1- Appointment & qualification of directors
2- Appointment & remuneration of KMP
3- Meetings of BOD & its powers
} 24 marks

I. DIRECTORS

(1) SEC 149: Companies to have BOD

- 149(1) - Every co. shall have BOD consisting of individuals as directors & shall have:

149(1)(a) - MINIMUM dir
- 3 (public co.)
- 2 (pvt co.)
- 1 (OPC)

149(1)(b) - MAX dir
- 15
  - Exception
    - Limit of 15 is N/A
      - Govt co.
      - Sec 8 co.
      - → If there is no default in filing F/S u/s 137 & Annual return u/s 92
    - Pass (SR) to appoint > 15 (≠ govt & sec 8 co.)

- 2nd proviso to 149(1) + Rule 3 of Companies (A & A of directors) Rules, 2014 → WOMAN DIRECTOR:

* The following companies shall appoint ≥ 1 WD:
  - Every listed co.
  - Every other public co. having
    - PUSC ≥ 100 cr (or) TTO ≥ 300 cr
      - ↑ latest audited F/S

* Newly incorp. co. must comply in 6 months from inc.

* Intermittent vacancy of WD → filled by BOD @ earliest but not later than ↑
  - IMMEDIATE NEXT BM
  - 3 MONTHS FROM VACANCY
  (whichever is later)

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* Example: There was 1 WD & she died on 4/1/20. Next BM happened on 11/4/20 & vacancy was filled.
↓
VALID ✓

* Example: There were 2 WDs and one of them died on 4/1/20. Next BM took place on 11/4/20 & vacancy was not filled.
↓
No problem ✓ (1 WD = sufficient)

- 149(3) - RESIDENT DIRECTOR:

'EVERY' COMPANY shall have ≥ 1 RD (who stays in India for ≥ 182 d. during that FY)

For newly incorp. co. apply it proportionately
↓
If incorp in 'middle' of the yr, the he should be in India ≥ 91 days

- 149(4) + RULE 4 - INDEPENDENT DIRECTORS:

Listed Company
↓
ID ≥ 1/3rd of total no. of dir
↓
Fraction → r/off to 1
eg. total 10 dir
10 X 1/3 = 3.33
↓
r/off (4) ✓

Other public co. having

PUSC (or) Turnover (or) Aggt o/s Loans, deposits, debentures
≥ 10 cr ≥ 100 cr (>) 50 cr *
↓
ID ≥ 2
(or)
Higher number if reqd for the composition of Audit committee

* Intermittent vacancy of ID → same as WD
* Stop complying if PUSC / TO / LDD condition ceased for 3 consec. years. Comply again when condition is met ✓
* PUSC etc → Latest Audited FIs

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* Exclude these from 'other public co.'

JV | WOS | Dormant co. u/s 455

- 149(6) - WHO CAN BECOME ID?

ID means a director (≠ MD, WTD, Nominee dir) who fulfills the following criteria -

* who is a person of Integrity & has relevant experience and expertise → in opinion of BOD (normally)
  ↘ in opinion of Ministry / Dept of CG/SG in charge of the co. (For Govt co.)

* who is not / was not a promoter of that co. / H/S/A
* who is not related to promo / dir of that co. / H/S/A
* who has no / had no pecuniary relationship with that co. / H/S/A / their promo / dir during CY / last 2FY

Exceptions:

- Remuneration of ID | Re-imb of expenses for participating in Bm / other meetings
- Transactions with value ≤10% of his total income
- Transactions @ ALP (same price as public)
- Sitting fees from ≥1 co. u/s 197(5) | Profit related commission as approved by Members

→ THESE ARE NOT PECUNIARY

(Pecuniary point → N/A for Govt co. if no default u/s 137 & 92)

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* None of whose relatives:

A- is holding any security / interest in that co./H/S/A during CY / last 2 FY [Exception: upto FV of 50 LAKH or 2% of PUSC is allowed]
B- is indebted to that co./H/S/A/ their promo / dir during CY / last 2 FY for an amt of ₹ 50 LAKH
C- has given guarantee / security, wrt indebtedness of a 3rd person, to:

that co./H/S/A → during CY / last 2 FY for ₹ 50 LAKHS
their promoters → during CY / last 2 FY for ₹ 50 LAKHS
directors of H co. → during CY / last 2 FY for ₹ 50 LAKHS

D- has any other pecuniary transaction with co./H/S/A

⇓

A+B+C+D ≥ 2% of gross TIO or total income

↳ if < 2%, then no problem!

* Neither himself nor relative:

A- holds / has held KMP position in that co./H/S/A in last 3 FYs
B- is / has been an employee [only himself, not relatives] in that co./H/S/A in last 3 FYs

↳ relative = emp → no prob ✓

C- is / has been an Employee / Proprietor / Partner of

Firm of auditors, CS in practice, Cost auditors of co./H/S/A → during last 3 FY

Any legal / consulting firm having transac^n with co./H/S/A amounting to ≥ 10% of Gross turnover of such firm → during last 3 FY

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D - holds (himself + relatives) ≥ 2% of total voting power of that co.

E - is a CEO / director of NPO

- which receives ≥ 25% of its receipts from that co./ its promoters / dir or from its H|S|A
- which holds ≥ 2% of total voting power of the company

* who is qualified as per RULE 5:

skills / knowledge in ≥ 1 field
- Law, finance
- sales, mkting,
- mgmt, admin,
- research, corp gov,
- tech op^n or anything related to co's biz

- 149 (7) - Every ID shall give DECLARATION of meeting criteria uls 149 (6)
  - @ 1st BM in which he participates as a director
  - @ 1st BM of every F.Y.
  - whenever there is a change of circumstances affecting his status as ID
- 149 (8) - Follow Code for ID ul Schedule IV
- 149 (9) - Remuneration of ID:
  - Stock options X
  - Sitting fee uls 197(5) ✓
    - Sitting fee to ID
    - & sitting fee to other dir
  - Re-imb of exp for participating in BM or other meetings ✓
  - Profit related commission approved by members ✓

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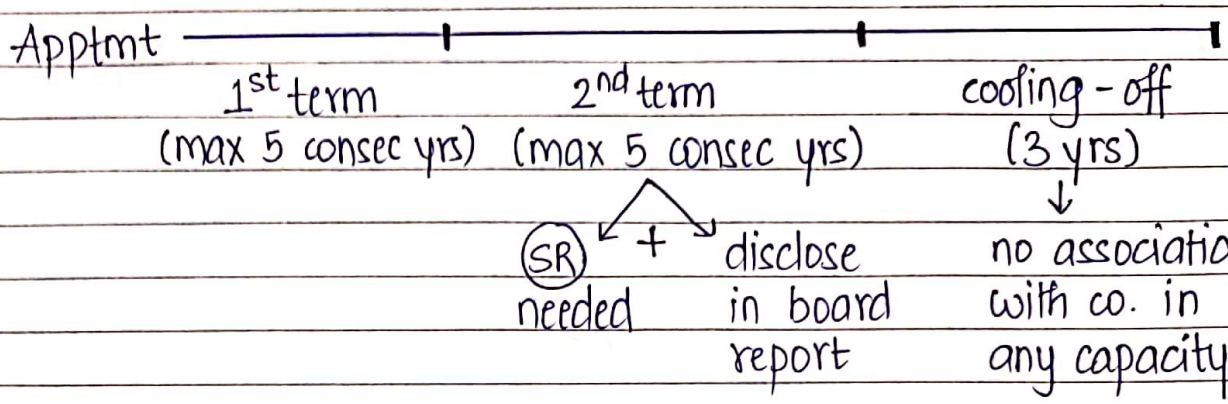
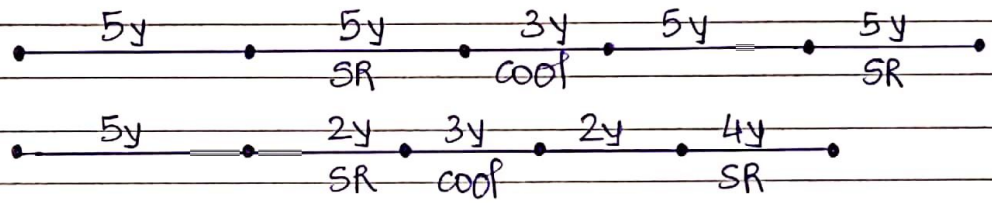
- 149 (10) & (11) - Tenure of ID



* Office cannot be held for >2 consec terms. After the cooling-off period, he can be appointed again ✓



* Basically, cooling-off happens after 2 consec TERMS and not after 10 years
  - whether 5 + 5
  - or else 5 + 2

* Term held by him before commencement of CA'2013 shall be IGNORED.

- 149 (13) - Retirement by Rotation uls 152 (6) & (7) is N/A to ID.

- 149 (12) - ID and NED (≠ promoter, KMP) shall be liable in respect of acts of the co. only if such act/omission happened with his knowledge/consent or when he did not act diligently.

* EXEMPTION FOR SEC 8 Co. *

⇓

SEC. 149 (4), (5), (6), (7), (8), (9), (10), (11), (12)(i), (13) — ID only

if there is no default uls 137 & 92

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② SEC 150: Selection of ID, maintenance of Data Bank + RULE 6

- ID can be selected from a data-bank:
  - maintained by an agency [IICA] appointed by CG
  - uploaded on MCA website
  - consists of name, add, contact, DIN, qualific^n, legal proceedings, name & details of co./LLP in which he is/was a director/partner, etc.

Anyone willing to be ID can apply to that agency to add the details to the bank

- Co. must exercise Due-Diligence before selecting ID
  - FYI - It cant blame the data bank agency later
- ID's appointment must be approved by co. in GM.
- The Explanatory statement attached to notice of GM must include justification for choosing him as ID.

* N/A to SEC 8 co. which has not defaulted u/s 137 & 92.

NEW RULE 6:

- A person who is ID already on 1/12/2019 → within 7 m. from 1/12/19 (For NOV 20 exam) or within 13 m. (For May 21 exam)
- (or)
- A person who wants to become ID after 1/12/2019 → before his apptmt as ID

→ shall apply to IICA for his name to be included in data-bank for 1yr/5 yrs/ Lifetime!

* A person without DIN can also apply ✓

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- He must apply for RENEWAL within 30 d. from expiry of 1yr / 5yrs, for fresh period of 1yr / 5yrs / Lifetime
  ↓
  or else, name will be REMOVED!

- Name included in data bank —1 year→ pass online self asst proficiency exam (≥60%.)

Exemption from exam:

- IF on date of inclusion of name, if served as dir/KMP for total ≥ 10 years in:
  - Listed public co.
  - Unlisted public co. with PUSC ≥ 10 cr
  - Body corp listed on RSE

- IF he served as dir / KMP in ≥2 companies or bodies corporate, then DONT DOUBLE COUNT the experience ✓

eg. 2010-13 in RIL, 2010-14 in TATA → TOTAL = 4 Years

(3) SEC 151: Appointment of director elected by Small Shareholders (SSH)

- A Listed company may have 1 director elected by SSH
  ↓
  holds Nominal Value ≤ 20k

- RULE 7 provides for all T&C of appointment:
  - Suo-moto
    ↓
    Listed co. may opt to have a director representing SSH
  - on notice given by SSH
    ↓
    Notice by At Least:
    - 1000 SSH
      (or)
    - 1/10th of no. of SSH

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- Requisite no. of SSH → must send notice under their signature 14 d. prior to meeting → Listed company

Specifying:
- Name ↓
- Address ↓
- Shares held & folio no. (if any) ↙

of person proposed to be director

Attach statement signed by proposed director stating:
- DIN
- That he is not disqualified to become a director
- His consent to act as director

- Tenure of SSH director → max 3 consec yrs → No Re-apptmt

3 yrs	next 3 yrs	LATER
tenure as SSH dir	no appointmt or association with co. in any capacity	can be associated in other capacity ✓

- Max no. of companies in which a person can be SSH director @ the SAME TIME = (2)
  ↓
  2nd co. must not be in competing / conflicting business of 1st co.

HPCL + BPCL	HPCL + SBI	HPCL + SBI + TATA
(X)	(✓)	(X)

- Applicability of other sections:

SSH dir is considered as ID if 149 (6) & (7) are complied with	Appointment is as per 152 but he shall not retire by rotation	Disqualificⁿ uls 164 & Vacation uls 167 shall apply ✓

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** A person was appointed as SSH dir & also considered as ID. Later, he failed to meet the criteria u/s 149(6).

a) He will vacate as ID but stay SSH dir
b) He will vacate as ID as well as SSH dir

ANSWER → (b) *

(4) SEC 152 : Appointment of directors

- First Directors

When AoA contains names of FIRST directors
↓
They are first dir ✓

When AoA doesnt contain names of FIRST directors

- Normally → The Subscribers to MoA (individuals only) are deemed to be 1st dirs
- OPC → Individual member is deemed to be 1st dir

↓
until directors are duly appointed as per 152

- Subsequent Directors

Except as elsewhere specified, all directors shall be appointed by co. @ GM
↓
eg. AoA provides the apptmt of ADDNL DIR @ BM → no prob ✓

Director must provide DIN
+
Declaration that he isnt Disqualified
+
Written consent to act as director (FORM DIR-2)

After his appointment, within 30 d., company
↓
Registrar
FORM DIR-12

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- Written consent → N/A to Govt co. (if appointment of director is by CG/SG) & SEC 8 co.
  ↓
  no default u/s 137 & 92

(5) SEC 152 (6): Retirement of directors by rotation

Private co.	Public co. (or) Pvt co. that is a subsidiary of a public co.	
↓		
AOA can allow for permanent directors ✓	If AOA provides for retirement of ALL directors @ AGM ↓ follow it ✓	Otherwise: ↓ ★ Rotational directors = 2/3 x (Total directors - ID - nominee dir) ★ Dir who shall retire = 1/3 x rotational dir [2/3 r/off to next no. 1/3 r/off to nearest no.]

- All directors (rotational or not) shall be app/re-app at General Meetings ✓
- Example → 10 dir → A B C D E F G H I J (H, I, J = ID)

★ Rotational = 2/3 x 7 = 4.66 = 5
★ No. of dir who shall retire = 5 x 1/3 = 1.66 = 2

- Example → Total dir = 10
★ Rotational = 2/3 x 10 = 6.67 = 7
★ No. of dir who shall retire = 7 x 1/3 = 2.33 = 2

- Some directors are not liable to retire by rotation due to other sections fixing their tenure:

ID	Nominee	SSH dir	Addnl dir	MD/WTD
(149)	161 (3)	(151)	161 (1)	(depends on terms of contract)

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- After determining no. of directors who shall retire, which directors should actually retire?
  - Those who have been in office for the longest time since appointment
  - If directors were appointed on the same day (TIE)
    - retire based on mutual agreemt
    - or by lot (chitthi)

- They retire @ AGM. What if AGM could not be held on due date? ⇒ AGM will be held @ later date, but retiring directors cannot hold office after due date ✓

- What happens @ AGM?
  - 1/3rd shall retire
  - To fill vacancy:
    - retiring dir can be re-appointed ✓
    - other dir can be appointed ✓
  - Resolve not to fill vacancy if min. no. of directors are present on the BOD ✓

(6) SEC 152(7): Deemed re-appointment of retiring dir

- IF vacancy is not filled @ AGM (or) IF co. has not resolved not to fill vacancy @ AGM

  THEN → meeting = adjourned → next week → same day time & place. IF that day = holiday, then it shall be adjourned to 'succeeding' working day.

- IF vacancy is not filled @ adjourned AGM (or) IF co. has not resolved not to fill vacancy @ adjourned AGM

  THEN → Retiring director is DEEMED to be REAPPOINTED

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- Exception → No deemed re-appointment if: [LUDOS]

L- In that meeting or any previous meeting, a resolution has been put to vote & LOST
U- He has expressed UNWILLINGNESS to be re-appointed by a notice in writing to the co./BOD
D- He is DISQUALIFIED to act as director
O- OR/SR is needed to appoint under some provisions
S- Sec 162 is applicable (≥2 appointments under 1 resolution is void)

- SEC 152(6) & (7) shall NOT APPLY to:

Govt co. (≠ Listed co.) [≥51% by CG/SG/Both] & Its subsidiary

If no default u/s 137 & 92

⑦ SEC 153 to 159: Director Identification Number (DIN)

- SEC 153: Every individual intending to be appointed as a director must apply to CG for allotment of DIN.

RULE 9:

* Applicant → CG
  e-FORM DIR-3 + fee prescribed
  ↓ to be dir in EXISTING co.

* Applicant → CG
  (max 3 directors proposed while forming NEW co.)
  e-FORM INC 32 (SPICe) + Fee

* DIR-3 → download, fill details, attach Photo + Identity Proof + Address Proof + Specimen signature + Board Resoln proposing appointment as dir in existing co.

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* It must be submitted electronically after signing via DSC & it must be verified by CS employed whole time by co. or MD / CEO / CFO of co. in which he/she is to be appointed

* If a person has NO SURNAME / LAST NAME, then his/her FATHER'S / GRANDFATHER'S SURNAME shall be used with declaration in form DIR-3A → Non-sense !

• SEC 154: CG shall allot DIN in 1 month from receipt of application

RULE - 10

* Applicant submits DIR-3 → Applic^n no. generated

1 month

CG finds it incomplete/defective (or) CG rejects (no refund) (or) CG Approves & allots DIN

CG finds it incomplete/defective → CG places it on website + notifies applicant by e-mail

15 d.

Applicant must rectify ✓

If rectified partially → CG shall reject & ask applicant to file a fresh applic^n with correct info

If not rectified → CG shall treat & label it INVALID → FEE WONT BE REFUNDED !

If rectified → CG allots DIN ✓

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- SEC 155 - If an individual has been allotted DIN u/s 154, then he/she cannot apply for / obtain / possess another DIN.

- SEC 156 - Every director shall intimate his DIN to the companies where he is director, within 1 month from receipt of DIN from CG.

Director —DIR-3B→ Co. —DIR-3C→ ROC

DIR-3B: 1 month (u/s 156)

DIR-3C: 15 days (u/s 157)

Rule 10A:
Only those who were directors in ≥1 co. on / before 30/06/2007 & has not yet intimated DIN

- SEC 157 - Co. shall intimate ROC within 15 days from receipt of intimation from director. Contravention by:

Company	Officer-in-default
Penalty (of) ₹25000	Penalty (≥) ₹25000
&	&
For continuing failure: further penalty ₹100 p.d. after 1st day up to MAX ₹100000.	For continuing failure: same

- SEC 158 - Every person / co. must furnish DIN where particulars / info relate to a director in any filings.

- SEC 159 - Individual / Director violating SEC 152, 155, 156

Penalty (≤) 50000 & further penalty up to 500 p.d.

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- RULE 11 → Cancellation, Surrender, De-activ^n, Re-activ^n of DIN:

* Cancellation / De-activation of DIN by CG or RD (Northern region) of NOIDA or officer authorised by RD

Duplicate DIN for same person	Death, unsound mind or insolvent	DIN obtained via wrongful means: - Illegal / incomplete or false docs - Wrongful certific^n - fraudulent motive	Individual doesnt file "FORM DIR-3-KYC" within time stipulated u/ RULE 12A
↓	↓	↓	↓
ROBHd X	ROBHd X	ROBHd. ✓	ROBHd. X

* Surrender of DIN:

DIN Holder → CG
apply in form DIR-5 + declaration
↓
that he was never appointed as director & DIN was never used for filing any doc, etc.

* To Re-activate the de-activated DIN → eFORM DIR-3 + Fee

- RULE 12 → Changes in particulars specified in DIN application (eFORM DIR-3)

* Director → CG
submit Form DIR-6 within 30 DAYS of a change in particulars + attach proof of change with it
↳ certified by PCA/PCS/PCMA

* DIN Cell, MCA → (intimate changes) → ROC
* Director → (intimate in 15 d. from change) → Company

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(8) SEC 160: Right of persons (≠ retiring directors) to stand for directorship + RULE 13

↓

i.e. by rotation are excluded

- Person willing & eligible to become director
  (or)
  Member of a co. who intends to propose anyone as director

→ shall leave a written notice 14d. prior to meeting → Regtd office of co.

- Sender of notice must also DEPOSIT an amt with co.

Normally ₹1 LAKH ↘

NIDHI CO. ₹10000 ↙

Exception → no need of deposit in case of:

- Apptmt of an ID
- Apptmt of dir recommended by the:
  - Nomination & Rem Committee uls 178 (NRC)
  - BOD (if co. isnt required to form NRC)

- Obligation of Co. on receipt of notice:

⇓

AT LEAST 7 DAYS BEFORE THE MEETING:

- Serve individually, a notice, to all members &
- Place notice of candidature on its website, if any

Advertise candidature in ≥1 vernacular NP & ≥1 english NP circulating in district where co.'s regtd office is situated (no need to send notice individually if advertised)

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- Refund of deposit:

Normally: Refunded to payer

- IF the person proposed to be director gets selected ✓ → (>50% ✓)
- IF the person is not selected but gets >25% votes on show of hands or Poll (>25 but ≤50%)

SEC 8 Co. → BOD shall decide whether to refund or forfeit if he did not receive >25% votes

* IF directors u/s 161(1)/(2)/(3)/(4) are to be appointed as regular directors → follow 160 ✓
* IF a person retires by rotation and:
  - is re-appointed → no need to follow 160
  - new person is to be appointed in his place → follow 160 ✓

* SEC 160 → N/A to:
  - Govt co. in which 100% of PUSC is held by CG/SG/Both
    - Subsidiary of above
  - Pvt co.
  - SEC 8 co. whose AOA provide for election of dir by BALLOT

→ IF no default u/s 137 & 92

(9) SEC 161: ADDⁿˡ, ALT, NOMINEE, CASUAL VACANCY DIR

■ SEC 161(1) – Additional director (AD)

AoA may confer on BOD the power to appoint AD

AD shall hold office up to next AGM date or the last date on which AGM should've been held WHICHEVER IS EARLIER ✓

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- A person who fails to get appointed as a director in GM cannot be appointed as an AD.
- SEC 160 must be followed ✓, he must have DIN ✓

FYI → Regular director is appointed @ GM but AD is appointed between 2 GMs (eg. urgency)

FYI → If AOA doesnt give the power, then 161(1) = N/A

■ SEC 161(2) – Alternate director (ALT DIR)

BOD can appoint ALT DIR if:
- Authorised by AOA
- or Authorised by resol^{n} in GM

Only when a director is absent for ≥ 3 months from India

Who cannot be ALT DIR?
- Person who is already a dir in that co.
- If he is an ALT DIR for some other dir of that company

- Tenure of ALT DIR's office:
  - Till the period permissible to original director
    - ↓ Any automatic re-appointment of retiring directors shall apply only to ORIGINAL DIR ✓
    - → IF original director dies, the office of ALT DIR is vacated ✓
  - He shall vacate office when the original director returns to INDIA

- ALT DIR must have DIN & must give consent (DIR-2) to co. & co. must file DIR-12 with ROC

- If original dir = ID, then ALT DIR must be ELIGIBLE to be ID → 149(6) & (7)

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SEC 161(3) – Nominee director (ND)

If AOA empowers BOD, the BOD can appoint a person (ND) nominated by an Institution as per any prov^n of law / agreement
↓
Shareholders cant interfere

ND can be nominated by CG/SG by virtue of its shareholding in a Govt co.
↓
BOD cant interfere

SEC 161(4) – Casual Vacancy Director (CVD)

IF the office of a director appointed @ GM is vacated before his tenure expires

THEN the vacancy (MAY) be filled by BOD @ BM which shall be subsequently approved by members @ immediate next GM

follow AOA reg^n if any (eg. time limit)

FYI:- 161(4) confers power on BOD (not the AOA)

- Tenure → up to the date up to which original dir would have held office

- What is CASUAL VACANCY?

Death, Removal, Resignation, Disqualification	office of CVD is vacated	Office of ADDNL DIR is vacated	Dir appointed @GM didnt assume office
↓	↓	↓	↓
CV ✓	CV ✗	CV ✗	CV ✗
	Since dir appointed @ "GM" must vacate office !!		since he did not begin !

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- Time limit to fill casual vacancy?

CV of woman dir / Independent dir → Follow original rule: LATER OF-
- Next BM
- or
- 3m from vacancy

Otherwise → no time limit → BOD may fill it if & when needed

(10) SEC 162 - Appointment of directors to be voted individually

2 or more directors cannot be elected by single resolution → i.e. Separate resol^n needed for every appointment → Contravention → Resol^n = void

Exception: 2 or more dir can be elected by single resol^n ⇓ IF a proposal to move such a resol^n has first been agreed to @ GM without any vote being cast against it

- Motion proposed shall include ← approving appmt & nominating a person for appmt as director

- 162 N/A to:

Govt co. in which entire PUSC is held by CG/SG/ Both & Subsidiary of above → IF no default u/s 137 & 92

Private co. → IF no default u/s 137 & 92

Eg. 2500 members are present @ GM. A proposal was moved to appoint Rhea & Sushant by single resol^n

2150 mem agreed; rest didnt vote

Will the appointment be valid? ⇒ YES!

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Eg. The above proposal was not put to vote. But, while it was being read, no member objected it. So, the appointmt of 2 dir was made by single resol^n.

↓

VOID

(11) SEC 163: (Option) to adopt principal of PROPORTIONAL REPRESENTATION for appointment of directors (PR dir)

- 163 overrides full act
- AOA must contain provisions for any appointment of dir by PR
- AOA need to provide for appointment of ≥ 2/3rd of total dir by PR principal

↓

Such that minority (<50% PUSC) gets PR on BOD

- Methods of voting allowed:
  - Single transferable vote system → dir is elected if he gets requisite 'x' votes fixed as a 'Quota'
  - Cumulative voting → see FYI at the end
  - Any other way → ensuring fair representation to minority SH on the BOD.
- Such appointments may be made ONCE in 3 years.
- Casual vacancy of PR dir to be filled as uls 161(4):
  - follow AOA reg^n (if any)
  - BOD fills it by BR @ BM
  - members approve @ immediate next GM
- 163 N/A → Govt co. (100% PUSC by CG/SG/Both) & subsi. if there is no default uls 137 & 92

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FYI → Cumulative System of Voting

Eg. A co. has 100 shares o/s & 10 directors are to be appointed. 80 shares are held by MAJORITY.

Normal / statutory vote	Cumulative vote
↓	↓
Majority will appoint all 10 directors since they can easily pass OR @ GM	TOTAL VOTES = no. of shares of minority x no. of dir to be elected = 20 x 10 = 200

Minority can use 200 anyhow & appoint directors!

SI mr. A | SI mr. B | SI mr. C

majority gets 7 dir only ✓

(12) SEC 164: Disqualifications for appointment of dir

164(1) [CURCITSS]

↓

C- Calls on shares are unpaid & 6 months have elapsed from due date of payment

U- Unsound mind (dec by court)

R- convicted of offence of dealing with RPT u/s 188 in last 5 yrs

C- convicted of offence (MT or not) and sentenced to imp ≥ 6 m and 5 yrs have not elapsed from expiry of sentence

[IF sentence ≥ 7 Yrs, then he cannot become a dir ever]

I- undischarged Insolvent or applied to be adj as insolvent

164(2)

↓

He is / has been a dir of a co. which has committed defaults –

- In filing FIs or AIR for continuous 3 FYs
  or
- In repayment of Deposit / Deben / Int or of div declared & failure continues for ≥ 1 yr

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T- order of Tribunal / court disqualifying him to be a director
S- SEC 152(3) violation [NO DIN]
S- SEC 165(1) violation [max no. of directorships]

- For 164(2) → such disqualified person cannot be re-appointed in defaulting co. & cannot be appointed in any other company for 5 YEARS from the date on which co. has committed default

- IF a person (Qualified) is appointed as director in a defaulting co. as under 164(2), then he shall not be disqualified for 6 months from his appointment

  * FYI → merely because he joined defaulter co. wont attract DISQUALIF^{n} → but he must make the default good in 6 months ✓ (≠ subsi of public co.)

- SEC 164(3) - A private co. can add more disqualif^{n} over above SEC 164(1) & (2) via AOA

  eg. Dir must be qualified CA/CS/CMA only.

** Disqualification under R, C2, T of 164(1) shall continue even if appeal is filed against conviction.

** SEC 164(2) → N/A to Govt co. (if no default uls 137, 92)

** Disqualific^{n} uls 217(6) → Director of co. under investig^{n} convicted for an offence uls 217 shall vacate office & be disqualified from holding office in any co.

(13) SEC 165 : max no. of directorships including ALT DIRship

- MAX Co. (Excluding dormant & SEC 8 co.) = 20
- Out of 20, pub co. & pvt co. (i.e. H/S of pub co.) = MAX 10

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- Exclude directorship in SEC 8 co. only if it has not defaulted uls 137 & 92

Example: Mr. A is:

dir	SSH dir	ALT DIR	ID	dir
↓	↓	↓	↓	↓
4 pub co. & 2 listed co.	2 pub co. (listed)	1 pub co.	2 listed Govt co.	4 pvt co. & 2 SEC 8 co.

Sol^{n} → 4 + 2 + 2 + 1 + 2 = 11 pub co. ∴ VIOLATION!

↓

* penalty = ₹5000 p.d. after 1st day of continuing contravention

- Members of a company may specify lesser no. of companies in which its director may act as director, by passing (SR) ✓

(14) SEC 166: Duties of directors

Act in accordance with AoA	Exercise duties with care, skill & diligence	Dont involve in situations with direct / indirect int or conflicts	Shall not attempt to achieve any undue gains for himself, relatives, partners, etc.
Act in good faith of co., members, stakeholders, etc.			↓
			IF guilty, he shall pay the amt of undue gain to co.

Director shall not assign his office (ASSIGNMENT = VOID)

↓

However, legitimately delegating work to staff ≠ ASSIGNMENT

* Violation of 166 → Fine 1L-5L

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(15) SEC 167: Vacation of office of director [DEAD-CS]

- Incurs Disqualifn u/s 164 [But if disq. is under 164(2), then he shall vacate all cos. except co. in default]
- He was appointed as director only by virtue of his holding an employmt or office in its H/S/A but now ceases to hold emp/office
- Absent from all Bm held during 12 m with/without seeking leave of BOD

- Disqualified by order of court or tribunal
- Convicted for offence (mT/not) & imp ≥ 6m
- Committed offence u/s 217
- SEC 184 violation

Exception:

a. No disq. for (30 d.) from date of order of court/tribunal
b. No disq. for (7 d.) from the disposal of Appeal / Petition filed against above order (Appeal or further appeal, both ✓)

Entering contracts or arrangements in which he is directly/indirectly interested by violating 184 ↓ fails to disclose above

- Director may have to vacate as per other provisions of CA'2013, wherever mentioned.
- Contravention → Imp up to 1 yr (or) fine 1L-5L (or) BOTH

* WHAT IF ALL DIRECTORS VACATE?

I. The promoter (or) II. CG (in absence of promo)

shall appoint reqd no. of directors who shall hold office until directors are appointed @ 9m.

FYI → 164 Applies before appointmt of DIR ✓
167 Applies when he is already DIR ✓

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(16) SEC 168: Resignation of director

- Resigning director → Company
  - resign by sending a written notice
  - Company: shall
    - within 30d. of receipt of notice
      - Intimate ROC (DIR-12)
      - Place it on website, if any
    - Place the fact of resig^n in the Board Report laid @ immediate next GM

- Resigning director → ROC
  - may forward the copy of resignation + detailed reasons within 30d. from date of resignation in FORM DIR-11

- Effective date of resignation = LATER OF:
  - Date of receipt of notice by company
  - or
  - Date specified in notice by director

- Director = LIABLE after resig^n for offences during his term
- What if all directors resign? (same as 167)
- 2 Practical Difficulties:
  - Who signs DIR-12 when all directors resign & new directors are not yet appointed?
    - ⇓
    - ROC can allow one of those resigned dir to sign it ✓
  - Co. filed DIR-12 and now its foreign director (who resigned) wants to file DIR-11
    - ⇓
    - Authorise PCA/PCS/PCMA or resident dir to sign ✓

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(17) SEC 169: Removal of directors

- By shareholders u/s 169
- By NCLT u/s 242

- SEC 169 states that director can be removed by:
  - Passing (OR) normally → only after ROBHd ✓
  - Passing (SR) If he is ID appointed for 2nd term → only after ROBHd ✓
  - Exceptions: The following cannot be removed by SH
    - Director appointed u/s 242 by NCLT
    - Directors app by PR princi u/s 163

- Eg. A co. opted for PR princi u/s 163 & appointed 2/3rd of BOD using PR princi. 6 out of 8 are PR dir.
  - 6 → removal ✗
  - 2 → removal ✓

- Members → Company: send Special notice (SEC 115) not earlier than 3m & not later than 14 d. before GM

- Notice must be SIGNED by:
  - members holding ≥1% of total voting power (OR)
  - members holding shares on which aggt ₹5 LAKH is paid

- Company → Concerned Director (whether a member or not): fwd copy of special notice

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- If director makes a written representation to the co. & requests that it must be notified to members, the company shall, if time permits,

  - State the fact of represent^n having been made by dir in notice given to members
  - & Send the represent^n to members to whom notice is sent (whether before/after receipt of represent^n by the co.)

- IF time ≠ sufficient, (or) IF co. defaults in sending it to members
  ↓
  Director has the right to be heard orally & to read out the represent^n @ gm.

- Represent^n need not be sent & need not be read out at Gm if:
  ↓
  Company or any aggrieved person → Applies to → NCLT
  ↓
  satisfied that right of represent^n is abused to secure needless publicity & defamation

- NCLT may order the concerned director to pay the costs of applic^n to the company

- Filling of Vacancy:

  - Director removed cant be re-appld
  - Vacancy can be filled in the same meeting (if special notice of new apptmt was given)

- IF not filled @ same meeting, then follow 161(4) ✓
- New director shall hold office till the time old director would've held if he had not been removed.
- Director removed will get CFLOO ✓ (Also check SEC 202)

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FYI: SEC 202 → CFLOO → MD, WTD, mgr ✓
↘ other directors ⓧ

FYI: Dir removed u/s 242 → CFLOO ⓧ

(18) SEC 170: Register of directors, KMP & their shareholding to be kept @ registered office

- Particulars to be included in the Register (rule 17)
  - Name & surname (Present & former) of dir/KMP, their parents & spouse, DOB, add, nationality, occupation, date of app/re-app/cessation, date of board resol^{n} of appointment, ICSI membership (if CS), PAN for KMPs without DIN.
  - Shareholding in that co./H/S/A/Subsi of its Holding company

- Co. must file FORM DIR-12 (RULE 18)
  - 30 d. from appointment
  - 30 d. from any changes wrt director/KMP

SEC 170 & 171
- ↳ N/A to Govt co. (100% PUSC by CG/SG/Both) if no default u/s 137 & 92

(19) SEC 171: members' right to inspect the REGISTER
- Register shall be open to inspection @ Every AGM
- Register shall be open for inspec^{n} during business hours @ regtd office & members can request for copies. Company shall provide it in 30 d. free of cost
  ⇓
  IF refused, mem can apply to ROC & ROC can order immediate inspec^{n} & supply of copies

(20) SEC 172: FINE for violation of SEC 149-171 if no specific penalty is mentioned
FINE → 50K - 5LAKHS

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MEETINGS OF BOD AND ITS POWERS

(1) SEC 173 : Meetings of Board

- **FREQUENCY**

Normally [173(1)]		SEC 8 co. [173(1)]	OPC, Small co., Dormant co., Pvt co. (start-up) [173(5)]
1st BM	Subseq. BM		
↓	↓	↓	↓
within (30) days of incorp^{n}	minimum (4) BM in a calendar yr	≥ 1 BM in every 6 calendar months	≥ 1 BM in every 6 calendar months
	↓		↓
	(max) gap bwn 2 meetings can be 120 d.		(min) gap bwn 2 meetings can be 90 d.

* Relaxation for SEC 8 & pvt co. (start-up) → only if no default u/s 137 & 92
* OPC with 1 director need not comply ✓

- **Participation in BM [173(2)]:**

In person (through physical presence)	(or)	Electronic mode		
		Video conferencing	(or)	Prescribed A/V Audio / Visual modes
				↓
				such that it is capable of recording & storing proceedings of BM & recognizing participation

* **Matters which cannot be dealt with electronic mode:**

Approval of FIs, Board report, Prospectus, matters wrt Merger/ Amalgam^{n} / Demerger / Acq^{n} / Takeover	Audit committee meetings for considering FIs, CFS to be approved by BOD

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* Amendment rules → Above matters = allowed via VC or A/V from 19/3/20 till 30/6/20 (NOV, 20) / 31/12/20 (MAY, 21)

* But if the Quorum is present physically @ Bm, then some directors may attend electronically & take up the above-mentioned matters
* Attending Bm → ≠ mandatory
  ↘ = advisable (IF absent for 12m, then vacate u/s 167)
* See RULE 3 of Companies (meetings of Board & its Powers) Rules, 2014 for procedural points wrt Bm → ICAI module

- NOTICE of Bm [173(3)]:

Shall be sent to {ALL} Directors at their regtd address at least 7 DAYS prior to Bm, by	Shorter notice (<7d.) is allowed to transact urgent biz, if ≥1 ID (if any) is present	In ID's absence, decisions taken @ Bm must be circulated to all dir & shall be final if ratified by ≥1 ID (if any)

↓ hand delivery; ↓ post; ↓ electronic means

RULE 3

Notice must specify the option of VC or A/V mode of attending Bm to all directors	Director shall notify chairperson or CS of co. regarding his intention to opt for VC or A/V mode of Bm	IF no such intimation is recd, then it is assumed the dir will attend in person

* Bm can be held {ANYWHERE, ANYTIME} [CA 2013 = SILENT]
* Notice {may} specify the biz to be transacted (AGENDA)
  ↘ advisable (It is a good secreterial practice)
  ↘ not mandatory

PENALTY:

- SEC 173(4) → Failure to give notice = ₹25000 (↙ CS/Anyone authorised by BOD)
  FYI → If notice is not sent to ≥1 dir, meeting & resol^n = {VOID}

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(2) SEC 174: QUORUM FOR BM

- If no. of interested directors ≥ 2/3rd of total strength of BOD ⇓ Quorum = The directors who are not interested and present @ BM (must be ≥ 2 ✓)
- Otherwise
  - Normally ↓ (*) ↑ 1/3 x total strength (or) 2 dir
  - SEC 8 co. ↓ 25% of total strength (or) ↓ 8 members (*) (BUT ≥ 2 ✓) (only if no default u/s 137, 92)

- AOA of co.
  - CANT SPECIFY LOWER QUORUM
  - CAN FIX HIGHER QUORUM
- "Interested" → as per SEC 184 (2)
- Quorum needs to be present throughout the BM
- Also count those dir attending via electronic mode
- TOTAL STRENGTH EXCLUDES DIRECTORS WHOSE OFFICE IS VACANT & fraction → r/off to ONE ✓

- Vacant Positions
  - no. of dir < no. specified in AOA ⇓ They may act ✓
  - no. of dir < Quorum ⇓ continuing dir may act ONLY FOR 2 PURPOSES
    - To increase no. of dir up to Quorum's no. (i.e. appoint AD)
    - To summon GM of co.

- IF meeting could not be held for want of Quorum:
  - Follow AOA
  - IF AOA = SILENT, Adjourn BM ✓

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- Adjourn → Next week, same day, time & place
  ↓
  IF National Holiday, then 'SUCCEEDING DAY which is not a national holiday.'
  ↓
  26/1, 15/8, 2/10 ✓

- N/A to OPC with 1 director

③ SEC 175: Passing Resolution by Circulation

IF ≥ 1/3rd of total dir require that resoln under circulation must be decided at Bm, then chairperson shall put it for vote @ Bm (≠ circulation)	OTHERWISE ↓ Resoln is deemed to be passed by circulation if the following conditions are satisfied :

Resoln is circulated in draft with all necessary papers to all directors or committee members	At their regtd address by hand delivery/ post / electronic mode (email / fax etc)	And must be approved by majority of dir entitled to vote on resoln

* Such resoln by circulation must be necessarily noted in next BM or committee meeting & be made a part of minutes of meeting.

④ SEC 176: Defect in apptmt not to invalidate actions

FROM		TO
Appointment of director	←→ Any act done by dir whose apptmt was invalid due to disqualifn or is terminated = DEEMED VALID ✓	Irregularity noticed by co.

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→ For LISTED CO. → FOLLOW SEBI (LODR) ✓

(5) Committees → AC, NRC, SRC [SEC 177 & 178]:

Particulars	AUDIT COMM (177)	NOM & REM COMM (178)	STAKEHOLDER RELATIONSHIP COMM (178)
Which co. shall form committee?	• RULE 4 of Co. (A & D of Dir) R'2014 All listed companies Other public co. PUSC ≥10cr TIO ≥100cr O/S LDD >50cr • Other public co. ≠ JV, WOS, Dormant • Stop complying if conditions ceased for 3 consec years		Companies with >1000 share-holders, deposit holders, deben-ture holders & other security holders @ any time during F.Y.
Composition	≥3 directors with ID as majority (>½), Majority of the mem & CP must be able to read & understand FIS	≥3 NED with ≥½ as ID CP of co. ≠ CP of NRC but can be member	Members = as decided by BOD & CP = NED
Other points	RESPONSIBILITIES: - recommend app, rem, T&C of app of Auditors - review & monitor auditor's indep-endence, perform-ance, effectiveness - examination of FIS, audit report - approval of transactions of co. with Related parties (RPT)	FUNCTIONS: - recommend a criteria of app, removal, rem of directors & SENIOR MGMT - evaluation of performance - disclose policy of rem on co's website & board report	OBJECTIVES: - consider and resolve the grievances of all security holders - protect int of all security holders (not just eq holders)

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- Points w.r.t. "ID" are N/A to SEC & co. (≠ default 137,92)
- Disclosures in Board Report:

Composition of Audit Comm	When BOD had not accepted audit comm's recommendations, it must be disclosed with reasons

- Audit committee shall recommend:

App, Rem, Terms of app of auditors (normally)	Rem only (For Govt co.) (≠ default 137,92)

- Audit comm may make OMNIBUS APPROVAL for RPT
  ↳ BLANKET or 1-TIME
  ⇓
  VALID for 1FY
  (i-e. fresh approval per F.Y. ✓)

- If a transaction (Amt ≤ 1cr) entered into by director/officer of co. without approval of Audit Comm & if it is not ratified by Audit Comm within 3 MONTHS from date of transaction
  ⇓
  VOIDABLE @ option of Audit Comm

- If the above transaction was with director's related party or was authorised by other director, then the concerned director shall indemnify the co. against any loss

- Some other responsibilities of Audit Comm:

Scrutinize inter-corporate loans & investments	Valn of co.'s ult or any assets	monitor use of funds raised via IPO, etc.	Evaluate internal controls & risk mgmt system

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- Rights of audit comm:
  - Call for auditor's comments wrt internal controls, scope & observations of audit
  - Review FIS before its submission to BOD
  - Investigate into matters wrt responsibilities of Audit comm & take outside prof. advice

- Auditors & KMP have:
  - Right to be heard in Audit comm meetings where Audit Report is considered
  - No right to vote!

- Contravention of SEC 177 & 178:
  - By company → FINE 1L-5L
  - By defaulting officers → Imp ≤ 1 yr (or) FINE 25000-1LAKH (or) BOTH

- If SRC is unable to resolve grievances in good faith, then it is not a contravention.

- 178 → N/A to SEC 8 co. (≠ default 137, 92)
- 178 → Functions of NRC → applies only wrt 'senior mgmt' and not wrt DIRECTORS for Govt co. (≠ default 137, 92)
- Senior mgmt = Personnel of co. who are core mgmt team members (≠ BOD) comprising of members one level below BOD's executive directors & includes all functional heads

⑥ VIGIL MECHANISM u/s 177(9) & (10):

↓

mechanism for directors & employees to report genuine concerns (WHISTLE-BLOWING)

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- Vigil mechanism shall be established by:
  - Every listed co.
  - Others [RULE 7]
    - Companies accepting deposits from public
    - Companies which have borrowed money from Bank & PFI >50 cr

- Vigil Mechanism (vm)
  - Co. having Audit comm → Audit comm oversees the VM
  - otherwise → BOD oversees VM via 1 nominated director
  - Directors & employees must have direct access to chairperson of Audit comm or nominated dir
  - must provide for safeguards against any victimization of dir/emp

- Repeated frivolous complaints → suitable action shall be taken → including REPRIMAND (dis-approval)
- Disclosure of VM → Board report + Website

(7) SEC 179: Powers of BOD

- SEC 179 (1) - Same powers as of co.
  - BOD has all powers as possessed by co. → Except: If co. can only exercise the power @GM, then BOD cant!
  - BOD shall exercise powers subject to:
    - MOA & AOA
    - CA'2013 & rules
    - Regⁿ made by co. @ GM

- SEC 179 (2) - New regⁿ made by co. in GM can have prospective effect (≠ retrospective). All acts of BOD done before New regⁿ shall not be invalidated.

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- 179(3) – Powers of BOD to exercised by BOARD RESOLUTIONS at duly convened board meeting
  ↳ (≠ circulation)

[CBI BIG DATA PAA]

C – make Calls on shareholders wrt unpaid calls
B – authorise Buyback uls 68
I – Issue securities & debentures (in/outside INDIA)

B – to Borrow monies
I – Invest funds of co.
G – Grant loan / security / guarantee

⇒ For B, I, G – Board res^{n} by circulation is allowed for SEC 8 co. [no default uls 137 & 92)

↓ For B, Dont include day-to-day OD/CC etc.

↓ For I & G → 186(5) → BR @ BM is needed with consent of ALL directors (UNANIMOUS)

D – Diversify biz of co.
A – Approve FIs & Board Report
T – Takeover a co. / acquire controlling / substantial stake in a company

A – Approve M & A, Reconstruction

RULE 8:

P – make Political contri
A – appoint & remove KMP
A – appoint internal & secretarial auditors

& many more ... 161(4), 188, 203 etc.

pass BR @ BM to delegate

★ For powers B, I, G → BOD can delegate to:

- Committee of dir
- MD
- Mgr / princi officer of co.
- Princi officer of branch office

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* 'B' point → N/A to borrowings by Banking co. from other banking co. | RBI | SBI. Also, acceptance of deposit from customers (repayable on demand or withdrawable by chq / draft etc.) ≠ Borrowings.

* Similarly, deposits by banking co. with other banking co. ≠ Grant of loan

* 179(4) → Imposing of restrictions by shareholders:

Co. can restrict Directors' powers by passing a resolution @ GM	shareholders cannot interfere unless there are sufficient reasons. Also, shareholders can exercise powers of BOD by majority (OR) in GM if:		
or			
By Altering AOA or By making reg^n	Directors are acting Malafide (working for personal gains, etc.)	All directors are interested & Quorum is absent	There is DEADLOCK in mgmt (dir are not on talking terms, etc.)

(8) SEC 180: Restriction on powers of BOD

- 180(1) → Powers which can be exercised after obtaining consent of co. by (SR) [not just BR @ BM]:

(a)	(b)	(c)	(d)
Sale / Lease / Disposal of whole or substantially whole of an UNDERTAKING	Invest in securities (≠ trust sec) the amt of compensation recd on M&A	Borrow money (Existing + proposed) in excess of PUSC + FR + SP	Remit or give time to director on repaymt of debt due to co.

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- 180(1)(a) → UNDERTAKING is that:

in which co. has invested ≥20% of its L.Y.'s N/W (or) which generates ≥20% of income of co. in L.Y.

↙

PUSC + FR + SP
- Accumulated losses
- deferred & misc exp
- reval^n reserve & writeback of depre/amortiz^n

* Substantially whole means ≥20% of value of U/T as per L.Y. B/s
* (SR) may stipulate any conditions regarding above sale/lease/disposal etc.
* (SR) is not needed if sale/etc is ordinary business of co.
* If directors sell/etc the U/T, the TITLE OF BUYER IN GOOD FAITH shall not be affected ✓
* If SEC 110 applies, then follow it:

Co. can specify passing (SR) by voting by POSTAL BALLOT only ✓

But N/A to OPC & any other co. having mem up to 200 (no need of ballot)

- 180(1)(b) → Trust securities = Govt sec/bond etc = SAFE ✓

↓

(SR) not needed

- 180(1)(c) → (Existing + Proposed borrowings) > (PUSC + FR + SP) then (SR) is needed

BORROWINGS = ST ✓ LT ✓ temporary loan ✗

⇓

repayable on demand or within 6m (≠ loan for any financial exp of capital nature)

FR = free for div. distri.

⇓

Exclude reval^n reserve & any change in carrying value of A/L recognized in equity

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∴ ST + LT + loan for financial capex > PUSC + FR + SP
≠ temp. loans like cash cr. / discounting
↓
(SR) ✓

* Borrowing excludes acceptance of deposits by Banking co.
* (SR) shall also specify the max amt upto which BOD can borrow in the name of co.

Eg. IF SR specifies ₹1000 cr & if BOD passes BR to borrow ₹1200 cr, then the EXCESS (200 cr) ≠ VALID

Lender cannot sue the company	Lender can sue only if it proves it lent in good faith without knowledge of limits being crossed by BOD

* 180 → N/A Pvt co. (≠ 137, 92)

(9) SEC 181: Contribution to charitable & bonafide funds

Prior permission of co. in GM is needed by BOD to contribute > 5% of avg NP of last 3 FY, in aggt in a year.

≤ 5%	> 5%
BR ✓	permission of co. & BR ✓

LY 2017-18 : NP 3 cr
LY 2018-19 : NP 4 cr
LY 2019-20 : NP 5 cr
CY 2020-21 : Loss 1 cr
20-21 charitable contri of 6 LAKH
↓
VALID ✓
↓
not mandatory to have C.Y. NP ✓

* Contri to a fund for benefit of own biz / employees is NOT CHARITABLE.

* Prior permission = (OR) *

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(10) SEC 182: Political Contribution by co.

A co. can contribute (any) amount directly / indirectly to political party registered uls 29A of ROPA, 1951
↓
only after passing BR @ BM & disclosing in P&L
↓
(≠ circulation)

The following companies cannot contribute:
- Govt co.
- A co. which has existed for < 3 FY

- Mode of contri:
  - A/c payee chq
  - A/c payee bank draft
  - ECS through a bank account
- Co. can also contribute to ET:

Co. ---100 cr---> Electoral trust ---97 cr---> Political party

↓	↓
disclose the contri made to ET (≠ PP)	disclose contri made to PP

- Deemed political contri:
  - Donation / subscription / Pmt to to a person carrying out any activity to affect public support for a political party
  - Expenditure on advertisement in souvenir / brochure / etc where such public^ is by or on behalf of or for benefit of political party
- Contravention:

Company	Defaulting officer
↓	↓
Fine ≤ 5 x Amt contributed	Imp ≤ 6m (+) Fine ≤ 5 x Amt contributed

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(11) SEC 183: Contri to National Defense Fund / Other fund approved by CG for purpose of national defense

- SEC 183 overrides CA'2013, MOA, AOA
- Who can exercise the power?
  - BOD or
  - A person / authority exercising power of BOD or of co. in gm
- Disclose contri in that FY's P&L A/c
  - ↓
  - No limit on amt to be contributed

(12) SEC 184: Disclosure of interest by Directors

- 184 (1) - GENERAL Disclosure of interest
  - Directors shall disclose their int in any co. / Body corp / Firm / any association of individuals
  - At
    - 1st BM in which he participates as a dir
    - 1st BM in every F.Y.
    - 1st BM after any changes in disclosures made earlier

RULE 9: Procedure for 184 (1)

- Dir must send written notice (FORM MBP-1) to co.
- Dir must cause it to be disclosed @next BM
- Notices must be kept
  - @RO
  - for 8FY from end of FY of receipt
  - in custody of CS / any person auth by BOD

- 184 (2) - SPECIFIC Disclosure of interest

When dir is interested, directly / indirectly, in a contract or arrangement to be entered into with a:

- Body corp in which himself + other directors hold ≥2% shareholding
- Body corp where he is promo / mgr / CEO
- Firm where he is owner / partner / member

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- When to disclose Specific int u/s 184(2)?

@ BM in which that contract / arrangement is discussed for the 1st time	If director ≠ interested during the time of entering contract / arrangement but later becomes interested, then he must disclose it @ next BM

- Restriction u/s 184(2) for interested dir:

Normally	Pvt co. (≠ default 137, 92)
Director cant participate in that BM, i.e.	Interested director CAN participate only after disclosing the interest ✓
Discuss matters wrt contract / arrangemt (X)	Vote (X)

- 184(2) applies to SEC 8 co. (≠ default 137, 92) only if the transaction wrt SEC 188 > ₹ 1 LAKH

- 184(3) → Violation of 184(2) → transaction shall be VOIDABLE at the option of the company

- 184(4) → Contravention of 184(1), (2) or furnishing of wrong info
  ⇓
  Imp up to 1 yr (or) fine up to 1 LAKH (or) Both

*Example → RIL entered a contract with TATA. Mr. A is a director of RIL & 5% shareholder of TATA.
↓
Mr. A must disclose int u/s 184(1) & (2) ✓

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(13) SEC 185: Loan to Directors, etc.

- 185 (1) → {PROHIBITIONS}

A company (shall not), directly / indirectly, advance any loan to (including loan by book debt), & shall not give security / guarantee w.r.t. loan taken by:

- A director of that co. or its Holding co. → or partner / relative of such director
- Any firm in which its director or director's relative is a partner

*Example → Mr. A is a director of Jio Ltd & a partner of a FIRM named ABC & Associates.

Jio ⟶ L | S | G ⟶ Mr. A, Mrs. A, ABC & associates } (X)

- 185 (2) → {RELAXATIONS}

A company (shall) advance loan (including via book debt) to, or give security / guarantee w.r.t. loan taken by:

⇓

{Any person} in which dir of the co. is interested

i.e.

- Pvt co. in which he is director / member
- Body corp in which that dir / with other directors holds ≥ 25% TVP @ gm
- Body corp whose BOD / MD / mgr is accustomed to act as per directions of BOD / dir of lender co.

{only if (SR) is passed @ gm + only if Borrowing co. uses loans for its principal biz. activities}

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* for (SR) → Explanatory Statement annexed to notice of GM must include full particulars + Purpose + other relevant facts of L|S|G

* Example: Mr. A is a director of Jio Ltd. Mr. A is a director of TATA pvt ltd, 30% shareholder of BATA Ltd. and he instructs BOD of GHATA Ltd.

Jio Ltd → L|S|G → TATA, BATA, GHATA → ✓ → (SR) ✓
✓ → Princi biz activity ✓

- SEC 185(3) → {FREELY ALLOWED} → 185(1),(2) N/A to:

Loan given to MD / WTD pursuant to a scheme approved by (SR) @ GM or as a part of conditions of service extended to all employees	L|S|G by co. in ordinary course of its biz if the INT RATE is not less than YIELD prevailing on the G-SEC of 1/3/5/10 yr whichever is closer to tenure	Co. → {WOS} L|S|G wrt Any loan (or) Co. → {Subsi} S|G wrt loan by Bank|FI to ↓ Only if loans are utilized for principal biz activities ✓

- 185(4) → Contravention

L|S|G giver company ↓ Fine: 5L - 25L	Defaulting officer of L|S|G giver co.	Receiver of L|S|G benefit

↓ ↓

Imp up to 6m
(or)
Fine: 5L to 25L
(or)
Both

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- Exemptions to some companies (≠ default 137, 92)

Govt company	Nidhi co.	Private co.
If it obtains approval of the ministry / dept of CG/SG that is administratively in charge of it before giving L/S/G	If loan is given to dir / his relative only if • Borrower = member, • Transaction is disclosed in annual A/c & • SH interests = protected	• IF no body corp has invested in that co's capital • IF ≠ default on existing borrowing • IF borrowings from Bank / FI / Body corp is: ⇓ (✓) 2 × PUSC or 50 crores

(14) SEC 186: L/I/S/G by co.

- 186(1) → Investment by co.

- Unless otherwise prescribed, a co. is not permitted to invest through more than 2 LAYERS of investment cos.

(✓) RIL ⟶ Inv co.1 ⟶ Inv co.2

(✗) RIL ⟶ I co.1 ⟶ I co.2 ⟶ I co.3

- Investment co.

means a co. whose principal biz is acqⁿ of shares / debentures / other securities

(or)

a co. whose investment in sh/deben/ other sec ≥ 50% of total assets or inv. income ≥ 50% of its gross income

- 186(1) → N/A if:

Co. acquires a co. incorporated outside India that has investmt subsi beyond 2 layers as per laws of that other country

A subsi co. wants to have investmt subsi co. for meeting any law or regulation

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- 186(2) → PERMISSIBLE LIMIT FOR L|S|G|A

L – Loan to anyone (≠ employees)
S – Security
G – Guarantee
A – Acqⁿ of securities of body corp
→ wrt loan taken by anyone

CANNOT EXCEED: ↓
60%. (PUSC + FR + SP) or
100% (FR + SP)

FYI → Loan to MD / WTD → Allowed (185) ✓
Loan to directors → Prohibited (185)
Loan to employees → Allowed (186) ✓

- 186(3) → IF Aggt L|S|G|A > Limit u/s 186(2), then (SR) must be passed @ GM ✓

Mention Total Amt up to which BOD can make L|S|G|A

No (SR) in 2 cases: ⇓

1. Co. —L|S|G→ WOS / JV
2. H Co. —A→ WOS

⇓

But disclose the L|S|G|A in F|S as provided u/s 186(4) along with its purpose

- 186(4) → L|S|G|A details → disclose in F|S ✓

- 186(5) → Unanimous BR & Approval of PFI

Any L|I|S|G shall be made only after:

Passing BR @ BM with consent of (ALL) directors present @ BM

obtaining prior approval of PFI from which loan is already subsisting

No need of PFI Approval if:

L|I|S|G doesnt exceed limit u/s 186(2)

there is no default in repayment to PFI

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FYI: L|S|G|A or L/I|S|G (Existing + Proposed)

up to 186(2) limit	> 186(2) limit
↓	↓
Unanimous BR @ BM	Unanimous BR @ BM
+ F|s disclosure	+ SR @ GM
	+ PFI approval
	+ F|s disclosure

- 186(7) → Rate of Interest on loan given shall not be lower than prevailing yield on G-SEC of 1y|3y|5y|10y closest to tenure of loan

  ↓

  N/A to SEC 8 co. (≠ default 137, 92) in which CG|SG holds ≥ 26% PUSC for loans given to fund Industrial research & Development projects as per its MOA objects.

* In case: Effective Yield (ROI) > Normal yields
  on tax-free G-SEC (≠ tax free)
  (8%) ↓ (7%)
  There is no violation if Int on loan is 7.5%

- 186(8) → Co. cannot give L|s|G|A is there exists a default on repayment of deposits / interest

- 186(9) → Maintenance of register as per RULE 12

Every co. giving L|s|G|A shall:

Maintain register (FORM MBP-2)	Make separate entries for L|s|G|A within 7d. of transaction	Preserve register permanently in custody of CS/ person auth by BOD & copies can be provided to SH
↓	↓	(Fee: as per AOA but max ₹10/pg)
manually / electronic mode	Authenticated by CS or person auth by BOD	
↓		
@ RO of co.		

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- 186 (10) → Register (same as above - rule 12) & it shall be open to inspection by members

- 186 (11) → Except 186(1), the section is N/A to:
  - L|I|S|G by:
    - Banking/Insurance/Hsg finance co. in ordinary course of biz
    - &
    - A co. having biz/objects of financing industrial enterprises or biz of providing INFRA facilities
  - Investment (I)
    - By an Investmt company → same meaning as uls 186(1)
    - made in rights shares uls 62(1)
    - made by RBI regtd NBFC whose principal biz is ACQ^n of securities

- 186 (6) → Restriction on inter-corporate loans/deposits by companies registered uls 12 of SEBI ACT, 1992 in excess of limits specified in reg^n made for those companies
  - ↓
  - Such companies must disclose loans/deposits in F|S

- 186 (13) → Contravention
  - Company → Fine 25000 - 5L
  - officer in default → Imp ≤ 2 yrs (+) FINE 25k - 1L

- 186 → N|A to:
  - Govt co. engaged in defence prod^n → & ≠default 137, 92
  - Govt co. (≠ Listed) when it obtains approval of ministry/dept of CG/SG in charge before L|I|S|G

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(15) SEC 187: Investments of co. to be held in its own name

- All investments made by co. in property / security / etc shall be made & held in its own name.
- EXCEPTIONS

Co. can hold shares in a subsi in the name of nominees just to ensure the minimum no. of members are present	Co. can deposit sh/sec with bankers for int/ div collection	Co. can deposit with bankers (SBI / Sch. Banks) any sh/sec for purpose of TRANSFER ✓
		↓
Co. can hold investments in name of a DEPOSITORY when co. = B.O.	Co. can deposit / trfr sh/sec as SECURITY for a loan repayment or performance obligation	IF not trfrd in 6m then sh/sec must be re-transferred to co. in its own name ASAP

↓

FYI:

NSDL / CDSL holds shares for co. in demat form & co. = BO

↓

When sh/sec are held by depository for a co., RULE 14 states that REGISTER IN FORM MBP-3 shall be maintained

@ RO of co.	Custody of	Authentication by	Preserve permanently	Free Inspection by mem/ debenture holders during biz hours
	CS / other person auth by BOD			
		AOA / co. in GM may put reasonable restrictions		

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- Contravention:
  - Company → Fine: 25k - 25L
  - Defaulting officer → Imp ≤ 6m (or) Fine 25k-1L (or) Both

(16) SEC 188: Related Party Transactions

- 188(1) → RPT to which 188 applies [S_2 L A_2 RU]

Sale/Purchase/ supply of any goods/materials	Sale/disposal/ purchase of any property	Leasing any property	Availing/ rendering services

Appointment of Agent for S_1, S_2, A_1

RP's appointmt @ office/place of profit in the Co./S/A

Underwriting subscrip^n of sec/ derivatives of sec of the co.

Office/Place of profit: where such office is held by
- A director → if dir receives a remuneration over & above his entitled rem^n (by way of sal/fee/ comm/perqs/etc)
- Individual (≠ dir)/Firm/ Pvt co./Body corporate → if Indi/Firm/Pvt co/body corp receives any rem^n from co. (salary/fee/comm/perqs/etc)

- 4th Proviso to 188(1) → No Approvals are needed for RPTs @ ALP in ordinary course of business

- RULE IS (1) → Transaction with RP not @ ALP & not requiring SH Approval → needs prior consent of BOD by BR @ BM ✓

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- RULE 15(1) states that AGENDA of BM shall disclose

Name of RP Relation with RP	Nature, Duration, terms of the contract	Pricing & other factors	Other relevant info
Advance paid / recd			

- RULE 15(2) → Interested director shall not be present @BM during discussion on resol^n wrt that RPT
- 1st proviso to 188(1) → If value of RPT violates limits specified in RULE 15(3), then prior app of co. by OR will be needed.
- RULE 15(3) → (OR) needed for the following:

$S_1 + A_2$: Sale / purch / supply of materials directly or via agent (All transactions → Aggt per FY)	≥ 10% of T/O of company
$S_2 + A_2$: Sale / purch / disposal of property directly or via agent (All transaction → Aggt per FY)	≥ 10% of N/W of company
L : Leasing any property (All transaction → Aggt per FY)	≥ 10% of T/O of company
$A_1 + A_2$: Avail / Render services directly or via agent (All transaction → Aggt per FY)	≥ 10% of T/O of company
R : RP's appointment @ office or place of profit in the co. / S/A	> 2.5 Lakh p.m
U : Underwriting sec / derivatives	> 1% of N/W of company

★ N/W & T/O of LY Audited FIs
★ For (OR), a member who is RP shall not vote on above contracts → 2nd proviso to 188(1)
↳ (N/A if ≥ 90% of mem are RP or relatives of promoters)

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** RP means only wrt that contract for which (OR) is sought
↓
so if mr. A = RP of TATA Ltd but not related wrt to a property sale transac^{n} → then he CAN VOTE on it ✓

* 1st & 2nd proviso to 188(1) → N/A to:

Govt co. wrt contracts entered with CG/SG
↓
≠ default 137, 92

Govt co (≠ listed) wrt contracts for which approval of ministry/ Dept of CG/SG is received

* 2nd proviso to 188(1) → N/A to PVT co. (≠ default 137, 92)

• 5th proviso to 188(1) → Transac^{n} bwn H co. & WOS co.
↓
no need of SH approval if Alc of WOS are consolidated & placed before SH of H co. @ GM

• RULE 15(3) → If H co. passes (OR) then WOS co. need not pass (OR) for transac^{n} bwn H co. & WOS co.

• 188(3) → Contract shall be voidable @ option of co./BOD
↓
IF contract is entered by dir/employee without obtaining approval of BOD/SH (as the case may be) & if not ratified by BOD/SH in 3m from date of transaction

IF contract is with RP of dir or is authorised by any other dir (≠ BOD), then concerned dir shall INDEMNIFY the company for any loss ✓

• 188(4) → Co. can proceed, against dir/emp who violated sec 188, for recovery of loss ✓

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- 188(2) → Every contract (RPT) u/s 188(1) shall be disclosed in Board report with justification

- 188(5) → Contravention by dir / employee

Listed co.	Other co.
↓	↓
Imp ≤ 1yr (or) Fine 25k-5L (or) Both	Fine: 25k-5L

★ 188 → N/A to transactions arising of Compromise / Arrangement / Amalgm^ (C/A/A)

FYI: RPT

- @ ALP → no approvals
- ≠ @ ALP
  - Limit u/Rule 15(3) touched / crossed → (OR) @ GM ✓
  - otherwise → (BR) @ BM ✓

★ 'Related Party' u/s 2(76) & 'Relative' u/s 2(77) → ICAI module ✓

(16) SEC 189: Register of contracts in which dir are interested

184(2) (188)

RULE 16 → Register → FORM MBP-4 → contains particulars:

of co. / body corp / firm / association of individuals in which dir is interested u/s 184(1)	of contracts with body corp / firm / entity u/s 184(2) in which director is interested	of contracts with related parties u/s 188

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* Exception → no need to disclose int u/s 184(1) in MBP-4 if SH of dir + other dir ≤ 2%

  - contract is for sale/ purch / supply of goods/ materials / services & Aggt Value p.a. ≤ 5LAKH
  - contract entered by banking co. for collection of bills in ordinary course of biz

* SEC 8 Co. (≠ default 137, 92) → 189 applies only if transaction value u/s 188 > 1 LAKH

* Rules for MBP 4 are same as of MBP 2 (SEC 186)
* Even proxy can inspect the register @ AGM
* Dir / KMP shall disclose int u/s 184(1) within 30 Days of appointment / relinquishment
* Contravention → Penalty = ₹ 25000

(17) SEC 190: Contract of employment with MD / WTD

Maintain @ RO		Free inspec^	Contravent^		N/A to
copy of contract (if it is in writing)	written memorandum with terms of emp (if contract ≠ writing)	by any member	co. ↓ 25k	officer ↓ 5k	Pvt co.

(18) SEC 191: Payment to director for Loss of office, etc. in connection with transfer of sh / property / UT

eg. Mukesh Ambani = director @ RIL & he looks after 'petroleum' division of RIL. If 'petroleum' division is sold → he gets CFLOO ✓ or if someone acquires stake in RIL, he may want a director of his choice & mukesh Ambani may lose his post
↳ CFLOO ✓

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- Events that may entitle CFLOO etc to directors:
  - Trfr of whole or part of U/T or property
  - Trfr of shares of the co. being a transfer resulting from an offer made
    - to general body of SH
    - by body corp to make the co. its SUBSI or a SUBSI of body-Corp's HOLDING co.
    - by individuals with a view to obtain ≥ 1/3rd TVP @ GM of co.

  which is conditional on acceptance (eg. an offer that someone buys RIL's shares on 1 condition that Mukesh Ambani must vacate ✓)

- However, a director shall not receive any payment UNLESS:
  - Particulars (u/ RULE 17), wrt payment proposed, have been disclosed to members
  - & such proposal has been approved by co. @ GM

- Which payments can be proposed?
  - CFLOO / Consideration for retirement from office
    - from TRANSFEREE of U/T or property or shares
    - (or)
    - from any other person NOT BEING SUCH Co. (eg. RIL can't pay)

- RULE 17 disclosures:
  - Name of dir
  - Event & Amt proposed
  - Basis, manner, source of amount & justific^{n} for the same
  - Date of BM recommending payment

* However, the co. (RIL) can pay CFLOO to MD/WTD/Mgr (not any other dir) as per SEC 202.

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- A company can pay the MD / WTD / MGR in connection with loss of office etc:

Notice pay & Statutory payments as per terms of appointment → ALLOWED ✓

CFLOO / Consideration for retirement from office → NOT ALLOWED IF CO. HAS DEFAULTED:

- on dividend redemption of pref sh
- on repayment of public deposits / deben / int / liab payable to banks or FI / taxes & dues to CG/SG/LA
- on payment of statutory dues to its employees & workmen

→ other than disputed liabilities ✓

- IF proposed payment is not approved for want of Quorum, then the proposal is DEEMED NOT TO BE APPROVED!

- Contravention:

Amt recd by directors in contravention of 191 (or) Payment is made without approval @ GM → Amt shall be held in trust for co. (i.e. director holds it as trustee for the co.)

Penalty = 1L

(19) SEC 192: Restriction on Non-Cash transactions

- No company shall enter into arrangement by which:

Company → acquires assets for any consider^{n} ≠ CASH → Director of that co./H/S/A or person connected with him

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• Exception to above : Non-cash transactions are allowed

IF prior approval for such arrangement is obtained by OR @ GM

eg. Co. → Dir

OR needed ✓

IF prior approval of that co. by OR @ GM + approval of H co. by OR @ GM is recd

when transaction is with a director of H co. or his connected person who is also a director of H co.

• Notice of GM must include → particulars of transac"
→ value of assets involved (by regtd. valuer)

• Contravention of 192:

Arrangement = VOIDABLE by the co.

Exception → ≠ VOIDABLE

IF restitution of money / other consid" is not possible & co. has been indemnified for any loss caused

IF rights are acquired bona-fide for value without notice of contravention

(20) SEC 193 : Contracts by OPC Ltd by sh / guarantee with its member (who is also the dir)

Preferably, contract must be in writing

* 193 → N/A to a contract entered in ordinary course of business

If not in writing, then terms of contract must be contained in a memorandum (or) must be recorded in minutes of next BM

↓

Inform ROC in 15 d. from BOD's approval

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APPOINTMENT & REMUNERATION OF KMP

① DEFINITIONS

- **SEC 2(51)** - Key managerial Personnel
  - CEO / MD / MGR
  - CS
  - CFO
  - WTD
  - Officer not more than 1 level below directors, who is in whole time emp & is designated as KMP by BOD

- **SEC 2(53)** - Manager
  - An individual having the mgmt of whole / substantially whole of affairs of the co., subject to superintendence / directions of BOD
  - & includes a director / any person occupying the position of 'manager' by whatever name called, under contract of service or not

* Examples →
- Mr. A is Head of finance dept → ≠ MGR
- Mrs. A controls & manages the whole company but she isnt a director → = MGR

- **SEC 2(54)** - Managing Director

A director entrusted with substantial powers of mgmt of the affairs of co. by virtue of:
- AOA of co. (or)
- Agreement with co. (or)
- Resoln passed by co. @ gm or by BOD

& includes a director who occupies position of MD, by whatever name called

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* Substantial powers of mgmt shall not include powers to do administrative acts of routine nature like: [SADD]

Sign share certificates	Affix common seal of co. to any doc	Draw & Endorse chq or any negotiable instruments	Direct registration of trfr of shares

* Examples → Mr. A is Additional dir having substantial powers of mgmt of co. → = MD ✓

→ Mrs. A is MD, But later she resigned as a director → she ceases to be MD!

* BOD exercises control over MD.

- SEC 2(78) - Remuneration

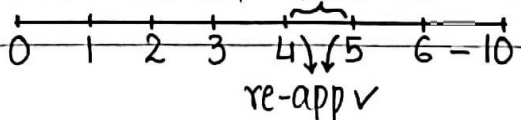
includes money or its equivalent given to any person for his services	&	includes perquisites defined under the ITA '1961

- SEC 2(94) - WTD → Director in whole time employmt

(2) SEC 196 - Appointment of MD / WTD / MGR

- 196(1) - Co. shall not appoint / employ MD & MGR at the same time [eg. MD + MGR (X), MD + WTD (✓)]
- 196(2) - Tenure of MD / WTD / MGR

max (5) yrs at a time ↓ 5+5+5+5....	re-appointment shall not be made earlier than 1 yr before the expiry of current term	FYI: Appointmt as MD/WTD/MGR for 'LIFETIME' is PROHIBITED!



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• 196(3) - Eligibility criteria for MD/WTD/MGR

196(3) [SICA] | Part I of Sch V [IDR] | 164 applies (directors)

* 196(3) - INELIGIBLE

↓

S - Suspended payment to his creditors or has made composition (settlement) @ any time
I - adjudged Insolvent @ any time
C - Convicted at any time by court & sentenced for ≥6m
A - Age below 21 or attained 70 yrs (<21 & ≥70)

↓

Exception for a person who has attained 70 yrs

OPTION - 1

↓

He can be appointed by passing (SR) ✓

↓

Explanatory statement to notice of meeting must include justific to appoint him

OPTION - 2

↓

IF SR could not be passed but VOTES IN FAVOUR had exceeded VOTES AGAINST (Like (OR))

↓

He can be appointed by taking CG's approval ✓

↓

(BOD must apply to CG)

* Part I of Sch V - ELIGIBILITY (without CG Approval)

↓

I - not been sentenced to Imprisonment or Fine >1000 for conviction of 19 Acts.
(CA'2013, SCRA, ITA'1961, Wealth tax, Customs, IBC, GST, FEMA, SEBI, PMLA, SICA, Competition, Excise, Indian Stamp act, Industries Act, Food adulteration, Essential commodities, Foreign trade, Fugitive Economic Offenders Act)

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D - has not been Detained for any period under Conservation of Foreign Exchange & Prevention of Smuggling Activities Act 1974 [COFEPOSA]

R - he must be Resident in India

- who has stayed in India for continuous 12 months immediately preceding the date of his appointment
- & who has come to stay in India for taking up an Employmt or Biz or Vocation in India

* NRI shall enter India only after obtaining Employmt Visa from concerned Indian mission abroad by furnishing details:
  - profile of co.
  - principal employer
  - T&C of apptmt

* 'R' → N|A to companies @ SEZ

- 196(4) - Procedure of apptmt:

Appointment, terms of app and remuneration shall be approved by:
- (BOD) @ Bm
- & (SH) @ GM by resol^n

* File FORM MR-1 within 60d. from appointment

IF appointment varies with Part I of Sch V
↓
It must be approved by (CG)
↓
Apply via FORM MR-2 within 90 d. from appointment

- 196(5) - Validity of acts:

If appointment of MD|WTD|MGR is not approved by company @ GM, any act till then = VALID ✓

* 196(2) → N|A to Govt co., 196(4),(5) → N|A to Govt co. & Pvt co.
(≠ default 137, 92)

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(3) SEC 197: Overall max managerial remuneration (MR)

only for a PUBLIC co.

- Adequacy of profits ✓
- Inadequacy of profits ✓

- 197(1) – Overall max MR to directors, MD, WTD, mgr per FY r.w. SECTION I – PART II – SCH V

Sr.	Particulars	Max MR %	In excess of max
1	Overall limit	(11%) of NP of that FY	>11% – company may authorise @ gm, subject to sch V
2	There is (1) MD / WTD / MGR	(5%) of NP of that FY	>5|10|1|3% ↓ Co. may authorise by (SR) @ gm
3	There is (>1) MD / WTD / MGR	(10%) of NP of that FY (Aggt)	
4	Rem to Directors who are NOT MD / WTD	(1%) of NP of that FY if co. has a MD / WTD / MGR	
		(3%) of NP of that FY if co. has NO MD / WTD / MGR	

* NP → u/s 198 (WITHOUT DEDUCTING REM^n TO DIRS)
* for >11% → SR isnt needed → only (OR)
* IF co. has defaulted in pmt of dues to:
  - Bank
  - PFI
  - NCD holders
  - other secured cr

  then their approval shall be obtained before obtaining approval of co. @ gm.
* Above % are exclusive of sitting fee u/s 197(5) to dir.

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* Eg. 1 MD, 2 WTD, 4 DIR
↓
10% + 1% = 11%

• 197 (3) & (11) - No profit / Inadequate profit

Remuneration → pay as per Sch V only → Even if MOA / resoln / etc. specify contrary, follow SCH V only

Sitting fee → pay ✓ [u/s 197(5)]

* SECTION II - PART II - SCH V → 2 limits (A & B)

A] MR based on effective capital:

Effective cap	Max MR p.a.
-ve or < 5 cr	60L
≥ 5 cr & < 100 cr	84L
≥ 100 cr & < 250 cr	120L
≥ 250 cr	120L + 0.01% of Effective cap exceeding 250 crores

If employed for part of the year, use pro-rata method ✓

→ (SR) needed if MR exceeds above-mentioned limits
→ EFFECTIVE CAPITAL *****
⇓
PUSC (≠ share app money, advance against shares)
+ R&S (≠ revaln reserve)
+ Securities premium
+ LT loan & deposit of tenure > 1yr
(≠ wc loan, OD, Bank guarantee, Int on loans, etc ∵ ST)
(-) Accum. loss & Prelim exp not written off
(-) Investments [Except if it is an INVESTMT co. which has princi biz of Acquiring sh / deben etc)

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B] LIMIT (RESTRICTION) FOR MANAGERIAL PERSON FUNCTIONING IN PROFESSIONAL CAPACITY:

Remuneration as per LIMIT A can be paid if he:

- is not having interest in capital of that co./ H/s directly/indirectly
- is not having any direct or indirect interest in, & is not related to promo/dir of that co./ H/s during LAST 2 Years before app or after apptmt.
- possesses graduate level qualific^n + expertise + spl knowledge in the field of co.'s operations

Exception → Employee holding sh of that co. (≤ 0.5% PUSC under any scheme (ESOP / basis of merit, etc) shall be DEEMED NOT TO BE INTERESTED

↓

So MR as per LIMIT A IS PERMISSIBLE ✓

* LIMITS A & B shall apply if :-

- Paymt of MR is approved by (BR) & also by NRC (if required u/s 178 to form)
- The co. hasnt defaulted to bank / FI / NCD holder / sec cr

  ↓

  IF defaulted, their approval is needed before OR/SR @ GM
- OR / SR (LIMIT A) SR (LIMIT B) has been passed @ GM for a period ≤ 3 yrs

• 197(4) - Determination of MR to dir/MD/WTD/MGR

- by AOA
- by Resolution
- by SR @ GM if AOA requires

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** The remuneration shall -

INCLUDE	EXCLUDE
any rem payable to director for services rendered by him in any other capacity	any rem payable to dir for PROFESSIONAL SERVICES provided by him
eg. Dir gets salary & a commission on sale of property of the co. since he helped to find a buyer	If he possesses requisite qualific^{n} for practising that profession, in the opinion of NRC / BOD (FYI → CA|CS|Doctor / Lawyer)

- 197 (5) - Sitting fees to dir for attending meetings of BOD or committees r.w. RULE 4:

MAX 1 LAKH per meeting	Fee to ID & WD	&	Fee to others	Sitting fee isnt included in limits (11%, 1% etc) [197 (2)]

- 197 (6) - Mode of payment:

Monthly payment (or) specified % of NP (or) Both

- 197 (9), (10) - Refund of excess remuneration if paid to a director above limit u/s 197 or without approval

He shall refund it to co. within 2 years or lesser period as allowed by co.	He shall hold it in trust for co. until it is refunded

* REFUND can be waived off within 2 yrs from pmt of excess rem by passing (SR) @ GM

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- 197(12) + RULE 5 → Disclosure in board report by LISTED Co.

Ratio	% increase in-	no. of permanent employees on that co's payroll
↓	• rem of each dir, CFO, CEO, CS, MGR in the FY	
Rem to each dir / Median employee rem	• Employee's median rem	

↓

Avg percentile increase already made in salary of emp (≠ KMP) in last FY & its comparison with percentile increase in rem of KMP & its justific^n

Affirmation that policy of rem of the co. has been followed

Names of TOP 10 Emp (as per rem) + Name of every emp who was

in receipt of rem ≥ 1.02 cr that FY	in receipt of rem ≥ 8.5L p.m. in that FY	in receipt of rem in that FY that exceeds rem drawn MD/WTD/MGR (+) Holds ≥ 2% Eq. sh of the co.
↓	↓	⇓
IF employed throughout the FY	IF employed for part of a FY	Himself + Spouse + Dep Children

- 197(13) – Premium paid wrt INDEMNITY INSURANCE on behalf of MD, WTD, MGR, CEO, CFO, CS for indemnifying them against liability wrt negligence / default / breach of duty etc.

Usually	IF he is proved guilty
↓	↓
Prem = Excluded from MR	Prem = Included in MR

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- 197(14) - MD/WTD receiving commission from the co. is not disqualified from receiving any rem/ commission from its Holding / subsi co.
  ⇓
  disclose in board report of the co.

- 197(15) - Contravention → co. → Penalty = 5L
  → officer → Penalty = 1L

- 197(16) - Auditors report u/s 143 must include a statement on whether MR is as per 197 or is in excess of limit u/s 197

★ Exemptions

Govt co.
↓
197 → N/A
(≠ default 137, 92)

Nidhi co.
↓
SR if MR > 1/3/5/10%
Applies with modific^{n} that

Rem to dir (≠ MD, WTD, MGR) for performing special services to NIDHI as per AOA may be paid monthly

subject to co.'s approval @ GM + Sec 197

No need of co.'s approval if:

There is no MD/WTD/MGR

Rem to all dir during the FY approved by (SR)
⇓
(≤) 10% of profits of NIDHI
or
15 LAKHS

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④ SEC 198 : Calculation of NP for the purpose of MR uls 197:

Give credit	Dont give credit	Deduct	Dont deduct
↓	↓	↓	↓
Bounty / Subsidy	PUSC - ICU	CIRCUIT B_2D_2 P	LIC_2

* Give credit:
Bounty / subsidy from any govt / public authority auth by Govt (Except → If CG directs not to give credit)

* Dont give credit (If credited to P/L, then deduct it):

PU - Profit by way of premium on shares / deb issued or sold by co. UNLESS CO. = INVESTMT CO.
S - Profit on sale of shares forfeited by co.
C - Profit of capital nature or from sale of U/T
I - Profit on sale of Immovable property / Fixed assets of capital nature (Except → If buying / selling prop etc is the business of that co.)

*** IF SP > WDV then give credit upto OC - WDV

Eg. OC = 1000, WDV = 600, SP = 1100

We credit 500 gain to P/L

But max credit allowed = OC - WDV = 400 ✓

C - Change in carrying amt of A/L recognized in equity reserves or recorded surplus in P/L A/c on measuremt of A/L @ FV
U - Unrealised gain, notional gains, reval^n of assets

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★ Deduct the following:

C - Contri uls 181 & other outgoings
I - Interest on deb / sec / unsec loans
R - Repairs to mp / IP (≠ capital nature)
C - Compensation / Damages wrt legal liability including breach of contract → (≠ voluntary)
U - Usual working charges
I - Insurance against risk of meeting legal liability
T - Taxes on Excess / Abnormal profit or taxes on profits for special reasons notified by CG (≠ inc tax)
B - Bonus / commission
B - Bad Debts written off
D - Depreciation to the extent uls 123
D - Director's remuneration
↳ However, 197 states that 1/3/5/10/11 % are of NP before deducting dir rem ✓
P - Prior period loss as per SEC 198 calculation if not deducted from profit of earlier years

★ Don't Deduct the following:

L - Loss of capital nature or loss on sale of U/T
I - Income tax / Super tax under ITA 1961 & any other tax other than 'T' of CIRCUIT BD P
C - Compensation / Damages paid → voluntarily ✓ other than 'C' of CIRCUIT BD P
C - Change in carrying amt of AIL recognized in equity reserves or P&L A/c

FYI → Understand the question first. Eg:-

IF Given → PBT → do nothing

IF Given → PAT → Add back Inc tax

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(5) SEC 199 : Recovery of MR in certain cases

When a co. is required to restate F/S of prior yrs due to fraud / non-compliances, it shall recover any MR paid in excess (rem, ESOP, etc) to MD / MGR / WTD / CEO (by whatever name called)

past ✓ present ✓

* Example: 2018 → NP u/s 198 = 1 cr & MR paid = 11 L
But in 2020, a fraud was revealed → NP of 2018 was overstated by 20 L. Accordingly 2018 F/s are being re-stated.

↓

Now, max MR = 11% of 80 L = 8.8 L
∴ EXCESS PAID = 11 L − 8.8 L = 2.2 L

- Co. can recover from MD etc. ✓
- MD etc. shall also be liable u/s 447 ✓

(6) SEC 200 : Considerations by co. wrt remuneration limits to be fixed

- Co. may fix the MR within limits specified in this act as it may deem fit, while providing its approval u/s 196 / 197 in respect of cases where co. has INADEQUATE / NO PROFITS

- While fixing the MR, co. shall have regards to :-
  - Financial position of co.
    - Professional qualification & experience
  - Rem / commission drawn by him in other capacity or from other co.
    - Securities / ESOP held / pledged by dir
  - Fin & Op performance in last 3 FY
    - Comparison of rem of dir v/s dir & dir v/s employees

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(7) SEC 201 : Forms & Procedure of certain applic^n + RULE 7

- Every applic^n uls 196 for CG's approval shall be made via (FORM MR-2) within 90 d. from appointment
- Before applic^n is made, a general notice:-

must be sent to all members of co. indicating nature of applic^n proposed	must be published in ≥1 English NP & ≥1 local NP of district in which Regtd. Office is located	must be attached along with MR-2 along with a certificate of public^n in NP
* FYI → BOD applies to CG		

(8) SEC 202 : CFLOO of MD / WTD / MGR

- Co. may make a payment to MD / WTD / MGR (not any other dir) by way of CFLOO or consideration for retirement from office
- No CFLOO etc can be paid in the following cases:

Director resigns from his office as a result of Reconstruc^n / Amalgm^n & is appointed as MD / WTD / MGR / other officer of reconstructed / newly formed company ↓ Director resigns (≠ on reconstruc^n / Amalgmn) (i.e. director resigns voluntarily)	Office of director is vacated uls 167 ↓ Director is guilty of a Fraud, breach of trust, etc. wrt affairs of that co. / H/S co.	Co. is being wound-up (by NCLT or voluntarily) due to gross negligence of director ↓ He instigated / took part in termination of his office

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- **Quantum (MAX CFLOO)**
  - ↳ Rem he would have earned for ↓ remaining tenure or 3 yrs
    - ↓
    - Based on Avg rem of LAST 3 yrs or shorter period, as the case may be.

★ **Example:** MD → term = 5y
↳ Rem → 10L, 12L, 14L, 16L, 18L
Y_1 Y_2 Y_3 Y_4 Y_5

If removed after 2 yrs	If removed after 4 yrs
Avg rem = $\frac{10L + 12L}{2} = 11L$	Avg rem = $\frac{12+14+16}{3} = 14L$
Remaining tenure → 3 yrs	Remaining = 1 yr
∴ MAX CFLOO = 11L × 3 = 33L	∴ MAX CFLOO = 14L × 1 = 14L

Q → Removed after 1 yr & 8 months

A → Avg rem = $\frac{10L + (12L \times 8/12)}{1 + (8/12)} = 10.8L$
↳ MAX CFLOO for ↓ remaining 3 yr 4 months or 3 yrs
∴ MAX CFLOO = 10.8L × 3 yrs = 32.4L

- No CFLOO if winding-up of co. commenced:
  - before date of cessation of his office (or) within 12 m from date of cessation
    - ↓ ↓
    - if assets of co. are not sufficient to repay shareholders' capital & premium

- SEC 202 does not prohibit pmt to MD etc for services rendered in other capacity.

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⑨ SEC 203: Appointment of KMP

- **203(1) + RULE 8:**
  - Every listed company & Other public co. having PUSC ≥ 10 cr
  - shall have WT-KMP
    - MD/CEO/MGR or in their absence, a WTD
    - + CS
    - + CFO

- **RULE 8A:** Every Private co. having PUSC ≥ 10 cr shall appoint a whole Time CS

- **1st proviso to 203(1):** An individual shall not be appointed / reappointed as Chairman of the co., as well as MD/CEO of the co. at the same time.
  - Normally
    - Chairperson + MD ⊗
    - Chairperson + CEO ⊗
  - Exceptions
    - If AOA provides otherwise
    - If co. doesnt carry multiple business
    - → Chairperson + MD/CEO ✓

- **2nd proviso to 203(1):** 1st proviso is N/A to some cos.-
  - ⇓ Public companies having -
    - PUSC ≥ 100 cr ⊕ Turnover ≥ 1000 cr
    - & multiple businesses and one CEO for each business

- **203(2)** - Every WT-KMP shall be appointed by a Board resolution & such BR shall contain T&C of app.
  - ↳ 179(3) says → BR @ BM (≠ circulation)

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- 203 (3) - Restriction of multiple appointments

WT- KMP shall not hold office in more than 1 co. at the same time except in its subsidiary co.

If a person is MD / MGR in a co., then he can be appointed as MD in 1 other company (not >1 other)

↓

Appointment Procedure

By BR @ BM with consent of ALL directors present @ BM (unanimous)

Special notice of that meeting and resol^{n} must be given to all directors in INDIA

But he can be 'Director' in other cos. with the permission of BOD ✓

* Examples:

Mr. A	Mr. B	Mrs. C
MD of RIL	MD of RIL JIO	Woman dir of RIL
MD of TATA	CS of TATA	CFO of Relaxo
Addnl dir of SBI	Dir of BATA	MD of RIL's subsi
↓	↓	↓
VALID	INVALID	INVALID

- 203 (4) - Vacancy of WT KMP

Filled up @ BM by BOD within 6m from vacancy

- 203 (4A) - 203 (1), (2), (3), (4) shall not apply to MD | CEO | MGR or in their absence, WTD to Govt co. that hasnt defaulted u/s 137, 92

- 203 (5) - Contravention → co. → Penalty = 5L
  ↳ Defaulting dir / KMP → Penalty = 50k & 1000 p.d. for continuing offence → MAX 5L

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(10) SEC 204: Secretarial Audit for Bigger companies

- Every Listed co.
- RULE 9 → Other public co.
  - PUSC ≥ 50cr (or)
  - T/O ≥ 250cr (or)
  - o/s loan from Bank/PFI ≥ 100cr

- **Procedure:**
  - Conducted by Practising CS
  - Audit report in FORM MR3
  - Annex audit report to board report

- **Duties of:**
  - **Company** ↓
    - Give all assistance & facilities to PCS for auditing all the secretarial records of co.
  - **BOD** ↓
    - Board report shall include explanations of qualific^{n}/remarks made by PCS in MR3

- **Contravention by co/officer/PCS:**
  - ⇓
  - FINE: 1L - 5L

(11) SEC 205: Functions of CS + RULE 10

- Report to BOD about compliance with CA'2013 & other laws
- Ensure the compliance of Secretarial Standards
- Guide BOD wrt their duties, powers & responsibilities, and Corporate Governance
- Facilitate & convene BM/CM/GM & maintain minutes
- Take approvals of BOD/co./Govt, etc.
- Represent before regulators & authorities

Discharge duties u/CA'2013 & those given by BOD

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(12) SCHEDULE V:

PART I	PART II	PART III	PART IV
↓	↓	↓	↓
Eligibility (MD/WTD/ MGR)	Remuneration	Provisions applicable to Parts I & II	CG may exempt a co. from compliance of SCH V
↓			
r.w. SEC 196			

- **PART II – Remuneration:**

SEC I	SEC II	SEC III	SEC IV	SEC V
↓	↓	↓	↓	↓
Co. having profits	Inadequate profits	Inadequate profits in certain cases	Percs excluded from MR	MR to KMP in 2 cos.
↓	↓			
r.w. SEC 197	r.w. SEC 197			

* SEC III – PART II:

Companies with inadequate profits may pay MR in excess of limits u/s II of PART II in following cases:-

A. If some other co. pays an amt in excess of limits under SEC I & II:

Some other co.	⊕	That co.	⊕	Total MR paid
Foreign Co. (or) A co. that got approval of SH		treats the amt as 'MR'		by that co. to its KMPs is within limits u/s 197

B. Newly incorp co. (for 7 yrs from incorp^{n})	Sick co. for whom BIFR has approved revival plan (for 5 yrs from approval)	Co. for which a resol^{n} plan is approved by NCLT (5 yrs from approval)

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C. When MR > limits under SECTION II but such MR is fixed by BIFR / NCLT

* SECTION III shall apply if :-

For pt. B & C, KMP is not receiving MR from any other company	Auditor / CS of co. / PCS certifies that secured crs & term lenders have given written NOC for app & rem	Auditor / CS of co. / PCS certifies that there is no default to any creditors / deposit holders

↓

Certificate must be filed with MR-3

- SECTION IV - PART II:-

Perquisites NOT INCLUDED IN MR: u/s II & III: (i.e. pay bindaas ✓)

- Contri to PF, AF, SAF to the extent exempt under ITA 1961
- Gratuity payable ≤ ½ month's salary for each completed yr of service
- Encashmt of leave @ end of tenure

Extra exclusions for expatriate managerial person (including NRI)

↓

- Children Edu allowance: For max 2 children studying in or o/s INDIA up to 12000 p.m.p.c., or Actual exp
- Holiday passage for children studing abroad / family staying abroad: Return passage (once a yr in economy class or once in 2 yrs in 1st class for children / family with managerial personnel
- Leave Travel Concession: Return passage for self + family to be spent abroad (home country)

** Remuneration includes re-imb of direct taxes to managerial personnel

** Family = spouse, dep children or dep parents

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- **SECTION V - PART II:**

Subject to provisions of SEC I - IV of Part II, a managerial personnel shall draw Rem from ONE or BOTH companies:

↓

Rem from both co. (Aggt) ≤ Higher max limit admissible from any one of the co. where he is managerial person

- **PART III:** Provisions applicable to PART I & II

Appointment & Rem under P I & II shall be subject to approval by OR @ GM

Auditor / secretary of co. / PCS shall certify that SCH V has been complied with

↓

File certificate with MR-3

* Example → SEC V - PART II

mr. A is MD of RIL & MD of Jio

↓ ↓

MAX MR 10 cr MAX MR 12 cr

Then Mr. A can receive MR from RIL + Jio ≤ 12 cr

* FYI → Things excluded from MR (i.e. pay bindaas ✓)

All pergs ← SECTION IV of PART II

↓ Sitting fees u/s 197 (5)

→ Fee paid in professional capacity

↓

Indemnity insurance premium (IF He ≠ Guilty)

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Compromises, Arrangements & Amalgamations (CCAA)

Introduction:

FYI

* Compromise / Arrangement is an agreement:
  - bwn company & creditors or company & members
  - that may include internal reconstruction (like IPCC A/c) and Corporate debt restructuring (CDR)

eg. Creditors forego 10% dues, Debentureholders forego unpaid interest, lenders agree to convert a % of debt to equity, etc.

FYI

* CDR → Done as per RBI guidelines → A scheme for restructuring debt outside of purview of court / legal proceedings for REVIVAL of co. & safety of Banks

* Amalgamation includes MERGER (for this chapter)

* SEC 230 → for compromise / arrangement and
  SEC 232 → for amalgamations, mergers, demergers

eg. (A), (B) → (C)

Co. A & Co. B amalgamate into Co. C

Co. A & Co. B → Transferor co. (T'r)

Co. C → Transferee co. (T'ee)

eg. (A) → (B), (C)

Co. A (T'r) is demerged / divided into B & C cos. (T'ee)

eg. (A) — (B)

Co. A (T'r) is merged into Co. B (T'ee)

* Amalgmn in nature of merger (5 conditions) → AS 14 ✓

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(1) SEC. 230: Power to compromise / make arrangements with Creditors / Members

- Company / creditors / members / Liquidator → make application for compromise / arrangement between co. & creditors or co. & members → Tribunal
- Applicant must, by affidavit, disclose:
  - All material facts like latest F/S, Auditors reports, Pending investig^n etc. of the co.
  - Reduction of share capital if any
  - Scheme of Corporate Debt Restructuring (CDR) consented by ≥ 75% of secured creditors in value
    + Creditors Responsibility Statement in form CAA-1
    + Safeguards for protection of other Sec./Unsec. creditors
    + Auditor's report conforming liquidity test for CDR
    + CDR guidelines of RBI fulfilled
    + Valuation report for Assets (TA / ITA), shares etc.
- Tribunal shall now order a meeting of Creditors / members
- Company must send Notice of meeting to:
  - Creditors
  - members
  - Debenture holders
  - Sectoral regulators [CG, RBI, SEBI, RoC, ITA, Stk exch., Official Liquidator] & CCI
- Notice must
  - have annexure including
    - details of C/A,
    - valuation report,
    - effect of C/A on mem / kmp / dir / promoter / creditor / deb. holder
  - be advertised through Newspaper & website [+ through website of SEBI & stock exch for LISTED co.]

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- Advertisement must include Time limit within which copies of C/A shall be made available to anyone from regtd. office FREE OF COST.

- Sectoral regulators can make representations to co. within 30 d. from receipt of Notice.

- Special case → Tribunal will (dispense with) (means "cancel") calling the meeting of creditors IF (≥90%) of value of creditors agree & confirm C/A by affidavit.

- Voting At the Meeting

(Vote) within 1 month from receipt of notice	(Objection) to C/A can be made by	Tribunal can order & (sanction) C/A if:
↓	- persons holding (≥10%) shares (or)	MAJORITY of persons holding 3/4th value agree to it.
Self ✓	- persons having o/s debt (≥5%) of total o/s debt of latest audited FIs.	[(>50%) of no. of persons + holding (≥75%) value]
Proxy ✓		
Postal Ballot ✓		

- Particulars to be stated in Tribunal's Order :

option to pref. SH to accept arrears of div. in cash or by way of Eq. sh. (If C/A involves conversion Pref → Eq.)	Protection of rights of crs/ members → including the variation in their rights	Any BIFR proceedings will abate	Exit offer to all dissenting shareholders, if any.

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- Before passing order, Tribunal must
  - receive certificate from auditor that confirms that Accounting treatment is as per AS uls 133.
  - verify that section 68 has been complied with (If C/A involves any BUY-BACK offer)
- Tribunal —order→ Co. —FORWARD IN 30 DAYS→ Registrar

★ Case Law → Section 66 states that while there is a Reduction in share capital, a (SR) needs to be passed & application needs to filed @ Tribunal.
IF C/A involves Reduction in share cap, then whether sec. 66 should be complied or the compliance of sec. 230 is sufficient?

Answer → No need to comply with sec 66 ✓
230 = sufficient

(2) SEC 231: Power of Tribunal to Enforce C/A

After passing order uls 230, Tribunal can:

Supervise implementation of C/A, Give directions or Make modifications

OR

Make an order for WINDING-UP if it is satisfied that C/A cannot be implemented properly & co. is unable to repay its debts.

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(3) SEC 232: Merger & Amalgamation of companies

- When the application for C/A is filed uls 230, and it is shown to Tribunal that:
  - C/A was proposed in connection with M/A of 2 or more cos.
  - & scheme involves transfer of whole/part of any Property / Liability

Then Tribunal shall order a meeting of Creditors / Members. The provisions regarding NOTICE & VOTING are the same as sec 230.

- Merging companies / Demerging companies must circulate following info for the meeting:
  - Draft of proposed terms of scheme
  - Confirmation that draft scheme was filed with registrar
  - Director's report explaining effect of M/A on SH, KMP, promoter, etc.
  - Valuation report & share exchange ratio
  - Supplementary A/c treatment if Last A/c relate to F.Y. that ended more than 6m. before 1st meeting

- Tribunal's order must provide for:
  - Date of trfr
  - Trfr of instruments
  - Trfr of Legal proceeding
  - Trfr of employees
  - Fees of authorized sh cap
  - Listed (T'r co.) to Unlisted (T'ee)
  - Dissolution of T'r co. without winding-up.
  - Provision for dissenting SH, NRI-SH

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- Tribunal —order→ Cos. —forward in 30 days→ Registrar
  ↓
  finally property can be transferred

- Companies ——————→ Registrar
  File a statement certified by PCA/PCS/PCMA whether scheme is being complied with, until completion of scheme.

* **Case law** → A Ltd. has Authorized SC of 10 cr & has paid fees ₹10000 on it. B Ltd. has Authorised SC of 20 cr & has paid ₹20000 on it. A Ltd. amalgamates into B Ltd. & now B Ltd.'s revised Authorised SC increased to 30 cr.
  Should B Ltd. pay fees for increase in authorised SC?
  Answer ⇒ NO!

- Contravention of 232: T'r & T'ee → Fine 1L to 25L
  Officer in default → Imp upto 1 yr (OR) Fine 1L to 3L (OR) Both

** FOR Govt co., substitute 'Tribunal' with CG uls 230-232

(4) SEC 233: M & A of certain companies

- ≥2 small co.
- Holding & WOS co.
- other prescribed co.

In Holding & WOS co. → Normally public co. must have 7 shareholders & pvt co. must have 2, so holding co. can hold 100% by keeping nominees. Except such shares held by nominees, Holding co. must hold ALL shares.

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- Prepare the Proposed Scheme
- T'r & T'ee co. → send notice of proposed scheme & invite objections within 30 d. → To registrar & official Liquidator (OL)
- Consider objections / suggestions @ General meeting
- Scheme must be approved by MEMBERS holding (≥90%) of total shares.
- T'r & T'ee co. → File DECLARATION OF SOLVENCY → Registrar
- Call meeting of CREDITORS by giving 21 d. notice.
- Scheme must be approved by CREDITORS in MAJORITY (>50%) holding (≥90%) value outstanding
- Transferee company → File Approved scheme copy → CG, ROC, OL
- ROC / OL
  - shall communicate objections to CG within 30 d. → If CG thinks the scheme is not in interest of public / creditors → THEN CG → file applic" within 60 d. from receipt of scheme → Tribunal → may consider scheme uls 232 if CG asks. ✓
  - If it doesnt have obj. or doesnt communicate → CG shall register scheme ✓
- When scheme is registered, the Transferor co. is deemed to be DISSOLVED without WINDING-UP
- EFFECT OF REGISTERATION OF SCHEME
  - Property, Proceedings, Liab, Charges, etc. transferred from T'r to T'ee co.
  - T'ee co. will pay-off all dissenting SH if it was provided for in the scheme.

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• Cases & Notes :

- T'ee co. cannot hold shares in itself in own name / name of Subsi / Associate co. / A trust. Such shares must be cancelled on M & A
- Fees for revised authorised cap of T'ee co. can be set-off against fees paid by T'r co.

* [CASE LAW] 2 companies proposed scheme uls 233 It completed all formalities but in the meeting of creditors, 6 creditors out of 9 holding 75% of value approved the scheme. What is the next step to be taken ?

Answer → On failure to get approval of majority with ≥90% in value, sec 233 cant be used ahead. Use 230/232!

* Note → 233 = fast track. Companies can opt for 230/232 too
* Note → 233 will apply for C/A also (Not just M & A)

(5) SEC 234 : M & A with foreign co. (Cross border M & A)

Foreign co.
↓
Co. incorporated outside India with Place of Business In India ✓ (or) o/s India ✓

Comply with Sec. 230-232 + Take prior approval of RBI

Payment of consideration to Shareholders → in cash / or Depository receipts / or Both

When F Co. merges with I Co.:

When I Co. merges with F Co: → Comply sec 230-232 + RBI prior approval

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(6) SEC 235 : Power to acquire shares from DISSENTING SH (DSH)

- **Basic Requirements**
  - Scheme must involve trfr of shares of T'n co. to T'ee co.
  - It must be approved by members holding ≥ 9/10th value of shares WITHIN 4m from offer made by T'ee co.
    - exclude sh held by T'ee co. / its subsi / its nominees
  - T'ee co. must express desire to buy sh from dissenting SH within 2m. after expiry of 4m.
  - T'ee co. must give Notice to dissenting SH.

- **After receiving notice from T'ee co.**
  - DSH can apply to Tribunal
    - Tribunal passes order against co.
    - Tribunal passes order in favour of co.
      - → on disposal of applicⁿ → T'ee co. can buy shares from DSH
  - If DSH doesnt apply to tribunal
    - within 1 m. from giving notice
      - T'ee co. can buy shares from DSH

- T'ee co. —Send Transfer Deed + consideration→ T'n co.
  - register T'ee co. as Shareholder
    - Inform DSH within 1m.
  - maintain separate bank Alc for considerⁿ
  - Disburse amt to SH within 60 d.

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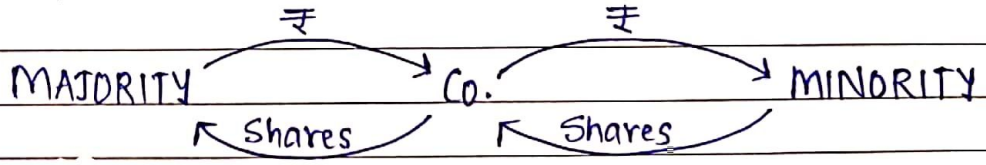
(7) SEC 236: Purchase of minority shareholding

- An acquirer or a person acting in concert with such acquirer (or) Any person / group of persons
  - ⇓ on becoming holder of ≥90% of "ISSUED" SHARE CAPITAL (EQUITY) (or) on becoming 90% majority (in number)
  - ⇓ Shall notify the co. of their intention to buy the remaining shares (equity) @ a price as per regtd. valuer.
- Even Minority SH → can offer to sell shares to → Acquirer/ Any person (majority)
- Majority SH → deposit Amt → Separate Bank A/c of co. → co. operates it for ≥ 1 yr. → disburse amt in 60 d.
- If cant disburse within 60 d. or the SH failed to claim then it can be paid upto 1 yr.
- Company, whose shares are transferred, will act as TRANSFER AGENT



- What if Minority SH dont deliver shares physically within time specified?
  - ↳ Share-certificates → deemed to be CANCELLED & co. issues new shares to MAJORITY.
- If Majority holder dies, legal heirs etc. have the right to make an offer to Minority within 3 yrs from acquiring Majority.

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* If shareholders holding (≥75%) of minority shareholding negotiate with Majority SH for transfer at a HIGHER price for shares held by them, without disclosing such negotiation / agreement, THEN they shall SHARE ADDITIONAL COMPENSATION, so received, with other minority SH on pro-rata basis.

* Example: ABC Ltd. Issued sh. cap 50cr.

90% (45cr.) held by XYZ Ltd.

10% (5cr.) minority

Mr. A (75%) 3.5cr

Mr. B (25%) 1.5cr

→ If Mr. A negotiates with XYZ Ltd. & agrees for a consideration of 4.5cr for his shares worth 3.5cr, THEN Additional compensation of 1cr. must be shared → A 75L
→ B 25L

FAILURE TO ACQUIRE "FULL" MINORITY STAKE

* Case: If Majority acquired some stake from Minority & now owns 98% of issued capital and co. got delisted, then → will this section apply to 2% minority holders?

ANSWER → YES!

* As per SEBI reg^n, After delisting, promoters must buy shares from minority SH within 1 YEAR. Will this section apply if 1 year has elapsed? ⇒ YES!

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(8) SEC. 237: Power of CG to provide for Amalgamation in public interest

- CG can provide for Amalgamation of (≥2) companies in public interest by order notified in Official Gazette.
- All Legal proceedings of T'r co. → transfered to → T'ee co.
- Every member / creditor / debenture holder of T'r co. shall have same interest / rights in T'ee co.
  [If Interest / rights are less, then compensate them] *
- Aggrieved person (mem/cr/DH) → APPEAL within 30 d. of publication in official gazette ** → Tribunal

- No order shall be made uls 237 UNLESS:
  - Copy of proposed order is sent to companies
  - Time limit for APPEAL has Expired
  - Appeal is disposed off [If Filed]
  - CG has considered & made modific^{n} in proposed order considering suggestion & objection recd. from co./mem/crs within 2 months of receipt of the proposed order by co.
- Every order must be laid before BOTH HOUSES of parliament.

* Compensation = assessed by a prescribed authority
** Assessment = published in official Gazette → appeal within 30 d. ✓

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(9) SEC. 238: Registration of offer of scheme/contract involving transfer of shares uls 235

- Every circular containing offer to members must be accompanied by necessary INFO in form CAA-15
- Every such offer must contain a statement by the T'ee co. disclosing steps it has taken to ensure necessary cash will be available
- Every circular must be registered with Registrar before issuing it.

- Registrar → may refuse to register the circular if NO INFO / FALSE INFO was given & it shall communicate it within 30 days. → Parties → Tribunal (APPEAL)

- Director who issues circular without registering it
  ↳ PENALTY = 1 LAKH.

(10) SEC. 239: Preservation of Books / Papers of Amalgamated co.

- CG's prior permission needed before disposal of Books / papers
- Before granting permission, CG shall appoint someone to examine books for ascertaining whether it contains evidence of offences, etc.

(11) SEC. 240: Notwithstanding anything in any law, Liabilities for offences UNDER THIS ACT by officers in default of T'r co. before M & A SHALL CONTINUE even after M & A.

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PREVENTION OF OPPRESSION AND MISMANAGEMENT

① Introduction:

- This chapter deals with **OPPRESSION** & **MISMANAGEMENT**

OPPRESSION: When affairs of a co. have been conducted in any manner prejudicial to the interest of public / members / the company

MISMANAGEMENT: When any material change has taken place in mgmt or control of co. & such change is likely to make affairs of co. prejudicial to interest of public or members

- Usually in a company, SHAREHOLDING = POWER!

Example → ABCD ltd. has 7 shareholders:

Gary	Harry	Jerry	Mary	Cherry	Perry	Terry
20%	20%	49%	1%	4%	2%	4%

89% ⇒ These 3 = powerful

11% (minority)

These 3 can pass OR / SR without hearing voice of minority

- Corporate laws work this way → Majority is reckoned on the basis of SHAREHOLDING % & not as per the number of shareholders.

- Rule of Majority or **FOSS v/s HARBOTTLE** rule:

The ones who hold the majority of shares shall rule the company

If promoters / directors misapplied or misappropriate assets, then it is a case of Promoter v/s company, i.e. Company can sue promoters. Other shareholders cant sue promoters.

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• However the rule has some exceptions:

Ultra vires / Illegal acts → ∴ Members can sue promoters or other members ← Affected rights of persons, Fraud on minority

Transaction requiring special majorities

In syllabus: Fraud on minority ✓

eg. Majority in no. of members (+) ≥ 75% in value of holdings

② Case laws / Examples of Oppression:

Cases	Oppression?
Not calling a General meeting and thus, keeping shareholders in dark	✓
Depriving a member of right to dividend (i.e. not PAYING)	✓
Non-declaration of dividends	X
Declaring low dividends	X
Non-maintenance of statutory records, not conducting affairs of co. as per CA'2013	✓
Refusal to transfer shares or register transfers	✓
Issuing shares to benefit a section of shareholders (eg. against minority holders)	✓
Company is making losses continuously	X
Inefficient conduct of directors	X
Non-holding of board meetings	X
Lack of details in notice of meetings	X
Increase voting rights of shares which are held by management	X
Writing-off bad debts, appointment / selection of dealers / suppliers, operation of bank A/c by 2 dir & not by 3rd dir	X

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③ Conditions to constitute OPPRESSION :

- Persons managing the affairs of co. are fraudulent towards "members"
- Persons must be affected in their capacity as a "MEMBER"
- Must be wrongful, harsh, etc.
- Must be a continuous act up to date of the petition

Mr. A, B, C are directors as well as shareholders and Mr. D is a shareholder only.
A → 15 sh, B → 15 sh, C → 15 sh
D → 55 sh. Now, A, B & C pass resolution to issue more shares to themselves:

	A	B	C	D
Earlier :	15	15	15	55
	45/100 = 45%			majority
Now :	20	20	20	55
	60/115 = 52%			MINORITY

A "single act" of renting out premises of company without knowledge of members → oppression X

MINORITY → OPPRESSION ✓

* If a company's shareholders lack confidence amongst themselves leading to irregularities, then too, it is not called as Oppression.

eg. Shareholders = Mukesh Ambani & Anil Ambani
Both dont trust each other. Merely based on that fact, it cannot be called OPPRESSION.

* A director (who is also a member) is aggrieved due to inefficiency of other directors → OPPRESSION X ← or he is getting lesser remuneration than others (since, he must be affected in "member's" capacity)

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④ SEC 241: Application to tribunal for relief in cases of oppression, etc.

- Any member who complains that:

Affairs of co. have been conducted in a manner prejudicial to interest of public / members / the company

(or)

A material change in the mgmt / control of company (≠ change by / in interest of creditors / debentureholders or shareholders)

↓

By alteration in BOD or of manager or membership etc.

↓

Due to which affairs of co. will be conducted in a manner prejudicial to the interest of co. / members

↓

may apply to the tribunal, if that member has the right to apply uls 244

- CG may itself apply to the tribunal if it is of the opinion that affairs are being conducted in a manner detrimental to public interest.

CG —Applies→ Principal Bench, NCLT (At New Delhi)

- Where, as per CG's opinion, there exist circumstances that suggest the business is conducted / managed:

By a person who is:

- Guilty of a fraud, breach of law / trust
- not likely to conduct biz as per sound / prudent business principles

By a person in a manner to cause an injury / damage to interest of trade / biz.

With the intent to defraud creditors / members / public

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the CG may initiate a case against such person and refer to tribunal with a request that Tribunal shall inquire in the case & record a decision whether the person is FIT & PROPER to hold office as director, etc.

* The CG —refers by application→ Tribunal —Inquiry against→ The person
  - CG ≈ Applicant
  - person ≈ respondent
  - refers by application must contain a concise statement of material/ circumstances necessary for the inquiry
  - refers by application shall be signed & verified as per COCP 1908

(5) SEC 244 : Right to apply uls 241 (requisite no. of members)

If co. has share capital

A] At least 100 members (or) At least 1/10th of the total no. of members (whichever is less)

(or)

B] Member / members holding at least 1/10th of {ISSUED} SHARE CAPITAL

If co. doesn't have share capital

At least 1/5th of the total no. of members

→ Tribunal can waive off any requirement on an application made in that behalf

* Applicants must have paid all calls / sums due on their shares → i.e. PARTLY PAID-UP ✗

* 100 members need not apply separately. One or more shall apply on behalf of all by taking their written consent.

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* If shares are held by two or more persons jointly, then they shall be counted as ONE MEMBER only.

* Issued sh cap → {Eq + Pref ✓}
  → ≠ paid up

* A petitioner-member (holding 10% sh) gets oppressed & his shareholding is diluted to 9% due to issue of sh cap (fresh allotment to others)
  ⇓
  No prob! Petition = maintainable ✓

* Consent of members shall be reckoned at the beginning of proceedings. Withdrawal of consent during the course of proceedings shall not affect maintainability of the petition.

  eg. 100 members applied → Petition accepted ✓
  If 10 members withdraw consent later → Petition shall go on ✓

(6) SEC 242: Powers of Tribunal

- On receipt of application u/s 241, if tribunal is of the opinion that:

Company's affairs have been conducted in a manner prejudicial to interest of public / members / company	(or)	To wind-up the co. would be unfair to members, but facts justify that co. must be wound up

Then, Tribunal can make an appropriate order with a view to bringing an end to matters complained.

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- Tribunal's order shall provide for:

- Regulation of affairs of co. in future
- Imposition of costs
- Purchase of shares of a member by the co. or by other members
- Reduction of share capital
- Restrict trfr/ allotment of the shares
- Appointment of directors **
- Removal of MD / manager / directors
- Manner of appointment of above post their removal
- Recovery of undue gains made by above & its utiliz^n including:
  - trfr to IEPF
  - repayment to victims
- Termination / modification / Setting aside an agreement:
  - Bwn co. and MD / manager / director
  - Bwn co. and any other person → by giving notice & taking prior consent

** Directors appointed by tribunal can't be removed u/s 169

- Setting aside a trfr / delivery of goods / property or a payment made by/to co. within (3 m) before date of application
  - If that transac^n would be deemed to be fraudulent preference during insolvency of other person

FYI: Kingfisher Airlines Ltd. sold a property, worth 40 LAKHS, to its promoter Mr. Mallya for 80 LAKHS. ⇐

Mr. Mallya's Bls after buying the property →

Liab	Assets
Capital (30L)	Property (80L)
Unsecured cr. (50L)	Cash (NIL)

Now, Mallya sells that property back to Kingfisher for 5 LAKHS. Thus, unsecured cr's loss = 50L - 5L = 45L → fraud ✓

∴ TRIBUNAL SHALL REVERSE IT ✓

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- Tribunal —order→ Company —fwd→ Registrar
  (fwd within 30 days)
- Tribunal can pass any interim orders on an applic^{n} by any party to proceeding
- Tribunal shall record a decision regarding the case referred by CG uls 241, whether 'respondent' is fit and proper person to hold office or not.
- IF tribunal's order makes alteration of MoA / AoA

Company cannot alter MoA or AoA, for matters that are inconsistent with order of Tribunal, without leave (permission) of tribunal
↓
Contravention
↓
Company → Fine 1L-25L
Officer in default → Imp upto 6m (or) fine 25000-1L (or) Both

Copy of order altering MoA / AoA or giving leave for alteration
↓ sent to
Company
↓ file in 30 days
Registrar

- Example: Majority status shifted to minority by issuing shares. Authorised sh cap was increased from 10L to 12L. Tribunal ordered a reversal and it altered Authorised sh cap from 12L to 10L. Now, if co. wants to raise capital from fresh issue to public or rights issue, then it can alter MoA only after Tribunal's leave.

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(7) SEC 243 : Consequences of termination / modification of agreement by tribunal's order u/s 242

It shall not give rise to claims against companies by anyone for damages / CFLOO even if entitled as per agreement	No MD/mgr/dir, whose agreement is terminated, can act as MD/mgr/dir of THAT COMPANY for 5 years from date of order without leave of tribunal ⇓ Tribunal can grant leave only after serving a notice, of the person's intention to apply, on CG & giving ROBHd to CG.	The person who is not fit and proper shall not hold office as a director / officer of ANY COMPANY for 5 years from date of order / decision of the Tribunal ⇓ CG can, with leave of tribunal, permit the same before expiry of 5 years

* Contravention of above-mentioned rules by MD/mgr/Dir and every director who is knowingly a party to violation
⇓
Imp upto 6m (or) Fine upto 5LAKHS (or) Both

(8) SEC 245 : Class Action

- If members / depositors are of the opinion that mgmt / conduct of affairs of co. are being conducted in a manner detrimental to interests of co. / members / depositors then they can file an application @ tribunal for seeking all or any of the following orders :-

a. To restrain the co. from committing an act, which is ultra-vires MoA / AoA, or which is contrary to provisions of any law, or in breach of resolution passed earlier

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b. To **declare** a resolution altering MoA / AoA as **VOID** if resolution was passed by suppression of material facts / by misstatement to members / depositors

c. To **restrain** directors & co. from acting on such resolution

d. To **claim damages** or demand any action from / against:

- The **co. / directors** for any act
- **Auditor / Audit firm** for any misleading statement in audit report or any act
- **Expert / Advisor / consultant / others** for misleading / incorrect statemt or any act

→ **that is fraudulent / wrongful / incorrect**

e. To seek any other remedy as the tribunal may deem fit

- Requisite number of members / depositors:

MEMBERS

If co. has share capital:
- (A) **5%** of no. of members or **100** members
- **or**
- (B) Members holding at least **5%** of issued sh cap [UNLISTED CO.] or **2%** of issued sh cap [LISTED CO.]

If not:
- **1/5th** of no. of members

DEPOSITORS
- (A) **5%** of number of depositors or **100** depositors
- **or**
- (B) Depositors to whom co. owes **5%** of total deposits

- Tribunal shall take into account various factors while considering the application:
  - whether applicant is acting in good faith (≠ vexatious)
  - Evidence of involvement of outsiders in it (≠ dir, officers)
  - whether violation is yet to occur, or if occured, whether it can be ratified, etc.

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- If Tribunal admits their application, Then:

Public notice shall be served on members / depositors	Similar applic^{ns} in any bench must be consolidated into 1 application	2 class actions for same cause	Cost / Expenses connected with applic^{n} shall be Defrayed (paid) by co. or any person who committed oppressive acts
	↓ mem / dep shall choose 1 lead applicant	↓ Not Allowed!	
	↓ or else the tribunal can, in absence of any consensus		

- Order of tribunal = Binding on mem / dep / auditor / expert or any person associated with the company

- When mem / dep seek compensation or demand an action from / against an audit firm, the liability shall be of:

AUDIT FIRM ⊕ Each partner involved in any wrongdoing / misreporting

- Punishments

Failure to comply with order	Frivolous / Vexatious applic^{n} filed @ tribunal (FALTU KA)
↓ Company → Fine 5L - 25L	↓ Tribunal shall REJECT it for written reasons
↓ Officer in default → Imp upto 3 years ⊕ Fine 25000 - 1L	+ order applicant, to pay to other party, a cost upto 1L
↓ Penalties uls 337-341 apply	

- This section is N/A to a Banking Company

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FYI: Sec 241 & 245 are overlapping but there are some differences -

Particulars	241	245
Applicant	Members	Members / depositors
On behalf of	members / co.	Class of mem / dep
Against whom	Company (NCLT can issue order against BOD / mgrs etc.)	Co. / BOD / Auditors / Experts / Advisors
Thresholds	refer 241	refer 245

(10) SEC 246: Application of certain provisions to the proceedings uls 241 - 245

↓

SEC 337-341 [related to winding-up]

(11) Case laws:

a. Legal heir of a deceased shareholder can file applic^{n} on his / her behalf, whether legal heir is a majority / minority shareholder or not a shareholder.

b. Person was acting as MD without being appointed. He discharged all functions, whether members knew or not → ≠ OPPRESSION !

c. Members filed applic^{n} for oppression. To prove their facts, members requested directors for inspection of books. Mere denial, by directors, of inspection ≠ oppression

d. Directorial complaints are not entertained. But those can be accepted if it's a composite one (in capacity of mem + dir) and co. runs in nature of a QUASI-PARTNERSHIP (i.e. a ltd. co. run as if it is a p'ship bwn limited no. of individuals having control)

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WINDING UP OF COS.

① SEC 2(94A): Winding up means

- Winding up under CA'2013
- Liquidⁿ under IBC

② SEC 271: Circumstances in which a co. may be wound-up by NCLT:

- SR passed by co.
- Co. acted against the national interest / security / sovereignty
- On applicⁿ by ROC / person auth by CG w.r.t. fraudulent activities in a co.
- Co. has defaulted in filing F/S or Annual returns for Last (5) consecutive years
- Tribunal opines that it is just & equitable to wind-up (CASE LAWS)
  - Severe Oppression
  - Deadlock in pvt co. having 2 mem
  - Unlawful Purposes
  - Bubble / Shell co.

③ SEC 272: Petition for winding up

- Petition for W/up of a co. shall be presented by:
  - Co.
  - Contributory
  - ROC
  - Person auth by CG
  - CG/SG when co. acts against the national interest/ security / sovereignty
- By Company → Petition shall be accepted only if accompanied by 'Statement of Affairs"
- By Contributories → Petition can be filed:
  - If he has held sh for ≥ 6m during 18m before commencement of W/up
  - IF shares have devolved on him through death of former holder
  - Even if he holds fully paid-up sh or if co. has no/ no surplus assets

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- By RoC → RoC shall obtain CG's sanction to file the petition. CG shall give RoBHd to the co. and then sanction.
- Petitioner ——→ RoC ——→ NCLT
  - must file a copy of petit"
  - submit his views within [60 d.] of recpt of copy

④ SEC 273: Powers of NCLT on recpt of petition

- Dismiss it, with or without any costs
- make an interim order
- make a winding-up order with/ without costs
- Appoint a provisional liquidator till making of w/up order
- Make any other orders as it may deem fit

Appointment of provisional liquidator:
- Give RoBHd to co. before appointment
- No need to give RoBHd for special reasons in writing

- Time limit for above ↓ [90 d.] from presentation of the petition

- Tribunal shall not refuse to w/up merely because:
  - Co. has no assets (or) Mortgage val ≥ Asset val
- It may refuse to w/up if any other remedy is available to petitioners ✓

⑤ SEC 274: Statement of Affairs (SoA)

- When petitioner ≠ co. & NCLT is satisfied that a prima facie case for w/up is made out, NCLT may direct the co. to file OBJECTIONS + SoA within 30 d. (+ EXT) from the order (direction) date

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- NCLT may direct the petitioner to deposit a security for costs as a pre-condition to issue directions to co.
- If NCLT passes w/up order, then the directors & officers of co. shall submit Books of A/c (Audited up to date of w/up order) at the cost of co., within 30 d. of w/up order, to the Liq^{n}.
- Contravention → Imp ≤ 6m or Fine: 25k - 5L or Both
  ↓
  If SOA isnt filed, then co. shall lose the right to oppose the petition!

- For complaints wrt contravention:
  - To be filed @ Spl court
  - By RoC / Provisional Liq^{n} / company Liq^{n} / Any person authorised by NCLT

(6) SEC 275: Co. Liq^{n}

- NCLT Shall:
  - Appoint official Liq^{n} (apptd by CG uls 359) or a Liq^{n} from a panel of IP under IBC 2016
    ↓
    as COMPANY Liq^{n} → @ time of passing w/up order
  - Appoint a provisional Liq^{n} from amongst IPs under IBC
    ↓
    @ time of passing w/up order
  - lay down terms & conditions of App. & may restrict powers of provisional Liq^{n}

- Co. Liq^{n} / PROV. Liq^{n} → NCLT
  File decl^{n} of lack of independence or disclosure of conflict within 7 d. of appointment

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(7) SEC 276: Removal & Replacement of LIQ^n

- On reasonable grounds & for reasons recorded in writing NCLT may remove the LIQ^n after giving RoBHd.
- Reasonable Grounds
  - Misconduct
  - Fraud → Any damage to co. shall be recovered from such LIQ^n if ordered by NCLT
  - Professional incompetence or failure to exercise due-diligence
  - Inability to act as LIQ^n
  - Conflict of int or lack of indep. justifying removal
- NCLT may replace such LIQ^n & transfer work to new liquidator

(8) SEC 277: Intimation to Co. LIQ^n / Prov. LIQ^n & ROC

- NCLT (on making order for app of prov. LIQ^n or W/up) —Intimate in 7 days ✓→ Co. LIQ^n / Prov. LIQ^n & ROC
- ROC —Intimates→ Stock exchange on which co. = listed
  - takes record of the order & notify in Official Gazette
- Within 3 WEEKS from date of W/up order,

⇓

Co. LIQ^n → NCLT: applic^n for constituting winding up committee to assist LIQ^n

- Official LIQ^n attached to NCLT ⊕ nominee of secured crs ⊕ a professional nominated by NCLT

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- Functions of W/up committee:

Take-over assets & Recover/Sell assets or property | Examine SoA | Review A/c & audit reports | Finalize list of creditors & contributories | Dividend pmt

Compromize / Abandon / Settle claims

- Reports:

Liq^n shall place, monthly report + minutes of committee meetings signed by members present at meetings, before NCLT

Liq^n makes draft final report for dissolution
⇓
W/up comm approves it
⇓
Submits it to NCLT ✓

- Date of w/up order → deemed to be commencemt date
- W/up order → deemed to be notice of discharge to all officers / emp / workmen

Except: If biz is being continued ✓

(9) SEC 278: Effect of W/up order

operates in favour of all crs & contributories of co. as if it were made out on joint petition of all crs & contributories

(10) SEC 279: Stay of suits, etc. on w/up order or on appointment of prov. Liq^n

Proceedings @ HC, SC → shall continue ✓

Other Proceedings = STAYED!
Except → on leave of NCLT (NCLT shall dispose applic^n in 60d.)

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(11) SEC 281: Submission of report by Co. LIQ^n

- Co. LIQ^n ——————→ NCLT

Within 60d. from w/up order, submit a report containing particulars like:

- Capital issued, subscribed & paid-up
- Existing & contingent liabilities
- Guarantees by the co.
- Legal cases by/against the co.

- Nature, details of assets + valuation from regtd. valuer
- Debts due to the co.
- List of contributories, their dues payable, unpaid calls

Details of:

- Trademarks, Intellectual property
- Holding, subsi co.
- JV, Collaborations, subsisting contracts

- Co. LIQ^n shall also report frauds & report on viability of biz & steps to be taken to maximize value of assets
- Any person describing himself to be creditor/contributory in writing shall, himself or via agent, inspect the report + take copies on payment of prescribed fees.

(12) SEC 282: Directions of NCLT on report of Co. LIQ^n

On receipt of LIQ^n's report, NCLT shall:

- Fix a time limit for completion of proceedings or later revise it
  - after hearing LIQ^n, crs, contri, other interested persons
- Order sale of assets or of whole co. as a going concern by appointing 'SALE COMMITTEE'
  - crs
  - Promoters
  - officers of co.
- Order for Investigation uls 210, consider the inv report & direct LIQ^n to file criminal complaint against persons involved in FRAUD

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(13) SEC 283: Custody of company's properties

- On passing of w/up order or Apptmt of prov. Liq^r, the Co. Liq^r / Prov. Liq^r shall:
  - Take into his custody / control
    - Property
    - Effects
    - Actionable claims
    - i.e. ASSETS OF CO.
  - Take steps to protect & preserve properties of co.

- All assets shall be DEEMED TO BE IN CUSTODY OF NCLT from date of w/up order

- Liq^r —apply→ NCLT → may order any person to pay / deliver any money / property of co. to the Liq^r, more specifically, it may order a contributory / banker / Employee / Agent / Trustee etc. to pay / deliver / surrender / trfr money / property / books / papers of co. to the Liq^r

(14) SEC 284: Promoters, Directors, Officers, Employees who are / have been associated with co. shall fully co-operate with Liq^r

↓

Contravention → Imp ≤ 6m or Fine ≤ 50k or Both

(15) SEC 285: Settlement of list of contributories and application of Assets

- Soon after passing w/up order, NCLT shall:
  - Settle a list of contributories
  - Cause rectific^n in register of members if needed
  - Cause Assets to be utilized to discharge liabilities

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FYI: contributory [SEC 2(26)] (present/ex member) → holder of partly paid up sh ✓; holder of fully paid up sh ✓ (w/o LIABILITY)

- NCLT may dispense with settlement of list of contri if it thinks it would not be necessary to make calls
- NCLT shall include every person who is / was a member, who shall be liable to contribute to assets of co., an amt sufficient for payment of:
  - Debts
  - Liabilities
  - Costs, exp of winding-up

- Conditions –

A. A person who has been a member (Ex-member) shall contribute only if NCLT thinks that Present members cannot contribute the sufficient amounts

B. Liability of contributories:

Limited to amt unpaid on shares	Limited to amt unpaid on shares as if co. were limited by shares
↓	↓
[Co. limited by shares]	[Co. limited by guarantee & having share capital]

C. No liability:

IF he has ceased to be a member for last 1yr or more before commencemt of w/up	IF a debt / liab was contracted after he ceased to be a member

(16) SEC 286: Obligation of directors / managers

Dir / mgr appointed with unlimited liab shall be liable to contribute as if he is a member of unlimited co. subject to condition A & C of SEC 285.

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(17) SEC 287: Advisory Committee

- NCLT may, while passing wlup order, direct that there shall be an advisory committee to advise LIQ^{n} and to report to NCLT on such matters as NCLT may direct
- Composition:

MAX 12 members	members can be creditors / contri / others as NCLT may direct	chairperson shall be the Co. LIQ^{n}

- Meeting:

LIQ^{n} shall convene meeting of creditors & contributories	within 30 d. from date of wlup order	To enable NCLT to choose members of the committee

(18) SEC 288: Co. LIQ^{n} shall make periodical report on progress of wlup of co. at the end of each quarter & submit it to NCLT.

(19) SEC 290: Powers & Duties of Co. LIQ^{n}

⇓

Similar to SEC 17, 18, 35 of IBC '2016

(20) SEC 291: Professional assistance to Co. LIQ^{n}

Co. LIQ^{n} may, with sanction of NCLT, appoint 1 or more CA / CS / CMA / Legal practitioner or other professionals for assistance	Professionals shall disclose conflict of interest or lack of independence to NCLT

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(21) SEC 292: Exercise & control of LIQ^{n}'s powers

- In administration of Assets & Distribution among crs, LIQ^{n} shall have regards to any directions given by:

Resol^{n} of crs / contri @ any GM **or** Advisory committee

↓

over-rides (if there's a conflict)

- Co. LIQ^{n}'s power to summon meetings of crs / contri

OPTIONAL	OBLIGATION
↓	↓
For purpose of ascertaining their wishes	when crs / contri direct via resolution
	(or)
• Aggrieved persons may apply @ NCLT against any decision of LIQ^{n}	when requested in writing by ≥ 1/10th of value holders of crs / contri

(22) SEC 293: Books to be kept by LIQ^{n}

LIQ^{n} shall keep proper books in which he shall cause entries / minutes of meetings to be recorded	Subject to NCLT's control, any cr / contri may inspect such books personally / via agent

(23) SEC 294: Audit of LIQ^{n}'s Accounts

- LIQ^{n} → NCLT → LIQ^{n} → NCLT, ROC
  - LIQ^{n} → NCLT: A/c of receipts & payments ≥ twice a yr
  - NCLT → LIQ^{n}: causes A/c to be audited
  - LIQ^{n} → NCLT, ROC: copy of audited A/c
- LIQ^{n} → each cr & contri: send printed Audited A/c copy or its summary (by post)
- LIQ^{n} → CG / SG / Both (if those are mem of Govt co.)

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(25) SEC 295: Payment of debt by contri & extent of set-off

- NCLT may pass an order, anytime after wlup order, requiring contri to pay money due to the co.
- What if co. ⟷ contri / director / mgr ?
  - co.: independent dealing or contract
  - contri / director / mgr: with unlimited liability

NCLT may allow:

SET-OFF of money due to contributory from co. against money due to co. from contributory
⇓
(≠ money due to him as a member, like dividend)
(= money due to him only wrt contract/dealing with co.)
⇓
In case of UNLIMITED CO.

SET-OFF of money due to dir/mgr from co. against money due to co from dir/mgr
⇓
(= money due to them wrt contract/dealing with co.)
⇓
In case of LTD. CO.

- What if co. owes 10L to contri & the contri owes 8L to co.?
  ⇓
  When creditors are paid-off, the co. may allow set-off of such amounts & pay 2L to contri ✓

(26) SEC 296: Power of NCLT to make calls on all/any of contributories for satisfying debts, liabilities, costs of wlup of co., either before/after it has ascertained sufficiency of assets of co.

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(27) SEC 297: NCLT shall adjust rights of contri among themselves & distribute surplus among entitled ones
↓
pro-rata

(28) SEC 298: Power of NCLT to order for payment of costs & exp of wlup out of assets (when A < L) in such priority as it thinks just & proper

(29) SEC 299: Power to summon persons suspected of having property of co.

- At any time after passing wlup order or after apptmt of Prov. Liqⁿ,

NCLT → may summon & examine on oath via: → officer of co. / Person suspected to have books or property of co. in his possession / Anyone capable of giving info

word of mouth / written interrogatories / affidavit
⇓
or may ask him to write answers & sign the paper

- NCLT may order for books & papers wrt that co. from an officer / person summoned
- NCLT may order anyone to repay his debt to co. Liqⁿ or deliver property of co. to co. Liqⁿ
  ↓
  order ≈ decree under CPC, 1908
- If a person fails to appear @ NCLT, then NCLT may impose an appropriate cost.

(30) SEC 300: Power of NCLT to summon & examine a person who has committed a fraud wrt promotion, formation, conduct of affairs of the co.

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(31) SEC 301: Arrest of person trying to leave India or abscond (escape)

Any time before / after passing w/up order, if NCLT is satisfied that a Contri / A person having property, papers, A/c of co. in his possession is about to:

- Leave India
- Abscond (Escape)
- Remove / conceal property

→ For

- Evading payment of calls
- Avoiding examination

Then NCLT may cause:

- The contri to be detained
- His books / papers & MP to be seized & kept safely

(32) SEC 302: Dissolution of co. by NCLT

On completion of w/up or on any just & reasonable ground,

LIQ^{n} → NCLT → LIQ^{n} → Registrar

- LIQ^{n} shall apply for DISSOL^{n}
- NCLT: DISSOL^{n} order
- LIQ^{n}: fwd. in 30 d ✓
  - ↓ Failure → 5000 p.d. FINE

(33) SEC 326: Overriding preferential payments

- following debts shall paid in priority to other debts:
  - → Workmen's Dues &
  - → Secured creditors

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- Workmen = Employees of co. which are 'workmen' as per Industrial Disputes Act, 1947
- Workmen Dues:

Wages, Salary, Commiss^n, Compensation payable as per IDA 1947	Accrued holiday remuner^n	Sums due from PF, PF, GF or other fund maintained by co.	Compensation wrt death or disablement of workmen ↓ Except if
		↓ Co. is wound up voluntarily for a purpose of amalgm^n or reconstruction	↓ Co. has an insurance contract for the same

- Overriding priority → 1] Workmen dues pt. 1 & 2 unpaid for 2 yrs preceding w/up order
  2] Other workmen dues & Secured crs

- If Value of secured asset (₹ 1L) is insufficient to pay-off Secured crs (₹ 3L) & Workmen (₹ 1L) then:
  ⇓

$$\text{Workmen's portion of security} = \frac{\text{Amt realised} \times \text{Workman dues}}{\text{Workman dues} + \text{Sec crs}}$$

$$= \frac{1L \times 1L}{1L + 3L}$$

$$= 25000$$

∴ Sec crs portion = 75000

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(34) SEC 327: Preferential payments

Relevant date: Date of app of prov. Liqr (if appointed) or Date of w/up order

3] Cost & exp of W/up

4] Pari-passu (7 items):

- Tax/cess/etc due to CG/SG/LA within last 12m before relevant date
- Wages/Salary/Commission due to Employee (≠workman) within 4m in last 12m before relevant date
- Accrued holiday rem
- Sums due to Emp (≠workman) from PF/PF/GF/other fund maintained by co.
- Workmen compensation wrt death/disablement (Exception → IF co. had an insurance contract subsisting @ commencement of W/up)
- ESI contri due for last 12m before relevant date (Exception → IF co. is being wound up voluntarily for reconstruc^n/amalgmn)
- Investig^n Exp u/s 213 & 216

5] Floating charge debenture-holders

6] Other creditors

** SEC 326 & 327 → N/A during Liq^n under IBC 2016

(35) SEC 328: Fraudulent Preference

During 6m before date of w/up applic^n, if co. has given preference to a CREDITOR/SURETY/GUARANTOR (of debts of co.) by way of:

Trfr of mp/ip | Payment | Delivery of goods, etc.

Then NCLT shall order as it may think fit, may declare the transac^n INVALID & order for RESTORATION

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(36) SEC 329: Transfers not in good faith to be void

During 1yr before the date of Wlup application, any

Trfr of mp/IP OR Delivery of goods

→ OTHER THAN

In ordinary course of Business

In favour of purchaser or encumbrancer in Good faith + for valuable consideration

→ SHALL BE VOID !

Example → Sale of property worth 1cr to MD for 20L → VOID

Sale of goods @ 5% discount → ≠ VOID

(37) SEC 330: Trfr / Assignment of ALL PROPERTIES/ASSETS by co. to TRUSTEES for benefit of creditors = VOID

(38) SEC 331: Liability of persons preferred fraudulently

Eg. Co. had taken unsecured loan (20L) from MD's friend. 1 month before Wlup applic^{n}, co. made the loan secured by keeping an asset (18L) = collateral

↓

So that person gets priority rank during w/up

↓

MD's friend shall be liable to co. as if he is a SURETY

⇓

upto | Extent of mortgage (18L) ✓

or

↓ Value of his interest (20L)

Thus, he may have to return the collateral (RESTORATION) on NCLT's order

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usually on current assets like stock, drs

(39) SEC 332: Effect of Floating charge

During 12 m before commencement of W/up (i.e. date of filing W/up applic^{n}), any FLOATING CHARGE created on undertaking / property of co. shall be INVALID

⇓

EXCEPTION

IF proved that the co. was SOLVENT immediately after creation of charge

⇓

VALID ✓

(or)

Up to cash paid to co. in consideration of charge [AT the time of, or AFTER creation of charge] + Interest @ 5% p.a.

⇓

VALID ✓

(40) SEC 333: Disclaimer of Onerous Property

= Not to claim! or To give up a right

= Asset but liability! or COST > VALUE (Payable > receivable)

- Onerous Property
  - Land burdened with onerous covenants
  - Shares
  - Other property not saleable due to pending
    - onerous performance
    - payment
  - Unprofitable contracts

Example:

- Agreed to buy property for 1cr, Paid 10L, W/up started, also the value of prop = 75L today → DISCLAIM IT!!!
- Shares of FV 10 subscribed → paid only ₹2 → that co. faced losses & its Book value per share = 6 → DISCLAIM IT!!!

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- Co. Liq^{n} can disclaim such property, in writing, with leave of NCLT, within:
  - 12m from commencemt of W/up (usually) → + Extension
  - (or) 12m from becoming aware of such property (IF he wasn't aware until 1m from commencemt of W/up)

- NCLT shall cause notices to be sent to interested persons & then pass apt. orders or grant leave ✓

- Liq^{n} cannot disclaim if:
  - An interested person has made a written application to Liq^{n}
  - Requiring him to decide whether he will disclaim or not, within [28 d.] from recpt of application → Liq^{r} can apply to NCLT for extension of time
  - And Liq^{n} has not given a notice to applicant that he intends to disclaim by applying for NCLT's leave ⇓ ∴ DEEMED THAT HE HAS {CLAIMED}

- What if the other party is aggrieved?
  ⇓
  NCLT shall pass apt orders (eg. pay damages)
  ⇓
  Other party → deemed to be a creditor of co. ✓

(41) SEC 334 & 335: Without leave of NCLT, all are VOID
- Trfr/disposal of property after W/up commencemt
- eg. SARFAESI [Exception: Govt can recover dues freely]
- Any attachment/ execution etc of properties/estate after comm of W/up

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(42) SEC 336: Offences by officers of co. in LIQ^{n}

- No disclosure of assets,
- No delivery of property/ books / info
- Material omissions
- Display of fictitious loss
- false represent^{n} / Fraud

⇓

Imp: 3y - 5y

⊕

Fine: 1L - 3L

Within 12m before the commencement of w/up

↓

- Conceal / Remove property of co. having value ≥ 1000
- Conceal / destroy / falsify books / papers
- Pawn / Pledge / Dispose a property taken on credit & not yet paid for

⇐

- Person who accepts pawn / pledge knowing it to be fraudulent

⇓

Imp: 3y - 5y

⊕

Fine: 3L - 5L

* OFFICER = Any dir / mgr / KMP / Emp → includes a SHADOW DIRECTOR TOO ✓

(43) SEC 344: Statement that co. is in LIQ^{n}

- A statement that 'co. is being wound up' shall be made on every Invoice, order for goods, biz letter by:

Co. | Co. LIQUIDATOR | RECEIVER | MANAGER of property

[Mandatory even if in ordinary course of biz]

- Contravention → FINE: 50k - 3L

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(44) SEC 347: Disposal of Books & Papers of co.

- Only after (5) YEARS from the DISSOLUTION
- CG may make rules to prevent destruction of books for a period → appealable @ NCLT ✓
- Contravention → Imp ≤ 6m (or) FINE ≤ 50k (or) BOTH

(45) SEC 352: CLD & UA A/c

- When Liq^{n} has money under his control representing
  - Dividend payable on Liq^{n} to anyone, that has been UNPAID for 6m from date of declaration
  - Assets refundable to a contributory, that has remained undistributed for 6m from date on which it became due

  → Liq^{n} shall deposit money in "Company Liq^{n} Dividend and Undistributed Assets Account" maintained in a scheduled bank.

- Contravention → Interest @ 12% p.a. (CG can exempt it)
  - ↘ Penalty by ROC
  - ↘ Expenses occasioned due to the default
  - Liq^{n} Remuneration = disallowed
  - Liq^{n} = removed from office

- To claim money from CLD & UA A/c,

Creditor/ contri → Apply to ROC → Settle in 60 d. or else report to RD with reasons of failure

- If unclaimed for 15 yrs, amt is trfrd to GENERAL REVENUE A/c of CG. Claim = allowed as above ✓

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(46) SEC 356: Power of NCLT to declare DISSOLⁿ = VOID

- Co. LIQⁿ or any interested person → Apply → NCLT
  ↓
  may declare dissoⁿ void within 2 yrs of date of dissolution

- NCLT → order → Applicant → fwd copy in 30d. → RoC
  ↓
  Contravention: Fine 10k p.d.

(47) SEC 357: Commencement of w/up
↓
@ time of presenting petition for w/up

(48) SEC 358: Notwithstanding LIMITATION ACT, 1963 or any other law, in computing period of any limitation for suit / applicⁿ in the name of co. being wound up, the period:

FROM w/up commencemt ⟷ TO 1 yr from w/up order

SHALL BE EXCLUDED!

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COMPANIES INCORPORATED OUTSIDE INDIA

(1) SEC 2(42): Foreign company (F Co.)

F Co. means any company / body corp incorporated outside India which:

- Has a place of business in India, by itself or through an agent, physically or through electronic mode
- (+) Conducts any business activity in India in any other manner

⇓

Companies (Registration of Foreign companies) Rules, 2014:
Electronic Mode = carrying out electronically, whether main server is installed in India or not, including but not limited to: [BFOOD]

⇓

- B: B2B & B2C transactions, data interchange, digital supply transactions
- F: Financial settlements, web-based marketing, advisory, transactional service, database services & products, Supply chain mgmt
- O: Online services like telemarketing, telecommuting, telemedicine, education, info research
- O: Offering to accept deposit / invite or accept deposits or subscriptions in securities in INDIA or from citizens of INDIA
- D: Data communication services

⇓

whether conducted by e-mail, mobile device, social media, cloud computing, document mgmt, voice or data transmission or otherwise.

∴ Incorp ols India (+) POB in India (+) Conduct Biz in India

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② SEC 379: Application of this act to F Co.

- SEC 380 to 386, SEC 392 & 393 shall apply to all F cos. However, CG may exempt any class of F cos. from such sections (380-386, 392, 393) by an order published in official Gazette. Every order shall be laid before both Houses of parliament.

- Where not less than 50% (i.e. ≥50%) of PUSC (Equity plus preference) of foreign co. is held, singly or in aggregate by:

≥1 citizens of India	(or)	≥1 companies or bodies corporate incorporated in India	(or)	Both together

Then such F co. shall comply with:

Provisions of this chapter (i.e. F co.) + Provisions of this act (i.e. other chapters also)

⇓

w.r.t. biz carried on by it in India as if it were a company incorpated in India.

③ SEC 380: Documents, etc to be delivered to registrar

- Every F co. shall, within 30 Days of establishment of place of biz in India, deliver to registrar for registration:

a. Certified copy of charter / statute / MoA / AoA or any instrument constituting the company (If not in English, then deliver certified translation in English)
b. Full address of regtd / princi office of F co.
c. Full address of office of F co. in India that is deemed to be the principal place of biz in India

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d. List of directors & secretary of co. with particulars prescribed under Companies (ROFCo.) Rules 2014 like:
- Personal name, surname, former name / surname if any, Father's or Mother's name, Spouse's name
- Date of birth, residential address, occupation
- Nationality (present as well as of origin)
- Income tax PAN if applicable, e-mail-ID
- whether holding directorship in Indian co., if yes then submit DIN & CIN, disclose all directorships
- All passport nos., dates of issue & countries issuing those
- Membership number (for secretary only)

e. Name & Address of person/(s) resident in India authorized to accept, on behalf of F co., docs or notices required to be served on F co.

f. Particulars of opening & closing Place of Biz in India on earlier occasions

g. Declaration that none of the directors / authorized representative in India has ever been convicted or debarred from formation of co. in India / abroad

- As per Companies (ROFCo) Rules

Above-mentioned info shall be filed via Form FC-1 + docs + prescribed fees

OR

Declaration of authorized rep that no such approval is reqd

Attach attested copy of RBI's approval under FEMA + any other regulator's approval if reqd

{* Registrar = NEW DELHI Jurisdiction}

Give notice to registrar if F co. ceases to have POB in India

⇓

∴ obligation to send docs etc. to ROC = CEASES ✓ from date of giving notice (if there is no other POB in India)

File form FC-2 + Fees for any changes in info within 30 Days

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④ SEC 381: Accounts of F Co.

- Every F co. shall, in every {CALENDAR YEAR}:
  - Make B/s & P&L
  - Attach prescribed documents
  - Delivery copy of docs to registrar
- CG may exempt any F co. from above requirements
- IF doc ≠ in English, then it shall attach certified translation of it in English
- Along with docs, F Co. shall send a {list of POB} established in India as on B/s date

*Rules regarding F/s under Companies (ROFCo.) Rules 2014:

→ Every F Co. shall prepare f/s of {Indian operations} in accordance with {SCHEDULE III} of CA'2013 or as near thereto as possible for every {FINANCIAL YEAR}

⊕

→ Annex docs as per chapter IX of CA'2013 (Accounts of companies)

⊕

→ Annex docs related to copies of {latest Consolidated F/s} of {parent foreign co.} (as submitted to authorities in country of its incorp^n as per law of that country)

⊕

→ Attach the following docs → statements of:
- Related Party Transactions
- Repatriation of Profits
- Transfer of funds including dividend

→ TIME LIMIT: All above-mentioned docs must be delivered to Registrar within {6 months} from close of FINANCIAL YEAR (+ 3 months ext^n ✓)

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→ Every F co. must file with the registrar, along with financial statements in Form FC-3, a list of POB established in India as on BIs date

→ If it ceases to have a POB in India, then it shall give notice of it to the registrar

→ Audit of accounts → Every F Co. shall get its accounts, pertaining to Indian business operations, prepared as per section 381, audited by PCA or Firm/LLP of PCAs in India

↓

Chapter X of CA'2013 i.e. 'Audit & Auditors' shall apply!

⑤ SEC 382: Display of name, etc. of F co.

- Every F co. shall clearly exhibit outside every office or POB in India:

Name of the co. + Country of its incorporation

In letters easily legible in English characters & in characters of ≥1 Local language of the area where office is located

↓

(eg. marathi for Mumbai)

AL FAQEERA (IRAQ)
अल फकीरा (इराक)

- Every F co. shall cause its name + country of incorp^{n} to be stated in legible English on all business letters, bill heads, letter paper, notices & publications
- If liability of members of F co. is limited, then:

It must be stated in every biz letter, bill head, notice, ad, publication etc of the co.

It must be clearly exhibited outside every office & POB in India (Eng + local language)

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⑥ SEC 383 : Service on F Co.

Any notice / doc to be served on F Co. shall be deemed to be sufficiently served if:

Addressed to a person whose name & address have been delived to registrar u/s 380 (i.e. Authorised rep)	&	left at / sent by post to the address which has been delivered to Registrar (OR) by electronic mode

⑦ SEC 384 : Debentures, Annual return, Registration of charges, Books of A/c & their inspection

The following sections shall apply mutatis mutandis to a F Co.

[in the same way with some +/- if needed]

SEC / CHAP	Particulars
SEC 71	Issue of debentures
SEC 92	Preparation & filing of annual return As per Companies (ROFCo.) Rules 2014, F Co. shall file Annual return in form FC-4, with prescribed fees, to the registrar within 60 days from end of F.Y.
SEC 128	Books of Accounts, etc to be kept by co. Applicable for books w.r.t. Money received / spent, sales & purchase, assets & liabilities in relation to its BUSINESS IN INDIA, to be kept @ principal POB in India
SEC 135	Corporate Social Responsibility (CSR)
CHAP VI	Registration of charges on properties of F Co.
CHAP XIV	Inspection, Inquiry, Investigation wrt Indian business of F Co.

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(8) SEC 385: Fee for registration of documents
↓
(As prescribed ✓)

Companies (ROFCo.) Rules 2014 state that fee shall be as provided in Companies (Registration of offices and Fees) Rules 2014

(9) SEC 386: Interpretation

CERTIFIED → means certified in prescribed manner to be a true copy or correct translation

DIRECTOR → includes any person in accordance with whose directions / instructions the BOD of F Co. is accustomed to act.
(FYI: He is called as 'SHADOW DIRECTOR'. He isnt a director, but he directs / instructs the BOD)

PLACE OF BIZ → includes a Share transfer / registration office also

∴ Co. incorporated in USA having Share transfer office at Kerala = F Co. ✓

* Is a company incorporated in USA by Indian citizens a F Co.? ⇒ NO! But, if it has POB in India & conducts biz activity in India, then it is = F Co. ✓

(10) SEC 387: Dating & Particulars of a Prospectus

- No person shall issue / circulate / distribute in India any prospectus offering to subscribe to securities of a co. incorp o/s India or to be incorp o/s India whether co. has / has not / will / will not form POB in India unless it satisfies following conditions:

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I. Prospectus is signed & dated

II. It contains particulars w.r.t. following matters: [IDEA - POB]

I- Instrument constituting the co. (eg. charter / MOA)

D- Date on which & country in which co. is / will be incorporated

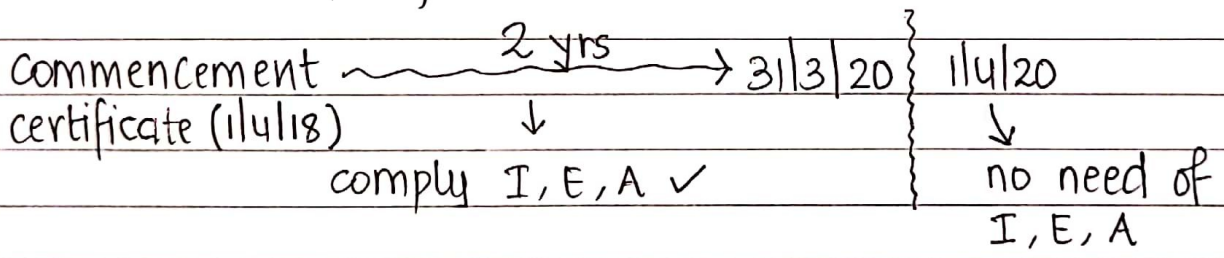
E- Enactment / Provision under which co. was / will be incorporated (eg. US Companies Act)

A- Address in India where (I), (E) or its copies can be inspected (English docs or else certified translation)

POB- whether it has established POB in India?
If yes, then → address of its principal office in India

III. Prospectus states matters specified u/s 26

★★★ Points (I) (E) (A) will not apply if prospectus is being issued more than [2 years] after the date on which the company is entitled to commence business.



- Any condition requiring an applicant for securities to waive-off compliance of above-mentioned rules shall be void. (eg. If applicants say that matters need not be disclosed in prospectus → VOID!)

- A person can issue a 'Form of application' for securities only if prospectus is attached with it (F+P)

Exception → If form of application was issued to a person to enter into underwriting agreement (bona fide) (no need of F+P)

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- SEC 387 shall not apply to :

The issue of prospectus or form of application to the existing members / debenture holders (whether right to renounce it to other persons is available or not ✓)

eg. Mr. A = member of F co.
Mr. B ≠ member of F co.
Now, if F Co. wants funds:

F Co. —387 X→ Mr. A —renounce or not→ Mr. B

F Co. —387 ✓→ Mr. B

The issue of prospectus relating to securities which are similar to securities previously issued & quoted on RSE

But 387 applies if the prospectus or form of application is issued w.r.t. Formation of co. or subsequently ✓

∴ Present & Future ✓

eg. F Co. issued 10% NCD in 2018 & NCDs were listed on BSE / NSE. Similar NCDs are to be issued in 2020.
→ No need to comply with sec 387 !

(11) SEC 388: Experts consent & allotment

No person shall issue / circulate / distribute in India, any prospectus offering for subscription in securities of a co. incorp / to be incorp ols India whether the co. has / has not / will / will not establish POB in India if :-

Prospectus includes a statement purporting to be made by an Expert:

- which he hasn't given
- which he withdrew before prospectus is delivered for registr^

Prospectus doesn't include statements that Expert has given

Prospectus doesn't have effects of rendering all persons bound by sec 33 - 40

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(12) SEC 389 : Registration of prospectus

Conditions to be satisfied to issue / circulate / distribute any prospectus in India by a co. incorp / to be incorp o/s India that has / has not / will / will not establish POB in India :

- Copy of prospectus ⇓ As approved by a resolution of the managing body ⇓ And signed by the Chairperson + 2 other directors ⇓ Has been delivered to Registrar for registration
- Prospectus states on its face that a copy has been delivered to Registrar
- Attach
  - Consent required u/s 388
  - Prescribed documents ↓ Companies (ROFCO) Rules 2014
    - Expert's consent
    - Copy of contract of appointment of MD / manager ⇓ If contract ≠ writing then attach a memorandum giving its full particulars
    - Copy of any other material contracts ⇓ Entered within last 2 years not in ordinary course of biz
    - Copy of under-writing agreemt and POA

POA = Power of attorney → if prospectus was signed through authorized agent of directors

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(13) SEC 390 : Offer of Indian Depository Receipts

- IDR = an instrument in form of 'depository receipt' created by Domestic Depository in India and authorized by a co. incorp o/s India making an issue of IDRs

eg. Facebook (USA) ⇓ (sh) Custodian (USA) — holds shares on behalf of → Indian Depository ⇓ (IDR) Indian Investors

- CG shall make rules for offer of IDR, disclosure in prospectus / letter of offer, manner of sale of IDR, manner in which IDR shall be dealt by depository, custodian & underwriter

- To issue IDRs, compliance of the following is a must

Companies (ROFCo.) Rules 2014 & CG's rules	SEBI (Issue of capital & disclosure requirements) Regulations, 2009 / 2018	RBI directions

(14) SEC 391 : Application of section 34, 35, 36 and chapter XX (winding up)

- Sec 34, 35, 36 → Shall apply to :

the issue of (prospectus) by a co. incorp o/s India uls 389 as they apply to prospectus issued by an Indian co.	the issue of (IDR) by a foreign co.

- SEC 34 = Criminal liability for mis-statement in prospectus
- SEC 35 = Civil liability for mis-statement in prospectus
- SEC 36 = Punishment for fraudulently inducing persons to invest money

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- SEC 34 & 36 → Punishment = as per (SEC 447 (frauds) from miscellaneous chapter
- SEC 35 → Punishment = compensate for loss caused
- Chapter XX (winding up) → shall mutatis mutandis apply for closure of POB of F Co. in India (as if it were an Indian co.) if such F Co. has raised money through offer of securities which have not been repaid / redeemed

(15) SEC 392: Punishment for contravention of this chapter (Apart from sec 391)

- Foreign co. in default
  - Fine 1L-3L
  - Addnl Fine upto 50000 per day (after 1st day) → For continuing contravention
- Officer [of F Co.] in default → Imp upto 6m / Fine ≥ 25000-5L or Both

(16) SEC 393: Company's failure to comply with the provisions of this chapter shall not affect the validity of any contract / dealing / transaction entered.

* Company shall be liable to be SUED ✓
* However, company cannot SUE / file suit / claim / counter claim / institute any proceeding wrt contract UNTIL company has complied with all applicable provisions of CA'2013.

FYI: Just like unregistered partnership firm rules

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CA'2013 - MISCELLANEOUS PROVISIONS (5 marks)

Nidhi Company | Dormant company | Govt co. | Removal of name | Fraud | Valuer rules

(1) NIDHI COMPANIES (Sec 406 + NIDHI RULES 2014)

A. Definition: Company incorporated as a Nidhi with the object of cultivating the habit of thrift & saving among its members, receiving deposits from members, lending to members for their mutual benefit & which complies with rules made by CG

B. CG's power to direct that any provisions of CA'2013 shall not apply or apply with modific^n / exception

↓

Proposed notification (draft) ⇝ Laid @ Both houses of the parliament ⇝ For 30 days (Ignore period while it was adjourned for ≥ 4 consec days)

CG can issue notification when both houses approve.

C. Incorporation:

- Nidhi = public co. with last words of name as 'NIDHI LIMITED'
- minimum paid up EQUITY capital of 5 LAKHS
- Issuing PREF. shares is NOT ALLOWED on or after the commencement of CA'2013 ↓ (old pref sh can be redeemed as per terms of issue)

Object clause under MOA (only 2)

- cultivating habit of savings, lending to / accepting deposits from mem
- Provide locker facility on rent to members only if Rent income ≤ 20% of Gross income of Nidhi @ anytime during FY

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D. General restrictions / prohibitions: [CHILA BAAAPPPOO]

CHILA: Carry biz of Chit fund, Hire purch, Insurance, Leasing, Acq^{n} of securities of body corporate

B: Pay Brokerage / incentive for mobilising deposits from members or for lending

A: Acquire co. / control BOD of a co. (appoint majority of BOD)
EXCEPTION → Allowed if (SR) is passed & RD's approval is received

A: Accept deposit from / lend to a person (≠ member) or to a body corporate

A: Advertise to solicit (receive) deposits
Exception → Allowed if details of fixed deposit scheme is circulated privately among mem with words "for pvt circulation to mem only" written.

P: Issue Preference share / Debentures / Debt instrument

P: Pledge assets that are kept by mem as security

P: Parthership agreement w.r.t. lending / borrowing

O: Open current A/c with members

O: Other business apart from borrowing / lending among members
Exception → Locker facility on rent to members (if rent income ≤ 20% of Nidhi's gross income @ anytime during FY)

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E. Membership:

- Body corporate — X
- Trust — X
- Minor — X
  - Deposits can be accepted in the name of minor if Natural or Legal guardian = member ✓
- Membership must not be reduced to < 200 members (i.e. min. 200 ✓)

F. Directors of Nidhi:

- Directors shall be members
- Tenure upto 10 consec yrs
  - ↓
  - re-appointment ✓ (only after 2 yrs of cessation)
- If tenure of director was extended by CG, then it shall terminate @ expiry of it
- Must comply
  - ↓
  - sec 152(4), sec 164 of CA'2013

G. Dividend:

- cannot declare dividend > 25% or higher amt (approved by RD for written reasons)
- Conditions to declare div:
  - Equal amt transferred to General Reserve
  - No default in repaymt of matured deposits/int
  - Comply rules

H. Auditor:

- Individual auditor
  - ↓
  - 1 term = max 5 consec yrs
- Auditor firm
  - ↓
  - 2 terms = max 5 consec yrs each

Reappointment = Allowed after 2 yrs from completion of a term ✓

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* Also count the period as an auditor before commencement of Nidhi Rules 2014 (1/4/14) to calculate 5 or 10 years
* Auditor shall furnish a certificate every year that states the Nidhi has complied with all rules. In case of non-compliance, Auditor must mention rules violated.

↓

Contravention → Co. & officer in default

↓

Max Fine 5000 + Max further Fine 500 p.d. for continuing offence (after 1st day)

I. Share capital & Allotment:

- Only fully paid up EQ
- FV ≥ 10
- Deposit holder → min. 10 shares (or) of total FV = 100
- Saving A/c or recurring depositor → min. 1 share of FV = 10

J. Compliance wrt FORM NDH-4:

- Nidhi / MBS u/s 620A of CA 1956 → File form NDH4 with CG for updating its status → No fees will be charged if Filed within 9 months of commencement of Nidhi (Amendment) Rules 2019
- Co. functioning on lines of Nidhi / MBS but has not applied or has applied but is waiting for CG to notify it as Nidhi/MBS u/s 620A of CA'1956
- Nidhi / MBS u/s 406 of CA 2013 → Before commencement of Nidhi (Amendment) rules 2019 (15/8/2019)

File form NDH-4 within - LATER OF:

- 1 year from date of incorp^{n}
- or
- 9 months from commencement of Nidhi (Amendment) Rules 2019

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* A public co. must file FORM NDH-4 with fees with CG & CG shall notify it as NIDHI in official Gazette if all requirements are met.

* For Nidhi / MBS incorporated uls 406 of CA 2013 on or after commencement of Nidhi (Amendment) Rules 2019
  ↓
  File form NDH-4 within 60 DAYS from expiry of:
  - 1 year from date of incorporation
  - (or)
  - Extended period granted by RD for compliances

* If NDH-4 requirement is not complied with, then the company will NOT BE ALLOWED to file FORM
  - SH-7 (Alteration of sh cap) & PAS-3 (return of allotment)

(2) DORMANT COMPANIES (SEC 455 + rules)

A. Which company can apply to ROC for being dormant?

A company formed:
- for future projects (or) To hold an asset or intellectual property
  - and has no significant accounting transaction
    - Significant A/c transac^{n} means a transaction OTHER THAN:
      - Payment of fee to ROC or to comply with laws
      - Allotment of shares
      - Payment for maintenance of office & records

Inactive company
- Co. has not been carrying on operations
- (or)
- Hasnt filed FIs & Annual return during last 2 FY
- (or)
- Hasnt made significant accounting transaction during last 2 FY

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B. Eligibility to apply:

- No inspection / inquiry / investig" has been ordered
- No prosecution has been initiated & pending
- There are no o/s public deposits, loans (sec/unsec) **
- No default in pmt of:
  - Statutory taxes
  - Workmen dues
  - Interest
- Securities are not listed on a stock exchange in India / Abroad
- There is no dispute in ownership / mgmt of co.

C. Application:

- Form MSC-1 with fees + Certificate that there is no dispute in mgmt or ownership of co.
- (SR) in general meeting or Send notice to all SH & obtain consent of SH holding ≥ 3/4th in value
- ** Consent or concurrence of LENDER if there is any o/s unsec loan

D. Certificate of status of dormant co. → FORM MSC-2 shall be issued by Registrar and it shall maintain a register of dormant cos.

E. Suo-moto action by ROC:

IF a company has not filed F/s & Annual returns for 2 consec. yrs, then ROC can issue a notice to co. & enter its name on register of dormant cos.

F. Return of Dormant co. (FORM MSC-3) indicating financial position audited by PCA must be filed within 30 Days from end of FY.

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G. Other returns to be filed → return of allotment
→ changes in directors

H. Directors of dormant company:

OPC	PVT Co.	PUB Co.
≥ 1 dir	≥ 2 dir	≥ 3 dir

I. Rotation of auditors → N|A to dormant co.

J. Application for seeking ACTIVE status:

- Dormant co. → ROC
  Apply in FORM MSC-4 + Fees + Return under FORM MSC-3
  ROC ↓ issues certificate (Form MSC-5) for status as active co.

- If a company violates grounds of application u/ form MSC 1 i.e. its starts biz operations or undertakes significant A|c transaction, then:

directors → ROC
must apply within 7 days from the particular event (MSC-4)

K. Suo-moto actions by ROC:

IF a co. remains dormant for consec 5 YEARS	IF dormant co. violates this section	IF it has a reason to believe that the dormant co. is "FUNCTIONING", then it may initiate an INQUIRY u/s 206
ROC shall initiate process of STRIKING OFF the name of co.		

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If ROC, after giving ROBHd, finds that dormant co. is "FUNCTIONING", then it may remove its name from the register of dormant co. & treat it as ACTIVE CO.

③ Govt co. [Sec 2(45), 394, 395]

A. Definition u/s 2(45) → A company in which ≥51% of PUSC is held by CG | SG | Both & includes a co. which is a subsidiary of govt co.

eg. 1 → Govt of Goa holds 45%, CG holds 3%, Govt of Punjab holds 10% in ABCD Corp Ltd.

↓

= Govt co. ✓

eg. 2 → Govt of Maharashtra holds 45% and ABCD Corp Ltd holds 40% in XYZ Corp Ltd

↓

≠ Govt co.

(only CG|SG's holding will be checked)

eg. 3 → Govt of Assam holds 2% and ABCD Corp Ltd holds 50.5% in DEF Corp Ltd

↓

= Govt co. ✓ (subsi of govt co)

B. SEC 394: Annual report of Govt co. when CG & SG are members of co.

AGM at which audit report + comments of CAG are placed ← 3 months ← prepare Annual report on working & affairs of the co.

ASAP after preparing

CG shall cause it to be laid @ Both houses of parliament (Annual rep + Audit rep + comments)

SG shall cause it to be laid @ Both houses of state legislature (Annual rep + Audit rep + comments)

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C. SEC 395: Annual report of Govt co. when ≥1 SGs are members of co. [≠CG]

Same as 394 except CG's part of laying it down @ parliament.

* 394 & 395 shall apply to govt cos. in HQ^n also.

(4) Removal of name (SEC 248 - 252):

A. SEC 248: Power of registrar the remove name of the company from register of companies

Suo-moto by registrar [248(1)]	On Application by co. [248(2)]
- Co. failed to commence its biz within 1 yr of incorp^n - Co. is not carrying on biz for last 2 FYs & no applic^n was made for dormant status - Co. is not carrying biz / op^n as revealed after physical verification u/s 12(9) - Subscribers to MoA have not paid subscrip^n & no declaration for it was filed within 180 d. of incorp^n u/s 10A(1) ↓ ROC → sends notice seeking docs & representations in 30 Days → company & all the directors	After extinguishing liabilities ↓ passing (SR) or taking consent of members holding ≥75% of PUSC ↓ File applic^n @ ROC on grounds mentioned u/s 248(1) + Also attach regulatory body's approval if incorp under special act

ROC shall issue a public notice in prescribed manner + official gazette ✓

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- Sec 248(2) → N/A to sec 8 co.
- On expiry of time limit mentioned in notice u/s 248(1) if company has not shown contrary cause, RoC shall strike-off name of co. & publish it in official Gazette
- Co = dissolved on publication in official gazette

** Before striking off, RoC must be satisfied that sufficient provision has been made for realisation of assets & discharge of liab of co.

↘ {FYI → It is like LIQ^n but after the strike-off ★★★★★

↓

Even after strike-off, assets of co. shall be utilized to repay liabilities ✓

↓

Also, the liab of director / mgr / mpl member / officer of a dissolved co. SHALL CONTINUE ✓

↓

NCLT can wind-up a co. whose name is struck-off ✓

B. SEC. 249: Restriction in making applic^n u/s 248

No application shall be made if in last 3 months:

Co. changed name or shifted registered office from 1 state to other	Co. has made an applic^n @ NCLT for compromise / arrangement & the matter = pending	Co. is being wound-up under IBC or CA 2013

Co. has engaged in activity

≠ deciding to conduct affairs or not	≠ compliances

≠ the one necessary to make applic^n u/s 248

Co. has made a disposal of property or any rights for a value, immediately before cesser of trade or business

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- If a company files an applic^{n} in violation of above
  Then → FINE upto ₹ 1 Lakh

C. SEC 250: Effect of Dissolution notice uls 248

- Co. ceases to operate as a company
- Certificate of incorp^{n} = deemed to be CANCELLED
- Co. shall be deemed to be in existence for realizing assets & discharging liab

D. SEC 251: Fraudulent Applic^{n} for removal of name

IF it is found that applic^{n} has been made with:

- object of evading liabilities of co.
- intention to deceive creditors
- intention to defraud others

THEN persons in charge of mgmt of co. shall be:

- Jointly & Severally liable to any person who had incurred loss when co. is notified as dissolved
- punished uls 447 (fraud)
- prosecuted by ROC

E. SEC 252: Appeal to Tribunal

- ROC's order of dissol^{n} uls 248 —APPEAL (3 yrs from date of order)→ NCLT —ROBHD→ ROC company other person concerned
- NCLT —fwd order→ Company —fwd - 30 days→ ROC must restore name & issue fresh C.O.I.

NCLT can order for restoration of name if removal ≠ justified

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- Co. / member / creditor / workmen → Applic^n @ NCLT within 20 YEARS from public^n in official gazette u/s 248 → NCLT may order restoration if:
  - Co. was carrying on biz / op^n @ time of striking-off
  - (or) It is just that the name of the co. be restored

(5) FRAUD PENALTY (SEC 447) ***

Fraud amt involved:	Fraud amt involved:
≥ ₹ 10 LAKH or ↓ 1% of TTO of co.	< ₹ 10 LAKH or ↓ 1% of TTO of co.
↓ THEN	& does not involve public interest
Imp: 6m – 10 years (+) Fine: Amount involved – 3 x Amt involved	↓ THEN Imp up to 5 Years (or) Fine up to ₹ 50 LAKHS (or) BOTH

* IF Fraud involves public int then Imprisonment ≥ 3 Years

Fraud = Act / Omission / Concealment / Abuse of position to deceive / gain undue advantage / injure co., sh, crs. whether or not there is wrongful gain / loss

(6) SEC 450: Punishment if no separate penalty is provided

Co. & officer in default of act / rules / conditions etc. ⟹ Fine up to ₹ 10000 & ⟹ Further Fine up to ₹ 100 per day if continuing offence.

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(7) REGISTERED VALUERS (SEC 247 + Rules):

A. SEC 247: Valuation by regtd. valuers

- Valⁿ of property, stocks, shares, sec, debentures, GIW, other assets
- Valⁿ of Liabilities (or) NET WORTH
- By a person registered as a VALUER → Appointed by Audit comm (or BOD in its absence)

Valuer appointed by AC/BOD

- must make impartial valuation
- exercise due-diligence
- make valⁿ as per rules
- shall not undertake valⁿ of assets in which he has direct/indirect interest or becomes interested during
  - 3 yrs (prior) to appointmt as valuer
  - 3 yrs (after) valuation was conducted by him

Contravention

- Violated 247 or rules → Fine: 25k - 1L
- Violated those with intention to defraud co./members → Imp up to 1 yr (+) Fine: 1L - 5L
- must refund the remuneration to the co. + pay damages to co./any person for loss due to incorrect statements made in his report

Now, we'll begin with Companies (Registered Valuers and Valuation Rules, 2017)

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(8) Eligibility for a person to be RV: RULE 3(1)

- = valuer member of registered valuers org^n & must be recommended by that RVO to be VALUER
- passed val^n exam under rule 5 within {3 years} preceding the date of applic^n for registration under rule 6
- Qualification and experience (rule 4) ↓ Bachelor's + 5y exp (or) Post graduate or PG diploma + 3y exp (or) member of professional institute est by act of parliament + 3 yrs exp after membership ↓ [degree → from inst/uni incorp by law in INDIA

- ≠ minor
- ≠ unsound mind
- ≠ undischarged / applied to be bankrupt
- = Fit & proper
- = PRI as per FEMA

- ≠ convicted by court for offence involving moral turpitude / having Imp > 6m

- ≠ levied penalty u/s 271J of ITA 1961 & time limit to file appeal has expired or penalty is confirmed by ITAT

- He cannot be a valuer if that offence led to Imp ≥ 7 yrs

- He can be a valuer if 5 yrs have elapsed from expiry of sentence or levy of penalty

(9) Eligibility for regtd partnership firm / LLP / Co. to be regtd valuer: RULE 3(2) → {INELIGIBLE IF

- objects other than prof / financial / val^n services
- it is undergoing CIRP or is an undischarged bankrupt
- 3 partners / directors ↓ or ALL of them are not regtd valuers

- it is subsi / JV / associate of a body corporate
- all dir / partners are ≠ eligible u/ RULE [3(1)]
- No partner / dir is a regtd valuer of a class of assets seeked to be valued (eg. shares)

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** Firm/LLP/co. = the regtd valuer firm/LLP/co. (not the client)

(10) Conditions of registration (RULE 7):

- Possess eligibility & qualific^{n} under rule 3 & 4 at all times
  - ↓
  - Comply with all rules, this act, byelaws & code of conduct of the RVO
    - ↓
    - Must not value asset classes for which he isnt registered
- must take permiss^{n} of Authority specified by CG for shifting membership from 1 RVO to other
  - ↓
  - must take adequate steps for grievance redressal
    - ↓
    - maintain records for ≥ 3 yrs from completion of an assignment
- only that dir/partner who is regtd valuer for an asset class must SIGN ✓
  - ↓
  - firm/LLP/co. must disclose the holding/capital contrib^{n} of dir/partner (SIGNER) in firm/LLP/co.
    - ↓
    - firm/LLP/co. must inform Authority specified by CG immediately when partner/dir is removed + detailed reasons

- Firm/LLP shall be liable jointly & severally with SIGNING partner
- Company shall be liable with director who signs the report

(11) Conduct of val^{n} (RULE 8):

- Comply with val^{n} standards of rule 18
  - ↓
  - Till CG notifies it, follow internationally accepted val^{n} stds & any val^{n} stds adopted by RVO
- mention in val^{n} report:
  - Info of asset valued / val^{n} purpose
  - Identity of experts or other valuers involved / restriction on use of report
  - Dates of appointmt, valuation & report / inspection/investig^{n} / conclusion
  - factors considered during val^{n}

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* Just like auditors disclaimer opinion, the valuer must also specify disclaimers / limitations faced ✓

(12) Temporary surrender (RULE 9):

Regtd valuer can surrender RC temporarily
↓
He must inform the Authority specified by CG

When regtd valuer surrenders temporarily or Revives membership of RVO, then the RVO must

- Inform the authority specified by CG in 7 days from approving surrender / revival
- place on its website in searchable format

(13) Eligibility for RVO (RULE 12):

= Sec 25 co. (CA 1956) /
= Sec 8 co. (CA 2013)
with sole object of "Dealing with matters relating to regulating valuers"

(or)

= Professional Institute est by act of the parliament (eg. ICAI)

(or)

= Society or Trust

But society / trust must be converted into or be registered as a SEC 8 co. within 1 yr from commencemt of val^n rules (18/10/17)

will be recognized if:

↓
It conducts educational courses in valuation as per syllabus u/rule 5 delivered via class-room / distance modules + practical training
↓
Grants membership / COP wrt that asset class for which it is recognized
↓
Conducts training before issuing COP
↓
Lays down a code of conduct
↓
Provides for continuing Edu
↓
Monitors / Reviews / Conducts disciplinary proceedings against members

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(14) Complaint against RV or RVO (RULE 16):

- Complainant (against RV or RVO) → complaint by post / courier with non-refundable fee of ₹1000 → Authority specified by CG ↓ handles & takes action

- Complainant (against RV who is partner / dir of valuer firm / LLP / co.) → ₹1000 → Authority can complain to authority & it refers it to RVO → RVO ↓ handles & takes action as per its bye-laws

(15) Punishments

RULE 20: Contravention of these rules
↓
LIABLE u/s 469 (3) of CA '2013
↓
max fine 5000
&
continued fine of max 500 p.d. after first day

RULE 21: Person makes a false statement that is material (knowing it is false) or omits a known material fact from report / certificate etc.
↓
LIABLE u/s 448 of CA '2013
↓
(448 says follow 447 fraud penalty)
******

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Chapter 10

Special Courts & Adjudication

(1) SEC. 435: Establishment of Special Court

- CG shall establish / designate as many Special Courts as necessary for purposes of SPEEDY TRIAL of offences under CA'2013.

- Special court consists of :-
  - A Single judge holding as Sessions / Additional sessions judge → for offences punishable under CA'2013 with Imprisonment ≥ 2 yrs
  - Metropolitan Magistrate or Judicial magistrate of 1st class → for all other offences

[They will be appointed by CG in consultance of the Chief Justice of HC]

(2) SEC. 436: Offences triable by Special Courts

- All offences under CA'2013 shall be triable only by the Special Court in jurisdiction of Co.'s registered office.
- If there are >1 special courts in that area, then One of them will be specified by HC.
- When a person accused of / suspected on commiting an offence is forwarded to Magistrate as per CoCrP 1973, Magistrate may authorize detention of such person in custody
  - For max 15 d. (if he is JUDICIAL MAGISTRATE)
  - For max 7 d. (if he is EXECUTIVE MAGISTRATE)

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- If Magistrate thinks detention is unnecessary, then it shall order him to be forwarded to Special court.
- When can Special Court take cognizance of offence?
  - upon receipt of a police report
  - upon receipt of any complaint
- * While trying an offence under CA'2013, Special Court can try offences (≠ CA'2013) with which the accused person may be charged at same trial u/CrPC 1973.

- **SUMMARY TRIAL**
  - Allowed only if:
    - Offence is punishable with Imprisonment upto 3 YEARS under CA'2013
    - After summary trial, the Imp. doesnt exceed 1 year
  - IF during summary trial it appears that
    - an order for Imp. exceeding 1 yr will have to be passed
    - or
    - "Summary" trial is undesirable
    - ↓
    - Then it can conduct a "REGULAR" trial now
      - recall witness ✓
      - re-hear the case ✓

(3) SEC. 438: CrPC 1973 shall apply to proceedings before a Special Court.
- Special court will be deemed to be a Court of Session / MM / JM of 1st class
- Person conducting a prosecution at Special court will be deemed to be "Public Prosecutor."

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* in addition to Registrar/member/person authorised by CG

Cant arrest without warrant

④ SEC 439: Offences to be Non-Cognizable

Every offence under CA'13 is non-cognizable [EXCEPT an offence uls 212(6)] → SFIO

Special court can take cognizance only on a written complaint by:

- Registrar/ Member/ Person authorised by CG → Normally
- Person authorised by CG → For Govt co.
- Person authorised by SEBI* → For offences related to trfr of securities or non-payment of dividends.

- Every complainant must be present @ special court during trial of offences. However, for Registrar & Person authorised by CG, presence is required only if Special Court requires it.

- This section is N.A. to actions taken by LIQUIDATOR in respect of any offence committed related to winding-up
- This section is N.A. to prosecution by company against any of its officers. (officer doesnt include LIQUIDATOR)

⑤ SEC 442: Mediation & Conciliation Panel (MCP)

- CG shall maintain a panel of Experts to be called as Mediation & Conciliation Panel for mediation during pendency of proceedings before CG/NCLT/NCLAT

Any party can apply to CG/NCLT/NCLAT for refering matter to MCP

CG/NCLT/NCLAT shall refer to MCP (Suo-Moto)

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- MCP shall dispose-off matter within 3 months & forward its recommendations to CG/NCLT/NCLAT
- Party to proceeding can file objections against MCP's recommedations to CG/NCLT/NCLAT.

(6) SEC 446: Application (Utilization) of FINES

The court imposing fine can direct its application:

- Towards expenses of proceedings
- Towards reward to persons on whose information the proceedings were instituted

(7) SEC 446 A: Factors for determining level of punishment

- Size of the co.
- Nature of Business of co.
- Injury to public interest
- Nature of default
- Repetition of default

(8) SEC 446 B: Lesser Penalties for OPC & small co.

Any fine / imprisonment / both shall not be more than HALF of the min / max fine / imp / both prescribed:

- u/s 92 (Annual return)
- u/s 117 (Filing of resolutions & agreements)
- u/s 137 (Filing of F/S)

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(9) SEC 454 : Adjudication of penalties

- CG shall appoint any of its officers, not below the rank of registrar, as Adjudicating Officer (AO) for adjudging penalties under CA 2013

- AO ⟶ Company ⟶ AO
  - AO sends show cause notice stating nature of non-compliances
  - Company or officer in default
  - show cause within min (15) to max (30) days from service of notice, as specified in notice
  - If reasons are sufficient, AO shall extend it, by reasons written down ✓ ⟹ Ext^{n} max 15d. ✓

- Notice must include relevant penal provisions of the act & max penalty that can be imposed.

- After considering the reply (i.e. in electronic mode) if AO is of the opinion that physical appearance of officer is required, then AO shall issue a notice for the same (either personal appearance or through authorized representative, even oral representation = allowed ✓)

- Orders by AO → After giving ROBHd, it may
  - drop charges
  - or conduct inquiry
  - or impose penalty and direct co./officer to rectify default

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- **Time limit to pass order**

If physical presence was not required	If physical presence was required
(30 Days) from expiry of period given for reply to SCN (i.e. from min 15 to max 30 + ext 15 days from service of notice)	(90 days) from date of issue of notice by AO (i.e. SCN)

eg. SCN served → min → max → ext → order
1|5|20 16|5|20 31|5|20 15|6|20 15|7|20

eg. SCN served → time given → expires → order
1|5|20 is 20 days 21|5|20 20|6|20

∝ physical app ∝

- If order is passed after above-mentioned due dates it shall be valid if reasons for delay are recorded by AO

- **Order shall be**
  - Dated, Signed by AO
  - consisting of reasons as to why physical app is reqd
  - Forwarded to
    - Co.
    - officer in default
    - CG (or any concerned person)

- **During inquiry, AO's powers:**
  - Summon & enforce attendance of any person acquainted with facts of case, after recording reasons in writing
  - order for evidence or to produce any doc relevant to the case

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- Aggrieved person against AO's order → can appeal within (60 days) from receipt of AO's order → Regional director

- AO shall levy penalty that is:
  - A fixed sum
  - to be paid through MCA portal only
  - credited to consolidated fund of India

- On failure to comply with AO / RD's order within (90 days) from date of receipt of order,
  - Company → Liable to fine of min 25000 to max 5 Lakhs
  - officer in default → Imp upto 6m (or) fine min 25000 to max 1 Lakh (or) Both

(10) SEC 454 A: Where a co. / officer in default having been subjected to penalty, again commits such default within 3 years from date of order imposing penalty (by AO / RD), then:

Liable for an amount = twice the penalty provided for the default under this act

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Miscellaneous points:

(11) SEC 443: Power of CG to appoint co. prosecutors

Notwithstanding anything contained in CoCrP 1973, CG may appoint, generally / for any case / for any specified class of cases in local areas, ≥ 1 person as company prosecutors for conducting prosecutions

↘ Has powers as under Code on public prosecutors u/s 24 of CoCrP 1973

(12) SEC 444: Appeal against acquittal

↘ means - to appeal when an offender is released (declared NOT GUILTY)

Notwithstanding CoCrP 1973, CG may direct the company prosecutor or authorize any person to appeal against acquittal order passed by any court (≠ HC).

↘ FYI: NCLAT ≈ HC!

(13) SEC 445: Sec 250 of CoCrP 1973 applies for compensation for accusation without reasonable cause before Special Court / court of Session.

↘ FYI: FALTU KA CASE!

(14) SEC 441: Compounding of offences

Punishable with "Imp only" and "Imp & Fine"	others
⇓	⇓
Non compoundable	COMPOUNDABLE (pay an amount & get charges dropped)

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Chapter 11

National Company Law Tribunal & Appellate Tribunal

- Date of Birth → 1st June 2016
- Establishment → u/s 408 of CA'2013 by CG (MCA)
- Purpose → To bring all lawsuits related to COMPANIES under 1 Body
- Predecessors → CLB & BIFR
- Branches = 12, Benches = 27, Principle Bench @ New Delhi
- NCLT → President, Members ; NCLAT → Chairperson, Members
- NCLT & NCLAT are quasi-judicial bodies (they are not courts but can interpret law & pass orders) for CA'2013 & IBC'2016.

SEC. 420 : Order of NCLT

NCLT can pass order after giving ROBHd to the parties & send it to all parties	It can amend an order to rectify a mistake within 2 years, if mistake is brought to its notice by parties. (No Amendment if an appeal is filed against the order)

SEC. 421, 422 & 423 : Appeals

NCLT —APPEAL [421]→ NCLAT —APPEAL [423]→ SC

- NCLT: dispose within 3m. +90 d. Ext
- 421: 45d. + Ext 45d. (if sufficient cause)
- NCLAT: dispose within 3m. +90 d. Ext
- 423: 60d. + 60 d. ext (if sufficient cause) [ONLY ON QSTN OF LAW]
- 422

* No Appeal allowed to NCLAT if NCLT passed order with the CONSENT of all parties.

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SEC. 424: Procedure before NCLT & NCLAT

NCLT & NCLAT are NOT BOUND by procedure of Code of civil procedure 1908. It shall regulate its own procedure based on PRINCIPLES of NATURAL JUSTICE	Any order passed by NCLT & NCLAT can be ENFORCED @any Local court as if it were a DECREE made by any court	NCLT & NCLAT deemed to be CIVIL COURT & All proceedings are deemed to be JUDICIAL proceedings

NCLT & NCLAT shall have powers same as that of CIVIL COURTS

SEC. 425: Power to punish for Contempt (Disobey orders)

NCLT & NCLAT have same Jurisdiction, Power and Authority like a HIGH COURT & it can exercise powers under CONTEMPT OF COURTS ACT, 1971.

SEC. 426: NCLT/NCLAT may, by general / special order, delegate powers to any officer / employee to inquire into any proceedings pending.

SEC. 427: President, Chairperson, Members, Officers & employees of NCLT & NCLAT are deemed to be PUBLIC SERVANTS [u/s 21 of Indian Penal Code]

SEC. 428: No suit / Prosecution / Proceedings shall lie against the abovementioned persons in respect of any Loss or damage caused while discharging their functions IN GOOD FAITH.

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SEC. 429: Power to seek assistance of Chief Metropolitan Magistrate, Chief Judicial Magistrate, District Collector

Tribunal —REQUEST in writing→ CMM/CJM/DC to take possession of Property / books, etc. of company & present it to tribunal in any proceedings for

- Winding up under CA'2013
- or
- under IBC'2016

★ No Acts of CMM, CJM, DC uls 429 shall be Questioned in any COURT.

SEC. 430: No CIVIL COURT can entertain any proceedings for matters which NCLT & NCLAT are empowered. No court can grant injunction / stay regarding any power to be exercised by NCLT & NCLAT.

SEC. 431: No Act / Proceeding of NCLT & NCLAT can be questioned or be invalid merely on grounds of any vacancy / defect in constitution of Tribunals.

SEC. 432: Right to legal representation

- Either appear in person
- or Authorise one or more CA, CS, CMA, Legal practitioner, any person

SEC. 433: Limitation Act 1963 will apply to all proceedings before NCLT/NCLAT.

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SEC. 434: Transfer of certain pending proceedings

- Matters before CLB —Transferred to→ NCLT
- Any person aggrieved by orders passed by CLB —APPEAL→ HC
  60 d. + ext 60 d.
  (only Question of Law)
- Proceedings, u/s CA'1956 pending before DC/HC before 15 DEC 2016, related to Compromise/Arrangement/Reconstruction/Winding up/any other matters, shall be TRANSFERRED to NCLT.

Proviso

- Proceedings related to WINDING-UP that are at a stage prescribed by CG → Shall only be transfered to NCLT
- Proceedings related to WINDING-UP which are not transfered by HC
- Voluntary winding-up where advertisemt of notice of the resolution is given as per the CA'1956 & co. has not been dissolved before 1/04/17
- Cases other than winding-up under CA 1956
  - reserved for orders by HC
  - not reserved by HC → Shall be transfered to NCLT

→ Shall be dealt with as per CA'1956 & the Companies (Court) Rules, 1959

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Sample answer on Appeals: As per sec — of —

- Appeal to NCLAT: Any person aggrieved by an order passed by NCLT may prefer an appeal to NCLAT ✓

- Period of filing appeal: Every appeal to NCLAT shall ✓ be filed within a period of 45 days from date of receipt of order of NCLT, in a prescribed form & (3m) must be accompanied by prescribed fees

- Condonation of delay: NCLAT may entertain appeals ✓ after expiry of 45 days, within further period of max 45 days, if it is satisfied that appellant was prevented by sufficient cause from filing with original period

Hence, company ABC Ltd shall follow the abovementioned rules

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SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

[SEBI ACT 1992 + SEBI (LODR) REG 2015 → 7 marks]

(1) Introduction:

The SEBI was established on 12/04/1988 & it got legal character in 1992. Before SEBI Act, securities-market was regulated by CA 1956, SCRA 1956 and Capital Issues (control) Act 1947. The capital market grew wider, the legislation was scattered in different laws & administrative agencies did not have proper manpower & expertise to deal with investors ⇒ Hence, SEBI Act ✓

(2) SECTION 1 of SEBI Act 1992:

- Act extends to whole of India
- Came into effect from 30th January 1992

(3) Purpose & Objective of SEBI Act:

- Protecting the interest of investors in securities
- Promoting development & Regulation
  - of securities market & other matters incidental thereto

(4) SECTION 3: Establishment of the SEBI

- It is a body corporate
- having perpetual succession and common seal
- with powers to acquire/hold or dispose any property (mc/IP)
- to contract, to sue or be sued

The head office of SEBI shall be at MUMBAI.

(5) SECTION 4: Management of the Board (Board means SEBI)

- 1 chairman nominated by UNION GOI
- 2 members (officers from union ministry)
- 1 member from RBI
- 5 other members (nominated by Union GOI) but out of 5, ≥3 must be whole-time members

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The 'chairman' & '5 other members' shall be persons of ability, integrity & standing who have shown capacity in dealing with problems related to securities mkt or shall have experience or special knowledge of law / A|c / Eco / Finance / Admin which shall be useful to SEBI as per CG's opinion.

⑥ SECTION 5: Terms of office & conditions of service of the chairman & members of the board

- Tenure
  - Chairman & Whole time members → Hold office up to '5 years' but max age limit = 65 years → can be re-appointed by CG again
  - Part time members → Hold office up to '3 years' without any age limit → can be re-appointed by CG again

- 'Chairman' or 'other members' have the right to Relinquish office (i.e. resign) before expiry of tenure by giving a 3 month notice to CG
- CG can terminate services of 'chairman' or 'other members' before expiry of tenure by:
  - giving at least 3 months' notice in writing (or) paying 3 months' salary and allowance

FYI: Sec 5 & 6 talk about 'chairman' & 'other mem' only
CG cant remove 1 RBI mem & 2 Union ministry mem.

⑦ SECTION 6: Removal of members of the board

CG shall remove chairman / other mem, only after giving ROBHd if:

- He has been adjudicated as insolvent at any time
- Has been declared to be of unsound mind by court
- Has been convicted of an offence involving moral turpitude
- Has abused his position & his continuance is detrimental to public interest

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(8) SECTION 7: Meetings of the board

out of syllabus

- Meetings shall be conducted as per regulations u/s 30.
- In absense of chairman (i.e. chairman is unable to attend), a member shall be chosen by members present to preside over the meeting (i.e. presiding member)
- Voting

Any matter shall be decided by majority vote of members present @ meeting	Chairman (or presiding member) has a second or casting vote when there is equality (tie) of votes

(9) SECTION 7A: Members not to participate in certain cases

Any member of SEBI, who is a director of a company and has any pecuniary int in a matter coming up for consideration at meeting of the SEBI, shall

1. Disclose such interest (ASAP after circumstances have come to his knowledge)
2. Not participate in any decision of SEBI related to that matter

eg. Shri Mallya (director of KFA Ltd.) is member of SEBI & if meeting relates to suspension of trading of KFA's shares on NSE/BSE on an alleged fraud.

(10) SECTION 8: Vacancies, etc. not to invalidate proceedings

The following shall not invalidate any acts / proceedings of the SEBI:

Any vacancy in the board	Any defect in constitution of the board	Any defect in appointment of any member	Irregularity in procedure of the board ⇓ not affecting merits of the case

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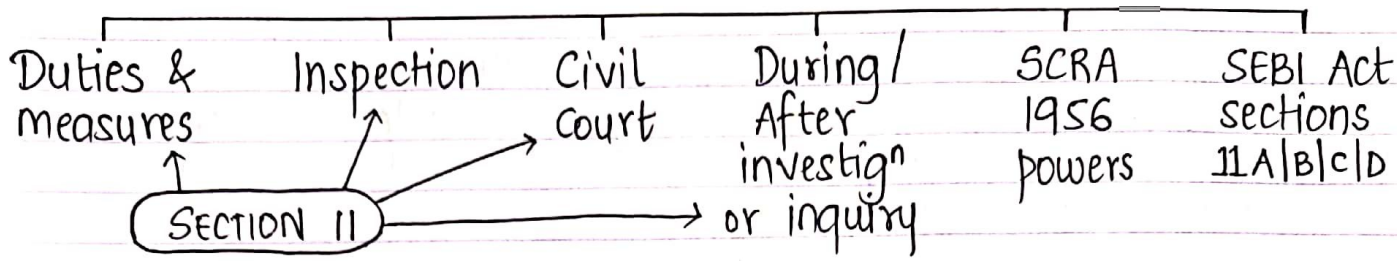
(II) FUNCTIONS AND POWERS OF SEBI



(A) Duties & Measures:

- It shall be the duty of SEBI to:
  - Promote the development of, and to regulate securities mkt
  - Protect the interest of investors
- For the above-mentioned duties, it may use these measures:
  - Regulating biz of stock exchanges / any other security mkts
  - Registering & regulating working of stock broker, sub broker, share transfer agent, merchant bankers, trustees, registrars / bankers to an issue (eg. IPO), underwriters, portfolio mgrs, advisers, FIIs, credit rating agency, depository (eg. NSDL), custodians, participants, venture capital funds, collective investment schemes (CIS) including mutual funds
  - Prohibit fraudulent & unfair trade practices & insider trading
  - Promote investor-education & training of intermediaries
  - Regulate substantial acquisition & take-over of companies
  - Calling for info from / conducting inspection, inquiry, audit of stock exchanges, MF, intermediaries, etc. connected with securities market
  - Calling for info & records, from anyone including any bank, authority / board / corp established under central / state act, relevant to investigⁿ / inquiry by SEBI.

(B) Inspection: When SEBI has reasonable grounds to believe that a company is engaged in unfair / fraudulent trade practices or insider trading, it can inspect any book / record:

- of a listed public co. (or) public co. intending to get its securities listed

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© Vested with same powers as that of a Civil Court u/ COCP:

* [SI_2DE] *

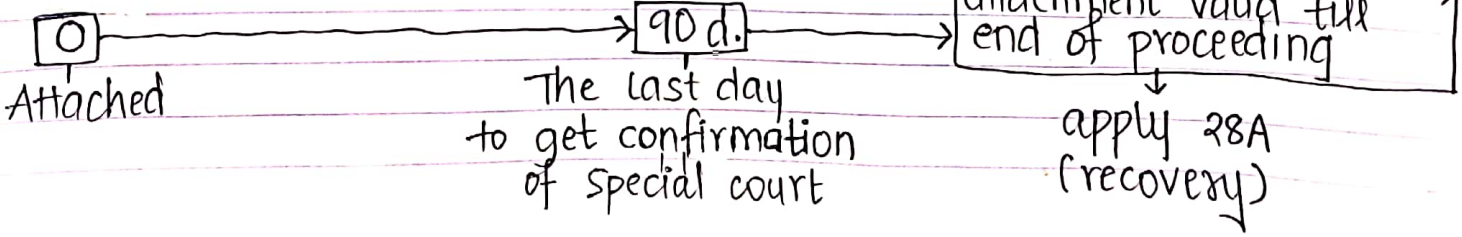
S- Summon & Enforce attendance of persons
I_1- Inspection of any books / records / docs of listed cos., public cos. intending to get its securities listed and a person u/s 12
I_2- Issuing commissions for examination of witness / docs
D- Discovery & production of books / docs
E- Examination on oath

(D) During pendency of, or on completion of investigation or inquiry, SEBI may take any of the following measures, by an order with reasons in writing, if it is needed in the interest of investors / securities mkt:

* [SIR-SAD] *

S- Suspend trading of securities on RSE
I- Impound & Retain the proceeds of securities in respect of a transaction that is under investigation
R- Restrain persons from accessing securities mkt & Prohibit a person from buying / selling / dealing in securities
S- Suspend an office bearer of stock exchange from his position
A-
- Attach bank A/c / property, of any intermediary or any person associated with securities mkt who has violated this act / rules / regulations, for max 90 days.
- Within 90 days of the attachment, it must obtain a confirmation of the attachment from Special court.
- Such attachment will continue during pendency of proceeding On conclusion of proceeding, section 28A applies (recovery)

* Only that property / bank A/c involved in violation of this act / rules / reg^ can be attached.



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D- Direct any intermediary or any person associated with sec market not to dispose off or alienate an asset forming a part of transaction under investigation

Any amount disgorged [FYI: Illegal profits seized] as per direction issued under SEBI Act, SCRA 1956 or Depositories Act 1996 shall be:

- Credited to Investor Protection and Education Fund (IPEF) established by SEBI
  - FYI: IPEF of SEBI & IEPF of CG under CA 2013 are different!!!
- & such amount shall be utilised by SEBI as per reg^n made under this act
  - FYI: SEBI (IPEF) Reg^n 2009

(E) Functions of SEBI under SCRA 1956: → w.r.t. RSE!

- Power to:
  - INSPECT → Books/docs of Stock exchanges for periods upto max 5 years if it is in public/trade's interest
  - MAKE INQUIRY → In relation to affairs of governing body or members of stock exch by appointing ≥1 person by an order in writing
  - CALL FOR INFO/EXPLANATION → in writing from the stock exch or its member if it is in public/trade's interest

- Power to approve bye-laws of stock exchanges:
  All stock exchanges may make bye-laws, for regulation & control of contracts, with prior approval of SEBI. After SEBI's approval, byelaws can be published, for public's comments, in official Gazette of India & the State. SEBI may exempt the publication by a written order.

- Power to make/amend byelaws of a stock exchange either suo-moto or on a request recd from governing body of RSE in writing.

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- Power to grant license to any person for biz of dealing in securities in any state / area to which section 13 of SCRA doesnt apply. Sec 13 of SCRA deals with contracts in notified areas to be ILLEGAL in some circumstances.
- Public issue & listing of securities referred to uls 2(h)(ie) of SCRA can be done only when issuer fulfills eligibility criteria & regulations made by SEBI
- CG may delegate its powers under SCRA to SEBI

(12) SECTION 11A: Board to regulate / prohibit issue of prospectus, offer document, advertisement soliciting money for issue of securities.

The SEBI may, for protection of investors,

SPECIFY BY REGULATIONS

↓

Matters relating to issue of capital, transfer of sec & other incidental matters

&

Manner in which such matters shall be disclosed

↓

FYI: SEBI (ICDR) Reg 2018

BY GENERAL/SPECIAL ORDER

↓

Prohibit a co. from issuing prospectus / offer doc / ad. for soliciting money from public by issuing securities,

OR

If not prohibited, then SEBI may specify conditions subject to which prospectus / offer doc or Ad may be issued

(13) SECTION 11B: Power of Board to issue directions

If, after making / causing to be made an inquiry, SEBI is satisfied that it is necessary:

- in interest of investors or for development of securities market
- to prevent affairs of intermediaries / persons (uls 12) from being detrimental to interest of investors & sec mkt
- to secure proper mgmt of intermediary / persons (uls 12)

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Then, SEBI may issue directions:

- To any person
  - referred uls 12 or associated with sec mkt
  - mentioned in sec 11 also in 'D' of SIRSAD
- To any company in respect to matters specified uls 11A
  - in the interest of investors & sec mkt
- To any person who made profit or averted loss (i.e. prevented loss) by indulging in an activity in violation of this act / regn
  - To disgorge amount equal to wrongful gain / averted loss

(14) SECTION 11C: Investigation

- Grounds for investigation: When SEBI has reasonable ground to believe that:
  - Transactions in securities are detrimental to investors or the sec mkt
  - (or) Any intermediary or person associated with sec mkt has violated this act / rules / regulations made thereunder

It shall appoint a person (INVESTIGATING AUTHORITY) to investigate its affairs & report to SEBI. → (IA)

- Duties of producing documents to IA:
  Every MD / manager / officer / employee of the company, intermediary (uls 12) or every person associated with sec mkt must PRESERVE & PRODUCE books / registers / docs, which are in their custody / power, to the IA.

- Period of custody: IA can keep docs / books in custody for SIX MONTHS & thereafter return the same. IA may call for books / docs if those are needed again.

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- Examination on oath: The IA may examine on oath, any manager / MD / officer / employee of any intermediary / person associated with securities market. IA may take notes of the examination & get it signed by person examined and use it against such person as evidence. It may also require such persons to appear before it personally.

- Failure to comply with above: Failure to:
  - produce books / docs or info which is his duty to produce
  - appear personally before IA or to answer any question asked by IA
  - sign notes of any examination

Punishment
- Imprisonment up to 1 year (OR)
- Fine up to 1 cr (OR)
- Both (AND)
- Further fine up to 5 Lakh per day during which failure continues (starting after day of failure)

eg. IA asked a person to appear on 1/4/2020 but he did not. He hasn't appeared till 10/4/2020
↓
Imp ≤ 1 yr / Fine ≤ 1 cr / Both & Further fine up to 45 LAKHS (5L x 9 days → 2/4 to 10/4)

- Impounding of documents: During investigation, if IA has reasonable grounds to believe that a person has:
  - Secreted (S)
  - Altered (A)
  - Mutilated (M)
  - Falsified (F)
  - Destroyed (D)

  Books or Docs

Then IA may make an application to Magistrate / Judge / a designated court in mumbai (as CG may notify) for an order for SEIZURE of such books / docs.

[On SAMFD of Books / docs, IA —Applies→ Mag / Judge / court (mumbai)]

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- Order of Mag / Judge / Court: After considering IA's application and hearing IA, if necessary, it may authorise IA to:

  - **ENTER** any place where books / docs are kept, with any assistance required
    - ↓
    - IA can request for service of a police officer / CG officer
  - **SEARCH** those places
  - **SEIZE** books / docs if it considers it necessary for investig'
    - ↓
    - ** Seizure = VALID TILL END OF INVESTIGATION

- Exemption: Mag / Judge / Court cannot authorise seizure of books / docs of

  - Listed public co.
  - Any public co. (≠ intermediaries uls 12) that intends to list securities on RSE

  ↓

  UNLESS → such co indulges in Insider trading / Market manipulation

- For search & seizure uls 11C → CoCrP 1973 applies ✓

(15) SECTION 11 D: Cease & Desist proceedings

After causing an inquiry to be made, if SEBI finds that a person has violated or is likely to violate this act / rules / regulations made thereunder, then it may pass an order requiring a person to CEASE & DESIST from causing violation.

↳ FYI: It means 'to stop'

Exemption: SEBI cannot pass such order in respect of

- Listed public co.
- Any public co. (≠ intermediaries uls 12) that intends to list securities on RSE

↓

UNLESS → SEBI has reasonable grounds to believe that the co. has indulged in insider trading / market manipulation

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(16) SECTION 11AA: Collective Investment Scheme [CIS]

- 11AA(1) → CIS is any scheme / arrangement that satisfies the conditions uls 11AA(2) & (2A)

- 11AA(2) → Requisite conditions for CIS:

a. Contributions / Payments made by investors are POOLED and utilized for purposes of scheme / arrangement
b. Contri / Payments are made with a view to receive profits / income / produce / property (mp/ip)
c. Property / Contri / Investment forming part of the scheme or arrangement is MANAGED on behalf of investors
d. Investors do not have day-to-day control over mgmt and operation of scheme / arrangement

- 11AA(2A) → Any scheme / arrangement satisfying conditions specified in regulations made under this act will be = CIS

FYI: SEBI (CIS) Regn 1999

- 11AA(3) → Exceptions → Following scheme / arrangement ≠ CIS

Any scheme or arrangement

- made / offered by Co-op society registered under Co-op societies Act 1912 or registered / deemed to be registered under any law relating to co-op soc in any state
- under which deposits are accepted by NBFCs under RBI Act 1934
- being a contract of insurance to which Insurance Act 1938 applies or Pension / Insurance scheme under EPF & MP Act 1952
- under which deposits are accepted by companies including Nidhi co. / mutual benefit society under CA 2013
- falling with 'Chit Business' as per Chit fund act 1982
- under which contri made is in nature of subscription to Mutual Funds

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* Proviso to sec 11AA(1) → Any pooling of funds under schemes not registered with SEBI (or) isnt covered uls 11AA(3)
  ⇓
  Involving a corpus amount of ₹100 cr or more
  ⇓
  shall be deemed to be a CIS

(17) SECTION 12: Registration Certificate

Stock broker, Sub-broker, share transfer agent, banker to an issue, registrar, trustee, merchant banker, underwriter, portfolio mgr, investment advisor & such other intermediaries associated with securities market	Depository, FII, custodian, credit rating agency, participant or any other such intermediary associated with securities Market	A person shall sponsor / carry on or cause to be sponsored / carried on a Venture capital fund, CIS (11AA) including mutual funds
⇓	⇓	⇓
can buy / sell / deal in securities only as per conditions laid in registration certificate obtained from SEBI and as per regulations made under this act		only after obtaining a registration certificate from SEBI

(18) SECTION 12A: Prohibition of manipulative & deceptive devices, insider trading & substantial acq^n of securities / control

No person shall, directly / indirectly,

Use / employ any manipulative or deceptive device in contravention of act / rules / reg^n	Employ any scheme / device or artifice to defraud	Engage in insider trading or communicate material non public info	Acquire control or securities of a co. more than % allowed by SEBI regulations

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(19) SECTION 13: CG may grant such sums, to SEBI for the utilization under the purposes of this act, as it may deem fit, after due appropriation made by parliament by a law.

(20) SECTION 14: Fund

A fund shall be constituted → called the SEBI Fund

There shall be credited to Fund

- All "grants", "fees" and "charges" received by SEBI under this act
- All sums received by SEBI from sources decided upon by CG

FYI: uls 15JA, "Penalties" recd by SEBI are to be credited to the "Consolidated Fund of India."

Fund shall be applied for

- Salary, allowance and other remuneration of the members / employees of SEBI
- Expenses to discharge its functions uls 11
- Expenses on purpose and objects authorised under this act

(21) SECTION 15: Accounts & Audit

ACCOUNTS

SEBI shall maintain proper Alc & relevant records and prepare an annual statement of accounts in such form prescribed by "CG in consultation with CAG of India"

AUDIT

Accounts shall be audited by CAG at such intervals specified by CAG.
Audit fees & expenditure shall be payable by SEBI

SEBI → must forward certified Alc & audit report to → CG → CG shall cause it to be laid before → Both houses of parliament (L & R)

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(22) Penalties:

SEC	OFFENCES	PENALTY
15A	Failure to: • Maintain books of accounts / records • Furnish any doc / return / report to SEBI • File return or furnish info to SEBI within the time specified in regulations	Minimum 1 LAKH ↓ MAY EXTEND TO 1 LAKH PER DAY OF CONTINUED FAILURE ↓ Maximum 1 crore
15B	IF any person registered as intermediary is required to enter into an agreement with clients & it fails to do so	
15C	IF any listed co. or a person registered as intermediary, after being called upon by SEBI in writing, to redress grievances of investors within specified time, fails to do so	↓ Same penalty for section 15A/B/C/D/E and 15F(b)
15D	• IF a person is required to obtain registration from SEBI under this act/ rules / reg^{n} for sponsoring / carrying on any CIS including MF, and the person does it without obtaining RC • A person registered with SEBI as CIS / MF fails to: - comply with T&C of RC - make an application for listing of its schemes as provided in regulations that govern listing - dispatch unit certificates of any scheme as per regulations governing dispatch - refund applic^{n} monies paid by investor within prescribed time - invest the collected money in the manner / within time prescribed in regulations	

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15E	When an Amc (asset mgmt co.) of a MF registered under this act, fails to comply with any regulations regarding restrictions on activities of AMCs	
15F	IF a person registered as stock broker: a] Fails to issue contract notes in form & manner specified by stock exchange	min: 1 LAKH Max: upto amt of contract note
	b] Fails to deliver a security / make payment due to investors in the manner and time specified in regulations	min: 1 LAKH Extends upto: 1 LAKH per day max: 1 crore
	c] Charges an amount of brokerage in excess of brokerage specified in regulations	min: 1 LAKH max: 5 times the amount of excess brokerage
15G	Penalty for insider trading: IF any insider: • Deals in securities of a body corp listed on any stock exchange on basis of any unpublished price-sensitive info, either on his own or on behalf of other person • Communicates unpublished price-sensitive info to any person, with / without being requested [Except if required in ordinary course of biz or law → eg. whistleblowing] • Counsels or procures for any person to deal in any securities of body corp on the basis of unpublished price sensitive info	min: 10 LAKH Max: Higher of ↑ 25 crores (or) 3 x Profit made from insider trading
15HA	IF a person indulges in fraudulent or unfair trade practices [FYI → eg. Pump & dump]	same as above but min = 5L & not 10L

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15H	IF a person, who is required under this act / rules / reg^n made thereunder, fails to • Disclose his aggregate shareholding in the body corp before he acquires any shares of that body corp • Make public announcement to acquire shares @ a minimum price • Make a public offer by sending 'Letter of offer' to shareholders of that co. • Make payment of consideration to the shareholders who sold shares pursuant to above mentioned 'Letter of offer'	same as of sec 15G i.e. insider trading min: 10L max: Higher of: ↑ 25 cr (or) 3x profit made from such failure
15HB	Violation of this act / rules / reg^n or a direction of SEBI for which no separate penalty is provided	min: 1 LAKH max: 1 crore

NOTE: Sec 15F = controversial → Bare act has typo-error and May'20 study material has used incorrect amounts So, wait for an amendment / correction.

(23) SECTION 15-I: Power to adjudicate

- To adjudge penalty uls 15A to 15HB, SEBI shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer (A.O.)
- AO holds inquiry after giving ROBHd to the concerned person
- Powers of AO during inquiry
  - Summon & Enforce attendance of any person to collect evidence
  - Require production and discovery of books / docs
- After Inquiry, if he is satisfied that the person has violated any section from 15A to 15HB, then he may impose any such penalty as he deems fit

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- SEBI may call for & examine the record of any proceeding & if it considers that order passed by AO is erroneous to the extent it is not in the interest of securities market, then:

SEBI → conducts inquiry → gives ROBHd to concerned person → Passes an order enhancing the quantum of penalty

Within ↓ 3 m from date of AO's order, or disposal of appeal uls 15T (whichever is earlier)

(24) SECTION 15J: Factors to be taken into account by the AO while adjudging quantum of penalty uls 15-I:

- Amt of disproportionate gain / unfair advantage wherever quantifiable
- Amt of loss caused to investor / group of investors
- Repetitive nature of default

(25) SECTION 15JA: All penalties realised → credited to the consolidated fund of India

(26) SECTION 15JB: Settlement of administrative or civil proceedings → {PAY & GET RID OF PROCEEDINGS}

- Any person against whom proceedings have been / may be initiated under section:
  - 11 (Powers & functions of SEBI)
  - 11B (directions of SEBI)
  - 11D (Cease & desist)
  - 12(3) (SEBI cancels or suspends the RC)
  - 15-I (penalties)

may file an application in writing to SEBI proposing settlement

- SEBI may consider the nature / gravity / impact of defaults & then agree for settlement on payment of a "sum", determined by SEBI, and settle proceedings initiated / to be initiated

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- DEFAULTER —Applies to→ SEBI —Accepts & sends order→ DEFAULTER
  ↓
  cant appeal u/s 15-T

(27) SECTION 15K: Establishment of Appellate Tribunals
↓
CG shall establish ⇒ "Securities Appellate Tribunals (SAT)" to exercise jurisdiction, powers & authority under this act / other law for the time being in force.

(28) SECTION 15L: Composition of SAT

- The SAT shall consist of a Presiding Officer (PO) and such number of Judicial members (JM) & Technical members (TM) as determined by CG
- Jurisdiction of SAT shall be exercised by 'Benches'
- Benches shall ordinarily sit @ Mumbai & may also sit at other places as CG may notify after consulting PO.
- Composition of a Bench → PO, JM, TM
- A BENCH
  shall be constituted by PO
  ∴ 1PO, ≥1JM, ≥1TM ⟹ with ≥2 JM/TM as PO deems fit but it should consist of ≥1JM AND ≥1TM
- PO can transfer JM/TM from 1 Bench to another.

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(29) SECTION 15 M: Qualification for appointment of PO/JM/TM

The person is / has been:

- SC Judge / HC chief justice / HC Judge (≥ 7y) ⇓ For (PO)
- HC Judge for ≥ 5y ⇓ For (JM)
- Secretary / Addnl Sec in dept / ministry of CG or equivalent post in CG/SG, (OR) Is a person of proven ability, integrity, standing, having special knowledge & experience of ≥ 15y in financial sector (sec mkt / pension funds / commodity derivatives / insurance) ⇓ For (TM)

(30) SECTION 15 MA: Appointment of PO & JM

⇓

By CG in consultation with CJI (chief justice of India) or his nominee

(31) SECTION 15 MB: Appointment of TM

⇓

By CG on recommendation of "Search-cum-selection" committee

Chairperson	member	member	member
↓	↓	↓	↓
PO of SAT	Secretary of Dept of Eco Affairs (DEA)	Secretary of Dept of Fin Services (DFS)	Secretary of legislative dept (LD) (or) of Dept of legal affairs (DLA)

⇓

= Also the convener of the SCS committee

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(32) SECTION 15 MC : Validity of appointment of PO & members

- No appointment of PO/JM/TM of SAT shall be invalid merely by reasons of vacancy/defect in constitution of the SCS committee.
- Any member or part time member of "SEBI / IRDA / PFRDA" or a person @ senior mgmt level ≈ Executive director in SEBI / IRDA / PFRDA ⟹ "CANT BE APPOINTED" AS PO/JM/TM of SAT during his service or within 2 yrs from date on which he ceases to hold office in SEBI/IRDA/PFRDA

eg. 1/4/2020 (member of SEBI) —— 31/3/23 (Quit SEBI) —— 2 yrs —— 30/3/25 } 31/3/25 or after 31/3/25 (Can Join SAT ✓)

IRDA → Insurance regulatory & development authority
PFRDA → Pension fund " " "

(33) SECTION 15 N : Tenure of PO/JM/TM

Tenure = 5 yrs | Reappointment for another term → max 5 yrs | Cant hold office on attaining age of 70 years

1/4/2019 → 31/3/24 (1st term) ⟹ can be re-app ✓ → HBD - Age 67 → will have to quit on 31/3/27

(34) SECTION 15-O : Salary, allowance, T&C of service including pension, gratuity etc. of PO/JM/TM shall be as may be prescribed and shall not be varied to their disadvantage after appointment

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(35) SECTION 15P: Filling up vacancies

For reasons other than temporary absence
↓
CG shall appoint another person, as per provisions of this act, to fill the vacancy & proceedings will be continued thereafter

When vacancy is due to death resignation / otherwise in office of the "PO"
↓
The senior-most member (JM) of SAT shall act as PO until CG appoints new PO

(36) SECTION 15Q: Resignation & Removal

- **RESIGNATION** → PO/JM/TM shall resign by sending notice in writing to the CG. He can hold office upto:

Earlier of:
1. Expiry of 3 months from receipt of notice
2. Appointment of his successor
3. Expiry of that PO/JM/TM's term of office

Exception: He can relinquish sooner only if permitted by CG

- **REMOVAL** → CG may, after an inquiry made by a SC-Judge, remove PO/JM/TM if he:

CG can remove without ROBHd:
- is/has been adjudged as insolvent at any time
- has become physically / mentally incapable of acting as PO/JM/TM
- has been of offence involving moral turpitude

ROBHd mandatory:
- has abused his position and his continuance is detrimental to public int.
- has acquired such financial or other int that is likely to affect his functions as PO/JM/TM

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(37) SECTION 15 R : Orders constituting SAT to be final & not to invalidate its proceedings

- No order of CG appointing any person as PO/JM/TM shall be questioned in any manner
- No action / proceeding before SAT shall be called in question in any manner merely on grounds of defect in its constitution

(38) SECTION 15-S : Staff of SAT

- CG shall provide officers & employees to SAT
- They shall discharge duties under PO's superintendence
- Salary, Allowance, T&C of employmt (as may be prescribed)

(39) SECTION 15 U : Procedure & Powers of SAT

- PROCEDURE
  - SAT shall not be bound by procedure laid under CPC 1908
  - It shall be guided by the principles of nature justice & shall regulate own procedure
- Powers → same as those of a civil court under CPC 1908 [shortcut → $S_2 R_3$ DI or मादी from PMLA sec. 35]
- Every proceeding before SAT → deemed to be judicial proceeding & SAT → deemed to be a civil court
- The PO may make provisions for distribution of business (i.e. cases) amongst benches. PO may transfer a pending case from 1 Bench to another, either own his own motion or on application by any party & hearing parties.
- Same as PMLA sec. 38 → decision by majority & in case a bench has '2' members & they differ in opinion,
  ↳ refer it to PO → PO hears / refers it to other member/s
  New Majority is formed!!

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(40) SECTION 15 V : Right to legal representation

Appellant can either appear in person (or) Authorise ≥1 CA/CS/CMA/Legal practitioners or its officers to present its case @ SAT

(41) SECTION 15 X : PO/JM/TM/staff of SAT shall be deemed to be public servants within the meaning uls 21 of IPC

(42) SECTION 15 Y : No civil court shall have jurisdiction to entertain any suit/proceeding in respect of which SAT or Adjudicating Officer (AO) is empowered under this act.
No injunction/stay shall be granted by any court/authority in respect of an action in pursuance of powers under this act

(43) SECTION 15 T & 15 Z : Appeals

Person aggrieved by any order made by
- SEBI [on/after the commencement of Securities laws (second amendment) act 1999] under this Act/rules/reg^n made thereunder
- Adjudicating officer under this act
- IRDA, PFRDA

→ SAT → SC

shall appeal within (45 d.) from receipt of order of SEBI/AO/IRDA/PFRDA + (Ext^n) if reasons are sufficient

* not High court *

appeal within (60 days) + Ext^n of further (60 days)

- SAT shall give ROBHd to parties, pass apt orders like confirming/modifying/setting aside original order and forward order to appellant & SEBI/AO/IRDA/PFRDA as the case may be
- SAT shall dispose appeals as expeditiously as possible & shall endeavor to dispose it of within (6 months) from recpt of appeal

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- An appeal against SAT's order can be filed @ Supreme court within 60 d. (+60 d. ext^{n}) only on QUESTION OF LAW arising out of such order.

FYI: Question of {Fact} v/s Question of {law}

Based on truth / fact	Based on legal interpretation
eg. Did A & B enter into an agreement?	eg. If a property is transferred without agreement, then is the title good?
eg. Did sign of Mr. A match his other signs?	eg. Does the agreement become invalid / illegal without sign?

(44) SECTION 16: Power of CG to issue directions to SEBI in writing & SEBI shall be given an opportunity to express its views before a direction is given

(45) SECTION 17: Power of CG to supersede SEBI

- If CG is of the opinion that SEBI is unable to perform its function, then it may, by notification, supercede the SEBI for a period not exceeding 6 months (≤ 6 m)
- CG may supercede if:
  - on account of grave emergency, SEBI cant discharge func^{n} & duties
  - SEBI has made a default in complying with CG's directions
  - There is default in discharge of func^{n} & duties & so the financial position or administration of SEBI is deteriorated
  - Necessary to do so, in the public interest
- Effect of publication of notification of superceding SEBI:
  - All members shall vacate offices from date of supersession
  - All powers / func^{n} shall be exercised by such persons as CG may direct {until SEBI is reconstituted}
  - Property owned or controlled by SEBI shall vest in the CG

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- Reconstitution of SEBI on expiry of period of supersession:

On expiry of period specified in Notification, CG may reconstitute SEBI by fresh appointments

In such cases, any persons who vacated their offices shall not be deemed to be disqualified for appointment

⇓

(i.e. old members can be appointed again ✓)

- CG shall issue a notification for supersession. The notification, full report of actions taken & circumstances leading to such action shall be laid before both houses of parliament at the earliest (ASAP)

(46) SECTION 18: Returns & Reports

- SEBI → CG

Furnish (returns), statements particulars regarding any proposed / existing program for promotion & developmt of securities market as required by CG

- SEBI → CG → laid before → Both houses of parliament (L & R)

Submit (report) within 90 d. from end of each F.Y. giving true & full A/c of its activities, policies & programs

FYI: only report has to be laid

(47) SECTION 19: Appeal

Aggrieved person → CG

(against SEBI's order passed before commencement of Securities laws (Second Amendment) Act 1999

(appeal within a prescribed time + Extⁿ ✓)

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(48) SECTION 20A : Bar of jurisdiction

→ same = section 15Y. [read SAT as SEBI]

→ same = section 15X [read PO/JM/TM as members of SEBI]

(49) SECTION 22: Members / officers / employees of SEBI shall be deemed to be public servants

(50) SECTION 23: Protection of action taken in good faith

No suit / prosecution / legal proceedings shall lie against:

- CG
- SEBI
- Any officer of CG
- Any member / officer / employee of SEBI

for anything which is in good faith done / intended to be done under this act / rules / reg^n

(51) SECTION 24: OFFENCES

Without prejudice to any award of penalty by Adjudicating officer (AO) under this act, if anyone contravenes provisions of this Act / rules / reg^n

⇓

Imp ≤ 10y (or) Fine ≤ 25cr (or) Both

IF any person fails to pay penalty imposed by AO or fails to comply with his direction / order

⇓

Imp → min 1m & max 10y (or) fine ≤ 25 cr (or) Both

(52) SECTION 24A: Composition of offences [compounding]

Notwithstanding CoCrP 1973, any offence punishable under this act (other than offences punishable with "Imprisonment ONLY" or "Imprisonment and fine") may be compounded by SAT / court where proceeding is pending or is to be initiated.

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(53) SECTION 24 B: Power to grant Immunity

- On recommendation of SEBI, the CG shall grant immunity from prosecution or penalty w.r.t. alleged violation, if it is satisfied the accused person has made full disclosure in respect of the alleged violation
- Exception → Immunity cant be granted if proceedings for prosecution have been instituted before date of receipt of application for grant of immunity
- SEBI's recommendation ≠ binding on CG
- Withdrawal of immunity:

eg. helped to find some offender

CG may withdraw granted immunity

- IF a condition, on which immunity was granted, was violated
- or False evidence was given

such person shall be tried for that offence (for which immunity was given) & penalty shall be levied for it

(54) SECTION 26: No courts shall take cognizance of any offence punishable under this act / rules / reg^n except on a complaint by SEBI.

(55) SECTION 26A: Establishment of Special Courts

CG may, by notific^n, establish / designate special courts for speedy trials of offences

It shall consist of a SINGLE JUDGE appointed by CG in concurrence with HC chief justice under whose jurisdiction he shall work

Judge must be holding office of Sessions or Addnl Sessions Judge immediately before appointment

(56) SECTION 26B: Offences triable by special courts

Offences under this act can be tried at Spl Court in the area where those are committed

IF there are >1 spl courts in an area, then HC may specify one spl court

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(57) SECTION 26D: Application of CrPC 1973

- CrPC 1973 shall apply to all proceedings before special court
  - ⇓
  - Spl court → deemed to be a Sessions court
  - Person conducting prosecution → deemed to be public prosecutor
- Person conducting prosecn should be a practising advocate for ≥7 yrs (OR) should have held a post, for ≥7 yrs, under Union / state, requiring special knowledge of law

(58) SECTION 27: Offences by companies → Same → PMLA Sec. 70

(59) SECTION 28A: Recovery of amounts

- WHEN? → IF a person fails to:
  - pay penalty levied by AO
  - comply direction of SEBI to refund monies or disgorgement orders
  - pay any fees due to SEBI
- HOW? → Recovery officer appointed by SEBI may draw up a statement under his signature specifying Amount due and shall proceed to recover by ≥1 following modes:
  - Attach MP
  - Attach IP
  - Attach Bank Alc
  - Appoint receiver for mgmt of MP / IP
  - Arrest a person and detention in a prison
- Sections 220 to 227, 228A, 229, 232, Sch II & Sch III of ITA 1961 and Income tax rules 1962 shall apply for above.
- Recovery officer can seek assistance of local district administn
- Notwitstanding anything contained in any law, recovery of amount w.r.t. non-compliance of direction uls 11B shall have PRECEDENCE (priority) over any claims against a person.

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- A person's MP & IP & Bank A/c money shall also include any property / money transferred, on / after date when amount had become due, directly / indirectly to his:

Spouse | Minor child | Son's Wife | Son's minor child

↓ otherwise than for ADEQUATE CONSIDERATION

and is held by / in name of above mentioned persons only

- If minor child / son's minor child attain majority (≥18y) then too these properties shall be included in that person's property for recovery purposes.

Example: Offence committed on 1/4/2020. Offender got illegal profits & transferred those amounts to Spouse / minor child / Son's wife / Son's minor child's Accounts on / after 1/4/2020, then it can still be used in recovery

or

He used profits to purchase a 🏠 and gifted it to Spouse or sold to spouse for ₹100/- (i.e. ≠ adequate consideration) → the 🏠 can be used for recovery ✓

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SEBI (LISTING OBLIGATIONS & DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 or SEBI (LODR) Regulations, 2015

① Scope of SEBI (LODR) Reg^n:

- On 2/9/2015, the SEBI notified the LODR Reg^n with objectives:
  - To align clauses of the listing agreement & CA'2013
  - To consolidate conditions under different security - listing - agreements in one single reg^n

- REG 3 → Applicability of LODR:
  Unless otherwise specified, LODR shall apply to the listed entities that have listed any of the following on recognized stock exchanges:
  - Equity shares & convertible securities listed on main board / SME exchange / institutional trading platform
  - Non convertible debt sec, perpetual debt instrument, perpetual non-cum pref. sh., non-convertible redeemable pref. sh.
  - Indian depository receipts (IDR)
  - mutual fund units
  - Securitized debt instruments
    - ↓
    - Security receipts (SARFAESI wala)

② Key features of LODR:

A - Composition of Board [REG 17(1)]:-

- Co. must have optimum combo of Executive & Non-executive directors, with AT LEAST 50% of directors comprising of non-exec directors. Minimum age of directors = 21 Years.
- BoD shall have at least 1 INDEPENDENT WOMAN DIRECTOR:
  - By 1/4/2019 (for top 500 listed cos.)
    ↳ as per mkt cap as on 31st March of prev. year ↲
  - By 1/4/2020 (for top 1000 listed cos.)

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→ N/A to section 8 co. (NPO)

- Number of independent directors (ID) on the BOD:
  - If chairperson of BOD is a non-exec director
    - Normally → ID ≥ 1/3rd of BOD
    - If he/she is also a promoter or is related to a promoter / person occupying mgmt position at level of BOD or at one level below BOD → ID ≥ 1/2 of BOD
  - If there is no regular non-executive chairperson → ID ≥ 1/2 of BOD

- Related to a promoter (If promoter = co.) means related to:
  - directors (≠ ID) / employees / nominees (If promoter = listed co.)
  - directors / employees / nominees (If promoter = unlisted co.)

- BOD shall comprise of ≥ 6 Directors → For top 1000 listed entities (wef 1/4/19) and top 2000 listed entities (wef 1/4/20)

- A listed company having outstanding SR equity shares (Shares with superior voting rights) must have ID ≥ 1/2 of BOD

- No listed co. can appoint a person or continue directorship of any person as a NON EXECUTIVE Director who has attained the age of 75 YEARS unless
  - Special resolution is passed ✓ &
  - Explanatory statement annexed to notice indicates justification for appointing that person.

- wef 1/4/2022, top 500 listed entities shall ensure that the chairperson of BOD shall be NON EXECUTIVE Director and not be related to MD/CEO. [Relative def^n → sec 2(77) of CA'2013]

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B - Board meetings & info to be given to BOD [REG (2)] :-

The BOD shall meet ≥4 times a year. Maximum time gap between two meetings must be 120 Days

C - Quorum for BOD [REG (2A)] :-

- For top 1000 listed co. (wef 1/4/2019) & top 2000 listed co. (wef 1/4/2020), Quorum shall be:

HIGHER of ↑ 1/3rd of total directors, or 3 directors } ⟹ including ≥1 ID

- Participation by video conference or A/V means = counted ✓

D - Maximum no. of directorships [REG (17A)] :-

include alternate directorships ✓

Directors of listed entities can hold directorship in maximum:

8 Listed co.	7 Listed co.	7 Listed co.	3 Listed co.
↓	↓	↓	↓
as 'director'	as 'director'	as 'ID'	as 'ID'
↓	↓		↓
(wef 1/4/19)	(wef 1/4/20)		If he/she serves as a WTD or MD

* ID is counted as dir only

(Listed means whose 'shares' are listed) → not any other instrument

E - Restrictions on committee membership [REG 26] :-

- A person can be a member of committees in ⟹ max 10 cos.
- A person shall be chairperson of committees in ⟹ max 5 cos.
- Only 2 committees - Audit committee & Stakeholders relationship committee shall be considered for this reg^n in determining limits
- Include & count only public (listed + unlisted) co. & exclude all other cos (pvt co., foreign co., section 8 co., etc.)

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eg. Mr. A is a member of Audit committees of 9 public cos., 12 pvt cos & 1 foreign co. ⇒ NO PROBS!
eg. Mr. B is a chairperson of Audit committees of 3 listed cos., 10 section 8 companies & also a chairperson of Nomination and Remuneration committees of 3 listed cos. ⇒ NO PROBS!

F - Qualified & Independent audit committee
G - Corporate governance w.r.t. subsi of listed co. > discussed later

H - Disclosure of events / info [REG 30]:

All material disclosures should be made:

Related party transactions	A/c treatment	Risks & Risk management	Proceeds of IPO & utilization

Remuneration & apptmt of directors | MDA | Business responsibility statement

- RPT → Statement of RPT → to be laid before audit committee
- A/c treatment → non compliances → to be reported in F/s
- IPO proceeds → Disclosure of proceeds → to Audit committee & utilization → disclose quarterly during quarterly results & disclose utilization (for purposes other than those stated in prospectus / offer doc) → annually (to be certified by statutory auditors)
- Directors → Pecuniary (monetary) relation or transactions of non-exec directors with the company → disclose in annual report
- Appointment → or Reappointment → disclose to shareholders:

brief resume	expertise	cos. in which he/she is a director/committee member	their shareholding (of non-exec dir)

- Biz responsibility statement → part of annual report → make disclosure regarding steps taken from Environment, Social and Governance (ESG) perspective

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- Management Discussion & Analysis (MDA) → MDA report of the Board forms part of Annual reports. The report includes the matters like :

Industry structure and development	Opportunities and threats	Segment & product wise performance	Outlook of future
Material developments in human resources & industrial relations	Risks, Internal controls & their adequacy	Discussion on financial, operational performance	

- Website info → Quarterly results & presentations made by the company to analysts shall be put on company's website & shall be sent to the stock exchange (on which co. is listed) to be uploaded on exchange's website.

I- CEO/CFO certification :

- CEO & CFO shall certify to BOD that they have reviewed the FIs & cash flow statement & those are true to the best of their knowledge
- Certificate must be submitted annually before/at the time when annual accounts are presented to BOD
- Appointment of CFO needs prior approval of audit committee.

J- Report on corporate governance :

This report is a part of annual report and it includes information about Board of directors (composition, board meetings, attendance, etc.), Audit committee, Remuneration comm, Shareholders grievance comm (grievances recd/solved/pending, etc.), General body meetings (location & time of last 3 AGMs, postal ballots procedure, SR passed/proposed to be passed using postal ballot) & any other prescribed disclosures.

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(3) Committees: AC/NRC/SRC → for "all" listed co & RMC → for top "500" only

Particulars	Audit Committee [REG 18]	Nomination & Remuneration committee [REG 19]	Stakeholders relationship committee [REG 20]	Risk mgmt Committee [REG 21]
Composition (members)	• ⩾3 directors • ⩾2/3rd of members = ID • If co. has o/s SR shares (superior vote rights) then ALL members = ID • All members shall be financially literate & ⩾1 member shall be having A/c or FM related expertise	• ⩾3 directors • All dir = non exec • ⩾50% = ID • If co. has o/s SR shares, then ⩾2/3rd = ID	• ⩾3 directors • ⩾1 = ID • If co. has o/s SR shares, then ⩾2/3rd = ID	• Majority must be directors • Senior executives of co. shall be members • If co. has o/s SR shares, then ⩾2/3rd = ID
Chairperson of committee	CP = ID and must be present @ AGM of co. to answer SH's queries & Secretary of committee will be a company secretary (i.e. CS of co.)	Same + CP shall be allowed to choose anyone to answer SH's queries + CP of co. ≠ CP of committee, whether CP is exec / non exec dir. But CP of co. can be a member of committee ✓	CP = non exec director and must be present @ AGM of company to answer SH's queries	CP = member of BOD
Committee meetings	⩾4 times in a year and max gap bwn 2 meetings → 120 days	⩾Once a year	⩾Once a year	⩾Once a year
Quorum for meetings	↑ 2 members or ↑ 1/3rd of members (But with ⩾2 ID)	↑ 2 members or ↑ 1/3rd of members (But with ⩾1 ID	–	–

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Notes:

- Financially literate means the ability to read & understand basic FIs i.e. B/s, P/L Alc and cash flow statements
- Alc & FM expertise means to have expertise / professional certification / experience resulting in Individual's financial sophistication including → being CEO/CFO/senior officer with financial oversight responsibilities
- Audit committee, at its discretion, shall invite finance director or head of finance, head of internal audit & a representative of statutory auditor & any other executives to be present at committee meetings. Occasionally it can meet without presence of any executives of listed co.
- Audit committee has the powers to investigate any activity, seek info from employees, obtain outside legal / professional advice & secure attendance of outsiders with relevant expertise.

* Some rules may differ from those of CA'2013
Listed companies must follow the stricter one → LODR!

(4) REG 6: Compliance officer & his obligations

Every listed entity shall appoint a Qualified Company Secretary as the compliance officer. He/she shall be responsible for:-

Ensuring the compliances of regulatory provisions	Co-ordination with & reporting to BOD, RSE & depositories	Ensuring correct procedures have been followed that would result in correct info & reports filed by the co.	Monitoring email-id of grievance redressal division of co.

* Above reg^n → N/A in case of MF units listed on RSE since it is governed by SEBI (MF) Reg^n, 1996.

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⑤ REG 7: Share transfer agent

The listed entities shall appoint a share transfer agent or it can manage share transfer facility in house.

FYI: Registrar & share transfer agents (RTA) are responsible for maintaining records of transactions → eg. Substitution of name of owner when a person sells shares

⑥ Quarterly compliances:

REG	Compliance	Due date
13(3)	File a statement with RSE giving the number of investor complaints pending @ beginning of quarter, received, disposed off & pending at end of quarter.	21 days from end of quarter
27(2)	Submit quarterly compliance report on corporate governance to RSE [in a format specified by SEBI] which shall be signed by compliance officer or CEO.	15 days from end of quarter
33(3)	Submit Quarterly & "year to date" standalone financial results to RSE for all except last quarter [FYI: Year to date → 1/4/xx to Qtr end]	45 days from end of quarter Consolidated FIs also ✓ (compulsory wef 1/4/19)
31(1)	Submit a statement, showing Holding of securities & shareholding pattern separately for each class of securities, to RSE	• 21 days from end of quarter, • 1 day prior to listing, • 10 days from capital restructuring if change is >2% of PUSC

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32(1)	Submit statement of deviation/variation for IPO, rights issue, preferential issue etc • Indicating deviation, in use of funds, from purposes stated in offer document • Indicating category wise variation between projected & actual utilization of funds (eg: For Capex, Marketing, working cap, etc)	– (time limit not given)

(7) Annual compliances:

REG	Compliance	Due date
33	Financial Results: Submit annual standalone financial results + annual consolidated financial results + audit report in form A (unmodified opinion) or form B (modified opinion) + statement on impact of audit qualifications if audit report has 'modified opinion'	60 days from end of FY
34	Annual report: Submit to RSE & publish on its website:- • Copy of annual report sent to shareholders along with notice of AGM &	Not later than day of commencement of dispatch to SH
	• Revised copy of report, details and explanation, for changes, if any, in the report	Not later than 48 hours after the AGM
36	Send annual report to holder of securities	21 days before AGM

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no. of days will exclude date of intimation & date of meeting

(8) Prior intimation of board meetings to RSE:

REG	INTIMATION	Due date
29(1)	Proposal to be considered regarding Financial results (Quarterly, Annual, etc)	5 days in advance
29(2)	• Proposal for buyback, voluntary delisting • Recommendation / declaration of dividend • Fund raising by FPO (further public offering), rights, depository receipts like ADR/GDR etc., convertible securities, Debt issue, QIP (qualified institutional placemt) bonds, etc. • Declaration of bonus securities	2 WORKING Days in advance eg. Intimate (Mon) Tue Wed Thu (15th Aug) Fri (meeting)
29(3)	• Alteration in form / nature of listed securities or in rights of holders • Alteration in date of interest payments of bonds / debentures	11 WORKING Days in advance
42(2)	Notice of 'record date' & its purpose: • Normally (eg. div, bonus, buy back, etc.)	7 WORKING Days in advance
	• For rights issue	3 WORKING Days in advance

(9) Other intimations to RSE:

42(3)	Recommend / declare dividend / cash bonus	5 WORKING Days before record date
46(3)	Update any changes in contents of its website	WITHIN 2 WORKING days of such change

FYI → record date is the date on which whoever is the SH will be entitled to div/ bonus / rights etc.

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(10) REG 24: Corp Governance requirement w.r.t. subsidiary of a listed entity:

- ≥1 ID from BOD of listed entity —shall be→ Director on BOD of material unlisted subsidiary, whether incorporated in India or not

⇓

* Material = if that Subsidiary's income or NW exceeds (20%) of the consolidated income or NW

- Management of the unlisted subsidiary shall periodically notify BOD of listed entity by sending a statement of all significant transactions & arrangements entered by unlisted subsi.

* Significant → an individual transaction / arrangements whose value >10% of last accounting year's revenue / exp / assets / liabilities of that subsidiary.
* eg. Total assets (31|3|20) of subsi = 1 cr & an asset worth 11 Lakhs is purchased on 4|5|20 = SIGNIFICANT!!!

- Listed entity to dispose off investment in shares of the material subsidiary resulting in reduction of shareholding (its own or together with subsidiaries) to [<50%], or to cease the exercise of control over subsi:

Normally ⇓ Not allowed	By passing (SR) in SH meeting ⇓ Allowed ✓	Under a scheme of any arrangement approved by court or tribunal (OR) under resolution plan approved u/s 31 of IBC 2016 ⇓ If disclosed to RSE within 1 day of plan's approval ⇓ Freely allowed ✓

- Listed entity to sell / lease / dispose of assets of Mat subsi amounting to [>20%] of assets of mat subsi on an aggt basis during a FY

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THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999
(FEMA, 1999 → 6 marks)

① Introduction:

Globalisation ⟹ Cross Border trade ⟹ Capital flows ⇓

FEMA '1999 ⟸ Need to manage ⟸ Foreign inflows in India

- **Preamble:** To consolidate & amend laws relating to foreign exchange with the objective of:
  - Facilitating external trade & payments
  - & Promoting the development & maintenance of forex market in India

- **Section 1:** FEMA 1999 extends to:
  - Whole of INDIA
  - All branches, offices, agencies outside India controlled by PRI (Person Resident in India)
  - Contraventions committed outside India by anyone to whom FEMA applies

② Residential Status of a person:

- **PERSON:** Individual, HUF, Co., Firm, AOP / BOI (whether incorporated or not), AJP, any branch / office / agency controlled by them.

- **Residential Status:** Either PRI or PROI
  - Citizenship ✗
  - Incorporation ✓
  - Days of residence in INDIA ✓

★ Interpretations have changed from MAY '20 onwards ★

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- Determining Residential Status (PRI definition):

Person residing in India for >182 d. during preceding Financial year
- Normally → PRI
- Exceptions → PROI
  - Person going out of Indid or stays outside INDIA for: taking up employment / carrying on biz / vocation / any purpose indicating his intention to stay for an UNCERTAIN period → in current FY
  - Person who has come to or stays IN INDIA otherwise than for: taking up employment / carrying on biz / vocation / any purpose indicating his intention to stay for an UNCERTAIN period → in current FY

Person registered or incorp in INDIA → PRI

Office / branch / agency
- in India → owned / controlled by PROI → PRI
- ols India → owned / controlled by PRI → PRI

★ Mantra → Employment / Biz / Voc^n / uncertain period stay jahaan ka, resident wahaan ka !!!

★ Examples for all points: Assume this is FY 20-21:

- Resides in India >182 d. in FY 19-20 ⇒ PRI wef 1/4/20
- Resides in India >182 d. in FY 19-20 and goes outside India on 1st June 2020 for:
  - Employment / Biz / Voc^n in USA (for any period) ⇓
  - (or) visiting his family in UK for uncertain period

⇓

PRI 1/4/20 - 1/6/20
PROI 2/6/20 onwards

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- Resides in India >182 d. in FY 19-20 and leaves India, for employment in USA, on 1/12/19 and comes to India on 2/7/20 for purpose:

≠ Emp ≠ Biz ≠ Vocⁿ ≠ for uncertain period

2/12/19 - 1/7/20 ⇒ PROI
2/7/20 onwards ⇒ PROI

- In the above eg., if he comes to India on 2/7/20 for:

Emp / Biz / Vocⁿ / any purpose indicating his intention to stay for uncertain no. of days
(for any no. of days)

2/12/19 - 1/7/20 ⇒ PROI
2/7/20 onwards ⇒ PRI

- RIL Ltd. incorporated in India has 98% income from sales in USA ⇒ PRI

- A co. (India) → controls → B co. (Dubai) → controls → C co. (USA)
  - A co. (India) → PRI
  - B co. (Dubai) → PRI
  - C co. (USA) → PRI

- A co.'s branch located in London → PRI
- PROI company's branch in India → PRI

★What about "upto 182 days" in India in last FY?

Normally → PROI

Comes to India in current FY for Emp / Biz / Vocⁿ / uncertain period → PRI as per RBI circular

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Example: Mrs. A stayed in USA in FY 19-20 and came to India on 1/4/2020 → for employment

⇓

PRI wef 1/4/2020

★ NOTES:

- RBI circular no. 45 of 2003:

Mr. A resides for >182 d. in India last year and leaves India on 1/8/20 for pursuing higher studies in USA.

Normally if he goes for empl biz etc. ↓ Then only he is PROI	As per RBI circular, students will be considered as PROI since they start working there to take care of studies & stay costs

- Case study of AIR-HOSTESS:

She is employed by British Airways (Head office → UK). She flies 12 days a month & takes break for 18 days. During her break, she is accomodated at Mumbai, which made her stay >182 d. in that year, in India.

She will be PROI next year since she stayed in Mumbai while she was EMPLOYED by British Airways. She did not come to India for taking up employment.

Also, when she was accomodated in Mumbai, it was due to her job requirements and it should be called as 'STAY' in India and not 'RESIDE' in India.

IF Mumbai branch of British Airways had employed her, then she would've been PRI.

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③ SECTION 3: Dealing in Forex / Foreign security etc.

Save as otherwise specified in this act / rules / regulations, No person shall:

Deal with / transfer forex or foreign security to any person ≠ Authorised person	eg. PROI came to India and sold $1000 to friend ↳ VIOLATION ✓
Make payment to or for the credit of or on behalf of PROI	eg. PRI pays insurance premium for PROI sister ↳ VIOLATION ✓
Receive any payment from anyone other than an authorised person	eg. Restaurant accepted $45 from foreign tourist ↳ VIOLATION ✓
Enter into financial trans° IN INDIA as consideration for, or in association / creation / trfr of rights to acquire any asset OUTSIDE INDIA by any person	eg. Mr. A paid ₹75000 to Indian agent, who in turn asked American agent to pay $1000 to Mr. A's bro in USA (= HAWALA) ↳ VIOLATION ✓

Authorised Person = Authorised by RBI uls 10

- Authorised Dealer
- money changer
- Offshore banking unit (OBO)

eg. Banks, Hotels, Tour agents, etc.

④ SECTION 4: Holding of Forex

Save as provided elswhere in this act / rules / regulations, PRI cannot acquire / own / hold / trfr

- Forex
- Foreign Security
- Immov property ols India

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(5) SECTION 8: Realisation & Repatriation of Forex

If any Forex is due / has accrued to PRI, then PRI shall take steps to REALISE & REPATRIATE such forex to India within the period & manner specified by RBI.

(6) SECTION 9: Exemption from realisation & repatriation

SEC 4 & 8 shall not apply to:

- Possession of forex or foreign coins upto a limit
- Foreign currency account upto a limit
- Forex acquired or recd before 8/7/1947 held o/s India & any income accrued on it
- Forex held by a PRI upto a limit, if such forex was acquired by Gift / inheritance from above-mentioned person & income accrued on it
- Forex acquired from biz. / trade / vocation / services / gifts / honorarium / inheritence or any legitimate means upto a limit

All limits → specified by RBI → not in syllabus!

(7) SEC 5: Current Account Transactions

- Any person may sell / buy forex to / from an Authorised Person if such sale / drawal = current A/c transaction
- SEC 2 → Current A/c transaction: It is a transaction (≠ capital transaction) that includes (but not limited to):
  - Payment wrt foreign trade, biz, interest on loan or income on investments
  - Payments due wrt foreign edu, travel and medical care of → self / spouse / kids / parents
  - Remittances for living expenses of ↓ self / spouse / kids / parents
  - short term bank / credit facility in ordinary course of biz.

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⑧ Restrictions under FEM (Current Account Transaction) Rules, 2000:

Schedule - I	Schedule - II	Schedule - III
↓	↓	↓
Prohibited	Prior approval of CG	Prior approval of RBI
↓	↓	↓
3 payments [CCC] 5 remittances [DRILL]	[CAF - IMP - CPT]	[V - STEMMED]

A] Schedule I: Drawal of forex is prohibited for -

Remittance

- of Dividend by co. to whom dividend balancing applies
- of Interest income on funds held in NRSR scheme A/c
- for purch of Lottery tickets, banned magazine, football pools, sweepstakes etc.
- of Racing / Riding incomes
- out of Lottery winnings

Payment

- related to Call Back services
- of commission on exports made towards equity investmt / WOS / Joint Venture abroad of an Indian co. [Export = allowed ↙ ↙ Commiss^n = prohibited]
- of commission on exports under the RSCR [Exception: Commiss^n upto 10% of invoice value = ALLOWED for export of tea & tobacco]

FYI:
NRSR = Non resident special rupee A/c
RSCR = Rupee State Credit Route
Sweepstakes = lottery contests where winners get products / goods

★ Drawal of forex = prohibited (Rupee can be used for all above transactions ↙)

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B] Schedule II: CG's prior approval is needed for

Transaction	Approval of
C- Cultural Tours	Ministry of Human Resource Development, Dept of Education & Culture
A- Advertisement in foreign print media for purposes, other than promotion of Tourism / Foreign Investments / International bidding, by SG and its PSU (only if amt exceeds $ 10000)	Ministry of Finance, Dept of Economic Affairs → "Print" only (other modes are freely allowed)
F- Remittance of freight of vessel chartered by PSU	Ministry of Surface transport (Chartering wing)
I- Payment of import through ocean transport by PSU or Govt dept on CIF basis (≠ FOB or FAS)	"
M- Multimodal transport operators making remittance to their agents abroad	RC needed from Director general of shipping (DGS)
P- Remittance for membership of Protection & Indemnity (P&I) club	Ministry of Finance (Insurance division)
C- Remittance of Container Detention charges exceeding rate prescribed by DGS	Ministry of Surface transport (DGS)
P- Remittance of Prize money / sponsorship of sports activity abroad, by persons other than International / National / state level sports-bodies (If amt exceeds $ 100,000)	Ministry of Human resource development (Dept of youth affairs & sports)

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T- Remittance of hiring charges of Transponders by TV channels & Internet service providers (ISP)	Ministry of Information & Broadcasting (TV) Ministry of communic^n & IT (for ISP)

C] Schedule III - RBI's prior approval needed for:

Facilities for Individuals → [V - STEMMED]

≠ Individuals → [D C_2 P]

→ For Individuals: They can draw {upto $ 2,50,000 p.a.} freely for V-STEMMED & other current A/c transactions (not covered in sch I & II) under LIBERALISED REMITTANCE SCHEME (LRS). Drawal > $ 250000 shall need RBI's prior approval. In 3 cases (S, E_1, M_1) drawal can be > 250000* without RBI approval.

V- Private Visit to any country (≠ Nepal / Bhutan)
S- Studies abroad
T- Travel for biz, attending conference / training, Medical exp, check-up abroad or accompanying as attendant to a patient going abroad for a medical treatment / check-up
E_1- Emigration (to settle abroad)
M_1- Medical treatment abroad
M_2- Maintenance of close relatives abroad
E_2- Employment abroad
D- Donation / Gift
& Any other curr A/c transac^n (other than sch I & II)

* For S, E_1, M_1 → Individuals can draw > $ 250000 without RBI's approval if REQUIRED BY UNIVERSITY (for S), EMIGRATION COUNTRY (for E_1) and MEDICAL INSTITUTE OFFERING TREATMENT (for M_1).

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* A person resident but not permanently resident in India

Who is citizen of a foreign state (≠ PAKISTAN) ⇓ may make remittance of an amt upto net salary (after tax / PF / deductions) freely ✓

or

Who is citizen of India who is on deputation to an office / branch of F co. or subsi / JV of F co. in INDIA ⟸

* Person resident but not permanently resident in INDIA is a person who is resident on account of:

His employment / deputation of a 'specified duration'

or

His specific job or any assignment whose duration ≤ 3 years

* A person (≠ Individual) may avail forex facility under LRS as per above limits for abovementioned purposes.

→ Facilities for persons other than Individuals: The following shall require RBI's prior approval- [DC₂P]

	Amounts Exceeding:
D- Donations for: • Creation of chairs in reputed educational institutes • Contri to fund (≠ inv fund) promoted by edu institutes • Contri to technical institute / body in field of donor co.'s activity	1% of forex earnings during last 3 FY (or) ↓USD 50 LAKHS
C_1- Commission to agents abroad for sale of resi flats / comm plots in INDIA → limit "per transaction"	↑USD 25000 (or) 5% of inward remittance (SP)
C_2- Consultancy service fee for: • Infra project → • Other projects / other consultancy → (service = procured from abroad)	USD 100L per project USD 10 L per project

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P- Remittance by an entity in India by way of reimbursement of Pre-incorporation expenses	↑5% of investment brought to INDIA (or) USD 1 LAKH

* Exemption for Sch III payments → If a person is on a visit abroad, the he can incurr it freely using an INTERNATIONAL CREDIT CARD ✓

* Exemption for Sch II & III payments:

- Remitted from (RFC) Account → no approvals needed
- Remitted from (EEFC) Account
  - for Sch II (P&I club) and Sch III (C, i.e. commission & P i.e. pre-incorp exp)
  - other payments → no approvals needed

(9) SEC 6: Capital Account Transactions -

- A person may sell / draw forex to / from an Authorised person for capital account transactions.
- CG / RBI may place any conditions / restrictions on above
- PRI may hold / own / trfr foreign currency / foreign sec / Immov prop outside India if it was:
  - Acquired / held / owned by that person when he was PROI
  - Inherited from PROI
- PROI may hold / own / trfr Indian currency / Indian sec / Immov prop in India if it was:
  - Acquired / held / owned by that person when he was PRI
  - Inherited from PRI

FYI: RFC A/c = Resident foreign Currency A/c
~~ EEFC A/c = Exchange Earners Foreign Currency A/c

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- SEC 2 → What is a capital A/c transaction?

Any transaction which:

- alters assets, liabilities, contingent liabilities outside India → of PRI
- alters assets & liabilities in India → of PROI

- SEC 6 → Transactions which can be carried out freely i.e. without restrictions:
  - Amortisation of loan
  - Repayment of loan instalments
  - Depre of direct investmt in ordinary course of business

(10) FEM (Permissible Capital Account Transactions) Regulations, 2000:

- SCHEDULE I → Permissible transac^n by PRI
- SCHEDULE II → Permissible transac^n by PROI
- REG 4 → Prohibited transac^n

SCH I (for PRI)	SCH II (for PROI)
Invest in foreign securities	Invest in securities of Indian body corp or in capital of firm / association in India
Trfr of immov prop o/s India	Acq^n / Trfr of immov prop in India
Guarantee in favour of PROI	Guarantee in favour of PRI
Export / Import / Hold currency	Export / Import currency
Loan / overdraft to / from PROI	Deposits between PRI & PROI
Foreign currency loan raised in India / Abroad	

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Maintenance of foreign currency A/c in India & outside India	Maintenance of foreign currency A/c in India
Remittance, outside India, of capital assets	Remittance, outside India, of capital assets
Undertake derivative contracts	Undertake derivative contracts
Taking out Insurance policy from insurance co. outside India	-

REG 4 : Prohibitions

A] for PRI (Individuals):

- Cap A/c Schedule I → max $ 250000 pa
- Curr A/c Schedule III → max $ 250000 pa

(>$ 2.5L needs RBI Approval)

- Cap A/c Sch I ⊕ Curr A/c Sch III = max $ 250000 pa
- Drawal of forex for cap A/c transac^n upto $ 250000 cannot be remitted directly / indirectly to "Non co-operative countries" declared by Financial Action Task Force (FATF)

↘ FYI: KOREA, IRAN

B] PROI cannot make investment in India in any co., firm, etc. which is engaged or proposes to engage in:

Trading in TDRs	Real Estate's biz or construc^n of farmhouses	Agri or plantation activities	Nidhi co.	Chit Fund biz.

(Shortcut = TRANC)

C] PRI cannot undertake capital A/c transac^n with a person / entity of Democratic People's Republic of Korea.

But for existing transactions? ⇒ close / settle / dispose it within 180 days from date of notification (7/3/2019).

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NOTES:

- For investment in Chit funds → If Registrar of chits or an officer authorised by SG can allow chit-funds to accept subscription from NRIs through Banking channel and on non-repatriation basis, without any limit.
- Real Estate biz excludes:

Development of Townships	constructⁿ of resi/comm premises, roads, bridges	SEBI registered REITs

In short, investment in above 3 by PROI = ALLOWED!

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FEMA: EXTERNAL COMMERCIAL BORROWINGS (ECB)

(1) Introduction:

Recognised non-resident (NR) entity —commercial loans $ or ₹→ Eligible resident entity

ECBs are commercial loans granted by NR to R and which must conform to parameters like:

- MAMP (minimum avg maturity period)
- Permitted / Prohibited End uses
- Max AIC (AU in cost) etc.

(2) ECB framework as per RBI FED master Direction no. 5 / 2018-19 shall be the regulation to be complied with.

(3) Parameters	Foreign Currency (FCY) denominated ECB	INR denominated ECB
A. Currency of Borrowing	Any freely convertible foreign currency	Indian Rupee (INR)
B. Forms of ECB	Loans, Bank loans, Floating / fixed rate notes / bonds / deb (≠ fully & compulsorily convertible instrument)	Loans, Bank loans, Floating / Fixed rate notes / bonds / deb / preference shares (≠ fully & comp conv. instrument)
	Trade credits (>3yrs)	Trade cr (>3 yrs)
	Financial lease	Financial lease
	Foreign Currency Conv. Bonds (FCCBs)	Plain Vanilla RDBs (Rupee denominated Bond) issued overseas placed privately or listed on exchanges
	Foreign Currency Exchangeable Bonds (FCEBs)	

(FYI)
- FCCB - convertible to issuer's shares
- FCEB - exchangeable for a company's shares (≠ issuer's shares)
- Vanilla = no convertible/ call / put option

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	FCY	INR
C. Eligible Borrowers	• Entities eligible to receive FDI • Port Trusts • SEZ Units • SIDBI • EXIM Bank of India	• Entities eligible to raise FCY ECB • Registered entities in MICRO-FINANCE activities like - Not for profit co., Registered trusts / societies / co-operatives, NGOs.
D. Change of currency	Change of denomination from one freely convertible foreign currency to other, or to INR is permitted	Not allowed
E. Which exchange rate is to be used for above?	• As on date on which agreement for such change is entered (or) • At a rate lesser than above if consented by lender	N/A

(4) HEDGING:

FCY ECB repayment is in FOREX.
INR ECB repayment is in Rupee.

NR → R

(For NR, forex = INR)
∴ It will hedge receipts on INR ECB settlement

(For R, forex = $/£/€...)
∴ It will hedge payments to be made on FCY ECB

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* Types of Hedging

Financial Hedge ↓

Resident has to pay forex so it can use derivatives like fwd / fut / options etc. to protect itself from the appreciation of $, etc.

Natural Hedge ↓

When a resident's revenue itself is earned in forex (eg. Exports business)

* Rules for overseas investors (LENDER NR) to hedge their Rupee exposure:

Allowed to hedge by using permitted derivative products with Authorised Dealer (AD) Category I Banks in India

Can also access domestic markets through an Indian Bank's abroad branch / subsi or through Foreign Bank's Indian branch

* Rules for Resident Entities (Borrowers) to hedge forex exposure:

Follow hedging guidelines issued by sectoral regulators

for Infrastructure Space companies:

- BOD approved risk mgmt policy must be adopted
- Hedge 70% of ECB exposure if avg maturity is < 5 Yrs
- Designated AD CAT I Bank shall verify 70% requirement & report to RBI via FORM ECB-2

FYI:
Infra Space co → Any co. in infra sector (eg. L&T), NBFCs undertaking infra financing, Core investmt cos. undertaking infra financing, etc.
* Also includes Exploration, mining & refinery biz.

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* Operational aspects w.r.t. hedging to be ensured:

COVERAGE	TENOR, ROLLOVER	NATURAL HEDGE
Financial hedge by borrower, i.e., Resident entity must cover Coupon + Princi payments & must start from the day the liab is created.	Minimum tenor for financial hedge must be 1 YEAR with periodic ROLLOVER ensuring that ECB must not be unhedged at any time	Natural hedge will be considered to the extent of "Projected CF or revenue in matching currency LESS projected outflows in that currency"

FYI: Rollover means 'renewal'

⇓

0 ——— 1 ——— 2 ——— & so on...

Enter fwd | End fwd, Enter new fwd | End fwd, Enter new fwd

(5) Recognized lenders:

Must be a resident of FATF/IOSCO compliant country	IF not a resident, still:		
	Multilateral/ Regional FI where India is member country ↓ ALLOWED (eg. IMF, World Bank)	Individuals who are Foreign Equity holders or subscribing to Bonds / Deben listed abroad ↓ ALLOWED	Foreign Branches/ subsi of Indian Banks can be lenders only for FCY ECB (excluding FCCB & FCEBs)

FATF → Financial Action Task Force, IOSCO → International org^n of securities commissions, FI → Financial Institutions

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* Foreign Equity Holder means any person who is:

Holding ≥ 25% Eq directly in the borrower entity	Holding ≥ 51% Eq indirectly in the borrowing entity	A Group company with common overseas parent

* NOTE: Foreign branch / subsi of Indian Bank

can be lender for FCY ECB (≠ FCCB & FCEB) ↓ (INR ECB X)	can participate as Underwriter / market maker / arranger etc for RUPEE DENOMINATED Bonds issued overseas	cannot underwrite Rupee denominated Bonds issued by that Indian Bank

⑥ MAMP → minimum Average Maturity Period:

Normally MAMP for ECBs = {3 YEARS}
IF ECB has call / put option, then it shall not be exercised before MAMP. MAMP for special cases:

CASE	MAMP
A. ECB raised by MFG co. upto $ 50 million or equivalent per FY	1 year
B. ECB raised from foreign Eq Holder for repayment of ₹ loan or for → {Working capital / General corporate purposes}	5 years
C. ECB raised from anyone ≠ B for → {Working capital / General corporate purposes} or ECB raised by NBFC for on-lending for → {Working capital / General corporate purposes}	10 years
D. ECB raised for → {Repayment of ₹ loans availed domestically for CAPEX} or ECB raised for onlending by NBFC for → {Repayment of ₹ loans availed domestically for CAPEX}	7 years
E. ECB raised for → {Repayment of ₹ loan availed domestically for ≠ CAPEX} ECB raised for onlending by NBFC for → {Repayment of ₹ loan availed domestically for ≠ CAPEX}	10 years

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for case B, C, D, E → ECB cannot be raised from foreign branch / subsi of Indian Banks.

Simplified Rules for MAMP:

CASES	From foreign equity holder	From others
1. Raised by MFG co. ≤ 50 mn $ per FY	1 y	1 y
2. For Working cap	5 y	10 y
3. For General corporate	5 y	10 y
4. for ₹ loan (CAPEX)	5 y	7 y
5. for ₹ loan (≠ CAPEX)	5 y	10 y
6. Other than 1 to 5 (eg. MFG >50 mn $)	3 y	3 y

FYI: Call / Put for Bonds → Call = right to redeem bonds earlier (Issuer has the right) & Put = right to sell the bond back to issuer before Maturity (Investor has the right

(7) All-In-Cost ceiling per annum:

Ceiling p.a. = Benchmark rate + 450 Bps (4.5%)

- FCY ECB
  - 6-month LIBOR for diff. currencies
  - or any other 6-month rate that is applicable (eg. EURIBOR)
- INR ECB
  - Yield of GOI securities of corresponding maturity

(8) Other costs (over & above AIC ceiling) like penal interest, prepayment charge, etc. for breach of covenants (T&C) cannot exceed 2% over & above the contracted interest rate on o/s Principal.

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Example → IF 6-m LIBOR = 2.5%, then max cost:

= 2.5 + 4.5 + 2 = 9%

↓ LIBOR ↓ AIC ↓ other cost

(9) Prohibited End-Uses of funds raised via ECB:

- Real Estate ↓ Except: township, SEZ constr°, industrial park, infra
- Investment in capital market
- Equity investment
- Working cap / General corp purpose / repaymt of ₹ loans / onlending for above by NBFCs

Exception: Those mentioned in cases B, C, D, E of MAMP (point no. 6th of notes) ↓ ALLOWED ✓

(10) ECB framework doesn't apply to investment in NCDs in India by registered FPIs (Foreign Portfolio Investors)

FYI: FDI = come to India & set up a biz, own assets, etc.
FPI = come to India for investing in shares, bonds, etc. (i.e. Indirect) and not to set up biz or own assets.

(11) ECB limits & leverage:

Automatic route ↓

1. Raise ECB up to ($750 million) or equivalent per FY
2. For FCY ECB raised from direct Foreign Eq Holder, the ratio of ECB Liab : Equity is upto (7:1)
   (Ratio N/A if existing o/s ECB + proposed ECB is upto $5mn)
   ↳ allowed even if > 7:1

Approval route (take RBI approval) ↓

If case doesn't fall under automatic route (eg. > $750 mn or > 7:1)

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* ECB liab (FCY) / Equity (FCY) = All o/s + proposed (from "that" FEH) / PUSC + FR + Share prem in forex (from "that" FEH)
* Use latest audited B/s figures
* Only direct FEH (who holds ≥ 25% directly in borrower) will be considered
* In short → FCY Liab (direct FEH who lends) / FCY Eq (direct FEH who lends)

(12) AUTOMATIC ROUTE	APPROVAL ROUTE
↓	↓
Approach AD category I Bank with their proposal along with filled "FORM ECB"	Approach RBI with application under "FORM ECB" for examination through AD CATEGORY I Bank
	↓
	RBI shall consider guidelines, merits, macro eco situation; Place applic" before 'EMPOWERED COMMITTEE'; consider its recomm" & take the decision.

(13) Restrictions

↓

For Indian Banks, All India Financial Inst", NBFCs

Issuing guarantee relating to ECB → NOT ALLOWED ← Investing in FCCB / FCEB

FYI: All India FI = NABARD, EXIM, NHB, SIDBI

(14) Loan Registration Number (LRN) is needed to draw-down ECB (i.e. to receive funds)

Borrower —FORM ECB with T&C of ECB (duplicate i.e. 2 copies)→ AD CAT I BANK —FWD 1 COPY→ Director, RBI, DSIM, ECB division, BKC.

↓

Grants LRN

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* DSIM → Dept of statistics & info mgmt
* Copies of loan agreement are not reqd to be submitted

(15) Changes in T&C of ECB, including reduced repayment by mutual agreement

⇓

report to DSIM via REVISED "FORM ECB" within 7 DAYS from date of change

⇓

mention all changes in it

(16) Monthly reporting of actual transactions:

Month end → submit "FORM ECB 2" to AD CAT I BANK in such a manner that it reaches DSIM within 7 DAYS from month-end

FORM ECB 2 must include changes in ECB parameters also.

FORM ECB ✓ FORM ECB 2 ✓

(17) Late Submission Fee (LSF) for delay in reporting drawdown of ECB before obtaining LRN or delay in filing returns via FORM ECB 2:

FORM	DELAY PERIOD	LSF
FORM ECB 2	upto 30 days from due date of submission (DOS)	₹ 5000
FORM ECB 2	upto 3 years from DOS	₹ 50000 pa
FORM ECB	upto 3 years from date of drawdown (DOD)	₹ 50000 pa
FORM ECB 2	Beyond 3 yrs from DOS	₹ 1 LAKH pa
FORM ECB	Beyond 3 yrs from DOD	₹ 1 LAKH pa

Pay fee through AD CAT I Bank by DD in favor of "Reserve Bank of India." Delay will be = contravention subject to compounding & adjudication u/FEMA 1999.

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(18) Parking of ECB proceeds abroad:

ECB proceeds meant for FCY expenditure can be parked (deposited) abroad till its utilization by investing in the following LIQUID ASSETS:

Deposits, Certificate of deposits issued by Bank rated not less than "AA-" (by S&P, FITCH IBCA) or "Aa3" (by Moody's)	Treasury Bills, other monetary instruments of 1 year maturity with same minimum rating ←	Deposits with foreign branch/ subsi of Indian banks abroad

(19) Parking of ECB proceeds domestically:

ECB proceeds meant for INR expenditure must be credited immediately to RUPEE ACCOUNTS with AD CAT-I Banks in India. Funds can be parked in TERM DEPOSITS with AD CAT I Banks for max 12 months cumulatively. Term deposits must be un-encumbered (not be kept collateral)

(20) Standard Operating Procedure (SOP) for Untraceable Entities (UE):

- UE → A Borrower who has raised ECB will be "UE" if

Entity / directors / Promoters / Auditors are not reachable / responsive over email / letter / phone for ≥ 2 QUARTERS with ≥ 6 documented reminders / comm.	⊕	Entity not found to be operative, at regtd office as per address with AD CAT I Bank, or during visit by AD Bank's officials or any of its agencies.	⊕	Entity has not submitted its statutory auditor's certificate for ≥ last 2 yrs.

- SOP must be followed by AD CAT I Bank in case of UE which has failed to submit returns under ECB framework (physically / electronically) for ≥ 8 QUARTERS.

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- Actions to be taken by AD CAT I BANK

File revised form ECB, if required, and last form ECB 2 without certification from CO. with 'UNTRACEABLE ENTITY" written in bold on top ↓ Liability will be written off from India's external debt amt, but lender can still recover it ✓	ED* must be informed when any entity = UE No inward remittance or debt servicing will be allowed under automatic route *ED = Directorate of Enforcement	No fresh applic° from UE can be processed

(21) Powers delegated to AD CAT-I Banks:

They can approve any requests from borrowers w.r.t. changes in ECB (Except FCCB & FCEB)	They must ensure all changes including change of borrower/ lender, transfer of ECB, etc. comply with ECB norms & are done with lender's consent

(22) The following can be done under automatic route:

Change of AD CAT I BANK	Cancellation of LRN	Refinance ECBs	Convert ECB → Eq.	Security for raising ECB

- Change of AD CAT I Bank → allowed after taking NOC from existing AD CAT I Bank
- Cancellation of LRN:

AD CAT I BANK —APPROACH→ DSIM, RBI

- only if no draw down for that LRN took place
- only if ECB 2 monthly returns till date are submitted to DSIM

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- **Refinancing of existing ECB:**
  - Borrow to repay a loan!

- Refinancing existing ECB by fresh ECB = allowed if:
  - Outstanding maturity of existing ECB is NOT REDUCED
  - AIC (fresh) < AIC (existing)
  - Borrower is eligible as per present framework of ECB

- Refinancing of ECB raised under old framework is also allowed if new ECB framework eligibility is met.
- Part refinancing is also allowed.
- Indian banks can participate in refinancing:
  - only for highly rated corporates (AAA rated) &
  - only for Maharatna / Navratna PSUs

- **Conversion of ECB to Equity:**

Matured but unpaid, or ECB not yet matured, can be converted to equity subject to following conditions:

- Activity of Borrower company is covered by automatic route for FDI, or Govt's approval is received wherever applicable as per FDI policy
- Exchange rate as on date of agreement of conversion (or) lesser rate can be applied with mutual agreemt with lender.
- Conversion should be with lender's consent without any addⁿˡ cost & without breaching FDI sectoral cap as per pricing guidelines of Govt
- Other lenders to the borrower must give consent, or at least be informed of it.
- RBI's restructuring guidelines to be followed ✓
- Partial conversion: File form FCGPR for FDI flow & ECB-2 for ECB.
- Full conversion: File FCGPR & one ECB-2 for the last time.
- ECB-2 must be filed with remarks "ECB partially or fully converted to Equity."

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- **Security for raising ECB:**

- NR —— FCY or INR loan ——→ R

Lender ←— collateral or charge on —— Borrower

(or)

Immovable assets	Movable assets	Financial securities	Issue personal / corporate guarantee in favor of lender / security trustee

- AD CAT I Banks can allow creation / cancellation of charge or issue of guarantees if:

Underlying ECB is in compliance of applicable guidelines	There is a clause in loan agreement requiring borrower to create or cancel charge / issue any guarantee	NOC from the existing Indian lenders is recd in case of creation of a charge

- **Charge on Immovable assets:**

Follow FEM (Acquisition and transfer of immovable property in India) Regulations, 2017 ↓ (not in syllabus now)	Permission to create charge ≠ Permission to buy Immovable property or asset in India	Enforcement or Invocation of charge ↓ It can be sold to PRI only & sale proceeds can be repatriated to liquidate ECB

- **Charge on movable assets:**

↓

Enforcement / Invocation of charge → lender can take over or sell etc. but claim ≤ ECB amt outstanding only. Encumbered assets can be taken abroad only after getting NOC from Domestic lenders.

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- Charge on financial securities:

Consider Borrower = RIL, Promoter = Mukesh Ambani

Permitted assets for pledge / charge are:

1. Shares of Borrower co. (RIL) → held by promoter (mukku)
2. Shares of domestic associate co. (Jio) → held by RIL of Borrower (RIL)
3. Bonds, Debentures, G-sec, Govt savings certificate, UTI / MF units, security receipts, loan assets, current assets, ₹ Bank A/c with AD Banks / Institutions → held by borrower or promoter (RIL / mukku)
4. ₹ A/c in form of escrow arrangement or debt service reserve A/c (i.e. account opened for repayment → eg. sinking fund) → held by borrower or promoter (RIL / mukku)

* Invocation of pledge (i.e. lender takes over such assets), transfer of securities must be as per FDI / FII policies including sectoral cap & pricing rules
* follow FEM (Transfer or issue of security by PROI) Reg.

- Issue of Corporate / Personal guarantee:

Copy of Board resolution is needed from corporate guarantor, specifying name of authorised officials:
- to execute guarantee on behalf of co.
- (or) to execute guarantee in individual capacity

Specific request from personal guarantor must be received

Follow FEM (guarantees) Reg^n, 2002

Imp note → ECBs can be guaranteed / insured / credit enhanced by (overseas) party only if that party is eligible to be recognized lender!

Imp note → Indian Banks, All India FI, NBFCs cant give guarantees

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→ HPCL | BPCL | IOCL

(23) ECB for Public Sector Oil Marketing Companies (OMC):

Can raise ECB for working cap purposes with MAMP = 3 yrs from recognised lenders under automatic route	Mandatory hedge = N/A Limit - $750m p.a = N/A but overall ceiling on ECB must be $10 BN	Must have BOD approved forex MTM procedure & prudent risk mgmt policy	Other rules shall apply as usual

(24) ECB for Start-ups recognized by CG under automatic route:

MAMP	3 Years
Recognized lenders	Lender is resident of FATF compliant country — ECB → Startup entity — ALLOWED
	Lender is foreign branch/subsi of Indian banks — ECB → Startup entity — NOT ALLOWED
	Lender is overseas entity in which any Indian entity has made ODI — ECB → Startup entity — NOT ALLOWED
Forms of ECB	Loans, Non convertible / optionally convertible / Partially convertible preference shares only.
Currency	Any freely convertible FCY or INR or combo. If ECB is in INR, the lender must mobilise (send) INR through AD CAT I Bank in India through swap or sale (i.e. $ ⇄ ₹)
Amount	Max $3 mn or equivalent per FY in aggt
All in cost	As agreed bwn borrower & lender
End use	Only for business expenditure
Conversion to Equity	Freely allowed subject regulations applicable to foreign investments in startups

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Security	Borrower entity can provide any security like movable / immovable / intangible assets, financial securities, etc. Rules regarding FDI/FPI etc must be followed
Guarantee	Corporate / Personal guarantees = Allowed IF Guarantor = NR, then it should be eligible lender under ECB for startups. Issuance of guarantee / LOC / LOU (Letter of credit, comfort or undertaking) by Indian Banks, All India FI, NBFCs ⇒ {NOT ALLOWED}
Hedging	For lender to hedge INR ECB exposure ↳ same as usual (4th point of notes) For start-up (Borrower) to hedge FCY ECB ↳ {advised} to have risk mgmt policy ✓
Equity holder ratio 7:1 rule	N/A
Start ups ≠ recognised by CG	They can accept ECB if they are eligible to receive FDI.
Other rules	Same as usual

(25) ECB by Entities under Investigation / Adjudication / Appeal for violation of FEMA or its regulations:

{CAN} raise ECB as per this framework by informing AD CAT I Bank or RBI about I/A/A	Allowed even if I/A/A is pending or is concluded (Ignore its outcome)	AD CAT I Bank / RBI must inform I/A/A authorities while approving ECB proposal

(26) Dissemination of Info → for purposes of transparency, the name of borrower, amt / maturity / purpose of ECB under auto/approval route are put up on RBI website on monthly basis with a 1-month lag (delay)

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(27) ECB by entities under restructuring (or) ECB for re-financing stressed assets :

(A) Infra / MFG co. (Corporate debtor) (Borrower) ← Rupee loan for capex (availed domestically) — SBI (Financial creditor) (Lender)

⇓

defaulted and its A/c = NPA or SMA2

↓ >90d ↓ >60-90d

⇓

Co. can avail ECB for repayment of ₹ loan above under one-time settlement with lender (SBI).

∴ NR lender —ECB→ Infra / MFG co. —₹→ SBI

⇓

≠ foreign branch / subsi of Indian banks

(B) Eligible Borrower (Any company) ⇒ under CIRP (corporate insolvency resolution process) of IBC 2016

⇓

only if resolution plan permits it & RBI approves ECB ⇐ can raise ECB to repay ₹ loans from eligible lenders (≠ foreign branch / subsi of Indian banks)

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FEMA : OVERSEAS DIRECT INVESTMENT (ODI)

(1) Introduction :

NR → R	NR → R	R → NR
Loans, etc.	Invests in equity	Investment/ Loan etc.
[ECB]	[FDI]	[ODI]

(2) Framework :

Section 6 of FEMA + FEM (Transfer or Issue of any Foreign security) Regⁿ, 2004

(3) Definitions :

A. Direct investment o/s India : Means investments under automatic / approval route by way of -

- Contribution to capital or subscrip^{n} to MOA of foreign entity (FE)
- Purch of existing shares signifying LT interest in JV/WOS Abroad by way of pvt placement or via stock exchange
- ≠ Portfolio investment ↓ (separate new rules for it)

B. Financial Commitment (FC) :

- Direct investmt in EQUITY
- Loan
- 100% of guarantees
- 50% of performance guarantees

→ by INDIAN PARTY to / for OVERSEAS JV / WOS ⇓ formed / registered as per foreign country's laws

C. Indian party → Company, LLP, Firm registered in India

D. Host country → Country of incorp^{n} of Foreign Entity.
(VIDESH)

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④ Automatic route for ODI or FC outside India :

- Indian party can make investment overseas / undertake FC in overseas JV/WOS as per RBI's ceiling limits

Financial Commitment (FC)

- up to $1 Billion or equivalent per FY (+) up to 400% of net worth (PUSC + FR) of Indian party as per last audited BS → **Automatic Route** ✓
- otherwise → RBI approval needed (eg. FC is 300% of networth but of $2 Billion)

- Total FC in all JV/WOS abroad shall comprise of:

100% of:
- Eq share investmt
- Loan amount
- Guarantee by Indian party

50% of:
- performance guarantee

Compulsorily convertible preference shares (CCPS)

Bank guarantee by resident bank on behalf of JV/WOS backed by collateral / counter guarantee by Indian party
[IP → Resident Bank → JV/WOS]

- Other requirements → Indian party:

- must invest in JV/WOS for activities permitted by law of host country
- ≠ RBI exporter's caution list
- ≠ CIBIL defaulter list to the Banking system
- ≠ under investigation by ED or other authority
- must route all transactions through ONE BRANCH of AD Bank designated by Indian party

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- Networth limit doesnt apply if

Investment is made out of balance held in EEFC A/c of Indian party (Exchange Earners Foreign Currency A/c) **or** out of funds raised through ADR / GDR.

- Today, FC will include 50% of performance guarantee

⇓

But during year of INVOCATION (eg. 2030), if outflow of amount breaches FC limit of 2030, then RBI approval is needed ✓

- Process :

Indian party ⟶ Authorised Dealer
"Form ODI" + docs, disclosures

- Indian party ⟶ (can invest through) Special Purpose Vehicle (SPV) ⟶ JV/WOS

⇓

If it doesnt appear on RBI caution list / CIBIL defaulter list and no investigⁿ is on by ED.

⑤ Approval route for ODI or FC outside India :

Indian party ⟶ ("Form ODI" & docs) AD CAT I BANK ⟶ (forwards) RBI

RBI Approves after considering

- Viability of JV/WOS outside India
- Biz track record, experience, expertise, financial position
- Contri of investmt or FC to external trade A/c or other benefits accruing to India

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⑥ Prohibition on ODI / FC abroad by Indian Party:

In foreign entity engaged in real estate / banking business

RE → TDR ✓
↘ township ✗
↘ construct^{n} of resi/comm ✗
road, bridges ✗

Foreign entity having direct/indirect equity holder as any Indian Party cannot offer financial products linked to INR (eg. forex derivatives, Indian market linked index, etc. having CASH settlement)

* The above activities are prohibited, but can be undertaken if RBI's APPROVAL is received ✓

⑦ ODI by PRI Individuals (≠ Indian parties)

Can invest in Equity sh or Compulsorily convertible preference shares (CCPS) of abroad JV / WOS

Limit on investment is under LRS of RBI
⇓
$ 250000 per year

⑧ General permission for PRI (Any person - Indi, co, firm, LLP) for purchase / sale → {FREELY ALLOWED}

Purch out of RFC A/c funds
↓
& sale of those

Bonus sh recd on current holding of foreign currency shares
↓
& sale of those

Purch when not permanently PRI out of forex resources o/s INDIA
↓
& sale of those

* Not permanently PRI Means:

PRI for employment of specified duration (any length)

or

for specific job or assignment with a duration ≤ 3 years

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FEMA : IMPORT & EXPORT OF G & S

(1) Framework :

- Section 5 of FEMA 1999 & RBI master direction
- AD CAT I Bank must ensure conformity to FEM (Current account transactions) Rules, 2000 & foreign trade policy
- Regulated by (DGFT) (directorate general of foreign trade)

(2) Obligations of Authorized Dealers

- Rules & Reg^ must be followed while making payments on behalf of clients
- If specific rule doesnt exist, follow general trade practices
- Adhere to KYC rules, make a payment only after ensuring docs & details of importer

(3) Obligations of purchaser of FOREX (Importer) :

- Can use forex only for purpose specified in a declaration made to AD or purposes permissible under FEMA & rules
- PRI can :
  - Pay in ₹ ⇒ expenses of lodging, boarding, travel of PROI who is on visit to India = allowed ✓
  - Pay via crossed cheque / draft ⇒ for purch of Gold / silver in any form ✓
  - Pay via International / Indian Cr. / Dr. card = Allowed ✓

AD must ensure that the importer

- furnishes evidence of import (IDPMS, Postal appraisal form, Customs assessment certificate)
- Has actually imported goods equivalent to value of remittance
- o/s import pmt on date of IDPMS are uploaded on IDPMS

[Import data processing & monitoring system of govt.]

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* A company or PRI can make payment in ₹:

- To Non-whole time director who is PROI and is on visit to India & entitled to:
  - Commission
  - Sitting fee
  - Remuneration
  - Travel exp to/from India
- Payment must be as per MoA, AoA, Resolution passed in BM or GM & as per law & regn.

(4) Time limit for settlement of imports

- Normal imports
  - Remit within 6 months from date of SHIPMENT
    - Except if you withold amt towards any performance guarantee
  - AD may allow a delayed remittance due to disputes / financial difficulty etc. But INTEREST on overdue is allowed up to 3 YEARS from date of shipment
    - Exporters give "USANCE BILLS" to grant a credit period to importers
- Deferred Payment Arrangement Imports including buyer / supplier credit
  - up to 5 YEARS
    - follow (ECB) & trade credit guidelines

(5) Extension of time

- AD can grant an Extension of 6 months at a time (which can go till max 3 yrs i.e. 6m, 6m, 6m, 6m, 6m, 6m)
  - update it on IDPMS
- Extension beyond 1 year is allowed if total o/s pmt is upto - lower of:
  - $ 1 mn, (or)
  - 10% of avg import remittances of last 2 FYs
- Imports must not be under investigation by ED / CBI / other agencies

For cases not covered above → visit RBI's regional office

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(6) Import of Forex / INR

Except as otherwise specified, no person can import or bring any foreign currency to INDIA without RBI's permission

RBI may allow a person to bring INR to India subject to T&C it may stipulate

→ Import of forex / cheques is governed by section 6 of FEMA & FEM (Export & Import of currency) regn, 2000

(7) Import of forex into India: A person can-

SEND TO INDIA

↓

Without limit

↓

forex (≠ currency note ≠ bank note / traveller chq)
(eg. Bank trfr = Allowed)

↓

No need to declare if aggt value of notes, traveller chq etc. at one time ≤ $ 10000

&

If "currency notes" (only cash) portion ≤ $ 5000

BRING TO INDIA

↓

Without limit

↓

forex (≠ unissued notes)

↓

subject to making a declaration to customs authorities in Currency Declaration Form (CDF) @ airport

Cash	Chq	Total	Declr^n?
4000	7000	11000	Yes
6000	7000	13000	Yes
4000	4000	8000	No

(8) Import of Indian currency & notes:

PRI who had gone abroad on temporary visit can bring from abroad (≠ Nepal / Bhutan) notes ≤ ₹ 25000

while coming from Nepal / Bhutan, a person can bring notes for any amount in denominations up to ₹ 100 (₹ 500, 200, 2000 notes - prohibited)

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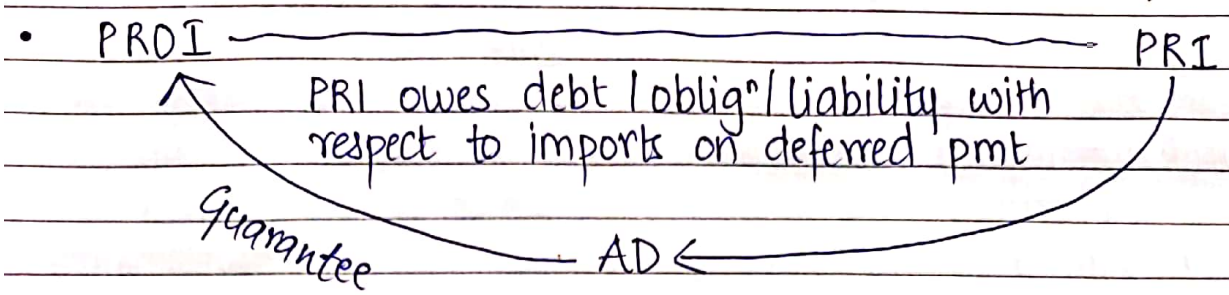
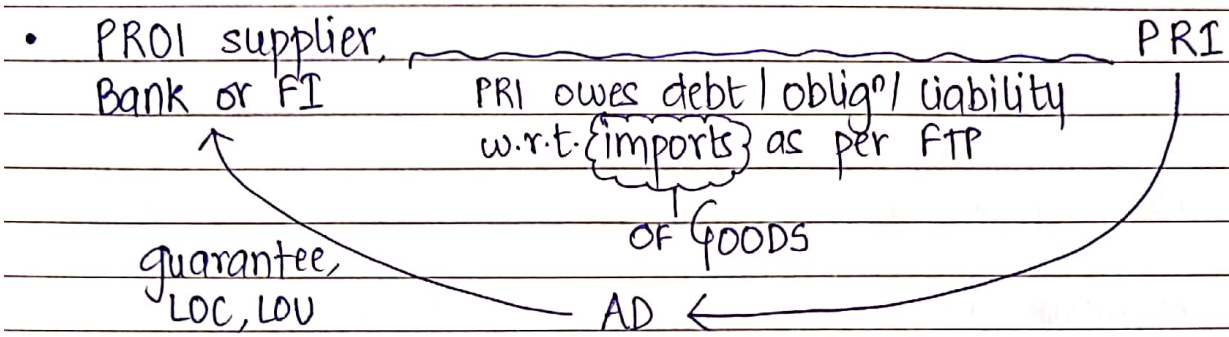
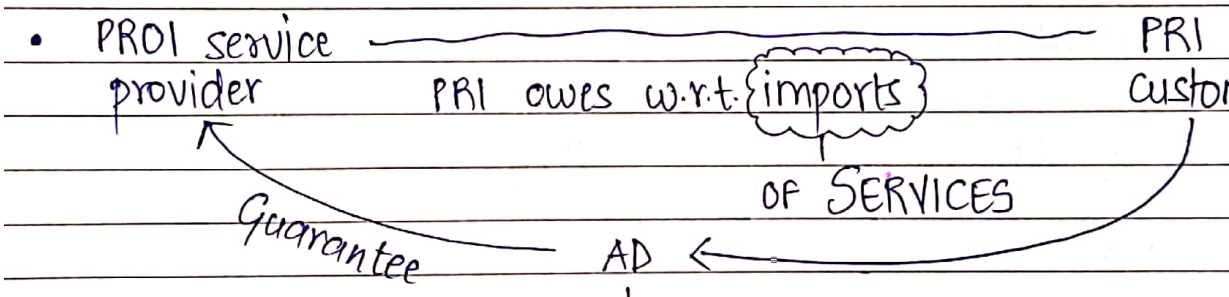
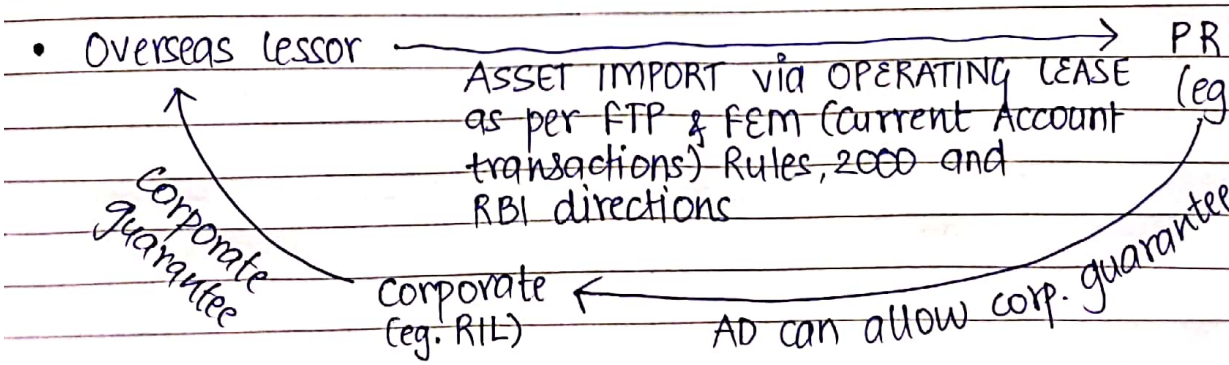
(9) Issue of Guarantee by AD:







Importer of service	Amount of guarantee
≠ Public Sector co. ≠ Dept / PSU of CG/SG	Max $5 LAKH (>5L not allowed)
= Public sector co. = Dept / PSU of CG/SG	Max $1 LAKH without approval of MoF, GOI (>$1L → take approval)



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PART B - EXPORTS

(1) Intro & Framework:

SECTION 7 of FEMA 1999

- Exporter must furnish a 'DECLARATION' containing prescribed details to RBI
- Exporter must furnish info to RBI for ensuring realization of exports proceeds
- RBI may give any direction to exporters for ensuring that FULL VALUE / REDUCED VALUE of goods as per RBI is received without delay

FEM (Export of goods and services) Regulations, 2015

Now, we'll begin with FEM (Export of G&S) Regulations 2015.

(2) Declaration of Exports to RBI / prescribed authority:

Export through Customs manual ports to any place o/s India (≠ Nepal, Bhutan)

- GOODS → FORM EDF
- SOFTWARES → FORM SOFTEX

must contain true & correct particulars like Importer / Exporter details, product details, etc. (any material info) including:

- Full Export Value of Goods / Software
  - IF FEV = available
- Value expected to be recd as per prevailing market conditions
  - IF FEV ≠ ascertainable @ time of export
    - "AFFIRM" that it will be realized as per reg^n

Exports of SERVICES (≠ software)

- No declaration
- follow realiz^n & repatriation rules ✓

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(3) Exemptions from declaration of Goods & Software:

{DISPAARTS GF}

D- Defective goods sent abroad for REPAIR & RE-IMPORT (AD must certify that export is for repair & re-import & doesnt involve any transaction in forex)

I- Import of goods free of cost on re-export basis

S- Ship's stores, trans-shipment cargo, goods supplied for military / naval / airforce requirements under orders of CG / military / naval / airforce authorities

P- Personal effects of travellers (accompanied or not)

A- Aircraft / its engines / spare parts sent abroad for repair / overhauling & must be re-imported within 6m from export

A- Leased Aircraft / helicopter / engine / auxiliary power units (APUs) re-possessed by overseas lessor & de-registered by DGCA (Directorate General of Civil Aviation)

R- Replacement goods exported free of charge as per FTP

T- Goods sent abroad for Testing & must be re-imported

S- Re-export, by SEZ / EHTP / STP / FTZ, of:

- Imported goods found defective & sent for replacements
- Goods imported on loan basis
- Goods imported free-of-cost found in surplus

G- Gift of goods accompanied by declaration by exporter that value doesnt exceed INR 5 LAKHS

* (If value > 5L, then FORM EDF declaration ✓)
* (If value ≤ 5L, then normal declaration ✓)

F- Free trade samples of goods / publicity material

(4) Indication of Importer-Exporter Code (IEC) allotted by DGFT

- on all copies of declaration made to RBI / prescribed authorities
- on all correspondence with AD / RBI

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(5) Declaration:

Exporter (Goods) —FORM EDF in duplicate→ Commissioner of customs —Forwards original→ Nearest RBI office

Commissioner of customs —Forwards duplicate→ Exporter —submits→ AD ⇓ retains it

Exporter (Software) —FORM SOFTEX in triplicate→ Designated official of Ministry of IT of GOI at SEZ/STP/FTZs —Forwards original→ Nearest RBI office

computer/Audio/Video or television software

Designated official of Ministry of IT of GOI at SEZ/STP/FTZs → retains a copy

Designated official of Ministry of IT of GOI at SEZ/STP/FTZs —Forward a copy→ Exporter —submits→ AD ⇓ retains it

(6) Evidence in support of declaration:

- Exporter = PRI and has place of biz in INDIA
- Destination stated in declaration is FINAL DESTINATION
- Value stated in it = FEV of Goods or software (or) if unascertainable, = Value expected to be recd as per market conditions

(7) Manner of payment

- Export value must be paid via AD ⇓ Imp → AD ↓ Exp
- If goods are exported to re-import within specified time, the re-import is deemed realisation of Export value

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(8) Period within which Export value must be realised:

Normally for any exporter

- Normally (for Goods, services, softwares) → realise, repatriate → WITHIN 9 MONTHS from DATE OF EXPORT
- (Goods) exported to warehouse that is established o/s INDIA → realize, repatriated & paid to AD → WITHIN 15 MONTHS from DATE OF SHIPMENT

Exporter is:

- SEZ, STP, EHTP, BTP, EOU, status holder exporter → realize, repatriate → WITHIN 9 MONTHS from DATE OF EXPORT

RBI or AD (on direction of RBI) may extend the time limits for any sufficient & reasonable cause

* If software is not exported in physical form (eg. online export) then date of export = date of INVOICE.

(9) Submission of export documents:

Exporter → Authorised Dealer

DOCS → mentioned in declaration form (EDF/SOFTEX) with (21 days)

- from date of export (for Goods)
- (or)
- from date of certification of SOFTEX form

* AD may extend period for reasons beyond exporter's control

(10) Exports requiring prior approval:

- Export of goods under special agreement bwn CG & foreign govt are governed by Trade control Authority in India (+) instructions of RBI
- Export under line of credit extended by EXIM to foreign Bank/FI are governed by RBI

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(11) Delay in receipt of payment for goods / software:

If the specified period of 9m / 15m + Ext has expired and payment is not received, then RBI may give any directions, to a person who has sold / is entitled to sell goods / software, for purpose of securing:

- Payment for goods / software expediently → IF SOLD ✓
- Sale + Payment for goods / software expediently → If not yet sold or not yet re-imported with specified time limits

* If RBI doesnt give directions, then too, exporter is said to have contravened provisions!

(12) Advance payments against exports:

If exporter receives advance payment from a buyer named in export declaration, the exporter must ensure:

- Shipment of goods is made within {1 year} from date of receipt of that advance payment
  - Exception: If agreement itself provides for shipment beyond one year ✓
- Rate of int on advance (if any) doesn't exceed LIBOR + 100 Bps i.e. {LIBOR + 1%}
- Docs regarding shipment are routed through same AD through which the advance was received

** If not shipped in 1 year, exporter may have to refund part / full advance / keep paying interest
- ONLY AFTER RBI's PRIOR APPROVAL ✓

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(13) Project Exports:

- Where export of Goods / Services is proposed to be made:
  - on deferred payment terms (or) in execution of turnkey project (or) for a civil construction contract

The exporter shall, before entering into such arrangements, submit proposal for prior approval of Approving Authority
- EXIM Bank of India (or) AD

- Who can grant guarantee for performance of project o/s India or for availing credit facility from Bank / FI o/s India regarding execution of project?
  - AD Bank (or) Any PRI Exporter company

only if contract / approval of authorities stipulates those requirements.

(14) The RBI may, by general / special order, direct exporters
- To cover full payment of exports by irrevocable Letter of credit → To ensure receipt in full
- To take prior approval of AD regarding the declaration before submitting it to specified authority
- To submit declaration to any org^n or authority for "certifying valuation" of goods/software

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FEMA - MISCELLANEOUS PROVISIONS

(1) SEC 11: RBI's power to issue directions to an Authorised person

For the purpose of securing compliance of this act / rules / regⁿ / notification / directions, RBI may direct AP:

- To do an act
- To desist from doing an act
- To make payment
- To furnish any information

↘ ↓ ↙

relating to foreign exchange / security

(2) SEC 12: RBI has the power to inspect AP to -

- Verify correctness of any info / statement furnished to RBI
- Obtain any info which AP failed to provide
- Secure compliance of this act / rules / etc.

- Inspection → By an officer of RBI authorised in writing by the RBI

- Duty of AP or its director / partner → co-operate & provide books / info in its custody / power to inspector within the time & manner specified by him.

(3) Penalties:

SEC	Contravention	Penalty
11	Contravenes direction of RBI or fails to file a return	upto 10000 (upto 2000 per day if continuing offence)
13	Contravenes any provision / rule / regⁿ / direction / notification / order	upto 3 times the sum involved (if quantifiable) or else - upto 2 Lac (upto 5000 per day if continuing offence)

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13(1A) & (1C)	Acquires foreign exchange / sec or immovable property o/s INDIA of value exceeding threshold uls 37A(1) ↘ (not in syllabus) "Property will include Bank deposits, INR currency, other property resulting from it."	Penalty upto 3 times the sum involved + Confiscation of value equivalent to foreign assets situated in INDIA + Imp ≤ 5 yrs + Fine
14	failure to pay above penalties: • demand > 1 crore • otherwise	Civil imp ≤ 3 yrs Civil imp ≤ 6 months

(4) SEC 14: Enforcement of orders of Adjudicating Authority

- If a defaulter fails to pay penalty uls 13 within 90 days from penalty-notice served on him, then he shall be liable to civil imprisonment.
- When can AA issue arrest warrant?

must issue SCN asking defaulter to appear before AA → no appearance?

AA is satisfied with reasons written ⇓ After issue of SCN to defaulter, he

- Dishonestly transferred or concealed property to affect recovery
- Has means to pay but neglects to pay

→ AA can issue ARREST WARRANT → officer arrests him → Defaulter pays the amt of penalty & arrest costs to officer?

- NO → Bring him to AA in 24 hrs (exclude journey time i.e. travel hours)
- Yes → Release him

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(5) SEC 14A: Power to recover arrears of penalty

AA may authorise any officer of Enforcement not below rank of Assistant Director to recover penalty if unpaid for 90 days from serving penalty notice

Officer of enforcement must follow ↓ Sch. II to the Income Tax Act, 1961

(6) Compounding of offences - SEC 15:

Defaulter uls 13 —must apply to→ ED / officers of ED or RBI as CG prescribes under foreign exchange (Compounding proceedings) Rules, 2000

must compound within 180 d. from receipt of application ↓

If an offence = compounded, no proceeding can be initiated / continued wrt that offence.

(7) Adjudication, Appeals & time limits:

SEC	Action	Time limit
14	Penalty to be paid	90 d. from service of notice of penalty
15	Compounding of section 13 offences	180 d. from receipt of applic^{n} by ED/RBI
16	Complaint made to AA by anyone against defaulter is to be disposed by AA	1 Year from receipt of complaint + Ext (if reasons are recorded in writing)
17	Appeal against AA by Asst / Deputy director of enforcement to SPECIAL DIRECTOR (APPEALS)	45 days from receipt of order + Ext^{n}
19	Appeal against AA by other persons or CG to the Appellate Tribunal	45 days from receipt of order

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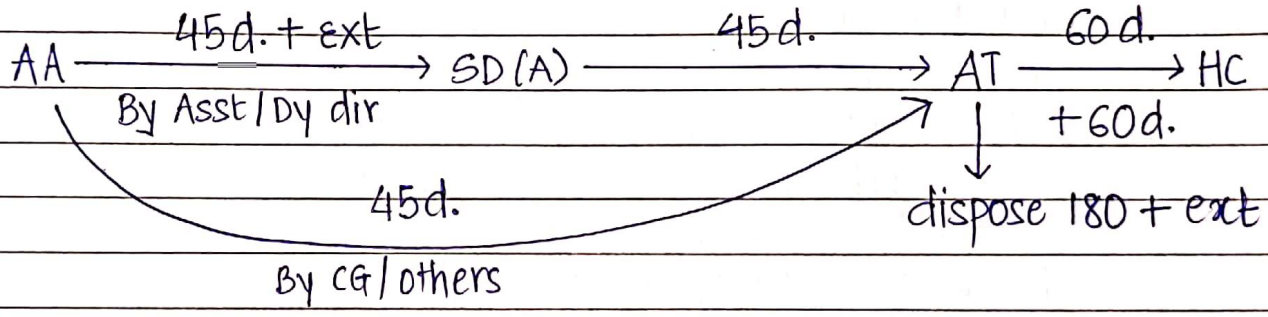
19	Appeal against Special Director (Appeals) by any person to the Appellate Tribunal	45 days from receipt of order
19	AT must try & dispose appeals	180 days from date of appeal + Extⁿ (if reasons recorded in writing)
35	Appeal against AT by any person to the High Court (Question of LAW only)	60 days from receipt of order + Extⁿ of 60 d.

★ {in short} ★



★ Which HC? ⟹ refer PMLA sec 42 (pt. 23 of notes)
★ CG appoints Directorate of Enforcement (ED), Additional / Special / Deputy / Asst dir & other officers, etc.
★ Officers, not below asst dir, can investigate & have power of search & seizure
★ Contravention by companies → refer PMLA sec 70
★ No suit / prosecution / proceeding shall lie against CG / RBI / their officers / anyone exercising duties under FEMA 1999 in good faith.
★ Sec 13 Liability of penalty won't abate if defaulter dies or becomes insolvent. the official receiver / assignee or legal representative will be liable to pay it off (to the extent of estate inherited)

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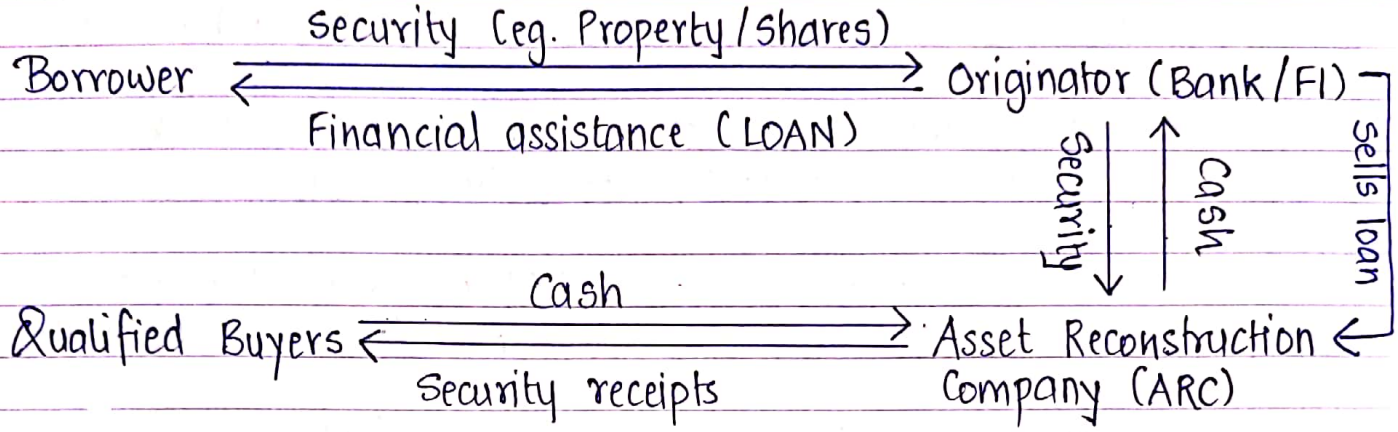
THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS & ENFORCEMENT OF SECURITY INTEREST ACT, 2002

i.e. SARFAESI ACT 2002

(4 marks)

(1) Functioning of ARC or Process / Definition of SECURITIZATION:



Example: Mallya borrowed 1cr from SBI by keeping his 🏠 as a security. He failed to repay various instalments. SBI then classified the loan as NPA. Mallya owes 60L when the loan became NPA. SBI sells the 'loan receivable' to ARC for 40L. Now, the security (🏠) right is transferred to ARC. ARC got 40L from investors (QBs) by issuing 'security receipts'.

↓

Like debentures only

FYI: Advantages of asset reconstruction

To Banks	To ARCs	To QBs
↓	↓	↓
Gets upfront cash instead of waiting for years to recover the NPA	They receive 10% int from Mallya & pay 9% int to investors. Also, they got an asset worth 60L for 40L	Good form of an investment that pays fixed returns

(2) SECTION 1: The SARFAESI Act 2002

- Extends to whole of India
- came into force w.e.f. 21st June 2002

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③ SECTION 2: DEFINITIONS

A] Financial assistance: Loan, Advance, Debentures, Bonds, Guarantee, Letter of credit or any credit facility extended by a bank / FI.

FYI: LoC = A guarantee by BUYER's bank to SELLER's bank given in an import / export transaction

B] ARC: A company registered with RBI uls 3 of this act for carrying out business of asset reconstruction / securitization.

C] Asset reconstruction: Acquisition, of a right / interest of any Bank / FI in any financial assistance, by an ARC, for the purpose of realizing such financial assistance.

D] Financial asset: means DEBT / Receivables & includes:

Debt secured by		Right / interest in security underlying a debt (eg. 1)	Right / Title / interest in a TA given on hire / lease or ITA that secures the obligation to pay any unpaid amount or credit provided to enable borrowers to acquire TA/ITA (eg. 2) & (eg. 3)	Beneficial interest in debt / property	Financial assistance (pt. A above)
Mortgage / charge on IP & MP	Hypothec^n / Pledge of MP				

IP = immovable prop
MP = movable prop
TA = tangible asset
ITA = Intangible asset

ONLY A FINANCIAL ASSET CAN BE SECURITIZED, ACQUIRED OR TRANSFERRED u/ SARFAESI Act.

eg. 1: ARC 'PQR' purchased loans receivable (secured by ₹) and issued security receipts to a buyer ARC 'XYZ'. Can ARC 'XYZ' issue security receipts to QBs stating that those receipts are backed by other security receipts (i.e. right in security underlying a debt)?
⇒ YES!

Borrower ⟶ Bank ⟶ ARC 'PQR' ⟶ ARC 'XYZ' ⟶ QBs

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Tata motor finance co.

eg. 2: Car owner (Borrower) Mr. A ← Auto loan — TMF — sell loan → ARC → SR → QBs (investors)

OLA driver

car on rent

car as security

₹ ₹

eg. 3: lessee (Borrower) Mr. A ← Financial lease (FA/IFA) — lessor (lender) LIC → sells lease receivable for 90 cr → ARC

LIC ↓ Present value of lease payments is 100 cr.

E] Qualified Buyers (QBs):

- Financial Institutions (FI)
- Banks
- Insurance Companies
- ARCs (registered u/s 3)
- FIIs
- NIIs
- State finance corp (SFC)
- State industrial dev. corp. (SIDC)

F] Debt: As per Recovery of debts due to Banks & FI Act 1993 and includes an unpaid portion of purchase price of any TA given on hire / lease, or IFA that secures the obligation to pay unpaid amt or credit provided to enable borrowers to acquire FA / IFA. (see eg. 2 & 3 again)

G] Default:

- non payment of any debt to a SECURED creditor upon which account of borrower is classified as NPA (i.e. after 90 d. of being unpaid)
- non payment of an amount w.r.t. debt security (eg. debentures) after a 90 day notice given to borrower by debenture trustees

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④ Conditions for being a "default" in order to apply SARFAESI:

DEBT ✓ | DEFAULT ✓ | NPA ✓ | FINANCIAL ASSET ✓ | SECURED CREDITOR ✓

(If all conditions are satisfied, then only this act applies)

⑤ SECTION 3: Registration of ARCs

- An ARC can commence the biz. of securitization / asset reconstruction only after:
  - obtaining certificate of registration (RC) from RBI
  - & having Net Owned Fund (NOF) ≥ 100 cr

FYI: As per RBI Act, NOF = PUSC + FR − Acc. loss − deff rev exp − ITA − Inv in subsi − loan to subsi

- Conditions by the RBI:
  - No losses in any of the last 3 FYs
  - ARC has made adequate arrangements
    - for realization of the financial assets &
    - for periodic payments to QBs (i.e. interest)
  - Directors of ARC have professional experience in finance, securitiz^n, reconstruc^n matters & must not be convicted of any offence involving moral turpitude
  - Sponsor of ARC is fit & proper person as per RBI rules
    - Sponsor is a shareholder of ARC holding ≥ 10% equity
  - Comply all RBI prudential norms

- RBI shall accept ARC's application, if all conditions are satisfied, or reject, if otherwise (after giving ROBHd. − reasonable opportunity of being heard)

Robinhood !

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- Once an ARC is registered with the RBI, it will need a prior approval of RBI, for:
  - Substantial change in management, including appointment of any director / MD / CEO
  - Change of its name or registered office
- RBI shall decide whether the change is 'substantial' or not & its decision = FINAL & BINDING.

(6) SECTION 4: Cancellation of RC

- RBI may cancel RC granted to ARCs if it:
  - Ceases to
    - Carry on the biz of securitiz^{n} or reconstruc^{n}
    - receive investments from QBs
  - failed to comply with any conditions uls 3 or other conditions on which RC was granted
  - Fails To
    - Comply with RBI directions
    - Maintain Alc as per RBI rules
    - Submit Alc for inspection when RBI demands
    - obtain prior approval of RBI uls 3
- Aggrieved ARC → Central Government (Secretary, MoF)
  Appeal within 30 days from receipt of RBI's cancellation order to
- An ARC whose RC is cancelled will still be deemed to be an ARC until it repays princi + int to the QBs.

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⑦ SECTION 5: Acquisition of rights / interest in financial assets (FA)

- ARCs can acquire rights / interest in FA of any bank / FI
  - by entering into an agreement with bank / FI on some mutually agreed T&C*
  - (OR) by issuing bonds / debentures as consideration along with some T&C*
- Any document (eg. transfer agreement) for above, executed by bank or FI in favour of ARC acquiring FA for the purpose of securitization / reconstruction = EXEMPT from stamp duty uls 8F of Indian Stamp Act 1899.
  - → no other purpose!
- Effects of transfer of FA
  - ARC will be the owner of rights / title in FA
  - Any contract, agreement, suit, etc. related to that FA having Bank / FI as a party shall be deemed to be in the name of ARC now
- Suits shall not abate. Appeals or other proceedings shall not abate. ARC shall file an application @ DRT / DRAT / Court for substitution of name.
  - DRT / DRAT: Debt recovery tribunal & appellate tribunal

⑧ SECTION 5A: Transfer of pending applications to 1 DRT.

eg. Kingfisher (Borrower) ← JOINT FINANCE → SBI (Mumbai) & PNB (Delhi) ——— ARC ——— QBs

If a financial asset comprises of a secured loan given by multiple banks / FIs against ONE (i.e. same) security, and if both banks have filed application @ DRT (i.e. DRT Mum & DRT Delhi for respective share of SBI & PNB), then ARC must file an application at respective DRAT (Either DRAT Mum or DRAT Delhi) for transfer of all pending applic^{n} to ONE DRT (Either Mum or Delhi)

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(9) SECTION 6: Notice to obliger (borrower) & discharge of obligation of such obligor

Bank/FI → gives a notice that FA has been acquired by ARC

Obligor & concerned registration authority → obligor will pay all obligations (eg. EMI) → ARC

FYI: property or mortgage registrar

(10) SECTION 9: Measures for asset reconstruction

An ARC may use one or more measures: PC RES$_2$T

P: Proper management of biz. of borrower - by change / takeover of management (eg. ARC chooses new CEO/CFO)
C: Convert debt into equity shares of borrower co.
R: Reschedule payment of debts (eg. Give extra time)
E: Enforcement of security interest u/s 13
S$_1$: Sale or lease of whole / part of borrower's biz.
S$_2$: Settlement of dues (eg. Agree to forego / cancel 20% dues)
T: Take possession of secured assets

(11) SECTION 10: Other functions of ARC

- Act as AGENT for any Bank / FI for recovering dues from borrowers.
- Act as MANAGER as per sec. 13 (manage secured assets)
- Act as RECEIVER if appointed by a court / tribunal. (preserve assets when a case is on)

- An ARC which has RC u/s 3 shall commence any biz. other than securitiz^n / reconstruc^n only with PRIOR APPROVAL of RBI.
- ARC doesnt include its subsidiary.

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(12) SECTION 11 : Resolution of disputes

Any dispute amongst Bank / FI / ARC / QBs related to securitization or reconstruction or non payment of any amount or interest shall be settled by ARBITRATION / CONCILIATION as per TAACA 1996.

Hidden question → TAACA 1996 needs an agreement in which there is an 'Arbitration clause', otherwise TAACA is not applicable. But section 11 of SARFAESI states that "it is deemed that parties have already consented in writing that disputes will be resolved using Arbitration / Conciliation.

(13) Powers of the RBI

Section 12

RBI may give directions to an ARC relating to income recog", Alc stds, Provision for bad debts, capital adequacy, etc.

↓

It can also give directions for:

- Type of FA that can be purchased
- Value of FA that can be purchased
- Transfer of security receipts issued to QBs
- Fees to be charged to manage FA

Section 12A

RBI may direct ARC to furnish any statements / information

officers of ARC must co-operate

ROBHd. must be given

→ Remove chairman or director or appoint additional director in ARC

Section 12B

RBI can carry out or cause to be carried out an inspection / audit of an ARC

↓

Based on that, if RBI concludes that its biz. is detrimental to the public / QB's interest, it can:

- Appoint any of its officers as an observer on ARC's board of directors

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(14) SECTION 13: Enforcement of security interest

- Notwithstanding anything contained in Transfer of Property Act 1882, a security interest created in favour of secured creditors can be enforced WITHOUT INTERVENTION OF COURT / TRIBUNAL.

- When a borrower makes a DEFAULT in payment of debt & such debt is classified as NPA (except if borrower raised funds through debt securities), the secured creditor must send a 60-day notice, to the borrower, in writing, asking to repay o/s amount.

- The Borrower may:
  - Repay the amt. → miracle ✓
  - Make representation or objection (i.e. oppose) → The creditor shall
    - Accept it → work on it
    - Reject it → communicate reasons within 15 days
  - Not repay it → Then the creditor can enforce the security interest (4 methods)

- Borrower {can't} file an application @ DRT / Court against the creditor's action / reply received after it made objections

- 4 methods of enforcing security interest
  - Take possession of secured assets
  - Takeover the management of biz of borrower

  → Along with the right to transfer the secured asset by way of SALE / LEASE etc.
  - Appoint a manager to manage the secured assets whose possess^{n} is taken by the creditor
  - Require a person, who purchased the secured asset from borrower & owes money to borrower, to pay the secured creditor directly.

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← warehouse renting biz.

- Example: Kingfisher Ltd. borrowed ₹5 cr from SBI by keeping 5 warehouses collateral. Sid Mallya purchased one of those warehouses & he owes ₹1 cr to Kingfisher. Default = full 5 cr.

SBI can:

Take possession or control of 4 warehouses & sell those / give those on lease	Takeover mgmt of Kingfisher's warehouse renting business	Appoint manager to manage 4 warehouses	Require Sid to pay 1 cr to SBI & not Kingfisher

- for 2nd method → Right to transfer shall be exercised only if substantial part of borrower's biz was held as security (eg. if Kingfisher's biz had 8 warehouses & 5 were = security then SBI can takeover mgmt + sell / lease out 5 warehouses)
- Also, if biz = severable (separable) → eg. warehouse + airline biz & if warehouse = security, then SBI can takeover the mgmt of warehouse biz. only.

- Who can enforce security interest when a borrower defaults on debentures? ⇒ DEBENTURE TRUSTEE!
  ↳ he safeguards interest of investors

- If SBI takes possession of 1 warehouse & tries to sell it via auction (fees of auctioner = 2% of sales) by publishing an ad in a newspaper (cost = 5000)

Q.1: Can an officer of secured creditor bid? ⇒ YES!
(eg. can CFO of SBI buy it?)

Q.2: Assume that SBI lent 1 cr against the warehouse & the warehouse is sold for 99 Lakhs. How will it be utilized?
1] First, against payment of expenses / charges, etc.
i.e. 2% of 99L + 5000 = 203000
2] second, against loan due → 99L - 203000 = 96,97,000

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Q.3: What can the creditor do if the dues are not fully satisfied? eg. Due = 1 cr, but recd = 96.97 L
∴ o/s → 303000

↳ Creditor can file an application @ DRT/court to recover it.

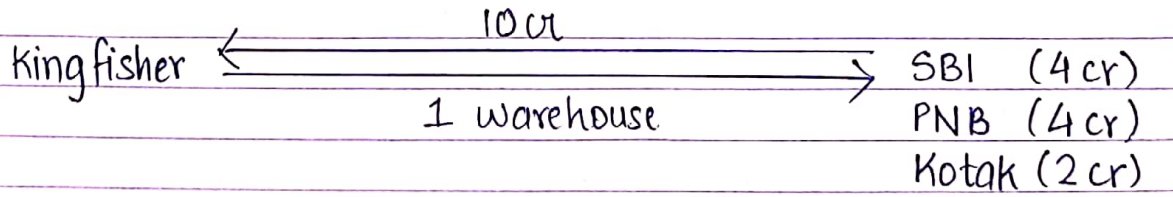
Q.4: What if the secured asset were sold @ higher value (i.e. 125 L instead of 99 L)? ⇒ Pay the excess to the borrower

Q.5: What if borrower repays the whole amount at any time before the publication of auction's notice?

- Creditor cannot transfer the asset
- But if the creditor has taken any step for transfer, then no further step must be taken

Q.6: Can borrower sell the secured asset after receiving the notice of transfer/sale of that asset by the creditor?
⇒ Not without prior consent of creditor.

- JOINT FINANCING:



Q: On default, there are 4 methods to enforce security interest. What if SBI wants to use 1st method but PNB wants to use 2nd?

↳ A Secured creditor can exercise any method, for which, total secured creditors holding ≥ 60% in value of amt o/s, agree.

Amt o/s must be checked @ a RECORD DATE which is a date agreed by secured creditors holding ≥ 3/4th value on that date.

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* eg. Date → 10/4/2020
Amt o/s : SBI – 4cr, PNB – 4cr, Kotak – 2 cr
If SBI & PNB (i.e. ≥3/4th) set 10/4/2020 = record date
then Kotak has to agree ✓

↳ Now, SBI wants to exercise 2nd method to enforce security interest but PNB & Kotak want to use 1st method.
Rule → ≥60% creditors must decide
PNB + Kotak = 60% of value ∴ All 3 banks have to collectively use 1st method ✓

- What if the borrower = company & is getting liquidated i.e. wound up?
↳ The companies act applies ✓
↳ If secured creditor wants to enforce security interest, it can retain sale proceeds of secured assets ONLY AFTER depositing WORKMEN'S DUES with liquidator of co.

- There is another option → IBC 2016 for creditors.
Either SARFAESI or IBC can be used by creditors
↙ SOFT ↘ HARD (since co. is liquated usually)

- IBC 2016 question → A secured creditor enforced security int under SARFAESI & recovered 70% of dues. Then, the borrower went into liquidation u/ IBC 2016. Can 30% be recovered under IBC? ⇒ YES

(15) SECTION 14: CMM / DM to assist secured creditor

A secured cr. who wishes to take possession of secured asset must request, Chief Metropolitan or District Magistrate within whose jurisdiction the asset is situated, in writing.

CMM / DM —(takes possession & forwards it to)→ Secured creditor
within 30 d. (+ Ext max 30 d.)
total max 60 d.

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(16) SECTION 15: Manner & Effect of takeover of management
↳ uls 9 & uls 13

A] Manner of takeover of mgmt:

- Secured cr. must publish a notice in 2 Newspapers
  - 1 = English
  - 1 = Local language of place where borrower's regtd. office is located
- And appoint "directors" on the borrower's BOD (if borrower = company), or "Administrators" to manage borrower's biz (if borrower ≠ company)

B] Effect of takeover of mgmt:

- On publication of notice
  - All directors of borrower (if co.) or controllers of biz of borrower (if ≠ co.) immediately before public^n of notice shall be deemed to have VACATED their office
    ↳ QUIT!
  - Any contract of management between borrower and its directors / managers entered immediately before publication of notice shall be deemed to be TERMINATED.

- Notwithstanding anything contained in CA 2013, Borrower's MoA or AoA:
  - No shareholders / any other person can appoint / nominate a person as director
  - No resolution passed at any SH meeting can be given effect
  - No proceeding for the winding-up or appointment of receiver for winding-up shall lie in any court

  EXCEPT WITH CONSENT OF SECURED CR.

- The secured cr. (except the one holding controlling interest due to conversion of debt into borrower's equity) must restore mgmt of borrower on FULL REALISATION OF DEBT.

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(17) SECTION 16: No compensation to directors for loss of office

- No MD / Director / manager / Person in charge of biz of borrower are entitled to any compensation for loss of office (CFLOO) or for premature termination of office.
- Section 16 overrides any contract / other law.
  eg. Can MD claim CFLOO u/ CA 2013? ⇒ No means No!
- Above restriction is only for CFLOO & not for other claims.
  eg. Can MD claim arrears of salary / allowances? ⇒ YES!

(18) SECTION 17: Application against measures to recover secured debts

eg. of section 13 → Kingfisher sold 1 WH to SID Mallya. SBI can take possession of 4 WHs since the 5th WH was purchased by SID Mallya in good faith.

↓

What if SBI takes possession of all 5 WHs?
↳ SID can apply @ DRT uls 17.

↓

- Any aggrieved person / borrower can file an application @ DRT, against the action taken by secured cr. uls 13, within 45 days from the date of action.
- Jurisdiction: Application must be filed @ that DRT, within whose local limits, the

↓ ↓ ↓

action was caused (or) secured asset is located (or) branch of lender bank or FI is located

- IF DRT concludes that measures / actions of secured cr. are not in accordance with SARFAESI then, it may:

↓ ↓ ↓

Declare that action = invalid

order to restore possession of asset or management of asset to borrower or aggrieved person who applied uls 17(1)

Pass any apt. direction / order

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- Time limit for DRT to dispose the application:

DRT shall dispose it as expeditiously as possible within 60 Days from DoA* ⟹ It shall extend period of 60 d. for reasons in writing, but: ⟹ If not disposed within 4 m. from DoA, then any party can apply @ DRAT & DRAT will direct DRT to dispose it expeditiously

↓

TOTAL PENDENCY cant exceed 4 months (i.e. 60 d. + Ext ≤ 4 m)

*DoA = Date of application uls 17(1).

(19) SECTION 18: Appeal to Appellate Tribunal

A person aggrieved by DRT's order uls 17 can appeal @ DRAT within 30 days from receipt of DRT's order

DRAT can entertain appeal only if 50% of Debt due from borrower as claimed by secured cr, (or) As determined by DRT (whichever is lower) has been deposited with DRAT by borrower (DRAT may reduce it from 50% to 25% for reasons in writing. Eg. Genuine hardship faced by borrower)

[All matters / appeals uls 17 & 18 shall be conducted as per RDDBFI Act, 1993.]

(20) Special cases for borrowers residing in Jammu & Kashmir:

SECTION 17A (Application)

Same as section 17, but the application is to filed at a District Court in borrowers local jurisdiction (not DRT)

SECTION 18B (Appeal)

Same as section 18, but the appeal is to be filed at a High Court having jurisdiction over district court (of section 17A) & not @ DRAT.

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For NBFCs → SARFAESI applies only if NBFC has Assets ≥ 500 cr.
Q.13 ↳ NBFCs can invoke SARFAESI only if a case is of > 1 cr.

(21) SECTION 18C: Right to lodge a CAVEAT

- Filing of caveat: Where an application / appeal is expected to be made / has been made uls 17, 17A, 18 or 18B, the Secured creditor or any person claiming a right to appear before DRT, DC, DRAT or HC may LODGE A CAVEAT
- Notice of caveat:

Caveator (i.e. who files a caveat)	→ serves notice that "caveat is filed" ↳ by regtd post acknowledgement due (RPAD) →	Person who has/ will file applic^n/ appeal

- If an applic^n / appeal is filed after the caveat was filed,

DRT / DRAT / DC / HC	→ must serve notice of applic^n/appeal to →	CAVEATOR

- When the applicant / appellant receives notice from caveator,

Applicant / Appellant	→ must send copy of applic^n/appeal along with all docs filed to support the applic^n/appeal →	CAVEATOR

- Validity of period of caveat: Caveat's validity expires after 90 days from filing it. Thus, if applic^n / appeal is filed within 90 days, then the caveat = useful. Otherwise, new caveat will have to be filed after expiry of 90 days.

FYI: CAVEAT = A notice that certain actions may not be taken without informing caveator. Eg. Court cant pass an order without giving caveator a notice that a case is filed, in which, the caveator has interest.

Example: If SBI & PNB lent Mallya a sum of 1 cr each, and if SBI gets to know that PNB is going to file applic^n @ DRT, then SBI can file caveat for it. DRT wont pass order without notifying SBI.

(22) SECTION 19: Right of borrower to receive compensation

If DRT / DRAT / DC / HC conclude that possession of secured assets taken by secured cr is not in accordance with SARFAESI, then borrower / aggrieved applicant is entitled to compensation & costs as determined by DRT / DRAT / DC / HC.

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PROF. CA. KEVIN HARIA (+91 70216 47857)

PMLA (4 marks)

PREVENTION OF MONEY LAUNDERING ACT, 2002

(1) Money laundering → LAYMAN's language :-

Black money (unaccounted) ILLEGAL → Laundry (clean) → White money (accounted) LEGAL

(2) CYCLE or STAGES of ML:

PLACEMENT	LAYERING	INTEGRATION
Crime money is injected into financial system	Money is spread over various transac^n in various A/cs to make its origin very difficult to detect	Money enters the system in such a way that any association with crime is obliterated & money looks clean
eg. Mr. A receives cash worth 10 Lakh by smuggling & selling drugs	Mr. A gives 1 Lakh cash to 10 family members. Those members deposit cash in Bank A/c	Mr. A starts a business (on paper) & receives cheques from 10 members (shown as customers)

(3) Methods of ML

- Crimes like drug smuggling, kidnapping, bribery, etc. → smuggle cash later or deposit in tax-haven countries (eg. Swiss A/c)
- Bogus / shell company mode
- Real Estate → Buy land in cash and sell it or let it out by receiving cheques
- Structuring → Cash is broken into smaller amounts

(4) Effects of ML

- Demand for cash changes
- Interest & currency exch rates = volatile
- High Inflation
- Bad financial health of an economy

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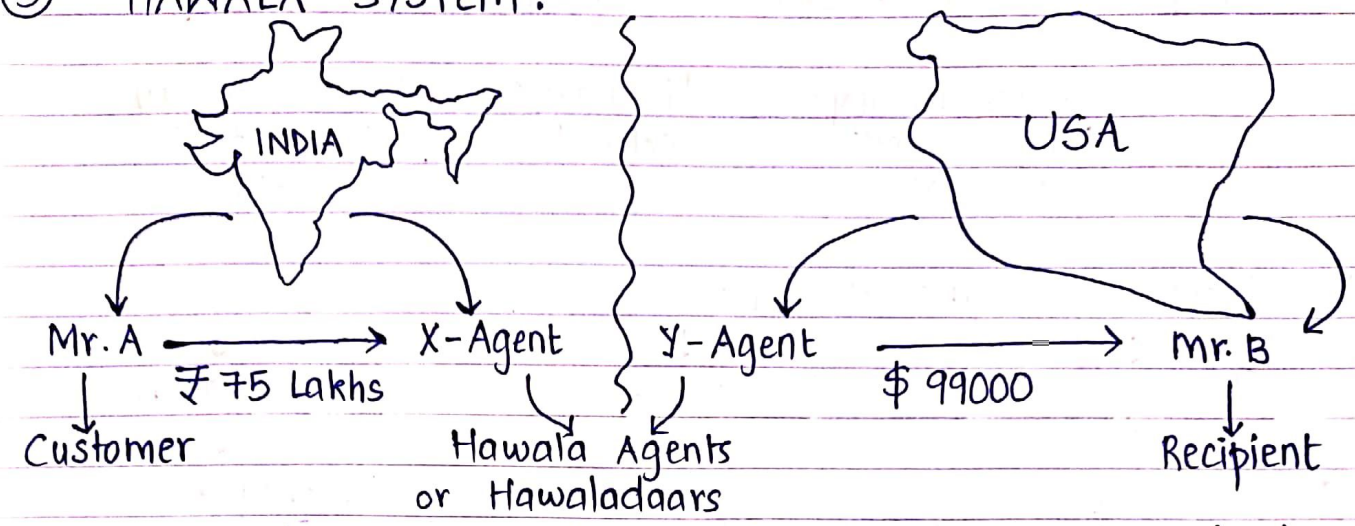
⑤ HAWALA SYSTEM:



- Mr. A has black money (75 Lakhs) & he wants to transfer it to Mr. B of USA (without being traced)
- Mr. A contacts Indian Hawala Agent - X & pays ₹ 75 Lakhs
- X has his network in USA & Agent - Y is his counterpart
- Agents decide a ₹/$ rate (≠ actual rate). Eg. ₹ 75/$
- So Mr. A's cash ₹ 75 Lakhs = $ 1 Lakh
- Agents keep $ 1000 profit & remit $ 99000 to Mr. B
- X & Y will settle their accounts informally.

Hence, in HAWALA, money enters the system in local currency & leaves as foreign currency.

⑥ SECTION 1 of PMLA 2002:

- Act Extends to whole of India
- Act has come into force w.e.f. 1st JULY 2005

⑦ SECTION 2 : DEFINITIONS (from printed notes)

Scheduled Offences

- Under Part A of the schedule (eg. Drugs, bombs, crimes, etc.)
- Under Part B if total value of offences ≥ 1 crore (only of Customs Act)
- Under Part C ↓ Trans-border crimes

[NOTE → Schedule means an annexure after the ACT]

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⑧ SECTION 3: OFFENCE OF MONEY LAUNDERING

- Whosoever, directly or indirectly,
  - Attempts to indulge, or
  - knowingly assists, or
  - is a party, or
  - is actually involved
- in any process / activity connected with proceeds of crime
- including its concealment / possession / acquisition / use
- and projects or portrays it as UNTAINTED (clean) property

shall be guilty of OFFENCE OF MONEY LAUNDERING.

⑨ SECTION 4: Punishment for offence of money laundering

Normally
↓
Imprisonment of min 3yrs to max 7 yrs
+
Fine

Offence relates to Para 2 of Part A of the schedule i.e. "Narcotic drugs and psychotropic substances act, 1985"
↓
Imprisonment of min 3 years to max 10 years
+
Fine

FYI → Fine is not quantified. It will be levied by the appropriate adjudicating authority.
Dont write min 3yrs to max 7 yrs in exam, instead, write "imprisonment for a term not less than 3yrs but may extend up to 7 yrs."

⑩ SECTION 6: Adjudicating authorities (Watchdog or Punisher)

Appointment & Powers
↓
By CG

Composition
↓
1 chairperson + 2 members having experience in Law, Administration, Finance or accountancy

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(11) SECTION 5: Attachment of property involved in ML

- Attachment = Prohibition of transfer, conversion, disposal, movement of any property (property = Any Asset)
- Provisional attachment = Temporary attachment (for some days)

- Who can provisionally attach property?
  - The director **or** An officer, not below rank of deputy director, authorised by director
  - FYI: Director, Addnl Dir, Joint Dir, Deputy Dir, Asst. Dir, etc. are all officers appointed by CG.

- When can they provisionally attach property?

  When they have reasons (in writing), on basis of material in possession, to believe that:
  - A person is in possession of any PROCEEDS OF CRIME **&** Such proceeds may be concealed / transferred etc which may negatively impact its confiscation

- Conditions to be fulfilled in order to attach property:
  - A report must be forwarded to a Magistrate **OR** A complaint must be filed by the investigating officer before Magistrate or Court

  [No need of above if attachment is urgent & much needed]
  [IF crime is of multiple countries, then report / complaint must be filed under laws of other country.]

- Provisional Attachment max. period = 180 days from the date of written order passed by director. In between, if any High court passes 'stay order' on any proceedings, then exclude that time while calculating 180 days. Also, max 30 days after end of stay period can be included as a bonus.

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eg. Date of order = 1|4|2020

Normally → Attachment valid till 28|9|20 (i.e. 2|4|20 + 179 days)

IF a HC stayed proceedings for 30 days from 1|6|20 to 30|6|20 → 2|4|20 to 31|5|20 & 31|7|20 to 27|11|20

60 d. | 120 d.

Attachment valid till 27|11|20

(Basically, we excluded stay period & got 30 d. bonus also from 1|7 to 30|7)

- Director or officer → Adjudicating Authority
  Forward attachment order & material in possession in a "SEALED ENVELOPE"

- Director or officer → Adjudicating Authority
  File a complaint within 30 days from ATTACHMENT stating facts of attachment

- Can a person use / enjoy the rights in an immovable property attached ? ⇒ YES ! He can live there. He cant sell it.

- Till when is the ORDER of provisional attachment valid ?

  Earlier of ↓
  - Expiry of 180 d. rule studied earlier OR
  - Date of order made u/s 8(3)

FYI: Order u/s 8(3) is the Final Attachment order passed by Adjudicating authority.

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(12) SECTION 8: Adjudication

- On receipt of complaint uls 5 from director, the AA → sends 30-day notice to → the person who is accused (whose property is provisionally attached)
- He must indicate SOURCES of income through which that property was acquired & SHOW CAUSE as to why the property should not be declared as "involved in money laundering."
- What if the property has multiple Joint owners?
  What if someone is holding the property on behalf of someone?
  ↳ AA must send Notice to ALL PARTIES.
- AA, will
  - consider his reply
  - examine facts & materials
  - hear any aggrieved person (eg. Property attached is claimed by some 3rd person as his property)
  - hear the director

  And then record the decision of "whether that property was involved in ML" and pass an order uls 8(2)
- IF the AA decides that the property was involved in ML [uls 8(2)] then it shall CONFIRM the attachment by passing an order uls 8(3). [Now provisional became final attachment]
- The above order shall:
  - lead to attachment during the investigation for max 365 days (Exclude no. of days of stay by any court of law)
  - & become final after an order of CONFISCATION is passed by SPECIAL COURT
- Now, after order uls 8(3), director/officer can take possession of property attached (only if practicable → eg. movable asset)

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- Special Court conducts the TRIAL of offence u/ PMLA:

IF it concludes "ML has been committed"	IF "ML was not committed" or "Property was not involved in ML"
↓	↓
Then the attached property shall be CONFISCATED by CG	Then the property shall be released

- IF trial could not be conducted (eg. offender died) or trial had commenced but could not be finished (for any reason), then Special Court shall pass apt. order based on material & facts available.

- IF a 🏠 was owned by Vijay Mallya & Kevin Haria in equal ratio, and 🏠 is attached & confiscated because Mallya was accused of ML, then, can Kevin Haria claim his 50% share?

Answer → YES! Special Court shall direct CG to RESTORE that part in any form when it is a quantifiable loss to a legitimate owner if he acted in good faith.

(13) SECTION 9: Vesting of property in CG

- When an order of confiscation is made by Special court, all rights & title in such property shall vest in the CG, free from all ENCUMBRANCES or LEASE-HOLD Interest.

- Eg. If Mallya committed a fraud, received 10 cr, purchased a LAND out of it and then

Either kept LAND collateral & took loan from SBI	or gave LAND on lease to someone

After confiscation, the Encumbrance / lease become VOID and thus, the lender SBI / lessee can sue Mallya for damages.

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(14) SECTION 11A : Verification of identity by Reporting Entity (RE) of its clients & beneficial owners

- By Authentication under Aadhaar (TDFOSBS) Act 2016 if RE = banking co.
- Offline verification under Aadhaar (TDFOSBS) Act 2016 if RE = non bank co.
- Use of passport (IF no aadhar)
- Use of any other doc notified by CG

Under these 2 methods, RE cant store biometric info & aadhar no.

- TDFOSBS = Targeted Delivery of Financial & other Subsidies, Benefits, services
- Even a non-bank co. can use authentication way if CG, in consultation with UIDAI, permits it to do so, only when it complies with all privacy norms of Aadhaar (TDFOSBS) Act.
- RE includes Banking co., Financial Institutions, Chit fund co., housing finance inst^n, NBFC, Dept of Post, Intermediaries like stock broker, merchant banker, stock exchange, etc.

(15) SECTION 12 : Obligations of Banking co., FI & Intermediaries

- Maintain records of
  - All transactions → For 5 Years from date of transaction
  - of documents evidencing client identity → For 5 Years from End of business relationship or Date of a/c closure (whichever is later)
- Furnish info to the director whenever asked for
- maintain confidentiality of all info

(16) SECTION 12A : Access to information

Director —(can call for records or any info)→ RE —(must furnish it within prescribed time & maintain confidentiality)→ Director

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(17) SECTION 13: Power of director to impose Fine

The director may

- make inquiry related to the obligations of RE
  - on his own motion or on application made by anyone
- Direct the RE to get its A/c audited by a CA amongst auditors panel of CG
  - Audit fee is borne by CG
- Issue warning in writing,
- Direct RE to comply with its requirements
- Direct RE or its employees, etc. to comply / send reports
- Impose penalty min 10000 to max 1 Lakh per failure
  - IF any RE or its employees fail to comply obligations under PMLA

Director → RE
passes an order for above & forwards it to

(18) SECTION 25: Establishment of Appellate Tribunal (AT)

Whenever any person is aggrieved by any order passed by the AA or director, he/she can appeal (challenge) @ AT.
The AT for PMLA = AT constituted under section 12(1) of the Smugglers & Foreign Exchange Manipulators (Forfeiture of property) Act, 1976.

(19) APPEALS:

Director / aggrieved person can appeal against AA's order
(OR)
RE can appeal against director's order passed u/s 13

→ (Sec. 26) → AT → (Sec. 42) → HC → SC

- Within 45 days from receipt of order [+ Extn if sufficient cause]
- AT: will try to dispose the appeal in 6m
  - pass an order & forward it to both parties
- Within 60 days from recpt of AT order [+ 60 d. Ext]

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(20) SECTION 35: Powers of AT

Powers of AT = same as powers of a CIVIL COURT under the Code of Civil Procedure, 1908.

* We will use the same answer in all Acts of our syllabus (Even DT & IDT)

POWERS

[Shortcut: $S_2 R_3 D I$ i.e. सरदी]

S1 = Summon & enforce attendance of any person & examine him on Oath
S2 = Set aside (cancel) any order
R1 = Require the discovery & production of documents from the parties or any public office
R2 = Receive evidence on affidavits
R3 = Review its own decisions
D = Dismiss a representation (eg. Lawyer/CA) for default or deciding a case Ex-Parte (when 1 party is absent)
I = Issue commission for examination of witness/documents

(21) SECTION 38: Decision to be made by majority

Usually, Tribunals have various benches (court rooms) and every bench has MEMBERS who decide the case through majority.

eg. IF AA held Mallya guilty & Mallya appealed @ AT, and if 3 out of 5 members say AA was correct, then the decision of majority = FINAL

** What if a bench has even members (eg. 2 or 4)

They will refer case to the chairman of AT

Chairman will decide, or will refer it to a new member & new majority will be formed!

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(22) SECTION 41 : Civil court not to have jurisdiction

Civil Courts cannot entertain any suit if the Director/AA/AT are empowered to entertain it under PMLA and no stay/ injunction can be granted by it.

eg. IF a person wants to file appeal against AA, then he will have to file @ AT only. He cannot appeal at Thane district/sessions court.

(23) SECTION 42: Appeal to HC (see point 19 also)

eg. Mallya resides @ Madras, SBI has head office @ Bombay

Case 1: AA states Mallya guilty of ML. Mallya appeals @ AT. So, Appellant = Mallya. AT also states Mallya guilty. Mallya appeals @ HC. Every state has high courts. Here, Mallya will appeal @ Madras HC

Case 2: IF AT states Mallya is not guilty of ML,

an aggrieved person 'SBI' appeals @ HC
↓
Bombay HC
(i.e. where aggrieved party resides / carries on biz)

an aggrieved person 'CG' appeals @ HC
↓
Madras HC
(i.e. where Respondent 'Mallya' resides / carries on biz)
↓
IF there are >1 respondents, then choose any HC in their locality
eg. Mallya (Madras) & Modi (Delhi) are 2 respondents in a case
↓
CG can appeal either @ madras HC or at Delhi HC

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(24) SECTION 43: Special court

Recall from section 8 → Special court conducts trials and orders for attached property to be confiscated to the CG.

What is Special court? ⇒ It is a 'Court of sessions' (like Thane court) designated as a 'Special Court' for PMLA by the CG in consultation with Chief Justice of a High Court. eg. CG can ask CJ of Bombay High court & decide that the Vikhroli court can be a Special Court for Mumbai's PMLA offences.

FYI → CJ of HC = Head / Presiding officer of a HC
Similarly, Head of SC is called 'Chief Justice of India'.

(25) SECTION 44: Offences triable by Special Courts

All offences punishable uls 4 can be tried by Special Court in the area where the offence is committed

It can take cognizance of the offence of ML uls 3 upon a complaint made by authorised authority (i.e. director or any officer authorised by CG/SG)

- Code of Criminal Procedure 1973 shall apply to all trials held by Special courts in the same manner it applies to other courts of sessions.

- Is it that only a Special court can take cognizance of PMLA offences?
⇒ No! Remember → Scheduled offences (Part A|B|C of schedule) are all offences under various acts. So, any court can take cognizance. But when a Special court receives a complaint regarding the same offence (related to PMLA), then the case shall be transferred that other court to the Special court. Special court will continue the case forward.

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(26) SECTION 45: Nature of offences under PMLA

All PMLA offences are → Cognizable (person can be arrested without any warrant)
& → Non-Bailable (Bail is given only in some cases)

When can BAIL be granted?

Normally

Accused person can be bailed if:-

A] Public prosecutor has been given a chance to oppose such bail application

AND

B] If prosecutor opposes it, the court must be satisfied that accused person is not guilty & he is not likely to commit any offence while he is on Bail.

Special cases (no need of (B))

Special court can direct a Bail if the accused is:-

A] under age of 16 years, or
B] a woman, or
C] sick or infirm (old/weak), or
D] involved in laundering a sum of < 1 crore
(aggregate of all accused taken together)

Note: In special cases, there is no need of condition (B)

- Can a Police officer investigate into any PMLA offence?
⇒ NO! (There are directors, AA, Special courts for PMLA already)
But → A police officer can investigate only in 1 case.
When authorised by CG ✓

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(27) SECTION 55: Contracting State

- Any country or place outside India
- with whose govt, our CG has made arrangement
- through a treaty or agreement

(28) SECTION 56: Agreements with foreign countries

CG can enter into agreements with other countries

- For enforcing the provisions of PMLA
- For Exchange of information
  - To prevent an offence
    - under PMLA of India
    - under foreign laws
  - To investigate current ongoing offences

(29) SECTION 57: Letter of request to a Contracting State

Special Court → Foreign court/authority
(issues Letter of request to)

↓

only when it is 'satisfied' that some info/evidence in foreign country is required for investigation, on an application made by Investigating officer / his superior officer to Special court.

(30) SECTION 58: Assistance to a Contracting state

Foreign court/authority → India's CG
(issues letter of request to)

↓

when it needs that an investigation should be done in India under PMLA

↓

CG forwards it to

- A special court
- or
- Any authority under PMLA

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(31) Penalties:

SECTION	OFFENCE	PENALTY
62	Any authority / officer with powers under PMLA doing VEXATIOUS search or detaining or arresting a person WITHOUT REASONS RECORDED IN WRITING	Imprisonment ≤ 2y OR Fine ≤ 50k OR Both
63(1)	Any person giving false information wilfully to cause a search / arrest	same as above
63(2)	Any person refusing to sign any statement given by him, disobeying summons for producing evidence / books, refusing to answer & saying the truth when he is legally bound	Penalty min → 500 max → 10000 per failure

(32) SECTION 64: Cognizance of offence uls 62 & 63(1):

Court can take cognizance of offences uls 62 & 63(1) only with prior sanction of CG.

Court → (requests) CG → (within 90 days from request date) → either sanction ✓ / or refuse to sanction

(33) SECTION 65: Code of Criminal Procedure, 1973 will apply to all proceedings of PMLA, so far as it is not inconsistent with provisions of PMLA.

(34) SECTION 71: PMLA over-rides all other laws

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(35) SECTION 66: Directors / Authorised authorities / officers of PMLA must furnish info to any officers / authorities under other laws

- related to imposition of taxes / duties (eg. ITA 1961)
- regulating forex (eg. FEMA)
- preventing trafficking of drugs & psychotropic substances or any other laws prescribed by CG

(36) SECTION 69: Recovery of fine / penalty

- IF any fine / penalty uls 13 & 63 is not paid within 6 months
- Then director can recover the amount as per schedule II of Income tax act, 1961

(37) SECTION 70: Offences by companies

When offender = co. / firm / an association of individuals, every person-in-charge + the entity, both will be penalised. Person-in-charge (eg. director of co., partner of firm, manager, officer, etc.) will not be liable if he proves that:

- He had no knowledge of it (OR)
- He had exercised proper due diligence to prevent it

(38) SECTION 72: Continuation of proceedings in events like death & insolvency

IF a person whose property was attached uls 8 dies or becomes insolvent, then its LEGAL REPRESENTATIVE / OFFICIAL RECEIVER can file appeal / continue appeal @ AT or HC on its behalf.

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FCRA 2010
FOREIGN CONTRIBUTION (REGULATION) ACT, 2010
(4 marks)

① Introduction / Purpose of FCRA 2010: This act consolidates laws:

- To REGULATE acceptance and utilization of foreign contribution (FC) or foreign hospitality (FH) by certain persons
- & To PROHIBIT acceptance and utilization of FC and FH for any activities detrimental to national interest & such incidental matters

② SECTION 1 of FCRA 2010:

Act shall extend to whole of India and shall apply to:
- Indian citizens outside India
- & Associate branches / subsidiaries, outside India, of companies / bodies corporate incorporated in India

came into force w.e.f. 1st May 2011

③ SECTION 2 Definitions:

a) Person: Person includes an individual, HUF, an association a company registered uls 8 of CA 2013.

b) Foreign company: Any co. / assoc^n / body of individuals incorporated outside India and includes:
- A foreign co. uls 379 of CA 2013
- A company that is subsidiary of a foreign co.
- Regtd office / principal place of biz of the first two
- MNC

MNC → Multinational corporation → Any corporation formed in a foreign country / territory shall be deemed to be an MNC if such corporation:
- Has branch / subsi / place of biz in 2 or more countries / territories
- Carries on biz / operations in 2 or more countries / territories

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c) Foreign Source :

i- Foreign Govt or its agency
ii- An International agency [except UN, IMF, World Bank]
iii- A foreign co., a corporation incorporated o/s India, an MNC
iv- Foreign trust / society / found" / club / trade union
v- Foreign citizen
vi- A company where {>50%} of "nominal" value of share capital is held by i/ii/iii/iv or v mentioned above, singly or in aggt.

d) Foreign contribution (FC): FC means donation / delivery / transfer made by a foreign source, directly / indirectly, of:-

- Any article [except article given to a person as a GIFT for personal use if its mkt value in India is not more than ₹100000 on the date of gift.]
- Any currency whether Indian or Foreign
- Any security as per SCRA 1956 and Foreign security as per FEMA 1999

→ {∴ Gift, of an article worth >100000, for personal use = FC}

* Inclusion → Interest accrued on FC deposited in bank = FC ✓
Any income derived from FC or interest on it = FC ✓

* Exclusions from definition of FC:

- An amount recd from foreign source in India by way of "FEES", and it includes fees charged by Edu Inst" in India from foreign students
- An amount recd towards "cost" in lieu of goods and services rendered by a person in an ordinary course of biz in / outside India
- Any contribution recd from an agent of a foreign source towards such FEE / COST

↓

{In short, income from biz ≠ FC} ←

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e) Foreign Hospitality (FH): FH means any offer (except purely casual one) made in cash / kind by a foreign source for providing a person with:

- cost of travel to a foreign country / territory
- or
- Free boarding, lodging, transport or medical treatment

④ FC & FH are regulated by:

- Foreign Contribution (Regulation) Act, 2010 [FCRA]
- Foreign Contribution (Regulation) Rules, 2011 [FCRR]

⑤ SECTION 3: Prohibition to accept foreign contribution

SECTION 3 (1): The following persons are prohibited to accept foreign contribution:

- Candidate for election, political party (or its office bearer)
- Organisation of a political nature specified by CG uls 5
- Member of any Legislature
- Judge, Govt. servant or an employee of any corporation / body controlled / owned by Govt.
- An association engaged in production / broadcast of audio-news, audio visual news or current affairs programme through electronic / other mode of mass communication
- Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper or of association mentioned in previous point (i.e. producer / broadcaster)

SECTION 3 (2): The following are other persons prohibited from accepting FC or delivering FC:

Shortforms:

* PRI = Person resident in India
* ICROI = Indian citizen resident outside India

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Prohibitions

PRI / ICROI

shall not ACCEPT any FC, or acquire / agree to acquire any currency from foreign sources

↓

on behalf on Political party or a person referred uls 3(1)

ICROI

shall not DELIVER any currency (Indian / Foreign) that was accepted from foreign sources

↓

to political party or a person referred uls 3(1), or

PRI

shall not DELIVER any currency (Indian / Foreign) that was accepted from foreign sources

↓

to any person, if he knows or has a reasonable cause to believe that such person intends to deliver such currency to political party or a person uls 3(1)

* FS —(×)→ PRI/ICROI → 3(1)
* FS → ICROI —(×)→ 3(1)
* FS → ICROI —(×)→ anyone → 3(1)
* FS → PRI —(×)→ anyone → 3(1)

SECTION 3(3): Any person receiving any currency (Indian or Foreign) from a foreign source on behalf of any "person uls 9" shall not deliver such currency:

- To any person other than a person for which it was received
- To any person, if he knows or has reasonable cause to believe that such person intends to deliver it to a person other than the person for which such currency was recd.

FYI: Person uls 9 means any person who is prohibited from accepting FC or who needs prior permission of CG to accept FC, if the CG so orders.

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⑥ SECTION 4: Persons to whom section 3 shall not apply

Section 3 shall not apply to the acceptance of FC, by a person specified in that section, where such FC is accepted, subject to section 10, by way of:

- Salary, wages, remuneration, payment in course of an international trade, stipend, scholarship, payment from a relative*
- Payment as an agent of a foreign source in a transaction made by such foreign source with CG|SG, Gift given to him as a member of any Indian delegation
- A remittance recd in ordinary course of biz through official channel / post office / authorized person of forex under FEMA, 1999

* Rule 6 of FCRR 2011 → Any person receiving FC > ₹1 Lakh or equivalent in a financial year from any relatives shall inform CG by uploading details electronically online in form FC-1 within 30 days from receipt of such FC.

Rule 6A of FCRR 2011 → Any article gifted for personal use to any person if MV ≤ 1 Lakh in India on date of gift ≠ FC

⑦ SECTION 10: Power to prohibit payment of currency

When CG is satisfied that any person has in its custody / control any article / currency / security which was accepted in contravention of this act, then it can prohibit such a person from:

- Paying
- Delivering
- Transferring
- Dealing with it

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⑧ SECTION 6: Restriction on acceptance of Foreign Hospitality

The following persons shall require prior approval from the Ministry of Home Affairs before accepting FH:

- Members of Legislature
- Office bearers of political parties
- Judge
- Govt servant or Employee of any corp / body owned / controlled by Govt.

Exception: It is not necessary to obtain such approval for an emergent medical aid needed on account of sudden illness contracted during a visit outside India. But after receiving such FH, that person shall intimate the CG, within 1 month from receipt of FH, regarding the source & manner of receipt of FH

Rule 7 of FCRR 2011: Procedure to avail approval of CG

A person who wishes to accept Foreign Hospitality → Apply via Form FC-2 → CG (MHA)

Apply electronically

- Application must be accompanied by invitation letter from host or host country, and administrative clearance of Govt's ministry / Dept in case the visit is sponsored by ministry / Dept of the Government
- Application must reach the authority 2 weeks before the proposed date of outward journey
  - a.k.a. onward journey

Rule 7 also states that in case of emergent medical aid needed on account of sudden illness abroad, the acceptance of FH must be intimated to CG within 1 month giving details about the source, manner, purpose & value (INR) of FH.
Exception: No need to intimate if value of FH ≤ INR 1 LAKH

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⑨ SECTION 7: Prohibition to transfer FC to other person [r.w. Rule 24 of FCRR 2011]

A person who is registered and has been granted a certificate or has obtained prior permission under this act and has received FC

Shall not transfer FC to any person unless that person is registered & has been granted a certificate or has obtained prior permission	Except: FC can be transferred, to a person who has not been granted RC or prior permission, with prior approval of CG only if FC transferred would be upto 10% of total value of FC received

Procedure:

- Transferor of FC ⟶ CG
  makes application via form FC-5
  +
  a "declaration" stating that the FC transferred ≤ 10% of FC received & the transfer shall not be made until CG's approval is received

- Transferor & Recipient must ensure proper utilization of FC and the transfer must be reflected in return (FC-4) submitted by transferor & recipient.

Example:

Person with RC/PP ⟶ Person with RC/PP [Freely allowed ✓]
Person without RC/PP ⟶ Anyone [Prohibited]

★ Foreign source —10L→ Person with RC/PP —9L→ Person with RC/PP [Allowed ✓]
Person with RC/PP —2L→ Person without RC/PP [Not allowed]
Person with RC/PP —1L→ Person without RC/PP [Allowed after CG's approval]

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Foreign source —10L→ Person with RC —1L→ Person without RC
- any → Person with RC [Not allowed]
- any → Person without RC [Not allowed]
- 1L → only after CG approval

(10) SECTION 8: Restriction to utilize FC for administrative purpose

Every person who is registered & granted a certificate or given prior permission under FCRA and receives FC, shall:

- Utilize such FC only for the purpose for which it has been received
- Not utilize FC or income arising out of FC for any speculative business
- Not defray (provide) more than 50% of FC received in a financial year to meet administrative expenses
  - Exception: Admin exp >50% of FC can be defrayed with prior approval of CG.

Rule 4 of FCRR 2011: Speculative Activities

- An activity / investment that has an element of risk of appre / depre of original inv linked to market forces including shares / MF
- Participation in any scheme promising high returns like inv in land / chits / etc or any similar assets not directly linked to aims / objectives of the organisation

Rule 5 of FCRR 2011: Administrative Expenses

Salary, Wages, Professional Fee ←→ Alc cost, legal fees, rent

Travelling exp, Electricity exp ←→ Repairs, maintenance

Water, Post, Stationery, etc.

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(11) SECTION 9: Power of CG in certain cases

CG may:

- PROHIBIT any person (other than those uls 3) from accepting FC
- REQUIRE any person specified uls 11(1) to obtain a prior permission of CG before accepting FC
- REQUIRE any person (other than those uls 11) to furnish an intimation as to amount of FC, source / manner of receipt, purpose of FC and the manner in which it was utilized.
- REQUIRE any person (other than those uls 6) to obtain a prior permission of CG before accepting FH or to furnish an intimation as to receipt of FH, source & manner of receipt of FH.

★ The above powers shall not be exercised unless CG is satisfied that acceptance of FC / FH is likely to affect prejudicially:

- Sovereignty / Integrity of India
- Public interest
- Freedom or fairness of elections
- Friendly relations with foreign states
- Harmony among all religions, castes, etc.

(12) SECTION 11: Registration of certain persons with CG

Section 11(1)

A person having a definite cultural, economic, religious, social, educational programme shall not accept FC unless such person obtains a certificate of regn (RC) from CG

⇓

Any association registered or having prior permission uls 6 of FCRA {1976} shall be deemed to be registered uls 11 of FCRA {2010} & it will be valid for 5 years from the date on which section 11 came into force.

Section 11(2)

If not registered with CG, a person can accept FC only after obtaining prior permission of CG. The permission would be valid only for that purpose and that source which is specified while taking permiss^n.

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Q. Can a pvt ltd co. / partnership firm get reg^{n} uls 11?
A. YES! If the wish to do charitable work ✓

Q. Can individuals / HUFs get RC uls 11?
A. YES! They are covered in definition of person ✓

Q. Are organisations under CG/SG required to obtain RC?
A. YES!
↓
★★ Exception: All bodies established by or under CG/SG requiring to have their accounts compulsorily audited by CAG are exempted from FCRA 2010.

(13) SECTION 12: Grant of certificate of registration

Conditions to be met for grant of reg^{n} or prior permission:

- The person making application:
  - is not fictitious or benami
  - has not contravened provisions of this act
  - has not been prohibited from accepting FC
  - has not been prosecuted / convicted for indulging in activities aimed at conversion from one religious faith to other through inducement / force, or for creating communal tension or disharmony
  - has not been guilty of diversion / misutiliz^{n} of funds
  - has not been engaged in propogation of sedition (to bring hatred towards govt of India) or some violent methods
  - is not likely to use FC for personal gains or divert it for undesirable purposes
  - if individual, or if ≠ individual, then its directors / office bearers, must not be convicted under any law, nor any prosecution for any offence must be pending against him

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- The acceptance of FC is not likely to affect the sovereignty & integrity of India, public interest, security / strategic / economic / scientific interest of the state, freedom / fairness of election, friendly relation with foreign states, harmony among religious / racial / social / linguistic groups / castes / communities, etc.
- The acceptance of FC shall not lead to incitement of an offence & shall not endanger the life / safety of a person.

→ Procedure:

Person → (shall apply via prescribed form & pay prescribed fees) → CG → after conducting inquiry, if it is of the opinion that all the conditions are satisfied, then it shall GRANT RC / PP within 90 days from receipt of application

CG can reject the applic^n if not made via prescribed form or it is incomplete or it may not grant RC/PP after accepting the applic^n if some condition is not satisfied & communicate reasons

No need to give reasons if there is no obligation u/ RTI Act 2005

→ Validity → of RC → 5 Years from date of issue of RC
↘ of PP → Valid for specified purpose or amount

(14) SECTION 13: Suspension of certificate

- WHEN? → when CG is satisfied that pending consideration of question of cancelling the certificate uls 14, it is necessary to suspend it; CG may suspend it for max 180 d. from date of written suspension order.
- EFFECT? → On suspension of RC, that person
  - cant receive any FC (without prior approval of CG)
  - cant utilize any FC in custody (without prior approval of CG)

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★ Rule 14 of FCRR 2011: Utilization of FC when RC has been suspended:

- 25% of unutilized amount of FC can be spent for declared aims / objects for which FC was received → only after prior approval of CG
- Balance 75% of unutilized amount of FC can be used only after revocation of suspension

(15) SECTION 14: Cancellation of certificate

CG may, only after giving ROBHd, by an order, cancel RC if:

- The person has made a statement, in or in relation to application for RC / its renewal, which is FALSE/INCORRECT
- The person has not been engaged in any reasonable activity in its chosen field for society's benefit for 2 consecutive years, or has become DEFUNCT
- The person has violated
  - T&C of RC or its renewal
  - Provisions of this act / rules
- It is necessary in public interest

★ COOLING PERIOD of 3 YEARS → A person whose RC is cancelled shall not be eligible for Registration / prior permission for 3 YEARS from date of cancellation of RC.

(16) SECTION 15: Management of FC of a person whose RC was cancelled

- The FC & Assets created out of FC in custody of the person whose RC is cancelled, shall vest in such authority as may be prescribed.

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- Such authority may, if it considers necessary & in public interest

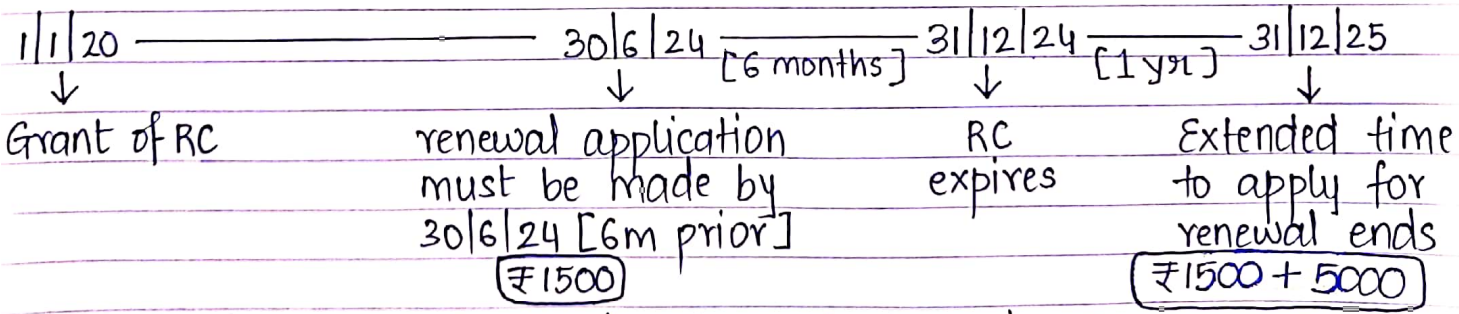
Manage	Utilize	Dispose
the activities of the person whose registration certificate is cancelled	FC	assets created out of FC, in case funds are not adequate for running such activity

- It shall return the FC & assets to the person if the person is subsequently registered under this act.

(17) SECTION 16: Renewal of certificate

- RC shall be renewed within 6 months before expiry of period of certificate.
- Application shall be made to CG (see rule 12)
- CG shall renew the RC, within 90 days from date of receipt of application, subject to any T&C it may deem fit
- Renewal shall be for a period of 5 Years

★ RULE 12 of FCRR 2011: Procedure for renewal of RC



- Application must be made electronically via Form FC-3C
- Fees = ₹1500 by DD / cheque in favour of "Pay and accounts officer, Ministry of Home affairs" payable at New Delhi or through online electronic payment
- IF no application is made within 6 m before expiry (by 30/6/24) then RC is deemed to have ceased on expiry of 5 yrs (31/12/24)
- IF the validity has been ceased, then a Fresh request for grant of new RC can be made to CG ✓

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- An application for renewal, if not submitted within stipulated time (30/6/24), can still be submitted* within [1 yr] after expiry of original RC along with requisite fee + late fee
  - By 31/12/25
  - [1500]
  - [5000]

* If sufficient reasons for delay are providing in writing.

(18) SECTION 17: FC through scheduled bank

- A person who has RC / PP, shall:
  - [RECEIVE] FC in a single bank A/c only
  - OPEN ≥1 A/c in ≥1 Banks for the [utilization] of FC
  - Not deposit funds other than FC in
  - Not mix FC with local recpts in an A/c

  ⇓ A/c in that branch of a bank specified in the application for RC or PP

- Every bank or authorised person in forex shall report to such authority as prescribed → the amount, source of, and manner in which the foreign remittance was received.

- RULE 16 of FCRR 2011: Banks shall report to CG within 48 hrs all transactions in respect of receipt / utilization of FC by any person whether having RC/PP or not

(19) SECTION 18: Intimation

Every person having RC / PP shall:

- Intimate CG / prescribed authority regarding Amount, Source, Purpose and manner of utiliz^{n} of FC.
- + Submit, copy of statement with particulars of FC received, duly certified by officer of bank / authorised person in forex, to CG.

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(20) SECTION 19 : Maintenance of Accounts

Every person having RC / PP shall maintain an Account of FC received by him & a record as to the manner of utiliz^{n}.

RULE 11 of FCRR 2011 : Every person having RC / PP shall maintain a SEPARATE set of accounts & records for FC received & utilised.

(21) SECTION 20 : Audit of Accounts

- When a person having RC / PP fails to furnish any intimation or furnishes an intimation which is not in accordance with law, OR The CG, on inspection of such intimation, has any reasonable cause to believe that this act has been contravened, then the CG may authorise a GAZETTE OFFICER HOLDING GROUP 'A' POST under CG or any AUTHORITY / ORG^{n} as it may deem fit, to AUDIT the books of A/c of such person
- Such officers can enter the premises BEFORE SUNSET & AFTER SUNRISE for the purpose of auditing
- All info obtained from such audits shall be kept confidential and shall not be disclosed except for the purpose of this act.

(22) SECTION 22 : Disposal of assets created out of FC

- Where a person permitted to accept FC ceases to exist or has become defunct,

Assets of such person shall be disposed of as per the law under which that person was registered or incorporated.	In absence of such law, the CG shall specify the manner & procedure for disposal of assets

Eg. Section 8 company → defunct → follow CA 2013 winding up
Individual → dies → CG shall specify a procedure

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(23) SECTION 28: Confiscation of article / currency / security obtained in contravention of the Act

IF an article / security / currency, seized under this act, has been adjudged uls 29 to have been received in contravention of this Act, then it shall be liable to CONFISCATION.

(24) SECTION 29: Adjudication of confiscation

A confiscation referred to uls 28 may be adjudged by

A court of session within whose jurisdiction that seizure was made	Such officer, not below the rank of Asst. Sessions Judge
↓	If the value of article / currency seized uls 25 doesnt exceed 10 Lakhs [Rule 19 of FCRR 2011]
without any limit	

(25) SECTION 30: Procedure for confiscation

No order of adjudication of confiscation shall be made uls 29 unless ROBHd is given to the person from whom seizure was made.

(26) SECTION 31: Appeals

Appeal Against	Within	Appeal At
• Court of session	1 month + Ext 1 month from communic^{n} of order	HC superior to it
• Officer uls 29		Court of session within whose jurisd^{n} order was passed
• CG's order uls 5, 12, 14 or for refusal of PP [Appellants can be persons uls 6 or 9 or org^{n} of political nature]	60 days from date of order	HC within whose jurisd^{n} appellant resides / carries on biz

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(27) SECTION 32: Revision of orders by CG

CG may call for & examine the record of any proceeding, under this act, in which it had passed an order, and can make inquiry & pass an appropriate order,

Either on its own motion (Suo moto)

↓

CG can revise only within 1 year from date of order

OR on an application made by a person registered u/FCRA

↓

Application must be made within 1 year from:

↓

- Date of communication of order to that person, (OR)
- Date on which he came to know of the order

(Whichever is earlier)

↓

[Extension = Allowed if there are sufficient reasons]

eg. Person having RC got to know about CG's order on 1/1/2020 but received order on 12/1/2020

Time limit → 1 year from 1/1/2020 i.e. by 31/12/2020

(28) SECTION 33 to 38 : OFFENCES & PENALTIES

SEC.	OFFENCE	PENALTY
33	A person who knowingly gives false intimation to CG uls 9, 18 or seeks RC/PP by means of fraud, misrepresentⁿ, concealment	Imprisonment ≤ 6m or Fine or Both
34	Any person, on whom prohibitory order uls 10 was served, pays/ delivers/etc. an article/currency/ security in contravention of order	Imp ≤ 3 years or Fine or Both Court may impose an additional fine equal to mkt value of article/ currency/security
35	Whoever accepts/assists a person, Political party/orgⁿ in accepting FC in contravention of FCRA/FCRR	Imp ≤ 5 years or Fine or Both

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36	Court trying a person who does / omits to do any act that would render an article / currency / security liable to confiscation in the event of conviction	Fine upto: • 5 times the value of article / sec / currency • 1000 whichever is higher
	Fine uls 36 is in ADDITION to other fines u/ FCRA	
37	Failure to comply FCRA's provisions for which there is no separate penalty	Imp ≤ 1 year or Fine or Both
38	Any person who has been convicted for offences uls 35 / 37 related to acceptance / utiliz^{n} of FC, if he is convicted AGAIN	Shall not accept any FC for 5 years from date of subsequent conviction

(29) SECTION 39: offences by companies → same → sec. 70 of PMLA

(30) SECTION 40: No courts shall take cognizance of offences except with prior sanction of CG / officer authorised by CG

(31) SECTION 41: Compounding of offences

FYI: Compounding = compromise bwn 2 parties, where the 'accused' pays MONEY and the 'complainant' drops all charges against the accused. In short, it is payment of money to avoid prosecution & prolonged litigation.

- Any offence [except offence punishable with "imprisonment" only] (↗ ≠ Imp / Fine / Both) committed u/ FCRA may, before institution of prosecution, be compounded by such officers authorized by CG for such an amount / sum notified by CG in official Gazette
- When an offence is compounded, no prosecution shall be instituted related to the same offence against that offender.

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- Compounding shall not apply to similar offences committed by an individual / association / its officer or other employee within a period of 3 years from the date on which a similar offence was compounded earlier
- Thus, if after the expiry of 3 years, the second / subsequent offence (similar to an earlier offence) is committed, then that second offence will be deemed to be first offence and it can be compounded ✓

Example: Mr. Halka Yagnik helps political party 'Congress Aam Party' to accept FC on 1/1/2020. He did it thrice again.

1st offence (1/1/20) ↓ compounded ✓	2nd offence (7/7/22) similar to first ↓ cant be compounded !
3rd offence (31/12/22) cant be compounded !	4th offence (6/2/23) CAN be compounded ✓ (since it is after 3 yrs from previous compounding)

★ By committing same offence uls 35, he violates sec 38 too.

(32) SECTION 42 & 43: An inspecting officer authorised by CG can call for any info, require a person to produce / deliver docs / thing & examine any person acquainted with facts of cases related to inspection. An offence ul FCRA can be investigated by an authority, specified by CG, who shall have same powers like an officer-in-charge of a police station.

(33) SECTION 50: CG can exempt the following from FCRA if it is of the opinion that it is necessary / expedient / in public int

- Any person / association
- organisation (≠ political party)
- Any individual (≠ election candidate)

(34) SECTION 51: FCRA shall not apply to any transaction bwn the Govt of India & Govt of foreign country / territory

(35) SECTION 52: Application of other laws not barred
This act shall be in addition to & not in derogation of any other law.

opposition

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THE ARBITRATION AND CONCILIATION ACT, 1996 [TAACA]

(4 marks)

① ADR - Alternate methods of dispute resolution

- ADR means resolving disputes outside the ordinary court system
- ADR's aim is to provide an alternative to LITIGATION.
- ADRs
  - Most common methods → Arbitration & Mediation
  - Other methods → Conciliation, negotiation, ombudsman, case evaluation, neutral fact finding
- Advantages of ADR
  - Low cost
  - Highly flexible
  - Higher confidentiality
  - High chances of settlement
  - Choice of forums & solutions
- Disadvantages of ADR
  - Requires co-operation of both the parties
  - Lacks possibility of interim measures
  - Difficult to enforce the final outcome
  - No Appeals (usually)
- Primary legislations dealing with ADR in India are:-
  - TAACA 1996 → In syllabus ✓
  - Code of civil procedure 1908 [CoCP]
  - Legal services authorities act 1987
- Supreme Court → Salem Advocate Bar Association (Tamil Nadu) v/s Union of India : SC directed that All courts shall direct the parties to use ADRs like Arb^n / Conciliation, etc.

② SECTION 1 : TAACA 1996

- Extends to whole of India
- Came into force w.e.f. 22nd Aug, 1996

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③ ARBITRATION:

- It is a method of adjudication of disputes
- By a neutral third party selected by parties in dispute
- Who renders a final & binding decision

④ International Commercial Arbitration:

It is the arbitration relating to disputes arising out of legal relationships considered as commercial under Indian law, where at least one of the parties is :-

- an individual who is a national of
- body corporate formed in
- association of individuals whose central mgmt or control is exercised from
- Govt of

→ A COUNTRY OTHER THAN INDIA

⑤ Process of Arbitration:

All Parties —appoint→ Arbitral tribunal i.e. Arbitrator

- conducts adjudication &
- makes Arbitral Award (i.e. final decision)

⑥ Basic features of arbitration:

- Arbitration Agreement
- Arbitrator
- Seat of arbitration
- Party autonomy & procedure
- Finality of outcomes
- Confidentiality ↔ Arbitral Awards
- Enforcement of arbitral awards

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- Arbitration agreement: Arbitration can't take place without the consent of parties. This consent is contained within an arbitration agreement.
- Arbitrator / Arbitral tribunal: Arbitrator resolves the disputes just like a Judge of a court does. Parties choose arbitrators who shall be neutral, impartial & independent
- Seat of arbitration: Seat means the legal system that would supervise arbitration to ensure that legal requirements are complied with. Eg. IF India = SEAT, then Indian laws will be applicable & Indian courts will have the authority to provide any support / assistance or to hear appeals, etc.
- Party autonomy (Freedom to choose): Parties can choose which law to be applied (usually for international commercial arb.) or what kind of hearing should be held - written / oral, etc.
- Finality of outcome: Usually, no appeals are allowed against an arbitral award. However, it can be set aside in cases like:-
  - Invalid arb^ agreement
  - Party's incapacity
  - Independence of arbitrators
  - Unfair procedure followed, etc.
- Confidentiality: whatever happens in arb^ remains private amongst the parties & arbitrators.
- Arbitral Award: It is the decision passed by arbitrator
- Enforcement of award: It is easier to enforce an award in foreign nations as compared to a court judgment, since it happens via international treaties.

⑦ LITIGATION	ARBITRATION
It takes place @ COURT	Parties choose the place
A Judge is assigned by court	Parties choose arbitrator
Procedure followed by court is fixed by CoCP & other rules	Parties have flexibility to adopt any procedure
Public can attend proceedings	Proceedings are confidential
Appeal is allowed upto SC	No appeals (except in some cases)

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(8) Arbitration in INDIA

- **Governed by**
  a. TAACA, 1996 &
  b. Indian contract Act, 1872
- **Authorities under TAACA**
  a. Judicial authorities
  b. Court uls 2(e)
  c. SC / HC / any person or institution designated by SC/HC

→ Judicial authorities: Not defined in the act. However, the Supreme court, in SBP vls Patel Engineering, observed that
- Judicial authority is not defined in the act
- It includes a court defined uls 2(e), other courts and even a special tribunal like 'consumer forum'
- JA is a concept wider than courts and it includes quasi judicial authorities / special tribunals.
- Every court = JA, but every JA ≠ court

→ Court uls 2(e): (for interim relief, appeals, etc.)
- For International comm. arbⁿ → HIGH COURT
- Otherwise → DISTRICT COURT & HIGH COURT

→ SC/HC/Any person or institution designated by SC/HC: SC & HC are entrusted with a task of appointing arbitrators upon request of the parties.
- For International comm. arbⁿ → SC can appoint
- Otherwise → HC can appoint

★ SC/HC can designate the task to any person/institution.

★ Madras HC → A.K. Balaji vls GOI: Foreign lawyers cannot be debarred to come to India & conduct Arbitration for disputes related to International comm. Arbⁿ.

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⑨ ARBITRATION AGREEMENT (AA)

Definition | Types | Principles | Requirements | Termination

→ DEFINITION:

- Section 2(1)(b): Arbitration agreement means an agreement referred to in section 7.
- Section 7: (i) AA means an agreement by parties, to submit to arbitration, all or certain disputes which have arisen or which may arise between them in a defined legal relationship.

(ii) AA must be in writing. AA is in writing if it is contained in:

- a document signed by parties, or
- an exchange of letters, telegram, telex, etc. including electronic means of telecommunic^n which provides a record of agreement

(iii) A reference to a contract / doc having arbitration clause also constitutes an AA if contract is in writing & if reference is such as to make that arbitration clause a part of the contract

↳ Groupe Chimique Tunisien SA v/s Southern Petrochemical Industries:
A party placed an order of purchase of high qty of phosphoric acid from other party. 'Purchase Order' noted that T&C of the transaction would be as per Fertilizer Association of India (FAI) T&C for sale / purchase of that acid. Clause 15 of FAI's T&C provided for settlement of disputes by Arbitration.
Q: Is it a valid reference for an AA to come into existence?
A: YES!

(iv) AA may be in form of an Arbitration clause in a contract or in form of a separate agreement.

→ TYPES OF AA

- Arbitration clause → included in a contract for any future-disputes
- Submission agreement → agreement to refer existing disputes to arbitration

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→ GENERAL PRINCIPLES:

→ AA = an agreement enforceable under law, i.e., It is a contract & has to fulfill all requirements of a valid Contract

→ Consent (consensus ad idem): The "consent" of "all" parties to arbitration should be "CLEARLY INDICATED" (≠ vague)

→ Ouster of Jurisdiction: Once the parties have agreed to go for arbitration, neither of the parties can unilaterally proceed to COURT for litigating the matter. If one party goes to court, then that party will be referred to arbⁿ if other party requests the court for the same.

→ Doctrine of separability: The arbitration clause contained in a contract is a 'separate agreement' (i.e. separable) from that contract. It means that arbitration would not be rendered invalid even if the principal contract was invalid.
Thus, AA & contract are INDEPENDENT. This is LEGAL FICTION.

→ Competency to rule on its jurisdiction: Arbitrator can rule on its own jurisdiction even if it involves a question of validity of main contract. It means that arbitrator shall determine the validity of main contract ✓

→ REQUIREMENTS OF A VALID AA:

→ Writing: AA must be in writing, even though main contract is entered orally.

→ Consent of all parties must be CLEAR (≠ vague):
All parties must consent to arbⁿ.
Eg. An arbⁿ clause stating "Any dispute arising during the partnership shall be mutually resolved by partners or shall be referred for arbⁿ if partners so determine," is NOT a valid AA since there is no clear consent for arbⁿ.

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→ Defined legal relationship: Any disputes arising from a legal relationship can be submitted to arbitration unless barred by a statute. Disputes concerning illegal activities cannot be submitted to arbitration. ↳ VAST TERM!

→ Final & Binding award: Parties to AA must agree that the determination of their rights by a neutral 3rd party (arbitrator) would be final & binding.
Eg. 3 parties → contractor, subcontractor & contractee enter into an agreement. Arbitration clause states "any dispute related to design / drawing / estimates / etc. shall be referred to the chief engineer / architect handling work of this construction contract."
★ Q: Is it a valid AA?
A: NO! Arbitrator ≠ neutral 3rd party
(Arbitrator is paid by the party to contract. Thus, he is not an independent / neutral person)

→ Specific words: Mere use of words like 'Arbitration' or 'Arbitrator' will not make it an AA. Usage of such words is not mandatory in AA.

→ Dispute: There must be a present / future dispute.

→ Arbitrability: Dispute must be arbitrable. There are some disputes that laws retain exclusively for courts, and the same are not arbitrable. Examples of non-arbitrable matters:

- criminal offences
- matrimonial matters → Shaadi / divorce etc.
- Guardianship matters → Legal guardian / custody etc.
- Testamentary matters → will, succession etc.
- Mortgage suit to sell collateral properties

→ Signature: Parties must sign the AA, if it is contained in a contract. Exception → no sign is needed if record of agreement is provided by telex / email / etc. i.e. in any correspondence.
Eg. Online ticket purchases by agreeing to T&C makes the AA valid even without sign.

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→ TERMINATION OF AA:

- By mutual consent of all parties
- Termination of principal contract
  - AA is terminated if main contract is terminated, discharged or replaced by new contract.
  - * Exception :- AA wont be terminated if principal contract is breached. (∵ Doctrine of separability is used)
- Death of parties
  - N/A for Indian arbⁿ since legal representatives can continue to dispute
- By operation of any law

* Example : Mr. A & Voltas Ltd entered into a service agreement on purchase of AC by mr. A from Voltas. Agreement provides for annual maintenance of AC - in the month of Feb. Arbⁿ clause is also present

CASE 1

Agreement had a tenure of 3 yrs. After 3 yrs, the agreement & AA both are terminated ✓

CASE 2

At the end of 2nd year, they replace current agreement with a new one. The new agreement doesn't have Arbⁿ clause. Thus, main (old) agreement & its AA both wont survive.

↓

For disputes related to service as per new agreement, arbⁿ can't be sought!

↓

Solution → Enter a separate AA!

CASE 3

Voltas stopped its maintenance service after 1st year or Mr. A did not like the quality of service & mr. A terminates the agreement to save cost.

↓

AA doesn't terminate

↓

matter = arbitrable ✓

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(10) # ARBITRAL TRIBUNAL

Meaning | Appointment (Who can be an arbitrator? | Number | Procedure) | Requirements | Challenge grounds | Duties, Liabilities | Termination, Removal, substitution

→ **Meaning :-** An arbitrator / arbitral tribunal performs the function of a court's judge, i.e., it adjudicates / judges the dispute and passes an arbitral award, i.e., a decision.

→ **Appointment :**

(i) Who can be an arbitrator?

Any person capable of entering a contract can become an arbitrator. Arbitrator enters into a contract with parties to resolve the dispute.

FYI : It can be anyone - CA/CS/CMA / lawyer / shahrukh / salman / sunny / Doctor / Engg^r etc

(ii) Number of arbitrators

Section 10: The parties are free to determine the no. of arbitrators but such no. shall not be an even number. Failing that, the arbitral tribunal shall consist of a SOLE ARBITRATOR.

↓

{Write both views in exams} ←

SC → Narayan Prasad Lohia v/s Nikunj Prasad Lohia : Even no. of arbitrators is an acceptable possibility. SC stated that it is possible that even no. (eg. 2) of arbitrators may all pass the same decision & not form a tie.

The parties have the freedom to appoint arbitrators. While appointment of arbitrators, they must keep these factors in mind : Fees, complexity of matter, time required, duration of sessions, etc.

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(iii) Procedure for appointment

Parties have the freedom to decide the procedure. Most common ones are:

- Parties will jointly appoint arbitrator/(s)
- Each party appoints one arbitrator & the 2 arbitrators shall appoint 3rd arbitrator
- Appointment by any unrelated person / instⁿ eg. ICAI president, ICC, etc.

There may be times when:

Scenario 1

Parties may have not decided upon a procedure for apptmt.

↓

SECTION 11 provides a solution.

↓

Parties can approach designated authorities under TAACA:

- For International comm. arbⁿ → make applicⁿ to an arbitral instⁿ designated by SC & it will appoint arbitrator/(s)
- Otherwise → make applicⁿ to an arbitral instⁿ designated by HC & it will appoint arbitrator/(s)

Scenario 2

Parties may have decided a procedure and it requires some further action but a party / arbitrator / instⁿ fails to act as per procedure.
(eg. agreed procedure states that the president of ICSI will appoint & he fails to do so)

↑ (returns to SECTION 11 provides a solution.)

Q: What if each party chose an arbitrator & those 2 arbitrators were supposed to appoint the 3rd one & they fail to appoint the 3rd one within 30 days of their appointment? or what if 1st party didn't appoint one arbitrator within 30 days of receipt of 2nd party's request?
A: Follow the same rule uls 11 mentioned above.

Q: When parties mutually agree to appoint 1 arbitrator, one party sends a list of proposed arbitrators & other party has to accept one name (or vice versa). What if there is no acceptance, by both parties, of 1 arbitrator?
A: Follow rule uls 11 ✓

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* SBP & Co. vls Patel Engineering: SC held that "appointment" of arbitrator by any appointing authority u/s 11 cannot be challenged before any court or arbitral tribunal. [FYI → IF award is passed & that arbitrator wasnt independent, then appeal is allowed.]

→ Requirements of an arbitral tribunal:

Arbitrator could be of any nationality.	Capable of contracting	Lack of bias
↓	↓	↓
This is relevant for an international comm. arb^{n}	A contractual relation is established bwn parties & arbitrator, who gives services for remuneration. ICA 1872 rules must be fulfilled by them.	He should be neutral, impartial independent & unbiased at all times.

* Some instances giving rise to doubts as to presence of bias :-

- Arbitrator is an employee / consultant / advisor / lawyer / legal representative of any of the parties.
- He has / had any business relationship with a party.
- He has significant financial interest in any party (eg. party = co. and he is a shareholder) or in the outcome of arb^{n} (eg. IF party ABC wins, then ABC grants arbitrator a job at its office)
- Close family member of arbitrator has significant financial int in any party, or is an affiliate of any party
- Arbitrator has previous involvement in the case. (Q. on page 7)

* Examples:

1. CA Bablu Patil worked for SBI from 2010 - 17. In 2020, he is appointed as arbitrator in a dispute bwn SBI & Mallya.
2. CA Bablu gave extra time to SBI for submitting facts but not to Mallya.

In both 1 & 2, Arbitrator = BIASED !

3. CA Babli Bachan used to work in Maharashtra Sales tax office (i.e. Govt employee) & she is an arbitrator now in a dispute bwn Maharashtra State Govt v/s Mallya.
4. Mr. A of Mumbai vls Mr. L of London and arbitrator is a citizen of London.

In Both 3 & 4, Arbitrator ≠ BIASED merely on given facts

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* However, even though there might be a previous connection bwn arbitrator & a party, it does not prevent the parties from appointing him as arbitrator. Parties have full autonomy to waive off objectionable grounds & appoint that person. However, once appointed, a party cant challenge later on that same ground, but it can challenge on some other ground.

Example: CA Bablu Patil was an employee of SBI. SBI disclosed it to Mallya & he agreed to appoint Bablu as the arbitrator. Later, Mallya found that Bablu was favouring SBI more.

- Mallya cant challenge the appointment stating biased opinion since Bablu was an employee of SBI.
- But Mallya can challenge on some other ground, like → Bablu's wife holds significant financial int in SBI, which was unknown to Mallya and became known later.

→ Section 12: Grounds for challenge

When a person is approached in connection with his possible appointment as arbitrator, he shall disclose in writing about any circumstances:

- such as existence of past / present relation with a party or interest in any party, whether financial / professional etc, directly / indirectly, giving rise to doubts as to his independence / impartiality
- & which are likely to affect his ability to devote time to arb^n and ability to complete arb^n within 12 months

In absence of above disclosures, a party can challenge the award given by such an arbitrator.

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→ Duties & Liabilities of arbitrators:

- Conduct arbitral proceedings without delay. Longer proceedings would mean more cost to parties.
- Remain impartial at all times & treat parties equally.
- Keep all matters of arbitration confidential.
- Avoid unilateral communication with one party.
- Ensure all docs & communication received from one party is communicated to other party
- Ensure award complies with all legal requirements
- Ensure he/she has complied with all legal requirements (eg. sec 12)
- Deliberation: Arbitration must discuss all issues before issuing an award. Arbitrators must render award through majority and by mentioning reasons for passing such award.

→ Termination / Removal / Substitution of Arbitrators:

- When arbitrator leaves voluntarily
- When parties agree that arbitrator should be removed
- Operation of Law
  - Arbitrator unable to continue
    - eg. Ill, busy, lost interest, etc.
    - eg. Law no longer permits him to act as arbitrator
  - When arb^n process ends
    - i.e. Final award is made or Final award wasn't made within 12 months or Parties decide that they dont want to continue arb^n.
- Court decides 'arbitrator to be removed'
  - when a party approaches the court (eg. Biased behavior as per sec 12)

→ Before whom is the challenge to be raised?

Party —(raises challenge before)→ Arbitral tribunal or Arbitrator itself —(then challenge further)→ HC [International comm arb^n]

Arbitral tribunal or Arbitrator itself → DC [Domestic arb^n]

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→ Arbitrator terminated / removed, what next?

Parties shall replace it with a new arbitrator keeping in mind the ORIGINAL METHOD of appointment.

eg. 3 parties - A, B, C agreed to appoint one arbitrator each. IF arbitrator appointed by B is challenged & removed, then new arbitrator should be appointed by B again (since it is the original method). IF B fails, then parties can use section 11 (i.e. go to arbitral inst^n designated by SC for int. comm. arb^n or by HC for domestic arb^n)

(11) ARBITRAL AWARD : It is the decision passed by arbitrators

- General principles
- Types
- Requirements
- Challenges
- Enforcement

→ General Principles:

- Who can challenge? ↓ only a party to arbitration agreement
- Authority ↓ Award can be challenged at: ↓
  - DC, then HC [domestic arb^n]
  - HC [Int comm arb^n]
- Timeline ↓ Challenge can be raised within 3 months from receipt of award (+ 30 day ext)
- Automatic stay on the enforcement of award is N/A. Parties need to request a court for any stay.

→ Types of Awards:

- FINAL ↓ Award made as per law, which adjudicates on ALL issues or disputes
- INTERIM ↓
  - An order remaining in force till final award, or
  - An award on some issues (not ALL)
- SETTLEMENT ↓ Award passed when parties agree to settle disputes instead of Adjudication
- ADDITIONAL ↓ Passed later, if final award missed out some disputes/claims, on request within 30 d. by parties

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★ Example: Infosys Ltd. & GST dept entered into a contract. There was an arbitration clause in it. After a year, GST dept was aggrieved and it raised 3 disputes: a) Failure to file GST returns b) Failure to make GST challans and c) No credit reflected in a ledger sometimes. Both parties appointed mr. Modi as arbitrator.

CASE 1: Modi gives an award dealing with a, b and c. This is FINAL AWARD.

CASE 2: Modi gives an award dealing with 'b' only [i.e. award 1] and informs parties that 'a' and 'c' will be dealt with via other award. Award 1 = INTERIM AWARD

CASE 3: Lawyers of both parties met and decided to go for a settlement. They made a settlement agreement and submitted to the arbitrator requesting him to incorporate it in the arbitral award → i.e. SETTLEMENT AWARD

CASE 4: Modi passed an award & informed parties that it is a final award. Parties later found that dispute 'a' was not dealt with. They must request Modi within 30 d. from receiving award & Modi passes an award for 'a' i.e. ADDITIONAL AWARD.

→ Requirements of an award:

- It must be a decision passed by majority
- Must be made in writing, must be signed & dated. The law requires only the majority arbitrators to sign the award and to note the reasons as to why sign of an arbitrator is missing
- Must be reasoned [Exception: if parties agree that reasons need not be given for award]
- Must not be vague. It should clearly note the duty & liability of a party, quantify amounts properly, etc. It should not sound like a recommendation. It should be like an order. (see example)
- Should be capable of being performed & enforced, i.e., parties should not be asked to do something Illegal, Impossible, etc.
- Should not be against public policy
- Award should be delivered to the parties as soon as it is signed

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ALL THE ABOVE CONDITIONS MUST BE FULFILLED, OR ELSE AWARD = INVALID!

Example: Arbitrator decides that party A must pay some compensation amount to party B

	Lines in the award	Decision Type	AWARD's Validity
1.	A must pay & compensate B	VAGUE	INVALID
2.	A must pay 2 Lakhs to B in two instalments	VAGUE	INVALID
3.	A must pay 2 Lakhs to B within 2 weeks from date of award via RTGS or DD or NEFT, failing which, an interest @ 20% p.a. will be charged.	CLEAR	VALID

→ Challenging an award:

Section 13

↓

Challenge of bias against arbitral tribunal

↓

when arbitral tribunal is biased in favour of a party

↓

Challenged 1st before arbitral tribunal itself

↓

If tribunal doesnt accept it, then challenge it before court

↓

DC & HC → domestic arbn
HC → Int comm arbn

Section 16

↓

Overstepping of jurisdiction by the arbitral tribunal

↓

when a party thinks that arbitral tribunal doesnt have jurisdicn (eg. Dispute 1, 2, 3 were to be arbitrated but tribunal considered 4th dispute also)

↓

Challenged 1st before arb tribunal itself & IF it doesnt agree and passes award, it can be challenged for REVIEW

Section 34

↓

Specific grounds for reviewing an award (7 grounds)

↓

1. Party is under some incapacity (eg. minor)
2. Invalid arbn agreemt
3. A Party is not given notice of arbitrator's appointment or arbn proceedings, hearings.
4. Award deals with disputes not submitted to arbitration
5. Arbn procedure / tribunal was not in accordance with legal requirements

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7 grounds continued

The 1st set (Ground no. 1 to 5) has grounds on which a party has to challenge

The 2nd set (Ground no. 6 & 7) has grounds which the court can look at its own motion

6. Subject matter of dispute is not capable of settlement by arbn (no arbitrability) eg. crimes, matrimonial, etc.
7. Award is in contravention of public policy of India

FYI: Against public policy of India means the award is:

- Not fair & reasonable
- Based on an irrational decision
- Immoral, unjust
- Based on hasty procedure

→ The above challenges are by way of 'REVIEW' @ court.

FYI: 'Appeal' is a statutory right. 'Review' isnt a statutory right and can be requested only on some specific grounds.

→ Consequences of challenge: The reviewing court can

SET ASIDE
Court shall cancel the award and it shall have no legal sanctity or value now.

CONFIRM
Court states that there is nothing legally wrong in the award.
FYI: Court "upholds" the tribunal's decision

MODIFY
Court shall modify some of the areas

REMIT BACK TO ARB TRIBUNAL
Court sends that matter back to arb tribunal to rectify some defect, which, if not corrected, would lead to setting aside of the award.

→ Enforcement of Award: An award can be enforced under the CPC 1908 as if it were a court order / decree even without waiting for challenge proceedings to conclude. When an aggrieved party has challenged, it can make an applicn to stay the enforcement.

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(12) # CONCILIATION

Meaning | Characteristics | Indian scenario | Settlement agreement | Conciliation v/s Mediation

→ Meaning: Conciliation is an ADR method. It is a process of getting the parties to come to an agreement about a dispute. Arbitration was ADVERSARIAL in nature, i.e. 1 party won & other party lost. This tends to destroy relations. Conciliation is not adversarial. It aims to bring parties to an agreement, i.e., a win-win situation.

→ Characteristics of conciliation:

Voluntary | Non-Adversarial | Assisted procedure | Finality of settlement | Confidentiality

- Voluntary: A matter can be conciliated if all parties agree to it. No party can be forced to conciliate / attend proceedings. If a party was forced, then the outcome of conciliation will not be binding on that party → SC in Afcons infrastructure ltd. v/s Cherian Varkey Construction co.
- Non-Adversarial: Parties dont compete to defeat the opposite party. Aim is to find a solution that best suits all parties.
- Assisted procedure: All proceedings shall be at the convenience of parties & the conciliator shall help parties to reach settlement
- Finality of settlement: The outcome / settlement is final and binding on parties
- Confidentiality: Conciliator & parties cant disclose any info to the persons not a party to conciliation. Info recd from 1 party can be disclosed to other party [except if that party has requested that info to be kept confidential.]

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→ Conciliation in India:

- Governed by TAACA 1996 & Section 89 of COCP 1908.
- Any disputes (except those prohibited by a law) arising out of a legal relationship can be submitted to conciliation.
- Section 63 - Number of conciliators: One to three ✓
- Section 64 - Appointment of conciliators: Conciliators are appointed by parties or they may request any person / institution to recommend a conciliator who shall be impartial & independent.
- Section 65 - Procedure of conciliation:

Parties → (submit statements in writing, docs, etc.) → Conciliator ⇒ sends copies of 1 party's docs to other party, encourages parties to engage in discussions to arrive @ settlement

- Section 77 - Bar on judicial / arb^n proceedings:

When conciliation is ongoing, the parties cannot start arb^n or approach the court regarding the SAME DISPUTE.

Exception: when it concerns preserving its right, a party can approach the court or start arb^n.

★ Example ★

ABC & Co. deals in flowers. It has various clients & piled up orders from clients buying exotic flowers. After a month, ABC & Co. sold its business to DEF & Co. for a lumpsum amount. DEF & Co. increased the price of flowers substantially. ABC & Co.'s biggest client PQR & Co. was most affected due to increase in prices by new owner DEF & Co. Earlier, PQR & Co. used to buy flowers from ABC & Co. at Rs. 10/flower and sell those to retailers at Rs. 11/flower. Based on cost of Rs. 10, PQR & Co. had taken orders from retailers for next 3 months. PQR & Co. had locked a selling price of Rs. 11 for 10 Lakh orders. Now, if DEF & Co. increased price to Rs. 12 (from Rs. 10), then PQR & Co. would face losses. They can conciliate. If DEF & Co. refuses to reduce price, then PQR & Co. may go to the court.

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Basically, PQR & Co. would request a price of Rs. 10 for existing orders to be served. PQR & co. would approach the court for an interim measure like "DEF & co. to supply flowers at Rs. 10 until conclusion of conciliation proceedings" or "DEF & co. to give some credit period so that the loss can be covered up by selling flowers to new customers @ higher rates", etc.

→ Settlement agreement:

Initial Steps	Agreement	Enforcement
Settlement should be based on suggestions made by conciliator/ parties.	The terms of settlemt should be written down as an agreement i.e. called as the settlement Agreement/ Memorandum of concil^{n}.	Same like arbitral award. It can be challenged @court. It can be enforced after the time to challenge has expired or the challenge was unsuccessful.

Agreement:
- made by conciliator or the parties
- authenticated by conciliator (compulsory)

⇓

SC → Mysore cements ltd v/s Svedala Barmac ltd.

→ A conciliator cant act as arbitrator / representative of any party in any arbitral / judicial proceedings in respect of a dispute that was a subject of conciliation proceedings.

→ Any evidence / views / suggestions / admissions / proposals made by parties CANNOT be used as evidence in arbitral / judicial proceedings, irrespective of whether that dispute was a subject of any proceeding or not.

Basically, confidentiality cant be breached. If a matter was conciliated & now it is being arbitrated, the arbitrator has to start afresh. He cant treat any info/ views from conciliator as an evidence.

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→ MEDIATION: Conciliation & Mediation have fundamentally the same philosophy & similar processes but there subtle differences:

CONCILIATION	MEDIATION
Aim is to "settle" disputes by a win-win agreement.	Aim is to "guide" the parties towards a solution.
Conciliator plays a Pro-active role. He is a facilitator, an evaluator & intervener.	Mediator plays a facilitative role and just guides the parties.
Parties as well as conciliator can come up with solutions.	Only the parties come up with a solution.
Governed by TAACA 1996 and section 89 of COCP 1908.	Governed by section 89 of COCP 1908.
Conciliation is bound by "confidentiality" or else the process is invalid.	Mediation is governed by confidentiality which is based on trust.
Outcome = "Settlement agreement"	Outcome = An agreement bwn parties
On breach of above, it can be enforced just like an arb. award by following TAACA 1996.	On breach of above, the parties must follow usual process followed for "Breach of contract."

★ SC → Salem Advocate Bar Association v/s Union of India:

- Conciliation is a BIGGER concept than mediation
- Conciliator plays a greater & more involved role than a mediator.

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THE INSOLVENCY AND BANKRUPTCY CODE, 2016
(8 MARKS)

(1) Why IBC 2016?

BEFORE	AFTER IBC
Multiple laws	One law
Time consuming process	Quick process (180d. + ext)
Multiple courts of law	NCLT & DRT (AA)
No database of cases	'Information Utility' ✓
No regulating authority	'IBBI' = regulator
Focused more on 'recovery'	Focused on recovery, revival
Discouraged lenders & entrepreneurs	Encourages lenders & entrepreneurs

(2) IBC - Regulatory mechanism

- Insolvency & Bankruptcy Board of India (IBBI)
  - Insolvency professional agency (IPA)
    - ICAI
    - ICSI
    - ICAI (cost)
  - Insolvency Professionals (IP)
  - Information Utility (IU)
- Adjudicating Authority
  - NCLT
  - DRT
  - ↓ Appellate authority: NCLAT & DRAT
  - ↳ SC ↲

(3) SEC 1: IBC, 2016 applies to whole of India

(4) SEC 2: IBC, 2016 applies to -

- Companies (under CA 2013 / special act / law)
- LLPs
- Partnership / proprietorship firms
- Personal guarantor to corporate debtors
- Individuals

wrt their insolvency, liqⁿ, voluntary liqⁿ & bankruptcy.

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(5) IBC can be applied on corporates, but other than those in financial sector.

- Bank
- FI
- Insurance company
- ARC
- MF
- CIS
- Pension funds

The list doesn't include NBFCs, i.e. you can file an applic^n against NBFC ✓

(6) Which Adjudicating Authority?

- NCLT
  - for corporate persons (Co., LLPs)
  - Personal guarantor to corp debtors
- DRT ↓
  - Individuals, firms

(7) CORPORATE INSOLVENCY RESOLUTION PROCESS

File application at NCLT ⟹ NCLT accepts application

⇓

Moratorium (SHAANTI!!!) & public announcement ⟸ Appoint Interim resolution professional (IRP)

⇓

Set up Committee of creditors (CoC) ⟹ Appoint Resolution Professional (RP)

⇓

Submit Resolution Plan to NCLT ⟸ Implement it if NCLT accepts it

⇓

LIQUIDATION (if NCLT rejects)

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(8) SEC 4: IBC, 2016 can be applied on Corporate debtors (companies, LLPs other than financial service providers) only if default is of MINIMUM ~~1 LAKH~~ 1 CRORE (24|3|2020)

(9) PARTIES

- Corporate Debtor (it owes ₹ to a creditor)
- Financial creditor (FC)
- Operational creditor (OC)
  - Supplier of G&S
  - Employees, workers
  - CG|SG|LA dues

Who can initiate CIRP, i.e. file applic° @ NCLT?

- FC u|s 7
- OC u|s 9
- Corporate applicant u|s 10

(10) SEC 7: Application by FC

- Who can apply?
  - A FC itself
  - A FC jointly with others
  - A person on behalf of FC
    - Guardian
    - Executor or Administrator of FC's estate
    - Trustee, Debenture trustee
    - Person who is authorised by BOD of FC

- Number of applicants required: 100 FCs (or) 10% of no. of FCs for
  - FCs who are allottees under real estate projects
  - Multiple security holders / deposit holders or a class of creditors exceeding a no. as prescribed

- Default need not be to applicant FC. If SBI & HDFC = FC and default was for SBI loan, then even HDFC can apply.

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- Application must be accompanied with:
  - Record of default recorded with Information Utility or any other evidence of default
  - Name of a Resolution Professional proposed to act as an IRP (Interim Resolution Professional)

- Within 14 Days of receipt of application, NCLT may:
  - ACCEPT/ADMIT IT
    - If satisfied that a default occured (&) no disciplinary proceedings are pending against proposed IRP (&) application = complete
    - ↓
    - CIRP commences from date of ADMISSION
  - REJECT IT
    - Otherwise → But it shall, before rejecting, give a notice to applicant to rectify a defect within 7 days from receipt of notice

- NCLT → Applicant
  must forward the order within 7 Days from admission or rejection

(11) SEC 8: Insolvency Resolution by Operational creditor

- OC → Corporate debtor (CD)
  must, on occurrence of default, deliver DEMAND NOTICE + INVOICES

- CD → OC
  must bring to OC's notice within 10 DAYS
  - Existence of dispute, if any or record of pendency of any suit / arbitration filed before receiving notice & invoice copy
  - Payment of that debt by sending attested copy of record of electronic trfr or encashment of cheque issued by it

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(12) SEC 9: Application by OC to initiate CIRP

- OC ——— may file an application ———→ NCLT

IF, within 10 DAYS from delivery of notice & invoice to CD, the OC:

Did not receive payment **or** Did not receive notice of any dispute / suit, etc

- Application must be accompanied with: [CA FII]

C - Copy of invoice / demand notice given to CD
A - Affidavit that no notice of dispute / suit etc is given by CD
If available { F - Copy of Certificate from financial inst^n maintaining A/c of OC confirming that CD did not pay the OC
I - Copy of record with IU confirming non-payment or any other proof

optional → I - 'MAY' propose a resolution professional to act as an IRP

- Within 14 days of receipt of application, NCLT may:

ACCEPT / ADMIT IT IF	REJECT IT
- Application = complete - Invoice / notice for payment was delivered by OC to CD - No notice of dispute on IU, no notice recd by OC - No payment is made by CD - No disciplinary proceedings are pending against IRP (if proposed)	otherwise ↓ But it shall, before rejecting, give a notice to applicant to rectify a defect within 7 days from receipt of notice

↓

CIRP COMMENCES from date of admission

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(13) SEC 10 : Initiation of CIRP by Corporate Applicant

- Corporate debtor's corporate applicant — may file an applic^n when CD defaults → NCLT

- Application must be accompanied with:
  - Info related to
    - CD's books of A/c or other docs as prescribed
    - RP proposed to be IRP
  - (SR) passed by share-holders or resolution passed by (3/4th) of no. of partners, as the case may be, approving filing of applic^n

- Within 14 days of receipt of application, NCLT may:
  - ACCEPT / ADMIT IT IF
    - Application = complete
    - No disciplinary proceeding is pending against proposed IRP
    - ↓
    - CIRP commences on admission
  - REJECT IT
    - ↓
    - otherwise
    - ↓
    - after giving 7 days notice to rectify any defect in application

** SEC 5(5) → Corporate Applicant means:

- CD itself
- member / partner of CD authorised to apply as per any constitutional doc of CD (eg. MoA, AOA)
- Individual in charge of CD's operation and resource mgmt (eg. MD)
- Person having control & supervision over financial affairs of CD

(14) SEC 10A : For any default arising on / after {25/3/20} for 6 months (or upto 1 yr), NO APPLICATION CAN BE FILED u/s 7/9/10 EVER.

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(15) SEC 11: Persons not entitled to make application

- CD undergoing CIRP
- CD that has completed CIRP in last 12 m → before date of application
- CD or FC who violated any resolution plan that was approved ← 12 m
- CD in respect of whom a LIQUIDATION order is passed

★ CD includes 'corporate applicant' also
★ Above-mentioned CDs can still initiate CIRP against other CDs

(16) SEC 12: Time limit for completion of CIRP

Insolvency commencement date (Admission of application)

↕

180 days + Ext^{n} upto 90 days (if resolution professional files application for ext^{n} @ NCLT as instructed by a resolution passed @ CoC meeting by vote ≥ 66% of voting shares)

★ Extension cannot be granted more than once u/s 12
★ CIRP must mandatorily be completed within 330 days from Insolvency commencement date:

ICD —— 180th —— (+90) —— 270th —— 330th day

Including any ext^{n} due to the legal proceedings w.r.t CIRP

(17) SEC 12A: Withdrawal of applic^{n} admitted u/s 7/9/10

is allowed on application made for it after approval of 90% voting share of CoC

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(18) SEC 13: Declaration of moratorium & public announcement

After admission u/s 7/9/10, AA shall:

- Declare moratorium for purposes u/s 14
- Appoint IRP as per sec 16
- Cause public announcement & call for a submission of claims u/s 15 immediately after IRP's appointmt

(19) SEC 14: Moratorium

- Activities (PROHIBITED) during moratorium
  - Institution or continuance of suits / proceedings @ court / arb^{n} panel / tribunal, etc
  - Trfr, encumber, alienate, dispose off property / right / beneficial interest
  - Any action under SARFAESI Act 2002
  - Recovery of a property by an owner / lessor if property is occupied by CD or possessed by CD

- Exceptions, i.e., Activities (PERMITTED):
  - Supply of prescribed 'essential' G&S to CD
  - Supply of G&S which IRP / RP considers critical to protect value of CD (only if CD pays for it)
  - Surety in contract of guarantee to a CD
  - Licence / permit / quota / concess^{n} etc given to CD by CG / SG / LA / sectoral regulator or any authority under a law wont be cancelled or suspended

only if there's no default ←

- CG can permit other activities with consultation of financial regulator / other authorities

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- AA's order date ⟷ Completion of CIRP
  - u/s 13 → Moratorium starts
  - (Approval of resolution plan u/s 31 or Liquidation order date u/s 33) → Moratorium ceases

(20) SEC 15: Public announcement of CIRP

- Name & Address of CD under CIRP
- Name of authority under which CD is incorporated / regtd (eg. ROC)
- Details of IRP who will manage CD & be responsible to collect claims of creditors
- Date on which CIRP closes (180th day from admission)
- penalty for a false / misleading claim
- last date for claim-submission

* Expense of announcement → borne by APPLICANT
  ↘ re-imbursed by CoC to the extent it ratifies / approves

(21) SEC 16: Appointment & tenure of IRP

- AA (NCLT) shall appoint IRP on insolvency commencemt
  - Sec 7 & 10 application → NCLT appoints IRP if no disciplinary proceedings are pending against IRP
  - sec 9 (if applic^n contains proposed IRP name) → NCLT appoints IRP if no disciplinary proceedings are pending against IRP
  - sec 9 (if applic^n doesnt contain the proposed IRP name) → NCLT → (Refers) IBBI → (recommends IRP in 10 days) NCLT
- Tenure of IRP shall continue till date of appointment of RP u/s 22.

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(22) SEC 17: Mgmt of affairs of CD by IRP

- For CIRP, from the date of appointment of IRP:
  - The mgmt of affairs of CD vest with IRP
  - Powers of BOD, Partners of CD are suspended & exercised by IRP
  - Officers, etc of CD will report to IRP and provide docs
  - Bank/FI of CD shall act on IRP's instructions & furnish info, etc
- IRP vested with mgmt of CD shall:
  - Act & execute deeds, docs etc for CD
  - Have authority to access
    - electronic records of CD from IU
    - Books, records of CD available with Govt / Auditors / Accountants
  - Comply laws for the CD

(23) SEC 18: Duties of IRP [BOFA MIC3]

BOFA: Collect info related to:

- Business operations for last 2 yrs
- Financial & operational payments
- List of Assets & Liabilities on initiation date

M: Monitor assets & manage operations till the RP is appointed by CoC

I: File info collected with IU

C_1: Take control & custody of assets owned by CD as recorded in BIs or IU or depository of securities or any registry

C_2: Receive & Collate claims of creditors after PA u/s 15

C_3: Constitute Committee of Creditors (CoC)

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- For C_1, which assets' {custody can} be taken?

Assets owned by CD in India or abroad	Assets owned by CD but not in its possession	Tangible (movable / immov) Intangible (eg. intellectual property), securities, shares held in subsi, insurance policy, Financial instruments
✓	✓	✓

- For C_1, which assets' {custody cannot} be taken?

Assets not owned by CD but in possession of CD under any contract / trust / bailment	Assets of subsidiary (Indian / Foreign) of CD	other prescribed assets
X	X	X

(24) SEC 19: Personnel to extend co-operation to IRP

officers, promoters, mgr., etc.

IF they dont assist / provide info, etc then IRP can make an application to NCLT & NCLT can direct personnel to co-operate

(25) SEC 20: mgmt of operations of CD as going concern

IRP shall make every endeavour to protect & preserve value of property of CD & manage CD as a going concern. IRP can: [ICAI]

Issue instruc^ to personnel	Enter contracts or modify contracts	Appoint legal, accounting or other professionals	Raise interim Finance

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* While raising interim finance, if IRP wishes to create security interest over encumbered property (i.e. keeping encumbered property as collateral again)

- Prior consent of original secured creditor is needed
- But No consent is needed if: Value of property ≥ Twice the amount of that original secured debt

eg. CD had borrowed 10 cr from SBI by keeping GOLD as security. Now IRP wishes to borrow 5 crores from PNB against same GOLD.

- IF Value of GOLD < 20 cr → SBI's consent = needed
- IF Value of GOLD ≥ 20 cr → no consent needed

(26) SEC 21: Committee of Creditors

A- Composition of CoC

- When financial creditors exist → Composition of CoC = ALL FCs
- When FC doesnt exist (or) All FC are related parties of CD → Reg 16 of Insolvency & Bankruptcy (Insolvency resolution) Regulations 2016 → Composition of CoC
  - 18 largest OC by value or All OC (+) 1 representative each elected by
    - Workmen (1 rep) (+) Employees (1 rep)

Thus, total max 20 ✓

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- After constituting, the IRP must file a report certifying constitution of committee to NCLT → on or before 30 days from IRP's appointment.
- FC or authorized representative of FC

is a related party of CD (normally)	is a related party of CD solely due to conversion of Debt into Equity or convertible security prior to ICD
↓	↓
CANNOT represent, vote, participate @ meeting	Can represent, vote, participate ✓

B- If a person is BOTH FC & OC

He will be FC & OC in proportion of debt	He will be a part of CoC as a FC to the extent of financial debt proportion

C- Joint Financial Creditors under consortium / agreement

- When agreement provides for single agent / trustee to act for all FCs, each FC may:

Authorise him to act on FC's behalf	Represent itself	Appoint IP (≠ RP) at his own cost to represent FC	Exercise vote

- When financial debt is:

in form of securities or deposits	is owed to class of FCs exceeding a specified no.	represented by guardian / executor or administrator
↓	↓	↓
trustee / agent can act ✓	'IP' can act ✓	they can act ✓

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- For 2nd case, the IRP shall apply @NCLT with list of all FCs containing name of IP (≠ IRP) to act as their authorised representative. NCLT shall appoint 'IP' prior to 1st meeting of CoC.

- Remuneration of authorised representatives:

1st case	2nd case	3rd case
↓	↓	↓
as per terms of financial debt agreement / doc	will form a part of CIRP process cost	as per terms of financial debt agreement / doc

D- Meetings of CoC (SEC 24)

- 1st meeting of CoC is to be held within 7 days of constitution of COC (as per section 22) by IRP
- In that meeting 'RP' is appointed uls 22
- Thereafter, RP will hold coc meetings by sending a notice to:

Members of CoC including any authorised rep	Members of suspended BOD or partners of CD	OC or their representatives if aggt dues of OC is ≥ 10% of DEBT
↓	↓	↓
can attend & vote	cant vote can attend	cant vote can attend

- Can a member (FC) appoint 'IP' (≠ RP) to represent him?
  ↓
  YES ✓
  (At his expense)

- QUORUM

Members of COC holding ≥ 33% voting rights, in person or via A/V means	IF not fulfilled, adjourn it to NEXT DAY at same time & place

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At adjourned meeting, quorum = members present ✓

- Voting in the meeting:
  - All decisions of CoC shall be taken by ≥51% of voting share of FCs
    - except as specified elsewhere
  - IF there are no FCs, or all FC = related party of CD then IBBI shall prescribe a procedure

- CoC may need financial info of CD. They can request RP for it & RP shall provide it within 7 DAYS.

(27) SEC 22: Appointment of RP

- CoC can resolve to appoint IRP as RP or replace IRP in 1st meeting (i.e. in 7 days from its constitution)
  - By majority vote of ≥66% of voting share of FCs
- IF IRP = RP
  - Take written consent of IRP
  - Communicate decision to IRP, CD, NCLT
- IF IRP ≠ RP
  - Make application @ NCLT for appointment
  - Attach written consent of the proposed RP

* NCLT → Forwards name of proposed RP → IBBI → confirms in 10 d. → NCLT → appoints the RP ✓

* IF IBBI doesn't confirm in 10 days, then NCLT shall direct IRP to continue till the time IBBI confirms it.

(28) SEC 23: RP to conduct CIRP till the end (till order approving resolution plan u/s 31 or appointment of a liquidator u/s 34) by exercising all powers / duties of IRP including inviting resolution plan applicants

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(29) REG^ 3 of Insolvency & Bankruptcy (Insolvency resolution process for corporate persons) Reg^ 2016:

ELIGIBILITY OF IP TO BE APPOINTED AS RP:

↓

IP must be independent of CD [IF IP = proprietor]
IP, all partners, directors of IP entity must be independent

↓

A person = independent if he:

- is eligible to be independent director of CD uls 149 of CA 2013
- is not a related party of the CD
- is not an employee / proprietor / partner of:
  - firm of auditors / secretarial or cost auditors of CD in last 3 FYs
  - legal / consulting firm that has / had any transaction with CD amounting to (≥ 5%) of gross turnover of such firm in last 3 FYs

(30) SEC 27: Replacement of RP by CoC

- Vote of (≥ 66%) is needed
- Written consent of proposed new RP is needed
- CoC must forward his name to NCLT. NCLT forwards it to IBBI & accordingly appoints RP in the same manner laid uls 16.

IF disciplinary proceedings are pending then old RP shall continue till new RP is appointed ⟸

(31) SEC 5(13): CIRP process costs include:

- Fees payable to RP
- Cost incurred by RP to run business of CD as going concern
- Interim finance & its cost
- Expenses of CIRP by Govt

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(32) Now, finally resolution plan is to be submitted:

Resolution Applicant —submits plan→ RP —examines & forwards→ COC —approves ≥66%→ RP —submits↓ NCLT —Approves or rejects→

A. SEC 29A: Persons not eligible to be resolution applicants [IPL - WC - CD - PMC - G NPA]

or

[IPL World Cup CD PMC bank Gross NPA]

I - He is undischarged Insolvent
P - Prohibited by SEBI from trading / accessing sec mkt
L - Laws ols India declaring him ineligible under IPL - W - CD - PMC - G NPA
W - He is a Wilful defaulter under RBI guidelines
C_1 - Has a Connected person ineligible under IPL-W-CD-PMC-GNPA
C_2 - Convicted for offence punishable with:

- Imp ≥ 2 yrs under acts mentioned in 12th schedule to IBC 2016
  (eg. RBI act, SCRA, ITA, Customs, Pollution, Excise, GST, SICA, CA 2013, Benami, Competition, FCRA, FEMA, PMLA, SEBI, Competition, Corruption, Black money, LLP COFEPOSA, Foreign trade, Essential commodity, Food)
- Imp ≥ 7 yrs under any law

Exception → He can apply after 2 yrs from his release.

D - Disqualified to act as a Director u/ CA 2013

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PMC - He is a Promoter / in Mgmt / Control of Corp debtor in which the following transaction (s) took place

Fraudulent | Undervalued | Preferential | Extortionate credit

and NCLT has passed orders against those u/ IBC.

Exception: FUPE happened before the corp debtor was acquired by resolution applicant as per past resolution plan & such applicant had not contributed to FUPE.

eg. Rcomm had FUPE, Anil Ambani didn't contribute to FUPE, Anil acquired 70% (control / mgmt) of Rcomm after that, now He can be resolution applicant for anyone

G - Has given Guarantee to a creditor on behalf of a corp debtor against whom CIRP application made by that creditor is accepted by NCLT & guarantee has been invoked by creditor & is still partly / fully unpaid

eg. Mukku gave guarantee to SBI for RIL. SBI initiated CIRP against RIL. Before that, on one of 3 loans, SBI had invoked guarantee & Mukku didnt pay. Mukku cannot be resolution applicant for anyone.

NPA - At the time of submission of plan, his A/c = NPA or corporate debtor of which he is promoter / mgr has its A/c = NPA & 1 year has elapsed from classification till insolvency commencement date

↳ NPA classific^{n} ←——→ ICD

≥1yr passed	<1yr
Applicant X	Applicant ✓

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Special Cases

- If dues + int is repaid before plan submission → RA ✓
- Applicant = Financial entity
  - Related party of CD
    - IF it is 'FC' & also related due to D → EQ. conversion or D → Convertible instruments (EQ.) prior to insolvency comm. date → RA ✓
    - otherwise → RA X
  - ≠ related to CD → RA ✓
- IF the NPA A/c was acquired as per past resol^{n} plan → RA ✓ (for 3 yrs from approval of that resol^{n} plan)

* Financial Entity

- Scheduled Bank
- ARC → RBI regtd
- AIF → SEBI regtd
- Investment vehicle, FII, FPI, FVCI
- Entity regulated by foreign central bank or sec mkt regulator of jurisdiction o/s India (FATF, IOSCO ✓)

* Points C2 & D (Conviction & disqualified director) will not apply in relation to a 'connected Person' u/ 3rd point

1. Promoter or in mgmt / control of applicant → eg. Rcomm was convicted so it cant apply, Then its promoter cant apply
2. Promoter or in mgmt / control of biz of CD during implement^{n} of resol^{n} plan
3. Holding / subsi / Assoc co. or related party of 1st & 2nd point's persons → Rcomm's subsi can apply ✓ promoter's wife can apply ✓

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* How to applicants get all info of CD to form a plan?
  ↓
  RP prepares an 'Information Memorandum' uls 29

B. SEC 30: Submission of resolution plan

- Applicant → RP
  submits plan + affidavit stating he is eligible uls 29A to apply

- RP shall examine the plan & confirm that the plan:

Provides for CIRP costs over other debt payments	Provides for mgmt of affairs of CD, implement & supervision of the plan	Doesnt contravene any law	Provides for payment of 'OC' as prescribed by IBBI & 'FC' who did not vote in favor of plan

shouldn't be less than sec. 53 eligible payment

* Usually CA 2013 mandates shareholders' approvals for some transactions. During implementation of the plan, all approvals = DEEMED TO BE GIVEN ✓

- Plan must be approved by {≥ 66%} of voting share of FC
- If resolution applicant ≠ eligible (NPA case) uls 29A, the COC can allow 30 days to him for clearing dues.
  This doesnt mean CIRP is extended. Time limit = 180 only!

- Resolution Applicant → CAN ATTEND
  → CANT VOTE
  [CAN VOTE IF HE IS 'FC' ALSO]

- RP → submits plan → NCLT

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C. SEC 31: Approval of resolution plan

NCLT may approve
- moratorium ends → RP forwards all records of CIRP to NCLT
- & Implement the plan ✓ → RP shall obtain approvals, under any laws to implement the plan, within LATER OF:
  - 1 Year from NCLT's approval (or)
  - Time specified in those laws

NCLT may reject → LIQUIDATION of CD ✓

★ What if plan includes a provision of combination (M&A) uls 5 of Competition Act 2002?
- Obtain approval of Competition Commission of India (By resoln applicant)
- Then COC approves the plan & RP submits it to NCLT

D. SEC 32: Appeal against NCLT's order approving plan

NCLT order → NCLAT

Appeal in 30 d. + Extn 15 d. on grounds mentioned uls 61(3)
- Plan contravenes any law or any criteria of IBBI
- CIRP costs are not provided for in priority
- Debt owed to OC have not been provided for
- material irregularity in exercise of RP's power

E. Finally → Plan submitted → NCLT approves → implement ✓
- not submitted ⇒ LIQn!
- NCLT rejects ⇓ LIQn!

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(33) SEC 33: Initiation of Liquidation

- NCLT doesnt receive plan before expiry of period of CIRP u/s 12 FTCIRP u/s 56
- NCLT rejects plan u/s 31
- COC makes a decision by 66% voting share to liquidate the CD (anytime from COC constitution before confirmation of plan)
- When a person (≠CD), whose int is affected when CD contravenes the plan, makes applic^n @ NCLT

* When NCLT passes LIQUIDATION order:

- Moratorium imposed on proceedings against CD
  - ↓
  - But legal proceedings can be instituted by Liquidator on behalf of CD (with prior approval of NCLT)
- Assets of CD vest in 'Liq^n Estate'
- = deemed notice of discharge to all officers / Emp / workers (Except if business is continued under Liq^n)

(34) SEC 34: Appointment of LIQUIDATOR

RP appointed for CIRP shall act as liquidator by submitting a written consent to NCLT.

Exception → NCLT can replace him by other liquidator

* All powers of BOD / KMP / Partners cease & vest in liquidator

(35) Eligibility to be a LIQUIDATOR (must be independent)

- Eligible to be an Independent director of CD
- ≠ related party of the CD
- Has not been an employee / proprietor / partner of firm of auditors / legal firm

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(36) SEC 35: Powers of Liqr

- Verify claims of creditors
- Take custody of CD's assets / property / effects / actionable claims
- Evaluate assets & property of CD
- Carry out business of CD for its beneficiary Liqn
- Make progress report of CD

(37) SEC 36: LIQUIDATION ESTATE

- Liqn estate is formed by Liqr and it comprises of all assets INCLUDING:
  - Assets over which CD has ownership rights, whether in its possession / not
  - Shares held in subsidiary, Tangible / Intangibles
  - Asset of CD in respect of which Secured creditor has relinquished security interest
  - Assets subject to determination of ownership by a court etc ↔ Assets or their value recovered through proceedings for avoidance of transactions (FUPE) → Property, etc belonging to / vested in CD @ Insolvency comm. date
  - ↓ All proceeds of Liqn whenever realised
- Exemptions (EXCLUDED from estate):
  - Assets owned by others but in CD's possession (trust, bailment, use, sums due to workmen / emp from PF / PF / GF
  - Collateral assets held by financial service providers
  - Assets of subsi of CD
  - Personal assets of shareholder / partner
  - Assets subject to set off bwn CD & any creditor mutually

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(38) SEC 38: Consolidation of claims

- Liquidator shall receive claims of creditors within 30 DAYS from commencement of liquidation
- Financial creditors
  - must provide record of the claim with IU
  - must submit claim as OC if not recorded on IU
- Withdraw claim in 14 days ✓

If a person = FC + OC, then it must submit separate claims → financial & operational debt

(39) SEC 39: LIQ^{n} shall verify claims & ask for docs, etc
SEC 40: LIQ^{n} shall admit / reject claims fully / partly

LIQ^{n} → Creditor & CD
shall communicate in 7 days from admission or rejection
↓
can appeal @ NCLT in 14 d. (uls 42)

(40) Avoidance transactions (FUPE):

- Fraudulent (sec 49)
- Undervalued (sec 45)
- Preferential (sec 43)
- Extortionate credit (sec 50)

A. SEC 43: Preferential transactions

- Meaning

Trfr of property or interest in property of CD for the benefit of creditor / surety / guarantor / existing FC / OC or any liability such that transferee gets preference uls 53 during distri of assets

Excludes:
- Trfr in ordinary course of biz
- Trfr in pursuance of court order
- Trfr of security int of any property acquired by CD in pursuance of security agreemt registered on IU within 30 d. after receiving possession of prop

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- RP/LIQ^{n} shall apply to NCLT to declare it void, etc.
- A preference is deemed to be given if:
  - Given to related party (≠ employee) → during 2 yrs preceding ICD
  - Given to ≠ related party → during 1 yr preceding ICD

B. SEC 45: Undervalued transactions

- Meaning:
  - CD makes a gift to any person
  - CD transfers assets for consideration significantly less than the consideration provided by CD (selling price < cost)
  - Excludes: transactions in ordinary course of biz
- Period
  - Transaction with related party → during 2 yrs preceding ICD
  - ≠ related party → during 1 yr preceding ICD
- RP/LIQ^{n} shall apply @ NCLT to declare such transactions as void & to reverse those
- If RP/LIQ^{n} didnt report @ NCLT, then a creditor/member/partner of CD can apply @ NCLT ✓
- If NCLT is satisfied → U/V transaction has occurred
  - ↘ LIQ^{n}/RP had sufficient info but didnt report
  - Then NCLT shall → declare the transaction as void & reverse the effects
  - ↘ ask IBBI to initiate disciplinary proceedings against RP/LIQ^{n}

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C. SEC 49: Transactions defrauding creditors

- NCLT shall restore the fraudulent transactions
- NCLT shall make an order to protect the interest of victims of such transactions

However, any order shall not:

- affect an interest in property that was acquired from a person (≠ CD) in good faith, for value without notice of the circumstances (eg. CD → director → mr. X)
- require, a person who recd benefit in transaction in good faith for value without notice of the circumstances, to pay any sum

Except if → he was a party to fraud

D. SEC 50: Extortionate credit transactions

Where CD has been a party to extortionate credit transaction including receipt of financial / operational debt during 2 yrs preceding ICD, the RP/LIQ^{n} shall make an application @ NCLT to declare it void, etc. if such transactions require exhorbitant payments to be made by the CD. NCLT may restore / set aside / modify it uls 51.

(41) SEC 52: Secured creditor in LIQ^{n} proceedings

- Finally, Sec cr is given a right to enforce the security interest
- It can enforce, realise, settle, compromise, etc. as per law (eg. SARFAESI)
- If it faces resistance from CD / connected person regarding possession / sale / disposal then it may apply to NCLT ✓

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- Eg. Debt due to sec cr = 2 cr & secured asset value is

2.5 cr	1.9 cr
↓	↓
ESI yields surplus	Realiz^{n} ≠ Adequate
↓	↓
Tender surplus to LIQ^{n}	Unpaid debt will be paid as per sec 53 (rank 5)

* From realiz^{n} of proceeds, Sec cr must transfer its portion of CIRP costs to LIQ^{n} (eg. CIRP cost share is ₹10000, so out of 2.5 cr or 1.9 cr the sec cr must pay ₹10000 to LIQ^{n})

(42) SEC 53: Distribution of assets (waterfall priority)

RANK	Priority
1	CIRP cost & LIQ^{n} cost
2	Equal ranks → Workmen dues for 24 months prior to LIQ^{n} commencement date ↳ Secured creditor (if security = relinquished)
3	Wages / unpaid dues owed to employees (≠ workmen) for 12 months prior to LIQ^{n} commencement date
4	Financial debts owed to unsecured crs (FC only)
5	Equal ranks → amount due to CG / SG / Consolidated fund of India or a state w.r.t. 2 years prior to LIQ^{n} commencement date ↳ secured creditor (amount unpaid after enforcing security int u/s 52)
6	Any remaining debts / dues (eg. audit fee o/s, any dues from rank 2, 3 or 5 beyond 24m / 12m / 2 yrs, etc)
7	Pref SH
8	Equity SH or partners of CD

* LIQ^{n} commencement date ⇒ Sec 33 / 59 commencement of LIQ^{n} proceedings

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** Fees payable to Liq^{n} will be deducted proportionately from proceeds payable to each recipient

Liq^{n} cost	Liq^{n} Fees
= cost incurred by Liq^{n} during Liq^{n} ↓ RANK 1	= His professional fee ↓ NO RANK (thus, paid proportionately every time an amt is paid to recipients)

*** for equal ranked dues → pay full (if sufficient)
↘ pay in EQUAL proportion (if insufficient)

FYI: Workmen dues → u/s 326 of CA'2013

(43) SEC 54: Dissolution of CD

Liq^{n} → NCLT → ROC

applies for dissol^{n} after assets are fully liquidated

pass dissol^{n} order & forward it in 7 days to registrar

(44) SEC 55: Fast Track CIRP (FTCIRP) of certain CDs + CG notific^{n} (14/6/17)

- Small co. u/s 2(85) of CA'2013
- Start-up (≠ firm) defined by Ministry of Commerce and Industry
- Unlisted co. with total assets ≤ 1 cr as per LY's F/S

(45) SEC 56: Time period to complete FTCIRP = 90 Days + 45 d Ext^{n} (only once) on applic^{n} by RP if instructed by resolution passed by (≥ 75%) of voting share of COC.

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(46) SEC 57: Manner of initiating FTCIRP

- Applic^n @ NCLT by a Creditor of CD or by CD itself
- submit proof of the existence of default as per IU or any other means
- CIRP procedure shall mutatis mutandis apply for FTCIRP

(47) SEC 59: Voluntary LIQ^n of Corporate persons

↓

'Company' for our syllabus

- Who can apply?
  - Corporate person who has not committed a default (or) A company whose AoA specified a fixed period or event

- Procedure:

i) Declaration from majority of directors + affidavit which states that:

- They have made full inquiry into affairs of the co. & formed an opinion
  - either co. has no debt (or) Debts will be repaid fully from proceeds of assets to be sold in LIQ^n
- Co. is not being liquidated to defraud anyone

ii) Attach docs with declaration:

- Audited FIs & record of business operations of co. for last 2 years or period since incorp, whichever is later
- Valuation report of assets of co. prepared by regtd. valuer

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iii) Within 4 weeks of declaration, there shall be:

- Special resolution passed @ GM requiring voluntary Liq^n + appointment of IP to act as LIQ^r
- Resolution passed @ GM requiring Liq^n due to a fixed duration / event in AOA + appointing IP = LIQ^r

Within {7 days} of above SR / OR, Creditors of co. representing 2/3rd in value of debt must approve SR/OR

iv) Passing SR/OR (or) Creditors approval (if any) → 7 days → Co. must notify ROC & IBBI

* v) Liq^n commencement date = date of SR/OR (subject to creditors approval)
↓
Sec 35-53 applies ✓

vi) Post winding up & liq^n of assets,

LIQ^r → NCLT → apply for dissolution of co.

NCLT → order → Co. → {14 d.} → order → ROC

* Study Mat def^n → related party, financial debt

(48) Amendments for NBFCs:

{OLD LAW}

NBFC engaged in business of:

- Financial service only → IBC ✗
- FS + others → IBC ✓

{NEW LAW}

CIRP of Any NBFC / housing finance co with assets ≥ 500 cr (latest audited B/S) → IBC + rules ✓

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(49) NEW SECTION 32A (over-rides IBC & all other laws):

IF a resolution plan approved by NCLT u/s 31 results in change of mgmt / control of CD to a person:

- ≠ promoter of CD
- ≠ in mgmt / control of CD
- ≠ related party

- ≠ person w.r.t. which an investigating authority has a reason to believe that he abetted / conspired commission of any offence & has filed a report / complaint @ court, etc

THEN

Liability of CD for an offence committed before ICD = CEASES ✓

↓

No prosecution ✓

↓

However, the following shall still be LIABLE if they were directly / indirectly a part of offence committed by the CD:

- Designated partner of LLP
- Officer in default
- Person in charge of CD's business

↓

Corporate Veil Lifted

No action (attachment, seizure, confisc^n, etc) can be taken against property of CD w.r.t. offence committed before ICD

↓

However, if liq^ assets are sold to promoter / mgr / controler / related party / any offender

↓

Action can be taken ✓

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