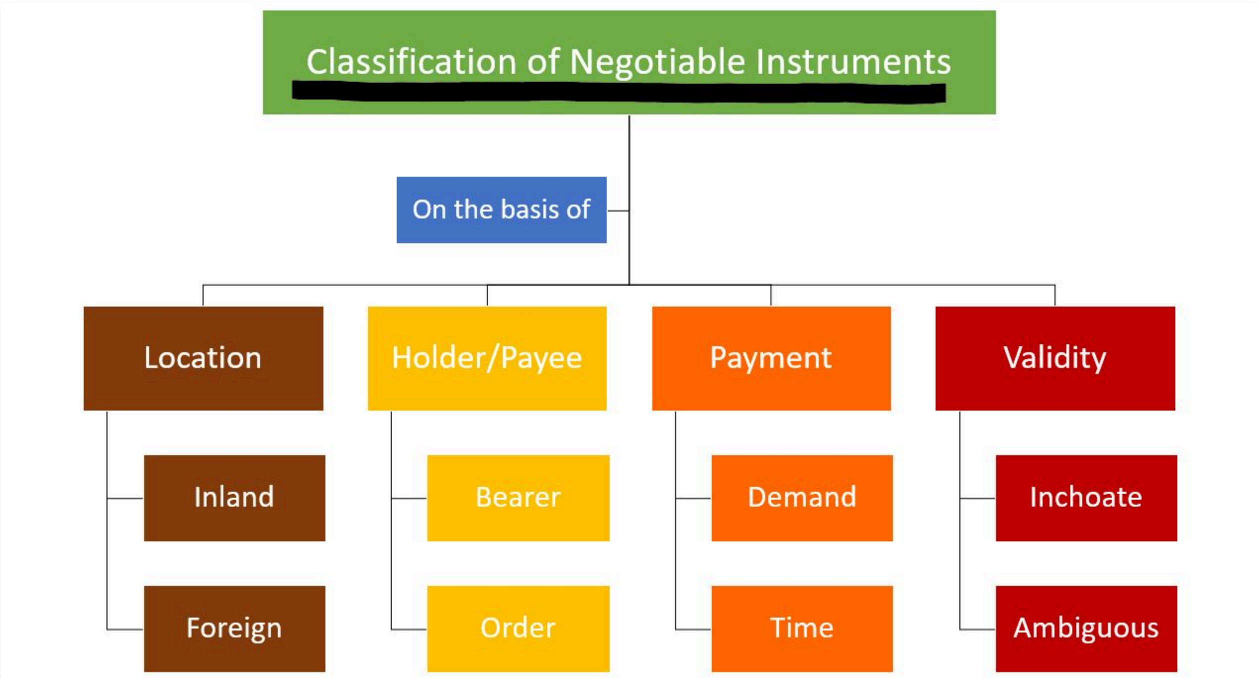
Auditing Course Material

Part 44 of 61 (Chapters 4301-4400)

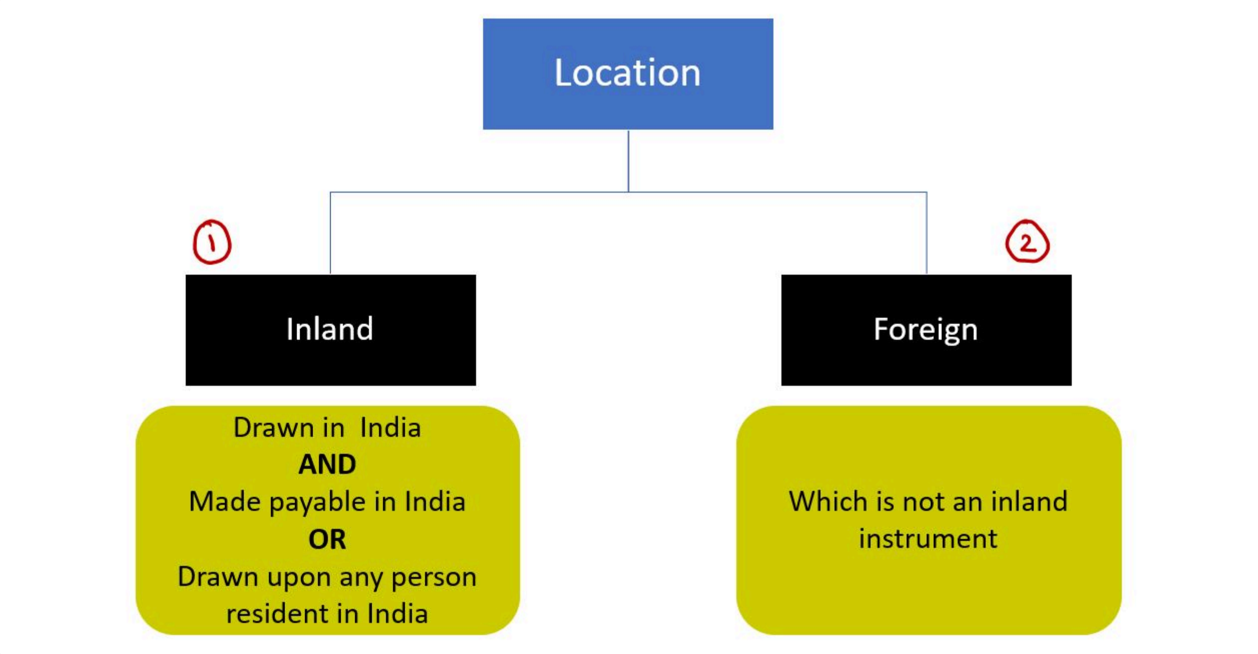
7. Classification of Negotiable Instruments

Negotiable Instruments can be classified as follows.
I. On the basis of Location
II. On the basis of Holder/ Payee
III. On the basis of Payment
IV. On the basis of Validity.



These are explained next.

7. Classification of Negotiable Instruments



On the basis of location, the negotiable instruments can be classified as follows.

Inland Instrument

A promissory note, bill of exchange or cheque (a) drawn or made in India and (b) made payable in, or (c) drawn upon any person resident in India, shall be deemed to be an inland instrument.

It means an instrument satisfying necessarily basic condition (a) along with either of (b) or (c) condition stated above, shall be termed as Inland Instrument. It also means, if basic condition (a) is not satisfied, then, the instrument would not be termed as Inland Instrument.

For example, (i) a promissory note made in Kolkata and payable in Mumbai; (ii) a bill drawn in Varanasi on a person resident in Jodhpur (although it is stated to be payable in Singapore).

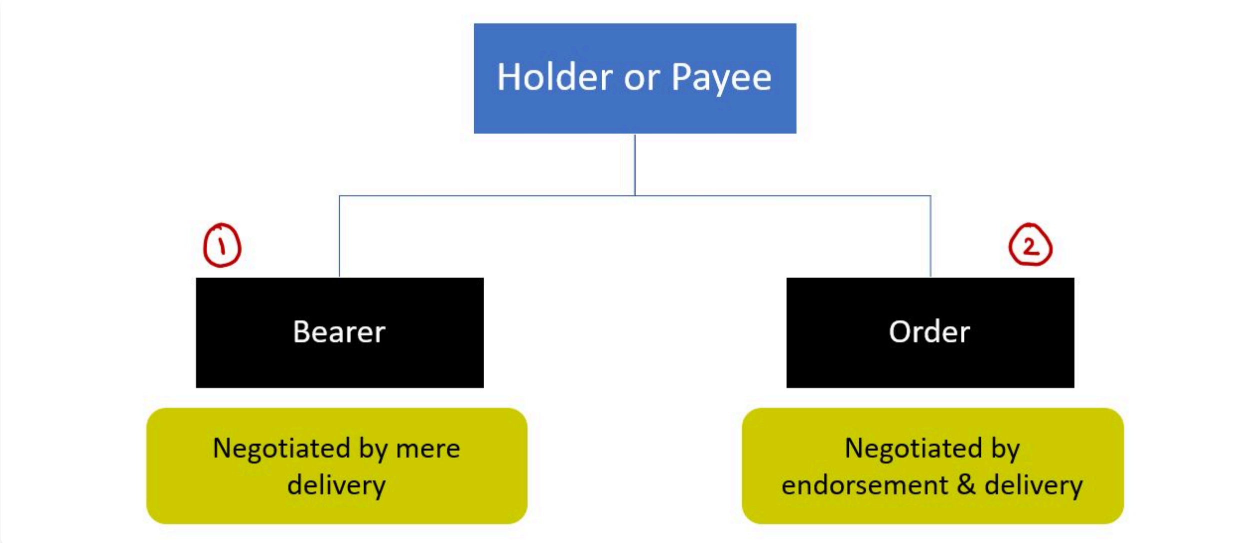
Foreign Instrument

Every instrument that is not an inland instrument automatically becomes a foreign instrument. These instruments are drawn in a foreign country, but may be payable within or outside India. They may even originate in India but only for payment to a person who resides abroad.

Following are considered as foreign bills:

1. Bills drawn outside India on a person resident in or outside India and made payable in India;
2. Bills drawn outside India on a person residing outside India and payable in India or outside India;
3. Bills drawn outside India on a person residing in or outside India and payable outside India.

7. Classification of Negotiable Instruments



On the basis of holder or payee, the negotiable instruments can be classified as follows.

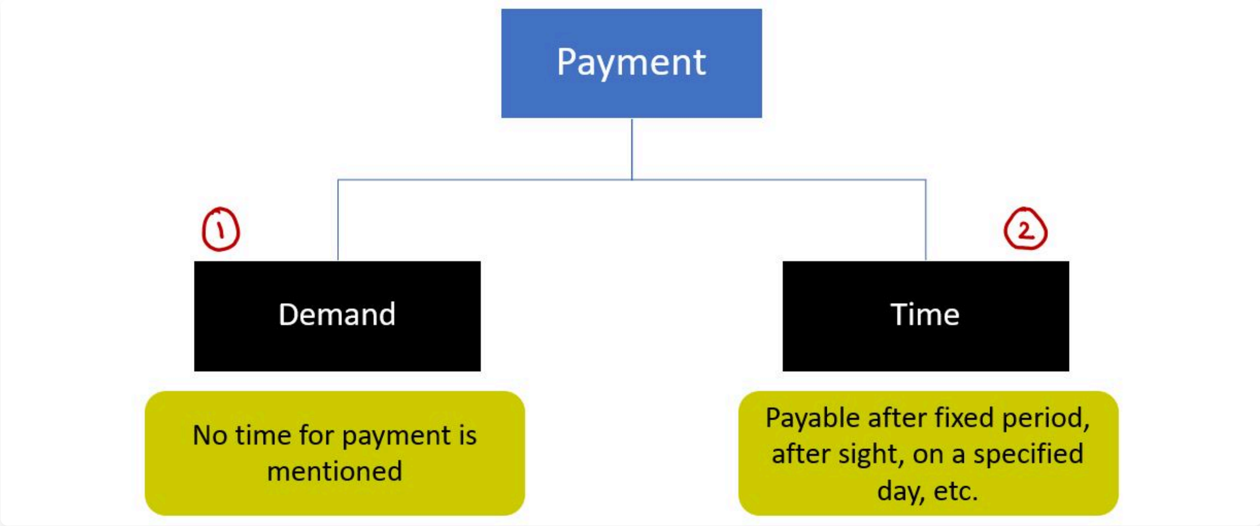
Bearer Instrument

It is an instrument where the name of the payee is blank or where the name of payee is specified with the words "or bearer" or where the last endorsement is blank. Such instrument can be negotiated by mere delivery.

Order Instrument

It is an instrument which is Payable to a person or his order or Payable to order of a person or where the last endorsement is in full, such instrument can be negotiated by endorsement and delivery.

7. Classification of Negotiable Instruments



On the basis of payment, the negotiable instruments can be classified as follows.

Demand Instruments

A promissory note or bill of exchange in which no time for payment is mentioned, is payable on demand.

Bills and notes are payable either on demand or at a fixed future time. Cheques are always payable on demand.

A bill or promissory note is also payable on demand when it is expressed to be payable on demand, or “at sight” or “presentment”.

The expression “after sight” means, in a promissory note, after presentment for sight, and, in a bill of exchange, it means after acceptance, or noting for non-acceptance, or protest for non-acceptance.

Time instruments

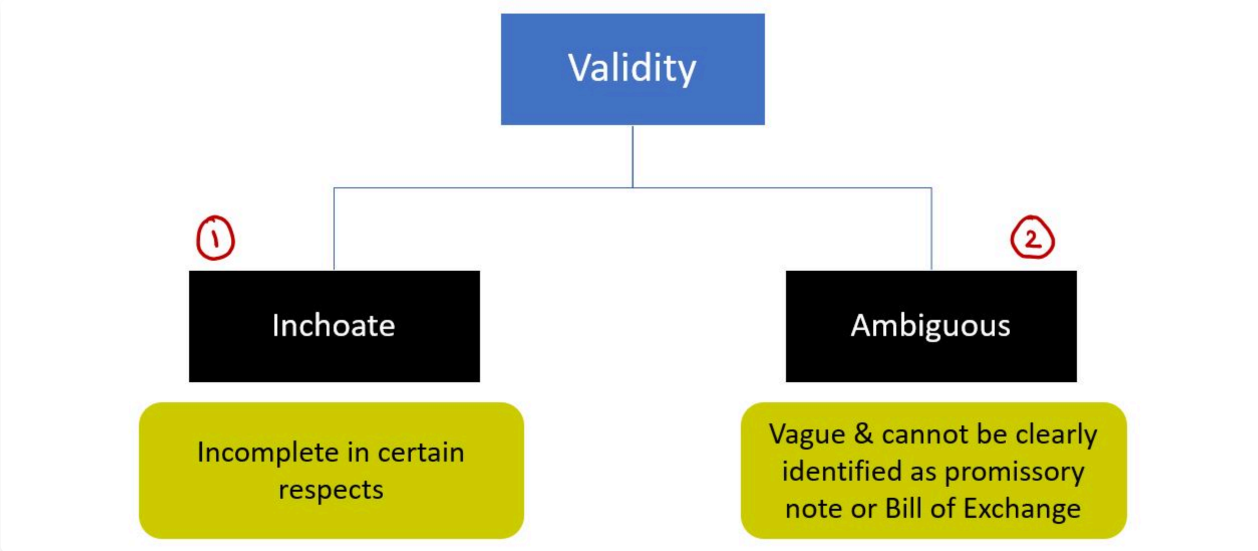
A bill or note which is payable:
(i) after a fixed period or
(ii) after sight or
(iii) on a specified day or
(iv) on the happening of an event which is certain to happen;
is known as time instrument.

What is 'Noting' and 'Protest'

The term ‘Noting’ means when a promissory note or bill has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public. Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, and the notary's charges.

The term ‘Protest’ means when a promissory note or bill has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

7. Classification of Negotiable Instruments



On the basis of validity, the negotiable instruments can be classified as follows.

Inchoate Instrument

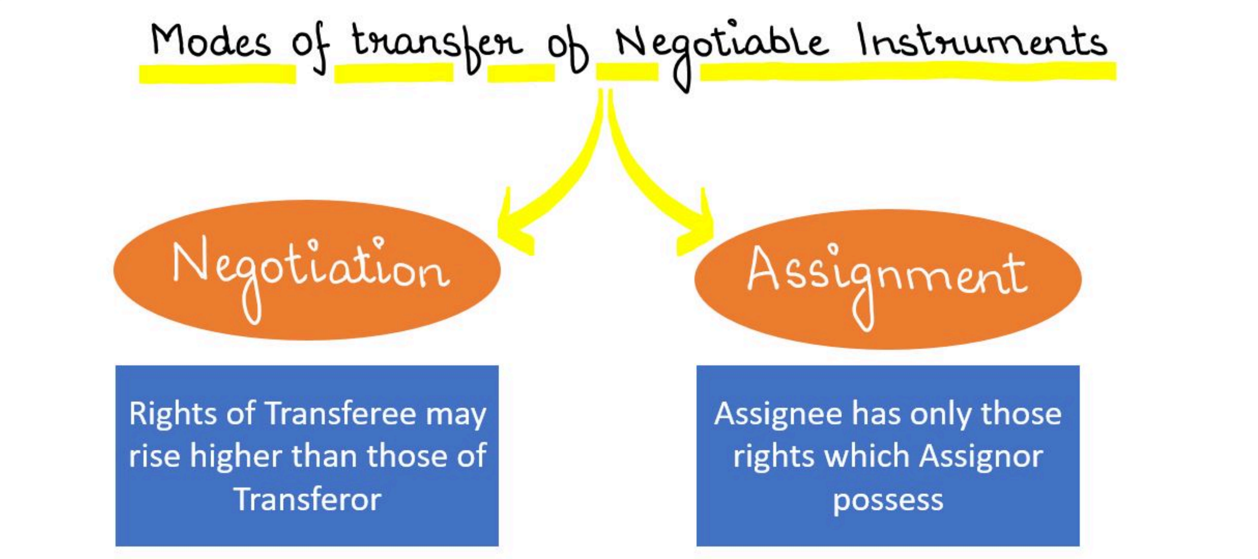
It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ endorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word 'incomplete'. Such an instrument is called an 'inchoate instrument' and this gives a power to its holder to make it complete by writing any amount either within limits specified therein or within the limits specified by the stamp affixed on it.

Ambiguous Instrument

An instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument. In other words, such an instrument may be construed either as a promissory note, or as a bill of exchange. Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly. Thus, after exercising his option, the holder cannot change that it is the other kind of instrument.

8. Modes of Transfer of Negotiable Instrument

A negotiable instrument may be transferred by negotiation or assignment.



When a negotiable instrument is transferred by negotiation, the rights of the transferee may rise higher than those of the transferor, depending upon the circumstances attending the negotiation.

When the transfer is made by assignment, the assignee has only those rights which the assignor possessed. In case of assignment, there is a transfer of ownership by means of a written and registered document.

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8. Modes of Transfer of Negotiable Instrument

One of the essential characteristics of a negotiable instrument is that it is freely transferable from one person to another. The rights in a negotiable instrument can be transferred from one person to another by negotiation.

The method of negotiation depends on whether the negotiable instrument is payable to bearer or payable to order. If it is payable to bearer, delivery alone is sufficient. If it is payable to order, both indorsement and delivery are required.

These modes of Negotiation are discussed next.

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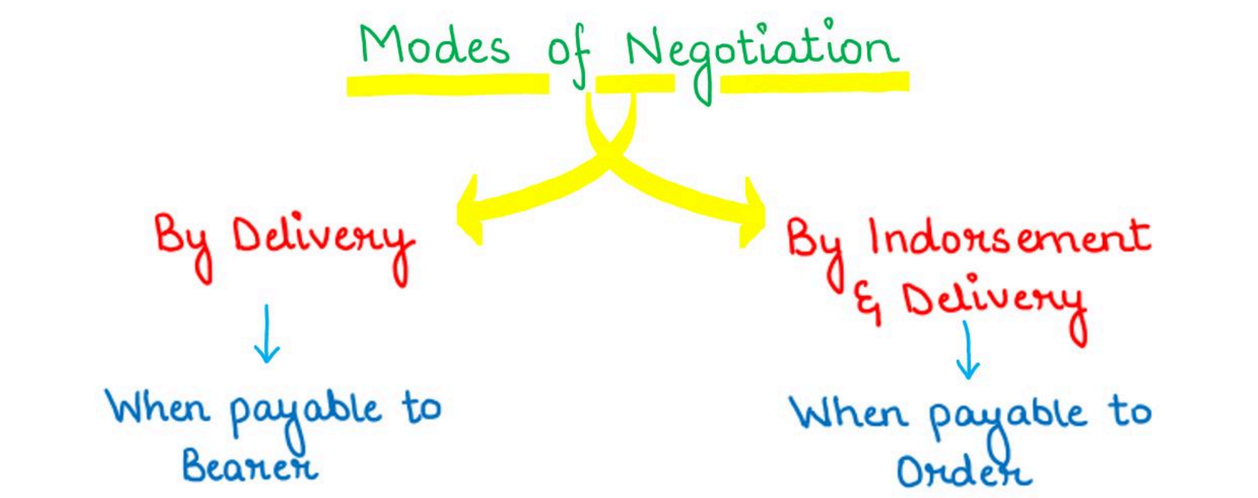
8. Modes of Transfer of Negotiable Instrument

According to Section 14 of the Act, when a negotiable instrument is transferred to any person with a view to constitute the person holder thereof, the instrument is deemed to have been negotiated. Thus, there is a transfer of ownership of the instrument.



Negotiable instruments may be negotiated either:

- by delivery (actual or constructive), when these are payable to bearer, or
- by indorsement and delivery, when these are payable to order.

Importance of Delivery in Negotiation

Delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered.

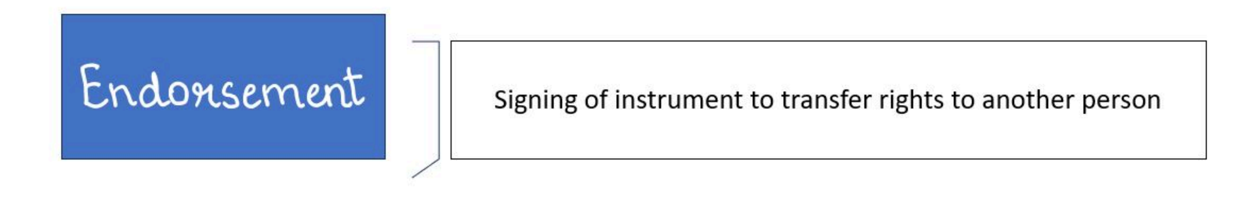
The delivery can be actual or constructive.

Actual delivery takes place when the instrument changes hands physically.

Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the endorsee on his behalf or when the endorser, after endorsement, holds the instrument, as an agent of the endorsee.

The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the endorsee unless after the endorsement, the same has been delivered. If a person makes the endorsement of instrument but before the same could be delivered to the endorsee, the endorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof.

Meaning of Endorsement



When the maker or holder of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, known as allonge (a French word meaning a slip of paper attached to give room for further endorsements); he is said to endorse the same and called as the **endorser**. The person to whom the instrument is endorsed is called the **endorsee**.

The endorsement, therefore, means, signatures of the person which are generally made at the back of the instrument, for the purpose of negotiation, i.e., transfer of rights to another person. The signature may also be on the face of the instrument. No particular form of words are necessary for an endorsement.

If the endorser signs his name only, **the endorsement is said to be in blank**, and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, **the endorsement is said to be in full**, and the person so specified is called the "endorsee" of the instrument.

8. Modes of Transfer of Negotiable Instrument

Assignment is governed by 'Transfer of Property Act, 1882'. When a holder of a bill note or cheque transfers the same to another, he in fact gives his right to receive the payment of the instrument to the transferee. Thus, in assignment, the benefit of a contract can only be assigned, but not the liabilities thereunder. This is because when liability is assigned, a third party gets involved therein. Thus, a debtor cannot relieve himself of his liability to creditor by assigning to someone else his obligation to repay the debt.

The main feature of assignment is that the assignee obtains the right of the assignor. Therefore, if the assignor's title is defective, assignee's title will also be defective.

8. Modes of Transfer of Negotiable Instrument

A transfer by negotiation differs from transfer by assignment in the following respect.

(a) Negotiation requires mere delivery of a bearer instrument and endorsement and delivery of an order instrument to effectuate a transfer. Assignment requires a written document signed by the transferor.

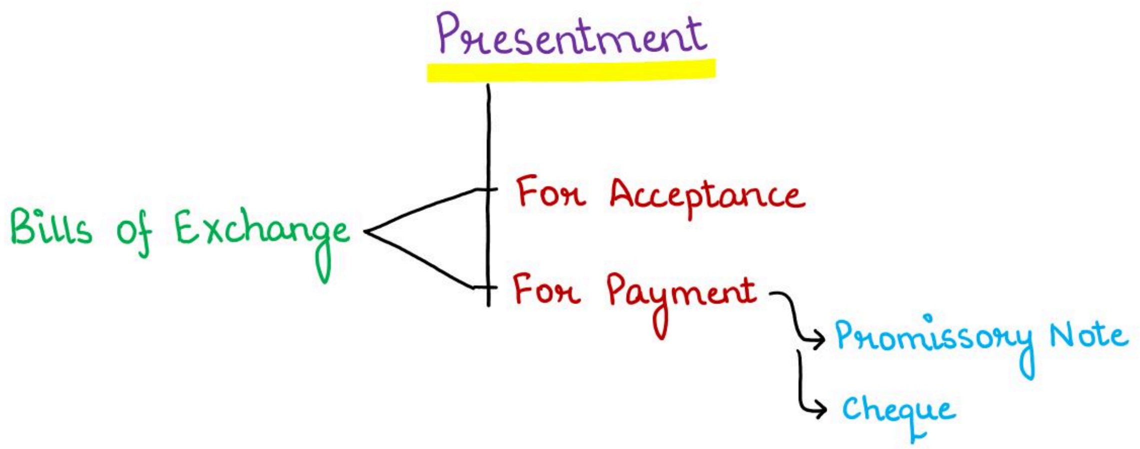
(b) Notice of transfer of debt (actionable claim) must be given by the assignee to the debtor in order to complete his title; no such notice is necessary in a transfer by negotiation.

(c) On assignment, the transferee of an actionable claim takes it subject to all the defects in the title of the assignor, even though he took the assignment for value and in good faith. In case of negotiation, the transferee, as holder-in-due course, takes the instrument free from any defects in the title of the transferor.

(d) In negotiability, consideration is presumed while in assignment, it has to be proved.

9. Presentment

Presentment means showing the instrument to the drawee, acceptor or maker for acceptance, sight or payment.



Kinds of Presentment

There are 3 kinds of presentments.

1. Presentment of bills of exchange for acceptance.
2. Presentment of promissory notes for sight.
3. Presentment of negotiable instrument for payment.

It is only bills of exchange that require ‘presentment for acceptance’ and even those of certain kinds only. Bills payable on demand or on a fixed date need not be presented. Thus, a bill payable 60 days after due date on the happening of a certain event may or may not be presented for acceptance.

But the following bills must be presented for acceptance otherwise, the parties to the bill will not be liable on it:
(a) A bill payable after sight. Presentment is necessary in order to fix maturity of the bills; and
(b) A bill in which there is an express stipulation that it shall be presented for acceptance before it is presented for payment.

Persons to whom bills of exchange should be presented

Following are the persons to whom a bill of exchange should be presented.
(i) The drawee or his duly authorised agent.
(ii) If there are many drawees, bill must be presented to all of them.
(iii) The legal representatives of the drawee, if drawee is dead.
(iv) The official receiver or assignee of insolvent drawee.
(v) To a drawee in case of need, if there is any. This is necessary when the original drawee refuses to accept the bill.
(vi) To the acceptor for honour. In case the bill is not accepted and is noted or protested for non-acceptance, the bill may be accepted by the acceptor for honour. He is a person who comes forward to accept the bill when it is dishonoured by non-acceptance. For example, Rahul's bill of exchange drawn on Priya is dishonored. To preserve Rahul's reputation, Simran steps in as the acceptor for honor, accepting the bill despite not being the original drawee.

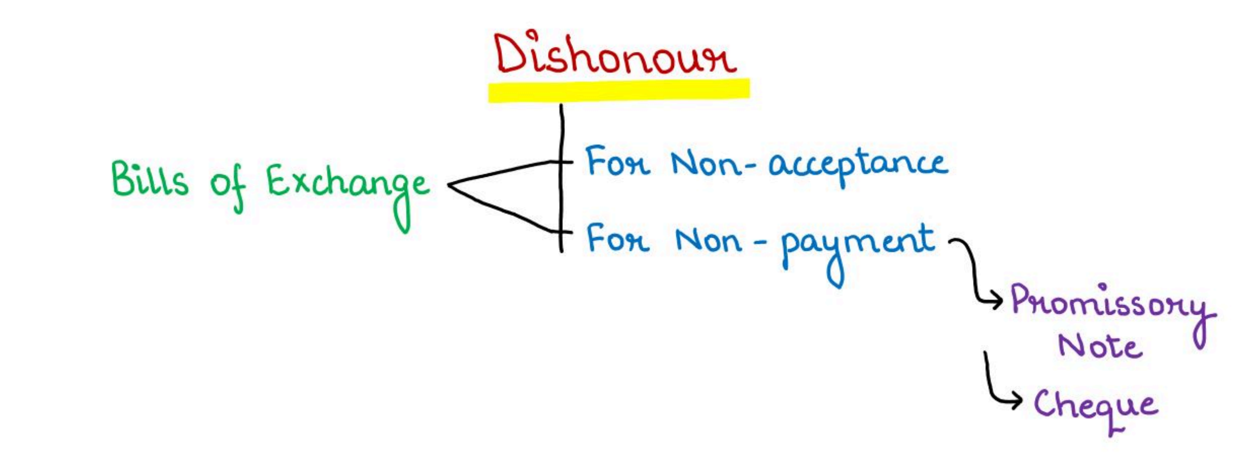
When presentment be made

The presentment must be made before maturity, within a reasonable time after it is drawn, or within the stipulated period, if any, on a business day within business hours and at the place of business or residence of the drawee.

The presentment must be made by exhibiting the bill to the drawee; mere notice of its existence in the possession of holder will not be sufficient. When presentment is compulsory and the holder fails to present for acceptance, the drawer and all the endorsers are discharged from liability to him.

10. Dishonour

Out of all negotiable instruments, a bill of exchange has to be presented twice, i.e., first, for its acceptance and second, for its payment. Therefore, a bill may be dishonoured by a reason of non-acceptance or non-payment.



However, a promissory note and cheque gets dishonoured for non-payment only, because these instruments do not require acceptance.

Dishonour of a bills of exchange for non-acceptance and dishonour of any instrument for non-payment are discussed next.

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10. Dishonour

A bill of exchange is said to be dishonoured by non-acceptance in any one of the following ways.

- when the drawee does not accept it within 48 hours from the time of presentment for acceptance.
- where presentment for acceptance is excused and the bill is not accepted.
- where the drawee is incompetent to contract, the bill may be treated as dishonoured.
- where the drawee is a fictitious person.
- where the drawee could not be found even after reasonable search.
- when a drawee gives a qualified acceptance, the holder may treat the instrument dishonoured.

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10. Dishonour

A promissory note, bill of exchange and cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Again, a negotiable instrument is dishonoured by non-payment when presentment for payment is excused and the instrument when overdue remains unpaid.

If the bill is dishonoured either by non-acceptance or by non-payment, the drawer and all the endorsers of the bill are liable to the holder, provided holder gives notice of such dishonour. The drawee is liable only when there is dishonour by non-payment.

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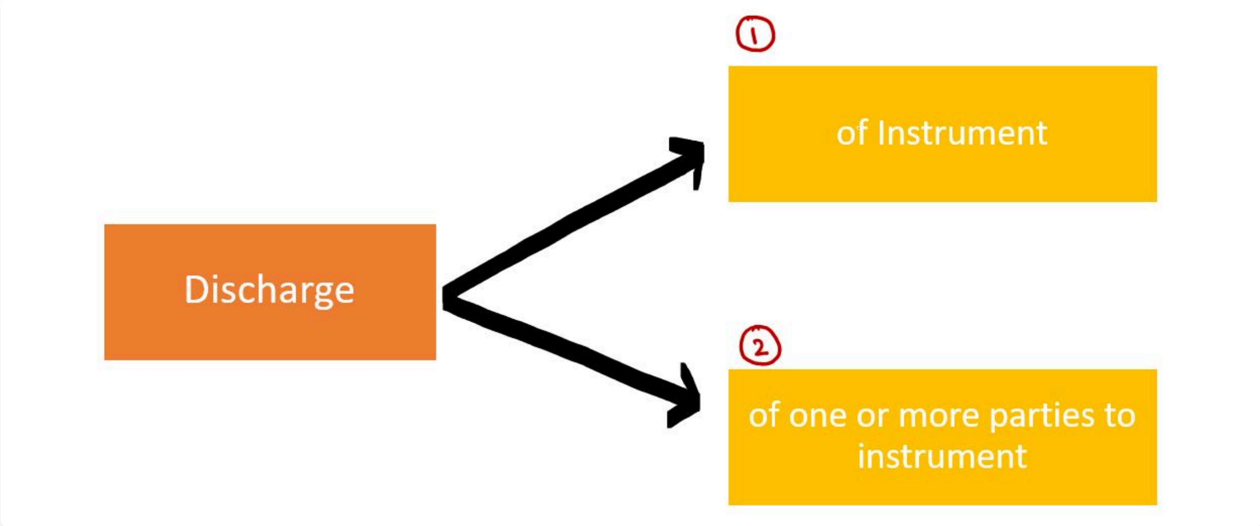
11. Discharge



The discharge in relation to negotiable instrument may be either:
(i) discharge of the instrument (i.e., when liability of primary party ceases to exist) or
(ii) discharge of one or more parties to the instrument, from liability (i.e., when liability of parties other than primary party ceases to exist).

Discharge of the Instrument

A negotiable instrument is discharged:
(a) by payment in due course;
(b) when the principal debtor himself becomes the holder;
(c) by an act that would discharge simple contract;
(d) by renunciation; and
(e) by cancellation.

Discharge of a Party or Parties

When any particular party or parties are discharged, the instrument continues to be negotiable and the undischarged parties remain liable on it.

For example, the non-presentment of a bill on the due date discharges the endorsers from their liability, but the acceptor remains liable on it.

A party may be discharged in the following ways:
(a) By cancellation by the holder, of the name of any party to it, with the intention of discharging him.
(b) By release, when the holder releases any party to the instrument.
(c) By discharge of secondary parties, i.e., endorsers.
(d) By the operation of law, i.e., by insolvency of the debtor.
(e) By allowing drawee more than 48 hours to accept the bill, all previous parties are discharged.
(f) By non-presentment of cheque promptly, the drawer is discharged.
(g) By taking qualified acceptance, all the previous parties are discharged.
(h) By material alteration, means any change in an instrument which causes it to speak a different language in legal effect from that which it originally spoke, or which changes legal character of the instrument is a material alteration.

12. Payment Settlement Modes

Banks facilitate various payment settlement modes to meet the diverse needs of individuals, businesses, and financial institutions.

Here are some common payment settlement modes offered by banks.

Cash Transactions
Physical currency (coins and banknotes) can be used for in-person transactions.

Cheques
A written order instructing a bank to pay a specific amount to the person or entity named on the cheque.

Demand Drafts (DD)
A prepaid negotiable instrument, similar to a cheque, issued by a bank on behalf of a customer.

Wire Transfers
Electronic transfer of funds between banks, often used for domestic and international transactions.

Electronic Funds Transfer (EFT)
The electronic exchange or transfer of money from one account to another, including methods like Automated Clearing House (ACH) transfers.

Real-Time Gross Settlement (RTGS)
A system where funds transfer between banks happens in real-time and on a gross basis (transaction by transaction).

National Electronic Funds Transfer (NEFT)
An electronic funds transfer system in India that operates on a deferred net settlement (DNS) basis, settling transactions in batches.

Mobile Banking
Using mobile devices to perform various banking activities, including transferring funds between accounts.

Internet Banking
Conducting banking activities over the internet, including bill payments, fund transfers, and account management.

Digital Wallets
Apps or platforms that allow users to store funds digitally and make electronic transactions. Examples include PayPal, Google Pay, and Apple Pay.

Credit and Debit Cards
Cards issued by banks that allow users to make purchases, withdraw cash, and conduct various transactions.

Prepaid Cards
Cards that are preloaded with a specific amount of money, similar to a gift card.

Automated Teller Machines (ATMs)
Electronic banking outlets that allow customers to perform various transactions, including cash withdrawals and deposits.

Online Bill Payment
Using online banking services to pay bills electronically.

Standing Orders and Direct Debits
Automated instructions for regular, fixed payments to be made from one's account to another account.

1. Introduction

Limited Liability Partnership is an alternate corporate business entity that provides the benefits of limited liability of a company but allows its members the flexibility of organising their internal management on the basis of a mutually-arrived agreement, as is the case in a partnership firm, introduced in India, by way of Limited Liability Partnership Act, 2008.

An alternative form of organisation where two or more persons are involved in starting the business organisation is the Limited Liability Partnership (LLP) under the 'Limited Liability Partnership Act, 2008'. A major advantage of such an entity is that the liabilities (if any), of the LLP lie with the entity and does not fall on the individual partners unlike the partnership form of business organisation under the Indian Partnership Act, 1932, where the joint and several liabilities of the partner(s) is one of the features.

The LLP structure is available in countries like United Kingdom, United States of America, various Gulf countries, Australia and Singapore. The LLP Act in India is broadly based on UK LLP Act, 2000 and Singapore LLP Act, 2005. Both these Acts allow creation of LLPs in a body corporate form i.e., as a separate legal entity, separate from its partners/members.

The Ministry of Corporate Affairs (MCA) and the Registrar of Companies (ROC) are entrusted with the task of administrating the LLP Act, 2008.

Note that the Indian Partnership Act, 1932 is not applicable to LLPs.

2. Overview of LLP Act 2008

Limited Liability Partnership Act, 2008 has been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected there with or incidental thereto.

The LLP Act, 2008 has 81 Sections and 4 Schedules.

1. The **First Schedule** deals with mutual rights and duties of partners, as well as limited liability partnership and its partners where there is absence of a formal agreement with respect to them.

2. The **Second Schedule** deals with conversion of a firm into LLP.

3. The **Third Schedule** deals with conversion of a private company into LLP.

4. The **Fourth Schedule** deals with conversion of an unlisted public company into LLP.

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3. Meaning of LLP

An LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners, the flexibility of organising their internal structure as a traditional partnership.

An LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited. Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure', LLP is called a hybrid between a company and a partnership.

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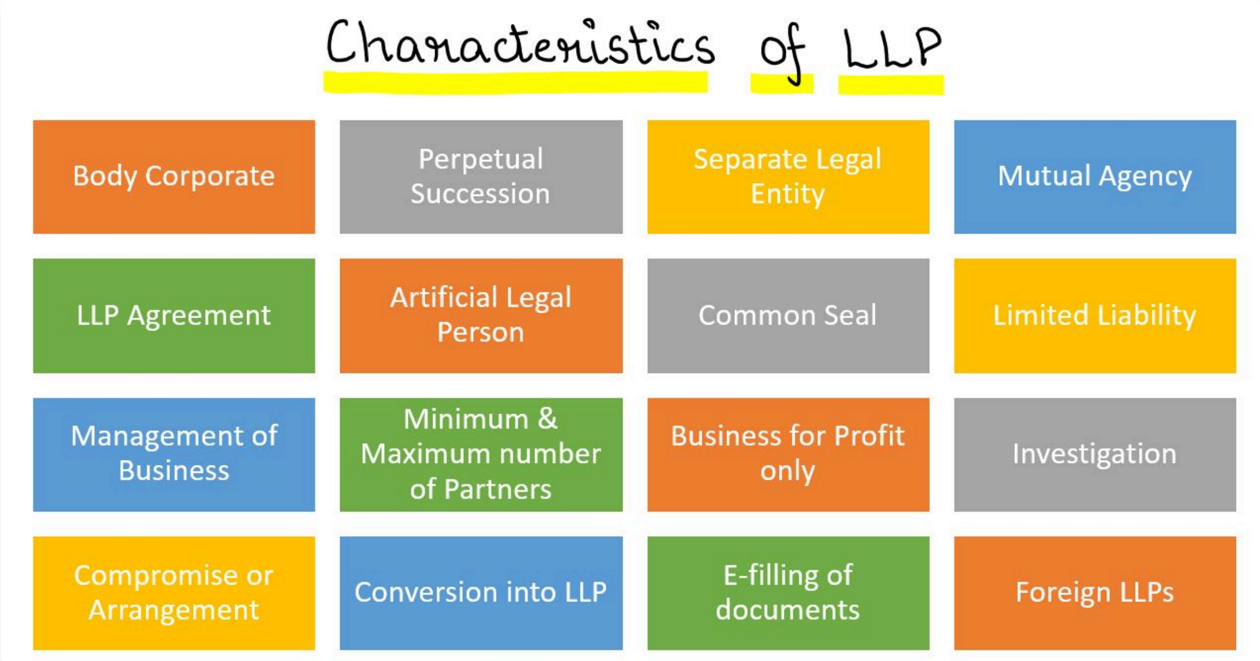
4. Characteristics of LLP

Following are the characteristic features of an LLP form of business.



1. Body Corporate
LLP Act, 2008 provides that an LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and shall have perpetual succession.

2. Perpetual Succession
The LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.

3. Limited Liability
The LLP as a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone.

4. Protection of partners
No partner is liable on account of the independent or un-authorized actions of other partners, thus, individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

5. LLP Agreement
Mutual rights and duties of the partners within an LLP are governed by an agreement between the partners. The LLP Act, 2008 provides flexibility to partners to devise the agreement as per their choice. In absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.

6. Artificial legal person
An LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. An LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious, because it really exists.

7. Common Seal
An LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one. Thus, it is not mandatory for a LLP to have a common seal. The common seal shall be affixed in the presence of at least 2 designated partners of the LLP.

8. Partner's liability limited to their agreed contribution
Every partner of an LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners. The liability of the partners will be limited to their agreed contribution in the LLP. Such contribution may be of tangible or intangible nature or both.

9. Responsibility for management and compliance

The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.

10. Partners and Designated partners

Every LLP shall have at least 2 partners and shall also have at least 2 individuals as designated partners, of whom at least 1 shall be resident in India. There is no maximum limit on the partners in LLP.

11. Lawful Business

The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus, LLP cannot be formed for charitable or non-economic purpose.

12. Investigation powers

The Central Government shall have powers to investigate the affairs of an LLP by appointment of competent authority for the purpose.

13. Merger or amalgamation as per LLP Act

Any compromise or agreements including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.

14. Conversion of other form of business to LLP

A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.

15. Statutory Compliance in e-form

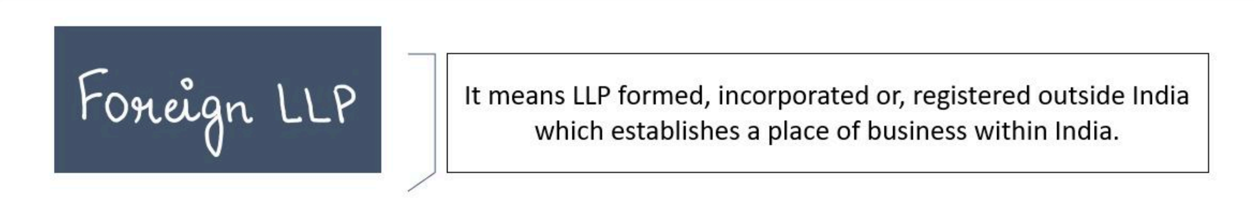
LLP is only required to file (i) annual statement of accounts (ii) statement of solvency, and (iii) Annual return, with the registrar every year.

Further, every form or application of document required to be filed or delivered under the Act and rules made thereunder, shall be filed in electronic form and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.

16. Use of acronym 'LLP' as suffix

Every Limited Liability Partnership shall use the words “Limited Liability Partnership” or its acronym “LLP” as the last words of its name.

17. Foreign limited liability partnership



The Act defines foreign limited liability partnership as “a limited liability partnership formed, incorporated, or registered outside India which established a place of business within India”. Foreign LLP can become a partner in an Indian LLP.

18. Applicability of Companies Act to LLP

The LLP Act 2008 also enables the Central Government to apply the provisions of the Companies Act whenever it thinks appropriate.

19. Audit threshold

The accounts of every LLP shall be audited in accordance with LLP Rules, 2009. Accordingly, any LLP, whose turnover does not exceed, in any financial year, Rs. 40 Lakh, or whose contribution does not exceed Rs. 25 Lakh, is not required to get its accounts audited.

5. Partners and Designated Partners

LLP has partners but no directors or shareholders. The major constituents of a LLP are its partners who are the ultimate owners.

Any individual or body corporate may be a partner in a LLP.

However, an individual shall not be capable of becoming a partner of a LLP, if:
(a) he has been found to be of unsound mind by a Court;
(b) he is an undischarged insolvent; or
(c) he has applied to be adjudicated as an insolvent and his application is pending.

Meaning of Body Corporate

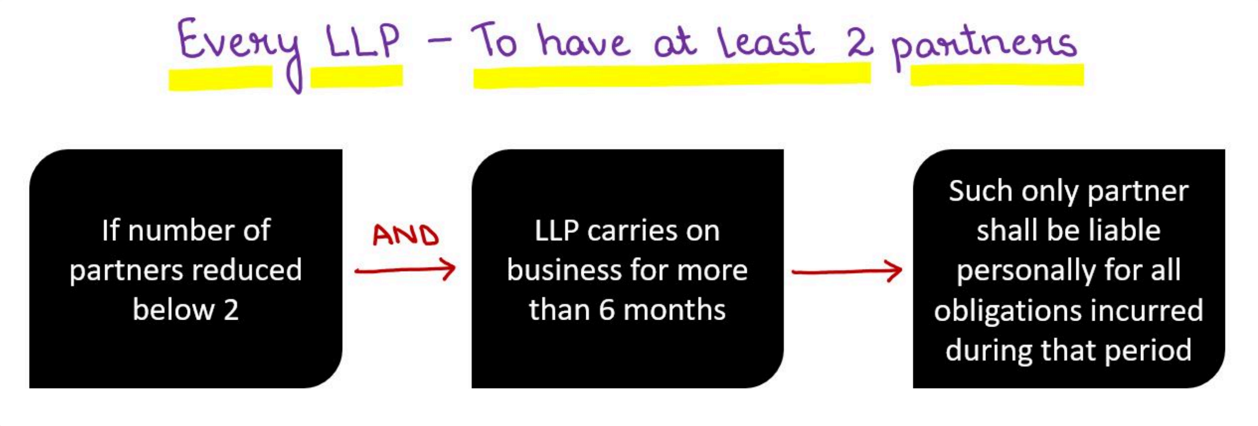
As per LLP Act 2008, a body corporate means a company defined under Companies Act and includes:

- an LLP registered under this Act
- an LLP incorporated outside India, and
- a Company incorporated outside India

but does not include:

- corporation sole;
- a co-operative society registered under any law for the time being in force; or
- any other body corporate or LLP which the CG may specify in this behalf.

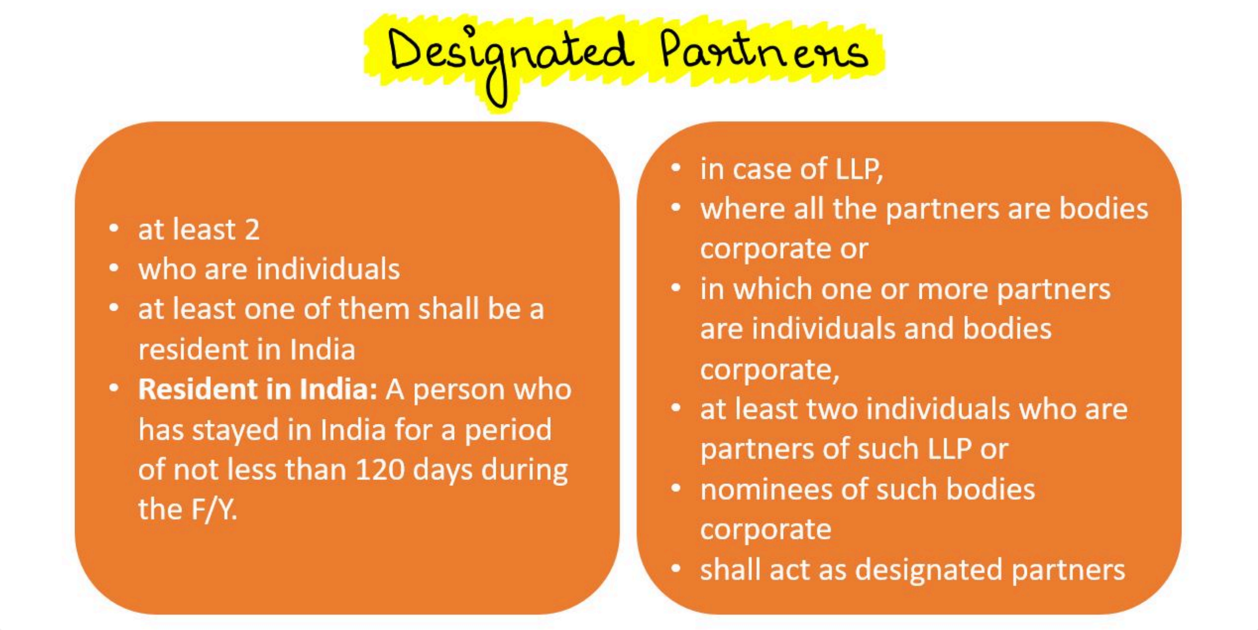
Number of Partners



Every LLP shall have at least 2 partners. There is no limit to maximum number of partners in an LLP.

If at any time, the number of partners of a LLP is reduced below 2 and the LLP carries on business for more than 6 months while the number is so reduced, the person, who is the only partner of the LLP during such time, knowingly carries on business alone beyond those 6 months, shall be liable personally for the obligations of the LLP incurred during that period.

Designated Partners



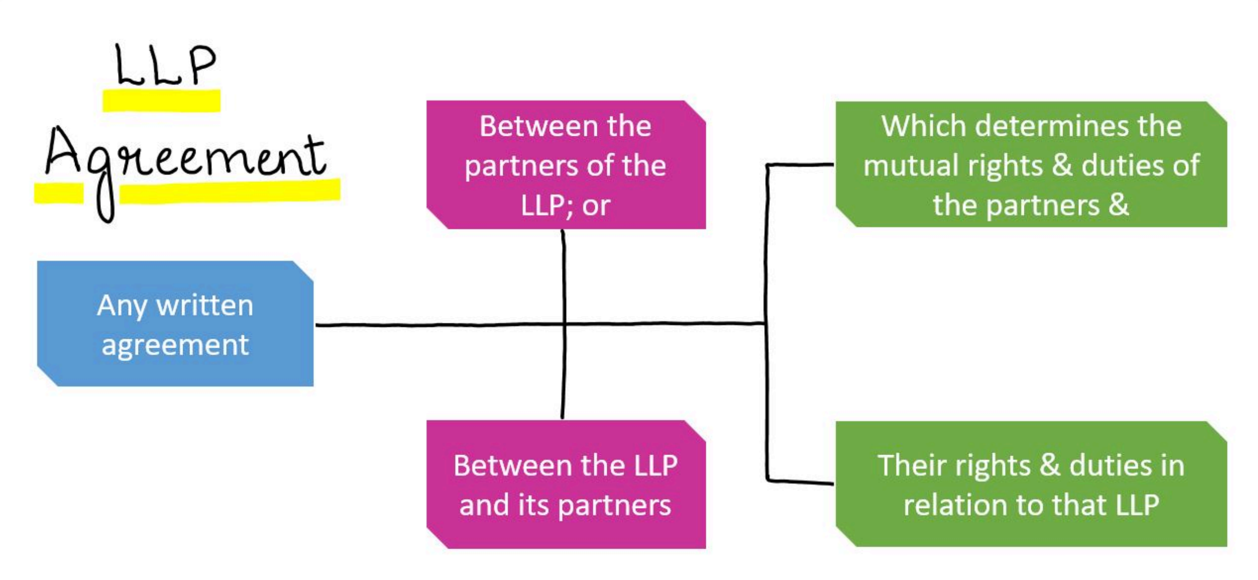
Every LLP shall have at least 2 designated partners who are individuals and at least 1 of them shall be a resident in India. The term "resident in India" means a person who has stayed in India for a period of **not less than 120 days** during the financial year.

Amendment

Note that the Limited Liability Partnership (Amendment) Act, 2021, has amended the period of stay back in India from at least 182 days during the immediate preceding one year to at least 120 days during the financial year.

Further, if in an LLP, all the partners are body corporates or in which one or more partners are individuals and body corporates, at least 2 individuals, who are partners of such LLP or nominees of such body corporates shall act as designated partners.

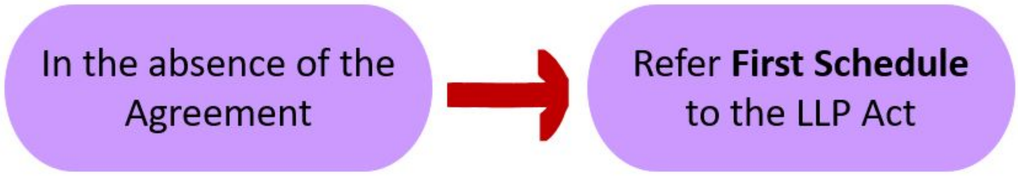
6. Limited Liability Partnership Agreement



Limited Liability Partnership Agreement means any written agreement between the partners of the LLP **or** between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

7. Relationship of partners

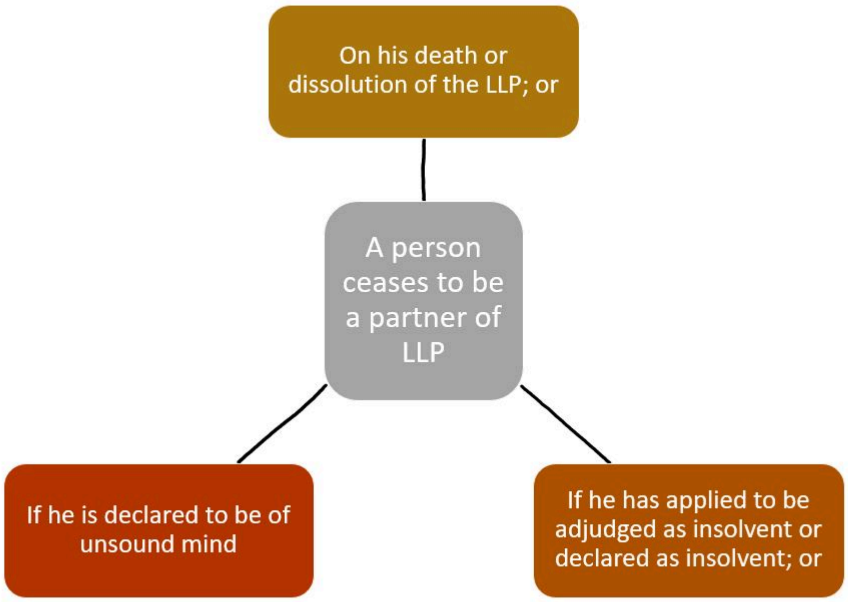
The mutual rights and duties of a LLP and its partners shall be governed by the LLP agreement between the partners, or between the LLP and its partners. Such LLP agreement and any changes, if any, made therein shall be filed with the Registrar.



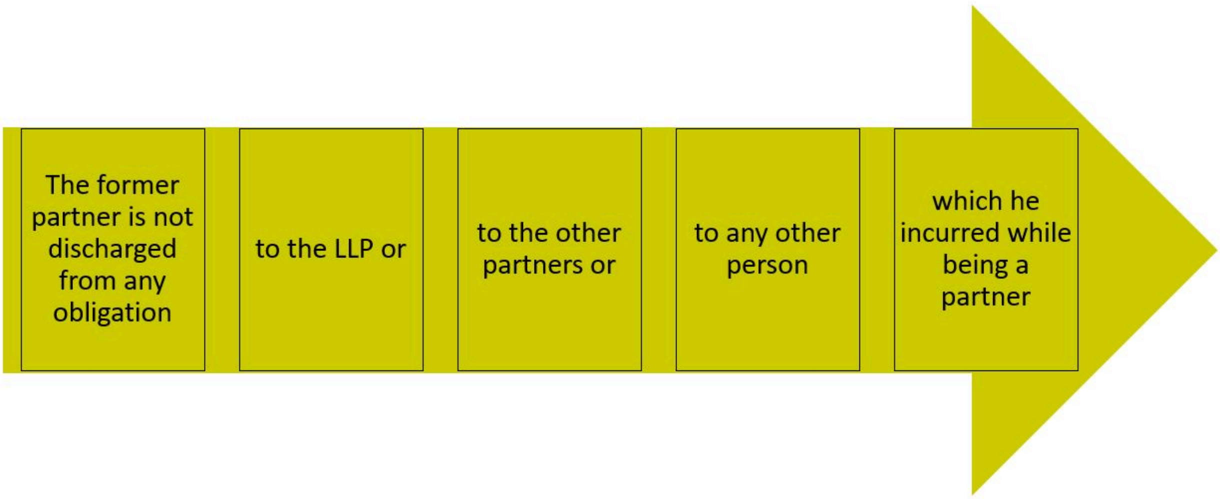
An agreement in writing made before the incorporation of a LLP between the persons who subscribe their names to the incorporation document may impose obligations on the LLP, only after its ratification by all the partners after the incorporation of the LLP.

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 LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the **First Schedule** of the LLP Act.

8. Cessation of partnership interest



A person may cease being a partner in LLP either through an agreement with other partners or, if there's no agreement about ending the partnership, by giving a written notice of at least 30 days to the other partners, expressing the intention to resign.



A person's partnership in an LLP ceases:
(a) upon his death or the dissolution of the LLP;
(b) if declared mentally unsound by a competent court;
(c) if he applies for insolvency or is declared insolvent.

Once someone ceases to be a partner (referred to as a "former partner"), they are considered a partner in dealings with the LLP unless:
(a) the person has a notice that the former partner has ceased to be a partner of the LLP; or
(b) notice of the former partner's cessation is provided to the Registrar.

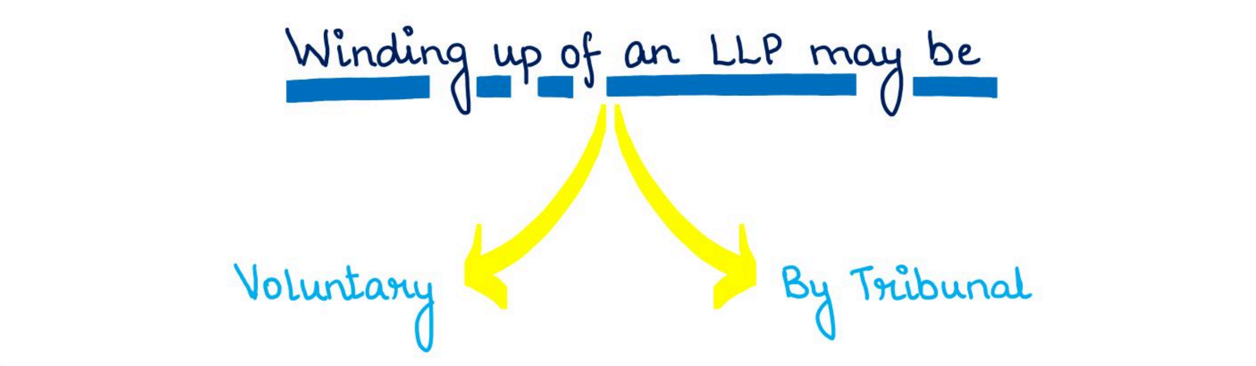
Ending partnership doesn't automatically release the former partner from any obligations incurred while being a partner.

Upon a partner leaving the LLP, unless the LLP agreement specifies otherwise, the former partner (or their entitled representative in case of death or insolvency) is entitled to receive:
(a) an amount equal to the capital contribution they made to the LLP; and
(b) their share in the LLP's accumulated profits, minus accumulated losses, as of the date they ceased to be a partner.

However, a former partner (or their representative in case of death or insolvency) doesn't have the right to interfere in the LLP's management.

9. Winding up and dissolution

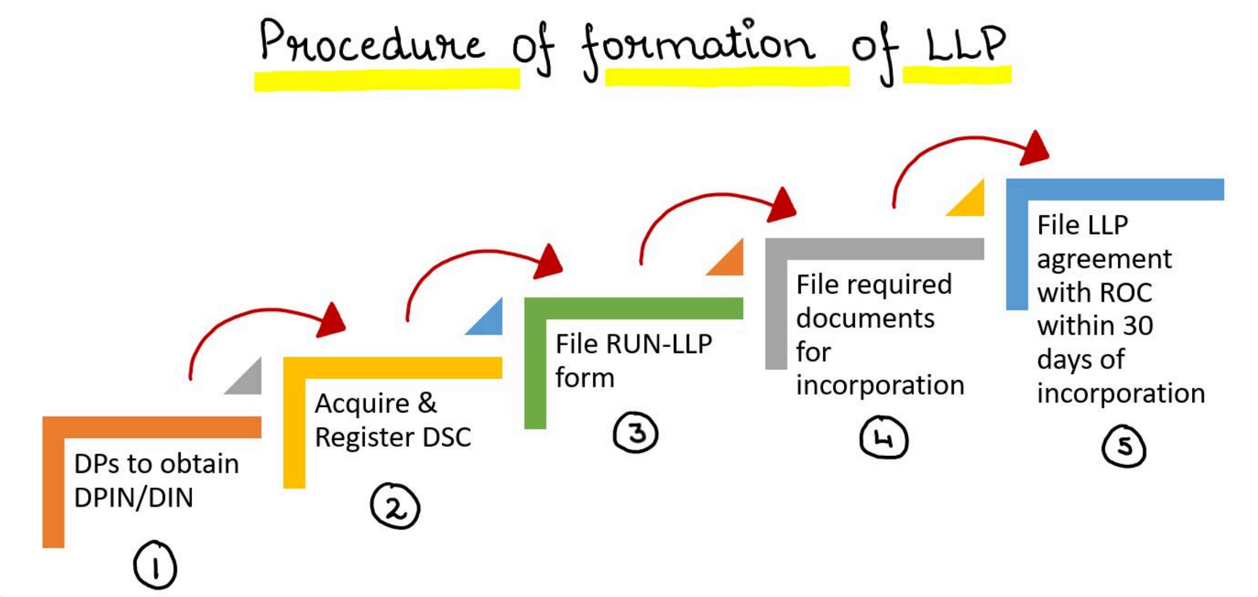
The winding up of an LLP may be either voluntary or by the Tribunal, and LLP, so wound up, may be dissolved.



Grounds for winding-up
An LLP may be wound up by the Tribunal, if:
(a) the LLP decides that LLP be wound up by the Tribunal;
(b) for a period of more than 6 months, the number of partners of the LLP is reduced below 2;
(c) the LLP is unable to pay its debts;
(d) the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
(e) the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or
(f) the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Further, the Central Government may make rules for the provisions in relation to winding up and dissolution of LLP.

10. Procedure of formation of LLP



Following are the steps to incorporate an LLP.

Step 1 - All designated partners of the proposed LLP shall obtain DPIN (Designated Partner Identification Number). In case, the person is already having a DIN (Director Identification Number), the same can be used as a DPIN.

Step 2 - Acquire and Register DSC.

Step 3 - File required RUN-LLP (Reserve Unique Name-Limited Liability Partnership) form for ascertaining availability and reservation of name of LLP.

Step 4 - File required documents for incorporation, such as, the details of LLP proposed to be incorporated, partners'/ designated partners' details and their consent to act as such, in prescribed form. Once it gets approved, all the formalities for registration of LLP is deemed to have been completed. It is to be noted that, one can file form FiLLiP (Form for Incorporation of Limited Liability Partnership) for simultaneous, name reservation and incorporation.

Step 5 - After incorporation, file LLP Agreement with ROC within 30 days of incorporation.

11. Amendments

The LLP Act has been amended by the Limited Liability Partnership (Amendment) Act, 2021 (Amendment Act) notified on 11 February 2022. In addition, the Limited Liability Partnership (Amendment) Rules, 2022 have also been notified on 11 February 2022.

The key features of the Limited Liability Partnership (Amendment) Act, 2021 are as follows.

1. Introduction of Small LLP and start-up LLP

The Act has introduced the concept of Small LLP. In the Act, Small LLP is defined as a limited liability partnership,

(i) the contribution of which is up to Rs 25 Lakh or such other amount as may be prescribed, not exceeding Rs 5 crore and

(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed Rs 40 Lakh or such higher amount, not exceeding Rs 50 crore, as may be prescribed; or

(iii) which meets such other requirements as may be prescribed,

The Act has also recognized the concept of a start-up LLP along with giving the Central Government the power to recognize and notify certain LLPs as start-up LLPs.

2. Change in definition of 'Resident in India'

As per LLP Act, 2008, to be appointed as a Designated Partner, one partner out of two shall be “resident in India”. For deciding the residential status of Designated Partner, the Amendment Act has amended the period of stay back in India from at least 182 days during the immediate preceding one year to at least 120 days during the financial year.

3. Power of Central Government to change the name of LLP (Section 17)

The Act states that Central Government has the power to direct an LLP to change its name, if the name is identical to a trademark, resembles another LLP’s name or if it is undesirable. The Central Government also has the power to allot a new name for the LLP, if it itself fails to do so within 3 months from the date of issuance of the direction from the Central Government.

4. Compounding of offences (Section 39)

The Act has allowed the Regional Director or any other officer not below the rank of a Regional Director, to compound offences under the LLP Act. It has also been clarified that any second or subsequent offence, shall be deemed to be a first offence if that offence has been committed after the expiry of 3 years from date on which it was previously compounded.

5. Establishment of special courts (Section 67A) and appointment of adjudicating officers (Section 76A)

The Act has specified the establishment of special courts by the Central Government for speedy adjudication of offences. It has also been explained that no court, other than the special courts, can take cognizance of any offence that is punishable under the LLP Act and the rules made thereunder except for a complaint made in writing by the Registrar or an officer not below the rank of Registrar.

The Act has further allowed the Central Government to appoint adjudicating officers, not below the rank of the Registrar for imposition of penalties for any non-compliance or default committed under the relevant provisions of the LLP Act. An appeal against an order of such adjudicating officers can be made to the Regional Director having jurisdiction over such matter.

6. Appeals to Appellate Tribunal (Section 72)

Under the LLP Act, 2008 appeals against orders of the National Company Law Tribunal (NCLT) lie with the National Company Law Appellate Tribunal (NCLAT).

The Amendment Act adds that appeals cannot be made against an order that have been passed with the consent of the parties. The Appeals must be filed within 60 days of the order. The Appellate Tribunal may entertain an appeal after the expiry of 60 days, but within a further period of not exceeding 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified.

1. Introduction

The first legislation to deal with competition in India was Monopolies and Restrictive Trade Practices Act (MRTP Act), which was enacted in 1969 to give effect to socio-economic philosophy expressed in Article 38 of the Constitution of India as one of the Directive Principles of State Policy.

The MRTP Act was enacted to:

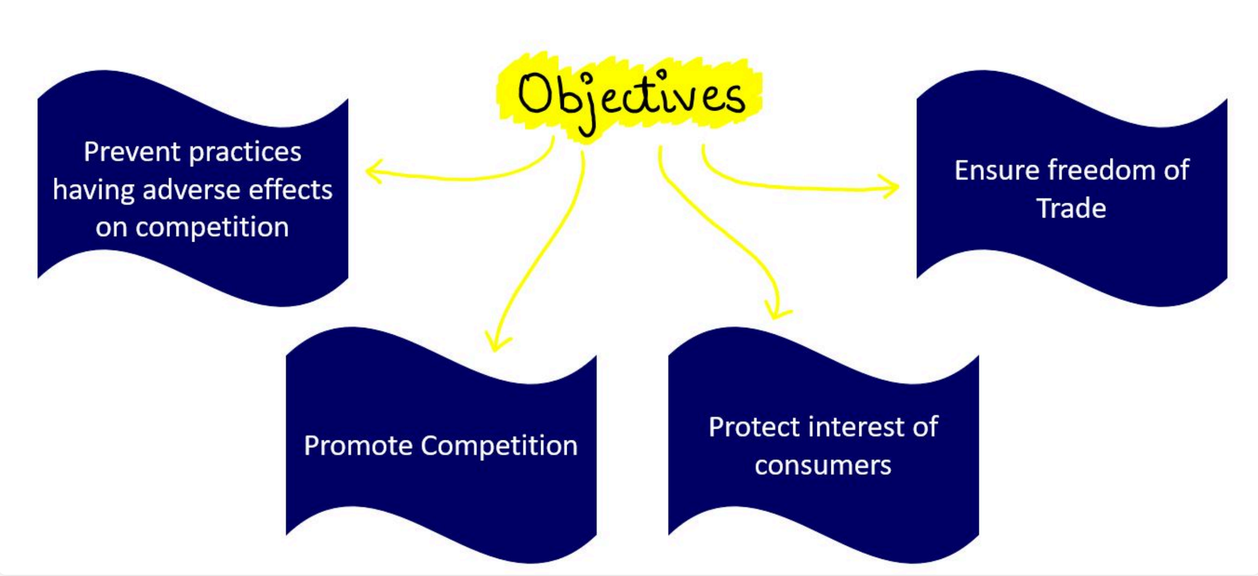
- prevent the concentration of economic power;
- provide for the control of monopolies; and
- prohibit monopolistic and restrictive trade practices.

Post 1991, policy of Liberalisation, Privatisation and Globalisation (LPG) was introduced. MRTP Act was found inadequate to meet the challenges of a modern globalised economy. The Government of India in October 1999 appointed a high level Committee on Competition Policy and Law (the Raghavan Committee) to advise on the competition law in consonance with international developments. Acting on the report (dated 22nd May, 2000) of the Committee, the Government passed the Competition Act in the year 2002, to which the President accorded assent in January, 2003. With the introduction of Competition Act, there was shift in focus from curbing monopolies to promote competition.

The Competition Act, 2002 has been split into 9 chapters containing a total of 66 sections. Through Finance Act 2017, 'Competition Appellate Tribunal' is substituted with 'Appellate Tribunal', because w.e.f. 26th May 2017, National Company Law Appellate Tribunal (NCLAT) constituted under Section 410 of the Companies Act, 2013 be the Appellate Tribunal for purpose of this Act (Competition Act).

2. Objectives of the Act

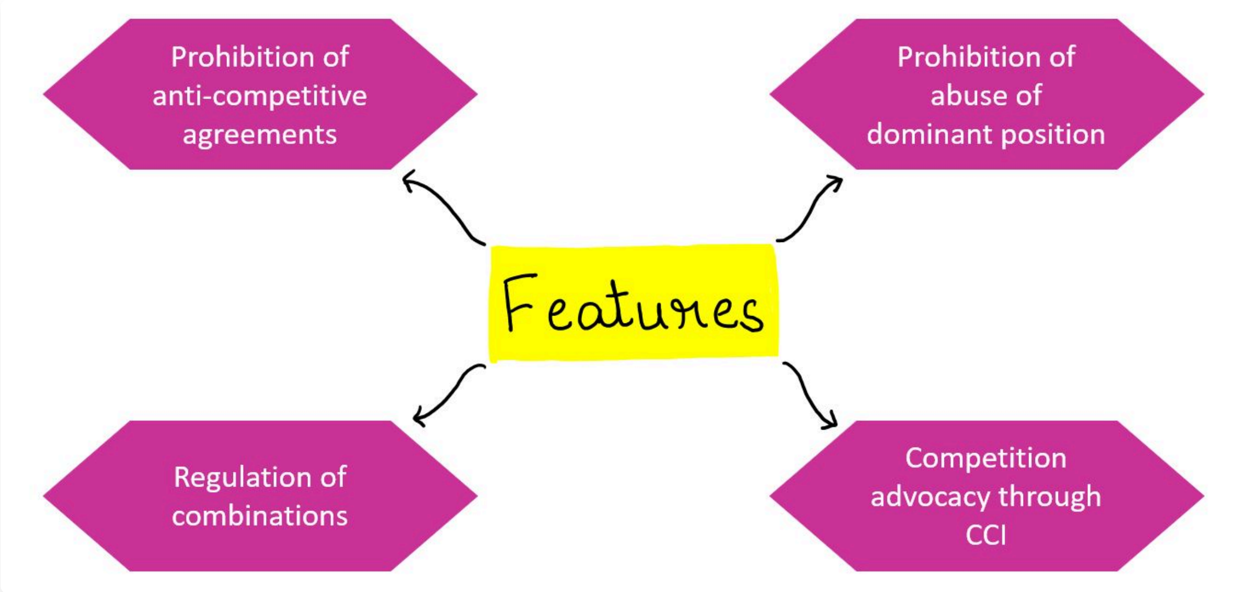
The broad objectives of the Competition Act, as laid down in its preamble, are "to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interest of the consumers and to ensure freedom of trade carried on by other participants in markets in India".



Thus, keeping in view, the economic development of the country (especially post-economic reforms of 1991), this Act was laid down to provide for an establishment of a Commission with the following objectives:

- to prevent practices having adverse effect on competition,
- to promote and sustain competition in markets,
- to protect the interests of consumers,
- to ensure freedom of trade carried on by other participants in markets in India, and
- for matters connected therewith or incidental thereto.

3. Features of the Act



The focus of the Competition Act 2002 is towards the following areas affecting competition, namely:

1. Prohibition of anti-competitive agreements,
2. Prohibition of Abuse of dominant position,
3. Regulation of combinations, and
4. Entrust Competition Commission of India (CCI), the responsibility of undertaking competition advocacy, awareness and training about competition issues.

4. Key Definitions

The Act defines following important terms.

Acquisition

Acquisition means, directly or indirectly, acquiring or agreeing to acquire (i) shares, voting rights or assets of any enterprise; or (ii) control over management or control over assets of any enterprise.

Agreement

Agreement includes any arrangement or understanding or action in concert (i) whether or not, such arrangement, understanding or action is formal or in writing; or (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.

Cartel

Cartel includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

Consumer

Consumer means any person who:

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods, when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services, when such services are availed of with the approval of the first-mentioned person, whether such hiring or availing of services are for any commercial purpose or for personal use.

Enterprise

Enterprise means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures, or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defense and space.

Goods

Goods means goods as defined in the Sale of Goods Act, 1930 and includes (a) products manufactured, processed or mined; (b) debentures, stocks and shares after allotment; (c) in relation to goods supplied, distributed or controlled in India, goods imported into India.

Person

Person includes:
(i) an individual;
(ii) a Hindu undivided family;
(iii) a company;
(iv) a firm;
(v) an association of persons or a body of individuals, whether incorporated or not, in India or outside;
(vi) any corporation established by or under any Central, State or Provincial Act or a Government Company;
(vii) any body corporate incorporated by or under laws of a country outside India;
(viii) a co-operative society;
(ix) a local authority;
(x) every artificial juridical person, not falling in the above sub-clauses.

Price

Price in relation to the sale of any goods or to the performance of any services includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration, which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing.

Relevant Market

Relevant Market means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.

Relevant Geographic Market

Relevant Geographic Market means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas. Gurgaon (now Gurugram) of Haryana is identified as Relevant Geographical Market.

Relevant Product Market

Relevant Product Market means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices, and intended use. Provision of services of development of high-end residential flats are identified as a Relevant Product Market.

Service

Service means service of any description which is made available to potential users and includes the provision of services in connection with the business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

Shares

Shares means share in the share capital of a company carrying voting rights and includes, (i) any security which entitles the holder to receive shares with voting rights; (ii) stock except where a distinction between stock and share is expressed or implied.

Trade

Trade means any trade, business, industry, profession, or occupation relating to the production, supply, distribution, storage, or control of goods and includes the provision of any services.

Turnover

Turnover includes the value of sale of goods or services.

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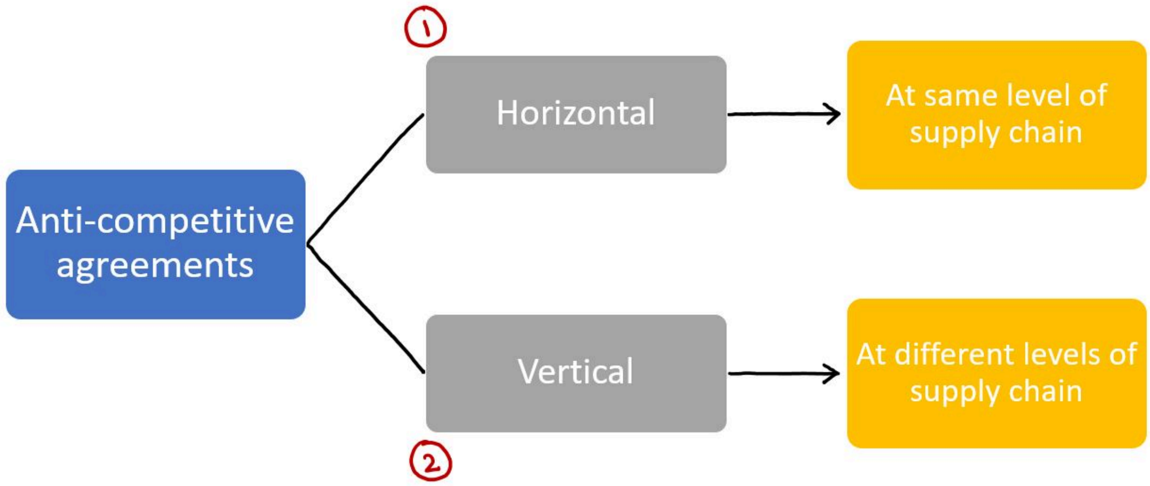
5. Prohibition of certain agreements

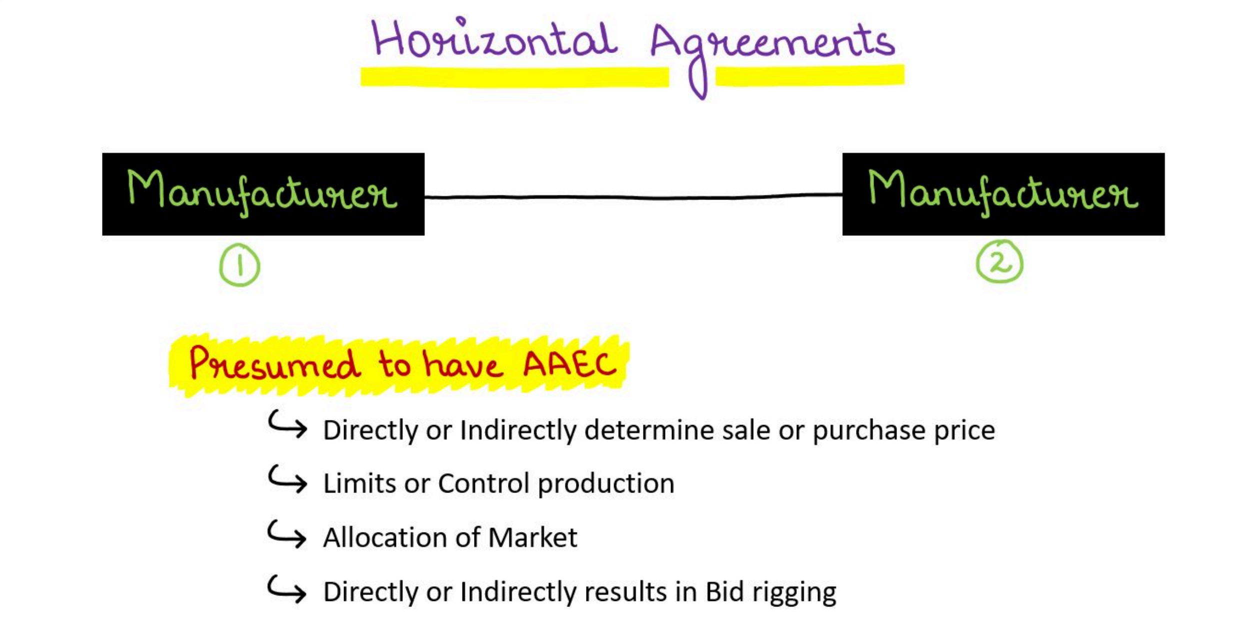
Section 3 of the Act deals with anti-competitive agreements – both horizontal and vertical.



It shall be unlawful for any enterprise / association of enterprises / person / association of persons to 'enter' into an agreement in respect of production, supply of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India (AAECI). All such agreements shall be void.

These anti-competitive agreements are discussed next.

5. Prohibition of certain agreements



Section 3 of the Act provides that any agreement entered into between enterprises or association of enterprises or persons or association of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, shall be presumed to have an appreciable adverse effect on competition, which:
(a) directly or indirectly determines purchase or sale prices;
(b) limits or controls production, supply, markets, technical development, investment or provision of services;
(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
(d) directly or indirectly results in bid rigging or collusive bidding.

Such agreements are classified as **horizontal agreements**, because they are entered by persons, enterprises, or association of persons/enterprises engaged in identical or similar trade of goods or provisioning of services. However, any agreement entered into by way of joint ventures, if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services, shall NOT be considered to be an anti-competitive agreement.

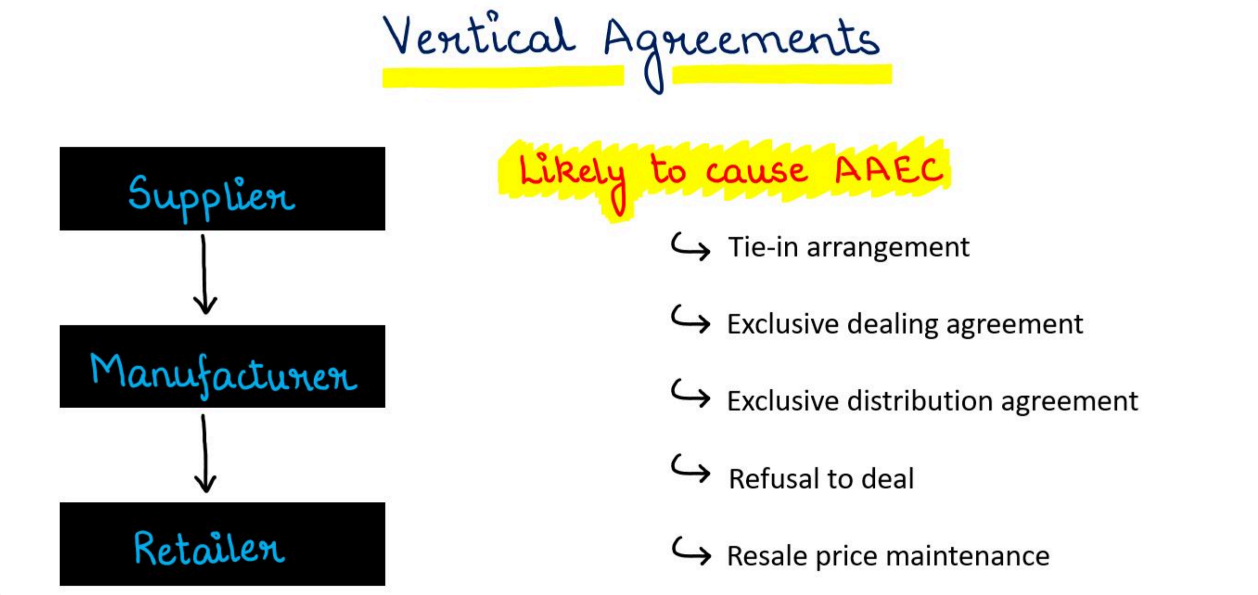
Amendment

The Amendment Act 2023 has amended Section 3 of th Act to introduce an additional provision stating that even enterprises or persons not engaged in identical or similar trades can be presumed to be part of such anti-competitive agreements if they actively participate in their furtherance.

Bid-rigging

Bid-rigging means any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

5. Prohibition of certain agreements



Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services shall be a void agreement, if it causes or is likely to cause an appreciable adverse effect on competition in India, including:

(a) **tie-in arrangement** - iincludes any agreement requiring a purchaser of goods *or services*, as a condition of such purchase, to purchase some other distinct goods *or services*;

(b) **exclusive supply agreement** - includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;

Note that exclusive supply agreement is **now replaced** with term exclusive dealing agreement through Amendment Act 2023 (as given in the amendment below).

Accordingly, "exclusive dealing agreement" includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be.

(c) **exclusive distribution agreement** - includes any agreement to limit, restrict or withhold the output or supply of any goods *or services* or allocate any area or market for the disposal or sale of the goods *or services*;

(d) **refusal to deal** - includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods *or services* are sold or from whom goods are bought;

(e) **resale price maintenance** - *includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction* that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller, unless it is clearly stated that prices lower than those prices may be charged.

Note that the “resale price maintenance” definition has been redefined to cover “any direct or indirect restriction”, not just an agreement, through Amendment Act 2023.

Such agreements are classified as **vertical agreements** because parties involved are operating at different stages of the same supply chain (including production stages).

Amendment

The Amendment Act, 2023, has also broadened the scope of definition of the anti-competition agreements by **replacing the "Exclusive supply agreement" with "Exclusive dealing agreement"** with the intention to cover the selling side of the exclusive agreements and not just the purchase side of the exclusive agreement.

The said provisions would also be applicable to an enterprise or association of enterprises or a person who is engaged in identical or similar trade. It shall be presumed to be part of the such agreement (anti-competitive agreement) if it participates or intends to participate in the furtherance of such agreement.

The Amendment Act, 2023 has **broadened the definition of the cartel by including hubs and spoke in the definition of cartel** i.e., those who do not directly participate in supply or production but participate indirectly at the horizontal levels such as trade associates or consultants or intermediaries.

Further, anticompetitive conduct like "tie-in arrangement," "refusal to deal," "resale price maintenance," and "exclusive distribution agreement" have all been redefined **to cover goods and services, and not just goods** through said Amendment Act.

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5. Prohibition of certain agreements

Section 3 of the Act also provides for those agreements which are not deemed to be anti-competitive.

Accordingly, no act or agreement will be deemed anti-competitive and void if its purpose is to prevent infringement or impose reasonable conditions to protect rights under the following laws:

- The Copyright Act, 1957
- The Trade and Merchandise Marks Act, 1958
- The Patents Act, 1970
- The Trade Marks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Designs Act, 2000
- The Semi-conductor Integrated Circuits Layout-Design.

Further, an agreement or any part of it will not be considered anti-competitive and void if it is exclusively related to the production, supply, distribution, or control of goods or the provision of services for the purpose of exporting goods from India.

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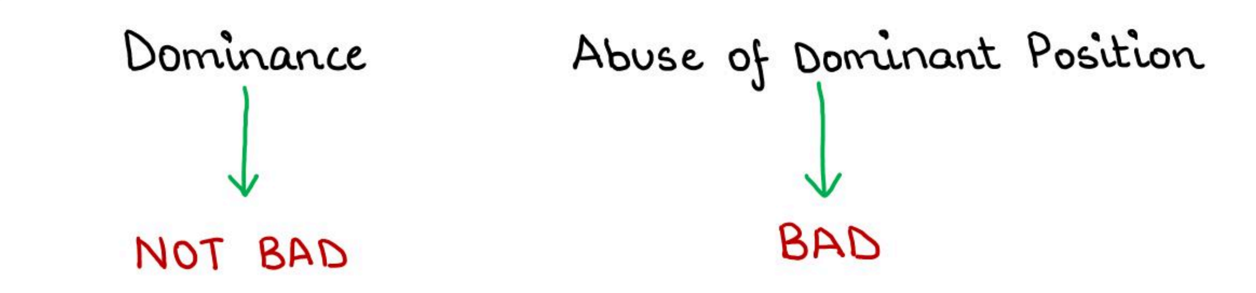
6. Abuse of Dominant Position

No enterprise or group shall abuse its dominant position. Note that dominance is not prohibited, but its abuse is prohibited.



Dominance will always be examined in reference to the relevant market, hence the relevant market is of utmost importance in determination of dominance and abuse.

Under Section 4 of the Competition Act, enterprises or groups are prohibited from abusing their dominant position.

What is dominant position

Dominant position means position of strength enjoyed by an enterprise, in the relevant market in India, which enables it to:

- operate independently of the competitive forces prevailing in the relevant market; or
- affect its competitors or consumers or the relevant market in its favour.

When there is abuse of dominant position

There shall be abuse of dominant position, if an enterprise or a group:
(a) directly or indirectly, impose unfair or discriminatory condition or price (including predatory price) in purchase of goods or services;
(b) limits the production or technical/scientific development relating to goods or provision of services or market to the prejudice of the consumer;
(c) indulges in practice(s) resulting in a denial of market access (barriers to entry for others) in any manner;
(d) forcing other parties to accept the supplementary obligations which have nothing to do with the subject of contracts (with reference to prevailing trade parlance or commercial usage);
(e) uses its dominant position in one relevant market to enter into or protect its position in other relevant markets.

Predatory Price

Predatory Price means the sale of goods or provision of services, at a price which is below the cost of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

7. Regulation of Combinations

Section 5 and 6 of the Act deals with combination of enterprises and persons.

When is combination said to take place

A combination is said to take place, if there is:
(a) any acquisition; or
(b) acquiring of control by a person over an enterprise, when such a person has already direct or indirect control over another enterprise engaged in production, distribution, or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service (for example, X is acquiring Y, X has already control over Z; Y and Z are dealing in identical goods); or
(c) any merger or amalgamation;

between or amongst enterprises when the combining parties exceed the thresholds as set out in the Act. These thresholds are provided in terms of assets or turnover in India and abroad.

Amendment

As per the Amendment Act 2023, the definition of ‘control’ has been amended to now formally mean the ability to exercise ‘material influence’ over the management or affairs or strategic commercial decisions of an entity or a group of entities.

Further, CCI has the authority to establish additional criteria, through regulations, to clarify what constitutes "material influence."

7. Regulation of Combinations

According to Section 6 of the Act, entering into a combination which causes or is likely to cause an appreciable adverse effect on competition (AAEC) within the relevant market in India is prohibited and such combination shall be void.

The MCA, vide its notification dated 4th March 2016, enhanced the value of assets and turnover as laid down originally in the Act.

The revised thresholds under Section 5 of the Act stand as follows.

	APPLICABLE TO	**JOINT ASSETS**		**JOINT TURNOVER**	
In India	Enterprise Level	₹ 2,000 cr.		₹ 6,000 cr.	
	Group Level	₹ 8,000 cr.		₹ 24,000 cr.	
	APPLICABLE TO	**JOINT ASSETS**		**JOINT TURNOVER**	
In India and outside		*Total*	*Minimum Indian Component*	*Total*	*Minimum Indian Component*
	Enterprise Level	$ 1 bn.	₹ 1,000 cr.	$ 3 bn.	₹ 3,000 cr.
	Group Level	$ 4 bn.	₹ 1,000 cr.	$ 12 bn.	₹ 3,000 cr.

- 'Group' means two or more enterprises which, directly or indirectly, are in a position to exercise at least 26% voting rights or to appoint more than 50% of the directors or controls the management or affairs in the other enterprise.
- The government has exempted "Group" exercising less than 50% of voting rights in other enterprise from the application of Section 5 of the Act for a period of 5 years from the date of notification (i.e., 4th March, 2016 itself).
- The 'turnover' shall be determined by taking into account the values of sales of goods or services.
- The 'value of assets' shall be determined by taking the book value of the assets as shown in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation. The value of assets shall include the brand value, value of goodwill, or Intellectual Property Rights etc.

Amendment

Section 5 of the Act has been amended through Amendment Act 2023, incorporating a new clause that broadens the authority of the Competition Commission of India (CCI) in overseeing combinations.

Now, CCI's prior approval will also be required if:

- the value of any transaction exceeds Rs. 2,000 crore (Rs. 20 billion); and
- the enterprise which is being acquired, taken control of, merged or amalgamated has substantial business operations in India.

As a result of the amendment, the number of transactions which would potentially require CCI's approval has certainly increased.

Further, as per the Amendment Act, the CCI is now required to form a prima facie opinion on a combination within 30 calendar days and in the event that the CCI does not do so, the combination shall be deemed to have approved and no separate order shall be required to be passed by the CCI. The CCI may accept suo motu modifications or propose modifications before forming a prima facie opinion.

The Amendment Act 2023 also provides that in case a combination is likely to have an appreciable adverse effect on competition (AAEC), it shall issue a *statement of objections* to the parties and direct the parties to explain why such combination should be allowed to take effect. The parties to the combination or the CCI (suo motu) may propose modifications in the manner set out in the Amendment Act.

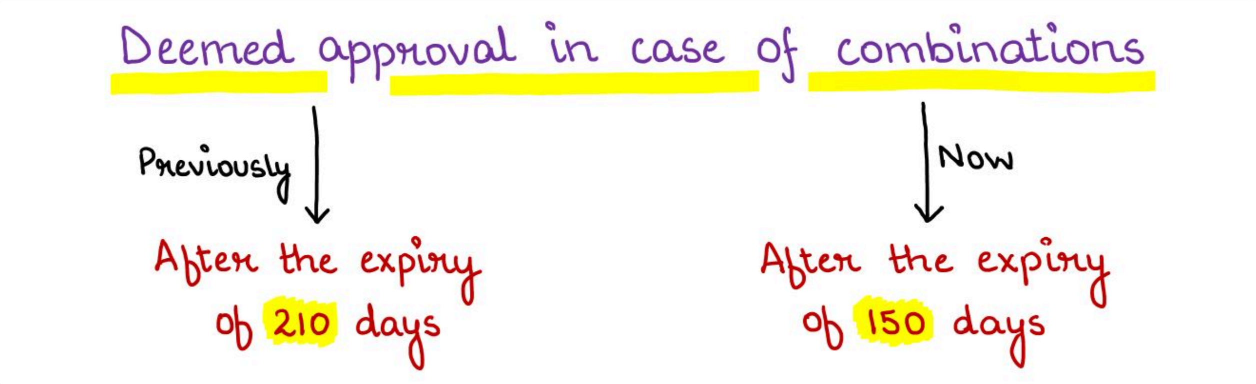
Thresholds of De Minimis Exemption

Pursuant to notification dated 27th March, 2017, acquisitions where enterprises whose control, shares, or voting rights or assets are being acquired have either assets of not more than Rs. 350 crore in India or turnover of not more than Rs. 1000 crore in India, are exempt from Section 5 of the Act for a period of 5 years.

7. Regulation of Combinations

Some of other key provisions regarding regulation of Combinations are discussed below.

Notice prior to entering into Combination



Any person or enterprise proposing to enter into a combination shall give notice to Competition Commission of India (CCI) disclosing the details of the proposed combination within 30 days of board resolution approving merger or amalgamation or execution of any agreement/document for acquisition or acquisition of control. In case, a notifiable combination is not notified, the Commission has the power to inquire into it within 1 year of the taking into effect of the combination.

The Commission also has the power to impose a fine which may extend to 1% of the total turnover or the assets of the combination, whichever is higher, for failure to give notice to the Commission of the combination.

Any combination for which notice has been filed with the Commission would not take effect for a period of 150 days (earlier 210 days) from the date of notification or till the Commission passes an order, whichever is earlier. If the Commission does not pass an order during the said period of 150 days (earlier 210 days), the combination shall be deemed to have been approved.

Amendment

Note that, the existing Act provided for a period of 210 days from the date of notification to the CCI for a combination to come into effect. A key change in the timeline as per the Amendment Act is that this period has now been reduced to 150 days.

Acquisition or Financing Facility by PFIs, VCFs etc.

The said provisions shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any condition of a loan or investment agreement. But in the case of acquisition, details including the details of control, the circumstances which trigger the exercise of such control and the consequences of default shall be filed with Commission within 7 days of such acquisition.

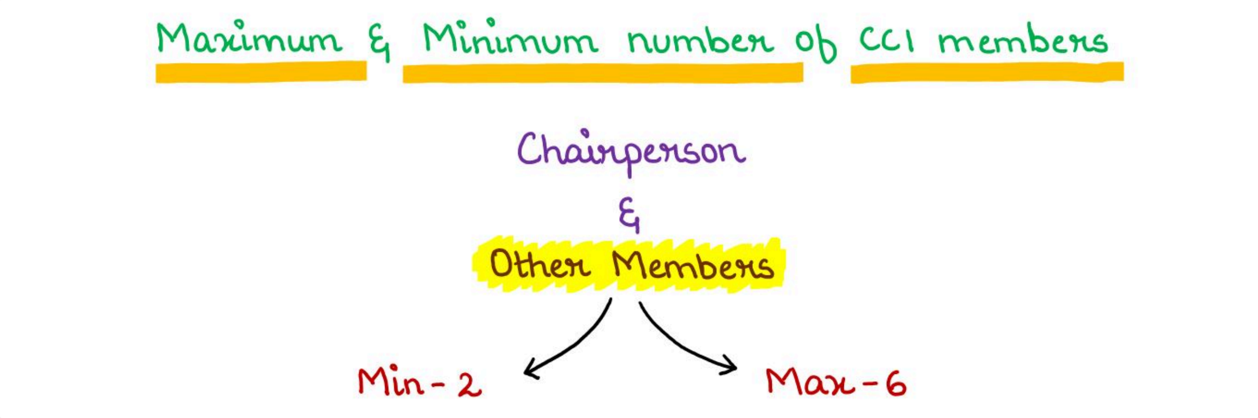
Green Channel

The notification dated 13th August, 2019 has amended the combination regulations to introduce Green Channel for certain specified categories of combinations. A combination notified under Green Channel would be deemed to have been approved upon filing a notice. However, the parties have to self-assess and determine whether their combination is eligible for being subjected to Green Channel.

8. Competition Commission of India

Under Section 7, the Act provides for the establishment of the Competition Commission of India (CCI), which shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and shall sue or be sued.

The place of head office of the Commission shall be decided by the Central Government. Further, the Commission may establish offices at other places in India.



Composition of CCI
The Commission shall consist of the Chairperson and not less than 2 and not more than 6 other Members, to be appointed by the Central Government, on whole-time basis.

The Chairperson and every other Member shall hold office for a term of 5 years and shall be eligible for re-appointment. However, no Chairperson or other Member shall hold office as such, after he has attained the age of 65 years.

Resignation or Removal of Members
The Chairperson or any other Member may, by notice in writing to the Central Government, resign from his office.

The Central Government may, by order, remove the Chairperson or any other Member from his office if such person:

- adjudged as an insolvent; or
- at any time, during his term of office, engaged in any paid employment; or
- convicted of an offence which involves moral turpitude; or
- acquired such financial or other interest likely to affect prejudicially his functions as a Member (removal only after approval of Supreme Court); or
- abused his position prejudicial to the public interest (removal only after approval of Supreme Court); or
- become physically or mentally incapable of acting as a Member.

Restriction on Members
The Chairperson and other Members are prohibited from accepting any employment in an enterprise involved in a proceeding before the Commission for a period of 2 years after they leave their positions.

However, this restriction does not apply if the employment is with the Central or State Government, local authority, statutory authority, or any corporation established by or under a Central, State, or Provincial Act, or a Government company.

Meetings of Members
The Commission shall meet at such times and places as may be provided by CCI regulations, thereof. The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting. The quorum for meetings of Commission shall be 3 Members.

8. Competition Commission of India

It shall be the duty of the Commission:

- to eliminate practices having adverse effect on competition;
- to promote and sustain competition in markets in India;
- to protect the interests of consumers; and
- to ensure freedom of trade carried on by other participants in markets in India.

With the prior approval of the Central Government, the Commission may enter into any memorandum or arrangement with any agency of any foreign country, for the purpose of discharging its duties or performing its functions under this Act.

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8. Competition Commission of India

The key provisions related to inquiry by CCI are given below.

Inquiry into certain agreements and dominant position by Commission

The Central Government may appoint a Director General who will assist the Commission in conducting an inquiry. The Commission is empowered to inquire into cases of anti-competitive agreements or abuse of dominant position, either:

(a) on its own motion or

(b) on receipt of information or

(c) on reference made to it by the Central Government or State Government or statutory authority.

Inquiry into Combination by Commission

The Commission may inquire into whether a combination has caused or is likely to cause AAECI upon:

- its own knowledge (suo moto) or information within 1 year from the date on which such combination has taken effect, or
- on receipt of a notice.

As per the Combination Regulations, the Commission shall form its prima facie opinion as to whether the combination is likely to cause or has caused appreciable adverse effect on competition within the relevant market in India within 30 days from the receipt of the notice.

Amendment

One of the most significant amendments under the Amendment Act, 2023, is the introduction of offering settlements and undertaking commitments. The Competition Act now allows enterprises facing inquiries related to abuse of dominance or anti-competitive agreements to opt for a *settlement or commitment mechanism*.

Accordingly, any concerned party against whom inquiry has been initiated for the contravention of the provisions of the Competition Act after the receipt of the report of the Director General, can approach the CCI for settlement, however, before the passing of the Final Order.

The concerned party may also undertake commitments for modification after the inquiry has been initiated, however, before the issuance/submission of the report by the Director General.

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8. Competition Commission of India

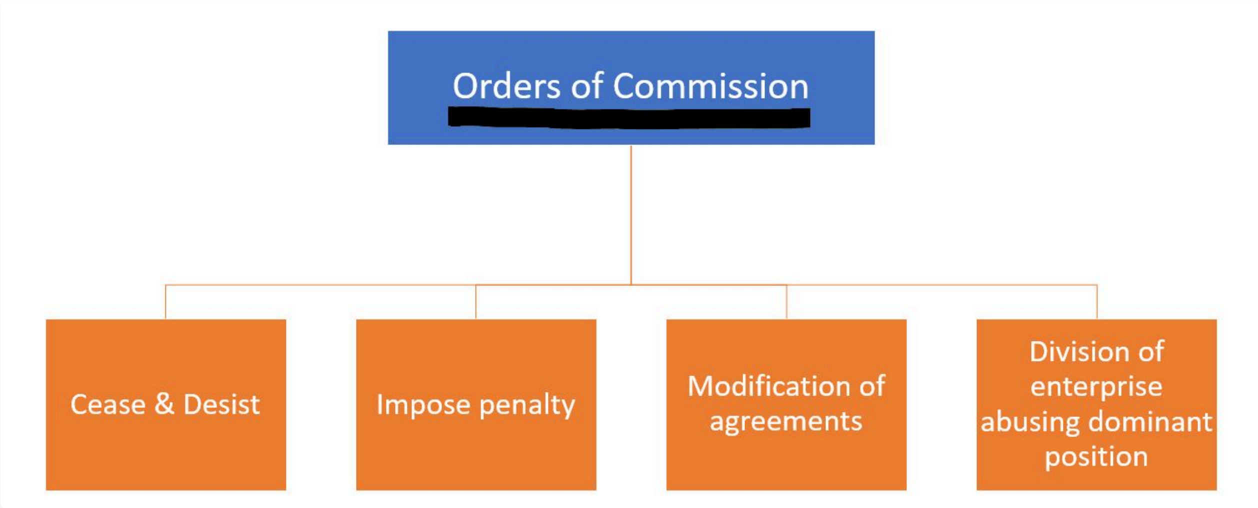
Where any reference is made to the Commission for obtaining its opinion by any Statutory Authority on the decision made by such authority (i.e., whether such decision is in contravention of the provisions of this Act or not), the Commission shall give its opinion within 60 days of such reference.

The Commission may also make a reference to the Statutory Authority. The statutory authority shall give its opinion within 60 days.

8. Competition Commission of India

The provisions related to Orders and Powers of CCI are given below.

Orders of Commission



After inquiry, if contravention is established, the Commission may pass all or any of the following orders:

(a) Cease and desist;

(b) Impose such penalty, not exceeding 10% of the average of the turnover for the last 3 preceding financial years upon each of the persons or enterprise;

In case any agreement entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to 3 times of its profit for each year of the continuance of such agreement or 10% of its turnover for each year of the continuance of such agreement, whichever is higher.

(c) Direct that agreements shall stand modified to the extent and in the manner as specified in the order of the Commission;

(d) Direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

(e) Pass any other order or issue directions, as it may deem fit.

In case of enterprises enjoying dominant position, the Commission can direct 'division of such enterprise', to ensure that such enterprise does not abuse its dominant position.

Acts taking place outside India but having an effect on competition in India

The Commission shall have the power to inquire into such agreement or abuse of dominant position or combination, if such agreement or dominant position or combination has or is likely to have AAECI and pass such orders as it may deem fit, wherein:

- an anti-competitive agreement has been entered into outside India
- any party to such agreement is outside India
- any enterprise abusing the dominant position is outside India
- a combination has taken place outside India
- any party to combination is outside India
- any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.

Powers of Commission

CCI has power to regulate its own procedures to discharge its function, subject to principle of natural justice or other provisions of this act or any of the rules made by Central Government. The commission is vested with powers of Civil Court, for the matters specified therein.

Penalties

Section 42A of the Act provides that any person may file an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage caused due to the contravention of the orders of the Commission issued under this Act.

The Act also empowers Commission to impose lesser penalty than specified in the provisions. Further, all sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

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8. Competition Commission of India

The Central Government or State Government may, in formulating a policy on competition, make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within 60 days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be.

The opinion given by the Commission shall not be binding upon the Central Government or the State Government in formulating such policy. The Commission shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

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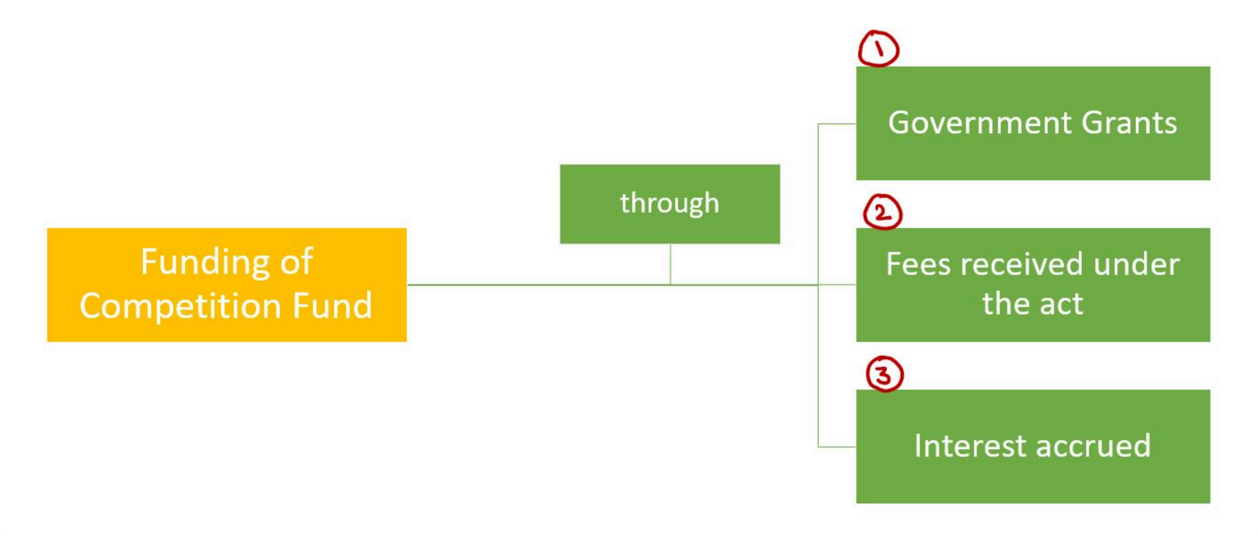
9. Finance, Accounts and Audit

The Central Government may make grants to the Commission for being utilised for purposes of this Act.



A fund shall be constituted to be called the Competition Fund and there shall be credited thereto:
(a) all Government grants received by the Commission;
(b) the fees received under this Act; and
(c) the interest accrued thereon.

The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in consultation with the Comptroller and Auditor-General of India (CAG). The accounts of the Commission shall be audited by CAG at specified intervals.

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10. Appellate Tribunal

The National Company Law Appellate Tribunal constituted under Companies Act, 2013 shall, be the Appellate Tribunal for the purpose of this Act and the said appellate Tribunal shall:

- hear and dispose of appeals against any direction issued or decision made or order passed by the Commission;
- adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission and pass orders for the recovery of such compensation.

The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order of the Commission may prefer an appeal to the Appellate Tribunal, within 60 days from the date of receipt of copy of the direction or decision or order made by the Commission. The Appellate Tribunal shall endeavour to dispose such appeal within 6 months from the date of receipt of the appeal.

Amendment

As per the Amendment Act 2023, a deposit of 25% of the penalty imposed by the CCI needs to be paid by a person, in order to file an appeal before National Company Law Appellate Tribunal.

Appeal against Appellate Tribunal

Any appeal against the order of Appellate Tribunal lies with Supreme Court within 60 days from the date of communication of the decision or order of the Appellate Tribunal.

11. Amendment Act 2023

The Competition (Amendment) Act, 2023 was recently passed in India.

The Act makes a number of changes to the Competition Act, 2002, which is the country's primary competition law. The amendments aim to strengthen competition regulation, streamline operations, and foster a business-friendly environment.

Highlights of major Amendments

Highlights of the major amendments under the Competition (Amendment) Act, 2023 are as follows.

1. Transaction value above Rs 2000 crore will require CCI's approval

Section 5 of the Competition Act, 2002 deals with the Regulation of Combinations. The Amendment Act has amended section 5 of the Act by inserting a new clause that expands the scope of the CCI's regulatory authority over combinations. The new clause states that the value of any transaction related to the acquisition of control, shares, voting rights or assets of an enterprise, merger or amalgamation that exceeds Rs. 2000 crore would require approval from the CCI.

Further, this provision would apply only if the enterprise being acquired, taken control of, merged or amalgamated has substantial business operations in India, as specified by the regulations.

This change is likely to have significant implications for large-scale mergers and acquisitions in India. By requiring CCI's approval for transactions that exceed Rs 2000 crore threshold, the amendment seeks to ensure that such transactions do not result in anti-competitive practices and promote fair competition in the market.

2. Reduction of time limit for approval of combinations from 210 days to 150 days

As per section 6(2A) of the Competition Act, 2002, any combination shall not come into effect until 210 days have passed from the day on which the notice of the combination has been given to the Commission (CCI) or the Commission has passed an order, whichever is earlier. The amended section 6(2A) of the Competition Act, 2023 reduces the maximum time limit for approval of combinations from 210 days to 150 days.

Thus, the CCI would have a maximum of 150 days from the date of notice of the combination to approve the combination or to pass an order. This will significantly reduce the waiting period for the approval of combinations. This would provide more expeditious approvals for combinations while ensuring a fair and transparent competition process.

3. Presumption to be part of the anti-competitive agreements in certain cases

Section 3 of the Competition Act provides for the prohibition of certain anti-competitive agreements.

Under the Act, anti-competitive agreements include any agreement related to the production, supply, storage, or control of goods or services, that can cause an appreciable adverse effect on competition in India. Any agreement between enterprises or persons engaged in identical or similar businesses will have such adverse effect on competition if it meets certain criteria.

These include:
(a) directly or indirectly determining purchase or sale prices,
(b) controlling production, supply, markets, or provision of services, or
(c) directly or indirectly leading to collusive bidding.

The amended norms introduce an additional provision stating that an enterprise or association of enterprises or a person or association of persons though not engaged in identical or similar trade shall also be presumed to be part of such anti-competitive agreements if they participate or intends to participate in the furtherance of such agreements. As per the amended norms, now it would be presumed that enterprises or persons not engaged in identical or similar businesses shall also be deemed to be part of the anti-competitive agreements, if they actively participate in the furtherance of such agreements.

4. Scope of anti-competitive agreements

The amendment to Section 3(4) of the Competition Act, 2002 has significantly enlarged the scope of anti-competitive agreements to now include indirect collusion. Now therefore, enterprises or persons not engaged in the trade of identical or similar businesses shall be presumed to be part of such agreements in case they participate or intend to participate in furtherance of such agreements.

Further, the term 'exclusive supply agreement' has been replaced with 'exclusive dealing agreement' with the aim to cover acquisition and supply of all kinds of goods and services by an enterprise during the course of its business cycle.

5. Covering sales of goods and services

Anticompetitive conduct like "tie-in arrangement," "refusal to deal," "resale price maintenance," and "exclusive distribution agreement" have all been redefined to cover goods and services, and not just goods.

6. Covering indirect restrictions

The "resale price maintenance" definition has been redefined to cover "any direct or indirect restriction", not just an agreement.

7. Introduction of Limitation Period

The Competition (Amendment) Act also introduces a 3-year limitation period for entertaining information or references regarding alleged contraventions under the Act.

The CCI is further empowered to condone delays in filing such information or references if sufficient cause is demonstrated. This limitation period establishes a clear timeframe for parties to file complaints and ensures the timely execution of competition law enforcement.

8. Pre-deposit for filing of an appeal before the National Company Law Appellate Tribunal

Under the Amendment Act, 2023, any person aggrieved by the order passed by the Competition Commission of India, may file an appeal within 60 days from the date of the receipt of the Order, however, with a pre-deposit of 25% of the amount imposed by the Competition Commission of India, as per directions of the National Company Law Appellate Tribunal.

9. Penalties to be calculated upon "global turnover derived from all products and services"

Under the Amendment Act, 2023, the penalties can be imposed upon the global turnover derived from products and services by the Competition Commission of India. The same may lead to higher penalties by the Competition Commission of India after an enquiry into the agreements or abuse of a dominant position.

Earlier, the penalties were imposed based upon the relevant turnover, which was presumed to be domestic turnover. Under the Amendment Act, 2023, the Competition Commission of India has the power to recover legal costs and the same shall be credited to Consolidated Funds of India.

10. Updated definition of 'control'

One important change is the updated definition of "control," which now includes the concept of "material influence." This change acknowledges that having the ability to exert significant influence over the management, affairs, or strategic commercial decisions of an entity or group of entities is a key factor in determining control.

The Competition Commission of India (CCI) has the authority to establish additional criteria, through regulations, to clarify what constitutes "material influence." This addition aims to provide clearer guidelines on what control means and reduce uncertainty when determining its extent in various business arrangements.

11. Introduction of Settlements and Commitments

The Amendment Act 2023 introduces a settlement and commitment mechanism for enterprises under inquiry for abuse of dominance or anti-competitive agreements.

This framework provides enterprises with the opportunity to seek resolution through mutually agreed remedies or commitments, thereby promoting cooperation and expediting dispute resolution. The specific procedure for settlements and commitments will be outlined in regulations, aligning Indian competition law with international best practices.

This new mechanism aims to reduce the time and resources expended on lengthy investigations and litigation, fostering efficient and compliant business practices.

12. Issuance of Statement of objections and modifications

The Amendment Act, 2023, empowers the Competition Commission of India to issue a statement of objections, if it is of the opinion that a combination has or is likely to have an adverse effect upon the competition in the market.

The Commission may issue a statement of objections to the concerned party and direct them to explain within 45 days as to why the combination is to be allowed. The concerned party may approach the Commission with suitable modifications to eliminate the adverse effect of the combination to the market.

13. Power to CCI to appoint Director General

Under the Amendment Act 2023, the Competition Commission of India has the power to appoint the Director General for assisting in investigating/enquiry into contravention of the provisions of the Competition Act.

The Amendment Act, 2023 also provides for more investigating powers to the Director General for conducting the enquiry, including examination of any officer/agent of the party being investigated with the prior approval of the Competition

Commission of India. The Amendment Act, 2023 also provides for power to the Competition Commission of India to call upon experts to provide expert opinions.

14. Introduction of "Leniency Plus" policy
The Amendment Act has introduced a "Leniency Plus" policy whereby members of cartels under investigation are encouraged to disclose to CCI other cartels operating in markets so as to avail imposition of lesser penalty for the cartel under investigation. Further, the Amendment Act now permits parties to withdraw leniency applications which was not possible earlier.

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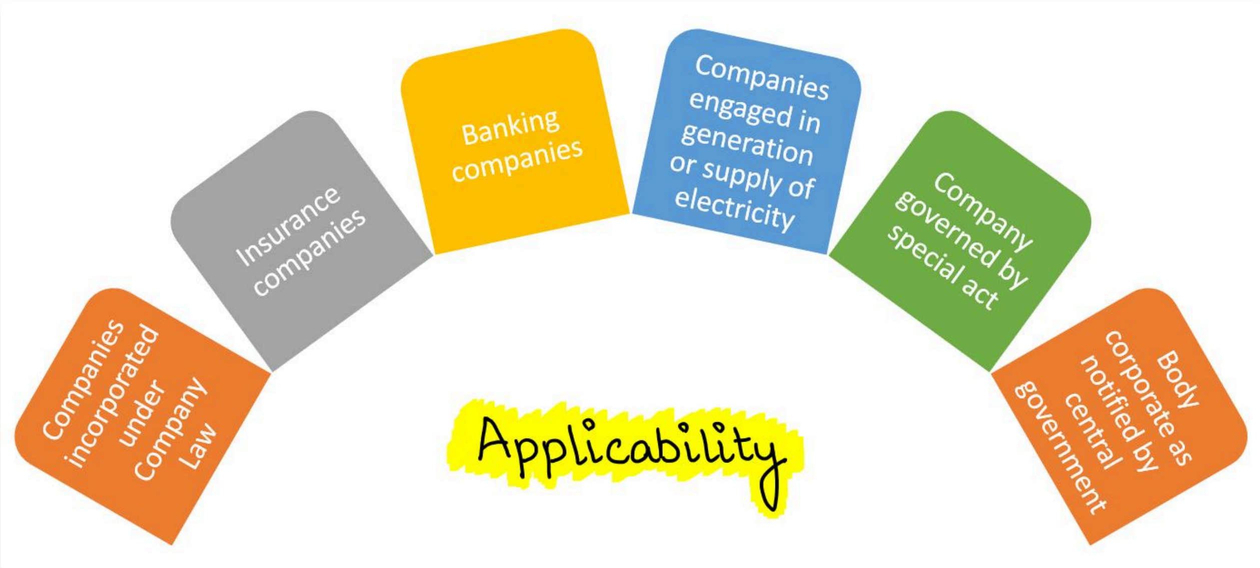
1. Introduction



As the business evolved, need was felt to introduce the Company Law in a fresh manner considering the changes in the systems and procedures worldwide. Companies Act, 2013 was passed (replacing the Companies Act, 1956) after decade long deliberations with stakeholders and came into force on 29.08.2013. It extends to the whole of India.

The Companies Act, 2013 has 29 Chapters, 470 Sections and 7 Schedules.

Applicability of the Act

The provisions of Companies Act, 2013 applies to:
(i) companies incorporated under this Act or under any previous Company law,
(ii) Insurance companies,
(iii) Banking Companies,
(iv) companies engaged in the generation or supply of electricity,
(v) any other company governed by any special Act, in force, and
(vi) such body corporate, incorporated by any Act in force, as the Central Government, may notify.

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2. Key Definitions

The Act defines following important terms. Other important definitions not given hereunder are covered under respective topics.

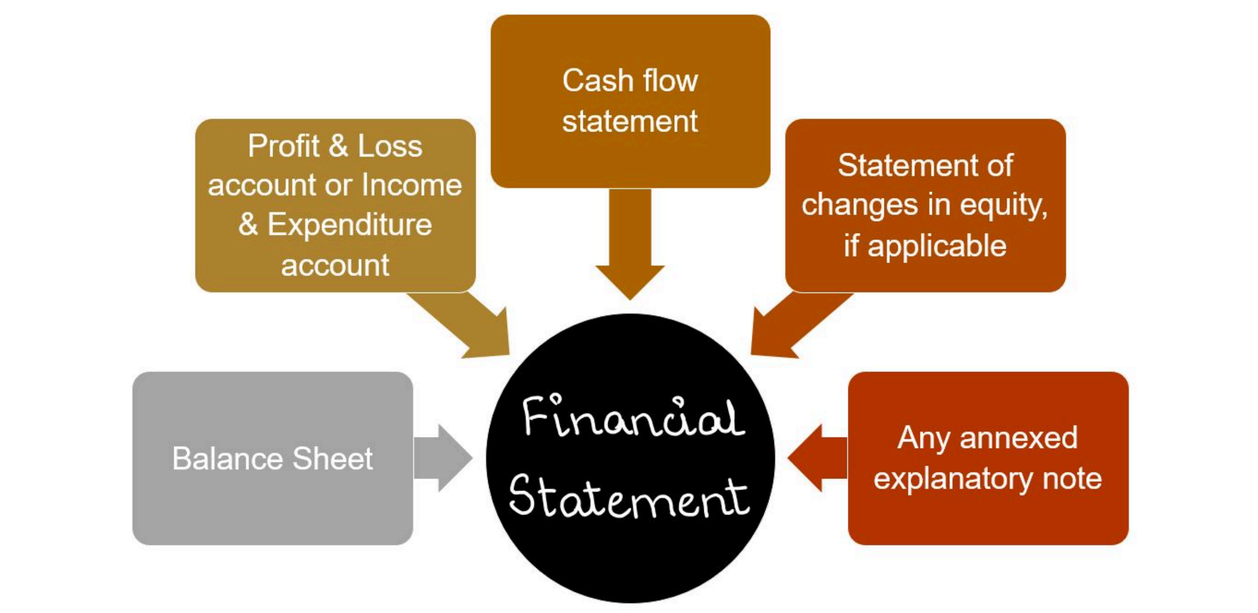
Abridged prospectus

Abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board of India by making regulations in this behalf.

Contributory

Contributory means a person liable to contribute towards the assets of the company in the event of it being wound up. A person holding fully paid up shares in a company shall be considered as a contributory, but shall have no liabilities of a contributory under the Act, while retaining rights of such a contributory.

Financial Statement



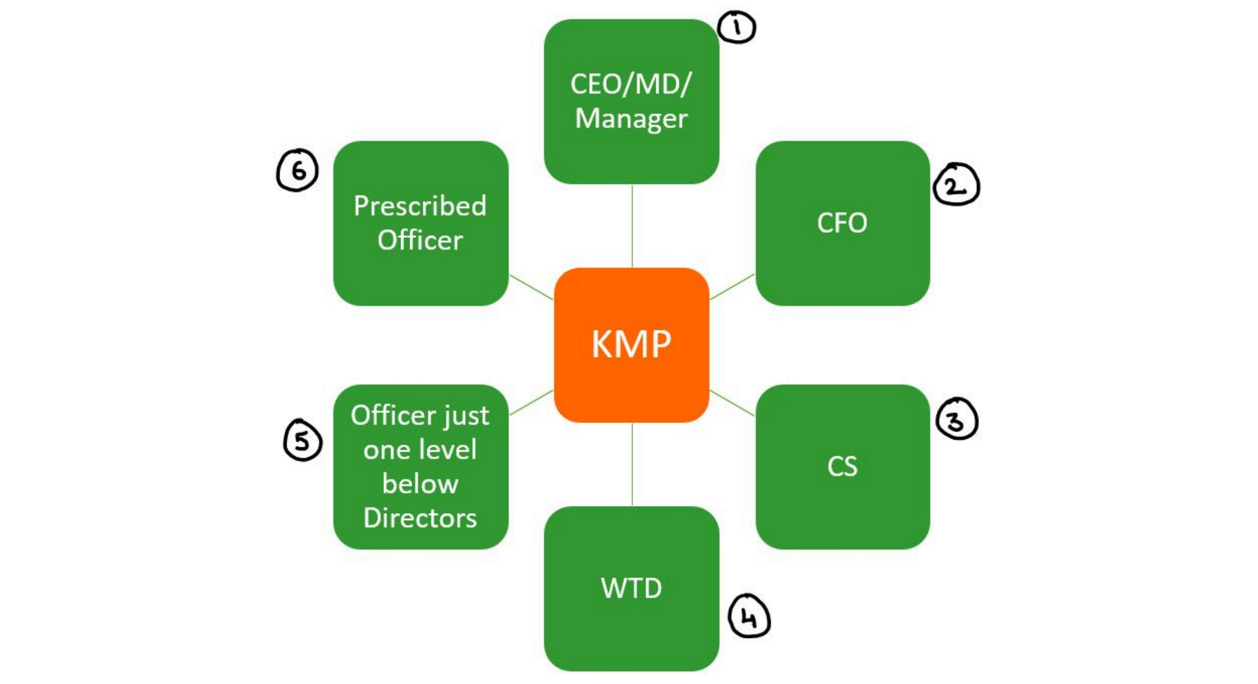
Financial statement in relation to a company includes:
(i) a balance sheet as at the end of the financial year;
(ii) a Profit & Loss statement for the financial year or income and expenditure account (in case of a company carrying on any activity that is not for profit);
(iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable;
(v) any explanatory note.

The financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

Financial Year

Financial year means:
(a) in relation to any company or body corporate means the period ending on the 31st day of March every year;
(b) for companies incorporated on or after the 1st day of January of a year - the period ending on the 31st day of March of the following year;
(c) for a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India - the Central Government may, on an application made by that company or body corporate allow any period as its financial year, whether or not that period is a year.

Key managerial personnel (KMP)



Key managerial personnel (KMP) in relation to a Company, means:
(i) the Chief Executive Officer (CEO) or Managing Director (MD) or Manager;
(ii) Company Secretary;
(iii) the whole-time director (WTD);
(iv) the Chief Financial Officer (CFO);
(v) such other officer, not more than one level below the directors (designated as KMP by the Board); or
(vi) such other prescribed officer.

Managing Director

Managing Director, who by virtue of Articles of Association, or by an agreement or by resolution in general meeting is entrusted with substantial powers of management of the affairs of the company.

Following SHALL NOT BE DEEMED as substantial powers of management:
(i) the power to do administrative acts of a routine nature authorised by the Board, or
(ii) the power to affix the common seal of the company to any document, or
(iii) to draw and endorse any cheque on the account of the company in any bank, or
(iv) to draw and endorse any negotiable instrument, or
(v) to sign any certificate of share or to direct registration of transfer of any share.

Member

Member, in relation to a company, means
(i) the subscriber to the memorandum of the company,
(ii) every other person who agrees in writing to become a member and whose name is entered in the register of members,
(iii) every person holding shares of the company and whose name is entered as a beneficial owner, in the records of a depository.

Net worth

Net worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account and debit and credit balance of P &L Account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, BUT DOES NOT include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Officer

Officer includes any director, manager or KMP or any person in accordance with whose directions or instructions, the Board of Directors is or are accustomed to act.

Officer in default

Officer in default, (who shall be liable to any penalty or punishment by way of imprisonment, or fine in case of default or offence) means any of the following officers of a company, namely:
(i) WTD;
(ii) KMP;
(iii) where there is no KMP, such director as specified by Board with his consent, or all directors, if no director specified;
(iv) any person (authorized by the Board or any KMP) charged with any responsibility including maintenance, filing or distribution of accounts or records, who knowingly permits or fails to take active steps to prevent any default;
(v) any person in accordance with whose advice, the BOD of the company is accustomed to act except person advising Board in professional capacity;
(vi) every director, in respect of any contravening provision of this Act, who is aware of such contravention;
(vii) in respect of the issue or transfer of any shares, the share transfer agents, registrars and merchant bankers to the issue or transfer.

Postal ballot

Postal ballot means voting by post or through any electronic mode.

Promoter

Promoter means a person:
(a) who has been named as such in a prospectus or annual return of the company; or
(b) who has control over the affairs of the company, directly or indirectly, whether as a shareholder, director or otherwise; or
(c) in accordance with whose advice or directions, the BOD is accustomed to act, except person acting in a professional capacity.

Prospectus

Prospectus means any document described or issued as a prospectus and includes a red herring prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of body corporate.

Related party

Related party, with reference to a company, means
(i) a director or his relative;
(ii) a KMP or his relative;
(iii) a firm, in which a director, manager or his relative is a partner;
(iv) a private company in which a director or manager, or his relative, is a member or director;
(v) a public company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid-up share capital;
(vi) any body corporate whose BOD, MD or manager is accustomed to act in accordance with the advice or directions of a director or manager except advice in professional capacity;
(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act, except advice in professional capacity;
(viii) any body corporate which is:

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

Investing Company

'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. Any other prescribed person may also be included in 'related party'.

Relative

Relative, with reference to any person, means anyone who is related to another, if:
(i) they are members of a HUF;
(ii) they are husband and wife; or
(iii) related to one another, in such other prescribed manner.

Share

Share means a share in the share capital of the Company and includes stock.

Tribunal

Tribunal means the National Company Law Tribunal.

Turnover

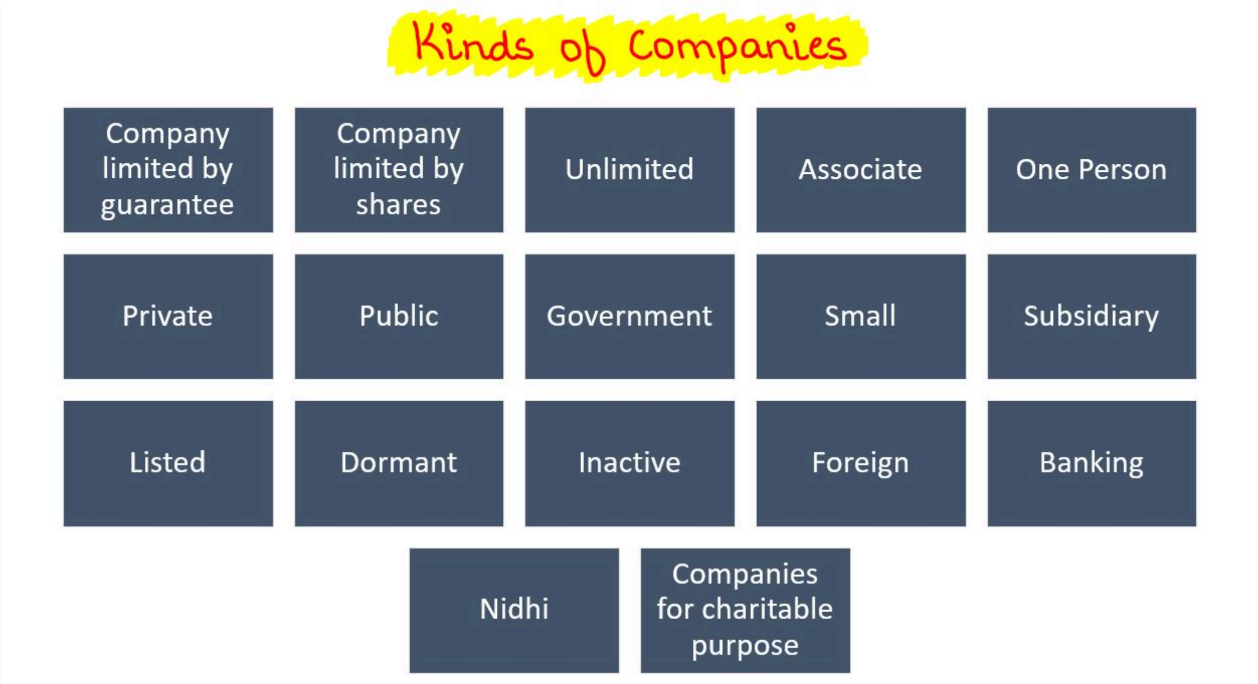
Turnover means the gross amount of revenue in the Profit & Loss from the sale, supply, or distribution of goods or services rendered during a financial year.

Voting right

Voting right means the right of a member of a company to vote in any meeting of the company or by means of postal ballot.

3. Kinds of Companies

As per Companies Act, 2013, 'Company' means a company incorporated under this Act or under any previous company law.



Following are the types of Companies under the Act.

Company limited by guarantee

Company limited by guarantee means a company having limited liability of its members limited to the extent undertaken by them to contribute to the assets of the company in the event of its being wound up.

Company limited by shares

Company limited by shares means a company having limited liability of its members limited to the amount, if any, unpaid on the shares held by them.

Unlimited company

Unlimited company means a company not having any limit on the liability of its members.

Associate company

Associate company, in relation to another company, means a company in which that other company has a significant influence (i.e. control of at least 20% of total voting power or control of or participation in business decisions under agreement), but which is not a subsidiary company of the company having such influence and includes a joint venture company.

One Person Company

One Person Company (OPC) means a company which has only one person as a member.

Private Company

Private Company means a company having a prescribed minimum paid-up share capital and which by its Articles:
(i) restricts the right to transfer its shares;
(ii) except in case of OPC, limits the number of its members to 200;
(iii) prohibits any invitation to the public to subscribe for any securities of the company.

Public Company

Public Company means a company which:
(a) is not a private company; and
(b) has a prescribed minimum paid-up share capital.

A company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles. There is no minimum paid up share capital to form a public company.

Government company

Government company means any company in which not less than 51% of the paid-up share capital is held by:
(a) the Central Government, or
(b) by any State Government or Governments, or
(c) partly by the Central Government and partly by one or more State Governments, and
(d) includes a company which is a subsidiary company of such a Government company.

Small company

Small company means a company, other than a public company:
(i) paid-up share capital of which does not exceed Rs. 50 Lakhs or such prescribed higher amount up to a maximum of Rs. 10 crore; and
(ii) turnover of which does not exceed Rs. 2 crore or such prescribed higher amount up to a maximum of Rs. 100 crore.

Nothing stated here shall apply to:

- a holding company or a subsidiary company;
- a company registered under Section 8 (Companies for charitable purpose); or
- a company or body corporate governed by any special Act.

Holding Company

Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Subsidiary company

Subsidiary company, 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 BOD (i.e. power to appoint or remove majority of the directors); or
(ii) exercises or controls more than ½ of the total voting power either at its own or together with one or more of its subsidiary companies.

Note that a private company, which is subsidiary of a public company shall be deemed to be public company for the purpose of this Act, even where such subsidiary company continues to be a private company in its articles.

Listed company

Listed company means a company which has any of its securities listed on any recognised stock exchange. Such class of companies, which have listed or intend to list such class of securities, as prescribed in consultation with the Securities and Exchange Board of India, shall not be considered as listed companies.

Dormant company

Dormant company means a company formed and registered for a future project or to hold an asset or intellectual property and has no significant accounting transaction. Such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.

Inactive company

Inactive company means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last 2 financial years, or has not filed financial statements and annual returns during the last 2 financial years.

Foreign company

Foreign company means any company or body corporate incorporated outside India which:
(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
(b) conducts any business activity in India in any other manner.

Banking company

Banking company means a banking company as defined in Section 5(c) of the Banking Regulation Act, 1949.

Nidhi company

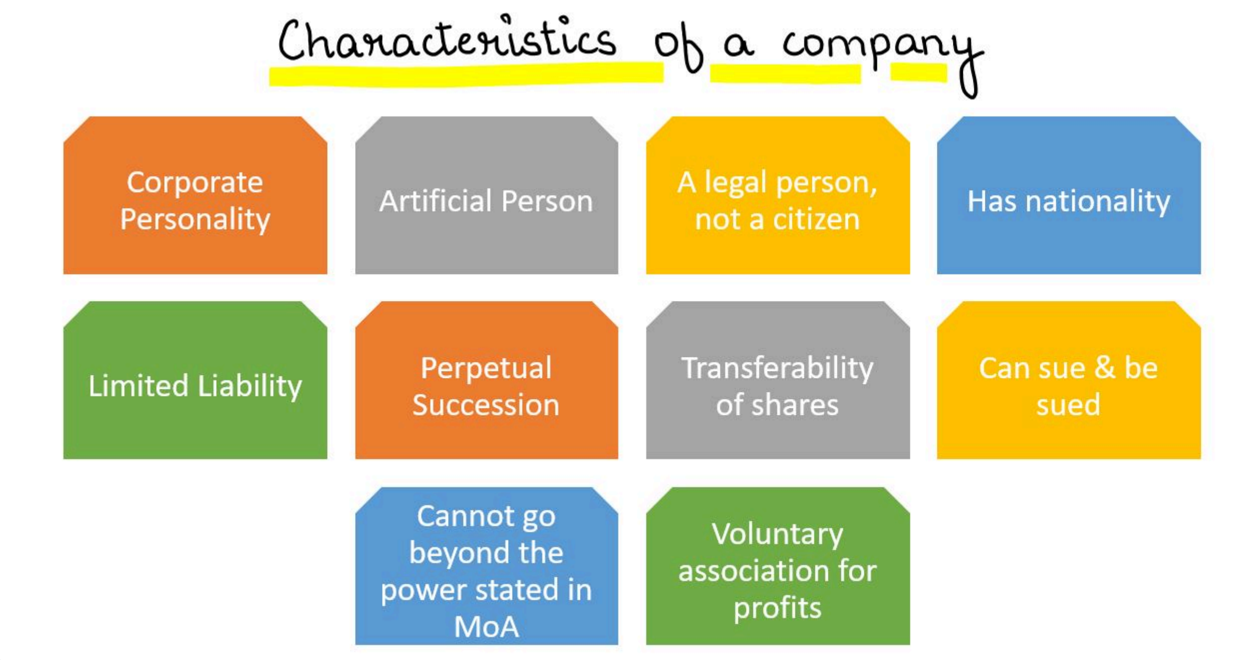
Nidhi company means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.

Companies for charitable purpose

Companies for charitable purpose (popularly known as Section 8 Companies) means a limited company:
(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
(b) intends to apply its profits, if any, or other income in promoting its objects; and
(c) intends to prohibit the payment of any dividend to its members.

For example, FICCI, ASSOCHAM, National Sports Club of India, CII etc. The Central Government may allow such companies to be registered as a limited company without the addition to its name of the word "Limited", or "Private Limited".

4. Characteristics of a Company



The characteristics of a Company are as follows.

1. A company incorporated under the Act is vested with a **corporate personality**, so it bears its own name, acts under its name, has a seal of its own and its assets are separate and distinct from those of its members. It is a different 'person' from the members who compose it.

2. A Company is called an **artificial person** since it is invisible, intangible, existing only in the contemplation of law. Common seal is the official signature of a company, however, it is not mandatory for companies to have a common seal.

3. The company, though **a legal person,** is **not a citizen** under the Citizenship Act, 1955 or the Constitution of India. It is to be noted that certain fundamental rights enshrined in the Constitution for protection of "person", e.g., right to equality (Article 14) etc. are also available to a company. The Citizenship Act, 1955 expressly excludes a company or association or body of individuals from citizenship.

4. A company cannot be a citizen, yet it **has nationality**, domicile and residence (place of its registration).

5. The privilege of **limited liability** for business debts is one of the principal advantage of doing business under the corporate form of organisation. The liability of a member as shareholder, extends to the contribution to the capital of the company up to the nominal value of the shares held and not paid by him.

6. A company, being a separate legal person is unaffected by death or departure of any member and it remains the same entity, despite total change in the membership. Thus, it has **perpetual succession**.

7. The shares held by the members are movable property and can be transferred from one person to another in the manner provided by the articles. However, there are restrictions with respect to **transferability of shares** of a Private Limited Company.

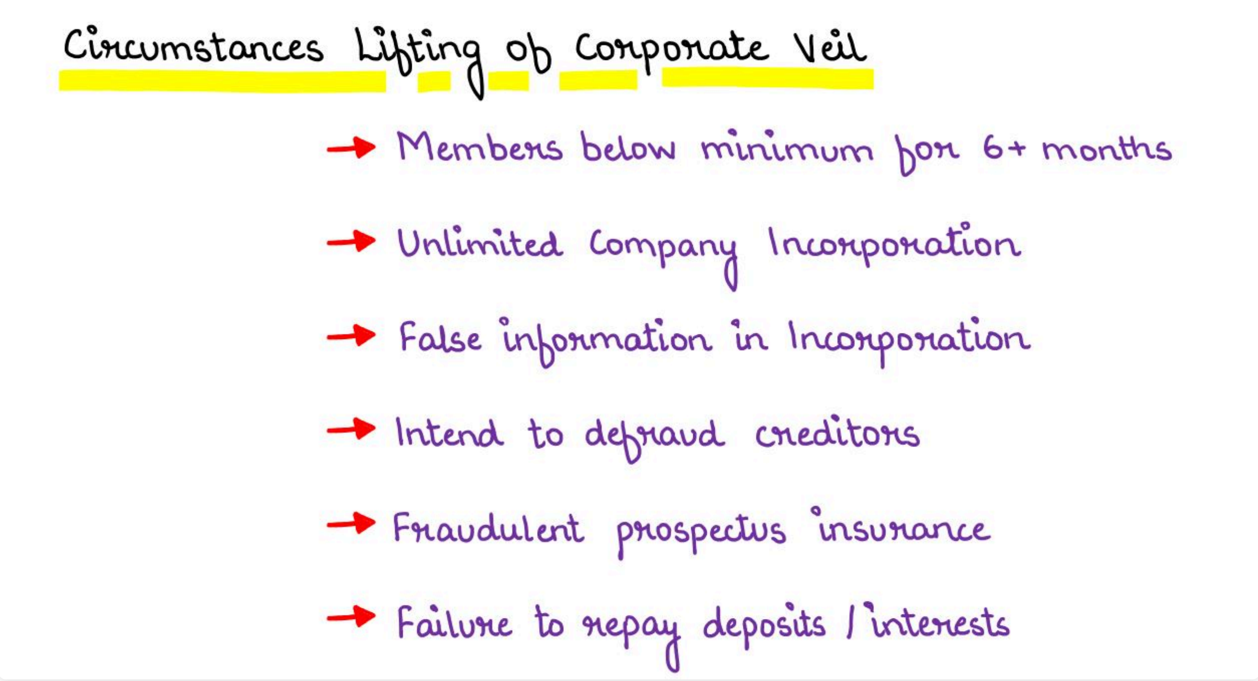
8. A company being a body corporate, **can sue and be sued** in its own name.

9. A company **cannot go beyond the power stated in its Memorandum of Association**. The Memorandum of Association of the company regulates the powers and fixes the objects of the company and provides the edifice upon which the entire structure of the company rests.

10. A company is a **voluntary association for profit**. It is formed for the accomplishment of some stated goals and whatsoever profit is gained is divided among its shareholders or saved for the future expansion of the company. Only a Section 8 company can be formed with no profit motive.

5. Lifting of Corporate Veil

The "lifting of the corporate veil" refers to a legal concept where the separation between a company and its members or shareholders is disregarded, allowing the court to look beyond the corporate structure to hold individuals or entities personally liable for the company's actions or obligations. Under the Indian Companies Act, the principle of corporate veil lifting is not explicitly mentioned, but the judiciary may resort to it in certain circumstances to ensure justice and prevent misuse of the corporate form.



Circumstances when corporate veil can be lifted

Here are situations where the corporate veil might be lifted or the members can be severally held liable for the payment of whole debts of the company in following cases:

1. If at any time number of members is reduced below statutory minimum, that is 7, in case of a public company and 2 in case of a private company and the company continues to carry on its business for more than 6 months, while the number of members is so reduced.

2. When the company is incorporated as an Unlimited Company.

3. When the Tribunal is satisfied that the company got incorporated by furnishing any false or incorrect information during incorporation.

4. Where in the course of its winding up, it appears that the business of the company has been carried on with an intent to defraud its creditors or any other person.

5. Where it is proved that a prospectus has been issued for any fraudulent purpose.

6. Where a company fails to repay the deposit or part thereof or any interest thereon.

6. Formation and Incorporation of Companies

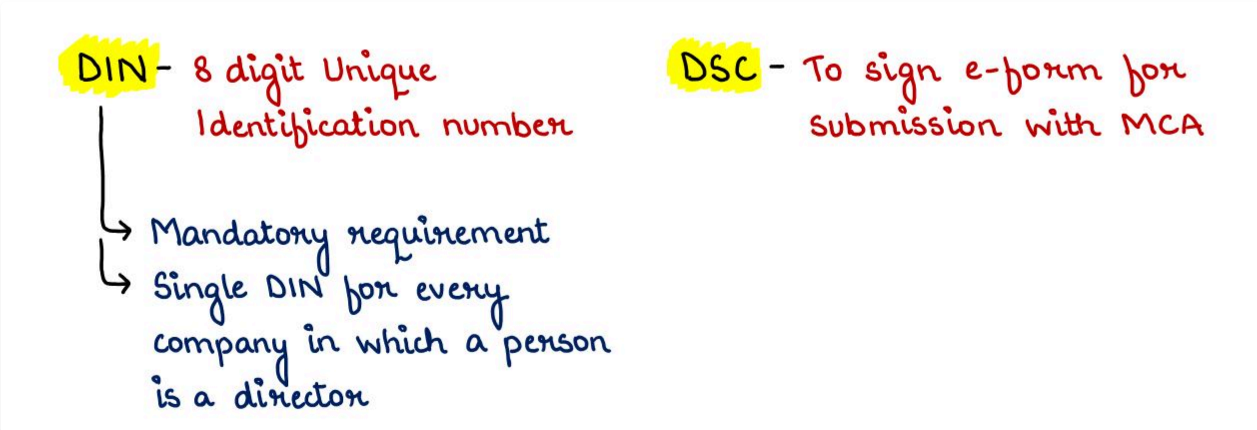
Chapter II (Sec. 3 to Sec. 22) of the Act deals with formation and incorporation of companies.

During the promotion of the company, promoters enter into certain contracts with third parties on behalf of the company. These are called **preliminary contracts or pre-incorporation contracts**. These are not legally binding on the company.

A company after coming into existence may, if it so chooses, decide to enter into fresh contracts with the same terms and conditions to honour the contracts made by the promoters. Note that it cannot ratify a preliminary contract. A company, thus, cannot be forced to honour a preliminary contract. Promoters, however, remain personally liable to third parties for these contracts.

The procedural steps that are required to be taken by the promoters for the incorporation of a company are discussed next.

6. Formation and Incorporation of Companies



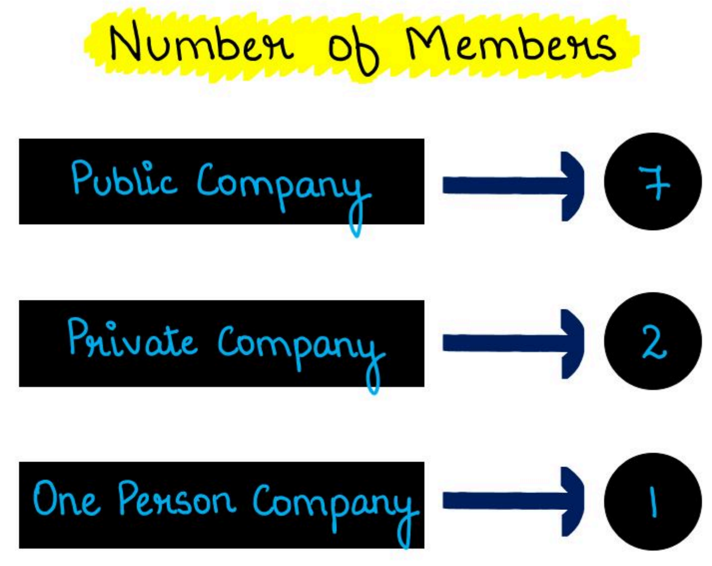
All the existing and intending Directors have to obtain DIN within the prescribed time-frame as notified.

Director Identification Number (DIN) is an 8-digit Unique Identification Number allotted to all existing and new directors pursuant to section 153 and 154 of the Companies Act 2013. It is a mandatory requirement and without DIN no person can become a director. DIN is specific to the individual who has obtained it, and not for the company he/she has obtained it, so it can be used during a lifetime and there is no need to obtain separate DIN each time a new company is floated.

Any person intending to become a director in an existing company shall file form DIR-3 and the same gets processed by Central Government (Office of Regional Director (Northern Region), Ministry of Corporate Affairs). Further, person who is appointed as a director upon filing form SPICe (INC-32) will be issued a DIN by the approving authority (Central Registration Centre).

Also, every user who is required to sign an e-form for submission with MCA (Ministry of Corporate Affairs) is required to obtain a Digital Signature Certificate (DSC).

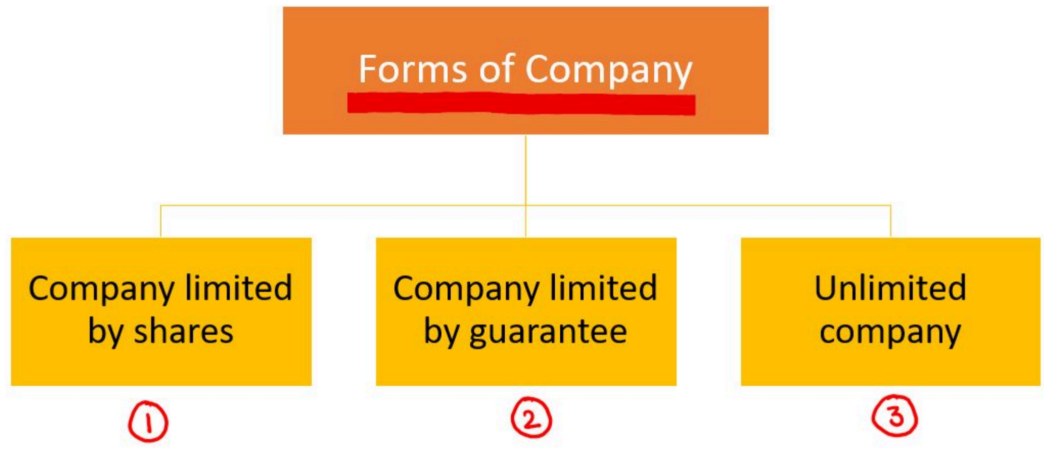
6. Formation and Incorporation of Companies



Section 3(1) of the Act states that a company may be formed for any lawful purpose by:
(a) **7 or more persons**, in case of a **public company**;
(b) **2 or more persons**, in case of a **private company**; or
(c) **one person**, in case of a **One Person Company** (OPC) that is to say, a private company

by subscribing their names or his name to MOA and complying with the requirements of this Act in respect of registration.

Note that MOA of an OPC shall indicate the name of the other person, with his prior written consent, who shall become member, in the event of the subscriber's death. Such written consent need to be filed with Registrar at the time of incorporation of the OPC along with its memorandum and articles.

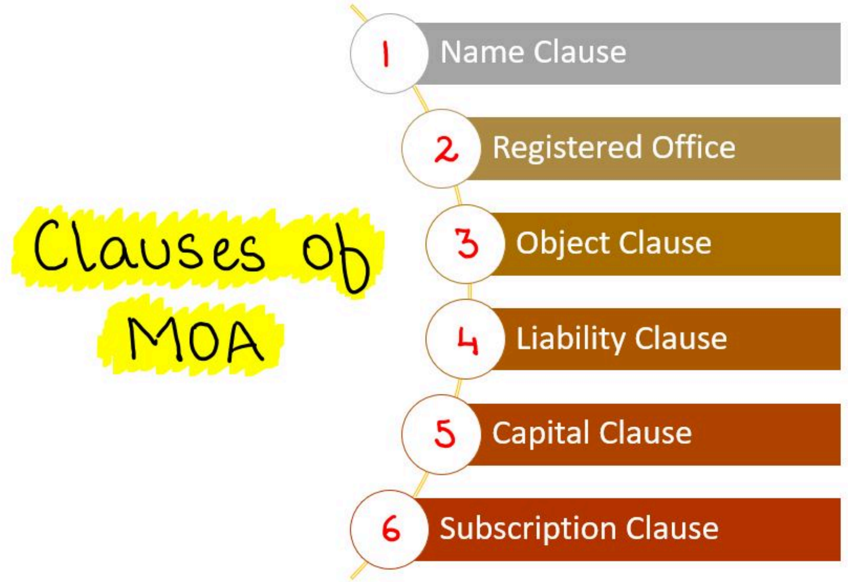


Section 3(2) states that a company formed as above may be either:
(a) a company limited by shares; or
(b) a company limited by guarantee; or
(c) an unlimited company.

Before proceeding further, let us briefly explain 2 important documents in relation to a Company, i.e., MOA and AOA. These are discussed next.

6. Formation and Incorporation of Companies

Memorandum of Association (MOA) is the most important document as it defines the objectives of the company. No company can legally undertake activities that are not contained in its MOA.



The Act states that the memorandum of a company shall state:

(a) the **name** of the company with the last word "Limited" [in case of a public company, or the last words "Private Limited" in the case of a private company] or 'One Person Company' (in case of OPC), except Sec. 8 Companies;

(b) The **state** in which the registered office of the company is to be situated;

(c) The **objects** for which the company is proposed to be incorporated;

(d) the **liability** of members of the company;

(e) in the case of a company having a **share capital**:

(i) the amount of share capital with which the company is to be registered and

(ii) the number of shares each subscriber to the memorandum intends to take;

(f) in the case of OPC, the **name of the person who in the event of death of the subscriber shall become the member** of the company.

Forms of MOA

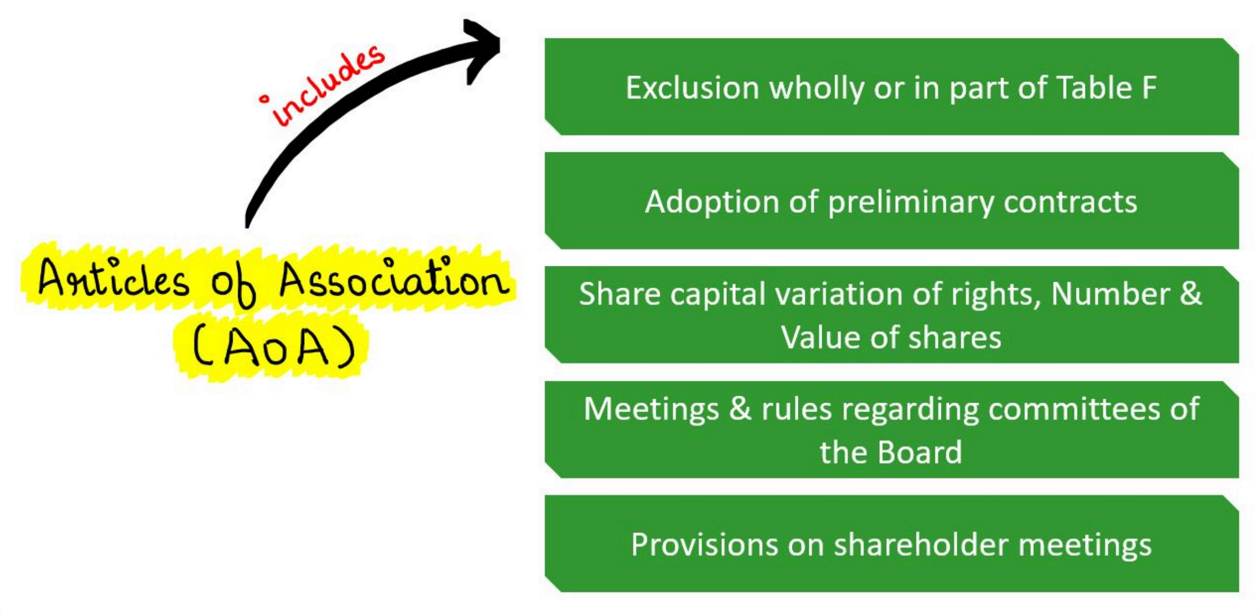
The MOA shall be in respective forms specified in Tables A, B, C, D and E in Schedule I.

TABLE A	MOA of a Company Limited by Shares
TABLE B	MOA of a Company Limited by Guarantee and not having a Share Capital
TABLE C	MOA of a Company Limited by Guarantee and having a Share Capital
TABLE D	MOA of an Unlimited Company and not having Share Capital
TABLE E	MOA of an Unlimited Company and having Share Capital

The MOA of a company cannot contain anything contrary to the provisions of the Companies Act. If it does, the same shall be devoid of any legal effect. Similarly, all other documents of the company must comply with the provisions of the Memorandum.

6. Formation and Incorporation of Companies

The articles of a company shall contain the regulations for management of the company. The articles shall also contain matters considered necessary for management of the Company.



The AOA may comprise provisions such as:

- Share capital, call of share, forfeiture of share, conversion of share into stock, transfer of shares, share warrant, surrender of shares, etc.
- Directors, their qualifications, appointment, remuneration, powers, and proceedings of the board of directors meetings.
- Voting rights of shareholders, by poll or proxies and proceeding of shareholders general meetings.
- Dividends and reserves, accounts and audits, borrowing powers and winding up.

Forms of AOA

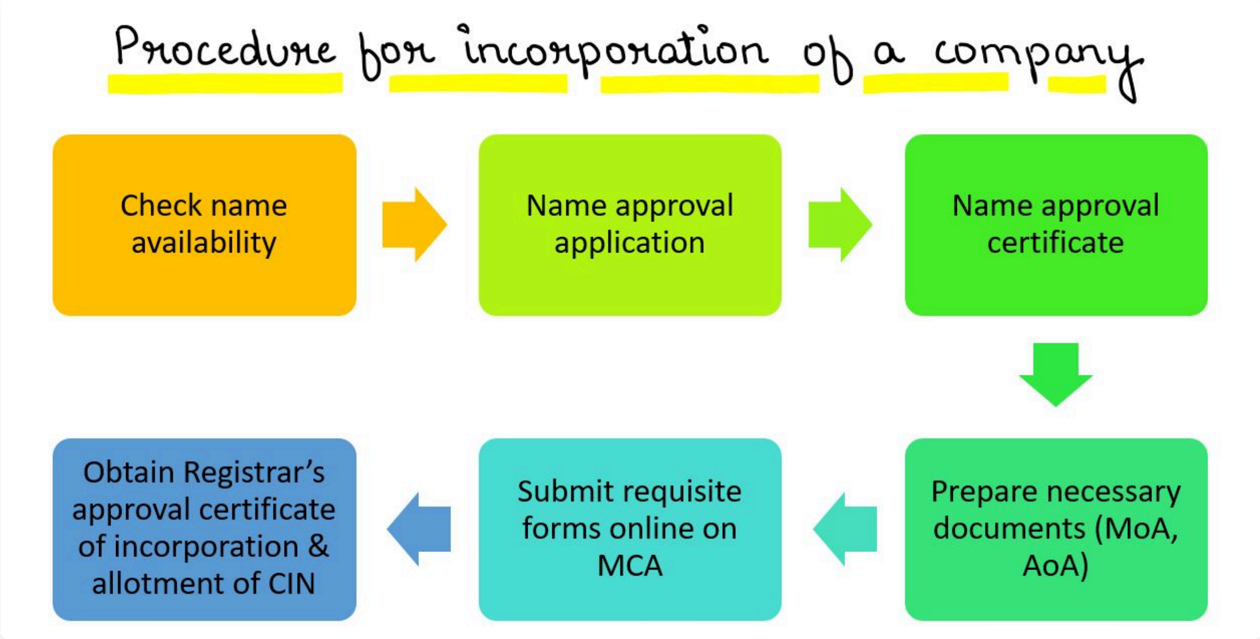
The AOA shall be in respective forms specified in Tables F, G, H, I and J in Schedule I.

TABLE F	AOA of a Company Limited by Shares
TABLE G	AOA of a Company Limited by Guarantee and having a Share Capital
TABLE H	AOA of a Company Limited by Guarantee and not having Share Capital
TABLE I	AOA of an Unlimited Company and having a Share Capital
TABLE J	AOA of an Unlimited Company and not having Share Capital

6. Formation and Incorporation of Companies

The detailed procedure for incorporation of company is provided under Section 7 of the Act.

Note that the Central Registration Centre (CRC) is an initiative of MCA in Government Process Re-engineering (GPR) with the specific objective of providing speedy incorporation related services in line with global best practices.



Incorporation consists of 2 steps, i.e. (a) name approval and (b) incorporation.

For this purpose, SPICe+ form is used, which is an integrated web form and has two parts to meet out the requirement. Part A of the said form is used for name approval and Part B of the form is used for incorporation. The applicant has also option to simultaneously apply for name approval and incorporation.

The steps are given in brief below.

1. Before starting with incorporation, check for availability of proposed name on MCA website.

2. If name is available, submit name approval application.

3. The ROC shall approve the proposed name and issue name approval certificate, if the name is not considered undesirable.

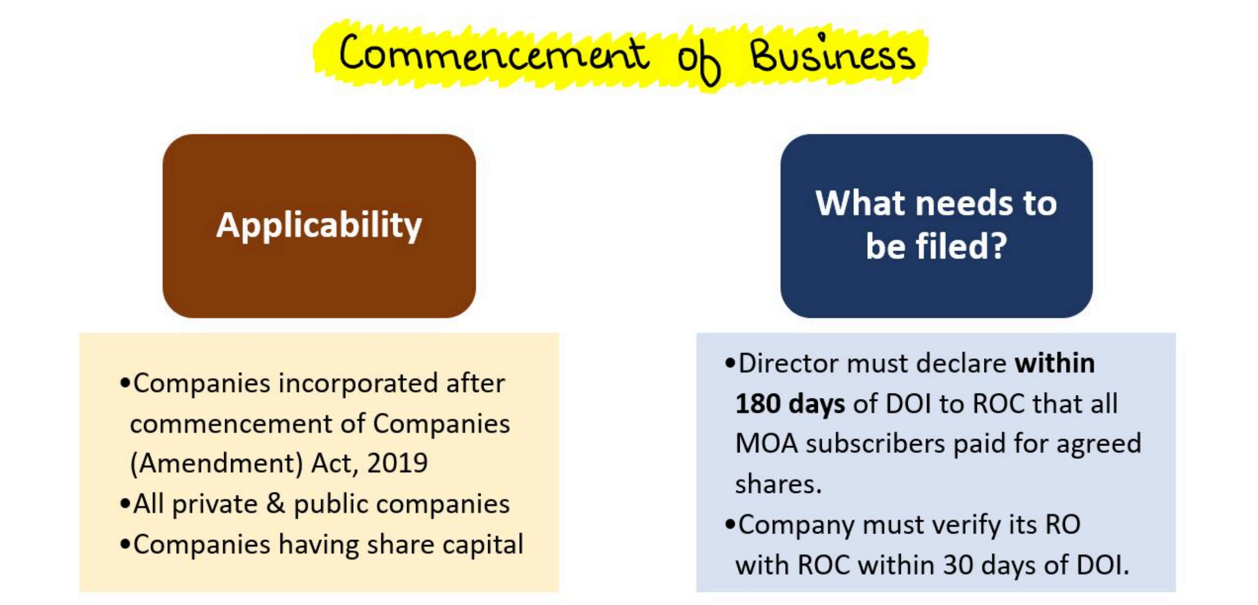
4. Prepare following documents to be filed, which are necessary for incorporation.

- MOA and AOA, duly signed by all subscribers.
- A declaration by a professional person engaged in the formation of the company and by a person named in the Articles as a director, manager or secretary of the company regarding compliance with all the requirements of the Act with respect to registration.
- A declaration duly signed by each subscriber to the MOA and person named as First Directors in the Articles stating and declaring:
  - non-conviction of any offence with respect to the formation, promotion, or management of any company.
  - not guilty of fraud or any breach of duty to any company in the last 5 years.
  - documents filed are complete and true to the best of his knowledge.
- Address for correspondence until the registered office is set-up.
- The details and particulars of the persons mentioned in the articles as the First Directors.
- Such First Directors must provide particulars of interests in other firms or body corporates along with their consent to act as directors of the company.

5. The applicant can apply for DIN, PAN, TAN, EPFO and ESIC Registration and opening of Bank Account through Incorporation Form at the same time.

6. After being satisfied, the Registrar shall register all information and documents and issues a Certificate of Incorporation. The Registrar also allocates a CIN to the company, which is a distinct identity for the company. The allotment of CIN is on and from the company's incorporation date.

6. Formation and Incorporation of Companies



A company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless:

(a) a declaration is filed by a director with ROC within a period of 180 days from its incorporation date that every subscriber to MOA has paid the value of the shares agreed to be taken by him, and

(b) the company has filed with the Registrar, a verification of its registered office.

Where no such declaration has been filed, ROC may, initiate action for the removal of the name of the company from the register of companies.

6. Formation and Incorporation of Companies

The company shall furnish to the Registrar, verification of its registered office within a period of 30 days of its incorporation.

6. Formation and Incorporation of Companies

It is likely that due to non-availability of a suitable name, lack of clarity among the promoters or for other reasons, the formation of a company may take time. In the meanwhile, the promoters may enter into contracts on behalf of proposed company, like purchase of land, ordering machinery, employing key personnel, investment tie up etc. and also incur expenses relating to incorporation of the company. These must be ratified on the incorporation of the company.

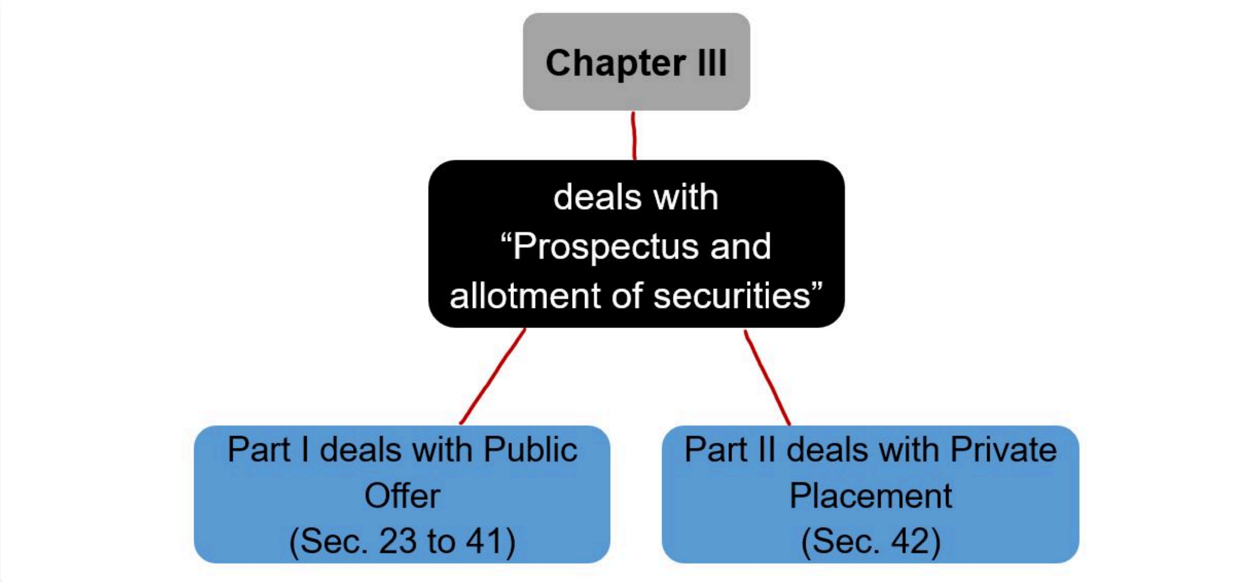
The Articles must authorize the directors to pay the expenses relating to registration of the company. The directors do not have any implied power to incur pre-incorporation expenses.

Promoter’s Liability

During execution, the promoters enter into the contracts on behalf of the company. Although, the promoters act as company’s agent to represent their interest, the principal is not in existence while registration. The contracts entered into by the promoters are therefore not binding on the company or third parties.

However, pre-incorporation contracts are not binding upon the company, if these are not adopted or accepted by the company after its incorporation. Adoption or acceptance of contracts practically means ratification of contract. A Board resolution should be passed for adoption of pre-incorporation contracts at the first Board meeting of the company. On passing such resolution, the contract shall be binding on the company.

7. Prospectus and Allotment of Securities

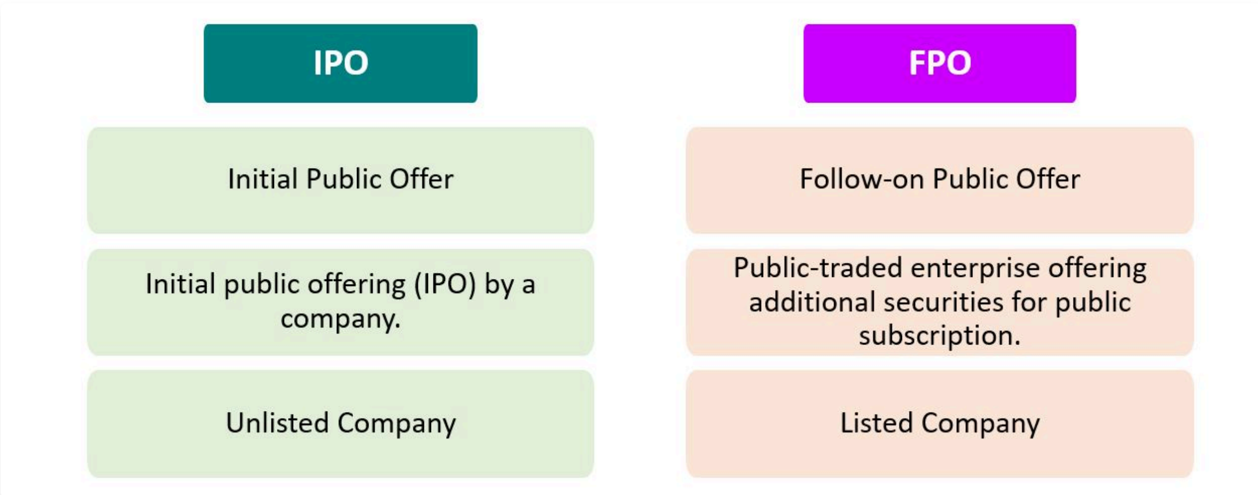


Chapter III of the Act deals with Prospectus and Allotment of Securities and is divided into 2 parts.

- **Part I** deals with Prospectus and Allotment of Securities (Public Offer) [Sec. 23 to 41], and
- **Part II** deals with Private Placement [Sec. 42].

IPO vis-a-vis FPO

Before discussing the provisions of this chapter, lets us know the meaning of Initial Public Offer (IPO) and Follow-on Public Offer (FPO).

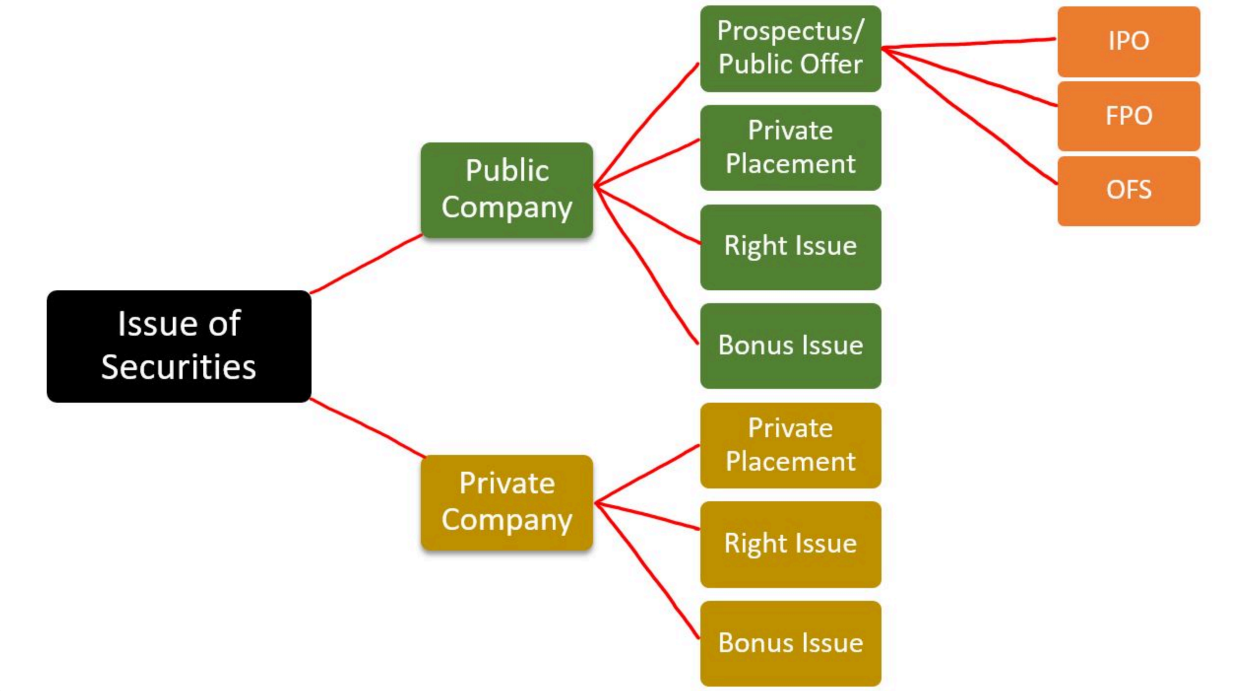


An IPO is when a company which is presently not listed at any stock exchange makes either a fresh issue of shares or makes an offer for sale (OFS) of its existing shares or both for the first time to the public.

An FPO involves additional issue of shares by a company that has already been listed on the stock exchange and want to raise more money from the market by issuing subsequent shares of that company.

7. Prospectus and Allotment of Securities

The Act says that 'Public offer' includes initial public offer or further public offer of securities to the public by a company, or an offer for sale (OFS) of securities to the public by an existing shareholder, through issue of a prospectus.



Mode of Issue of Securities by Public and Private Companies (Sec. 23) is given in the table below.

A public company may issue securities:

- to public through prospectus (public offer); or
- through private placement; or
- through a rights issue or a bonus issue.

A private company may issue securities:

- by way of rights issue or bonus issue; or
- through private placement.

	Public Company	Private Company
Public Offer (including IPO, FPO or OFS)	Yes	No
Private Placement	Yes	Yes
Rights Issue/Bonus Issue	Yes	Yes
Compliance with SEBI rules & regulations	Yes, for listed company or company proposed to be listed	No

Deemed Prospectus (Sec. 25)

Any document by which the offer for sale to the public is made by a company for allotment of securities shall, for all purposes, be deemed to be a prospectus issued by the company.

Matters to be stated in Prospectus (Sec. 26)

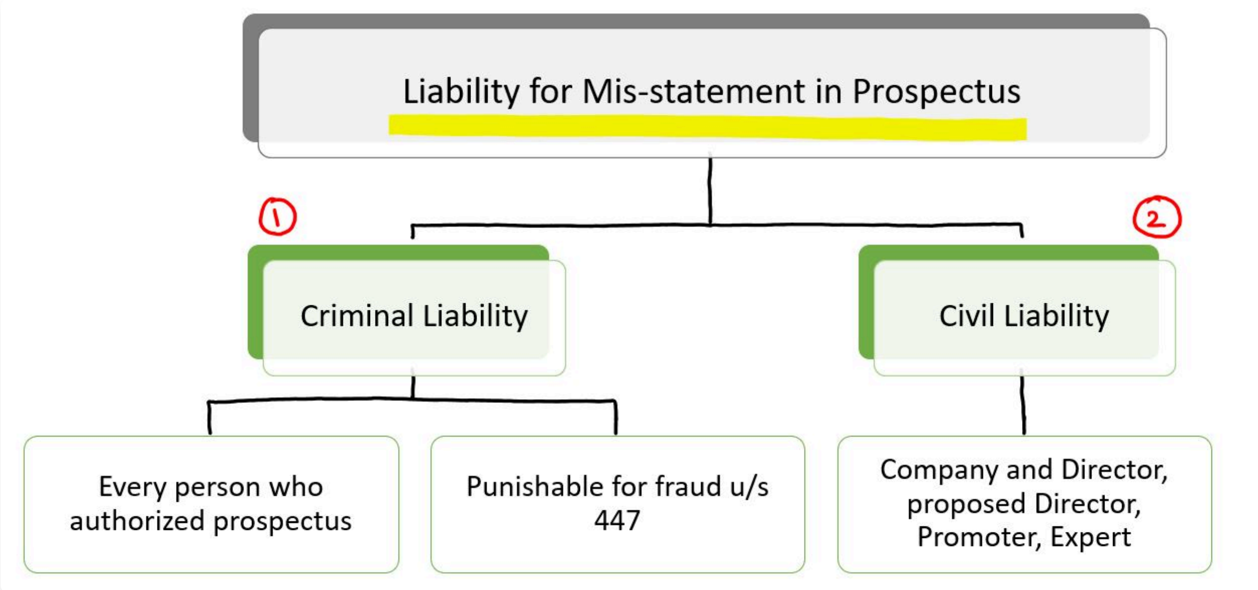
Every Prospectus shall state such information and set out such reports on financial information as may be specified by SEBI in consultation with the Central Government. Further, the Company is required to file a duly signed copy of Prospectus with Registrar on or before the date of its publication. Every prospectus, to be valid, needs to be issued to the public within 90 days from the date on which its copy is delivered to the Registrar.

Public Offer of Securities to be in De-mat Form (Sec. 29)

Every company making public offer shall issue securities in de-mat (digital) form only.

Shelf Prospectus (Sec. 31)

A shelf prospectus is a prospectus which remains valid (on the shelf) for a specified time period (not more than 1 year) during which offers for securities may be made by a company to the public without going through the arduous exercise of issuing fresh prospectus every time. The Company issuing shelf prospectus is required to file 'information memorandum' for providing details of changes that have occurred during 2 consecutive offers to public under shelf prospectus. Such changes need to be intimated simultaneously to ROC within prescribed time limit.



Red-herring Prospectus (Sec. 32)

A red herring prospectus means a preliminary prospectus which does not include complete particulars of the quantum or price of the securities included therein. This means that in case, price is not disclosed, the number of shares and the upper and lower price bands are disclosed.

Criminal Liability for Mis-statements in Prospectus (Sec. 34)

In case, there is any untrue or misleading statement in a prospectus, every person (including statutory auditor) who authorizes the issue of such prospectus, shall be liable under Section 447 (punishment for fraud).

Civil Liability for Mis-statements in Prospectus (Sec. 35)

Where a person has subscribed for securities of a company acting on any mis-statement or untrue statement in the prospectus and consequently, sustained any loss or damage, the company and following stated persons be liable to pay compensation to every person who has sustained such loss or damage:

(a) person who is a director of the company at the time of the issue of prospectus;

(b) person who has authorized himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;

(c) person who is a promoter of the company;

(d) person who has authorized the issue of prospectus; and

(e) person who is an expert (who has given written consent to issue of prospectus).

No person shall be liable for civil or criminal liability, if he proves that he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent or knowledge. Further, where it is proved that a prospectus has been issued for any fraudulent purpose, every person mentioned above (including statutory auditor) shall be personally responsible, without any limitation of liability.

Allotment of Securities (Sec. 39)

It is on allotment that shares come into existence. No allotment of any securities of a company offered to the public for subscription shall be made, unless the amount stated in the prospectus as the minimum amount has been subscribed (called 'minimum subscription'). As per the SEBI Guidelines, the limit of minimum subscription is 90% of the size of the issue. Further, the amount payable on application on every security shall not be less than 5% of the nominal amount of the security or such percentage as specified by SEBI. If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of 30 days from the date of issue of the prospectus, the amount so received shall be returned within 15 days from the closure of the issue.

Return of Allotment

Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment within 30 days of such allotment.

Securities to be dealt with in Stock Exchanges (Sec. 40)

Every company making public offer (which intends to get listed) shall, before making such offer, make an application to one or more recognized stock exchange(s) and obtain permission for listing.

All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than:

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies, in case the company is unable to allot securities.

Global Depository Receipt (Sec. 41)

A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country, subject to prescribed conditions.

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7. Prospectus and Allotment of Securities

Part II of the Chapter III of the Companies Act 2013 deals with provisions related to private placement. These provisions are covered under Section 42 of the Act.

Private Placement: Offer or invitation for subscription of securities to a selected group of persons by a company, excluding public offering.

Identified Persons: The group of individuals identified by the Board, not exceeding 50 in a financial year (excluding qualified institutional buyers and employees under ESOP).

Maximum Number: The Companies (Prospectus and Allotment of Securities) Rules, 2014 set a maximum of 200 such persons.

No Right of Renunciation: Private placement offer, and application do not allow the transfer of rights to others.

Use of Application Money: Application money must be kept in a separate bank account and used only for allotment or repayment if securities cannot be allotted.

Return of Allotment: A company must file a return of allotment with the Registrar within 15 days of allotment, including details of allottees.

Offer or Invitation for Subscription of Securities on Private Placement (Sec. 42)

Private Placement means offer of securities or invitation to subscribe securities to a selected group of persons by a company (other than by way of public offer) through issue of a private placement offer-cum-application and which satisfies the conditions specified in Section 42 of the Act.

This selected group of persons, as identified by the Board, is known as **identified persons**, whose number shall not exceed 50 or such prescribed higher number (excluding qualified institutional buyers and employees under ESOP), in a financial year.

The Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 such persons. The private placement offer and application shall not carry any right of renunciation.

Allotment of Securities

The company shall allot its securities within 60 days from the date of receipt of application money, else, the same need to be repaid within 15 days from the expiry of said 60 days. On failure to repay, the company is liable to repay money with interest. The monies received shall be kept in a separate bank account with a scheduled bank and shall not be utilized for any purpose other than (a) for adjustment against allotment of securities; or (b) for the repayment of monies where the company is unable to allot securities.

Return of Allotment

A company making any allotment of securities under this Section, shall file with the Registrar, a return of allotment within 15 days from the date of the allotment including a complete list of allottees, with their full names, addresses, number of securities allotted and such other prescribed relevant information.

Any private placement issue not made in compliance of the stated provisions shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable.

8. Share Capital and Debentures

Chapter IV (Sec. 43 to Sec. 72) of the Act deals with Share Capital.

The relevant sections of Chapter IV are discussed next one by one.

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8. Share Capital and Debentures

Types Of Share Capital	
	Authorized/ Registered/ Nominal Capital
	Issued Capital
	Un-issued Capital
	Subscribed Capital
	Called-up Capital
	Paid-up Capital

Following are the types of 'Capital' as defined under the Act.

Authorised capital (nominal capital) means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.

Issued capital means such capital as the company issues from time to time for subscription.

Subscribed Capital means part of the capital which is subscribed by the members of a company.

Called-up capital means such part of the capital, which has been called for payment.

Paid-up share capital means aggregate of the amount of money credited as paid-up as is equivalent to the amount received as paid-up, in respect of issued shares and also includes any amount credited as paid-up in respect of shares of the company.

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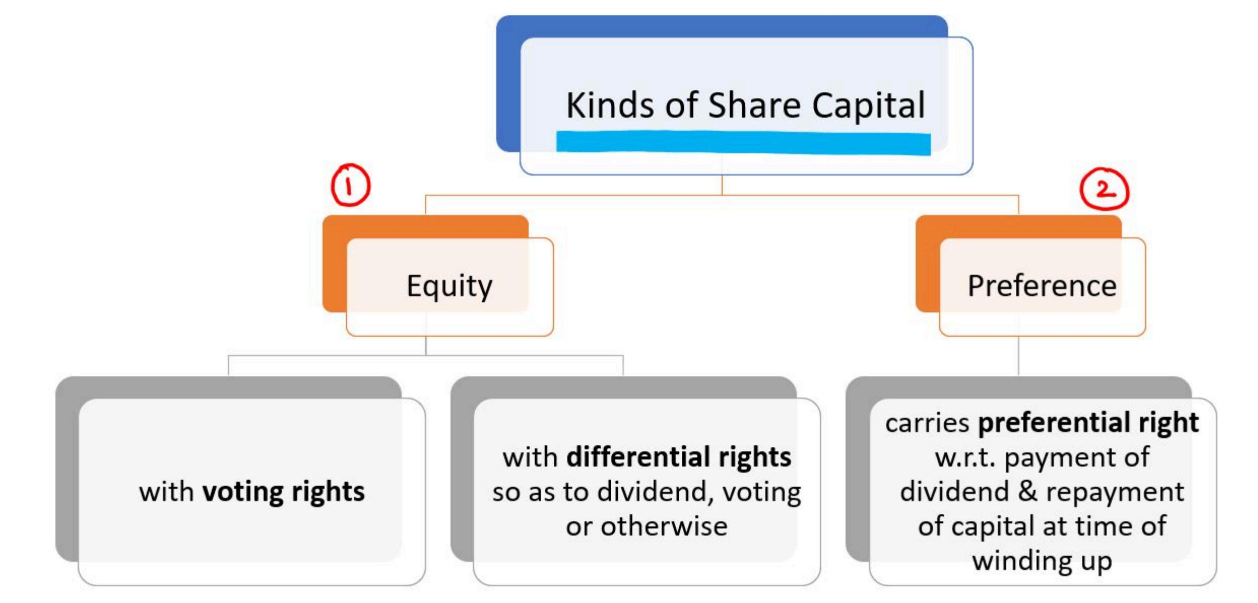
8. Share Capital and Debentures

The share capital of a company limited by shares shall be of 2 kinds, namely:



1. Equity Share Capital

Equity share capital means all share capital which is not preference share capital.

The Act further provides for equity share capital:
(i) with voting rights; or
(ii) with differential rights as to dividend, voting or otherwise.

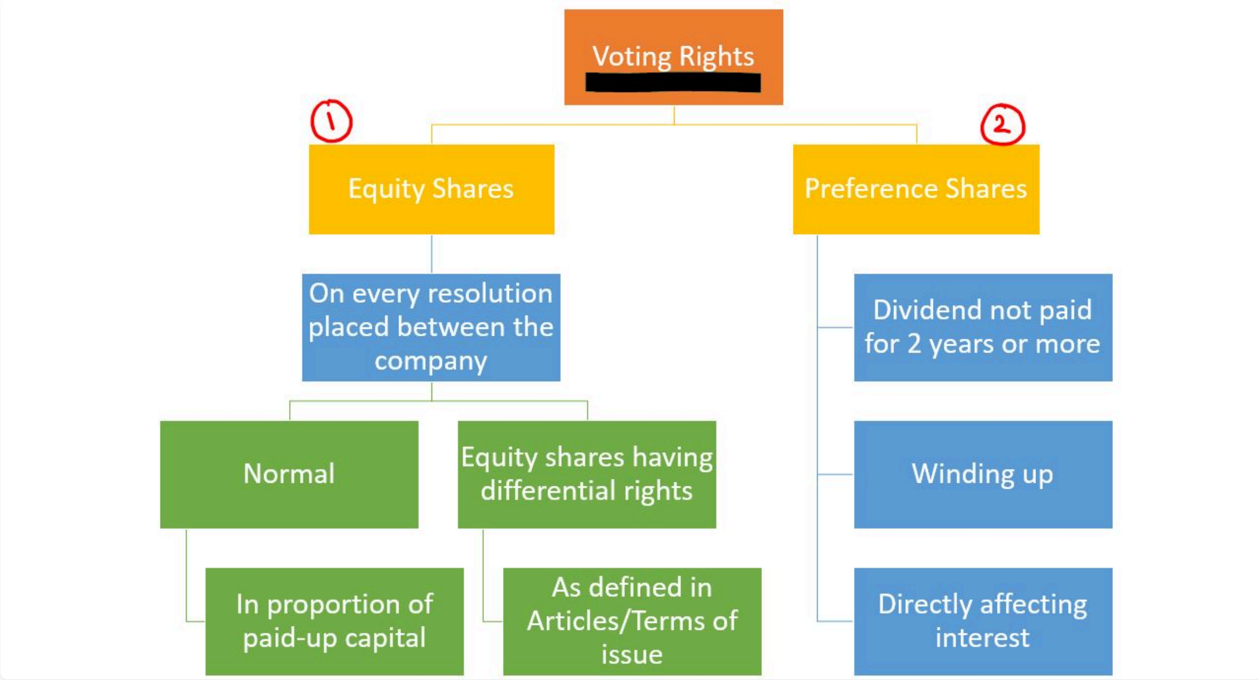
Equity Shares with Differential Rights

No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the prescribed conditions and is authorized by its AOA and also the issue is authorized by an ordinary resolution passed at a general meeting of the shareholders. In case of listed companies, the issue of such shares shall be approved by the shareholders through postal ballot.

2. Preference Share Capital

Preference share capital means that part of the issued share capital of the company which carries a preferential right with respect to:
(i) payment of dividend; and
(ii) repayment of capital, in the case of winding up or repayment of capital.

8. Share Capital and Debentures



Every Equity Shareholder shall have a right to vote on every resolution placed before the company.

Every Preference Shareholder shall have a right to vote only on resolutions placed before the company, which directly affect the rights attached to his preference shares and any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital. Where the dividend in respect of a class of preference shares has not been paid for a period of 2 years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

8. Share Capital and Debentures

The amount which is in excess of the issue price of a share over its face value (or par value) is referred to as ‘share premium’.

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

Application of Securities Premium Account

The securities premium account may be applied by the company:
(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
(b) in writing off the preliminary expenses of the company;
(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company;
(e) for the purchase of its own shares or other securities.

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8. Share Capital and Debentures

The Act **prohibits** a company to issue shares at discount **except** in the case of issue of sweat equity shares.

Any shares issued by a Company at a discount price shall be void.

However, a company may also issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme.

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8. Share Capital and Debentures

Sweat Equity Shares means such equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash, for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Sweat equity shares are different from shares issued by a company under Employee Stock Option Scheme (ESOS) and Employee Stock Purchase Scheme (ESPS).

The key differences between ESOP and Sweat equity are given below.

Basis	ESOP	Sweat Equity Shares
Nature	ESOPs are issued in the form of an incentive and as a retention plan to directors and employees. They do not create an obligation, and it is in the form of a right given to employees to exercise their option to purchase the shares.	Sweat equity shares are issued to the employees or directors as consideration for providing intellectual property rights or know-how or any value additions to the company.
Allotment	ESOP is granted in the form of an option for the employees to purchase the shares at a predetermined price on a future date. These shares are allotted to the employee or directors only after exercising their option of the ESOP grant.	Sweat equity shares are directly allotted to the employees or directors at a discount or for consideration other than cash.
Consideration	The consideration for ESOP has to be paid in cash.	The consideration for sweat equity shares is other than cash or at a discount which may be partly cash and party non-cash.

The rights, limitations, restrictions and provisions applicable to equity shares shall be applicable to sweat equity shares and holders of such shares shall rank *pari-passu* (equal footing) with other equity shareholders.

The issue of Sweat Equity must be authorized by a special resolution. The sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of 3 years from the date of allotment.

8. Share Capital and Debentures

A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to:

(a) **increase** its authorised share capital by such amount as it thinks expedient;

(b) **consolidate and divide** all or any of its share capital into shares of a larger amount than its existing shares. However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal;

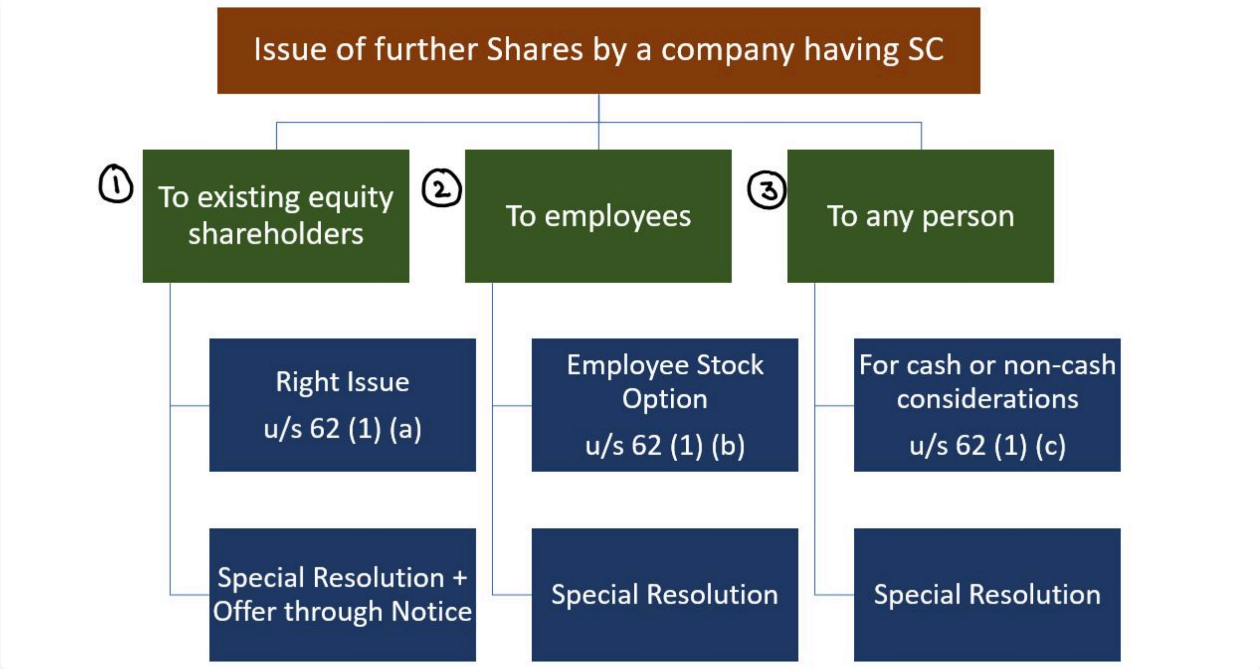
(c) **convert** all or any of its fully paid-up shares into stock, and **reconvert** that stock into fully paid-up shares of any denomination;

(d) **sub-divide** its shares, or any of them, into shares of smaller amount than is fixed by the memorandum;

(e) **cancel** shares which, at the date of passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

The cancellation of shares shall not be deemed to be a reduction of share capital. Further, a company shall, within 30 days of its share capital having been so altered, give notice to the Registrar.

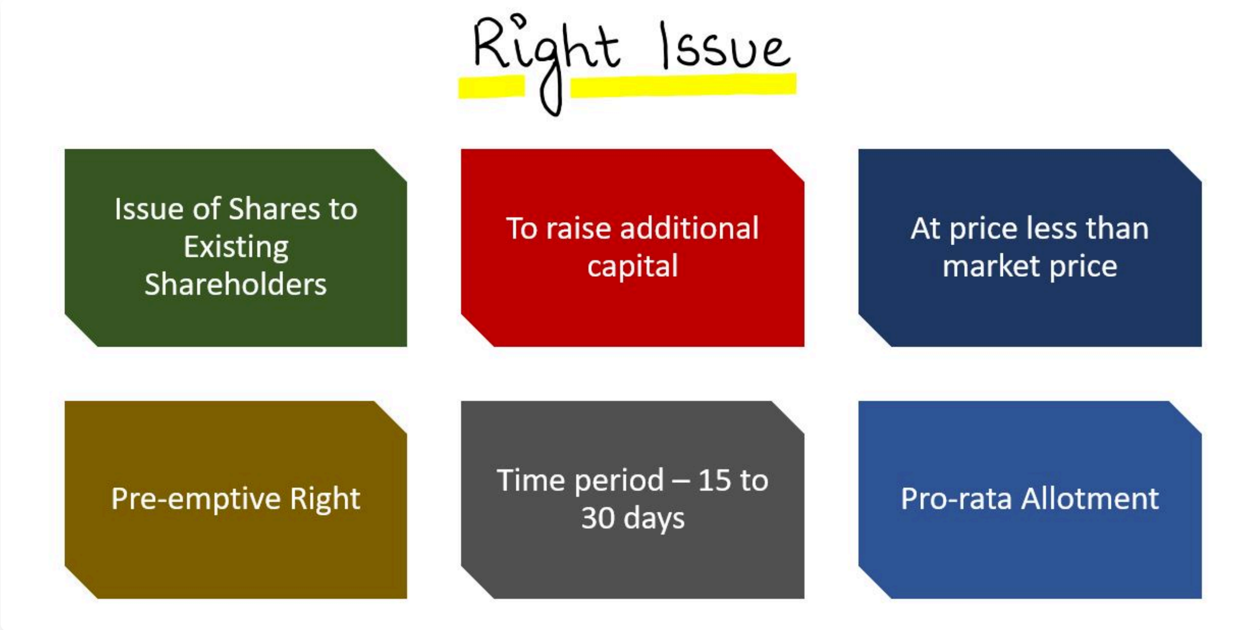
8. Share Capital and Debentures



Under Section 62, the Act contains provisions relating to further issue of share capital through following modes.

1. Rights issue of shares

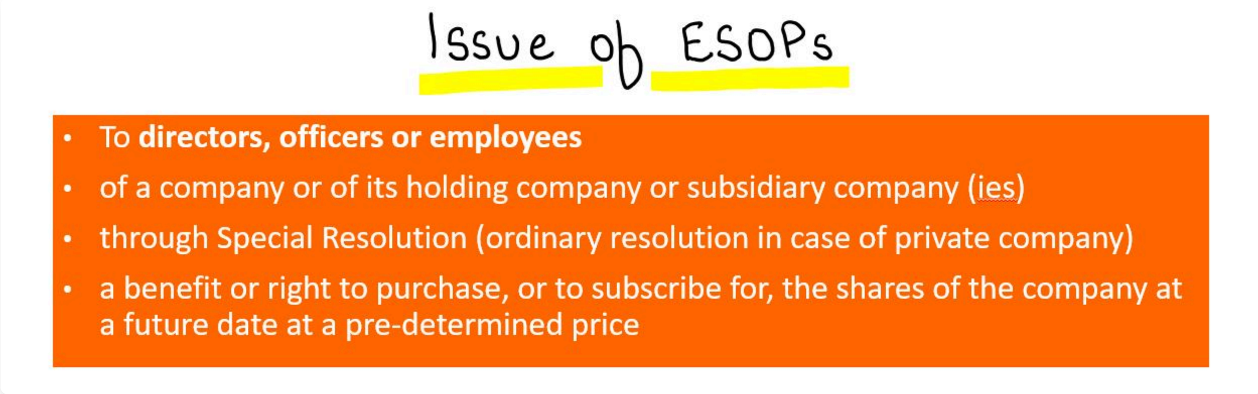
A rights issue is a way by which a company may raise additional capital. However, instead of going to the public, the company gives its existing shareholders the right to subscribe to newly issued shares in proportion to their existing holding.



For example, 1:4 rights issue means an existing shareholder can buy 1 extra share for every 4 shares already held by him. Usually the price at which the new shares are issued by way of rights issue is less than the prevailing market. This is also known as **pre-emptive right** (in preference to outsiders) available to existing shareholders.

The prescribed time limit for Right issue offer is a time not being less than 15 days and not exceeding 30 days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined.

2. Issue of shares through Employee Stock Option (ESOP)



A Company may offer shares through employee stock option to their employees through special resolution subject to the conditions specified under Companies (Share Capital and Debentures) Rules, 2014.

3. Issue of shares on Preferential Basis

A company may issue further shares to persons other than existing shareholders either for cash or for a consideration other than cash, if:

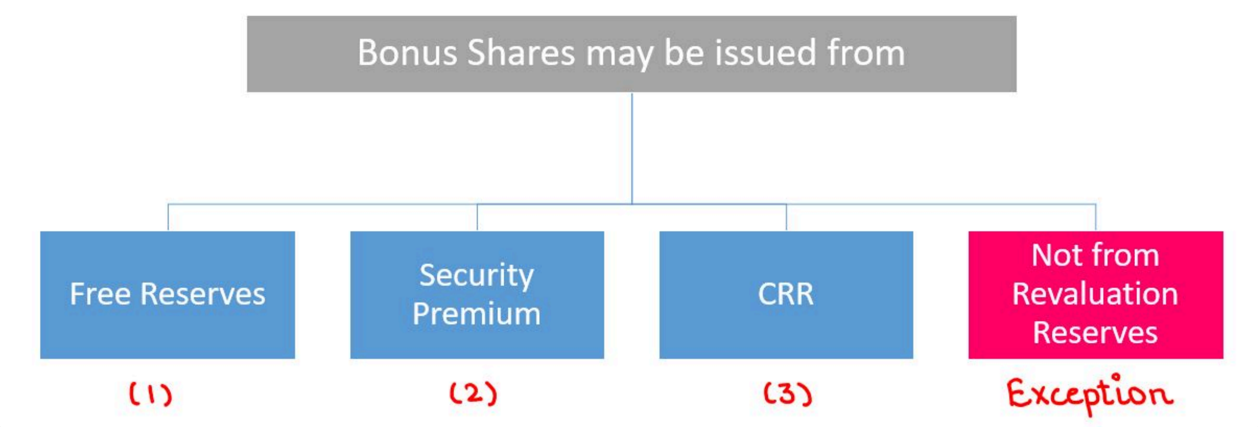
(i) the company in General Meeting passes a special resolution to this effect; and

(ii) the price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and other prescribed conditions.

8. Share Capital and Debentures

Bonus shares are shares issued proportionately by a company to its current shareholders as fully paid-up shares free of cost.

Further, the issue of Bonus Shares results in conversion of the company's profits into share capital, however the overall capital remains the same. It is also termed as **Capitalization of Profits**.



Sources of bonus issue

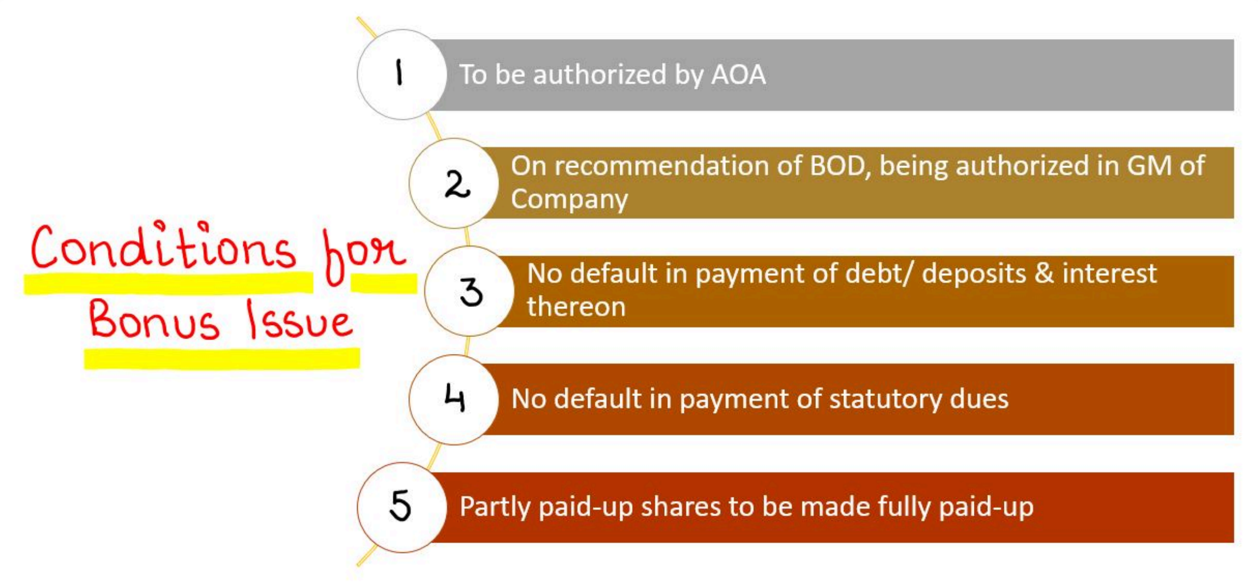
A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of:

(i) its free reserves; or
(ii) the securities premium account; or
(iii) the capital redemption reserve account.

Note that bonus shares cannot be issued out of revaluation reserves. The bonus shares shall not be issued in lieu of dividend.

The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Conditions to be satisfied before bonus issue



The following conditions must be satisfied by the Company, before issuing bonus shares:
(a) It is authorized by its articles;
(b) It has, on the recommendation of the Board, been authorized in the general meeting of the company;
(c) It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
(d) It has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
(e) The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

8. Share Capital and Debentures

Accumulated business losses, assets of reduced or doubtful value like unsound investments proving bad or having paid-up capital in excess of the requirements of the company or surplus capital which cannot be employed gainfully, require corrective measures to be taken to keep the financial health of the company in a reasonably well position.

Accordingly, the company may find it necessary to reduce its share capital. Approval by Special Resolution and confirmation by the Tribunal is one of the mandatory conditions for reduction of Share Capital, among other prescribed conditions.

Modes of reduction of Share Capital

A company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may:

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares:

> (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
>
> (ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

Note that no Reduction of Capital would be allowed, in case of arrears in the Repayment of Deposits and Interest thereon.

8. Share Capital and Debentures

The term buy-back implies the act of purchasing its own shares/securities by a company. It is an alternative mode of reduction of capital without requiring approval of Court/ NCLT.

Following points are note-worthy in respect of buy-back of securities.

Sources of buy-back of securities

A company, authorized by its articles and subject to the passing of Special Resolution may purchase its own shares or other specified securities out of:
(i) its free reserves; or
(ii) the securities premium account; or
(iii) the proceeds of the issue of any shares or other specified securities.

However, no buy-back of any kind of shares or other specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

No special resolution is required, if buy-back is 10% or less, of the paid-up equity capital and free reserves of the Company. Only Board Resolution would be sufficient, then.

Limits on buy-back of securities

The buy-back shall not exceed 25% of the aggregate of paid-up capital and free reserves of the company. Futher, the buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.

The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back shall not be more than twice the paid up capital and its free reserves.

Other conditions of buy-back of securities

All the shares or other specified securities for buy-back should be fully paid-up.

No offer of buy-back, shall be made within a period of 1 year from the date of closure of the preceding offer of buy-back, if any.

Further, Section 69(1) prescribes that where a company purchases its own shares out of free reserves or securities premium account, then a sum equal to the nominal value of the share so purchased shall be transferred to the **capital redemption reserve account** and details of such transfer shall be disclosed in the balance sheet.

The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

8. Share Capital and Debentures

According to Section 71 of the Companies Act, 2013, a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. Such an issue shall be approved by a special resolution passed at a general meeting.

Further, no company shall issue any debentures carrying any voting rights. A **debenture redemption reserve account** shall be created out of profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for redemption of debentures.

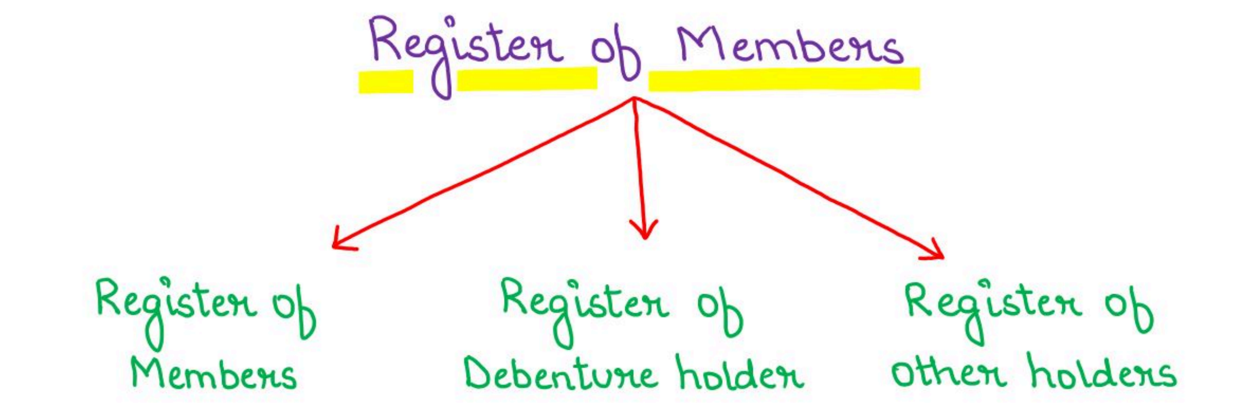
9. Management and Administration

Chapter VII (Sec. 88 to Sec.122) of the Act deals with provisions related to Management and Administration.

The relevant sections of Chapter VII are discussed next.

Note that provisions related to General Meetings and types of Resolutions, which are part of the Chapter VII on Management and Administration are covered under separate headings.

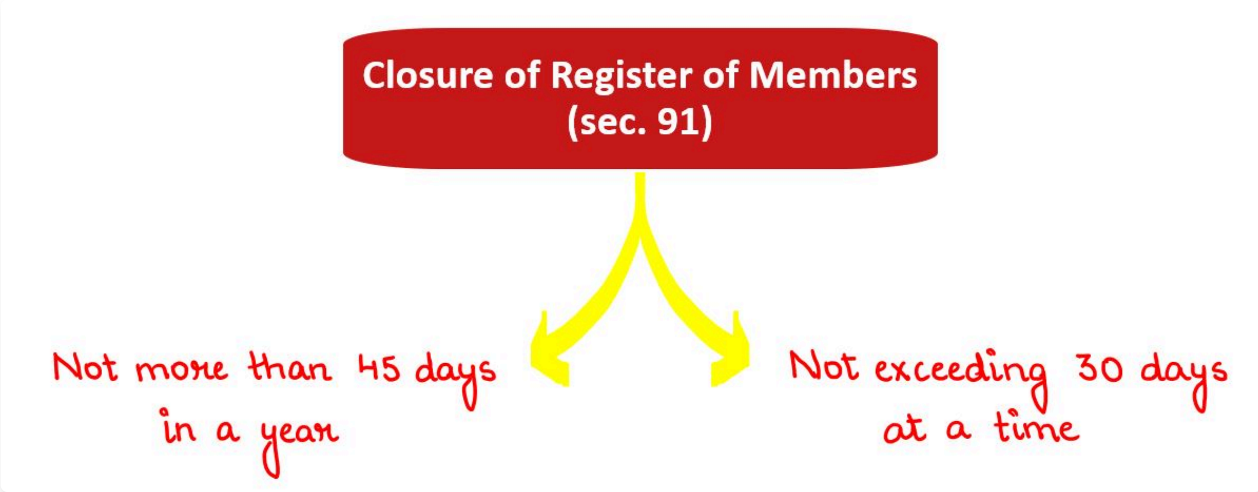
9. Management and Administration



According to Section 88 of the Act, every company shall keep and maintain the following registers in prescribed manner and form:
(a) **register of members** indicating separately for each class of equity and preference shares held by each member residing in or outside India;
(b) **register of debenture-holders**; and
(c) **register of any other security holders**.

A company may, if so authorised by its articles, keep in any country outside India, a part of the register, called "foreign register" containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

9. Management and Administration



A company can temporarily shut down its register of members, debenture-holders, or other security holders for up to 45 days in a year. However, each closure period should not be more than 30 consecutive days.

The company needs to provide a prior notice of at least 7 days to its members or security holders before such closures.

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9. Management and Administration

As per Section 92 of the Act, every company shall file with the Registrar a copy of the annual return containing prescribed particulars, within 60 days:
(a) from the date on which the Annual General Meeting (AGM) is held or
(b) where no AGM is held in any year, within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM.

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9. Management and Administration

As per Section 94 of the Act, the Registers and Returns should be kept at the registered office of the company. These may also be kept at any other place in India in which more than 1/10th of the total number of members entered in the register of members resides, if approved by a special resolution passed at a general meeting of the company.

Any member, debenture-holder, other security holder or beneficial owner or any other person may:
(a) take extracts from such registers and returns without payment of any fee; or
(b) require a copy, thereof, on payment of prescribed fees.

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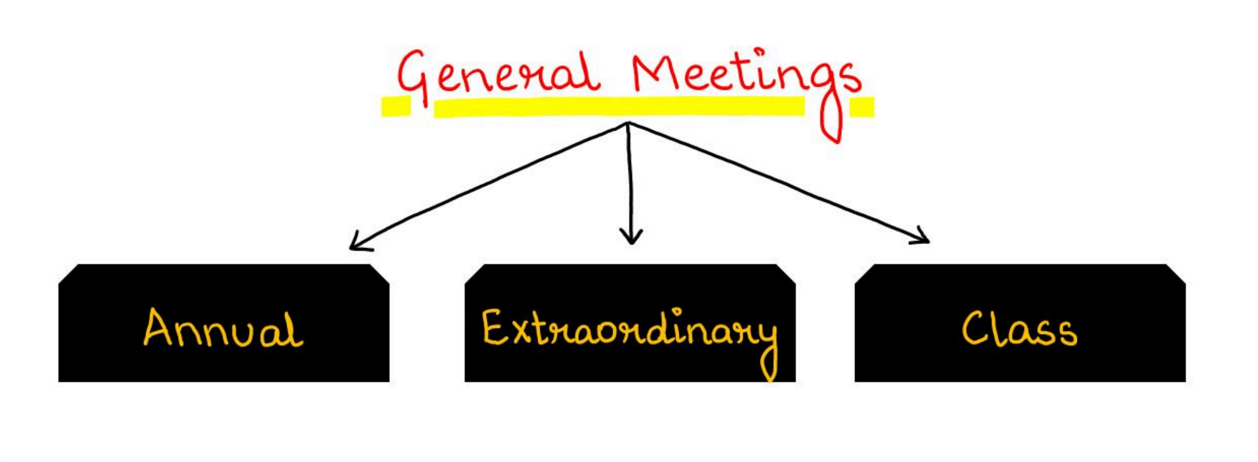
10. General Meetings

The meeting to be held annually for seeking approval to certain ordinary business is called **Annual General Meeting** (AGM).



A meeting to be held to transact any business other than ordinary business or special business is called **extraordinary general meeting** (EGM). In certain cases, a company may have to hold a meeting of the members of a particular class of members, called **class meetings**.

The relevant provisions related to Annual General Meetings and Extraordinary General Meetings are discussed next.

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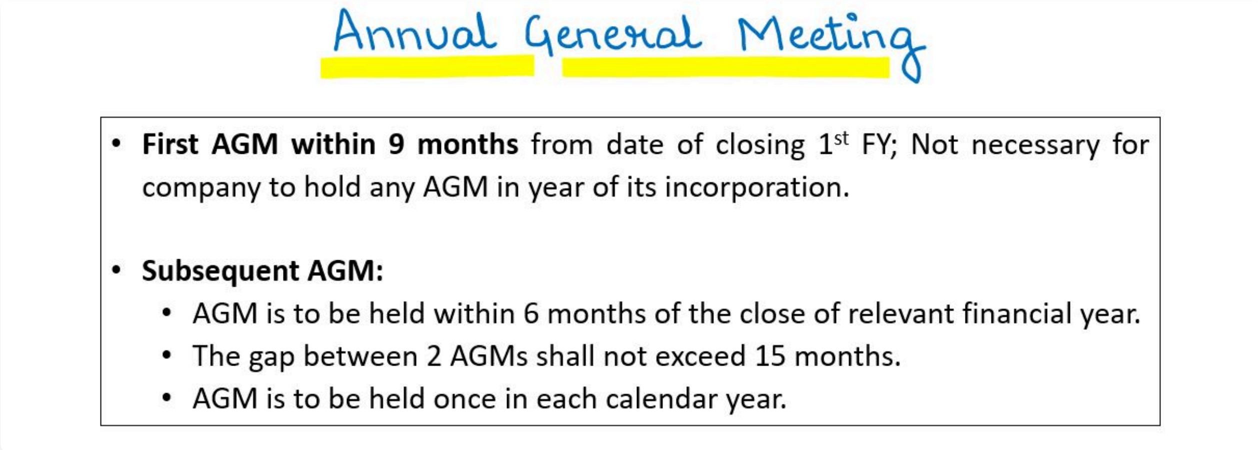
10. General Meetings

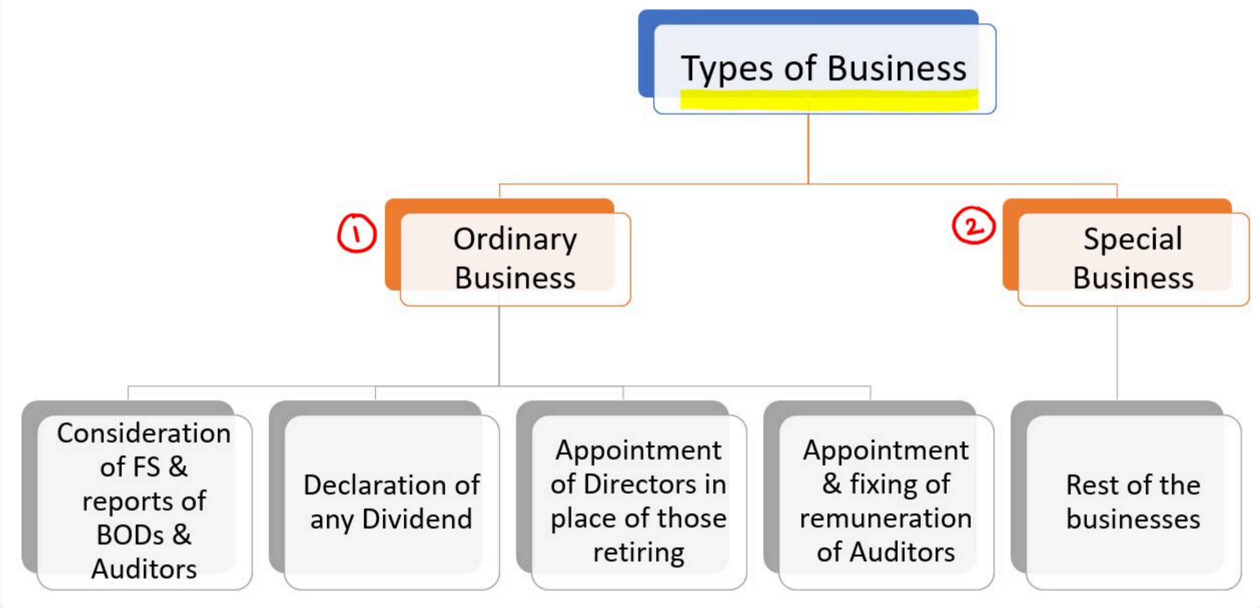
Every company, other than OPC, is required to hold an AGM every year. If the Board fails to convene AGM, any Member of the company may approach the prescribed authority (the Tribunal), which may then direct the calling of the AGM of the company.



Following are the key provisions regarding the holding of an AGM.

- AGM should be held once in each calendar year.
- First AGM should be held within 9 months from the closing of the first financial year. Hence, it shall not be necessary for the company to hold an AGM in the year of its incorporation.
- Subsequent AGM should be held within 6 months from the date of closing of the relevant financial year.
- The gap between 2 AGMs shall not exceed 15 months.
- Note that the last date for holding AGM shall be the earliest of the above three limits.
- An AGM shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday.
- It should be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.
- The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose.
- AGM 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.
- In case of Government Company, the Central Government may approve such other place for holding AGM, if the place is other than registered office.
- In case of Section 8 Company, the time, date and place of each AGM are decided upon before-hand by the Board.
- In case, it is not possible for a company to hold an AGM within the prescribed time, the Registrar may extend the time for a period not exceeding 3 months. No such extension can be granted for the holding of first AGM.
- Every listed public company shall prepare a report on each AGM including the confirmation to the effect that the meeting was duly convened, held and conducted. A copy of the report is to be filed with the Registrar within 30 days of the conclusion of AGM.

Special and Ordinary Business

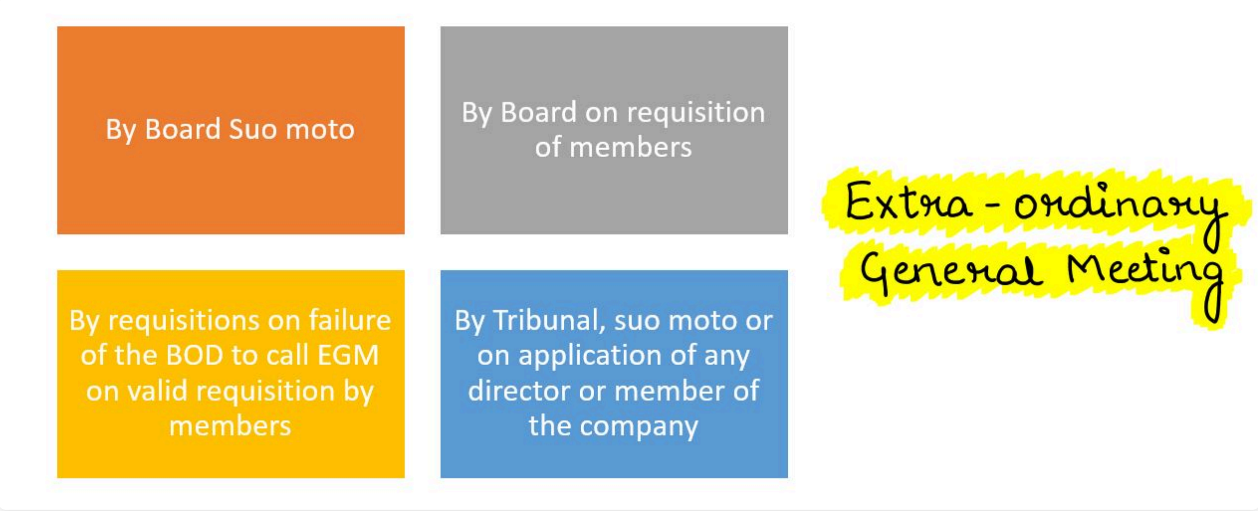


All other businesses transacted at an AGM **except the following** are special business:
(i) the consideration of financial statements and the reports of the BOD and auditors;
(ii) the declaration of any dividend;
(iii) the appointment of directors in place of those retiring;
(iv) the appointment of and fixing of remuneration of auditors.

Accordingly, above mentioned 4 businesses are ordinary business, rest shall be deemed to be special business. Explanatory statement is not required for transacting any item of ordinary business.

Further, in case of meeting other than AGM, all business shall be deemed to be special. Explanatory statement must be annexed to the notice for transacting every item of special business.

10. General Meetings



The AOA of the company makes provisions for convening general meeting other than AGM, for matters, which cannot be deferred till next AGM. All general meetings other than AGM are called EGMs.

All the transactions dealt upon in an EGM shall be special business. An EGM, shall be held at any place in India. An EGM of a Company, which is a wholly owned subsidiary of a company incorporated outside India, may be held outside India.

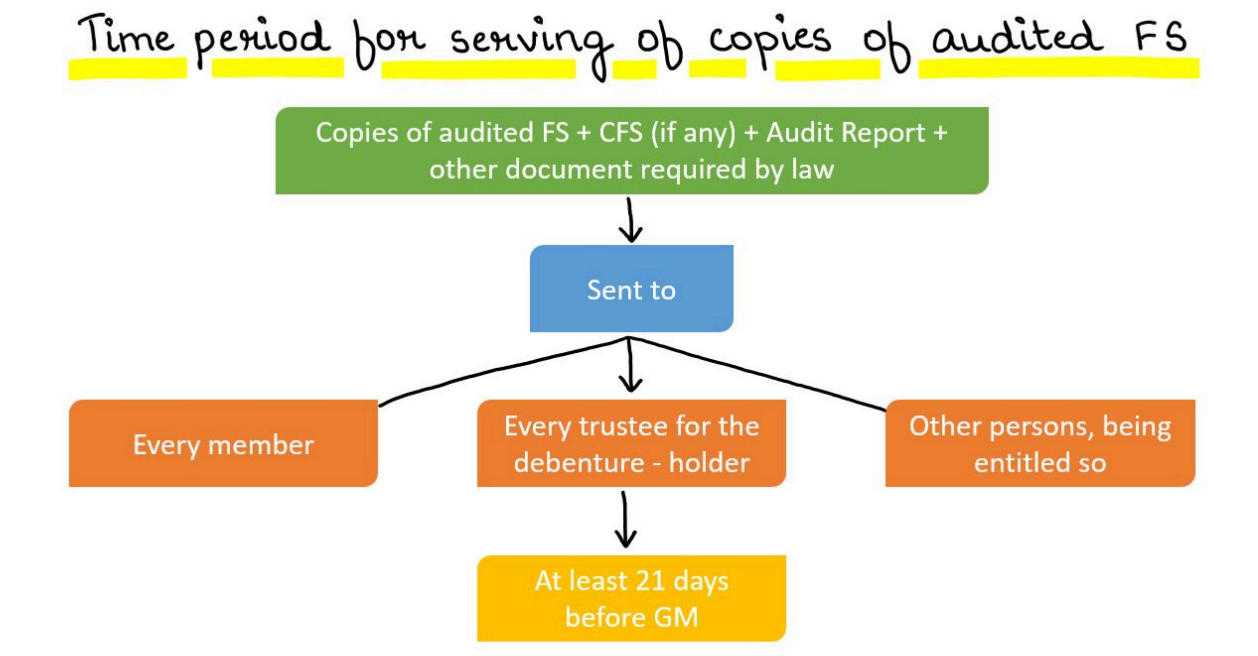
Who may call EGM

EGM may be called by:

- the Board, suo moto, or
- the Board, on requisition of members, or
- the requisitionists, on failure of the Board to call EGM on valid requisition by members, or
- the Tribunal, suo moto, or on application of any director or member of the company.

10. General Meetings

Section 101 provides provisions with respect to Notice of General Meeting.



A general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode.

Clear days means days exclusive of the day of the notice of service and of the day on which the meeting is held.

In case of Section 8 company, 14 days clear notice is required instead of 21 days.

Persons to whome notice should be served

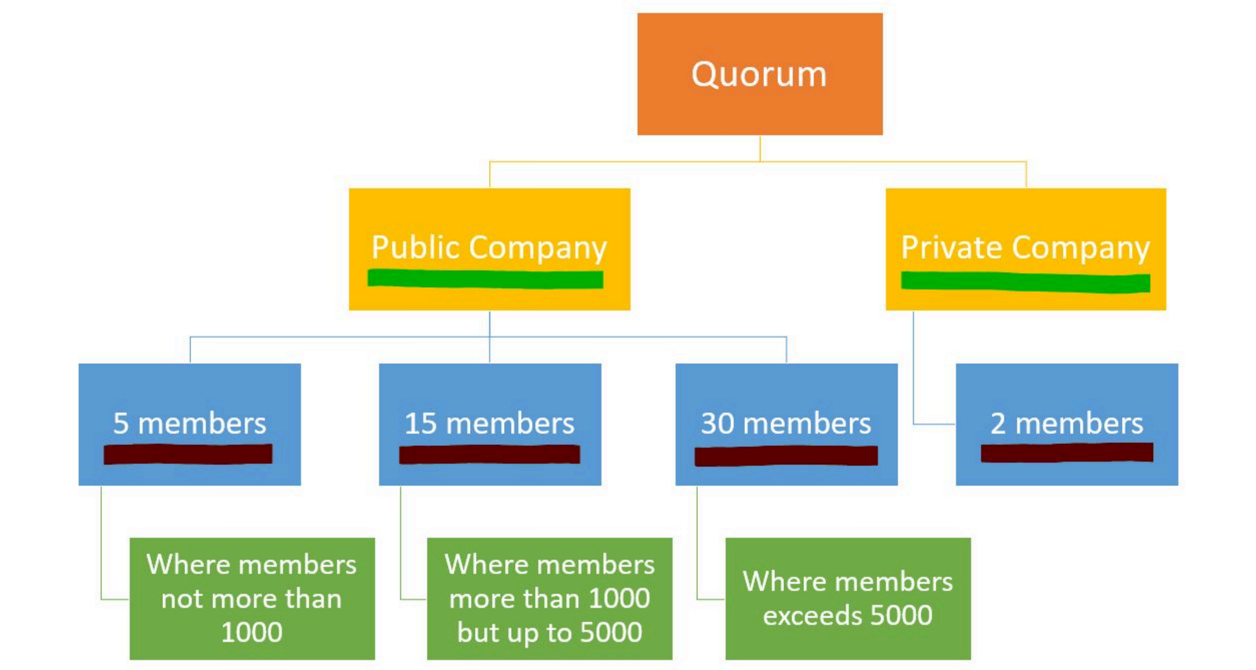
The notice of every meeting of the company shall be given, in writing or electronic mode or in other prescribed mode to:
(a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
(b) the auditor or auditors of the company; and
(c) every director of the company.

Shorter notice

A general meeting may be called after giving a shorter notice also, if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

10. General Meetings

Unless, the Articles provide for larger number, the quorum for a meeting is depicted below.



Meeting in absence of quorum

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or the meeting, if called by requisitionists shall stand cancelled.

If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

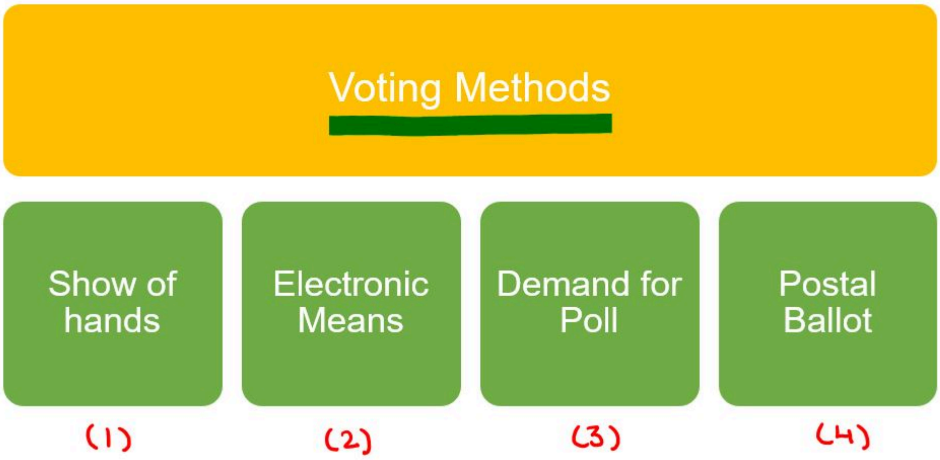
Proxies (Sec. 105)

Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. A member of a company not having a share capital shall not be entitled to appoint proxy unless articles provide so.

A person appointed as proxy shall not act as proxy for more than 50 members and holding in aggregate not more than 10% of the total share capital of the company carrying voting rights.

A proxy received 48 hours before the meeting will be valid, even if the articles provide for a longer period.

10. General Meetings



The Act provides following modes of voting at General Meetings.

Voting by show of hands (Sec. 107)

At any general meeting, a resolution put to vote of the meeting shall, unless a poll is demanded or the voting is carried out electronically, be decided on a show of hands in the first instance.

Voting through Electronic Means (Sec. 108)

Every listed company and company having not less than 1000 members shall provide to its members facility to exercise their right to vote at a general meeting by electronic means.

Voting by demand for poll (Sec. 109)

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made by specified members, in that behalf.

Voting by Postal Ballot (Sec. 110)

A company (a) shall, in respect of such items of business as the Central Government may declare to be transacted only by means of postal ballot; and (b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, in prescribed manner, instead of transacting such business at a general meeting.

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10. General Meetings

While the Board enjoys the primacy in setting the agenda of the meetings, the members are given a right under Section 111 to propose resolutions for consideration at the general meetings, subject to fulfilment of prescribed conditions.

Section 111 outlines the procedures for a company to give notice of resolutions and circulate statements to its members upon the requisition of a specified number of members. The company is not obligated to give notice or circulate statements unless certain conditions, such as timely deposit of the requisition and adequate funds to cover expenses, are met.

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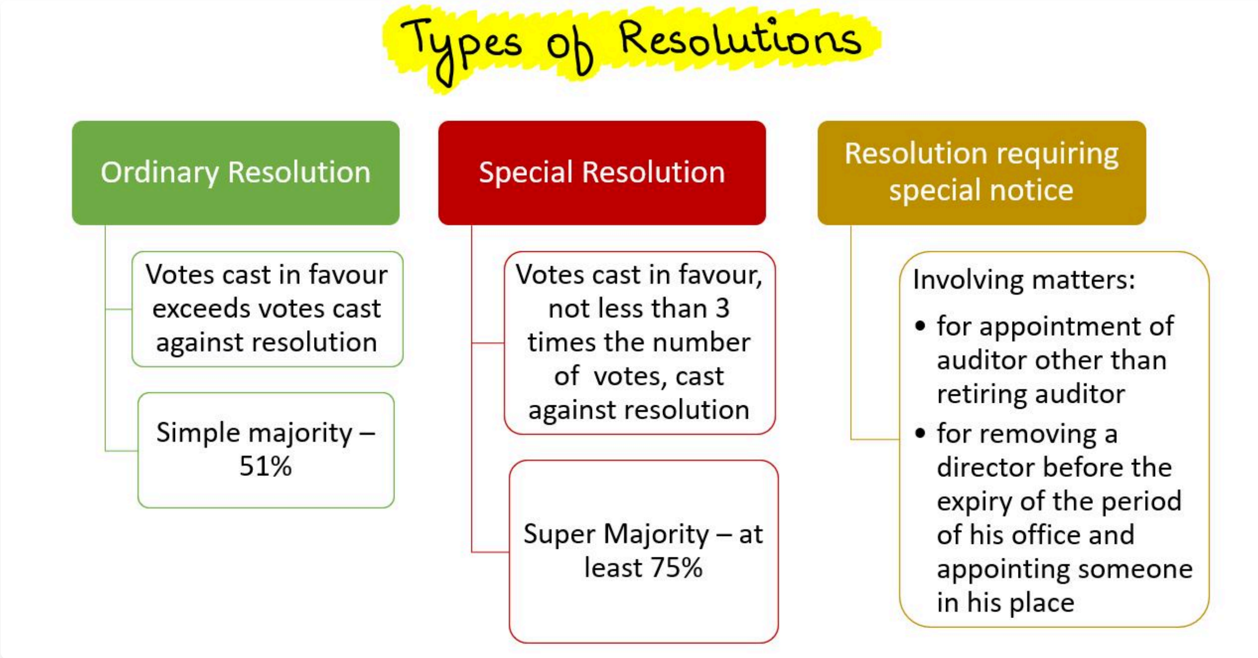
11. Types of Resolutions



Section 114 relates to Ordinary and Special Resolution.

Ordinary Resolution

Ordinary Resolutions are those which are passed by simple majority (i.e., more than 50%).

Special Resolution

Special Resolutions are those which are passed by specified majority (i.e., more than 75%).

There are also resolutions which require special notice, which are covered under Section 115 of the Act, as given below.

Resolutions requiring Special Notice (Section 115)

Following are the matters where a special notice is required of any resolution to the company by members holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding Rs. 5,00,000 has been paid-up:
(a) resolution for appointment of a person as auditor at the AGM other than the retiring auditor; or
(b) resolution to provide that a retiring auditor shall not be re-appointed at the AGM; or
(c) resolution for removing a director before the expiry of the period of his office; or
(d) resolution for appointing someone in the place of the director so removed.

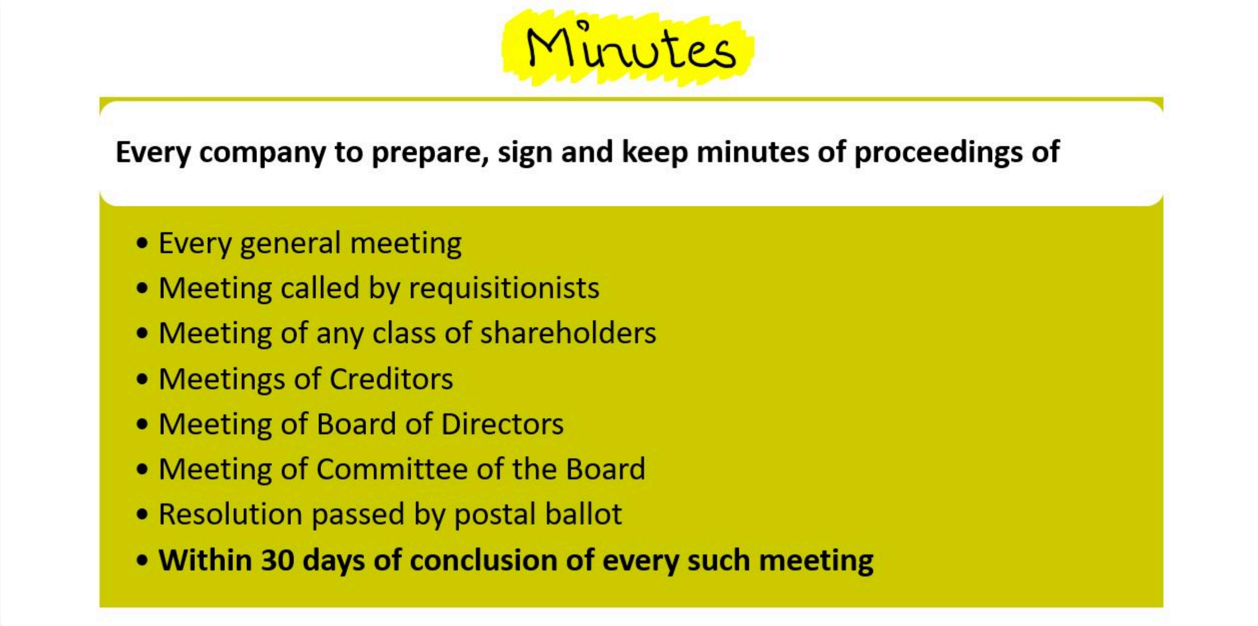
Resolutions passed at Adjourned Meeting (Sec. 116)

Where a resolution is passed at an adjourned meeting of a company / holders of any class of shares / Board of Directors, the resolution shall be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

Resolutions and Agreements to be filed with ROC (Sec. 117)

A copy of every resolution or any agreement (in respect of specified matters) together with the explanatory statement shall be filed with the Registrar, within 30 days of its passing or making thereof. All Special Resolutions, Board' Resolution appointing MD or Resolution for voluntary winding-up of a Company need to be necessarily filed with ROC.

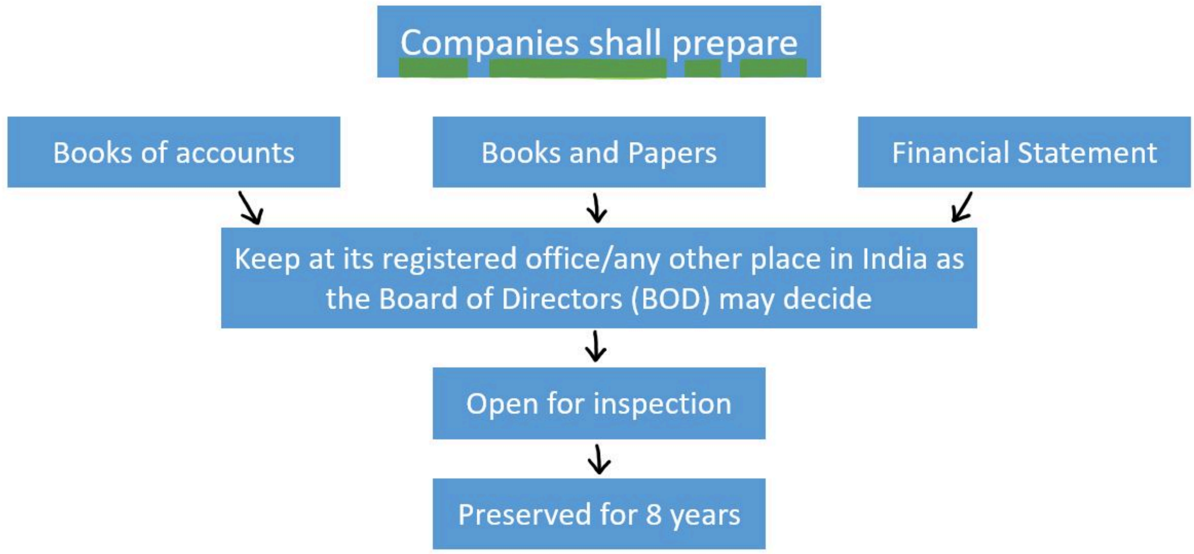
Maintenance of Minutes of Meetings (Sec. 118)



The minutes refer to a written record of business transacted at a meeting. Every company shall prepare, sign and keep minutes of proceedings of every general meeting and meetings of requisitionists/ any class of shareholders/ creditors/ Board of Directors/ committee of the Board and also resolution passed by postal ballot within 30 days of the conclusion of every such meeting.

In respect of resolutions passed by e-voting or postal ballot, a brief report on the e-voting or postal ballot conducted including the Resolution proposed, the result of the voting thereon and the summary of the scrutiniser's report shall be recorded in the Minutes Book and signed by the Chairman or in the event of death or inability of the Chairman, by any Director duly authorised by the Board for the purpose, within 30 days from the date of passing of Resolution by e-voting or postal ballot.

12. Accounts of Companies



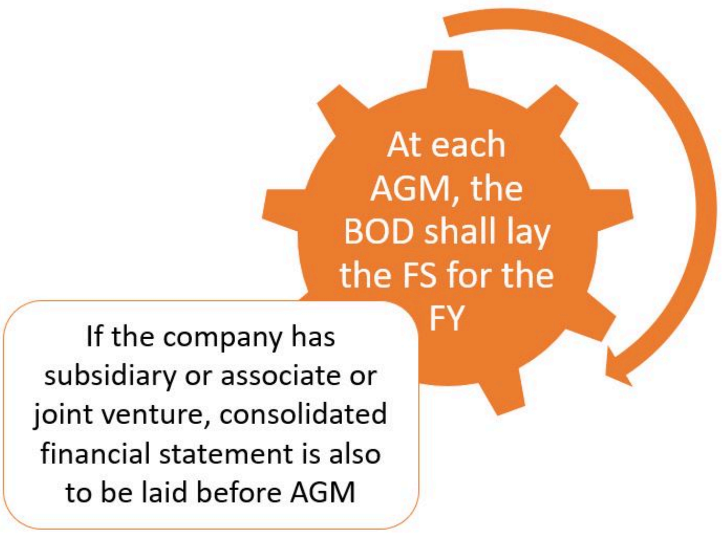
Chapter IX (Sec. 128 to Sec. 138) of the Act provides provisions related to Accounts of Companies.

The relevant sections from Chapter IX are covered below.

Books of Accounts (Sec. 128)

Every company is required to keep all books of accounts including vouchers for a period not less than 8 financial years immediately preceding a current financial year.

Laying of financial statements (Sec. 129)



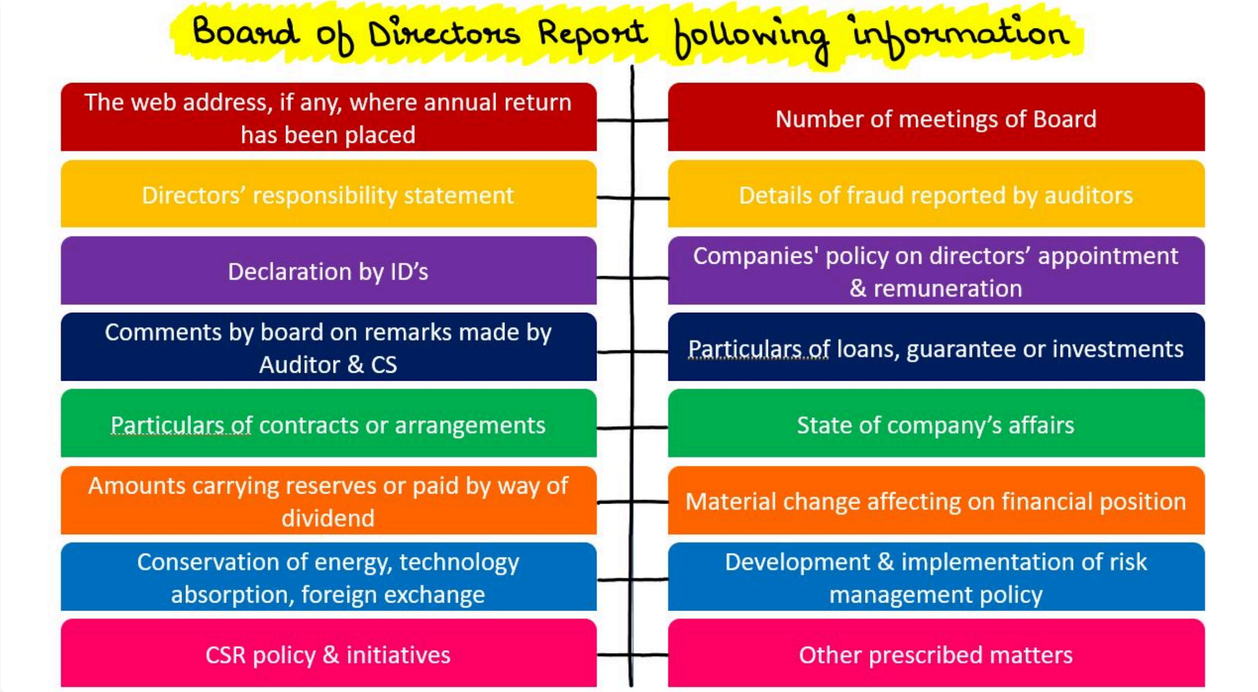
The financial statements shall give a true and fair view of the state of affairs of the company or companies. It shall comply with the accounting standards notified under Section 133 and shall be in the form(s) as may be provided for different class(es) of companies in Schedule III of the Act. At every AGM of a company, the Board of Directors of the company shall lay before such meeting, financial statements for the financial year.

Where a company has 1 or more subsidiaries or associate companies, it shall, in addition to financial statements, also prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies, to be laid before AGM.

Central Government to prescribe Accounting Standards (Sec. 133)

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the ICAI, in consultation with NFRA (National Financial Reporting Authority).

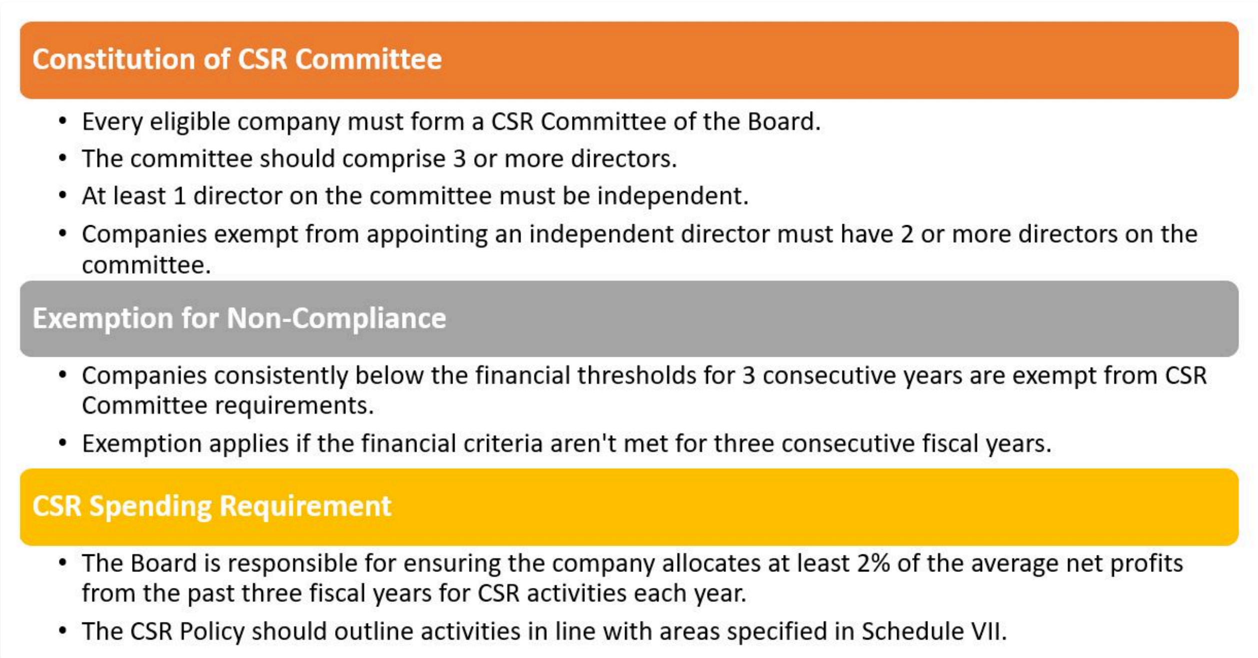
Financial Statements, Board Report (Sec. 134)



The auditor's report shall be attached to every financial statement. The Board Report to be laid before a company in its General Meeting should include number of meetings of the Board, Directors' Responsibility Statement, details of frauds reported by Auditors, Company's Policy on Directors' Appointment and Remuneration, explanation of Board on adverse remarks (qualified report) of Auditor, etc.

Corporate Social Responsibility (Sec. 135)

The Act provides for the applicability of CSR provisions on corporates. It lays down that every company having, net worth of Rs. 500 Crore or more; or turnover of Rs. 1000 Crore or more; or net profit of Rs. 5 Crore during any financial year shall be required to constitute a CSR Committee of the Board consisting of 3 or more directors, out of which at least 1 director shall be an independent director. The Companies which are not required to appoint Independent Director must have 2 or more Directors as members in the Committee.



Every company which ceases to be a company as per the specified limits for 3 consecutive financial years shall not be required to comply with the provisions of constitution of CSR Committee.

The Board of the Company shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the 3 immediately preceding financial years, in pursuance of its CSR Policy.

Copy of Financial Statement to be filed with ROC (Sec. 137)

A copy of the financial statements, including consolidated financial statement, if any, duly adopted at the AGM of the company, shall be filed with the Registrar within 30 days of the date of AGM.

Internal Audit (Sec. 138)

The following class of companies shall be required to appoint an internal auditor who/which may be either an individual or a partnership firm or a body corporate.

	Unlisted Public Companies with				Private Companies with	
Mandatory for all Listed Companies	Paid-up Share Capital	Turnover	Outstanding loans or borrowings from banks/ PFIs	Outstanding Deposits	Turnover	Outstanding loans or borrowings from banks/ PFIs
	50 Cr. or more	200 Cr. or more	100 Cr. or more	25 Cr. or more	200 Cr. or more	100 Cr. or more

Further, only a CA, or Cost Accountant, or professional as decided by Board can be an Internal Auditor.

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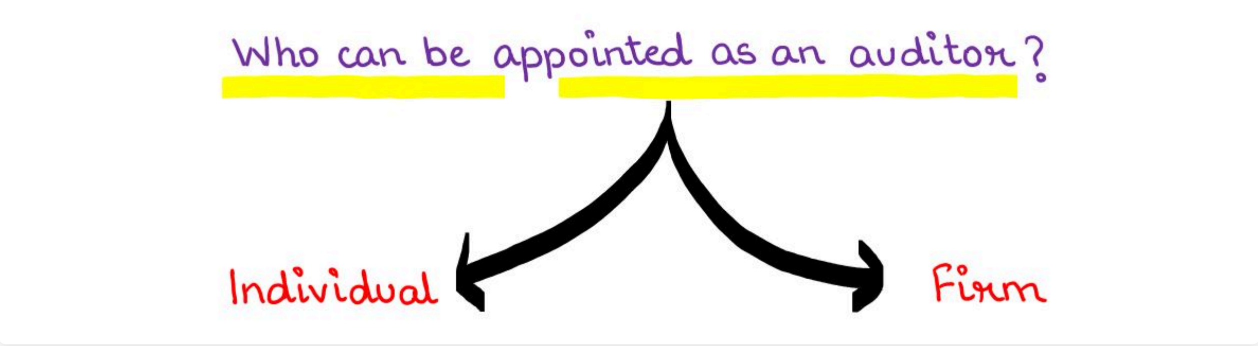
13. Audit and Auditors

Chapter X (Sec. 139 to Sec. 148) of the Act deals with provisions related to Audit and Auditors.

The relevant sections from Chapter X are given next.

13. Audit and Auditors

Every company, at the first AGM, shall appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its 6th AGM and thereafter till the conclusion of every 6th meeting with prior written consent of the auditor to such appointment and a certificate obtained from him regarding his appointment in accordance with the prescribed conditions. It means an auditor of a company is appointed for a period of 5 years. The Company shall file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.



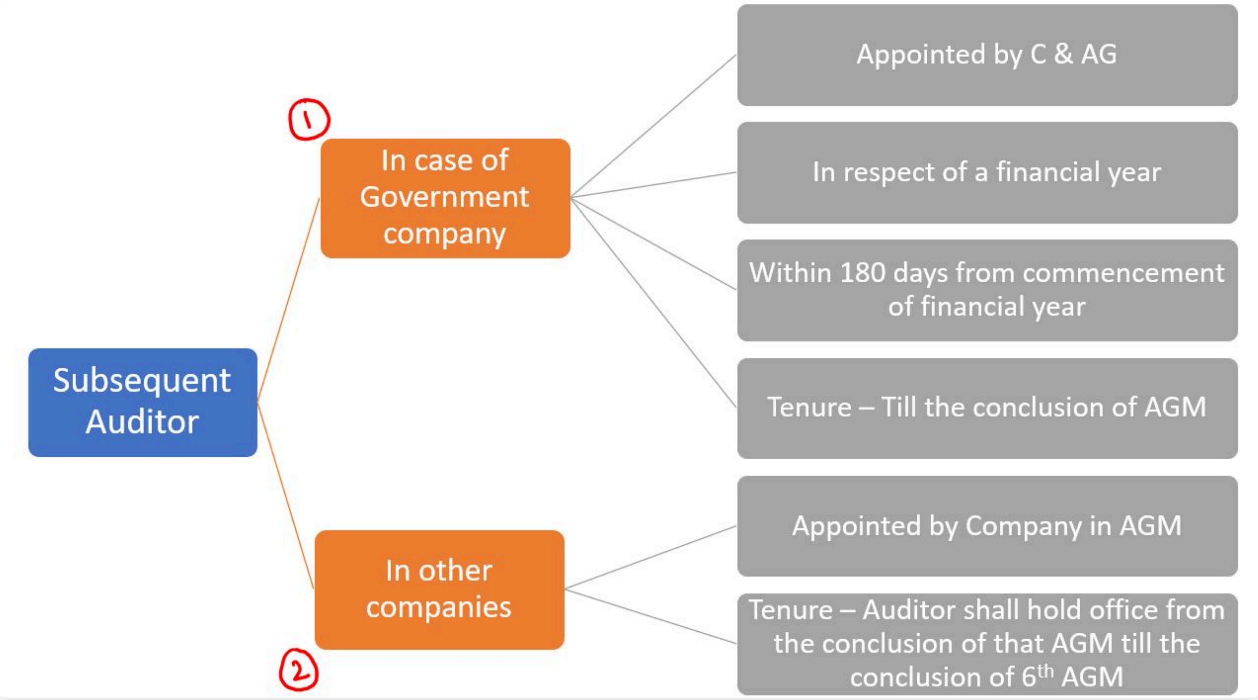
The listed company and other prescribed classes of companies shall not appoint or re-appoint:

(a) an individual as auditor for more than 1 term of 5 consecutive years; and

(b) an audit firm as auditor for more than 2 terms of 5 consecutive years.

Further, there is a cooling period of 5 years, which means, an individual auditor or an audit firm who has completed his term as stated above, shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of his/ its term.

In case of appointment of the audit firm as Auditor by a Company, the auditing partner and his team shall be rotated at such intervals as may be resolved by members and the members can also resolve that the audit shall be conducted by more than one auditor.

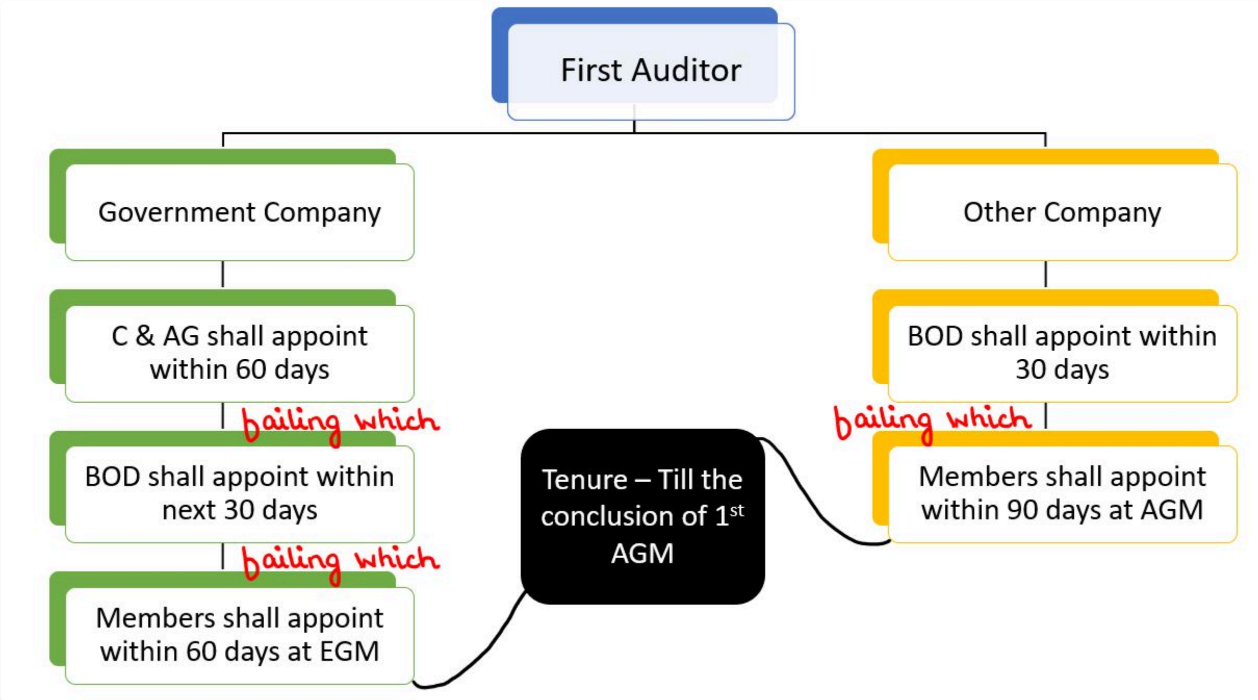


Appointment of Auditors in Government Company

In case of Government Company, the Comptroller and Auditor-General of India (CAG) shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of 180 days from the commencement of the financial year, who shall hold office till the conclusion of AGM.

Appointment of First Auditors

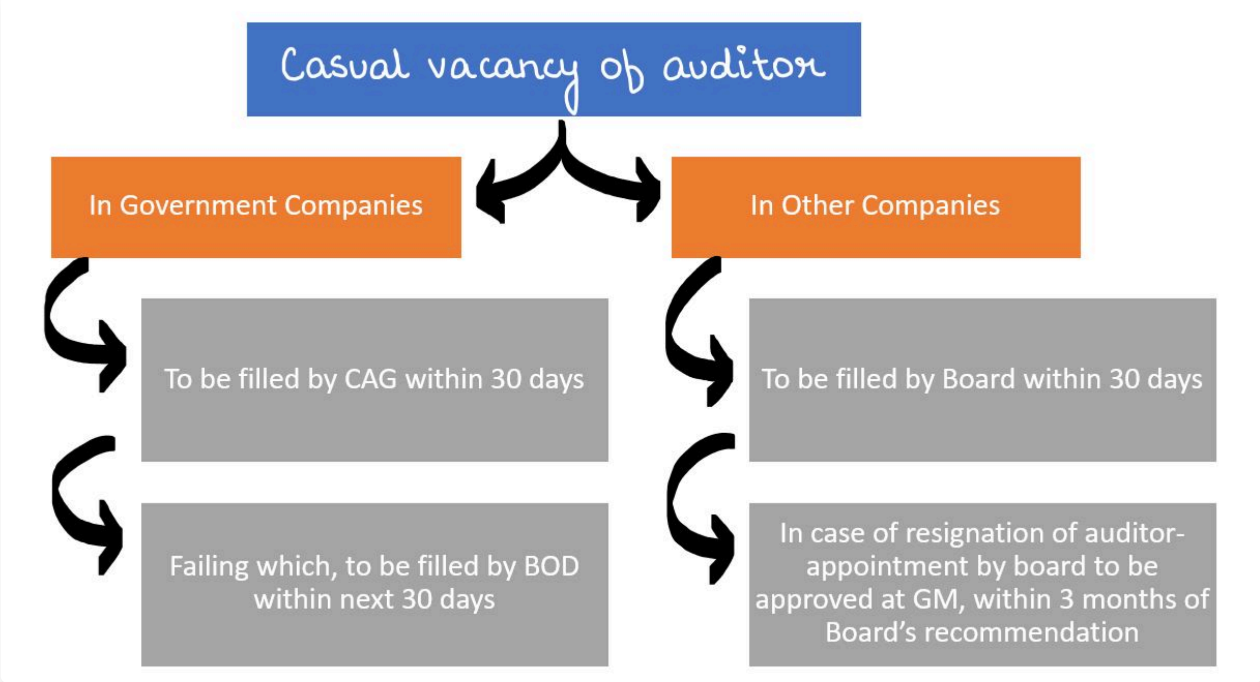
The first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within 30 days from the date of registration of the company and failing which, the Board shall inform the members of the company, who shall within 90 days at an EGM, appoint such auditor to hold office till the conclusion of the first AGM.



In case of a Government Company, the first auditor shall be appointed by the CAG within 60 days from the date of registration of the company and failing which, the Board shall appoint such auditor within the next 30 days; and failing which, the Board shall inform the members of the company who shall appoint such auditor within 60 days at an EGM, to hold office till the conclusion of the first AGM.

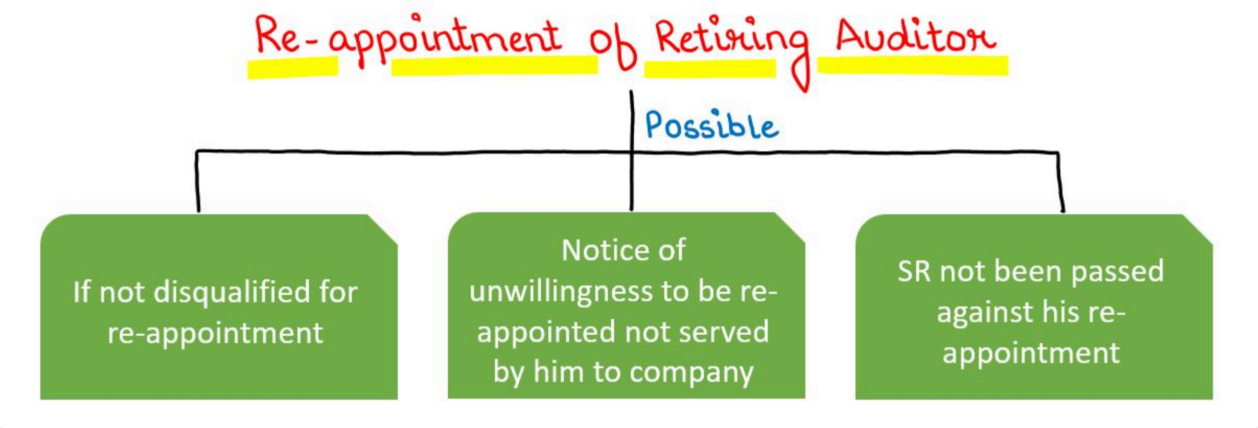
13. Audit and Auditors

Any casual vacancy in the office of an auditor shall be filled by the Board within 30 days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next AGM.



Further, any casual vacancy in the office of an auditor in the case of a Government Company, be filled by the CAG within 30 days, failing which, the Board of Directors shall fill the vacancy within next 30 days.

13. Audit and Auditors



A retiring auditor may be re-appointed at an AGM, if:
(a) he is not disqualified for re-appointment;
(b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and
(c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

13. Audit and Auditors

The auditor appointed may be removed from his office before the expiry of his term only after obtaining the previous approval of the Central Government (application for approval to be made within 30 days of Board's Resolution) and by way of Special Resolution and after giving a reasonable opportunity of being heard to the auditor.

In case, the auditor who has resigned from the company, he shall file within a period of 30 days from the date of resignation, a statement of his resignation with the company and the ROC and with CAG (in case of Government Company).

13. Audit and Auditors

The following persons shall not be eligible for appointment as an auditor of a company, namely:
(a) a body corporate other than an LLP registered under the LLP Act, 2008;
(b) an officer or employee of the company;
(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
(d) a person who, or his relative or partner:

> (i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company (i.e. fellow subsidiary). However, the relative may hold security or interest in the company of face value not exceeding Rs. 1,00,000; or
> (ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 5,00,000; or
> (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for Rs. 1,00,000;

(e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company;
(f) a person whose relative is a director or is in the employment of the company as a director or KMP;
(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies (other than OPC, small companies and private companies having paid-up share capital less than Rs. 100 Crore);
(h) a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction;
(i) a person who, directly or indirectly, renders any service to the company or its holding company or its subsidiary company.

Where a person appointed as an auditor of a company incurs any of the disqualifications after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

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13. Audit and Auditors

An individual shall be eligible for appointment as an auditor of a company only if he is a CA in practice. A firm shall be eligible for appointment as an auditor of a company, only if majority of partners practising in India are qualified for appointment (i.e. they are CAs).

Where a firm including a LLP is appointed as an auditor of a company, only the partners who are CAs shall be authorised to act and sign on behalf of the firm.

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13. Audit and Auditors

The remuneration of the auditor of a company shall be fixed in its general meeting. In case of first auditor, it may be fixed by the Board.
