

The Companies Act and LLP Act

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- Chapter III Prospectus and allotment of securities-Sections 23 to 42
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THE COMPANIES ACT, 2013

Chapter III to XXIX

Types of Forms used in Company Law

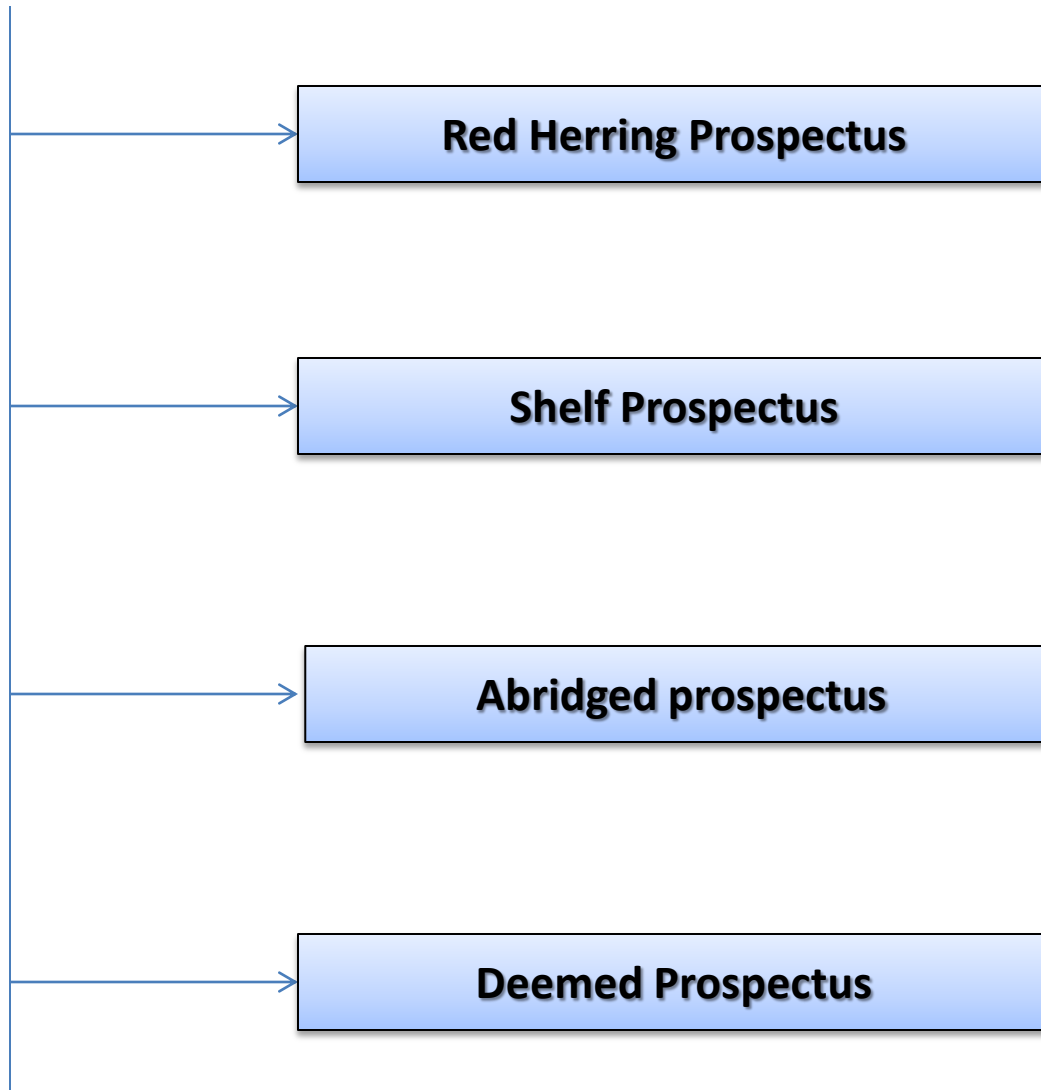
- In the exam, question may be asked as to the type of Form ,Form Number and the purpose for which it is used:
Major types of Forms used in Company Law covered in syllabus are:

Type of Form	Purpose
AOC	Accounts
CA	Compromises,Arrangements and Amalgamations
A-B-C-D	Registered Valuers and Valuation Rules
STK	Removal of Names
NCLT	For use in NCLT
NCLAT	For use in NCLAT

Chapter III- Prospectus and Allotment of Securities

Sections 23 to 42

Different Types of prospectus



❑ **Some other Terms used in this regard are:-**

- **IPO**: Initial Public Offer
- **FPO**: Follow on Public Offer: a process by which a company already listed on an exchange, issues new shares to the investors or the existing shareholders, usually the promoters. **FPO** is used by companies to diversify their equity base.
- **Statement in lieu of Prospectus:-**
- **OFS**: Offer for sale of Securities

Prospectus as defined under Section 2(70)- “any document which is described or issued as a prospectus”. This also includes any notice, circular, advertisement or any other document acting as an invitation to offers from the public. Such an invitation to offer should be for the purchase of any securities of a corporate body. Shelf prospectus and red herring prospectus are also considered as a prospectus.

❑ **Essentials conditions for a document to be called as a prospectus:-**

1. The document should invite the public for subscription of shares/ debentures/deposits/such other instruments.
2. The invitation should be made by the company or on the behalf company.

❑ **Statement in lieu of prospectus Section 70:-**

Every public company may either issue a prospectus or file a statement in lieu of prospectus. This is not mandatory for a private company. But when a private company converts from private to public company, it must have to either file a prospectus if earlier issued or it has to file a statement in lieu of prospectus.

❑ Advertisement for prospectus (Section 30)

Any advertisement must contain: Contents of the memorandum of the company regarding the object, member's liabilities, amount of the company's share capital, signatories and the number of shares subscribed by them and the capital structure of the company.

❑ Shelf Prospectus (Section 31)

Issued by any public financial institution, company or bank for one or more issues of securities or class of securities as mentioned in the prospectus. When a shelf prospectus is issued then the issuer need not issue a separate prospectus for each offering. He can offer or sell securities without issuing any further prospectus. The validity period should not exceed one year. **This period commences from the opening date of the first offer of the securities.** For any second or further offer, no separate prospectus is required.

While filing a shelf prospectus, a company is required to file an information memorandum along with it.

□ Information Memorandum [Section 31(2)]

It should contain all the facts regarding the new charges created, what changes have undergone in the financial position of the company since the first offer of the security or between the two offers.

It should be filed with the registrar within three months before the issue of the second or subsequent offer made under the shelf prospectus as given under Rule 4CCA of Section 60A(3) under the Companies (Central Government's) General Rules and Forms, 1956.

When any company or a person has received an application for the allotment of securities with advance payment of subscription before any changes have been made, then he must be informed about the changes. If he desires to withdraw the application within 15 days then the money must be refunded to them.

After the information memorandum has been filed, if any offer of securities is made, the memorandum along with the shelf prospectus is considered as a prospectus.

❑ Red herring prospectus:-

Red herring prospectus is the prospectus which lacks the complete particulars about the quantum or the price of the securities. A company may issue a red herring prospectus **prior to the issue of prospectus** when it is proposing to make an offer of securities.

This type of prospectus **needs to be filed with the registrar at least three days prior to the opening of the subscription list or the offer.**

The obligations carried by a red herring prospectus are same as a prospectus. If there is any variation between a red herring prospectus and a prospectus then it should be highlighted in the prospectus as variations.

When the offer of securities closes then the prospectus has to state the total capital raised either by way of debt or share capital. It also has to state the closing price of the securities.

Any other details which have not been included in the prospectus need to be registered with the registrar and SEBI.

The applicant or subscriber has right under Section 60B(7) to withdraw the application on any intimation of variation within 7 days of such intimation and the withdrawal should be communicated in writing.

❑ **Abridged Prospectus:-**

- It contains a summary of a prospectus filed before the registrar. It contains all the features of a prospectus. An abridged prospectus contains all the information of the prospectus in brief so that it should be convenient and quick for an investor to know all the useful information in brief.
- Section 33(1) of the Companies Act, 2013 also states that when any form for the purchase of securities of a company is issued, it must be accompanied by an abridged prospectus.

❑ Deemed Prospectus Section 25(1)

When any company intends to offer securities for sale to the public, allots or agrees to allot securities, the document will be considered as a deemed prospectus through which the offer is made to the public for sale. The document is deemed to be a prospectus of a company for all purposes and all the provisions of contents and liabilities of a prospectus will be applied upon it.

In the case of SEBI vs. Kunnakulam Papers Mills Ltd. , it was held by the court that where a rights issue is made to the existing members with a right to renounce in the favour of others, it becomes a deemed prospectus if the number of such other persons in whose favour the right is renounced exceeds fifty.

□ Process for filing and issuing a prospectus:-

Contents

For filing and issuing the prospectus of a public company, it must be signed and dated and contain all the necessary information as stated under Section 26:

1. Name and registered address of the office, its secretary, auditor, legal advisor, bankers, trustees, etc.
2. Date of the opening and closing of the issue.
3. Statements of the Board of Directors about separate bank accounts where receipts of issues are to be kept.
4. Statement of the Board of Directors about the details of utilization and non-utilisation of receipts of previous issues.

5. Consent of the directors, auditors, bankers to the issue, expert opinions.
6. Authority for the issue and details of the resolution passed for it.
7. Procedure and time scheduled for the allotment and issue of securities.
8. The capital structure of the company in the manner which may be prescribed.
9. The objective of a public offer.
10. The objective of the business and its location.
11. Particulars related to risk factors of the specific project, gestation period of the project, any pending legal action and other important details related to the project.
12. Minimum subscription and what amount is payable on the premium.
13. Details of directors, their remuneration and extent of their interest in the company.
14. Reports for the purpose of financial information such as auditor's report, report of profit and loss of the five financial years, business and transaction reports, statement of compliance with the provisions of the Act and any other report.

Filing of copy with the registrar:-

As stated under sub-section 4 of Section 26 of the Companies Act, 2013, the prospectus is not to be issued by a company or on its behalf unless on or before the date of publication, a copy of the prospectus is delivered to the registrar for registration.

The copy should be signed by every person whose name has been mentioned in the prospectus as a director or proposed director or the assigned attorney on his behalf.

□ Delivery of copy of the prospectus to the registrar:-

As per Section 26(6) of the Companies Act 2013, the prospectus should mention that its copy has been delivered to the registrar on its face. The statement should also mention the document submitted to the registrar along with the copy of the prospectus.

❑ Registration of prospectus Section 26(7):-

Registrar can register a prospectus when:

1. It fulfils the requirements of this section, i.e., section 26 of the Companies Act, 2013; and
2. It contains the consent of all the persons named in the prospectus in writing.

❑ Issue of prospectus after registration:-

If a prospectus is not issued before 90 days from the date from which a copy was delivered before the registrar, then it is considered to be invalid.

❑ Contravention of section

If a prospectus is issued in contravention of the provision under section 26 of the Companies Act 2013, then the company can be punished under Section 26(9). The punishment for the contravention is:

Fine of not less than Rs. 50,000 extending up to 3,00,000.

If any person becomes aware of such prospectus after knowing the fact that such prospectus is being issued in contravention of section 26 then he is punishable with the following penal provisions.

- Imprisonment up to a term of 3 years, or
- Fine of more than Rs. 50,000 not exceeding Rs. 3,00,000.

❑ **Conclusion**

A prospectus is basically a formal and legal document issued by a body corporate which acts for inviting offers from the public for subscription or purchase of any securities. Every public company is entitled to issue the prospectus for its shares or debentures. But, the same is not required for a private company.

The Companies Act, 2013

Chapter III- Prospectus and Allotment of Securities Sections 23 to 42

■ Manner of Issue of Securities-Section 23

Manner of Issue	Public Company Section 23(1)	Private Company Section 23(2)
To public through prospectus incl. IPO,FPO,OFS	Yes	No
Private Placement	Yes	Yes
Rights Issue	Yes	Yes
Bonus Issue	Yes	Yes

■

Administrative Powers-Section 24

Authority	Relevant Section
SEBI	24(1)(a)
The Central Government	24(1)(b)
The Tribunal	24(1)(b)
The Registrar	24(1)(b)

Different Types of Prospectus-General

Type	Remarks	Relevant Section	Penalty	
Prospectus	To be issued within 90 days of delivery of its copy to the Registrar	26(8)	For Company	For Person who is a party to it
			Rs.50000 to Rs.300000	Rs.50000 to Rs.300000 Or imprisonment upto 3 years or both
Variation in terms or objects of issue of prospectus	Form PAS-1	Rule 7	Special resolution in General Meeting. Details in two newspapers citing reasons for variation. Exit offer to dissenting shareholders. Bar on buying shares of any other listed company	
In Dematerialised Form-Compulsory for Public company making public Offer. Optional for Pvt.Companies	Whether listed or unlisted. Rule does not apply to Nidhi, Govt.Co. or wholly owned	29(1)(a)		

Mandatory Contents of Memorandum for advertisement for prospectus- Section 30

The Objects and the liability of members

The amount of share capital of the company

The names of the signatories to the memorandum and the number of shares subscribed for by them

Shelf Prospectus/Red Herring Prospectus

Shelf Prospectus		Red Herring Prospectus	
Validity	One Year	Meaning and date of issue	A prospectus which does not include complete particulars of the quantum or price of the securities included therein. It may be issued prior to the issue of a prospectus and should be filed at least three days prior to the opening of the subscription list and offer.
Form for Information Memorandum	Form PAS -2	Obligations and Variations	Same as applicable to a prospectus and any variations should be highlighted in the prospectus.

Penalties for False Statements or Misstatements in prospectus

Cause of action	Fine/Penalty	Relevant Section
Application for purchase of securities not accompanied by an abridged prospectus	Rs.50000	33(3)
Misstatement in prospectus- Civil Liab	Imprisonment-6 months to 10 years Fine-One to three times of the amount involved	34/447
Misstatement in prospectus- Criminal Liab	Company and the concerned person liable to pay compensation to every person sustaining loss or damage	35(1)
Fraudulently inducing persons to invest money	Action under Section 447	36

Allotment of securities-Preconditions

Event/Action	Minimum Stipulations/Penalties	Section/Rule
Amount subscribed	Minimum amount stated in the prospectus	39(1)
Amount paid to and received by the company	Sum payable on application	
Minimum amount payable on application	5% of the nominal amount	39(2)
Maximum time period for receiving the amount subscribed /amount payable on application	30 days	39(3)
Period for returning money in case of under subscription	15 days from the closure of the issue	Rule 11
Interest on late refund	15% per annum	Rule 11
Penalty for default u/s 39(3) or 39(4)	Rs.1000 each day till the date default continues or Rs.100000 whichever is less	39(5)
Form for return of allotment	PAS-3 within 30 days	Rule 12
Rate of commission payable to any person concerned with subscription	5% in case of securities and 2-1/2% in case of debentures or as per articles whichever is less	Rule 13

Section-40-Information reg Stock Exchange in case of Public Offer

Application to Stock Exchange
Mentioning the name(s) of Stock Exchange(s)
To maintain Separate Bank Account

Penalty for the company	Rs.5 lakhs to Rs.50 lakhs	40(5)
Penalty on officer	Fine-Rs.50000 to Rs.3 lakhs Imprisonment-upto 1 year or both	

GDRs-Global Depository Receipts

Types of DR-ADR,GDR and IDR

Conditions for issue-Rule 4	Proceeds of GDR-Rule 7
In terms of scheme and provisions of FEMA,1999	Bank account in India
Board Resolution	Indian Bank operating abroad
Special resolution in general meeting	Foreign Bank (A scheduled Bank under RBI Act,1934) having operations in India taking responsibility for furnishing required information and ensuring deposit of sale proceeds of GDRs to the respective bank account of the shareholders in case of a sponsored issue
To be issued by an overseas depository Bank	Overseas depository Bank will give acknowledgement to the foreign investor. Such an acknowledgement is known as GDR.GDRs are tradeable at International Stock Exchanges.
Underlying shares shall be kept in custody of a domestic custodian Bank	
Offer document for issue of GDRs not to be treated as a prospectus or an offer	

Chapter IV:- Share Capital and Debenture

SECTION 43 TO 72

Section 43

Kinds of Share Capital

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graph TD; A["Kinds of Share Capital"] --> B["Equity"]; A --> C["Preference"]; B --> D["With Voting Rights"]; B --> E["With differential Rights as to Dividend, Voting or Otherwise"];
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Equity

Preference

With Voting
Rights

With differential
Rights as to Dividend, Voting or
Otherwise

Section 44

Shares or Debentures are movable property.

Section 45

Distinctive numbers of Shares.

Section 46

Certificate under common seal signed by two directors or a Director and the CS wherever appointed.

Section 47

Voting Rights:- Right to vote, in proportion to paid up capital
Preference shareholders entitled to vote on resolutions directly affecting their interest.

Section 48

Variation in shareholders rights with three fourth consent or by special resolution.

Section 49

Calls for further share capital to be made on uniform basis.

Section 50

Company may accept in advance any uncalled amount without any voting rights.

Section 51

Dividend on basis of paid up capital.

Section 52

Premium received to be transferred to securities premium account and can be applied towards bonus issue, writing off preliminary expense, providing for premium payable on redemption of any redeemable preference shares or debentures etc.

Section 53

Prohibition on issue of shares at a discount except to creditors in accordance with statutory resolution plan or debt restructuring Plan.

Punishment:- Penalty equal to amount raised or Rs 5 Lakhs whichever is less besides liability to refund the amount received along with interest @ 12%p.a.

Section 54

Issue of Sweat-Equity shares if authorized by special resolution specifying the no. of shares, current market price ,consideration if any and class (es) of Directors/Employees. Besides this to conform to SEBI regulations in case of listed shares and prescribed rules in case of unlisted shares

Section 55

Only redeemable preference shares can be issued maximum period not to exceed 20 years except in case of infrastructure projects.

Redemption to be made out of:-

- Profits of the company available for dividend
- Proceeds of a fresh issue made for such redemption

- Should be fully paid before redemption
- Nominal amount to be transferred to Capital Redemption Reserve A/c
- Premium payable out of profits or securities premium account.

Section 56

Transfer or transmission within 60 days based on certificate, instrument of transfer duly executed.

Period:-

2 months from DOI in case of subscribers to the memorandum.

2 months in case of allotment

1 months in case of transfer

6 months from date of allotment in case of allotment of debenture

Section 57

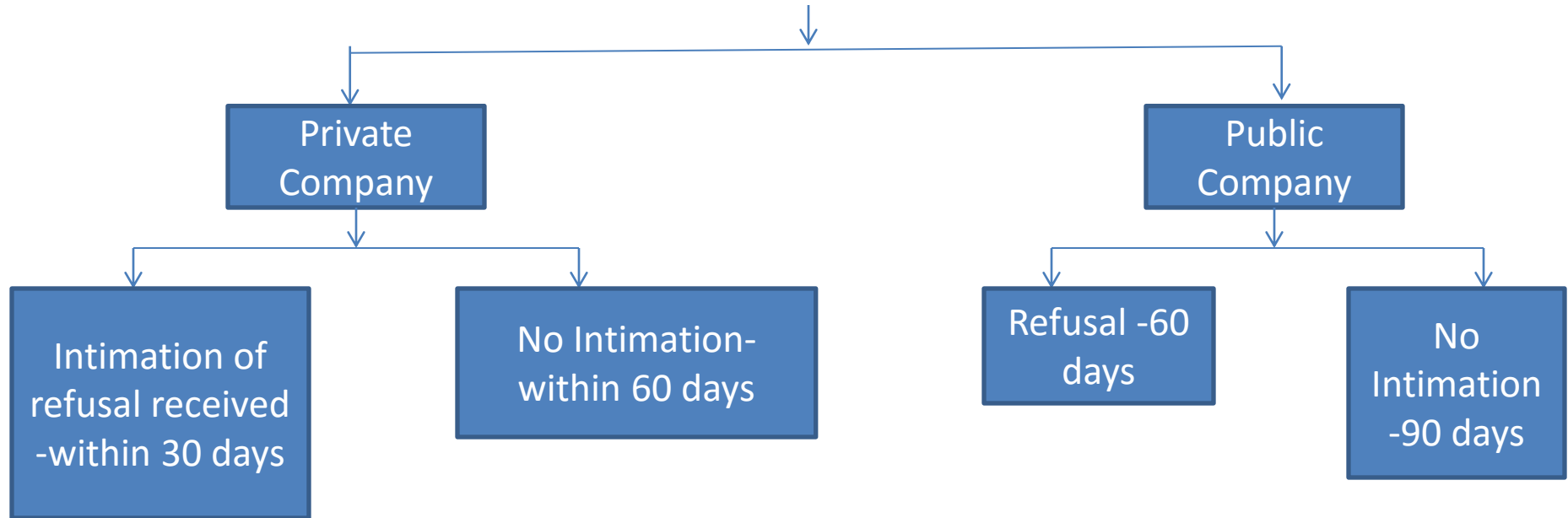
Penalties for impersonation:

Fine: Rs 1 Lakh to 5 Lakh

Imprisonment: 1 year to 3 years

Section 58

Refusal to Register and time period for appeal



In appeal Tribunal may direct to transfer within 10 days of the receipt of the order.

Penalty:

Imprisonment:- One year to Three years.

Fine:- One lakh to Five Lakhs.

Section 59

Rectification of Register of members to be done within 10 days of the receipt of the order.

Penalty on Company: 1 lakh to 5 lakh.

Penalty on Officer:-

Imprisonment: Upto One year

Fine: One lakh to Three lakh or both.

Section 60

Publication of authorized , subscribed and paid up

Penalty: Rs 10,000/-

Officer: Rs 5,000/- for each default.

Section 61

A limited company may increase its authorized capital ,may consolidate/subdivide, reduce its unissued/share capital without change in voting power.

Section 62

Further issue:-

- To existing shareholders in proportion to paid up capital
- Rights of renunciation of such offer in favour of another person not disadvantageous to the shareholders
- To employees as stock option
- To any other person based on valuation report for cash or consideration other than cash.

Section 63

Bonus issue out of free reserves, securities premium, Capital Redemption Reserve A/c .Not out of reserves created by revaluation. otherwise compliant in payment of FD , statutory dues etc.

Section 64

Notice to Registrar of alteration of share capital within 30 days of such alteration along with altered memorandum.

Penalty on company and officer: Rs 1,000/- each day or Rs 5 lakhs whichever is less

Section 65

Unlimited company to provide for reserve share capital on conversion into limited Company: No increased part to be called except in case of winding up.

Section 66

Reduction of share capital .Tribunal may approve reduction after giving notice to central Gov., SEBI, Registrar, Creditors etc. No reduction if company defaulted in repayment of deposits or interest.

Section 67

Restrictions on purchase by company or giving of loans by it for purchase of its shares.

Exceptions: -

Banking Company ,NBFC,loans to employees not exceeding 6 months salary or wages. Penalty: Fine Rs. 1 lakh to Rs. 25 lakh

Officer: Imprisonment upto 3 years

Fine: Rs. 1 lakh to Rs. 25 lakh

Section 68

Power of company to purchase its own securities out of free reserves, securities premium account, proceeds of the issue.

No buy back unless

- Authorized by articles
- Special resolution passed
- Ratio of 2:1 of debt equity to be maintained
- Further 10%-25% criterion

Section 69

Transfers of certain sums to Capital Redemption Reserve A/c equivalent to nominal value of own share purchased.

Section 70

Prohibition for buy back in certain circumstances

- Through subsidiary, through investment company- in case of default in repayment of deposits unless defect removed and 3 years have elapsed.

Section 71

Debentures:-

- Convertible debentures issue to be approved by special resolution at general meeting
- No voting rights to debenture holders
- Debenture Redemption Reserve A/c
- Appointment of debenture trustee in case invitation is to more than 500
- Debenture trustee to file petition before tribunal if he feels that the company assets are insufficient to pay

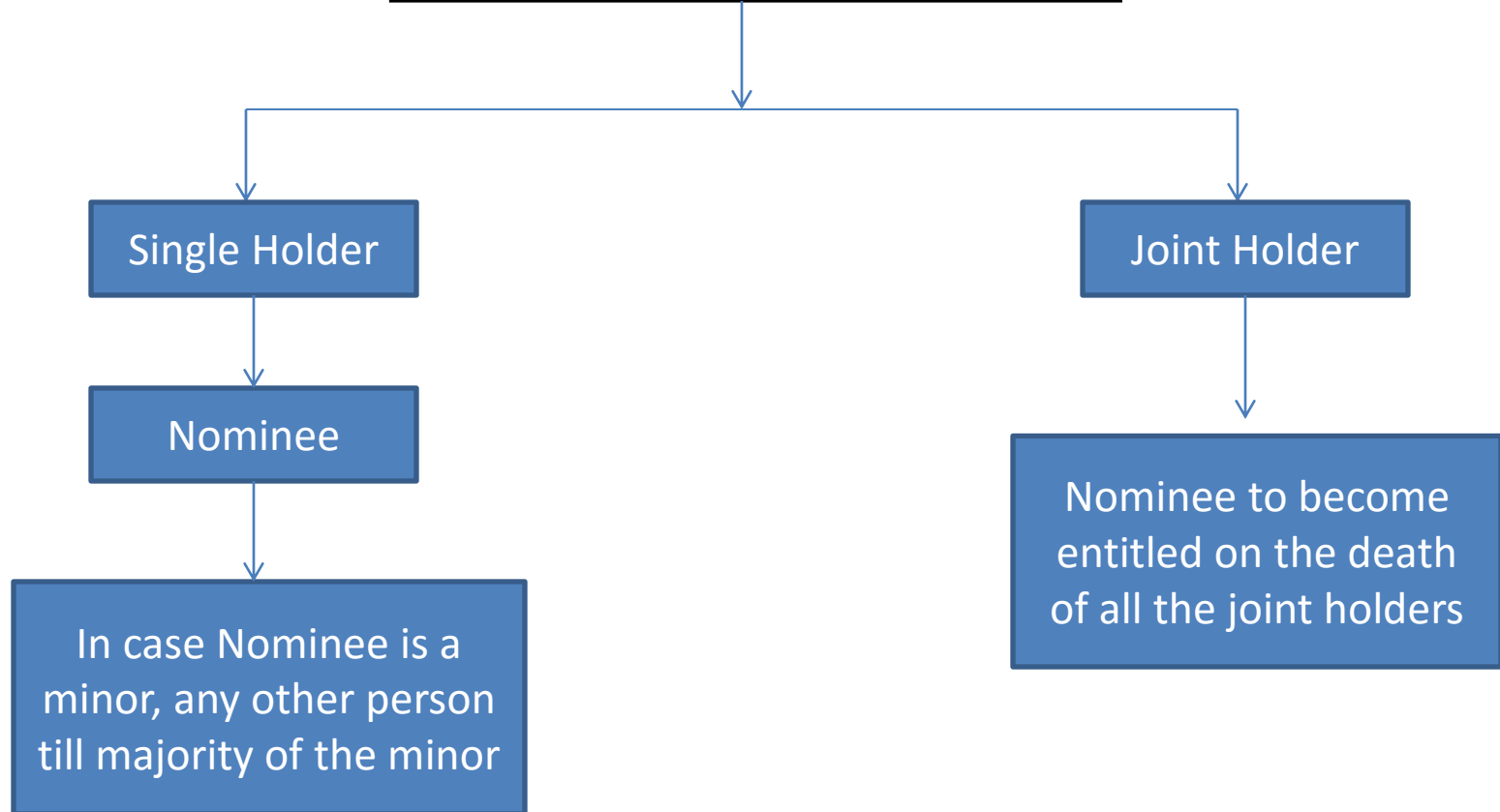
➤ Default of order of Tribunal punishable

Officer: Imprisonment- upto 3 years

Fine: Rs. 2 lakh to Rs. 5 lakh or both

Section 72

Power to Nominate on Death



Chapter V- Acceptance of Deposits by Companies

SECTION 73 TO 76A

Section 73

Prohibition on acceptance of deposits from public except by banking company or NBFC

Acceptance of deposits from Members: Circular to members indicating total amount, credit rating, amount due in respect of previous deposits etc.

- Filing circular with registrar within 30 days before issue of circular
- Depositing on or before 30th day of April 25% of the amount of deposits maturing during the following financial year.

Section 74

Repayment of deposits accepted before commencement of the Act

- File a statement within 3 months from such commencement or from the date on which such payments are due with the registrar a statement showing repayment plan.
- Repay within 3 years or earlier except when extension granted by the tribunal.

Penalty: Rs. 1Cr to Rs. 10Cr

Officer: Imprisonment upto 7 years

Fine: Rs. 25 Lakhs to Rs. 2Cr or both

Section 75

Damages for fraud

- Every officer personally liable without any limitation of liability

Section 76

Acceptance of Deposits by certain companies from public.

Net worth: Rs. 100Cr or more

Turnover: Rs 500Cr

- Special resolution, Credit rating of adequate safety for every year during tenure of deposits, company to create charge on assets within 30 days of such acceptance.

Section 76A

Punishment for Contravention of Section 73 or Section 76

Fine: Rs. 1Cr or double the deposits accepted maximum Rs. 10Cr

Officer: Imprisonment upto 7 years

Fine: Rs. 25Lakhs to 2 Cr

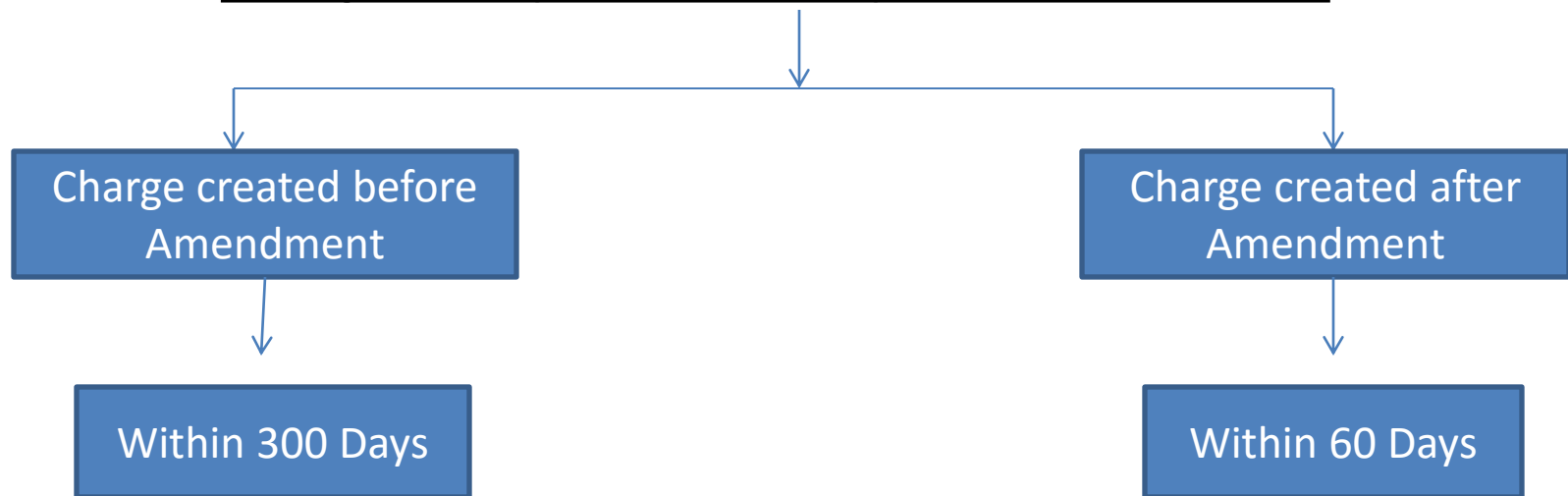
Chapter VI- Registration of Charges

SECTION 77 TO 87

Section 77

Duty to register charge within 30 days

Companies (Amendment) Ordinance, 2019



Section 78

Where a company fails to register a charge, the person in whose favour the charge has been created may apply and recover the fees from the company.

Section 80

Deemed Notice (Knowledge) of charge from the date of registration to any person acquiring such property .

Section 81

Register of charges to be kept by the registrar open for inspection on payment of fees.

Section 82

Company to report satisfaction of charge within 30 days (max. 300 days on payment of additional fees).

Registrar may ask the holder of the charge to raise objection if any within maximum 14 days.

Section 83

Power of registrar to make entries of satisfaction and release in absence of intimation from company. Registrar shall inform the affected parties within 30 days of making entry.

Section 84

Intimation of appointment of receiver or manager by the person receiving such appointment or by the person appointing such receiver within 30 days along with a copy of such appointment/order.

The person appointed shall notify the company and registrar on ceasing to hold such appointment.

Section 85

Register of charges along with copy of instrument to be kept at registered office and open for inspection to members and creditors without any payment of fees and to other persons on payment of fees.

Section 86

Punishment for contravention of provision of this chapter

Company: One lakh to Ten lakh

Office in default: Imprisonment upto 6 months

Fine: Rs. 25000 to Rs. 1 Lakh or both

Section 87

Rectification by Central Government in register of charges.

In case of any omission or misstatement or inadvertence, Central Gov., may extend the time or allow rectification.

Chapter VII- Management & Administration

SECTION 88 TO 122

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graph TD; A[SECTION 88 TO 122] --> B[Register  
Section 88-91 & 95]; A --> C[Annual Return  
Sections 92-94]; A --> D[Meetings  
Section 96-102 & 121]; A --> E[Requisites of  
convening a meeting  
Sections 103-120];
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Register
Section 88-91 & 95

Annual Return
Sections 92-94

Meetings
Section 96-102 &
121

Requisites of
convening a meeting
Sections 103-120

Registers

- Register of members- MGT-1
- Register of Debenture holders- MGT-2
- Foreign Register file within 30 days from the date of opening the register- MGT-3

Declaration of Beneficial Interest

Any person holding beneficial interest in shares 89(2)

Members not beneficial interest in the Co. 89(1)

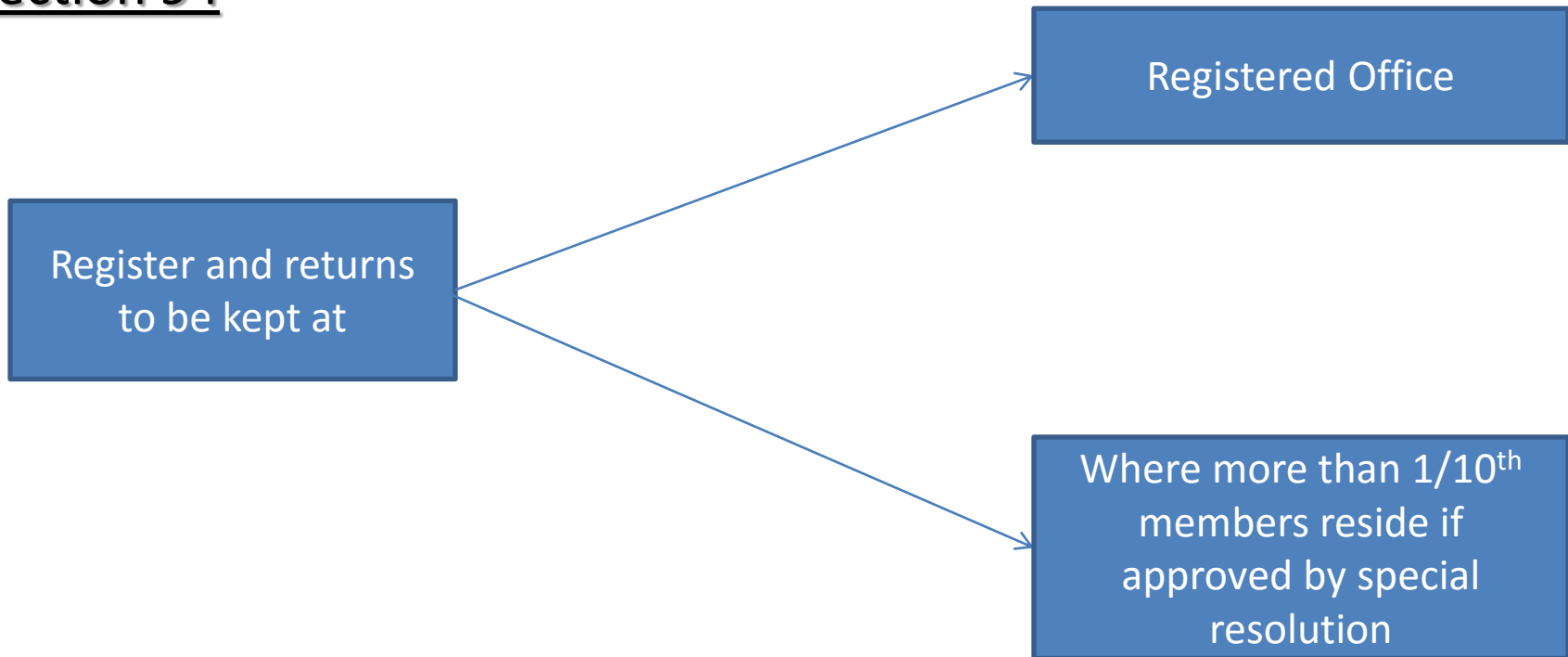
Any change in beneficial interest 89(3)

Shall file declaration to co. within 30 days and co. to file return to ROC within 30 days.

Annual Return (Sections 92-94)

Information about company regarding registered office, business activities, shares, debentures, indebtedness, change since previous year, meetings, remuneration of Directors and KMP, penalty or punishment, shares held on behalf of FIIs.

Section 94



Meetings- Pre- Requisites of a Meeting

Before Meeting

Notice: 21 clear days explanatory statement notice to be sent to

- Members
- Directors
- Auditors
- Legal Rep. of deceased member
- assignee of insolvent member

During Meeting

- Quorum
- Chairman
- Proxies
- Voting
- Resolutions

Post Meeting

- Minutes of meeting
- Maintenance &
- Inspection of documents

Types of Meetings:-

- General Meeting
- Board Meeting
- Class Meeting

Meetings with shorter Notice

AGM: 95% of members entitled to vote

other meetings: 95% of voting power.

General business and Special business

➤ General Business

1. FS and Reports
2. Declaration of Dividend
3. Appointment of directors in place of those retiring
4. Appointment of auditors and fixing their remuneration

Any business apart from the 4 cited above is special business.

Quorum for meetings

Public Company

No of Members upto 1000- 5

1001-5000 = 15

Above 5000 – 30

If quorum not present within half an hour the meeting shall stand adjourned to the same day in the next week at the same time and place or such other date, time and place as the board decides.

Company to give at least three days notice to members individually or by advertisement.

Chairman of Meetings: By show of hands or by poll

Proxy:-

Form MGT-11

can vote on a poll. No right to speak .can ask as proxy for upto 50 members or upto 10% of the total share capital of the company carrying voting rights.

Private Company

2

If a single member holds more than 10% his proxy cannot be a proxy for other members.

Proxy received 48 hours before the before the meeting is valid.

Voting:

Voting by show of hands (107)

Voting by Electronic Means. Listed company having more than 1000 members (Section 108)

Voting by poll (109)

Voting by Postal Ballot (110)

Demand for poll (Section 109)

1/10th of voting power or Rs. 5,00,000 paid up capital or such higher amount as may be prescribed .

Annual General Meeting

Applicable to both public & private company.

Not applicable to OPC

AGM to be held by every company every year.

First AGM:- Within 9 months from the end of the financial year

Time gap between 2 AGM- Not to exceed 15 months.

Registrar may grant extension of 3 months for special reasons except in case of first AGM.

Company (Accounts) Rules, 2014

AOC-1	Statement containing salient features of the financial statement of subsidiaries or associate companies or Joint ventures
AOC-2	Form of disclosure of particulars of contracts/arrangements
AOC-3	Statement containing salient features of balance sheet and P and L Account
AOC-3A	Form of abridged financial statements
AOC-4	Form for filing financial statement and other documents with the registrar
AOC-4 CFS	Form for filing consolidated financial statement and other documents with the registrar
Aoc-5	Notice of address at which books of account are to be maintained

National Financial Reporting Authority

Provide matters relating to accounting and auditing standards under the companies act, 2013	National financial reporting authority
Functions	<ul style="list-style-type: none">• Monitor and enforce the compliance with accounting standards• Oversee the quality of service• Make recommendation to the Central Government on the formulation
Authority to appoint Chairman	The Central Government
Number of Part time or full time members	Not exceeding 15
Powers as are vested in a civil court	The Code of Civil Procedure, 1908
Penalty <ul style="list-style-type: none">• In case of individual• In case of firms	<ul style="list-style-type: none">• Not less than 1 lakh but may extend to five times of the fee received• Not less than 10 lakh but may extend to ten times of the fee received
Authority to Prescribe the standards of accounting or addendum	The Central Government

Corporate Social Responsibility

Companies covered	<ul style="list-style-type: none">•Net worth of Rs 500 crore or more•Turnover of Rs 1000 crore or more•Net profit of Rs 5 crore or more during any f.y.
Board shall consist of	Three or more directors
Spending required	At least 2% of the average net profits made during the 3 immediately preceding financial years
Where to spend CSR	Projects or programs relating to activities specified in schedule VII

Section 128	Books of accounts to be prepared on accrual basis, Double Entry System . Option to maintain accounts in electronic mode. Accounts to be kept for 8 years unless a lengthier period is directed by Central Govt.
Section 129 Section 130	Accounts to be prepared as per Sch III Reopening of accounts on the order of the court or tribunal.
Time period by which to be sent to every member	Not less than 21 days before the date of meeting
Time period for filing with the Registrar	Within 30 days of the date of annual general meeting
Not adopted at annual general meeting	Within 30 days of the date of annual general meeting

Standard of accounting specified in	The companies act, 1956
OPC shall file a copy	Within 180 days from the closure of the financial year
Qualification of Internal Auditor to conduct internal audit	A Chartered Accountant or a cost accountant or such other professional as may be decided by the Board

Background:

- CAA was going as per provisions of Companies Act, 1956 till 14.12.2016.
- On 7th November, 2016 Central Government issued a notification for enforcement of section 230-233, 235-240, 270-288 etc. w.e.f. 15th December, 2016. But still rules were not available till date for CAA.
- MCA vide notification dated 14th Dec, 2016 has issued rules i.e. The Companies (Compromises, Arrangements & Amalgamation) Rules, 2016. These rules will be effective from 15th December, 2016. Consequently, w.e.f. 15.12.2016 all the matters relating to Compromises, Arrangements, and Amalgamations (hereafter read as “CAA”) will be dealt as per provisions of Companies Act, 2013 and The Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

❖ Process of Compromise and arrangement:-

1. **Between whom the Compromise & Arrangement can propose :-**

- Between a company and its creditors or any class of them
- Between a company and its members or any class of them

2. **Who can file the application for Compromise & Arrangement can propose :-**

An application for Compromise & Arrangement can be file with Tribunal (NCLT) by followings:

- The Company
- Creditor
- Member of the Company,
- In the case of a company which is being wound up, by the Liquidator.

❖ **Joint Application**

Where more than one company is involved in a scheme, such application may, at the discretion of such companies, be filed as a joint-application.

❖ **Conditions for serving of application, in situation where application is not served by the Company**

Where the application is not filed by the Company then, At least 14 days before the date fixed for the hearing of the notice by the tribunal-

- A copy of notice of admission and of the affidavit shall be served on the Company, or,
- Where the company is being wound up, on its liquidator.

The applicant shall also disclose to the Tribunal in the application under sub-rule (1), the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.

3. Format of Application:-

Application to the tribunal for Compromise & Arrangement will be submitted in form no. NCLT-1 along with following documents

- a) A notice of admission in Form No. NCLT-2
- b) An affidavit in form no. NCLT-6
- c) A copy of Scheme of C&A
- d) A disclosure in form of affidavit including following points
 - All material facts relating to the company, such as:
 - i. The latest financial position of the company,
 - ii. The latest auditor's report on the accounts of the company and
 - iii. The pendency of any investigation or proceedings against the company
 - Reduction of share capital of the company, if any, included in the compromise or arrangement

e) Any scheme of Corporate Debt Restructuring consented to by not less than seventy five per cent. of the secured creditors in value, including.

- i. A Creditor's Responsibility statement in the form No. CAA-1.
- ii. Safeguards for the protection of other secured and unsecured creditors.
- iii. Report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board.
- iv. Where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect.
- v. A valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

f) The applicant shall also disclose to the Tribunal in the application, the basis of identification of each class of members or creditors for the purposes of approval of the scheme.

4. **Calling of Meeting by Tribunal:**

Upon hearing of the application, Tribunal shall, unless it thinks fit for any reason to dismiss the application, give such directions / order as it may think necessary in respect meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as prescribed in as follow:

- i. Fixing the time and place of the meeting or meetings.
- ii. Appointing a Chairperson and scrutinizer for the meeting or meetings to be held, as the case may be and fixing the terms of his appointment including remuneration.
- iii. Notice to be given of the meeting or meetings and the advertisement of such notice.

- iv. Determining the values of the creditors or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held.
- v. Determining the values of the creditors or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held.
- vi. Notice to be given to sectorial regulators or authorities as required under sub-section (5) of section 230.
- vii. The time within which the chairperson of the meeting is required to report the result of the meeting to the Tribunal.
- viii. Such other matters as the Tribunal may deem necessary.

5. Notice of Meeting:

The Notice of the meeting pursuant to the order of tribunal to be given in Form No. CAA-2

Person entitled to receive the notice: The notice shall be sent individually to each of the Creditors or Members and the debenture-holders at the address registered with the company.

➤ **Person authorized to send the notice:**

- Chairman of the Company, or
- If tribunal so direct- by the Company or its liquidator or by any other person

➤ **Modes of Sending of notice:**

- By Registered post, or by Speed post, or by courier, or
- By e-mail, or by hand delivery, or by any other mode as directed by the tribunal

Documents to be send along with notice: The notice of meeting send with (i) Copy of Scheme of C&A and (ii) Following below mentioned details of **C&A** if not included in the said scheme.

a. **Details of the order of the Tribunal directing the calling, convening and conducting of the meeting:-**

- Date of the Order.
- Date, time and venue of the meeting.

b. **Details of the company including:**

- Corporate Identification Number (CIN) or Global Location Number (GLN) of the company.
- Permanent Account Number (PAN).
- Name of the company.
- Date of incorporation.
- Type of the company (whether public or private or one person company).
- Registered office address and e-mail address.
- Summary of main object as per the memorandum of association; and main business carried on by the company.

- Details of change of name, registered office and objects of the company during the last five years;
- Name of the stock exchange (s) where securities of the company are listed, if applicable;
- Details of the capital structure of the company including authorised, issued, subscribed and paid up share capital; and
- Names of the promoters and directors along with their addresses.

c. **Relationship in case of Combined Application:-**

If the scheme of compromise or arrangement relates to more than one company, then the fact and details of any relationship subsisting between such companies who are parties to such scheme of compromise or arrangement, including holding, subsidiary or of associate companies.

d. **Disclosure about effect of C&A on material interests of directors, Key Managerial Personnel (KMP) and debenture trustee**

e. **Details of Board Meeting:**

- The name of the directors who did not vote or participate on such resolution
- The name of the directors who voted against the resolution and
- The name of the directors who voted in favour of the resolution,
- The date of the board meeting at which the scheme was approved by the board of directors

f. **Explanatory Statement disclosing details of the scheme of compromise or arrangement including:**

- Parties involved in such compromise or arrangement;
- In case of amalgamation merger, appointed date, effective date, share exchange ratio (if applicable) and other considerations, if any.

- Summary of valuation report (if applicable) including basis of valuation and fairness opinion of the registered valuer , if any, and the declaration that the valuation report is available for inspection at the registered office of the company;
- Details of capital or debt restructuring, if any;
- Rationale for the compromise or arrangement;
- Benefits of the compromise or arrangement as perceived by the Board of directors to the company, members, creditors and others (as applicable);
- Amount due to unsecured creditors.

h. **Disclosure about the effect of the compromise or arrangement on:**

- Key Managerial Personnel;
- Directors;
- Promoters;

- Non-Promoter Members;
- Depositors;
- Creditors;
- Debenture holders;
- Deposit trustee and debenture trustee;
- Employees of the company:

h. **Below Mentioned Details: Following below mentioned details:**

- Investigation or proceedings, if any, pending against the company under the Act.
- Details of approvals, sanctions or no-objection(s), if any, from regulatory or any other governmental authorities required, received or pending for the proposed scheme of compromise or arrangement
- A statement to the effect that the persons to whom the notice is sent may vote in the meeting either in person or by proxies, or where applicable, by voting through electronic means

- A copy of the valuation report, if any

i. Details of availability of documents:

Details of the availability of the following documents for obtaining extract from or for making or obtaining copies of or for inspection by the members and creditors, namely

- Latest audited financial statements of the company including consolidated financial statements;
- Copy of the order of Tribunal in pursuance of which the meeting is to be convened or has been dispensed with;
- Copy of scheme of compromise or arrangement;
- Contracts or agreements material to the compromise or arrangement
- The certificate issued by Auditor of the company to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013

- Such other information or documents as the Board or Management believes necessary and relevant for making decision for or against the scheme

6. Advertisement of Notice of Meeting:-

The Notice of the meeting shall be advertised in **form No. CAA-2** at least in one English Newspaper and in at least one vernacular language newspaper. it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company

- Such Newspaper shall be published on the website of the company at least 30 days before the date fixed for meeting, as directed by tribunal.
- In case of Listed Company, such notice and other documents shall also be published on the website of SEBI and stock exchange, where securities of the Company are listed.

7. Notice to Statutory:-y Authorities

A notice in **Form No CAA-3** along with Copy of Scheme of C&A, the explanatory statement and Disclosures mentioned in point No.5 above, shall also be sent to followings:

- The Central Government, The Registrar of Companies and The income-tax authorities, in all cases
- The Reserve Bank of India, the Securities and Exchange Board of India, the Competition Commission of India, and the stock exchanges, as may be applicable.
- Other Sectorial Regulators or authorities, as required by Tribunal.
- Notice shall be sent to the office of the authority after sending of notice to members or creditors of the Company by Registered post, or by Speed post, or by courier, or by hand delivery.

➤ **Representation by authority:**

- The authority desire to make any representation then shall sent to the tribunal within a period of 30 days from the date of receipt of such notice.
- Copy of such representation shall simultaneously be sent to the concerned companies
- In case of no representation within the 30 days then presumed that authority doesn't have any representation

8. Voting:

The persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement *within one month* from the date of receipt of such notice.

Right of Objections:

Any objection to the compromise or arrangement shall be made only by:

- Persons holding not less than 10% (Ten Per cent). of the *shareholding* or
- Having *outstanding debt* amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement

➤ **Other Conditions for C&A:**

I. Copy of Compromise or arrangement to be furnished by the company:

The Company on the requisition of the creditors or members entitled to attend meeting shall furnish a copy of scheme of C&A and copy of statement required to furnish in section 230(2)(c) with in one day of requisition.

II. Affidavit of Service:

- **Liability to Service:** The Chairperson appointed for the meeting of the company or other person directed to issue the advertisement and the notices of the meeting.
- Above mentioned shall file an affidavit before the Tribunal at least seven days before the date fixed for the meeting or the date of the first of the meetings, as the case may be, stating that the directions regarding the issue of notices and the advertisement have been duly complied with.

SECOND STEP- Result of Meeting

III. Copy of Compromise or arrangement to be furnished by the company:

Method of Voting: The voting at the meeting or meetings held in pursuance of the directions of the Tribunal on all resolutions shall take place by poll or by voting through electronic means.

The report of the result of the meeting shall be in **Form No. CAA.4** and shall state accurately

- The number of creditors or class of creditors or
- The number of members or class of members, as the case may be,
- who were present and
- who voted at the meeting either in person or by proxy, and
- Where applicable, who voted through electronic means, their individual values and the way they voted.

IV. Report of the result of the meeting by Chairperson: –

The Chairperson of the meeting shall, within the time fixed by the Tribunal, or where no time has been fixed, within 3 (Three) days after the conclusion of the meeting, submit a report to the Tribunal on the result of the meeting in **Form No. CAA.4**.

V. Binding of approval:

- Where, at a meeting majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement *AND* if such compromise or arrangement is sanctioned by the Tribunal by an order.
- The same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.

THIRD STEP- Order of Tribunal

After completion of the Voting and report of result of the meeting by the chairman to the tribunal next step will be confirmation of C&A form the Tribunal (NCLT).

VI. Petition for confirming compromise or arrangement :-

- The Company shall, within 7 (seven) days of the filing of the report by the Chairperson, present a petition to the Tribunal in **Form No. CAA.5** for sanction of the scheme of compromise or arrangement. The petitioner will pray for the appropriate orders and directions from the Tribunal.
- **Right of Creditor to file the petition:** Where the company fails to present the petition for confirmation of the compromise or arrangement as aforesaid, it shall be open to any creditor or member as the case may be, with the leave of the Tribunal, to present the petition and the company shall be liable for the cost thereof.

VII. Notice of Hearing by Tribunal

The Tribunal shall fix a date for the hearing of the petition.

- **Legal Responsibility of the Tribunal:** The notice of the hearing of the petition shall also be served by the Tribunal .

- To the Objectors or
- To Their Representatives under sub-section (4) of section 230 of the Act and
- To the Central Government and
- Other Authorities who have made representation under rule 8 and have desired to be heard in their representation.

➤ **Publication of the Notice:**

The notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised or in such other newspaper as the Tribunal may direct, at least ten days before the date fixed for the hearing.

VIII. **Order by Tribunal :-**

Where the Tribunal sanctions the compromise or arrangement, the order shall be in **Form No. CAA. 6.**

The order shall include such directions in regard to any matter or such modifications in the compromise or arrangement as the Tribunal may think fit to make for the proper working of the compromise or arrangement.

➤ **Filing of Order of Tribunal:-**

- The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the copy of order, or such other time as may be fixed by the Tribunal.

Power of Tribunal

- If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273

SCHEDULE OF FEES

S. No.	Sections of the Companies Act, 2013	Rule Number	Nature of application or petition	Fees
1.	Sub-section (1) of Section 230	3 (1)	Application for compromise arrangement and amalgamation.	Rs. 5,000/-
2.	Sub-section (2) of Section 235		Application by dissenting shareholders	Rs. 1,000/-
3.	Sub-section (2) of Section 238	29	Appeal against order of Registrar refusing to register any circular.	Rs. 2,000/-

The Companies
(Compromises,
Arrangements and
Amalgamations) Rules,
2016

CAA-1	Creditor Responsibility Statement	Rule 2(1)(c) & 4
CAA-2	Notice and Advertisement of notice of the meeting of creditors or members	Rule 6 & 7
CAA-3	Notice to Central Government, Regulatory Authorities	Rule 8
CAA-4	Report of result of meeting by chairperson	Rule 14
CAA-5	Petition to sanction compromise or arrangements	Rule 15(1)
CAA-6	Order on petition	Rule 17(3)
CAA-7	Order under Section 32	Rule 20
CAA-8	Statement to be filed with registrar of companies within 210 days from the end of each financial year	Rule 21
CAA-9	Notice of the scheme inviting objections or suggestions	Rule 25(1)
CAA-10	Declaration of solvency	Rule 25(2)
CAA-11	Notice of approval of the scheme of merger	Rule 25(4)
CAA-12	Confirmation order of scheme of merger or amalgamation between Ms .. And Ms...	Rule 25(5)
CAA-13	Application by the Central Government to the tribunal	Rule 25(6)
CAA-14	Notice to dissenting shareholders	Rule 26
CAA-15	Information to be furnished along with circular in relation to any scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company	Rule 28

Meaning of Arrangements	A reorganization of the company share capital by -consolidation of shares of different classes - division of shares into shares of different classes
Who can raise objection	Persons holding not less than 10% of the shareholding Persons having o/s debt amounting not less than 5%
Meaning of Majority of persons in a meeting held in pursuance of section 230(1)	Three fourths in value
How to ensure compliance of Accounting standards prescribed under section 133	A certificate by the company auditor
Time period for Order to be filed with the registrar	Within a period of 30 days
Circumstances for calling of a meeting of creditors or class of creditors	At least 90% value, agree and confirm, by way of affidavit to the scheme
In case of listed companies, takeover offer shall be as per the regulations framed by	The SEBI
Provisions apply to	The companies registered under this act The companies incorporated in the jurisdiction of such countries as may be notified from time to time by the Central Government
Whether the Central Government can amalgamate two or more companies	Yes, where it is essential in the public interest that two or more companies should amalgamate
Form for making an application under section 230(1)	NCLT-1
Whether Minor can be appointed as a proxy	No

Companies (Registered valuers and Valuation) Rules, 2017

FORM A	Application for registration as a valuer by an individual	Rule 6(1)
FORM B	Application for registration as a valuer by a partnership entity	Rule 6(2)
FORM C	Certificate of registration	Rule 6(6)
FORM D	Application for recognition	Rule 13(1)
FORM E	Certificate of recognition valuers organization	Rule 13(5)

If Valuation is required valuer shall be appointed by	Audit committee or in its absence by the board of directors of that company
Valuer appointed by the company shall not	Undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets
Fine/Penalty if a Valuer contravenes the provisions of section 247	Not less than Rs. 25000 but which may extend to Rs. 1 lakh rupees
Section 247 intention to defraud the company or its members shall be punishable with fine	For a term which may extend to one year and with fine which shall not be less than Rs. 1 lakh rupees but which may extend to Rs. 5 lakh rupees
In case a valuer has been convicted under Section 247(3) of the companies act, 2013 treatment of professional fee received by him	He shall be liable to refund the remuneration He shall pay for damages to the company He shall pay for damages to any other person
Authority under Valuation Rules	Authority specified by The Central Government under section 458
Qualification and experience for an individual eligible for registration as a registered valuer	<ul style="list-style-type: none"> •Post graduate degree or post graduate diploma with 3 yrs exp •A bachelor degree or equivalent with 5 yrs exp •Membership of a professional institute with 3 yrs exp
Fee payable for registration as a registered valuer	A non refundable application fee of Rs 5000 in favour of the authority
Code of conduct of the registered valuer	Annexure I of the valuation rules
Who may constitute a committee to be known as “Committee to advise on valuation matters	The Central Government

The Companies (Removal of names of companies from the register of companies) Rules, 2016

STK-2	Notice by Registrar for removal of name of a company from the register of companies	Rule 3
STK-2	Application by company to ROC for removing its name of a company from the register of companies	Rule 3
STK-2	Application by company to ROC for removing the name from register of companies The application shall be signed by a director duly authorised by the board Certify the CA, Cs and CA in whole time practice	Rule 4(1)
STK-3	Indemnity Bond	Rule 4(3)
STK-4	Affidavit	Rule 4(3)
STK-5	Public Notice	Rule 7
STK-5A	Public Notice	Rule 7(1)
STK-6	Public Notice	Rule 7
STK-7	Notice of striking off and dissolution	Rule 9
STK-8	Statement of account	Rule 4(3)(ii)

<p>Circumstances when The registrar shall send a notice to the company and all directors of the company</p>	<p>A company has failed to commence its business within one year of its corporation A company is not carrying on any business or operation The subscribers to the memorandum have not paid the subscription</p>
<p>How Can a company suo moto file an application to the registrar for removing its name</p>	<p>By passing a special resolution after extinguishing all its liabilities By obtaining consent of 75% members in terms of paid up share capital</p>
<p>Order of the registrar, notifying a company as dissolved under section 248 may be filed</p>	<p>Within a period of 3 years from the date of the order of the registrar</p>
<p>Maximum time available to file an application before the tribunal by a company</p>	<p>Before the expiry of 20 years from the publication in the official gazette of the notice under section 248(5)</p>
<p>The registrar of companies may remove the name of a company from the register of companies in terms of section 248</p>	<p>Listed companies Companies that have been delisted due to non-compliance Companies where inspection or investigation is ordered and being carried out or actions</p>
<p>Fee paid while making an application for removal of name of the company</p>	<p>Rs 5000</p>
<p>If the persons is a foreign national or non resident indian, the indemnity bond,& declaration shall be</p>	<p>Notarised, Appostilised & Consularised</p>
<p>Manner of publication of notice under section 248(1) or (2)</p>	<p>Be published in english language in a leading english newspaper and at least once in vernacular language</p>

Punishment (Section 447 to 453)

<p>Section 177</p> <p>Amount of Fraud Rs.10 lakhs or more or 1% of turnover whichever is less</p> <p>In case Public Interest is involved</p>	<p>Fine:</p> <p>Min Fine:Amount of Fraud Max Fine:3 times the amount of fraud and Imprisonment: 6 months to 10 years.</p> <p>Fine:</p> <p>Min Fine: Amount of Fraud Max Fine:3 times the amount of fraud and Imprisonment:3 years to 10 years</p>
<p>Amount of Fraud less than Rs.10 lakhs or 1% of turnover whichever is less and does not involve public interest</p>	<p>Fine:Upto Rs.50 Lakhs or Imprisonment upto 5 years</p>

Punishment for false evidence	Shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and fine which may extend to ten lakh rupees
Section 451 Punishment in case of repeated default within a period of three years	Shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence
Section 450 Punishment where no specific penalty or punishment is provided	Shall be punishable with fine which may extend to ten thousand rupees. In case of a continuing contravention, Rs.1000 for every day after the first day.
Section 452 Punishment for wrongful withholding of property	Shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. To return the property or to undergo imprisonment which may extend to two years
Section 453 Punishment for improper use of limited or Private Limited	Shall be punishable with fine which shall not less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used

NCLT AND NCLAT (SECTIONS 407 434)

NCLAT

NCLAT-9	REGISTER SHALL BE MAINTAINED IN REGARD TO SPECIAL LEAVE PETITIONS OR APPEALS AGAINST THE ORDERS OF THE APPELLATE TRIBUNAL TO THE SUPREME COURT
NCLAT-8	WITNESS DISCHARGED BY THE APPELLATE TRIBUNAL MAY BE GRANTED A CERTIFICATE IN
NCLAT-7	THE DEPOSITION OF A WITNESS SHALL BE RECORDED IN WHICH FORM
NCLAT-6	THE APPELLATE TRIBUNAL MAY, SUO MOTU, ISSUE SUMMONS FOR PRODUCTIONS OF PEOPLE DOCUMENT OR OTHER DOCUMENTS IN THE CUSTODY OF A PUBLIC OFFICER
NCLAT-3	APPLICATION FOR INSPECTION OF RECORD
NCLAT-2	EVERY INTERLOCUTORY APPLICATION FOR STAY, DIRECTION, CONDONATION OF DELAY, EXEMPTION FROM PRODUCTION OF COPY OF ORDER APPEALED AGAINST OR EXTENSION
NCLAT-1	APPEAL SHALL BE PRESENTED BEFORE THE NCLAT

NCLT

Form	Particulars
NCLT-16	Recording The deposition of a witness
NCLT-10	An authorised representative desirous of registering his intern shall make a petition or an application to the registrar
NCLT-12	The authorised representative shall make an appearance through the filing of Vakalatnama or memorandum of appearance
NCLT-8	For Execution of order passed by the tribunal, the holder of an order shall make an application to the tribunal
NCLT-9	Any member has requested the company for inspection of minute book of general meeting on payment of requisite fee and the company refuse to give such inspection
NCLT-7	Every affidavit to be filed before the tribunal
NCLT-3A	Form for Any application, petition or reference required to be advertised, unless the tribunal otherwise orders, or these rules otherwise provide
NCLT-6	Affidavit to Every petition or application including interlocutory application
NCLT-5	Notice to be issued by the tribunal to the opposite party

NCLT

Forms	Particulars
NCLT-3	Attachments of interlocutory application
NCLT-1	Every petition or application or reference including interlocutory application
NCLT-2	Attachments to petition or application or reference
NCLT-4	The general heading in all proceedings before the tribunal, in all advertisement and notices
NCLT-3C	The lodging of caveat

NCLT

President Qualification	<p>It means the president of the tribunal</p> <p>He shall be a person who is or has been a judge of a high court for five years</p> <p>Hold office as such for a term of 5 years</p> <p>Shall hold office as such until the attains the age of 67 years and other member attain age of 65 years</p>
The Central Government	Shall constitute the National company law tribunal
Judicial Member	<ol style="list-style-type: none">1. A judge of a high court2. A district judge for at least five years3. At least 10 years been an advocate of a court
Technical member	<ol style="list-style-type: none">1. Proven ability, integrity and standing having special knowledge and experience of not less than 15 years2. In law, industrial finance, industrial reconstruction, industrial management or administration3. Investment, accountancy, labour matters or such other disciplines related to management, conduct of affairs, revival
No of members	Not exceeding 11
Eligible criteria of age	50 years and above

NCLT

Principal bench of tribunal	At New Delhi
Decision	If the members of a bench differ in opinion on any point, it shall be decided according to the majority
Amendment	Within 2 years from the date of the order
Appeal	The appellate tribunal
Days	Within a period of 45 days
Not file appeal before the AT	Within a further period not exceeding 45 days
Time for disposal of such application or petition or appeal	Within three months from the date of its presentation
In case Petition or appeal is not disposed of within the period of three months extension can be granted for a period of	Not exceeding 90 days

NCLT

Place of service of order in case of an order against a company	The registered office of the company is situated
Place of service of an order In case of an order against a person	Where the persons concerned voluntarily resides, carries on business and personally works for gain
The President/Chairperson ,Members officers and the Employees of the Tribunal/Appellate Tribunal are deemed to be	Public servants within the meaning of section 21 of the indian penal code
A party to any proceeding or appeal before the tribunal	As the case may be, may either appear in person or authorize one or more CA, CS and Cost accountants
Provision of Limitation act, 1963	Apply to proceedings or appeals
Sitting hours	From 10:30 am to 1:00 pm and 2:00pm to 4:30 pm subject to any order made by the president
Office shall remain open	On the day of main indian festivals like Holi, Diwali, Eid, Christmas.
Working hours	It shall remain open on all working days from 9:30 am to 6:00 pm
Filing counter of the registry open time	From 10:30 am to 5:00 pm

NCLT

Authority to decide the calendar of days of working of the Tribunal	President of the tribunal
Language and date on the appeal or petition or application or caveat petition or objection	English or a translated copy in case in Hindi or other regional language Gregorian calendar or corresponding date as per Gregorian Calendar in case Saka or other dates are used
Number of copies the appellant or petitioner	3 copies and shall Deliver one copy to each of the opposite party
Preservation of All necessary documents and records	For a period of a 5 years
The record of the petitions or applications and decisions passed	Shall be maintained by registry for a period of 15 years after the passing of the final order
The documents shall be marked	By the appellant or petitioner side as A series, by the respondent side as B series and the tribunal exhibits as C series
Witness called by the applicant numbered as	PWs
Witness called by the respondent numbered as	RWs
The certified copy of the order passed	Form INC 28

NCLAT

Headed by a Chairperson	Shall hold office for a term 5 years and till completion of age of 70 years Eligible for re-appointment for another term of 5 years and age of 67 years
Appeal against any order Days In case appeal Not filed before the supreme court	To the supreme court Within a period 60 days Within a further period not exceeding 60 days
NCLAT Shall not while disposing of any proceeding before it	As the case may be, an appeal before it, be bound by the procedure laid down in The code of civil procedure, 1908
In case of an order against a company	At The registered office of the company is situated
In case of an order against a person	Where The persons concerned voluntarily resides, carries on business and personally works for gain

NCLAT

A party to any proceeding or appeal before the appellate tribunal	As the case may be, may either appear in person or authorize one or more CA, CS and Cost accountants
Provision of Limitation act, 1963	Apply to proceedings or appeals
Custody of records	The registrar
Holds its sitting	New Delhi
Sitting hours	Ordinarily from 09:30am to 01:00 pm and from 02:15 pm to 05:00 pm
Office shall remain open	09:30 am to 6:00 pm
Filing counter of registry	10:30 am to 05:00 pm
Decision regarding calendar of days	The chairperson of the appellate tribunal
All urgent matters filed before 12 noon shall be listed	On the following working days

Special courts (Sections 435 to 446)

Powers to establish special courts	The Central Government
Person conducting a prosecution before a special court shall be deemed to be	A public prosecutor
Every offence under the companies act, 2013 except the offence referred to in section 212(6) shall be deemed to be	Non-cognizable. Note: Cognizable Offences are covered in Section 447 covering a fraud of Rs. 10 Lakhs or 1% turnover .
Punishment for Any officer failing to comply with any order	Six months, or with fine not exceeding one lakh rupees, or with both Shall not be compoundable
The Central Govt. may appoint one or more persons for Conduct of prosecutions arising out of this Act	Company prosecutors
Provisions of section 250 of code of criminal procedure,1973 shall apply mutatis mutandis to	The special court and The court of session

<p>The panel of mediator or conciliator prepared by Shall be placed on the website of Application for empanelment in form</p> <p>Updation of panel</p>	<p>Regional director The ministry of corporate affairs MDC-1.Applications to be invited in February. 1st April of every year</p>
<p>Qualifications to be empanelled as mediator or conciliator if he</p>	<p>Judge of the Supreme Court,High Court or District and Sessions Judge</p>
<p>Shall not be disqualified from being empanelled as mediator or conciliator if he</p>	<p>Is a discharged insolvent or has applied to be adjudicated as an insolvent and his application in pending</p>
<p>Duty of Disclosure about any circumstances which might impact his impartiality or independence</p>	<p>The Central Government, The tribunal and The appellate tribunal</p>
<p>The mediator or conciliator</p>	<p>Shall not be bound by the Indian evidence act, 1872 or code of civil procedure, 1908</p>

Chapter-XX Winding up of the Companies

Section 271:Grounds for winding up of a Company	<ol style="list-style-type: none">1) Company has passed special resolution2) Company has acted against the interest of the sovereignty and integrity of India , decency ,morality etc3) If on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or there was a fraud in formation/management of the company
Section 272:Petition for Winding up of a company	<ol style="list-style-type: none">1) The Company2)The contributory3)The Registrar4)Any person authorized by Central Govt.
Section 274:Penal provision against the director/officer in case of failure to complete accounts and audit	Punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs. 25000 but which may extend to Rs. 5 lakh or with both
Section 275:Who may be Appointed as the	The Insolvency professionals

Section 277: Intimation of Passing of winding up order or appointment of provisional liquidator	Within a Period not exceeding 7 days
Section 277: Within three weeks from the date of passing of winding up order, Company liquidator shall make an application to the tribunal for	Constitution of a Winding up committee and monitor the progress of liquidation
Section 277: Composition of Persons in Winding up Committee	<ol style="list-style-type: none"> 1) Official liquidator attached to the Tribunal 2) Nominee of secured creditors 3) A professional nominated by the Tribunal
Section 278: Order for the winding up of a company shall operate in Favour of	All the creditors and All contributories as if made on their joint petition
Section 279: Effect of passing of order of winding up or appointment of a provisional liquidator	<ol style="list-style-type: none"> 1) No suit or Other legal proceeding shall be commenced 2) If Other legal proceedings are pending at the date of the winding up order, it can be proceeded with, by or against the company only with the leave of the tribunal. 3) No effect on the proceeding pending in Appeal before the Supreme court or a High court

<p>Section 280:Jurisdiction of the Tribunal</p>	<ol style="list-style-type: none"> 1) To entertain proceeding by or against the company. 2) Any claim made by or against the company 3) Any application made under section 233 (merger and amalgamation) or any question of priorities
<p>Section 281:Submission of report by the company liquidator to the Tribunal</p>	<p>Within 60days from the order</p>
<p>Section 284:Non co-operation by company or officers with Company liquidator</p>	<p>Imprisonment which may extend to 6 months or with fine which may extend to Rs. 50000, or with both</p>
<p>Section 287:Composition of the advisory committee appointed by the Tribunal</p>	<ol style="list-style-type: none"> 1) Not more than 12 members ,being creditors and Contributories after a meeting convened by Company liquidator or such other person in such proportion as the Tribunal may direct
<p>Section 288:Periodicity of submission of report by the Company liquidator</p>	<p>Quarterly Report</p>
<p>Restriction on power of company liquidator</p>	<ol style="list-style-type: none"> 1) To raise loan from the financial institution for further expansion

Pari Passu chart of creditor and security
Security **Workmen dues** **Secured Creditors**
Rs. 100000 **Rs. 100000** **Rs. 300000**
Aggregate amount Rs. 400000

Workmen portion is One Fourth the value of the security

Order of payment of dues under section 327(1)

- 1) Revenue and taxes due from Central Government/state Government and payable within the 12 months
- 2) All wages and salary payable within a period not exceeding 4 months within the 12 months
- 3) All accrued holiday remuneration becoming payable
- 4) Amount due on death or disablement of any employee
- 5) Provident fund and Pension fund due
- 6) Expenses of investigation

Section 329: Transfer of property, movable or immovable or any other delivery not made in the ordinary course of its business or in favour of purchaser not to have affect

Void against the company Liquidator

<p>Section 334:In case of Winding up by the Tribunal, any disposition of the property including actionable claims after the commencement of winding up shall be</p>	<p>Void</p>
<p>Section 335:Where any company is being wound up by the Tribunal, any attachment, distress or execution put in force shall be</p>	<p>Void</p>
<p>Section 337:Every officer of a company who is found guilty of transfer of documents or alienation of property shall be</p>	<p>Imprisonment one year to 3 years and fine 1 lakh to 3 lakh</p>
<p>Section 344:Where a company is wounding up, every invoice, order, business letter etc shall contain a statement that</p>	<p>The company is wounding up</p>
<p>Penal provision, if a company contravenes of section 344(1)-To company, officer and liquidator</p>	<p>He shall be punishable with fine which shall not be less than Rs. 50000 rupees but which may extend to Rs. 3 lakh rupees</p>
<p>Winding up of a company by the Tribunal under the Companies Act, 2013 shall be deemed to commence</p>	<p>At the time of the presentation of the petition for the winding up</p>

Section 359:Appointment of Official liquidator made by	The Central Government
Section 361:The Central Government may order for winding up of company by summary procedure in case	The company has assets of book value not exceeding Rs. 1 crore
Section 362:The official Liquidator shall expeditiously dispose of all assets	Within 60 days of his appointment
Section 362:The official liquidator shall serve a notice to the debtors/contributories to deposit the amount due	Within 30 days
Section 363:Time available with a creditor aggrieved by the decision of the official liquidator under section 363 to file an appeal before the Central Government	Within 30 days of such decision

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

- Basic Facts:-
- ✓ LLP is a body corporate
- ✓ LLP is a legal entity separate from that of its partners
- ✓ LLP shall have perpetual succession
- ✓ Any change in the partners of LLP shall not affect the existence, rights or liabilities partnership
- ✓ LLP shall be governed by the provision of the LLP Act, 2008
- Any individual or body corporate can be a partner in a limited liability partnership:
- An individual shall not be capable of becoming a partner of a limited liability partnership, if:
 - ✓ He has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force
 - ✓ He is an un discharged insolvent
 - ✓ He has applied to be adjudicated as an insolvent and his application is pending

- ❑ An HUF cannot become partner in LLP:
- ❑ **At least two** partners are required to form LLP
- ❑ If the number of partners of a LLP is reduced below two and the LLP carries on business for **More than six months** while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business shall be liable personally for the obligations of the limited liability partnership incurred during that period:
 - ❑ **At least two designated partners** are required in LLP
 - ❑ Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Section 7(1)
 - ❑ In an LLP where all the partners are bodies corporate, nominees of such bodies corporate shall act as designated partners
 - ❑ A limited liability partnership shall file with the registrar the particulars of every individual who has given his consent to act as designated partner within thirty days of his appointment.

- ❑ A limited liability partnership may appoint a designated partner **Within thirty days** of a vacancy arising for any reason
- ❑ Section 7 (1) of the LLP Act 2008, provides that every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India

If any LLP contravenes the said the LLP and its every partner shall be punishable with fine. The punishment is:

- ✓ The LLP and its every Partner shall be punishable with fine which shall not be less than 10,000 rupees but which may extend to 5lakh rupees
- ❑ Designated partnership identification number (DPIN) means an identification number which the Central Government may allot to any individual intending to be appointed as designated partner of LLP
- ✓ It includes directors identification number issued under section 266A, 266B and 266E of the companies act, 1956 and rules made there under
- ❑ Every LLP registered with the registrar shall be assigned a LLP identification number in one consecutive series and is called **LLPIN**

- A person shall not be capable of being appointed as a designated partner of a LLP , If he:
 - ✓ as at any time within the preceding 5 years have been adjudged insolvent
 - ✓ Suspends, or has at any at time within the preceding five years suspended payment to his creditor and has not at any time within the preceding five years made, a composition with them
 - ✓ Has been convicted by a court for any offence involving moral turpitude and sentenced in respect thereof toe imprisonment for not less than six month or has been convicted by a court for an offence involving section 30 of the act.

SECTION (22 TO 25)

- Who shall be treated as partners of LLP:
 - ✓ The persons who subscribed their names to the incorporation document at time of the incorporation of a limited liability partnership
 - ✓ Any other person may become a partner of the limited liability partnership by and in accordance with the limited liability partnership agreement
- In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter, they are set out in **First Schedule**
- A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of **Not less than 30 days** to the others partners of his intention to resign as partner

- ❑ Cessation of partner of a limited liability partnership:
 - ✓ On his death or dissolution of the limited liability partnership
 - ✓ If he is declared to be of unsound mind by a competent court
 - ✓ If he has applied to be adjudicated as an insolvent or declared as an insolvent
- ❑ Every partner shall inform the limited liability partnership of any change in his name or address within a period of 15 days of such change. If any partner contravenes this provisions such partner shall be punishable with fine which shall not be less than 2000 rupees but which may extend to 25000 rupees
- ❑ A limited liability partnership shall, where a person becomes or ceases to be a partner and where there is any change in the name and address of the partner, file a notice with the registrar within 30 days from the date he becomes or ceases to be a partner
- ❑ If the LLP contravenes the provisions of section 24 (2), which relates to the information to the registrar about any changes of cessation of partner and change in the name and address of the partner, the LLP and every designated partner of the LLP shall be punishable with fine which shall not be less than 2000 rupees but which may extend to 25000 rupees

Section (26 to 31)

- ❑ Every partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership:
 - ✓ The agent of the limited liability partnership, but not of other partners
- ❑ The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority
- ❑ A partner is not personally liable, directly or indirectly for an obligation referred to in sub section(3) of section 27 solely by reason of being a partner of the limited liability partnership
- ❑ The court or Tribunal may reduce or waive penalty leviable against any partner or employee of LLP if it is satisfied that:
 - ✓ Such partner or employees of a LLP has provided useful information during investigation of such LLP
 - ✓ When any information given by any partner or employee(whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this act or any other act

Sections (26 to 31)

- The LLP shall maintain proper books of account relating to its affairs for each year of its existence :
 - ✓ Cash basis
 - ✓ Accrual basis
 - ✓ Double entry system of accounting
- The LLP shall maintains books of accounts **At its registered office**
- Designated partners** shall prepare and sign the statement of account and solvency prepared by the LLP **Within a period of six months** from the end of each financial year .The statement of account and solvency is required to be filed by the LLP with **The registrar**
- Every LLP shall keep books of account, which shall contain:
 - ✓ Particulars of all sums of money received and expended by the LLP and the matters in respect of which the receipt and expenditure takes place
 - ✓ A record of the assets and liabilities of the LLP
 - ✓ Statement of cost of goods purchased inventories, work-in-progress, finished goods and cost of goods sold

- ❑ Penal provisions for LLP, if any LLP fails to comply with the provisions of section 34 (which relates to the maintenance of books of accounts, other records and audit:
- ❑ The LLP shall be punishable with fine which shall not be less than Rs 20000 but which may extend to Rs 500000
- ❑ Penal provisions for designated partners . If any LLP fails to comply with the provisions of section 34 (which relates to the maintenance of books of accounts, other records and audit ,every designated partner of such LLP shall be punishable with fine which shall not be less than Rs 5000 but which may extend to Rs 100000
- ❑ LLP shall file annual return with the registrar **Within 60 days of closure of its financial year**
- ❑ Penal provisions for the LLP, if any LLP fails to comply with the provisions of section 35 which deals with the filing of the annual return with the registrar:
- ✓ The LLP shall be punishable with fine which shall not be less than Rs 25000 but which may extend to Rs 5 lakh
- ❑ Penal provisions for the designated partner LLP, if any LLP fails to comply with the provisions of section 35 which deals with the filing of the annual return with the registrar:
The designated partners of the LLP shall be punishable with fine which shall not be less than Rs 10000 but which may extend to Rs 100000

- ❑ Incorporation documents, names of partners and charges, any statement of account and solvency and annual return filed with the registrar can be inspected by any persons on payment of the prescribed fee
- ❑ Penalty for the false statement made by the LLP in any return, statement of other documents required by or for the purposes of any of the provisions of the LLP act:
 - ✓ The person concerned shall be punishable with imprisonment for a term which may extend to 2 years and shall also be liable to fine which extend to Rs 5 lakh but which shall not be less than Rs 1 lakh
- ❑ Penal provisions, if any person who, without lawful excuse, fails to comply with any summons or requisition of the registrar under section 38, which deals with the powers of registrar to obtain information:
 - ✓ The person concerned shall be punishable with fines which shall not be less Rs 2000 but which extend to Rs 25000
- ❑ **The Central Government** is the authority to grant compounding of offence under the LLP
- ❑ The books of accounts which a LLP is required to keep shall be preserved for a period of **8 years**

- The audit of accounts of every LLP is not compulsory if its **turnover does not exceed, in any financial year, Rs 40 lakh, or whose contribution does not exceed Rs 25 lakh**
- The designated partners may appoint an auditor and auditors:
 - ✓ At any time for the first financial year but before the end of the first financial year
 - ✓ At least 30 days prior to the end of each financial year
 - ✓ To fill a casual vacancy in the office of auditor, including in the case when the turnover or contribution of a LLP exceeds the limits specified under rule 24 (8) of the LLP rules, 2009 or to fill up the casual vacancy caused by the removal of an auditor
- The designated partners may appoint auditor, but if the designated partners fails to appoint the auditor, then other partners of LLP will make the appointment
- An auditor or auditors of an LLP shall hold office in accordance with the terms of his or their appointment and shall continue to hold such office till the period:
 - ✓ The new auditors are appointed
 - ✓ They are re-appointed
- The designated partners shall fix the remuneration as per the procedure laid down in the LLP agreement
- Removal of the auditors from his office:

- ✓ The partners of the LLP may remove an auditor from office at any time by following the procedure as laid down in the LLP agreement
- ✓ Where the LLP agreement is silent on the issue, consent of all the partners shall be required for removal of the auditors from his office
- ❑ Where an auditor is unwilling to be reappointed, he shall give a notice in writing to that effect at the LLP registered office not less than 14 days before the end of the time allowed for appointing the new auditor, along with the statement of circumstances connected with his ceasing to hold office
- ❑ The annual return of an LLP having turnover upto 5 crore rupees during the corresponding financial year or contribution upto 50 lakh rupee shall be accompanied with a certificate from a designated partner, other than the signatory to the annual return that it contains true and correct information. In all other cases, the annual return shall be accompanied with a certificate from a Company secretary in practice to the effect that he has verified the particulars from the books and records of the LLP and found them to be true and correct
- ❑ For filling registering or recording notice of appointment, cessation, change in name, address, designation of a partner or a designated partner, information of designated partner identification number and consent to become a partner or designated partner in form 4, fee is Rs.50.
- ❑ For inspection of documents, fees is Rs.50
- ❑ The fee for obtaining certified copy is Rs 5 per page or fractional part thereof

Forms

In terms of section 23 (2) of the LLP act, 2008, every LLP shall file information with regard to the LLP agreement in the prescribed form, with the registrar within thirty days of the date of information	Form 3
In terms of section 25 (2), every partner shall intimate change in his name or address to the LLP	Form 6
In terms of section 25 (2), when a partner becomes or ceases to be a partner or where there is any change in the name or address of a partner	Form 4
In term of section 7 (3), an individual shall give his prior consent to act as a designated partner to the limited liability partnership	Form 9
In term of section 7 (4) the particular shall of an individual who has given his consent to act as a designated partner	Form 4
LLP shall file the statement of account and solvency in the prescribed form	Form 8
LLP shall file the statement of account and solvency	Form 8
LLP shall file its annual return	Form 11

Fee chart for filing registration fee or filing fee

Contribution	Registration Fee	Filing fee
Does not exceed 1 lakh	500	50
Exceeds 1 lakh but does not exceeds 5 lakh	2000	100
Exceeds 1 lakh but does not exceeds 10 lakh	4000	150
Exceeds 10 lakh	5000	200

Fee chart for filing of statement of a/c and solvency

Contribution	Filing fee paid to the registrar for filing of statement of a/c and solvency
Does not exceed 1 lakh	50
Does not exceed 5 lakh	100
Does not exceed 10 lakh	150
Exceed 10 lakh	200