the real persons who control the company.

Judicial Provisions

1. Protection of revenue

• The court may ignore the separate legal entity status of a company where it is used for tax evasion.

Decided Case law: (Sir Dinshaw Maneckjee Petit)

2. Determination of enemy character of the company

• A company may assume an enemy character when persons in DE-FACTO control of its affairs are residents in an enemy country.

Decided Case law: (Daimler Co. Ltd. Continental Tyre & Rubber Co. Ltd.)

3. Prevention of fraud

• Where a company is used for committing frauds or improper conduct, court may lift corporate veil and look at the realities of the situation.

Decided Case Law (Gifford Motor Company vs Horne)

4. Avoidance of welfare Legislation

• Where a company tries to avoid its legal obligations, the corporate veil shall be lifted to look at the real picture

Decided Case Law: (workmen of Associated Rubber Industry Ltd. Vs Associated Rubber Industry Ltd)

Statutory Provisions

1. Misrepresentation in prospectus

• In case of misrepresentation in prospectus, every director, promoter and every other person who authorizes the issue of such prospectus incur liability towards those shareholders who subscribe shares on faith of such prospectus

2. Failure to refund application money

• In case of public issue of shares by a company, if minimum subscription, as stated in the prospectus, has not been received within 30 days of the date of issue of the prospectus or with in such time as may be prescribed by SEBI, the company must refund the entire application money within such time as may be prescribed.

3. Misdescription of company's name

• Where an officer of a company signs on behalf of company, any contract, bill, promissory note, hundi, cheque or orders for money or goods, such person shall be personally liable to the holder if the name of company is either not mentioned or is properly not mentioned.

4. Holding and subsidiary company

• Every holding company shall attach to its Balance sheet, copies of Balance sheet, Profit and Loss Account, Director's Report and Auditor's Report etc of each of its subsidiary company. Though holding company and its subsidiary company have separate legal entities, court may treat a subsidiary company as a branch or department of its holding company.

5. Fraudulent conduct

• Where in the winding up of the company, it appears to the court that any business of the company has been carried on with intent to defraud the creditors of the company or any other person, then, the court may declare that any of the directors or officers who are parties to the fraud shall be personally liable.

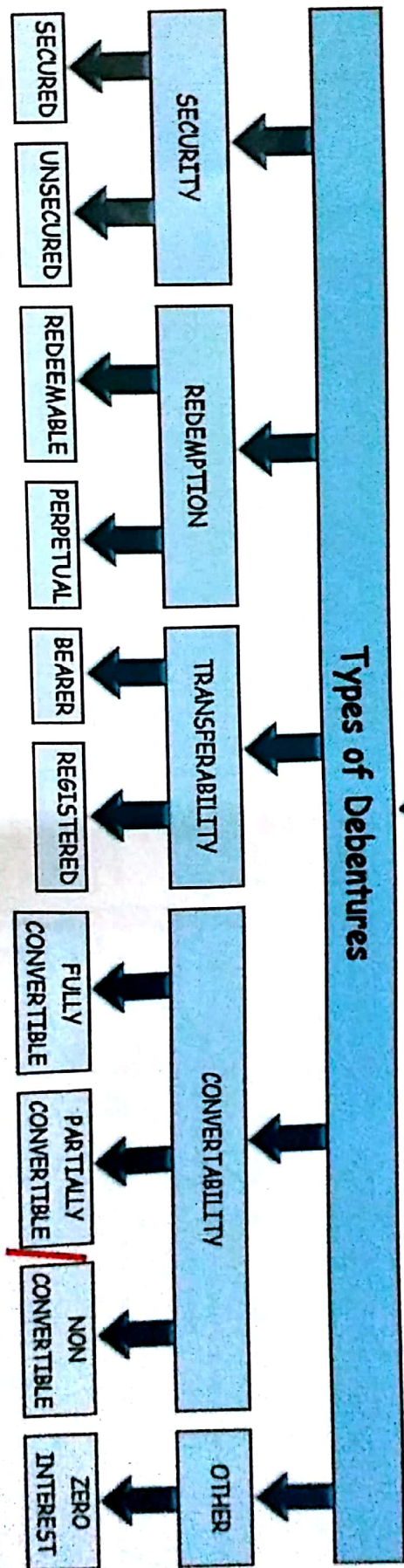
6. Liability under other statutes

• Besides the Companies Act, the directors and other officers of the company may be held personally liable under the provisions of other statutes. For example, where any private company is wound up and if tax arrears of the company in respect of any income of any previous year cannot be recovered, every person who was director of the company at any time during the relevant previous year shall be jointly and severally liable for payment of taxes.

7. Ultra virus Act

• Directors and other officers of company shall be personally liable for all those acts which they have done on behalf of the company and which are ultra vires the company.

KINDS OF DEBENTURES



MEETING

Properly Conveyed

Legally Constituted

Properly Conducted

Proper Authority

Section 101 - Adequate Notice

- 1) Board of Directors - have power to call for meeting. Thus a single director will have no power to call for GM
- 2) If director's wish to, they can delegate their power to someone else. And then that person will be authorised to call for a meeting

Length of Notice

- 1) 21 clear days
- 2) For calculating the same following shall be excluded -
 - Date of dispatch
 - 48 hrs for transmission
 - Date of Meeting
 - 3) Sec 8 Co. - 14 clear days
 - 4) If 95% members agree in writing for shorter length, meeting shall be valid

Contents of Meeting

- 1) Day
- 2) Time
- 3) Place
- 4) Agenda

Notice to whom

- 1) Each & every Member
- 2) Legal representative of Deceased Member
- 3) Official Assignee of Insolvent Member
- 4) Auditor
- 5) Director

Omission

- 1) Deliberate Omission - Proceedings Invalid
- 2) Accidental Omission - Proceedings Not Invalid

Note

- Provisions relating to length, content, notice to be sent to whom
- Ordinary Business & Special Business
- Quorum
- Chairman
- Voting by way of show of hands, poll shall not apply to a private company unless specified in respective sections or articles of Co.

Section 103 - Proper Quorum

Requirement of Quorum

2 Members personally present

Public Company

Cases	No. of members on the date of meeting	As Quorum Required
1)	Upto 1000	5
2)	1000 ≤ 5000	15
3)	More than 5000	30

Other Points

- 1) If within half an hour, Quorum is not present then, Meeting called as requisition of member shall stand dissolve
- 2) In case of other meetings, meeting shall stand adjourned
- 3) If at adjourned meeting also quorum not present then members present shall be Quorum

Section 105 - Proxies

- Proxies will not be counted for quorum
- Proxy is appointed through Form No. MGT-11 which must be deposited with Co. at least 48 Hrs before meeting
- Member is entitled to inspect proxy forms deposited with Co. by giving at least 3 days notice, inspection can be done 24 Hrs before commencement of meeting & ending with conclusion of meeting
- In case member attends meeting himself, it will act as automatic revocation of appointment of proxy
- Later appointed proxy will act as revocation of prior appointed proxy
- 4) In case articles specify time limit of more than 48 hrs for submitting MGT - 11, the same shall be considered as 48 hrs only
- 5) A Representative is member personally present & thus he will be counted for quorum purpose

Section 104 - Chairman

- 1) Presides over the meeting & sees to it whether business is being properly conducted in meeting
- 2) Usually appointed by Articles
- 3) Exercise casting vote in case of ordinary resolution in case of equality of votes

Section 114 - Resolution

Ordinary Resolution

$V_f > V_a$

Votes in favour of resolution are more than votes casted against resolution

Special Resolution

$V_f \geq 3(V_a)$

Votes casted in favour are not less than 3 times votes casted against the resolution

Section 107 - Show of Hands

One member one vote

Section 109 - Poll

One Share one vote

Section 110 - Postal Ballot

- 1) Alteration in objects clause
- 2) Variation in rights attached to class of shares or debentures
- 3) Buy back of shares
- 4) Alteration of Articles
- 5) Election of small shareholders
- 6) Change in place of registered office
- 7) Giving loans, extending guarantee in excess of limit prescribed
- 8) Sale of whole or substantially whole of undertaking of Company
- 9) Issue of shares with differential voting rights

Voting

Section 108 - Electronic means

- 1) Every listed Co. & Co. having 1000 or more members shall provide facility of e-voting at GM
- 2) Notice of GM can be sent through registered post / speed post / courier / email & also be placed on website
- 3) Content of Notice - Day, Place, Time, Agenda, facility of e-voting, process & manner of voting, Time Schedule, login id, process & manner of generating Password
- 4) Public Notice - at least 21 days before GM in vernacular + english newspaper
- Remote voting - Open for not less than 3 days & closed @ 5 PM on the date preceding GM
- Once member cast his vote, it shall not be allowed to change it
- At the end of voting period, facility will be blocked
- 5) BOD shall appoint Scrutinizer (CA/CS/CMA in practice) who shall maintain register to record assent/dissent
- 6) Scrutinizer shall immediately after conclusion of voting at GM count votes & unblocks votes cast through e-voting in presence of at least 2 witnesses
- Chairman - declare result
- Scrutinizer - make Consolidated Scrutinizers Report to Chairman not later than 3 days of conclusion of GM
- Result + Report to be placed on website

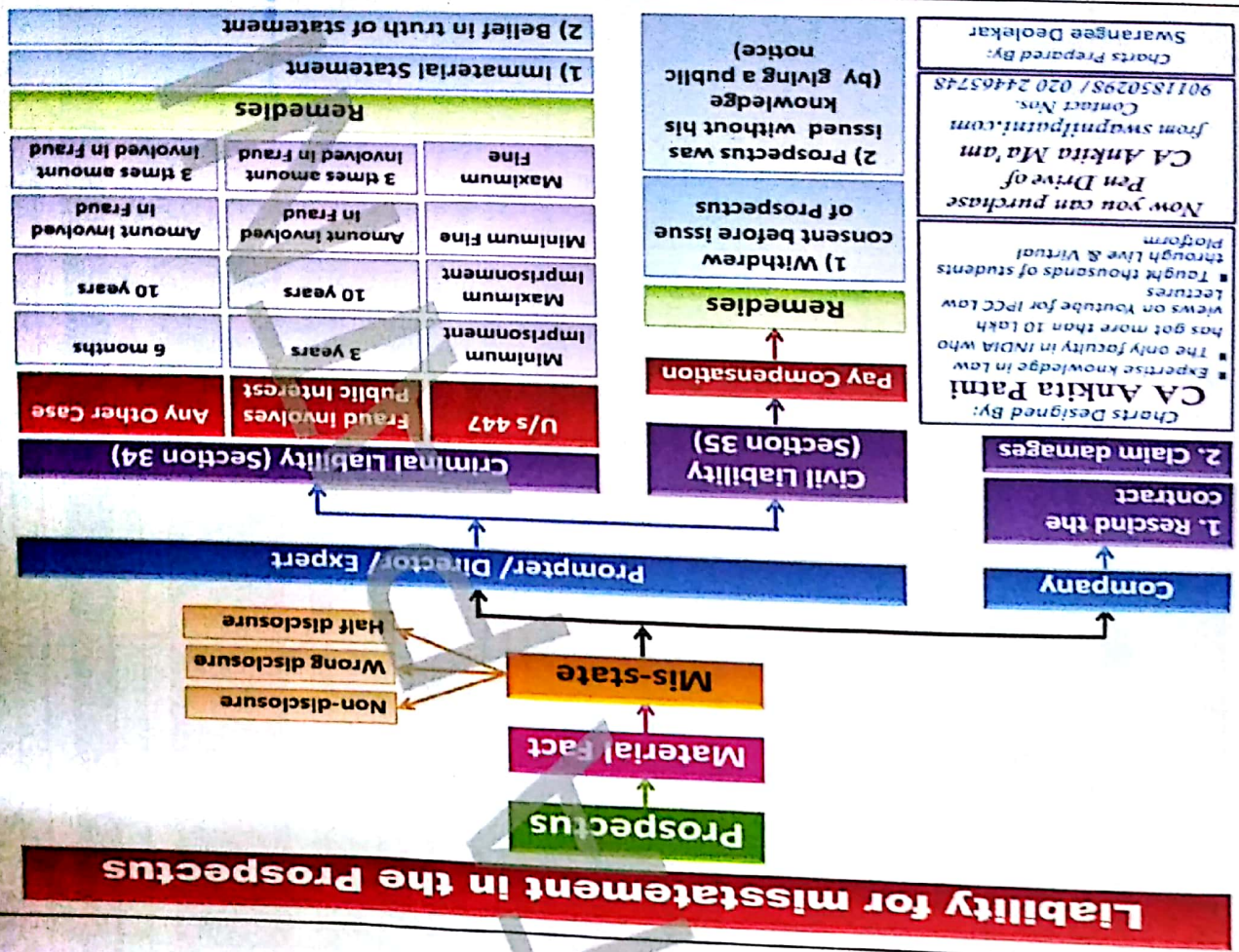
Section 115 - Minutes

- 1) Minutes Book must be signed by Chairman within 30 Days of conclusion of meeting
- 2) In case of Death/incapacity of Chairman, 1 of the director duly authorised by Board must sign minutes
- 3) Chairman has absolute discretion in not recording statements which he thinks:
 - Defamatory to any person
 - Irrelevant
 - Detrimental to interest of Co.



SP CLASSES
Your Success Partner

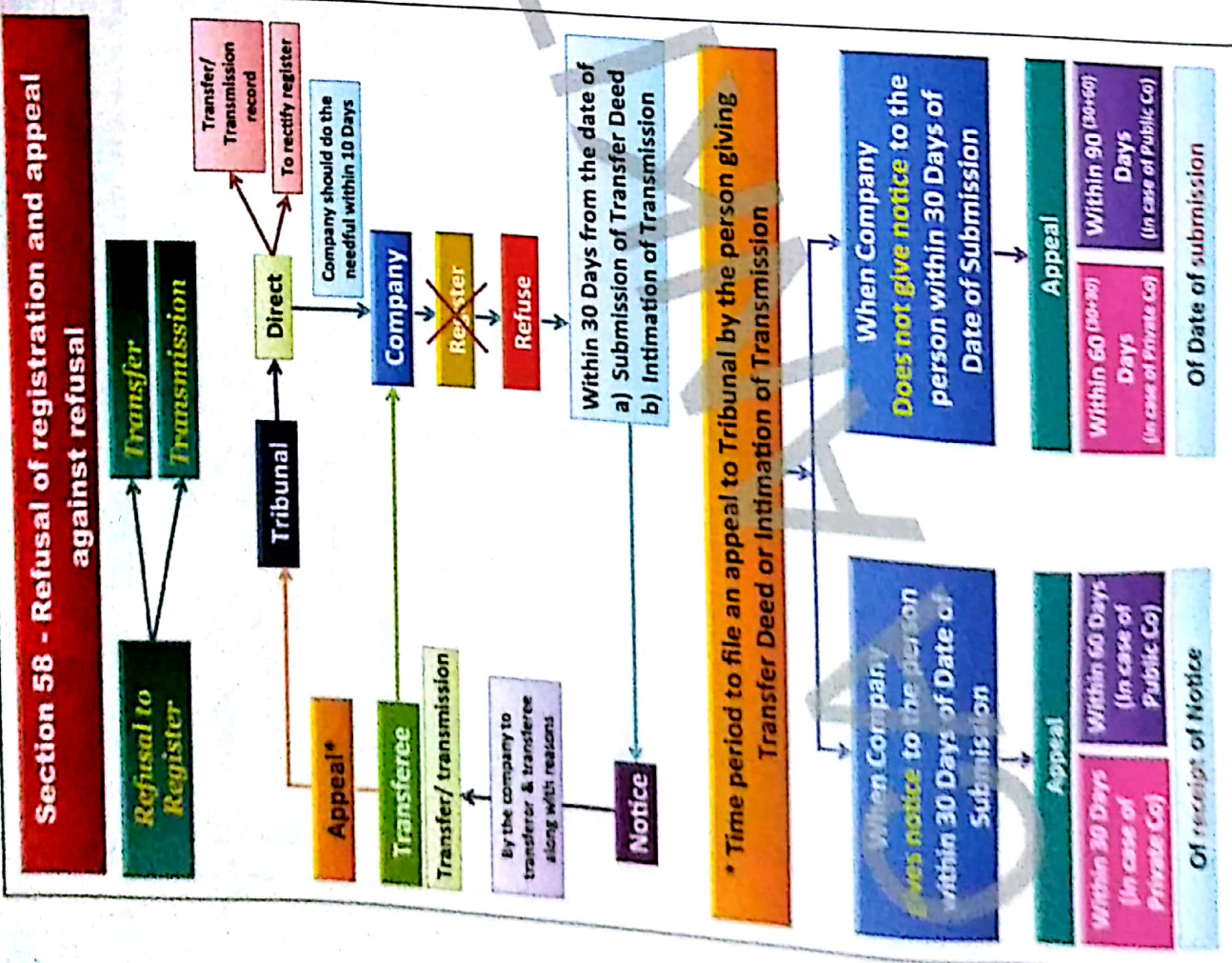
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Section 124 A

Unpaid Dividend Account

1) Money transferred to unpaid dividend account which remains unpaid/

unpaid/
unclaimed
for period of
7 years from
date of such

transfer
date or such
transferred
to IEPF
2) No claims
shall lie
against IEPF
or Co. & no

respect of
any such
claims

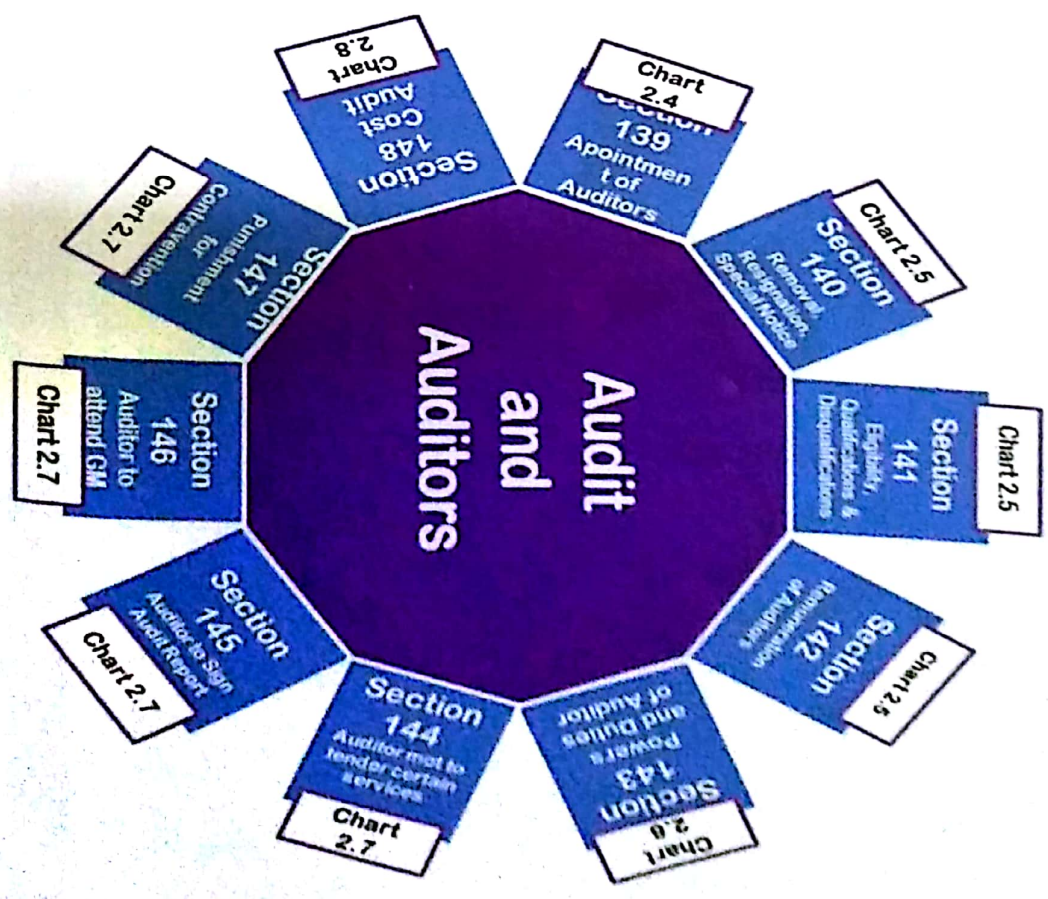
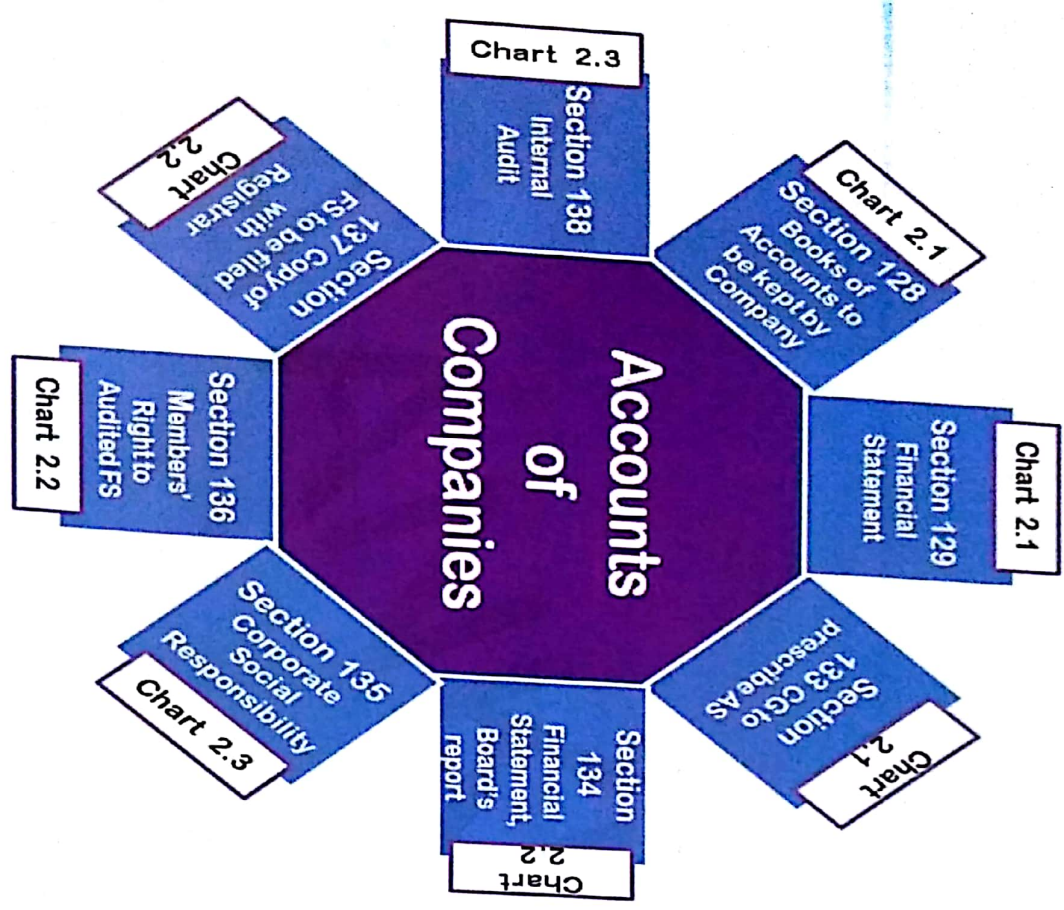
CONTACT NO.: (020) 2440111
9011851798 / 9011854340

Declaration and Payment of Dividend

Section 125 - Investor Education and Protection Fund

125(1)- Establishment of IEPF	125(2)- Deposit of fund	125(3)- Utilisation of Fund	125(4)- Application to Authority to claim funds	125(5)- Establishment of Authority for Refund of claims	125(6)- Management & Administration	125(7)- Resources to Authority	125(8)- Administration & Accounts of Fund	125(9)- Power of authority to expend fund for specific object of sec 125(3)	125(10)- Audit & Reporting	125(11)- Reporting to CG
CG Shall Establish	a) Grands by CG b) Donation by CG c) Unpaid Dividend Account d) Amt in General Revenue a/c e) Amt lying in IEPF fund u/s 205C f) Interest or other income received out of investment made from fund g) Amt Received under sub section (4) h) Application money received by co i) Matured Deposits j) Matured Debentures k) Interest accrued l) Sale proceed of fractional shares m) Redemption amt of Preference shares	a) Refund in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund & interest thereon b) Promotion of investors' education, awareness & protection c) Distribution of any disorged amt among eligible & identifiable applicants d) Reimbursement of legal expenses incurred in pursuing class action suits under sections 37 & 245 by members, debenture-holders or depositors as may be sanctioned by Tribunal	Any person claiming to be entitled to amt referred in sub-section (2) may apply to authority constituted under sub- section (5) for payment of money claimed	CG can constitute authority with: 1 Chairman, Other members not exceeding 7 & CEO	CG have power to decide following things by making new rules a) Administration of Fund b) Appointment of chairperson c) Appointment of Members d) Appointment of CEO e) Holding of meetings of authority	CG have power to provide offices, officers, employees & resources to authority by making rules	Authority Shall: a) Administer Fund b) Prepare & maintain records as needed as per CAG	It shall be competent for authority constituted under sub-section (5) to spend money out of Fund for carrying out objects specified in sub- section (3)	1) Audit of IEPF will be conducted by CAG 2) CAG will decide time, frequency & scope of audit 3) Audited accounts & audit report shall be forwarded by authority to CG annually or on demand	Authority & CAG shall prepare following documents & reports before parliament of India a) Annual report b) Audit report by CAG

Master Chart - Accounts and Audit



Accounts of Companies

Section 128 - Books of accounts, etc. to be kept by company

<p>Section 128(1) - Manner and Place of Maintenance</p> <p>1) Maintained at Registered Office for every FY 2) Give true & fair view of state of affairs of Co. including Branch 3) Maintained on original basis in double entry system of accounting 4) Books of Accounts can be kept at any other place in India at BOD may deem fit, notice in writing</p>	<p>As per Rule* - Electronic form</p> <p>Books maintained in Electronic mode shall be- 1) Accessible in India, usable for subsequent reference 2) Retained in format originally generated, sent or received 3) Branch Office information not be altered 4) Information displayed in legible form 5) Proper system for storage, retrieval, display or printout, not be disposed of unless permitted by BOD 6) Periodical Back-up of books in servers physically located in India 7) Annually intimate ROC, name, IP address, location, if maintained on cloud, its address</p>	<p>Section 128(2) - Books of Branch Office</p> <p>1) Proper books of transactions at branch office in or outside India be kept at that branch office 2) Summarised Returns periodically must be sent by branch office to Co 3) Books open for inspection by any director during business hours, at RO/other place 4) Conditions in Rules* for Financial Information outside country:- a) Summarised returns to registered office quarterly, kept open to directors for inspection b) Director furnish request with full details, period of information sought c) Co produce information to director within 15 days from receipt of written request d) Sought by director himself, not through power of attorney holder/agent/representative 3) Inspection of Subsidiary co. by authorised person only 4) Officers & other employees give assistance</p>	<p>Section 128(5) - Period of Maintenance</p> <p>1) Books of account with relevant vouchers be kept for minimum period of 8 FY immediately preceding FY 2) Co in existence less than 8 years, shall maintain books of all such preceding years 3) If investigation has been ordered, CG may direct longer period as it may deem fit</p>	<p>Section 128(6) - Persons Responsible & Penalty</p> <p>1) MD, WTD, CFO, Any other person charged by Board, contravenes provisions, they will be punishable a) Imprisonment upto 1 year or fine Rs.50,000/- b) Fine Rs.5,00,000/- c) Both or</p>	<p>Section 129(1) - Form of Financial Statements</p> <p>1) FS shall - a) give true & fair view of state of affairs of Co b) comply with AS notified u/s 133 c) shall be in form as may be provided for different classes of Co in Schedule III 2) Provisions relating to nature & content of FS not apply to:- a) Insurance Co b) Banking Co c) Co engaged in generation/supply of electricity d) Other class of co for which form of FS has been specified under Act</p>
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* Companies (Accounts) Rules, 2014

Section 129 - Financial Statement

Section 129(2) - Laying of Financial Statements	Section 129(3)(A) - CFS	Section 129(5) - Deviations from Accounting Standards	Section 129(6) - Exemptions
At every AGM, BOD shall lay before Co, FS for FY Section 129(3)(A) - CFS	1) If Co has subsidiaries, it shall, prepare consolidated financial statement (CFS) in same form & manner as its own 2) CFS shall also be laid before AGM along with its own features of FS of its subsidiaries in Form AOC - 1 3) "Subsidiary" shall include Associate Co & joint venture 4) CFS shall be made in accordance with Schedule III & AS 5) If Co not required to prepare CFS under AS, compliance with Schedule III will be sufficient 6) Provisions applicable to preparation, adoption & audit of FS of holding Co shall apply to CFS 7) Provided that nothing in this rule shall apply in respect of preparation of consolidated FS by a co. if it meets following conditions:- (i) It is a wholly-owned subsidiary, or is a partially-owned subsidiary of another co. & all its other members, having been intimated in writing & for which proof of delivery of such intimation is available with co. do not object to co. not presenting consolidated FS; (ii) It is a co. whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; & (iii) Its ultimate or any intermediate holding company files consolidated financial statements with Registrar which are in compliance with applicable AS	If FS do not comply with AS, Co shall disclose following in FS: 1) deviation from AS 2) reasons for such deviation 3) financial effects, if any, arising out of such deviation	CG may on its own or on application by Co, grant exemption from complying with requirements of this section in public interest Section 129(7) - Convention Explanation FS shall include any notes annexed to or forming part of such FS, giving information required to be given & allowed to be given in form of such notes under this Act Sec 129 - Not applicable to Govt Co. engaged in defence production to the extent of application of AS 17

A Section 130- RE-OPENING OF ACCOUNTS ON COURTS OR TRIBUNALS ORDERS

Section 133 - CG to prescribe AS	Section 130
CG may prescribe Accounting Standards recommended by ICAI in consultation with & after examination of recommendations made by National Financial Reporting Authority (NFRA) Note: NFRA not yet constituted u/s 132 of Companies Act, 2013 so AS given by National Advisory Committee under Companies Act, 1956 are still in force	(1) Apply to court for re-opening of accounts - co. shall not re-open its BOA & not recast its FS, unless an application in this regard is made by: (a) Central Govt, (b) Income-tax authorities, (c) Securities & Exchange Board, (d) any other statutory/regulatory body or authority or any person concerned & an order made by a court of competent jurisdiction or Tribunal to effect that - (i) Relevant earlier accounts were prepared in a fraudulent manner, or (ii) affairs of co. were mismanaged during relevant period, casting a doubt on reliability of FS Provided that court or Tribunal, as case may be, shall give notice to Central Govt, IT authorities, securities & Exchange Board or any other statutory regulatory body or authority concerned & shall take into consideration representations, if any, made by that Govt or authorities, Securities & Exchange Board or body or authority concerned before passing any order under this section. (2) Revised accounts shall be final: Without prejudice to provisions contained in this Act accounts so revised or re-cast under sub-section (1) shall be final

* Companies (Accounts) Rules, 2014

Accounts of Companies

Section 134 - Financial Statement, Board's report, etc

Section 136 - Right of member to copies of Audited Financial Statement

Section 137 - Copy of financial statement to be filed with Registrar

Board's report			
Section 134(1) - Authentication of FS 1) FS including CS if any, shall be approved by BOD before they are signed on behalf of Board by- a) Chairperson OR b) Two Directors of which 1 shall be MD (if any), CEO if he is director, CFO, CS 2) If OPC, signed Section 134(2) Auditor's report shall be attached Section 134(7) Signed copy of FS, including CS, if any, shall be issued, circulated or published along with copy of - a) Notes annexed to or forming part of FS b) Auditor's report & c) Board's report	Section 134(3) - Contents of Board Report Board's Report shall be prepared based on stand alone FS of co. & shall report on highlights of performance of subsidiaries, associates & joint venture companies & their contribution to overall performance of co. during period under report 1) Extract of annual return 2) No. of Board meetings 3) Director's Responsibility Statement 4) Article in respect of fraud reported by auditors under section 143(12) other than those which are reportable to CG Section 134(4) - Board's Report in case of OPC Report containing explanations or comments by Board on every qualification, reservation or adverse remark made by auditor in the report shall be attached to FS Section 134(5) - Directors' Responsibility Statement DRS shall state that- a) In preparation of annual accounts, applicable AS had been followed along with explanation to material departures b) Directors had selected such accounting policies & applied them consistently & made judgments & estimates that are reasonable & prudent so as to give true & fair view of state of affairs of Co at end of FY & of profit & loss of Co for that period c) Directors had taken proper & adequate accounting records for safeguarding assets of Co & for preventing & detecting fraud & other irregularities d) Directors had prepared annual accounts on going concern basis & directors, in case of listed co, had laid down internal financial controls to be followed, are adequate & were operating effectively e) Directors had devised proper systems to ensure compliance with provisions of all applicable laws & that systems were adequate & operating effectively	Section 134(6) - Signing Board's Report & any annexures thereto shall be signed by its a) Chairperson if he is authorised by Board & b) where he is not authorised, shall be signed by at least 2 directors, 1 of whom shall be MD or by director where there is 1 director Section 134(9) - Contravention 1) Company - Fine - Rs. 50,000 to Rs. 25 Lacs 2) Every officer in default - a) Imprisonment upto 3 years or fine - Rs. 50,000 to Rs. 5 Lacs or b) Both c) Both	Section 136(1) - Who are entitled? 1) CFS, Auditor's Report & Other document required by law shall be annexed with FS which are to be laid in its GM 2) It shall be sent to- a) member b) trustee for debenture-holder of any debentures issued by Co & c) persons entitled, other than member/ trustee d) at least 21 days before meeting 3) In case of Listed Co- above provisions shall be deemed to be complied with - a) If copies of documents are made available for inspection at its registered office during working hours for 21 days before meeting b) Statement of Salient features in Form AOC-3 or copies of documents, as Co may deem fit is sent to every member & trustee for holder of any debentures issued by Co at least 21 days before meeting unless shareholders ask for full FS 4) Co allow member or trustee to inspect debenture holder registered office during business hrs
	Manner of circulation 1) In case of Listed Co & Public Co having net worth of more than Rs. 1 crore & turnover of more than Rs. 10 crore, ES may be sent- a) by electronic mode to members whose shareholding is in demat format b) members in demat format c) Shareholding in physical mode otherwise d) in respect of each subsidiary who asks for it	Subsidiary Companies Co having subsidiaries shall place separate audited accounts in respect of each of its subsidiary on its website (if any) b) provide copy of audited FS in respect of each subsidiary to any shareholder who asks for it	Section 137(1) - Filing of FS Copy of FS, including CS, if any, along with all documents which are required to be or attached to such FS under this Act, shall be filed with Registrar within 30 days of AGM in such manner, with fees or additional fees within time specified u/s 403 Section 137(1) - If FS are not adopted 1) Unadopted FS along with required documents be filed with Registrar within 30 days of AGM 2) Registrar shall take them as provisional till FS filed with him after their adoption in adjourned AGM 3) FS adopted in adjourned AGM shall be filed with Registrar within 30 days of adjourned AGM with fees or additional fees within time specified u/s 403
	Section 137(1) - Filing by OPC OPC shall file copy of FS duly adopted by its member, along with all documents which are required to be attached to such FS, within 180 days from	Section 137(2) - AGM not held Where AGM has not been held for any FY, FS along with documents, required to be attached, duly signed, with Statement of Facts & reasons for not holding AGM shall be filed with Registrar within 30 days of last date before which AGM should have been held & with fees or additional fees within	Section 137(3) - Penalty 1) Co punishable with fine - Rs. 1,000/- for every day during which failure continues but upto Rs. 10,00,000/- 2) MD & CFO, in absence, director charged by Board punishable with - a) Imprisonment - Up to 6 mths b) Fine - Rs. 1,00,000/- to Rs. 5,00,000/- c) Both

A Following class of companies shall file their FS & other documents u/s 137(1) with Registrar in e-form "AOC-4 XBRL" for FY commencing on or after 1st April, 2014 using XBRL taxonomy-
 1) Co. listed with any stock exchange in India & their Indian subsidiaries
 2) Companies having turnover of Rs. 100 Cr or above
 3) Companies having PSC of Rs. 5 Cr or above
 4) Companies which were covered under Companies (Filing of Documents & Forms in Extensible Business Reporting Language) Rules, 2011
A Noted that companies in Banking, Insurance, Power Sector & Non-Banking Financial commercial Companies & Housing finance co. need not file financial statements under this rule

Accounts of Companies

Section 135 - Corporate Social Responsibility

Definition as per Rules*	CSR Committee	As per Rules*	Section 135(9) - Duties of Board	Section 135(5) - Amount of contribution towards CSR	A APPROPRIATE SOCIAL RESPONSIBILITY POLICY	Exceptions to CSR Activities As per Rules*	Calculation of Average Net Profit	CSR Reporting	Activities specified under Schedule VII
1) CSR means & includes but is not limited to: a) Project/ programs specified in Sch VII to Act or b) Project/ programs undertaken by BOD in pursuance of recommendations of Committee	Composition Section 135(1) 3 or more directors, out of which at least 1 shall be independent director (ID) As per Rules* 1) Unlisted public Co/ Private Co, not required to appoint ID shall have its Committee without such director 2) Private Co having only 2 directors shall have CSR Committee with 2 such directors 3) CSR Committee of Foreign Co shall comprise of at least 2 persons of which 1 shall be as specified u/s 330(1)(d) & another person be nominated by Foreign Co Section 135(2) Board's report disclose composition of Committee	1) List of CSR projects/ programs which Co plans to undertake within purview of Sch VII & 2) Monitoring process 3) CSR activities do not include activities undertaken in normal course of business of Co 4) BOD shall ensure that activities included by Co in its CSR Policy are related to activities included in Sch VII 5) CSR Policy shall specify that surplus arising out of CSR projects/ programs/ activities shall not form part of business profit of Co	1) after Board shall, in relation to CSR to Board, recommend & take into account CSR Policy approved by Committee, actions made by CSR Policy for Co & disclose contents of report & place it on Co's website, if any, 2) ensure that activities as included in Policy are undertaken	1) Board shall ensure that Co spends, in every FY, at least 2% of average net profits made during 3 immediately preceding FY, in pursuance of its CSR Policy 2) Co shall give preference to local area & areas around it where it operates, for spending amount 3) If Co fails to spend amount, Board shall, in its report, specify reasons for not spending 4) Co may build CSR capacities of own personnel & of their implementing agencies through institutions with established track records of at least 3 FY 5) Expenditure including rep on administrative overheads not exceed 5 % of total CSR expenditure of Co in 1 FY	The Board of a co. may decide to undertake its CSR activities approved by CSR Committee, through- (i) a co. established under sec 8 of Act or a registered trust or a registered society, (ii) a co. established under sec 8 of Act along with any other co., or (iii) a co. established under sec 8 of Act or a registered trust or a registered society, established by Co, either singly or along with any other co., or (iv) a co. established under sec 8 of Act or a registered trust or a registered society, established by CG or State Govt or any entity established under an Act of Parliament or a State legislature : (b) Provided that: if, Board of a co. decides to undertake its CSR activities through a co. established under sec 8 of Act or a registered trust or a registered society, other than those specified in this sub-rule, such co. or trust or society shall have an established track record of 3 yrs in undertaking similar programs or projects; & co. has specified projects or programs to be undertaken, modalities of utilisation of funds of such projects & program & monitoring & reporting mechanism".	Activities not considered as CSR activities: 1) CSR projects or programs or activities undertaken outside India 2) CSR projects or programs or activities that benefit only employees of Co & their families 3) Contribution of any amount directly or indirectly to any political party u/s 182	1) Average net profit shall be calculated in accordance with Section 198 2) Net profit shall not include- a) Profit arising from overseas branch, whether operated as separate Co or otherwise & b) Dividend received from other Co in India, which are covered under & complying with Section 135 c) Net profits of FY for which relevant FY were prepared as per provisions of Companies Act, 1956, shall not be required to be re-calculated	1) Board's Report of Co covered under these rules pertaining to FY commencing on or after 01/04/2014 shall include an annual report on CSR 2) In case of Foreign Co, balance sheet filed u/s 331(1)(b) shall contain Annexure regarding report CSR	a) eradicating hunger, poverty & malnutrition, promoting health care & making available safe drinking water b) promoting education & employment c) promoting gender equality, empowering women, elderly, & differently abled d) promoting gender equality, empowering women, setting up homes & hostels for women & orphans, setting up old age homes, day care centres e) ensuring environmental sustainability, ecological balance, protection of flora & fauna, conservation of natural resources & maintaining quality of soil, air & water f) including contribution to Clean Ganga Fund g) protection of national heritage, art & culture including restoration of buildings & sites of historical importance & works of art, setting up public libraries h) measures for benefit of armed forces veterans, war widows, their dependents i) training to promote rural sports, nationally recognised sports, paralympic sports & Olympic sports j) contribution to Prime Minister's National Relief Fund/ fund set up by CG k) contributions or funds provided to technology incubators located within academic institutions approved by CG l) rural development projects m) hum area development

* Companies (CSR Policy) Rules, 2014

Accounts of Companies

Section 131 - VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT

- (a) If it appears to directors of a co. that
- (i) Financial Statement of co; or (ii) Report of Board, do not comply with provisions of sec 129 or sec 129 or sec 134, they may prepare revised FS or a revised report in respect of any of 3 preceding FY after obtaining approval of Tribunal on an application made by co in such form and manner as may be prescribed & a copy of order passed by Tribunal shall be filed with Registrar
- (b) Tribunal to serve notice: Provided that Tribunal shall give notice to CG & IT authorities & shall take into consideration representations, if any, made by that Govt or authorities before passing any order under this section: Provided further that such revised FS or report shall not be prepared or filed more than once in a FY.
- (c) Reason for revision to be disclosed: Provided also that detailed reasons for revision of such FS or report shall also be disclosed in Board's report in relevant FY in which such revision is being made.
- (2) Limits of revisions: Where copies of the previous FS or report have been sent out to members or delivered to Registrar or laid before co. In general meeting, revisions must be confined to—
- (a) correction in respect of which previous FS or report do not comply with the provisions of sec 129 or sec 134; &
- (b) making of any necessary consequential alternation.
- (3) Framing of rules by the CG in relation to revised financial statement or director's report: CG may make rules as to application of provisions of this Act in relation to revised FS or a revised director's report and such rules may, in particular—
- (a) make different provisions according to which previous FS or report are replaced or are supplemented by a document indicating the corrections to be made;
- (b) make provisions with respect to functions of the company's auditor in relation to revised FS or report;
- (c) require directors to take such steps as may be prescribed

Section 138 - Internal Audit

Companies required to appoint Internal Auditor	Who is Internal Auditor?
1) Co required to appoint Internal Auditor which may be either an individual or a partnership firm or a body corporate a) Listed Co b) Unlisted Public Co having: i) PSC Rs.50 Crore or more during preceding FY or ii) Turnover Rs.200 Crore or more during preceding FY or iii) Outstanding loans or borrowings from banks or public financial institutions exceeding Rs. 100 Crore or more at any time during preceding FY or iv) Outstanding Deposits Rs. 25 Crore or more at any time during preceding FY & c) Private Co having: i) Turnover Rs.200 crore or more during preceding FY or ii) Outstanding loans or borrowings from banks or public financial institutions exceeding Rs.100 crore or more at any time during preceding FY	1) Internal Auditor shall either be CA or Cost Accountant, or other professional decided by Board to conduct internal audit of functions & activities of Co Here, term "Chartered Accountant" or "Cost Accountant" shall mean CA or cost accountant whether engaged in practice or not 2) Internal Auditor may or may not be employee of Co
2) Audit Committee/ Board, in consultation with Internal Auditor, formulate scope, functioning, periodicity & methodology for conducting internal audit	Transition Period Existing Co covered under any of above criteria comply with requirements of Section 138 & Co (Accounts) Rules, 2014 within 6 months of commencement of such section

A Section 140 (4) & Section 140 (5)

- 1) 140(4) on satisfaction of Tribunal that right deliberated to auditor are being abused: Provided further that if Tribunal is satisfied on an application either of co or of any other aggrieved person that rights conferred by this sub-section are being abused by auditor, then copy of representation may not be sent & representation need not be read out at meeting.
- (2) 140(5)
- (i) On satisfaction of Tribunal that auditor of a co. has acted in a fraudulent manner Without prejudice to any action under provisions of this Act or any other law for time being in force, Tribunal either suo motu or on an application made to it by CG or by any person concerned, if it is satisfied that auditor of a co. has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, co. or its directors or officers, it may, by order, direct co to change its auditors:
- (ii) Requirement for change of auditor: Provided that if application is made by CG & Tribunal is satisfied that any change of auditor is required, it shall within 15 days of receipt of such application, make an order that he shall not function as an auditor & CG may appoint another auditor in his place:
- (iii) Ineligibility of auditor to be appointed: Provided further that an auditor, whether individual or firm, against whom final order has been passed by Tribunal under this sec shall not be eligible to be appointed as an auditor of any co for a period of 5 yrs from date of passing of order and the auditor shall also be liable for action under section 447.

Audit and Auditors

Section 139 - Appointment of Auditors

Section 139(1) - Appointment of Auditors	Manner and procedure of selection and appointment of auditors As per Rules*	Section 139(2) - Term of Auditor	Section 139(3) & (4) - Rotation of auditor	Section 139(6) - First auditors	Section 139(5) - Auditor of Govt Co	Section 139(8) - Filling up casual vacancy
<p>1) Every Co. at 1st AGM, appoint individual/ firm as auditor of Co.</p> <p>2) Auditor shall hold office from conclusion of 1st AGM till conclusion of 6th AGM & thereafter till conclusion of every 6th AGM</p> <p>3) At every AGM, appointment be ratified by members by passing OR</p> <p>4) If not ratified, auditor shall vacate & it shall be Casual Vacancy to be filled by Board u/s 139(8)</p> <p>5) Before appointment, written consent & certificate that he satisfies criteria u/s 141</p> <p>6) Co shall inform auditor of his appointment & file notice in Form "ADT-1" with Registrar within 15 days of meeting in which auditor is appointed</p> <p>7) Explanation- Appointment includes Re-appointment</p>	<p>1) BOD/Audit Committee (if Section 177 applicable) shall-</p> <p>a) Consider qualifications & experience of individual/ firm proposed to be auditor</p> <p>b) Have regard to order/ pending proceeding relating to professional matters of conduct against proposed auditor</p> <p>c) Call for other information as it may deem fit</p> <p>2) In case Co is not required to constitute Audit Committee (AC) u/s 177, Board shall recommend Name of Individual/ Firm as Auditor to members</p> <p>3) In case Co is required to constitute AC-</p> <p>a) AC recommend to Board</p> <p>b) Board agrees, recommend to Members</p> <p>c) Board disagrees, refer back to AC for reconsideration with reasons</p> <p>d) AC decides, not to reconsider, Board shall record reasons & send its own recommendation to Members</p>	<p>1) Following Co-</p> <p>a) Every Listed Co.</p> <p>b) Unlisted Public Co having PSC of Rs.10 crore or more</p> <p>c) Private limited Co having PSC of Rs.20 crore or more</p> <p>d) All Co having PSC below limit mentioned above, having borrowings from FI/ banks/ public deposits of Rs.50 Cr or more</p> <p>shall not appoint or reappoint</p> <p>a) Individual as auditor for more than 1 term of 5 consecutive years &</p> <p>b) firm as auditor for more than 2 terms of 5 consecutive years</p> <p>2) Individual/Firm who has completed his term shall not be eligible for re-appointment for 5 years from completion of his term</p> <p>3) Audit firm having common partner to other firm, whose tenure has expired shall not be appointed for 5Y</p> <p>4) Transition Period to existing co for compliance - 3 yrs</p> <p>Provided also that every co, existing on or before 1st April 2016, shall comply with requirements of this Act which is required to comply with provisions of this sub-sec, shall comply with requirements of this sub-sec within a period which shall not be later than date of 1st annual general meeting of co held, within period specified under sub-sec (1) of sec 96, after 3 yrs from date of commencement of this Act</p>	<p>1) Members may resolve to provide that-</p> <p>a) In audit firm, auditing partner & team shall be rotated at intervals or</p> <p>b) audit shall be conducted by more than 1 auditor</p> <p>2) As per Rules*</p> <p>a) Period for which individual/ firm has held office prior to commencement be considered for calculating 5/ 10 consecutive years</p> <p>b) Incoming auditor not be eligible if he is associated with outgoing auditor under same network (firms operating or functioning under same brand name, trade name or common control)</p> <p>c) Break in term for 5 continuous yrs be considered as fulfilling requirement of rotation</p>	<p>1st auditor of Other than Government Co, shall be appointed by BOD within 30 days of date of registration of Co. & auditor so appointed shall hold office until conclusion of 1st AGM</p> <p>b) If Board fails to appoint, it shall inform members who shall within 90 days at EGM appoint 1st Auditor & such auditor shall hold office till conclusion of 1st AGM</p>	<p>1) C&AG shall appoint auditor in case of-</p> <p>a) Government Co or Government Controlled Co</p> <p>2) The auditor shall be appointed within 180 days from commencement of FY</p> <p>3) Auditor shall hold office till conclusion of AGM</p>	<p>1) Board may fill casual vacancy in office of auditor within 30 days</p> <p>2) If vacancy caused by resignation, appointment shall be approved by company at GM convened within 3 months of recommendation of Board</p> <p>3) Auditor appointed in casual vacancy shall hold office until conclusion of next AGM</p>
					<p>Section 139(7) - 1st Auditor of Govt Co</p> <p>1) 1st auditor be appointed by C&AG within 60 days from date of registration</p> <p>2) If C&AG does not appoint Board shall appoint within next 30 days</p> <p>3) If failure by Board, it shall inform members who shall appoint within 60 days at EGM who shall hold office till conclusion of 1st AGM</p>	<p>Section 139(9)(10) - Re-appointment of Retiring Auditor</p> <p>1) Retiring auditor may be re-appointed at AGM if-</p> <p>a) he is not disqualified</p> <p>b) he has not given notice in writing of unwillingness to be reappointed</p> <p>c) SR has not been passed appointing some other auditor or providing expressly that he shall not be re-appointed</p> <p>2) Where at AGM, no auditor is appointed/ re-appointed, existing auditor shall continue to be auditor</p>

* Companies (Audit and Auditors) Rules, 2014



your Success Partner

Designed By: **Swarnil Patni**

- CA, CS, IIB, B.Com., CISA
- Expertise knowledge in ISCA, IT, SM, LAW
- Presence all over India at the age of 29
- Also known as the "Motivational Guru"

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Audit and Auditors

Section 140 - Removal, resignation of auditor and giving of special notice

Section 140(1) - Removal of auditor before expiry of his term	Section 140(2) & (3) - Resignation by Auditor	Section 140(4) - Appointing Auditor other than the Retiring Auditor
1) Requires Special Resolution 2) Previous approval of CG must be obtained by making application in Form ADT - 2 within 30 days of resolution passed by Board 3) Co shall hold GM within 60 days of receipt of approval of CG for passing SR 4) Before removal of auditor before expiry of his term, auditor concerned shall be given reasonable opportunity of being heard	1) When auditor resigns, he is required to file statement in Form ADT - 3 with - a) Company b) Registrar c) C & AG (in case of Govt Co) 2) Auditor shall indicate reasons & other facts with regard to resignation, in statement 3) If auditor does not comply he shall be punishable with Fine - Rs. 50,000/- to Rs. 5,00,000/- 6) If copy is not sent because it was received too late or because of company's default, auditor may require to be read out at meeting 7) Copy of representation shall be filed with Registrar	1) At AGM, special notice shall be required for a) appointing as auditor person other than retiring auditor or b) providing expressly that retiring auditor shall not be reappointed 2) Special Notice shall not be required if retiring auditor has completed consecutive tenure of 5/10 yrs as provided u/s 139(2) 3) Co shall send copy of notice to retiring auditor 4) Retiring auditor makes representation in writing to company, requests its notification to members 5) Co. shall, unless representation is received by it too late - a) State fact of representation having been made & b) send copy of representation to every member 6) If copy is not sent because it was received too late or because of company's default, auditor may require to be read out at meeting 7) Copy of representation shall be filed with Registrar

Section 141 - Eligibility, qualifications and disqualifications of auditors

Section 141(1) & (2) - Qualifications of an auditor	Section 141(3) - Disqualifications of auditors
1) Person shall be eligible to be appointed as auditor only if he is CA 2) Firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of Co. 3) Where firm including LLP is appointed as auditor of Co, only partners who are CAs shall be authorised to act & sign on behalf of firm	1) Body Corporate, other than LLP (2) Officer or employee of Co 3) Person who is partner, or who is in employment, of officer/employee of Co 4) Person who, or his relative or his partner - a) is holding any security of or interest in Co or Subsidiary/Holding/Associate (S/H/A)/ Subsidiary of Holding Provided that relative may hold security/ interest in Co of face value not exceeding Rs. 1,00,000/- b) is indebted to Co/S/H/A/ Subsidiary of Holding, in excess of Rs. 5 Lacs c) has given guarantee/ provided any security in connection with indebtedness of 3rd person to Co/ S/H/A/ Subsidiary of Holding, in excess of Rs. 1 lac 5) Person/ Firm who, whether directly or indirectly, has business relationship with Co/ S/H/A/ Subsidiary of Holding or Associate 6) Person whose relative is director or is in employment as director or KMP 7) Person who is in full time employment elsewhere or Person/ partner holding appointment as its auditor, if he is holding appointment of more than 20 Co 8) Person who has been convicted by court of offence involving fraud & 10 yrs have not elapsed from date of conviction 9) Person whose Subsidiary/ Associate/ other entity, is engaged on date of appointment in consulting & specialized services as provided u/s 144

Section 142 - Remuneration of auditors

1) Remuneration of auditor shall be fixed by Co in GM or in manner decided therein 2) Remuneration of 1st Auditor may be fixed by Board 3) Remuneration include expenses, incurred by auditor in connection with audit & any facility extended to him but excludes any remuneration paid for other service rendered at request of Co

Section 143

1) In Section 143, following proviso shall be inserted "Until NFRA is constituted u/s 132, CG may hold consultation required under this sub-section with Committee chaired by officer of rank of Joint Secretary or equivalent in MCA & Committee shall have representatives from ICAI & Industry Chambers & also special invitees from National Advisory Committee on AS & office of CAG" b) In Section 133 following proviso shall be inserted, namely:- "Until National Financial Reporting Authority is constituted u/s 132, CG may prescribe standards of accounting or any addendum thereto, as recommended by ICAI in consultation with & after examination of recommendations made by NAC on AS constituted"

Audit and Auditors

Section 143 - Powers & Duties of Auditors & Auditing Standards

Section 143(1) - Powers of Auditors	Section 143(2) - Duty to make Report	Section 143(3) - Matters Included Auditor's Report	Other Matters in Auditor's Report (Rule 3)	Section 143(5), (6), (7) - Audit of Government Companies	Section 143(8) - Audit of accounts of branch office	Section 143(12) - Reporting of Frauds by Auditor	Section 143(9) - Compliance with Auditing Standards
1) Auditor has right to access books of accounts & vouchers kept at NO or other place 2) He shall be entitled to information & explanations as he may consider necessary for performance of his duties as auditor 3) Matters of inquiry - a) Whether loans & advances made on basis of security have been properly secured & whether its terms are prejudicial to interests of Co or its members b) Whether transactions represented by book entries are prejudicial to interests of Co c) Where Co not being investment or Banking Co, whether so much of assets of Co as consist of shares, debentures & other securities have been sold at prices less than that at which they were purchased by Co d) Whether loans & advances made by Co have been shown as deposits e) Whether personal expenses have been charged to Revenue A/c f) Where it is stated in books & documents that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, & if no cash has actually been so received, whether position as stated in account books & Balance Sheet is correct, regular & not misleading 4) Auditor of Holding Co shall have right to access records of all its subsidiaries in no far as it relates to CS with that of its	1) Auditor shall make report to members of Co on following: a) Accounts examined by him & b) Every FS which are required under this Act to be laid before Co in GM 2) He while making report shall take into account: a) provisions of Act b) accounting & auditing standards & c) matters which are required to be included under provisions of this Act or any rules made thereunder 3) He shall express his opinion on accounts & FS examined by him that to the best of his information & knowledge, said accounts, FS give true & fair view of state of company's affairs as at end of its FY & Profit or Loss & Cash	a) whether he obtained all necessary information & explanations b) whether, proper books of account as required by law have been kept c) whether report on Branch Accounts audited by another person has been sent to him d) whether Company's B/S & P&L A/c dealt with in report are in agreement with books of account & returns e) whether, FS comply with AS f) observations/ comments on financial transactions or matters which have adverse effect on functioning of Co g) whether any director is disqualified from being appointed u/s 164(2) h) any qualification/ adverse remark relating to maintenance of accounts i) Whether Co has adequate internal financial controls	As per Rule 3, Auditor's Report shall also include views & comments on: a) whether Co has disclosed impact, of pending litigations on its financial position in its FS b) whether Co has made provision, as required under any law or AS, for material foreseeable losses, on long term contracts including derivative contracts c) whether there has been any delay in transferring amounts to EPF	1) Auditor of Government Co is appointed by C&AG of India u/s 139(5), 139(7) & direct manner in which accounts are required to be audited 2) Auditor so appointed shall submit copy of Audit Report to C&AG 3) Audit Report shall include following: a) directions issued by C&AG b) action taken thereon & c) its impact on accounts & FS 4) C & AG shall within 60 days from date of receipt of audit report have right to: a) conduct supplementary audit by authorised person & b) comment upon or supplement such audit report 5) Comments given by C&AG upon, or supplement to, Audit Report shall be sent by Co to every person entitled to copies of audited FS u/s 136(1) & also be placed before AGM at same time & manner as audit report controlled by SG/ CG, C&AG may, by order, if he considers necessary, cause test audit, without prejudice to	1) Accounts of Branch office shall be audited either by: a) Company's Auditor or b) by other person qualified for appointment as auditor 2) If Branch Office is situated outside India, accounts shall be audited either by: a) Company's auditor or b) by an accountant or c) by any other person duly qualified to act as an auditor in accordance with laws of that country 3) Duties & powers of Company's auditor with reference to audit of Branch & Branch Auditor shall be as contained in Section 143(1) to (4) 4) Branch auditor shall prepare report on accounts of branch examined by him & send it to Company Auditor who shall deal with it in his report in such manner as he considers necessary 5) Provision regarding reporting of fraud by auditor shall also extend to Branch Auditor to extent it relates.	performance of his duties, has reason to believe that offence of fraud involving such amount as may be prescribed, is being or has been committed in co. by its officers or employees, he shall report matter to CG Rule 13(1)*: Statutory auditor, has reason to believe that offence of fraud, which involves or is expected to involve individually amount of Rs. 1 or above, is being or has been committed against co. by its officers or employees, auditor shall report matter to CG Rule 13(2)*: Report matter to CG as under:- a) Report to Board or Audit Committee, immediately but not later than 2 days setting their reply or observations within 45 days b) Auditor shall forward his report & reply or observations of Board to CG within 15 days of receipt of reply from Board c) If Auditor fails to get reply, he shall forward his report to CG with note containing details that report was sent to AC/ BOD for which reply not received d) Report shall be sent to Secretary, MCA, in sealed cover by Registered Post or by Speed Post followed by e-mail in confirmation e) On letter-head containing postal address, email address & contact no & signed seal & Membership No. f) In form of statement specified in Form ADT - 4	1) Auditor shall comply with Auditing Standards 2) CG may prescribe standards of auditing or any addendum thereto, as recommended by ICAI, in consultation with & after examination of recommendations made by NFRA 3) Until any Auditing Standards are notified, standards of auditing specified by ICAI shall be deemed to be auditing standards 4) CG in consultation with NFRA, may direct by General or Special Order, in respect of such class or description of companies, that Auditor's Report shall also include statement on

* Companies (Audit and Auditors) Rules, 2014

Audit and Auditors

Section 144 - Auditor not to render certain services

Services Approved
Auditor shall provide only such services as are approved by BOD or Audit Committee (if any)

Prohibited Services
Following services (whether rendered directly or indirectly to Co. or its Holding/Subsidiary Co.)

- accounting & book keeping services
- Internal audit
- design and implementation of any financial information system
- actuarial services
- investment advisory services
- investment banking services
- rendering of out-sourced financial services
- management services & other kind of services

Section 144(2) - Discontinuation of existing non-audit services Before closure of 1st FY after date of commencement of section

Section 145 - Auditors to sign audit report

- Person appointed as auditor of Co. shall sign auditor's report
- Sign & certify other document of Co.
- Qualifications, observations or comments on financial transactions or matters, which have any adverse effect on functioning of Co. mentioned in auditor's report shall be read before Co. In GM & shall be open to inspection by any member of Co

Section 146 - Auditors to attend GM

- All notices of, & other communication relating to, any GM be forwarded to auditor
- He shall, unless otherwise exempted, attend any GM either-
a) by himself or
b) through his authorised representative, who shall also be qualified to be an auditor
- He shall have right to be heard at meeting on any part of business which concerns him as auditor

Section 147 - Punishment for contravention

On Company
Provisions of Section 139 to 146 is contravened:

Fine:
Minimum - Rs. 25,000/-
Maximum - Rs. 5,00,000/-

On Officer in Default

Provisions of Section 139 to 146 is contravened:
1) Imprisonment: Upto 1 year
2) Fine: Minimum - Rs. 10,000/-
Maximum - Rs. 1,00,000/-
3) Both

On Auditor
1) Provisions of Section 139, 143, 144 or 145 is contravened:

Fine -
Minimum - Rs. 25,000/-
Maximum - Rs. 5,00,000/-

2) If contravention is committed knowingly or willfully with intention to deceive company or shareholders or creditors or tax authorities:

a) Imprisonment - Upto 1 year

b) Fine -

Minimum - Rs. 1,00,000/-
Maximum - Rs. 25,00,000/-

3) Consequences of conviction:

a) Refund of Remuneration

b) Payment of Damages



Your Success Point

Designed By: **Swapnil Patni**

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Audit and Auditors

Section 148 - CG to specify audit of items of cost in respect of certain companies

Section 148(1) - Order by CG for maintenance of Cost Records	CG may, by order, in respect of companies engaged in production of goods or providing services, direct that particulars relating to utilisation of material or labour or other items of cost as may be prescribed shall also be included in books of accounts kept u/s 128
Section 148(2) - Order by CG for conduct of Cost Audit	If CG is of opinion, that it is necessary to do so, it may, by order, direct audit of cost records of companies, which are covered aforesaid & which has prescribed net worth or prescribed turnover, shall be conducted in manner specified in order
Section 148(3) - Appointment of Cost Auditor by Board & Cost auditor to comply with cost auditing standards	1) Cost audit shall be conducted by Cost Accountant in practice appointed by Board on remuneration determined by members 2) Companies (Audit and Auditors) Rules, 2014 provides that- a) In case of Co required to constitute Audit Committee- i) Board shall appoint an individual, who is Cost Accountant or Firm of Cost Accountants on recommendations of Audit committee, which shall also recommend remuneration for cost auditor ii) Remuneration shall be considered & approved by BOD & ratified subsequently by shareholders b) In case of Co not required to constitute Audit Committee, Board shall appoint Cost Accountant or Firm of Cost Accountants & remuneration be ratified by shareholders subsequently 3) Person appointed u/s 139 as Company auditor shall not be appointed for conducting Cost Audit 4) Auditor conducting cost audit shall comply with Cost Auditing Standards issued by Institute of Cost and Works Accountants of India, with approval of CG
Section 148(4) - Audit conducted u/s 148 shall be in addition to audit conducted u/s 143	1) Qualifications, disqualifications, rights, duties & obligations applicable to Company Auditor shall apply to Cost Auditor appointed u/s 148 & it shall be duty of Co to give all assistance & facilities to Cost Auditor for auditing cost records of Co
Section 148(5)	2) Report on Cost Audit shall be submitted by Cost Accountant to BOD of Co
Section 148(6),(7) - Cost Audit Report	1) Co shall within 30 days from date of receipt Cost Audit Report furnish it to CG along with full information & explanation on every reservation or qualification contained therein 2) If, after considering Cost Audit Report & information & explanation furnished by, CG is of opinion that any further information or explanation is necessary, it may call for further information & explanation & Co shall furnish the same within time specified by CG
Section 148(8) - Contravention	1) Co & every officer in default shall be punishable in manner provided in Section 147(1) 2) Cost Auditor in default shall be punishable in manner as provided in Section 147(2) to (4)

FORMS OF CHAPTER II

SR.NO	FORM NO	DESCRIPTION
1	INC 1	Application for Reservation of Name
2	INC 2	Form for incorporation and nomination (one person company)
3	INC 3	Form for the Consent of nominee of one person company
4	INC 4	Form for change in member/nominee of one person company
5	INC 5	Form for intimation of exceeding threshold of one person company
6	INC 6	Application for conversion
7	INC 7	Application for incorporation of company (other than one person)
8	INC 8	Declaration form the professional as to compliance
9	INC 9	Affidavit from Subscribers
10	INC 10	Form for the Verification of signature of subscribers by witness
11	INC 11	Certification of incorporation
12	INC 12	Application for C.G by section 8 company for not using the word "Limited" in its name
13	INC 13	Memorandum of Association
14	INC 14 & INC 15	Declaration Regarding section 8 company
15	INC 16 & INC 17	Licence under section 8 company

FORMS OF CHAPTER II

SR.NO	FORM NO	DESCRIPTION
15	INC 16 & INC 17	Licence under section 8 company
16	INC 18	Application to regional Director for conversion of section 8 company into any other kind of company
17	INC 19	Notice for applicant under section 8
18	INC 20	Intimation to registrar of revocation or surrender of license issued under section 8
19	INC 21	Declaration prior to the commencement of the business
20	INC 22	Notice of situation or change of situation of registered office from and verification
21	INC 23	Application to regional director for approval to shift the registered one state to other state or form jurisdiction of one registrar to another within the state
22	INC 24	Application for approval of central government for change of name
23	INC 25	certificate incorporation pursuant to change of name
24	INC 26	Advertisement to be published in newspaper for licence for existing companies
25	INC 27	Conversion of public company into private company or private company into public company
26	INC 28	Notice of order of the court or other authority
27	INC 32	Simplified Proforma for Incorporating companies Electronically



Cost Accountants of India

A member of M/s A Chartered Accountants, Pune. CMA (Pune) with marks in various subjects of ICAI

FORMS OF CHAPTER III

SR.NO	FORM NO	DESCRIPTION
1	PAS 1	Advertisement giving the details of a special resolution varying the terms of contract referred in the prospectus.
2	PAS 2	Information Memorandum
3	PAS 3	Return of Allotment
4	PAS 4	Private Placement offer letter
5	PAS 5	Record of private placement offer

FORMS OF CHAPTER V

SR.NO	FORM NO	DESCRIPTION
1	DPT 1	Circular in the form of advertisement inviting deposits
2	DPT 2	Deposite Trust Deed
3	DPT 3	Return of Deposite
4	DPT 4	Statement Regarding Deposites Existing on the commencement of the Act

FORMS OF CHAPTER IV

SR.NO	FORM NO	DESCRIPTION
1	SH 1	Share Certificate
2	SH 2	Register on renewed or Duplicate share Certificates
3	SH 3	Register on Equity Shares
4	SH 4	Securities transfer Form
5	SH 5	Notice for transfer of partly paid-up shares
6	SH 6	Register to Employee stock open
7	SH 7	Notice to register for alteration of share capital
8	SH 8	Letter of offer
9	SH 9	Declaration of solvency
10	SH 10	Register of Securities bought back
11	SH 11	Return in Receipt of buy back of securities
12	SH 12	Debenture Trust Deed
13	SH 13	Nomination Form
14	SH 14	Cancellation or Variation of nomination
15	SH 15	Certificate of compliance in receipt of buy back of securities

FORMS OF CHAPTER VI			
ACT	FORM NO	DESCRIPTION	
1	CHG 1	Application for registration, modification of charges (other than those related to debentures) including particulars of modification of charge by asset re-construction company in the form of securitization and reconstruction of financial assets and enforcement of securities interested ACT, 2002(SARFAESI)	
2	CHG 2	Certificate of registration of charge.	
3	CHG 3	Certificate of registration of Modification of charge	
4	CHG 4	Particulars for satisfaction of charge	
5	CHG 5	Memorandum of satisfaction of charge.	
6	CHG 6	Notice of appointment of cessation of receiver or manager	
7	CHG 7	Register of charges	
8	CHG 8	Application for condonation of delay to the Central Government	
9	CHG 9	Application for registration of creation or modification of charges for debenture or redemption of particulars filled in respect of creation or modification of charge for Debenture.	

FORMS OF CHAPTER VII			
SR. NO	FORM NO	DESCRIPTION	
1	MGT 1	Register on Members	
2	MGT 2	Register on Debenture holder/other Securities holders	
3	MGT 3	Notice Regarding place of keeping the Registers	
4	MGT 4	Declaration of beneficial interest (by Register owners)	
5	MGT 5	Declaration of beneficial interest by person holding beneficial interest	
6	MGT 6	Return to registrar regarding beneficial interest	
7	MGT 7	Annual return	
8	MGT 8	Certificate by Company Secretary in Practice	
9	MGT 9	Extract of annual Return	
10	MGT 10	Changes in the share holding position of promoters and top ten share holders.	
11	MGT 11	Proxy form	
12	MGT 12	Pollingpaper	
13	MGT 13	Report on the scrutinizer	
14	MGT 14	Filling of the Resolution and agreements under section 117 to the register	
15	MGT 15	Form for filling the report on AGM	

FORMS OF CHAPTER VII

NO FORMS PRESCRIBED

FORMS OF CHAPTER X

SR.NO	FORM NO	DESCRIPTION
1	ADT 1	Notice of a appointment of Auditors
2	ADT 2	Application for Removable of Auditors before the Expiry of them.
3	ADT 3	Notice Registration of Auditors
4	ADT 4	Report to Central Government, suspecting offence involving fraud

FORMS OF CHAPTER IX

SR.NO	FORM NO	DESCRIPTION
1	AOC 1	Statement containing salient features of the Financial statement of subsidiaries/associate companies /joint ventures
2	AOC 2	Related party Disclosure
3	AOC 3	Statement containing salient features of balance sheet and Profit and loss Account
4	AOC 4	From form filling Financial statement and other Document with the Registrar.
5	AOC 5	From to intimate the place of keeping the books of Account and other Documents at a place other than registered Office.

Interpretation of Statutes, Deeds and Documents

Rules of Interpretation / Construction			
DEFINITIONS		PRIMARY RULES	
<p>A) Statute: i) Written Will of legislature</p> <p>ii) Necessary to constitute the law of State</p> <p>B) Instrument: Document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded</p> <p>C) Document: i) Proof or evidence of anything</p> <p>ii) Include any matter written, expressed or described upon any substance by means of letters, figures or marks which is intended to be used</p> <p>D) Deed: Instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition</p> <p>E) Interpretation:</p> <p>i) real meaning of an Act (or a document) and intention of the legislature in enacting it is ascertained</p> <p>ii) Signifies the meaning of abstruse words, writings, etc.</p> <p>F) Interpretation & Construction: Process by which the Courts seek to ascertain the meaning of legislature in which it is expressed. Generally Interpretation & construction are used as synonymous terms.</p>		<p>1) Rules of Literal Construction:</p> <p>i) Words, phrases & sentences of a statute are ordinarily to be understood in their natural, ordinary or popular & grammatical meaning</p> <p>ii) Cardinal rule of construction-Ordinary, natural & grammatical meaning</p> <p>iii) Provision is unambiguous & legislative intent is clear, other rules of construction of statutes need not be called into aid</p> <p>iv) Words & phrases of technical nature are 'prima facie' used in their technical meaning, otherwise in their ordinary popular meaning</p> <p>v) Narrower Interpretation fails to achieve the manifest purpose of the legislation, then adopt the wider one</p> <p>vi) Non applicability:</p> <p>a) If Language is Ambiguous</p> <p>b) If the Literal Interpretation gives absurd or unreasonable result</p> <p>c) If literal Interpretation defeats intention of legislation</p> <p>2) Rule of Reasonable Construction:</p> <p>i) Sensible meaning</p> <p>ii) Applicability:</p> <p>a) If the Language is ambiguous.</p> <p>b) If the Literal Interpretation gives absurd or unreasonable result.</p> <p>c) It defeats intention of legislation.</p> <p>iii) Non Applicability: Ordinary meaning is clear</p> <p>iv) Narrower Interpretation would fail to achieve the main purpose of legislation, then such construction, should be avoided</p>	
<p>3) Rule of Harmonious Construction:</p> <p>i) Doubt about meaning of words of a statute then harmonise with the subject of the enactment & object which legislature had in view.</p> <p>ii) Two or more provisions cannot be reconciled with each other then interpret as to give effect to all of them.</p> <p>iii) Non Applicability Applicable only when there is a real & not merely apparent conflict between provisions of an Act & One Provision has been made subject to other.</p> <p>4) Rule of Beneficial Construction or the Heydon's Rule or Mischief Rule:</p> <p>i) Applicability: Language used in a statute is capable of more than one interpretation and the Rule of Literal Interpretation fails.</p> <p>ii) Background & Essence: Consider Historical set up of statute.</p> <p>a) What was the law before the making of the Act;</p> <p>b) What was the mischief or defect for which the law did not provide;</p> <p>c) What is the remedy that the Act has provided; &</p> <p>d) what is the reason for the remedy.</p> <p>iii) Adopt that construction which 'shall suppress mischief & advance remedy'.</p> <p>iv) Applicable only when words used are ambiguous & are reasonably capable of more than one meaning. eg 'Untrue statement in Prospectus'.</p>		<p>5) Rule of Exceptional Construction:</p> <p>i) No sensible meaning can be fixed to a word or phrase, or defeats the real object of the enactment, it should be eliminated then should a give a sensible meaning.</p> <p>ii) 'or' is normally disjunctive and 'and' is conjunctive.</p> <p>iii) They are read as vice versa only if literal reading of the words produces an unintelligible or absurd result.</p> <p>iv) Distinction between 'mandatory' & 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with.</p> <p>v) Factors to be considered by Court</p> <p>a) The nature of the thing empowered,</p> <p>b) The object for which it is done, &</p> <p>c) The person for whose benefit the power is to be exercised</p> <p>6) Rule of Ejusdem Generis:</p> <p>i) 'Ejusdem generis' means 'of same kind or species'.</p> <p>This rule means specific words are used and after those specific words, some general words are used, the general words would take their colour from the specific words used earlier.</p> <p>ii) Non applicability: If general words following those specific words remain unaffected-those general words then would not take colour from the earlier specific words.</p> <p>Eg. a) Keeping of dogs, cats, cows, buffaloes and other animals, the expression 'other animals' would not include wild animals like lions and tigers, but would mean only domesticated animals like horses, etc.</p> <p>iii) Courts have a discretion whether to apply this rule or not.</p>	
		SECONDARY RULES	
		<p>1) 'Optima Legum Interpretatio consuetudo' -the custom is best interpreter of the law.</p> <p>2) 'Contempranea expositio optima et fortissima in lege' - the best way to interpret a document is to read it as it would have been read when made.</p> <p>3) Old statutes & documents should be interpreted as they would have been at time when they were enacted/ written.</p> <p>4) NOSCITUR A SOCIIS- Associated Words to be Understood in Common Sense Manner.</p> <p>5) Two or more words which are capable of analogous (similar or parallel) meaning are coupled together, then to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take their colour from each other, i.e. the more general is restricted to a sense analogous to the less general.</p> <p>6) For example, term 'entertainment' would have a different meaning when used in expression 'houses for public refreshment, resort & entertainment' than its generally understood meaning of theatrical, musical or similar performance.</p>	
		Distinction between directory & mandatory provision :	
		<p>A) Mandatory:</p> <p>a) Provision is mandatory.</p> <p>b) Non-compliance results in penalty.</p> <p>c) If a provision gives a power coupled with a duty.</p> <p>d) Provisions enacted to prevent fraud & mischief.</p> <p>B) Directory:</p> <p>a) No public policy is involved.</p> <p>b) If the non-compliance of a provision does not results in penalty</p>	



Designed By: **Swarnil Patni**

- CA, CS, LL.B. & Com., CISA
- Expertise knowledge in ISCA, IT, SM, LAW
- Presence all over India at the age of 29
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Interpretation of Statutes, Deeds and Documents

<p>Internal Aids to Interpretation/Construction : Title, Preamble, Heading, Marginal Notes, Definitional Sections/ Clauses, Illustrations etc. helps in interpreting/constructing enactment or any of its provisions.</p> <p>a) Long Title: i) Short Title merely identifies enactment & is chosen merely for convenience, 'Long Title' describes enactment & does not merely identify it ii) Long Title of an Act is a part of Act iii) To ascertain the object, scope and purpose of the Act</p> <p>b) Preamble: i) Expresses scope, object & purpose of the Act more comprehensively than Long Title. ii) It does not override plain provision of Act iii) Rectify ground & cause of making a statute & evil which is sought to be remedied by it.</p> <p>c) Heading & Title of a Chapter: i) Prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing enactment or its parts ii) Regarded as giving key to interpretation of clauses iii) Treated as 'preambles to the provisions' following it</p> <p>d) Marginal Notes: i) MN appended to a Section cannot be used for construing the Section ii) Part of Constitution as passed by the Constituent Assembly</p> <p>e) Illustrations: i) Illustrations follow text of Sections & do not form a part of the Sections ii) Relevance & value in construing the text of the sections iii) Can not have effect of modifying language of sec & can neither curtail nor expand ambit of section</p>	<p>External Aids to Interpretation/Construction : Society does not function in a void. Everything done has its reasons, its background, the particular circumstances prevailing at the time. These factors are of great help in interpreting/constructing an Act and have been given the convenient nomenclature of 'External Aids to Interpretation'</p> <p>a) Historical Setting: i) History of external circumstances which led to enactment. ii) External or historical facts which are necessary in understanding & comprehension & scope & object of enactment. iii) History in general & Parliamentary History in particular, ancient statutes, contemporary or other authentic works & writings all are relevant in interpreting & construing an Act. We have also to consider whether statute in question was intended to alter law or leave it where it stood before. b) Consolidating Statutes & Previous Law: i) Presumption that it is not intended to alter law. ii) They may solve doubtful points in statute with aid of such presumption in intention, rejecting literal construction.</p> <p>c) Analogous Acts: i) Exposition of One Act by Language of Another. ii) Different statutes in 'pari materia' (i.e. in an analogous case), though made at different times, or even expised and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.</p> <p>d) Use of Foreign Decisions: i) Foreign judgments of countries following the same system of jurisprudence as ours. ii) Prime importance is always to be given to the language of the Indian statute. e) Reference to Repealed Act : i) Part of an Act has been repealed, it loses its operative force</p>	<p>Rules of Interpretation /Construction of Deeds and Documents</p> <p>a) To find out of its scope & intendments, would understand by words used in that deed or document. b) It is inexpedient to construe terms of one deed by reference to terms of another. c) Same word cannot have two different meanings in same document, unless context compels adoption of such a rule. d) Status & trining of parties using words have also to be taken into account as same words may be used by an ordinary person in one sense & by a trained person or a specialist in quite another special sense. e) Words with double meaning : Word should be understood in the former and not latter sense. f) Conflict between two clauses i) Effort must be made to resolve conflict by interpreting clauses so that all the clauses are given effect to. ii) It is not possible to give effect to all of them, then it is earlier clause that will over-ride the latter one.</p>	<p>Interpretation of word without prejudice</p> <p>a) without prejudice to generality of provision : Indicates that anything containing in 'provision' following such words is not intended to cut down generality of meaning of preceding provision. b) without prejudice to provisions of sec: Means that expression shall not affect anything done in pursuance of sec which follows such words. c) Subject to: i) It gives an overriding effect to the other provision, it means other shall prevail over other provision in case of any inconsistency. ii) effect of a provision containing word 'notwithstanding' is opposite to a provision containing words 'subject to'</p> <p>d) notwithstanding, i.e. 'non obstante' clause: i) Notwithstanding anything contained in this ACT- Override entire Act. ii) Notwithstanding anything contained in any foregoing provision- Override only the foregoing provision. iii) Notwithstanding anything contained in any other Law for the time being- Override entire Law</p>
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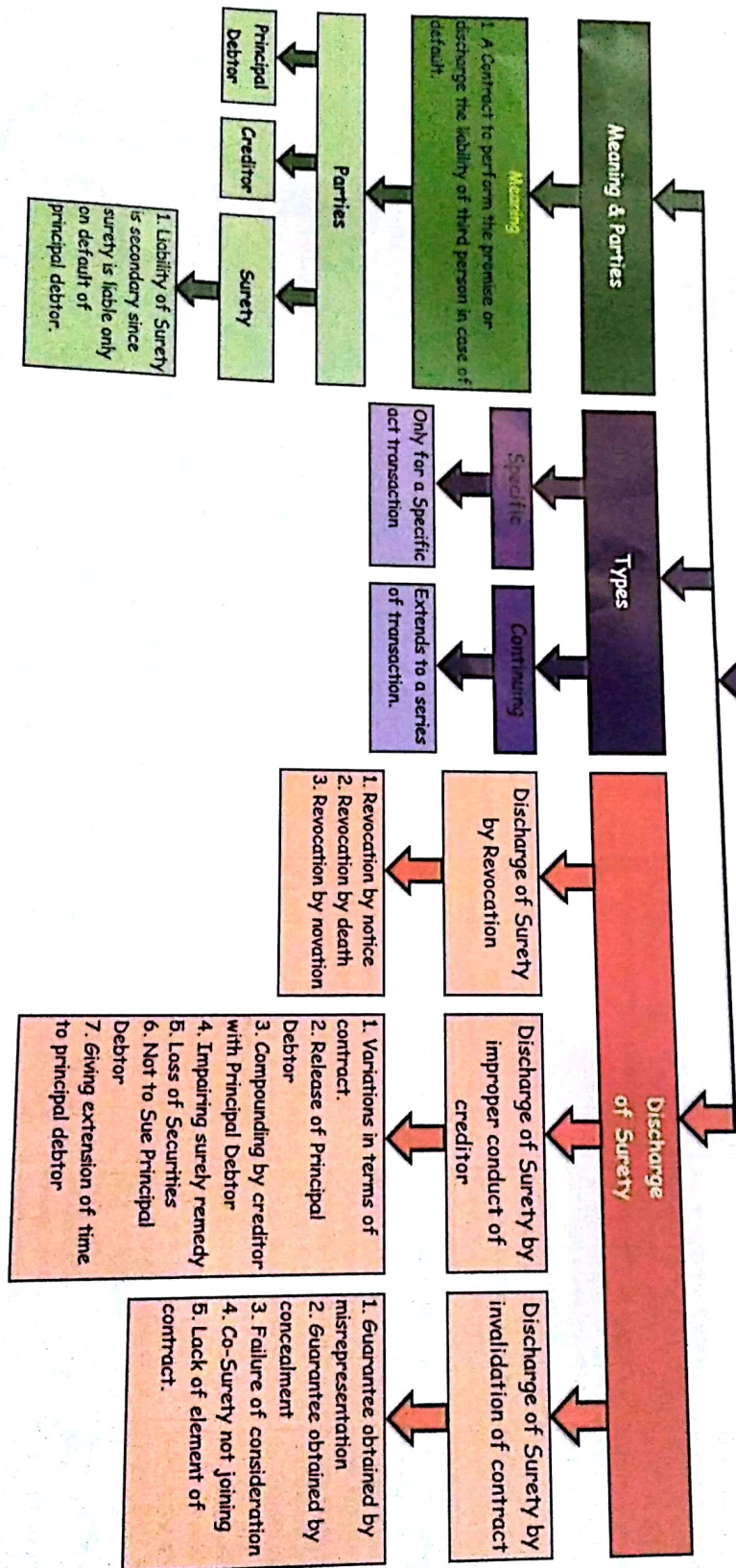


SP CLASSES
PRACTICE MATERIAL

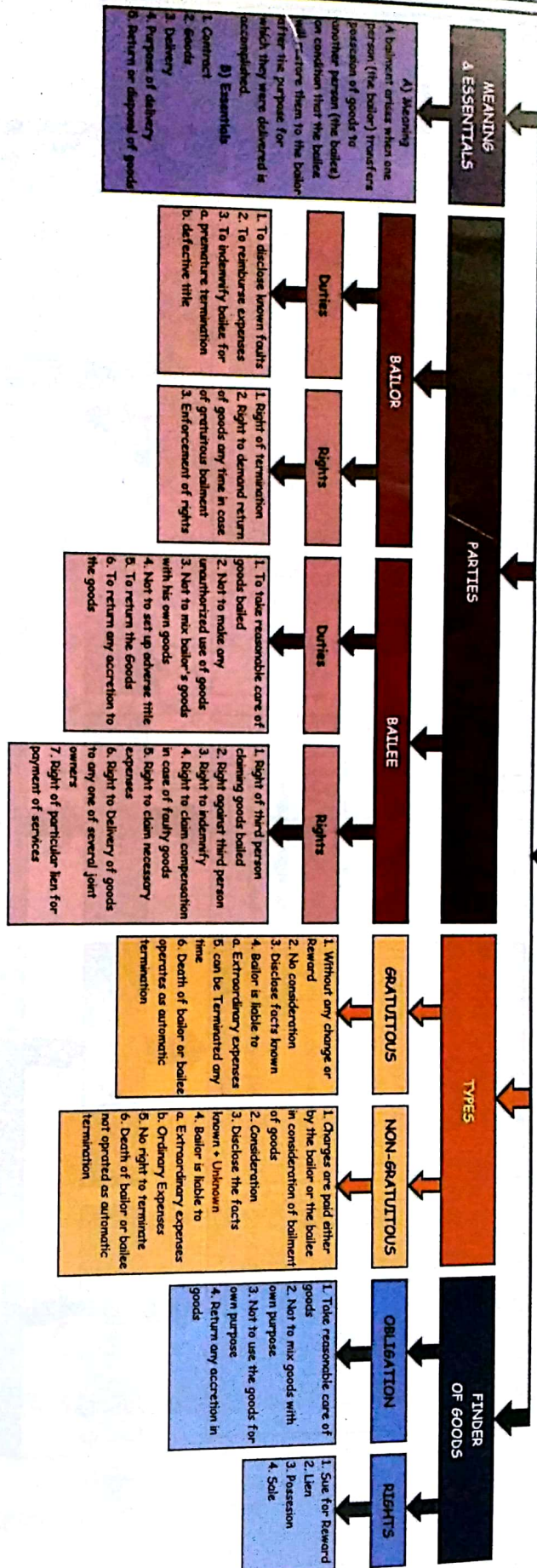
Designed By: **Swapnil Patni**
- CA, CS, UBA & Com., CISA
- Expertise knowledge in ISCA, IT, SMA, LAW
- Presence all over India at the age of 29
- Also known as the "Motivational Guru"

Charts can also be downloaded from : www.swapnilpatni.com
Contact No: 0209-2466745
9011954340

Indian Contract Act (Contract of Guarantee)



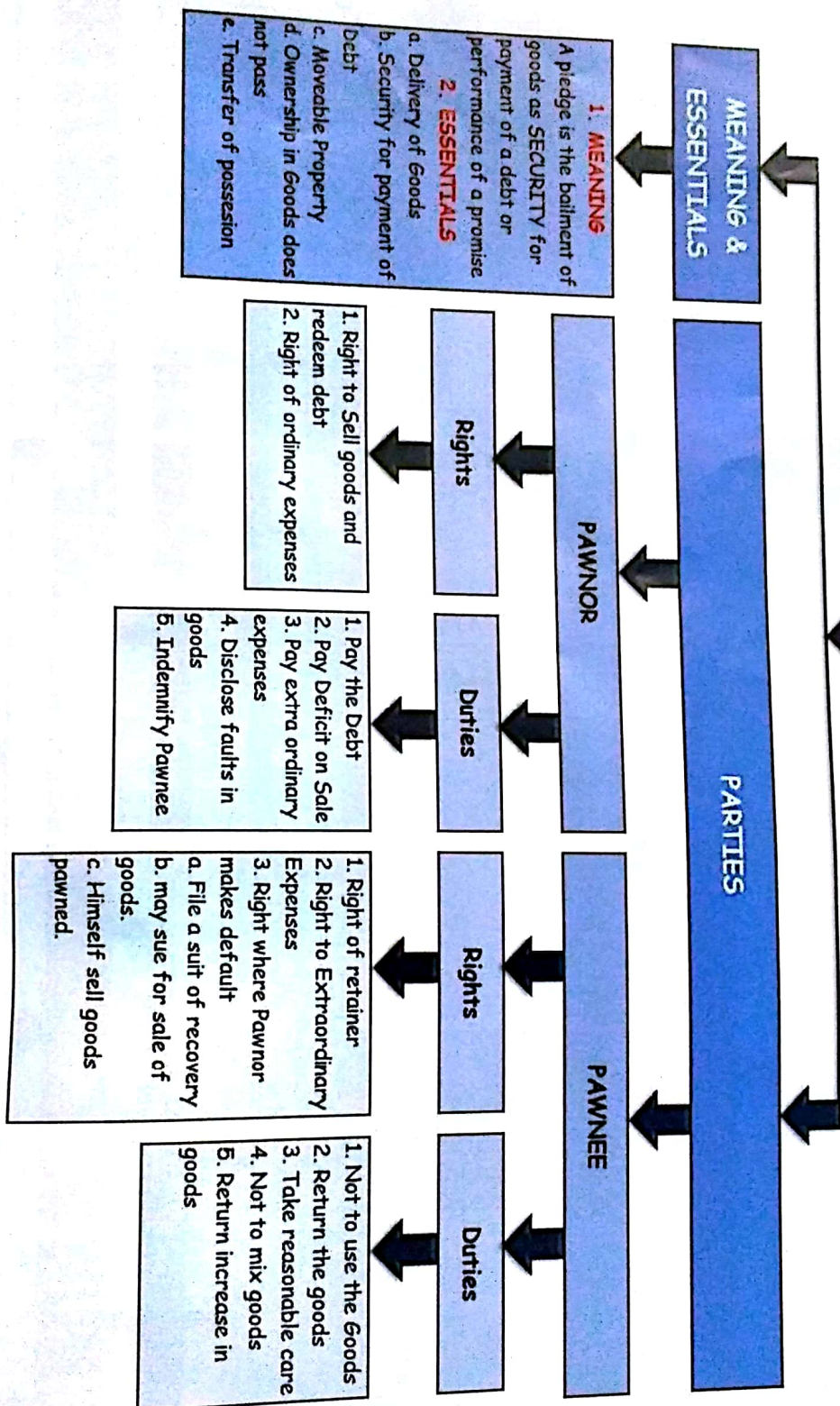
Indian Contract Act (Contract of Bailment)



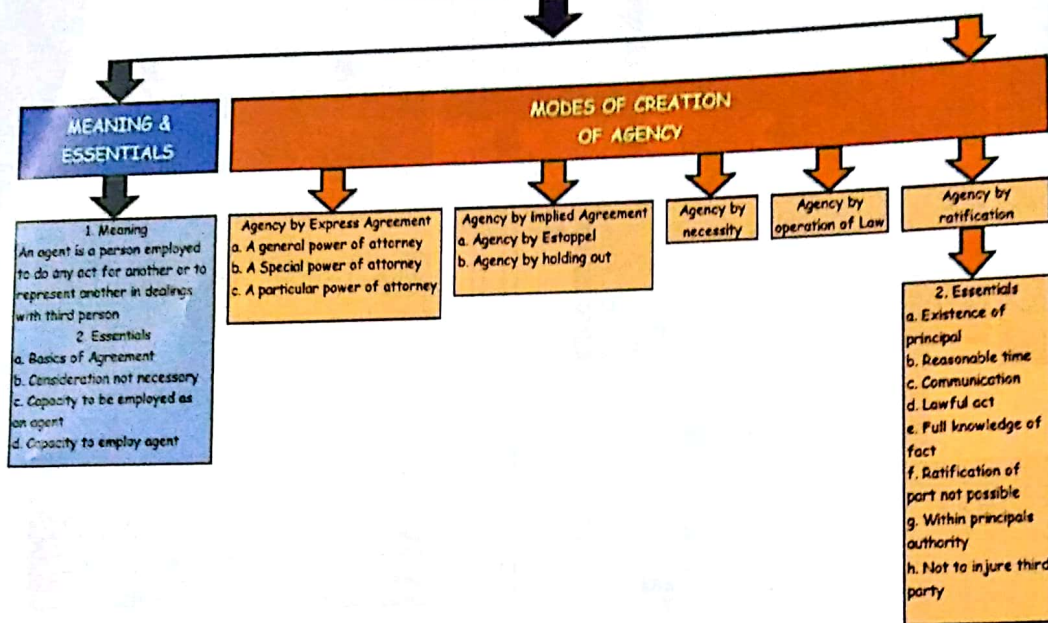
Kinds of Lien

BASIS	PARTICULAR LIEN	GENERAL LIEN
Nature of right	Particular lien gives right to retain only such goods in respect of which charges due remain unpaid.	General lien gives right to retain any goods belonging to another person for any amount due from him.
Conditions for asserting lien	Particular lien can be exercised only when some labour or skill has been expended on goods, resulting in an increase in value of goods.	General lien may be exercised even though no labour or skill has been expended on the goods.
Right to whom	Every bailor is entitled to particular Lien.	General lien can be exercised by only such persons as are specified u/s 172, e.g., bankers, factors, wharfingers, Attorneys of High Court, policy brokers, any other bailees may exercise general lien if there is an agreement to this effect.

Indian Contract Act (PLEDGE)

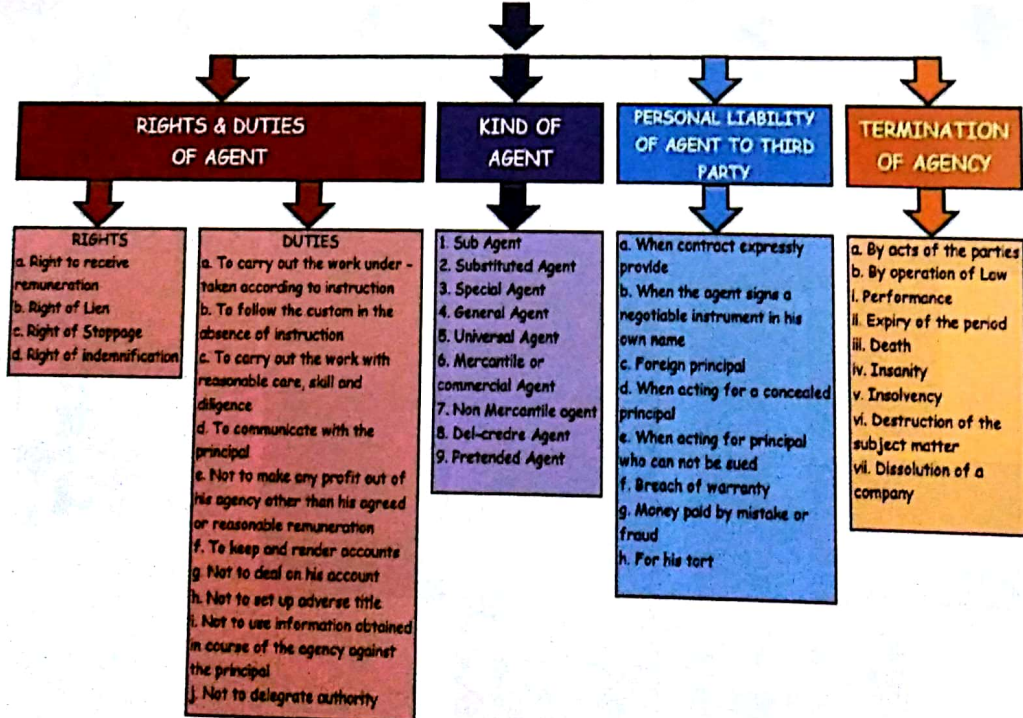


Indian Contract Act (AGENCY)



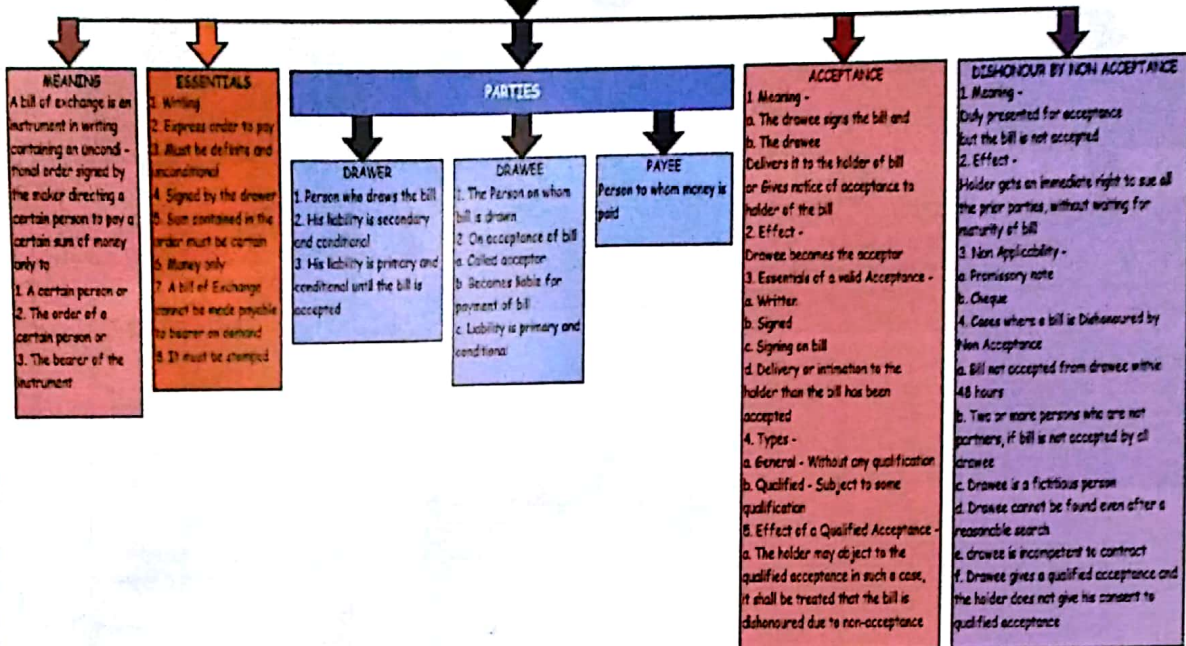
41

Indian Contract Act (AGENCY)



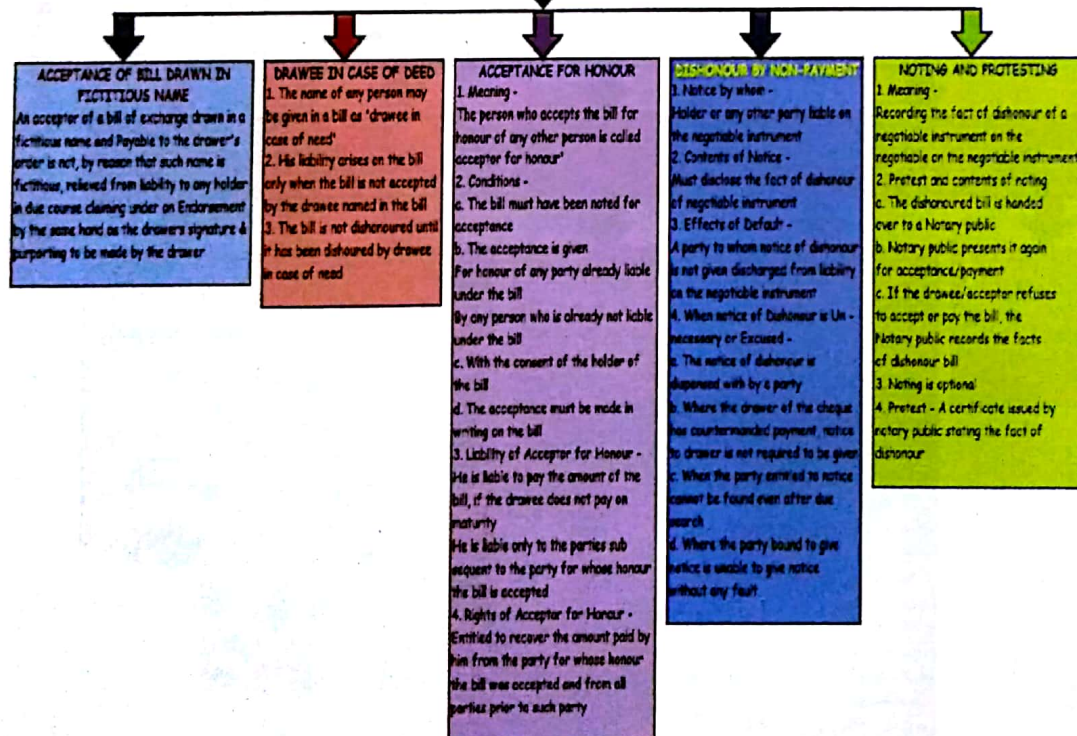
NEGOTIABLE INSTRUMENTS CHART (A)

BILL OF EXCHANGE

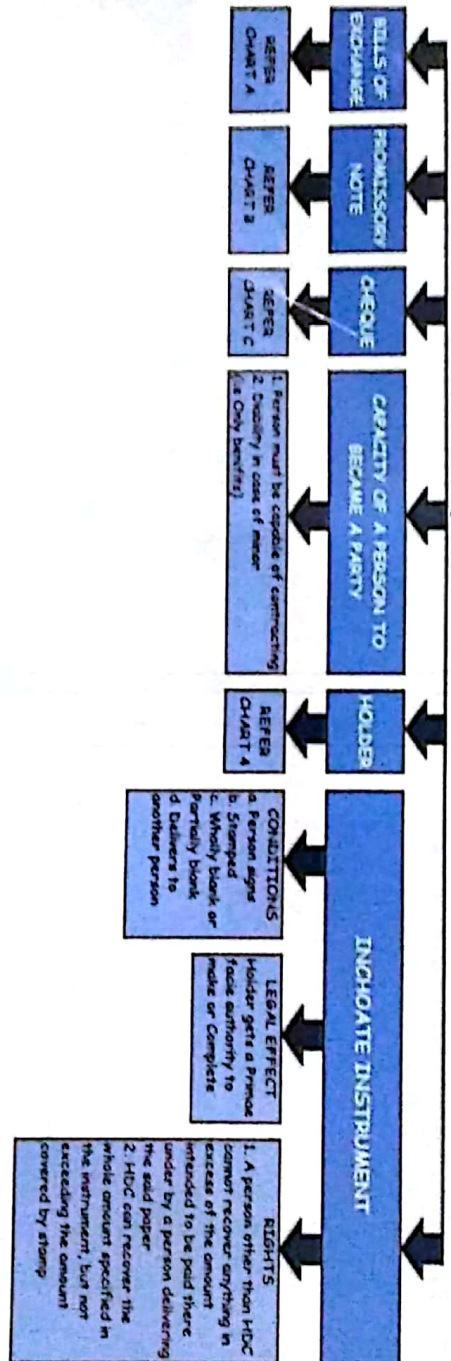


NEGOTIABLE INSTRUMENTS CHART (A)

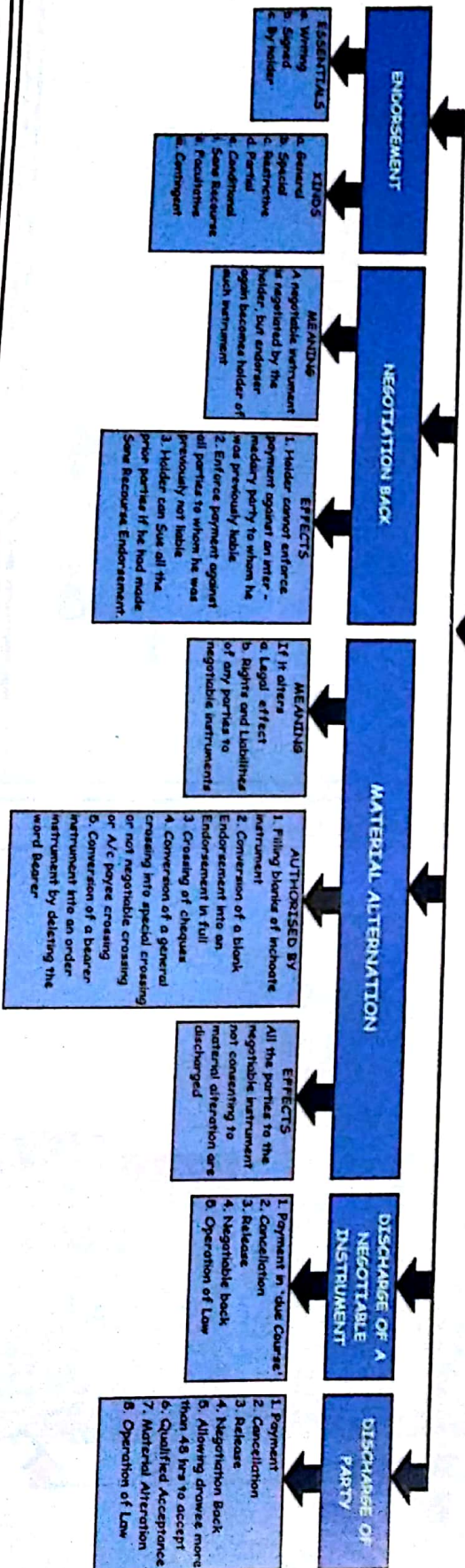
BILL OF EXCHANGE



PAPA CHART - NEGOTIABLE INSTRUMENT ACT

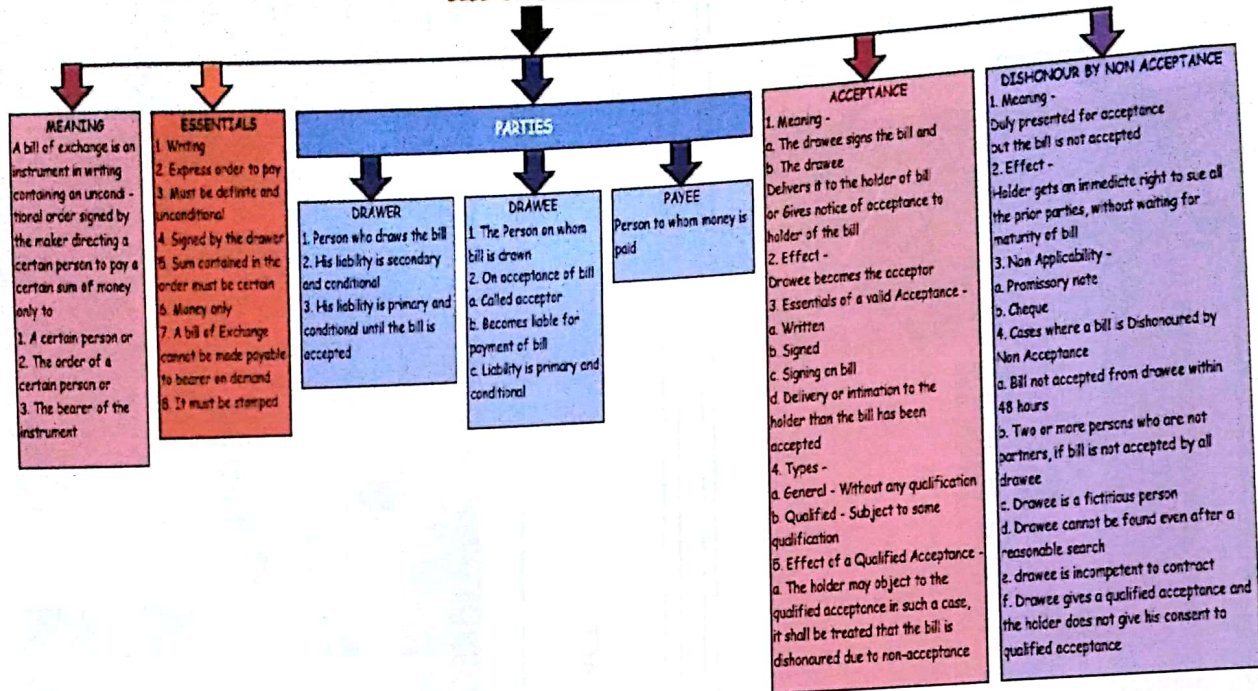


PAPA CHART - NEGOTIABLE INSTRUMENT ACT



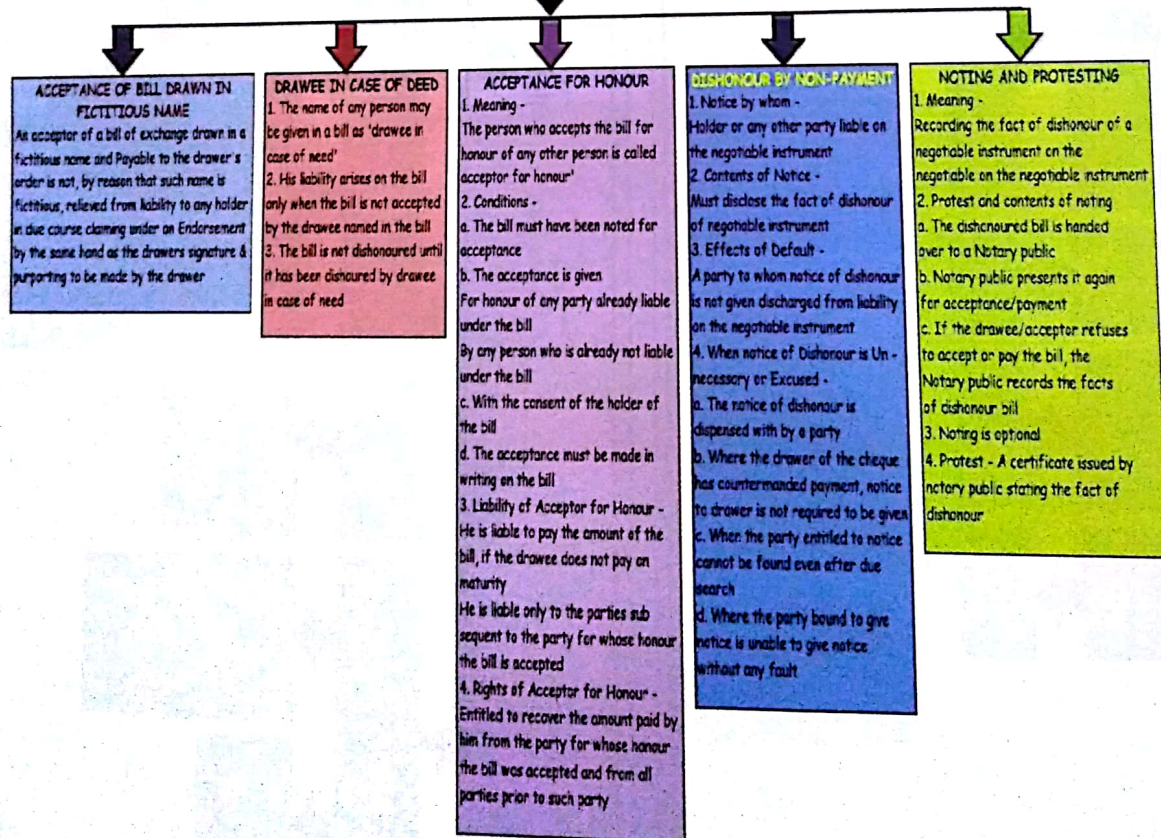
NEGOTIABLE INSTRUMENTS CHART (A)

BILL OF EXCHANGE



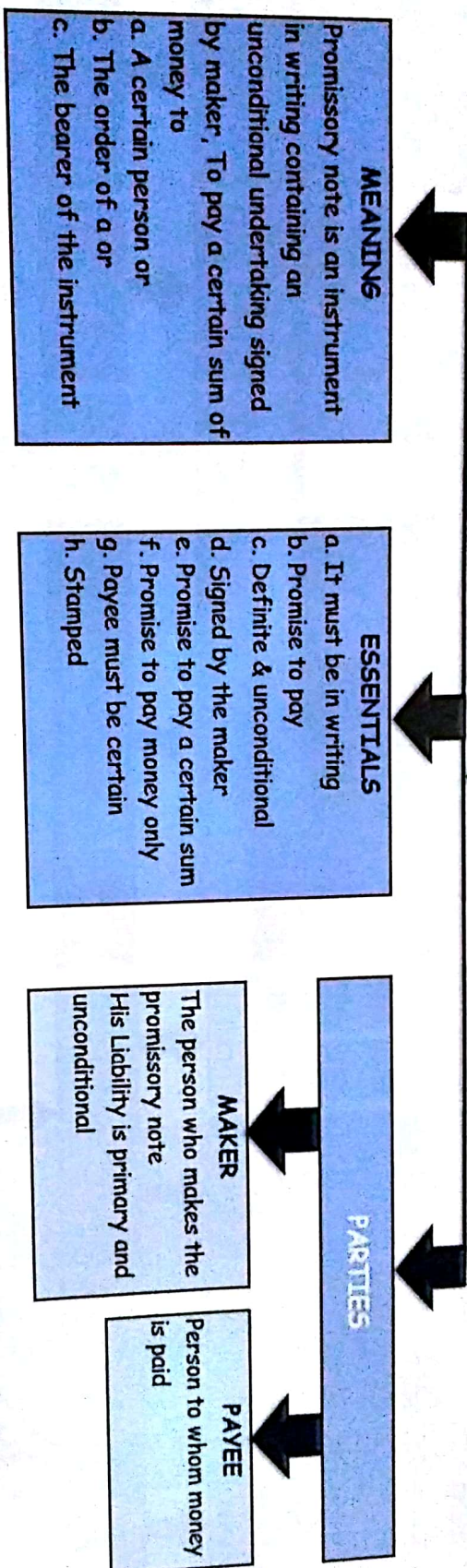
NEGOTIABLE INSTRUMENTS CHART (A)

BILL OF EXCHANGE

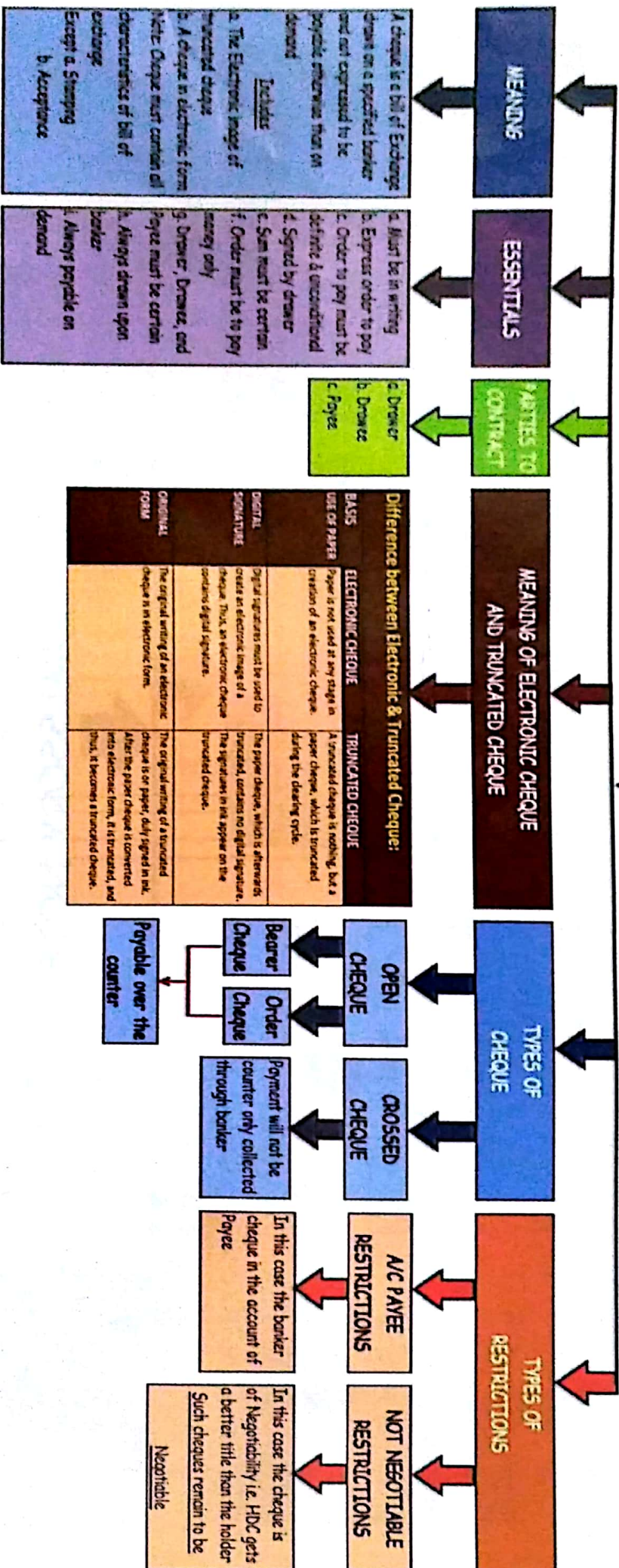


NEGOTIABLE INSTRUMENT CHART (B)

PROMISSORY NOTE



NEGOTIABLE INSTRUMENTS CHART (C) CHEQUE



NEGOTIABLE INSTRUMENT CHART

HOLDER

HOLDER

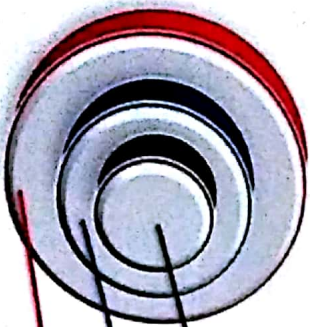
1. Possession
2. Entitled to possess
3. In his own name
4. Entitled to recover money on negotiable instrument

HOLDER FOR CONSIDERATION

1. Possession
2. Entitled to possess
3. In his own name
4. Entitled to recover money on negotiable instrument
5. Consideration should be present

HOLDER IN DUE COURSE

1. Possession
2. Entitled to possess
3. In his own name
4. Entitled to recover money on negotiable instrument
5. Consideration should be present
6. Instrument should have been obtained in good faith, without negligence
7. Obtained the possession of negotiable instrument before maturity



HOLDER IN DUE COURSE
HOLDER FOR VALUE
HOLDER

GENERAL CLAUSES ACT

DEFINITIONS (SECTION 3)

AFFIDAVIT
SECTION 3(3)

SECTION 3(8)

SECTION 3(13)

SECTION 3 (18)

OATH
SECTION 3(7)

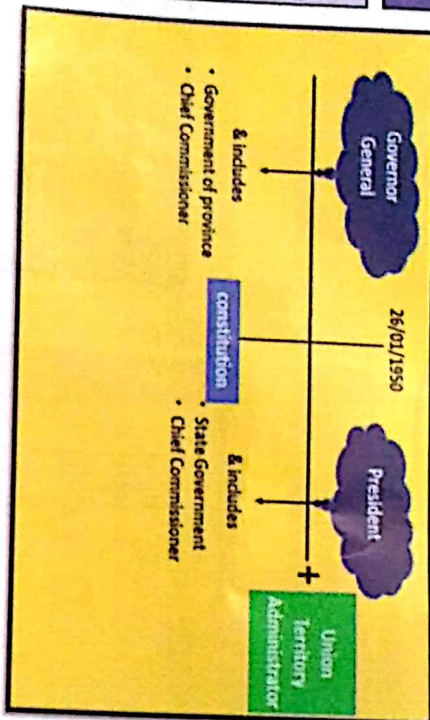
CENTRAL GOVERNMENT

COMMENCEMENT

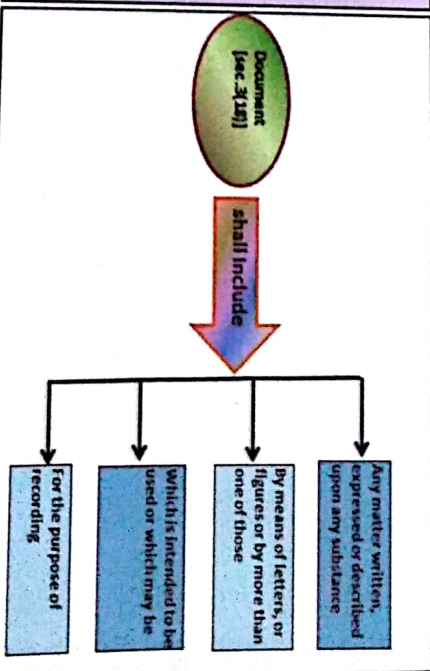
DOCUMENT

SWEAR
SECTION 3 (62)

1. Affidavit shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.
2. The terms "Affidavit", "Oath", "Swear" have the same Definition in the Act.



1. The Day on which the Act or Regulation comes into force.
2. A Law cannot be said to be in force unless it is brought into operation by legislative enactment.



SEC 3(22)

SEC 3(21)

SECTION 3(42)

SECTION 3(66)

SECTION 3(26)

GOOD FAITH

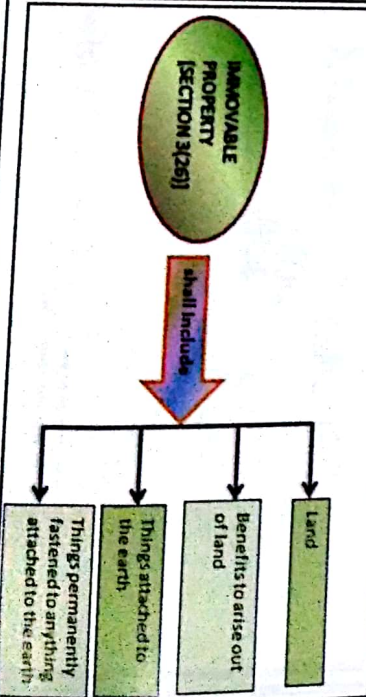
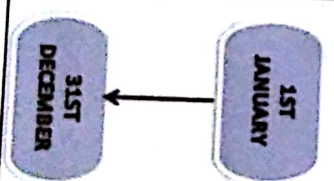
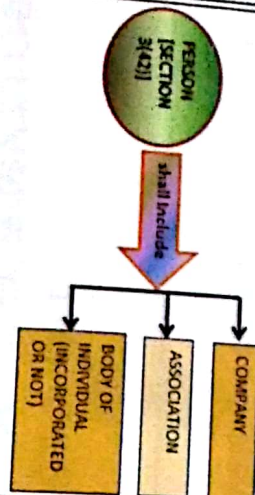
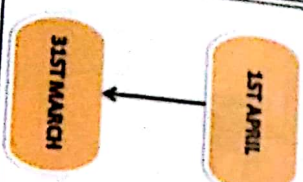
FINANCIAL YEAR

PERSON

YEAR

IMMOVABLE PROPERTY

A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.



GENERAL RULES OF CONSTRUCTION

SECTION 5 COMING TO OPERATION OF ENACTMENT	SECTION 6 EFFECT OF REPEAL	SECTION 6A Repeal of Act making textual amendment in Act or Regulation	SECTION 7 Revival of repealed enactments	SECTION 8 Construction of references to repealed enactments
1. BEFORE CONSTITUTION: Day on which it receives assent of Governor General. 2. AFTER CONSTITUTION: Day on which it Receiver assent of President.	Where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, - Revive anything not enforced - Affect the prior management - Affect any claim, privilege, responsibility or debt obtained - Affect any punishment, forfeiture - Affect any inquiry, litigation or remedy	The repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.	In any Central Act or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressed to state that purpose.	1. Where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted. 2. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.
SECTION 9 COMMENCEMENT TERMINATION	SECTION 10 COMPUTATION OF TIME	SECTION 11 MISMEASUREMENT OF DISTANCE	SECTION 12 DUTY	SECTION 13 GENDER AND NUMBER
In any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".	Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.	In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.	Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any gender or less quantity	1. Words importing the masculine gender shall be taken to include females, and 2. Words in singular shall include the plural and vice versa.

Swapnil Patni's Classes

CA IPCC Law Notes & Charts

By CA Ankita Patni



CA IPCC Law Notes & Charts

POWER AND FUNCTIONARIES

SECTION 14

Power conferred to be exercisable from time to time

Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires

SECTION 15

Power to appoint to include power to appoint in officio

Where by any legislation or regulation, a power to appoint any person to fill any office or execute any function is conferred, then unless it is otherwise expressly provided, any such appointment, may be made either by name or by virtue of office. Ex-officio is a Latin word which means by virtue of one's position or office

SECTION 16

Power to appoint to include power to suspend

The authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power

SECTION 17

Substitution of functionaries

In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed

SECTION 18

Successors


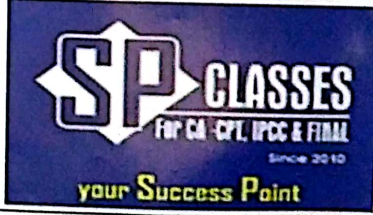
In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations

SECTION 19

Official Chiefs and subordinates

A law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior

PROVISION AS TO ORDERS, RULES ETC

SECTION 20	SECTION 21	SECTION 22	SECTION 23	SECTION 24
Construction of orders, etc., issued under enactments Where by any legislation or regulation, a power to issue any notification, order, scheme, rule, form or bye-law is conferred, then expression used in the notification, order, scheme, rule, form or bye-law, shall, unless there is anything repugnant in the subject or context, have the same respective meaning as in the Act or regulation conferring power	Power to issue, to include power to add to, amend, vary or rescind Where by any legislations or regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any notifications, orders, rules or bye laws so issued	Making of rules or bye-laws and issuing of orders between passing and commencement of enactment Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.	Provisions applicable to making of rules or bye-laws  	Continuation of orders etc, issued under enactments repealed and re-enacted Where any Central Act or Regulation, is, after, the commencement of this Act, repealed and re-enacted with or without modification, then unless it is otherwise expressly provided any appointment notification, order, scheme, rule, form or bye law, made or issued under the repealed Act, continue in force, and be deemed to have been made or issued under the notification, order, scheme, rule, form or bye law, made or issued under the provisions so re-enacted and when any Central Act

MISCELLANEOUS

SECTION 25

RECOVERY OF FINES

Section 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-laws, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

SECTION 26

OFFENCE PUNISHABLE UNDER TWO OR MORE ENACTMENTS

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

SECTION 27

MEANING OF SERVICE BY POST

1. Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- properly addressing
- pre-paying, and
- posting by registered post.

2. A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

3. Must Refer case laws from Module 2 pg no:20

SECTION 28

CITATION OF ENACTMENT

Any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and years thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

SECTION 29

SAVING FOR PRVIOUS ENACTMENT, RULES AND BYE-LAWS

The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law made before the commencement of this Act, although the Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

SECTION 30

APPLICATION OF ACT OF ORDINANCE

In this Act the expression Central Act, wherever it occurs, except in Section 5 and the word 'Act' in clauses (9), (13), (25), (40), (43), (53) and (54) of section 3 and in section 25 shall be deemed to include Ordinance made and promulgated by the Governor General under section 23 of the Indian Councils Act, 1861 or section 72 of the Government of India Act, 1915, or section 42 of the Government of India Act, 1935 and an Ordinance promulgated by the President under article 123 of the Constitution