

CS EXECUTIVE

COMPANY LAW

AMENDMENTS

(old syllabus – December 18' attempt)

CS VIKAS VOHRA

CHAPTER 2 TYPES OF COMPANIES**SMALL COMPANY**

Small company means a company, other than a public company:

- (i) Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than **Ten** Crores rupees;

AND

- (ii) Turnover of which as per profit and loss account for immediately preceding financial year does not exceed two crores rupees or such higher amount as may be prescribed which shall not be more than **One Hundred** Crores rupees.

SUBSIDIARY COMPANY [SEC 2(87)]

Section 2 (87) provides that subsidiary company or subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company :

- i) Controls the composition of the Board of Directors; or
ii) Exercises or controls more than one half of the ~~total share capital~~ **total voting power** either at its own or together with one or more of its subsidiary companies;

Provided that such class or classes of holding companies, shall not have layers of subsidiaries beyond the prescribed limit.

ASSOCIATE COMPANY

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

Explanation.—For the purpose of this clause,—

- (a) the expression "significant influence" means control of at least twenty per cent of **total voting power, or control of** or participation in business decisions under an agreement;

CHAPTER 3 INCORPORATION OF A COMPANY**RESERVATION OF NAME DURING INCORPORATION**

Upon receipt of an application, the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of **twenty days** from the date of approval or such other period as may be prescribed:

Provided that in case of an application for reservation of name or for change of its name by an **existing company, the Registrar may reserve the name for a period of sixty days from the date of approval.**

INCORPORATION OF A COMPANY**Apply for Name Approval (RUN)**

An application for reservation of name shall be made by using form RUN (Reserve Unique Name) along with fee Rs. 1000/- which may either be approved or rejected by the Registrar, Central Registration Centre after allowing re--submission of such application within fifteen days for rectification of the defects, if any.

DSC & DIN are not required for filing of RUN form for reservation of Name.

The name shall not:

- (a) be identical with or resemble too nearly to the name of an existing company registered under this act; or
- (b) be such that its use by the company will constitute an offence under any law or is undesirable in the opinion of the central government.

Reserved name shall be valid for 20 days from the date of approval of Name. Reserved name shall be valid for 60 days in case of allotment of name for existing Company (Change of Name).

Only one Name can be mentioned in RUN form.

Approval of Name through “RUN” is an optional way. Companies can also directly apply for the Name in SPICE form.

Preparation of the documents for Incorporation**Declaration by Professionals:**

The declaration by an advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice shall be in Form No INC 8.

Affidavit from Subscribers and First Directors:

The affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No INC9.

Particulars of First Directors of the Company and their consent:

The particulars of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed in Form No DIR12.

Application for Incorporation of Company:

Once all the above mentioned documents/ information are available. Applicant has to fill the information in the e-form —Spice INC-32.

FEATURES OF SPICE (INC-32) FORM:

- (a) Maximum details of subscribers are SEVEN (7). In case of more subscribers, physically signed MOA & AOA shall be attached in the Form.
- (b) Maximum details of directors are TWENTY (20).
- (c) Maximum THREE (3) directors are allowed for filing application of allotment of DIN while incorporating a Company.
- (d) Person can apply the Name also in this form.
- (e) By affixation of DSC of the subscriber on the INC-33 (e-MOA) date of signing will be appear automatically by the form.
- (f) Applying for PAN / TAN will be compulsory for all fresh incorporation applications filed in the new version of the SPICE form.

- (g) In case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees ten lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPICE) shall not be applicable

SINGLE WINDOW FORM

Earlier if a Person wanted to incorporate a Company then he had to apply for the DIN, Approval of the Name Availability, separate form for first Directors, Registered office address, PAN, TAN etc. But this form is a single window for Incorporation of a Company.

This form can be used for the following purposes:

- Application of DIN (upto 3 Directors)
- Application for Availability of Name
- No need to file separate form for first Directors (DIR-12)
- No need to file separate form for address of registered office (INC-22)
- No need to file separate form for PAN & TAN

Signing of the Memorandum of Association and Articles of Association

After proper filing of SPICE form applicant has to download the e-form INC-33 (MOA) and INC-34 (AOA).

After completely filing of the form affix DSC of all the subscribers and professional on subscriber sheet of the MOA & AOA.

The Memorandum and Articles of Association of the company shall be signed in the following manner, namely:-

- (1) The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signatures.
- (2) Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name

of the subscriber against or below the mark and authenticate it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.

(3) Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of association.

(4) Where the subscriber to the memorandum is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate and where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership:

(5) Where subscriber to the memorandum is a foreign national residing outside India-

(a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.

(b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.

(c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 or in any Act amending the same;

(d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

Explanation.- For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.

Submission of INC-32,33,34 on MCA:

Once all the 3 forms are ready with the applicant, upload all three documents as Linked form on MCA website and make the payment of the same.

Certificate of Incorporation and allotment of Corporate Identify Number

The Certificate of Incorporation shall be issued by the Registrar in Form No INC-11 and the Certificate of Incorporation shall mention permanent account number of the company where if it is issued by the Income-tax Department.

CHAPTER 4 MEMORANDUM & ARTICLES OF ASSOCIATION**INTIMATION OF SHIFTING OF REGISTERED OFFICE**

Previously, when a company would fix its registered office or would change it to any other place, then it had to fix the place within 15 days from the date of resolution and an intimation thereof was to be given within 30 days of fixing such registered office.

Now the requirement of fixing the place within 15 days is called off. A company directly has to intimate it to the Registrar within 30 days of fixing such registered office in form INC 22.

CHAPTER 6**ISSUE OF SWEAT EQUITY SHARES [SEC. 54]**

“Employee” means-

- (a) a permanent employee of the company who has been working in India or outside India, ***for at least last one year***; or
- (b) a director of the company, whether a whole time director or not; or
- (c) an employee or a director of a subsidiary, in India or outside India, or of a holding company of the company;

CONDITIONS FOR ISSUE OF SWEAT EQUITY SHARES

The Sweat Equity Shares must be issued at least 1 year after the date of commencement of the business.

This condition has been deleted.

ISSUE OF SHARES AT A DISCOUNT (SEC 53)

As per the provisions of Section 53, no company can issue shares at a Discount except issue of Sweat Equity Shares.

Now, a company may issue shares at a discount to its creditors when its debt is converted into shares as debt restructuring scheme in accordance with any guidelines or specified by the RBI under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.

CHAPTER 8 PROSPECTUS**MISSTATEMENT IN PROSPECTUS (SEC 35)**

Earlier, the position was such that for any misstatement in a prospectus, the promoter was held liable. **However, after the amendments, if the promoter expresses certain facts based upon an experts opinion, then for such misstatement, the promoter cannot be held liable since it was based upon the views of experts opinion.**

CHAPTER 9 DEBT CAPITAL**DEFINITION OF DEBENTURES**

Debenture includes Debentures Stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not.

Provided that the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture;

CHAPTER 10 CHARGES

DUTY TO REGISTER A CHARGE (SEC 78)

Charge could be registered by either of the parties ie the creator or the charge holder. No time period was as such provided as to when the charge holder must register the charge in case if the creator doesn't register the charge.

The amendment now clarifies the exact as to who should register a charge. It now provides that the primary duty to register a charge shall be that of the creator within 30 days of creation of such charge. However, if it is not registered by the creator within 30 days, then after the expiry of such period, the charge holder can register such charge.

CHAPTER 12 MEMBERSHIP IN A COMPANY

WHETHER SHARE CERTIFICATE IS AN OFFICIAL PUBLICATION?

The Department has clarified that shares in a company are movable property transferable in the manner provided in the articles of the company. The Act further provides that a certificate signifies ownership of shares to a member.

Thus, shares are transferable movable property and that the share certificates are certificates of title and are movable property but are not publications in the nature of prospectus, balance sheet, profit and loss account, notice or advertisement. The conclusion reached, therefore, is that the share certificate is not an official publication.

REGISTER OF MEMBERS (SECTION 88 & 92)

- The registers shall be kept and maintained and copies of the annual return shall be kept at the registered office of the company.
- Such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company ~~and the Registrar has been given a copy of the proposed special resolution in advance.~~
- The registers and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.
- Any such member, debenture-holder, other security holder or beneficial owner or any other person may take extracts from any register, or index or return without payment of any fee; or require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.

CHAPTER 14 INSTITUTION OF DIRECTORS**APPOINTMENT OF PERSON AS DIRECTOR OTHER THAN RETIRING DIRECTOR (SECTION 160)**

The notice must be in writing from a member signifying his intention to propose the candidature of a person as a director along with a deposit of Rs 1,00,000/- which shall be refunded to such person if the person proposed gets elected as a director or gets more than 25% of the valid votes casted.

Provided that requirements of deposit of amount shall not apply in case of appointment of:

(1) An independent director or

(2) a director recommended by the Nomination and Remuneration Committee or

(3) a director recommended by the Board of Directors of the Company, in case if a company is not required to constitute Nomination and Remuneration Committee.

ALTERNATE DIRECTOR

The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

CASUAL VACANCY DIRECTOR

~~In case of Public Company~~, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

DISQUALIFICATIONS OF A DIRECTOR (SEC 164)

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

Sec 164(2) - Applicable to a company

Any person who is or has been a director of any Company:

Which has not filed any financial statements and annual return for 3 continuous financial years

OR

Has defaulted in payment of debentures/ deposits/ interest or dividend during last year

shall not be eligible for appointment as Director of any **public** Company and for re-appointment, in the same company for a period of 5 years from which the company fails to do so.

Note: The word “Appointment” includes re-appointment

VACATION OF OFFICE OF DIRECTOR (SEC 167)

The office of a director shall become vacant in case :

(a) He disqualifies as per section 164;

Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.

(b) He absents himself from all the Board meetings during a period of 12 months with or without leave of absence from the Board;

(c) He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangement in which he is directly or indirectly interested;

(d) He fails to disclose his interest (direct or indirect) in any contract or arrangement;

(e) He becomes disqualified by an order of a court or the Tribunal;

(f) He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months :

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

(i) for thirty days from the date of conviction or order of disqualification;

(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or

(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of

(g) He is removed in pursuance of the provisions of this Act;

(h) He, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

NUMBER OF DIRECTORSHIPS (SEC 165)

For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.

RESIGNATION OF A DIRECTOR (SEC 168)

A director **may** also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

CHAPTER 15 INDEPENDENT DIRECTORS**NUMBER OF INDEPENDENT DIRECTORS**

Earlier, the following class of unlisted public limited companies shall have atleast 2 independent directors:

- a. Public Company with a paid up share capital of Rs. 10 crores or more **or**
- b. Public Company with a turnover of Rs 100 crores or more **or**
- c. Public Company having in aggregate outstanding loans, debentures and deposits exceeding 50 crores.

Now, an unlisted public companies which is a joint venture, a wholly owned subsidiary or a dormant company shall not be required to appoint an Independent Director.

REMOVAL OF AN INDEPENDENT DIRECTOR

A company may by passing an ordinary resolution remove a director except a nominee director appointed by the Tribunal before the expiry of his period. Such provisions of removal were also applicable to an Independent Director.

Now if a company which wishes to remove an independent director re-appointed for the second term, he shall only be removed by passing a special resolution after giving him an opportunity of being heard.

CHAPTER 16 POWERS OF THE BOARD**MEETINGS OF THE BOARD (SEC 173)**

1. Secretarial Standard on Board Meetings (SS-1) issued by ICSI clarifies that the Board shall meet at least once in every calendar quarter, with a maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board, such that at least four meetings are held in each calendar year.
2. SS-1 provides that the notice shall contain contact number or e-mail address(es) of the chairman or the company secretary or any other person authorised by the Board, to whom the Director shall confirm in this regard. In case the company sends the Notice by speed post or by registered post or by courier, an additional two days shall be added for the service of Notice.
3. Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

CERTAIN MATTERS TO BE DISCUSSED ONLY AT THE BOARD MEETING

Five agendas were to be discussed only at the board meeting and were not to be approved at a meeting held through video conferencing.

Now post amendment scenario states that if the directors physically present at the meeting forms valid quorum, then even if the remaining directors are participating in the meeting through video conferencing, the resolutions passed at such meeting shall be valid.

POLICY TO BE FRAMED BY NOMINATION & REMUNERATION COMMITTEE (SEC 178)

Such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.

ROLE & RESPONSIBILITIES OF NOMINATION AND REMUNERATION COMMITTEE (SEC 178)

- (a) Identifying the persons who are qualified to become Directors and who may be appointed in senior management;
- (b) Recommend to the Board the appointment and removal of any director and **shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance;**
- (c) Formulation of the parameters for determining qualifications, positive attributes and independence of a Director; and
- (d) Recommend a policy relating to the remuneration for the Directors, KMP and other employees.

RESTRICTIONS ON POWERS OF THE BOARD (SEC 180)

- (c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves **and securities premium**, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

POLITICAL CONTRIBUTIONS [SECTION 182]

- 1) Any non-government company or a company which is in existence since last three financial years **may** make any political contribution, directly or indirectly.
- 2) Previously, upto 7.5% of the average net profits during the three preceding financial years was allowed by such company with the permission of the board.
- 3) **However, the Finance Act, 2017 removed the maximum limit over political contribution and now a company could contribute any limit by way of political contribution.**
- 4) The contribution can be directly paid to the political party or expenses can be incurred on advertisement or in any other form on behalf of such political party.
- 5) The amounts so contributed shall be disclosed in the Profit and Loss Account of the company.

LOANS TO DIRECTORS [SEC 185]

No company shall, directly or indirectly, advance any loan, including any loan to, or give any guarantee or provide any security in connection with any loan taken by,—

- (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
- (b) any firm in which any such director or relative is a partner.

Such loan or guarantee transaction can be done only if:

- (a) A special resolution is passed by the company in general meeting;
- (b) the loans are utilised by the borrowing company for its principal business activities.

Exceptions:

- a) If the loan is given to managing or whole time director as part of the conditions of service or pursuant to a scheme approved by their members by a special resolution.
- b) Any loan made, guarantee given or security provided by a holding company to its wholly owned subsidiary company, provided it is utilized by the subsidiary company for its principal business activities.

Section 185 shall not apply to Private Company subject to the following conditions:

- (a) In whose share capital no other body corporate has invested any money
- (b) If the borrowings of such company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower and
- (c) Such a company has not defaulted in repayment of such borrowings subsisting at the time of making transactions under this section.

Penalty:

The contravention of provisions of this section leads to punishment with fine which shall not be less than five lakh rupees but which may extend to twenty five lakh rupees. The director or to whom loan or advance is given or guarantee or security is given or provided shall be imprisonment which may extend to six months or with fine mentioned above or with both.

RELATED PARTY TRANSACTIONS (SEC 188)

ADDITION

(h) any body corporate which is—

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venturer of the company;

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

PROHIBITION ON FORWARD DEALINGS IN SECURITIES (SECTION 194)

DELETED

PROHIBITION ON INSIDER TRADING OF SECURITIES (SECTION 195)

DELETED

CHAPTER 17 KEY MANAGERIAL PERSONNEL**KEY MANAGERIAL PERSONNEL**

Key Managerial Personnel, in relation to a company, means:

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

DISQUALIFICATIONS OF KMP (SCHEDULE V)

A person, who has attained 70 years, may be appointed by passing a special resolution.

Where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

CHAPTER 18 GENERAL MEETING**PLACE OF HOLDING AGM**

Annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

PLACE OF HOLDING EGM

An extraordinary general meeting of a company, which is a wholly owned subsidiary of a company incorporated outside India, can be held at any place outside India as well.

SHORTER NOTICE

General meeting may be called after giving shorter notice, if consent in writing or by electronic mode, is accorded thereto—

(i) in the case of an annual general meeting, by not less than ninety-five percent of the members entitled to vote; and

(ii) in the case of any other general meeting, by members of the company—

(a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting;

RESOLUTIONS BY WAY OF POSTAL BALLOT (SEC 110)

Previously, certain resolutions were required to be passed by way of postal ballot.

Now the amendment provides that for all the resolutions which were to be passed by way of postal ballot and if the company provides e voting facility to its shareholders, such proposals may also be passed at a validly conducted general meeting.

Further, it has been provided that OPC and other companies having upto 200 members are not required to transact any business through postal ballot.

CHAIRMAN OF THE MEETING [SECTION 104]

1. The Articles of the company must provide for the Chairman of the meeting.
2. In case if the Articles are silent, Chairman shall be appointed by the members in the meeting by show of hands.
3. In case if poll is demanded, the chairman elected by show of hands shall continue with the proceedings upto the declaration of result of the poll. After that, chairperson elected by poll shall carry over the remaining proceedings of the meeting.
4. **SS2 provides that if the Chairman is not present within fifteen minutes after the time appointed for holding the Meeting, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting.**
5. If no Director is present within fifteen Minutes, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting.
6. **In case of public companies, the Chairman shall not propose any Resolution in which he is deemed to be concerned or interested nor shall he conduct the proceedings for that item of business.**
7. **If the Chairman is interested in any item of business, he shall entrust the conduct of the proceedings in respect of such item to any Dis-Interested Director or to a Member, with the consent of the Members present, and resume the Chair after that item of business has been transacted.**

QUORUM [SEC. 103]

Quorum means minimum number of members required to constitute a valid meeting. Proxies shall be excluded for determining the quorum. The Act provides for the quorum as follows:

Public Limited Company

- a) 5 members, personally present if the number of members as on the date of meeting are not more than 1000.
- b) 15 members personally present if the number of members, as on the date of meeting are more than 1000 but not more than 5000.
- c) 30 members personally present if the number of members exceeds 5000.

Private Limited Company

2 members shall be personally present to constitute a valid quorum.

SS-2 provides that a duly authorized representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys all the rights of a Member present in person.

One person can be an authorized representative of more than one body corporate. In such a case, he is treated as more than one member present in person for the purpose of quorum. However, to constitute a meeting, at least two individuals shall be present in person. Thus, in case of a public company having not more than 1000 members with a quorum requirement of five members, an authorized representative of five bodies corporate cannot form a quorum by himself but can do so if at least one more member is personally present.

SS-2 requires that quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

Absence of Quorum:

1. If the quorum is not present within half an hour from the time fixed for meeting, it shall stand adjourned to the same day in the next week at the same time & place or to such other date, time & place as the Board may determine.

Adjourned Meeting:

In case of adjourned meeting or any change in particulars thereof, the company shall give not less than 3 days notice to the members either individually or publish the same in english & vernacular language newspapers.

If at the adjourned meeting also, quorum is not present within half an hour, the members present being not less than two in numbers shall form quorum.

Illustration

Question: The articles of association of XYZ Ltd. having 700 members as on cut off date, prescribe for physical presence of 7 members to constitute quorum of general meetings.

Following are the status of persons present in a general meeting of XYZ Ltd to consider the appointment of MD. Check the quorum of the meeting.

- (a) Mr. A, the representative of Governor of Maharashtra.
- (b) Mr. B & Mr. C are preference shareholders
- (c) Mr. D representing ABC Ltd. and SKY Ltd.
- (d) Mr. E, Mr. F, Mr. G and Mr. H are proxies of shareholders

Hint:

- (a) Since Mr. A is the representative of the Governor of Maharashtra, shall be treated as a member personally present (Section 112).
- (b) Preference shareholders can vote only in relation to such matters which directly affect their rights. In this case, meeting was called to take decision on appointment of MD, which does not affect their rights. Therefore, Mr. B & Mr. C are not members personally present.
- (c) Since Mr. D represents two body corporates, he would be treated as two members personally present. (Section 113)
- (d) Since Mr. E, Mr. F, Mr. G and Mr. H are proxies of shareholders and members are not personally present. They are not considered while counting quorum.

From the above analysis, it can be concluded that only 3 members are personally present and they do not constitute proper quorum as fixed by the company.

Note: The quorum required in respect of general meeting of a public company is 5 and the quorum can be increased by the articles of the company

PROXY

1. Any member entitled to attend & vote at the meeting shall be entitled to appoint another person as a proxy on his behalf.
2. Any company having share capital or as per the Articles of any such company, the notice of such meeting shall state regarding the right to appoint a proxy.
3. A proxy shall not have a right to speak, however he shall be entitled to vote on a poll.
4. Only in case of Sec. 8 companies, a proxy holder needs to be a member of the company.

5. A proxy holder shall not act as proxy on behalf of more than 50 members and holding 10% of the share capital of the company having voting rights.
6. **A valid proxy must be deposited atleast 48 hours before the meeting, however a longer period prescribed by the Company's Articles of Association shall be considered as if the period is 48 hours only.**
7. The instrument of proxy must be in form MGT - 11, which needs to be in writing & shall be signed by the member or his duly authorized agent.
8. **Every member entitled to vote at a meeting is entitled to inspect the proxies lodged with the company, if at least 3 days notice in writing is given to the company. Such inspection can be taken during the period beginning 24 hours before the time fixed for the commencement of the meeting, during the business hours of the company, and ending with the conclusion of the meeting. Such inspection should be allowed between 9:00 am and 6:00 pm during such period.**
9. **If after appointment of proxy, the member himself attends the meeting, it amounts to automatic revocation of proxy. But once the proxy has voted, it cannot be revoked.**
10. **If a Proxy had been appointed for the original meeting and such meeting is adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting.**

Question:

The Chairman of the meeting of a public company received a Proxy 54 hours before the time fixed for the start of the meeting. He refused to accept the Proxy on the ground that the Articles of the company provided that a Proxy must be filed 60 hours before the start of the meeting. Decide, under the provisions of the Companies Act, 2013 whether the Proxy holder can compel the Chairman to admit the Proxy?

Hint:

As per Section 105 of the Companies Act, 2013 proxy shall be deposited with the company within 48 hours before the meeting. Any provisions contained in the Articles of a company that requires a longer period than 48 hours before a meeting of the company for depositing a proxy shall be void. Thus contention of Mr X is valid.

Question:

Mr. A, a member of XYZ Limited appoints Mr. B as his proxy to attend the general meeting of the company. Later he (Mr. A) also attends the meeting. Both Mr. A (the member) and Mr. B (the proxy) voted on a particular resolution in the meeting. Mr. A's vote was declared invalid by the chairman stating that since he has appointed the proxy and Mr. B's vote has been considered as valid. Mr. A objects to the decision of the Chairman. Decide, under the provisions of the Companies Act, 2013 whether Mr. A's objection shall be taxable.

Hint:

Decision by Chairman is invalid. Since Mr. A i.e. a member himself attended a meeting and voted on resolution, it will amount to revocation of proxy. Thus any vote put by Mr. B i.e. proxy shall be invalid.

MAINTENANCE OF MINUTES OF THE MEETINGS [SEC. 118]

1. Every company shall within a period of 30 days from the conclusion of such meeting, prepare, "SIGN" and keep minutes of the proceedings of the meeting, including board meetings, general meetings, committee meetings or resolutions passed through postal ballot.
2. The minutes shall contain the details of the Directors present, those who assented or dissented as a part of Board Meeting Minutes.
3. The company shall observe all the secretarial standards for Board and GMs as prescribed by ICSI.
4. Resolutions passed by postal ballot shall be recorded in the minute's book as if they had been passed in the GM, alongwith the summary of scrutinizers report, date of entry etc.
5. Minutes shall be maintained alongwith the dates of such entry within 30 days of the conclusion of the meeting.
6. Each page of the minutes book and they shall be entailed and the last page shall be signed and dated by :
 - i. In case of Board Meeting, by the chairman of the meeting or the chairman of the next meeting.
 - ii. In case of GM, by the Chairman of the meeting or in case of his death or inability, the Director authorized by the Board.

- iii. In case of postal ballot, by the chairman of the Board & in case of his death or inability, by a Director duly authorized by the Board.
7. Minutes of the GM shall be kept at the registered office of the company and that of the Board shall be kept ~~either at the registered office or any other place approved by the Board.~~
8. It shall be kept in the custody of the company secretary or a Director duly authorized & shall be preserved permanently.

CONVENING OF A VALID GENERAL MEETING

The essentials of a valid meeting are that the meeting should be:

(a) Properly convened:

- (i) The meeting must be called by proper authority; and
- (ii) Proper notice must be served.

(b) Properly constituted:

- (i) Proper quorum must be present in the general meeting.
- (ii) Proper chairman must preside the meeting.

(c) Properly conducted:

- (i) The business must be validly transacted at the meeting i.e. resolutions must be properly moved and passed, and voting by show of hands and on poll.
- (ii) Proper minutes of the meeting must be prepared.

CHAPTER 19 LOANS AND INVESTMENTS

LOANS AND INVESTMENTS (SEC 186)

~~Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.~~

Substituted by:

Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board,

exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.

Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply.

Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).

Explanation

(a) the expression —investment company means a company whose principal business is the acquisition of shares, debentures or other securities and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty percent of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income.

The word "person" does not include any individual who is in the employment of the company.

CHAPTER 20 DEPOSITS**LIMIT ON AMOUNT OF DEPOSITS**

Type of company	Members	Public
Eligible Company	Upto 10% of aggregate of the paid up share capital, free reserves and securities premium account	Upto 25% of aggregate of the paid up share capital, free reserves and securities premium account
Company referred in section 73(2)	Upto 35% of aggregate of the paid up share capital, free reserves and securities premium	Prohibited
Government Company (eligible under section 76)	-	Upto 35% of aggregate of the paid up share capital, free reserves and securities premium account

RAISING DEPOSITS BY A PRIVATE LIMITED COMPANY AND SPECIFIED IFSC PUBLIC COMPANY

A Specified IFSC public company and a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT 3.

A Specified IFSC public company means an unlisted public company which is licenced to operate by RBI, SEBI or IRDA from International Financial Services Centre (IFSC) located in a multi services Special Economic Zone.

The maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies:

- (i) a private company which is a start-up, for five years from the date of its incorporation;
- (ii) a private company which fulfils all of the following conditions, namely:-
 - (a) which is not an associate or a subsidiary company of any other company;

- (b) the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and
- (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

DEPOSIT REDEMPTION RESERVE

Earlier the company was required to deposit 15% of the amount due for redemption in each year in Deposit Redemption Reserve Account.

However, instead of 15%, the company now has to deposit 20% of the sum due for redemption in each year in Deposit Redemption Reserve Account.

DEPOSIT INSURANCE

The company is no more required to obtain deposit insurance. The provision is omitted.

DEFAULT IN REPAYMENT OF DEPOSITS

If company contravenes Section 73 or Section 76 or fails to repay the deposit or part thereof or interest due thereon within the time or time allowed by Tribunal then:

1. The Company shall be liable to pay in addition to the deposits & its interest, also liable to pay Rs 1 Crore **or twice the amount of deposit** accepted by the company, whichever is lower but which may extend to Rs 10 Crores.
2. Every officer of the Company who is in default shall be punishable with imprisonment which may extend to 7 years ~~or~~ **AND** with the fine between 25 Lakhs and 2 Crores ~~or with both.~~

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

CHAPTER 21 ACCOUNTS AND AUDIT**TERM OF AUDITORS**

- In case of listed companies
- All public limited companies having paid up share capital of Rs. 10 crores or more or
- In case of private limited companies having paid up share capital of Rs. ~~20~~ **50** crores or more or
- All companies having public borrowings from banks or financial Institution or public deposits of Rs. 50 crore or more

Shall appoint or re-appoint an individual as the auditor for a period not exceeding 5 years or in case of a firm for a period not exceeding 10 years.

RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL ORDER

(1) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

- (i) the relevant earlier accounts were prepared in a fraudulent manner; or
- (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

Provided that the court or the Tribunal shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned **or any other person concerned** and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned **or any other person concerned** before passing any order under this section.

No order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

Provided that where a direction has been issued by the Central Government for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.

CORPORATE SOCIAL RESPONSIBILITY (SEC 135)

Earlier, every company to which the subject provisions were applicable was required to contribute 2% of the average net profits of the past three immediately preceding financial years.

Now the company needs to contribute 2% of the net profits of the last financial year as CSR contribution.

For CSR Committee, a company was previously required to have 3 members if the company had independent directors.

Now, if the company doesn't have independent directors, the committee shall comprise of minimum 2 directors.

CASUAL VACANCY BY RESIGNATION OF AUDITOR

The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form ADT-3 with the company and the Registrar, and in case of Government company, the auditor shall also file such statement with the Comptroller and Auditor General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

In case of failure the auditor shall be punishable with fine which shall not be less than fifty thousand rupees **or the remuneration of the auditor, whichever is less** but which may extend to five lakh rupees as per section 140 (3).

RIGHTS OF MEMBERS TO COPIES OF FINANCIAL STATEMENT (SEC 136)

A copy of the financial statements shall be sent to every member, trustee for the debenture-holders, and to every person so entitled, not less than twenty-one days before the date of the meeting.

Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members—

(a) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. Of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety five per cent. of the total voting power exercisable at the meeting:

Provided also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any.

Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")—

(a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;

(b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.

(2) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours.

Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.

POWERS OF AUDITORS (SEC 143)

Auditor of the holding company now has powers to access books of accounts of its subsidiary company as well, which wasn't provided previously.

APPOINTMENT OF AUDITOR

Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed.

~~Ratification of appointment during his term as an auditor is no more required. This provision has been omitted.~~

CONTRAVENTION BY AUDITORS (SEC 147)

If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees **or four times the remuneration of the auditor, whichever is less.**

Provided that if an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine

which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees or **eight times the remuneration of the auditor, whichever is less.**

(3) Where an auditor has been convicted under sub-section (2), he shall be liable to— (i) refund the remuneration received by him to the company; and (ii) pay for damages to the company, statutory bodies or authorities **or to the members or Creditors of company** for loss arising out of incorrect or misleading statements of particulars made in his audit report.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

SIGNING OF FINANCIAL STATEMENTS (SEC 134)

Financial Statements of a company shall be signed by the following:

- Chairman or atleast 2 directors, one of whom shall be a MD
- CFO
- CEO (now he need not be a director)
- CS

CHAPTER 22 DIVIDEND

SOURCES OF DIVIDEND

(1) No dividend shall be declared or paid by a company for any financial year except— (a) out of the profits of the company for that year arrived at after providing for depreciation or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation and remaining undistributed or out of both; or.

Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded; or

INTERIM DIVIDEND

The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of:

- (i) the surplus in the profit and loss account or
- (ii) out of profits of the financial year for which such interim dividend is sought to be declared or
- (iii) out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:

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

CHAPTER 23 BOARDS REPORT AND DISCLOSURES

Earlier, extract of annual return was to be attached to the Directors Report.

But now, the extract of annual return must now be placed on the companys website and is not be attached as a part of Directors Report.

CHAPTER 34 OFFENCES AND PENALTIES**PENALTY FOR FRAUD (SECTION 447)**

Any person who is found guilty of fraud involving an amount of at least 10 Lakhs or 1% of turnover of company, whichever is lower, shall be punishable with imprisonment not less than 6 months but not more than 10 years and shall also be liable for fine of not less than the amount involved in the mis-statement, but not more than 3 times the amount involved.

If the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.

Provided further that where the fraud involves an amount less than ten lakh rupees or one percent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.

FACTORS FOR DETERMINING LEVEL OF PUNISHMENT (SEC 446A)

For the courts or government authority in deciding the quantum of punishment for a default, it shall take into consideration following factors:

- size of the company
- nature of business
- injury to public interest
- nature of default
- repetition by the company