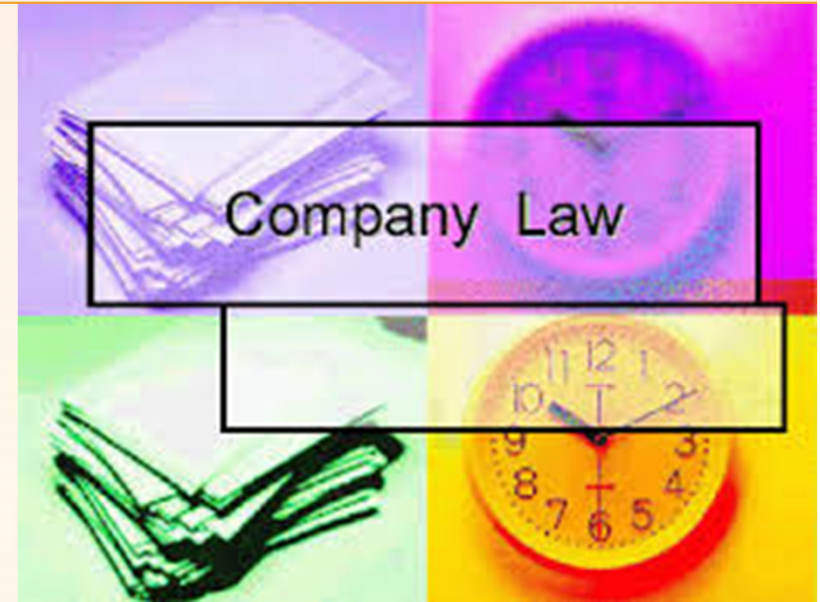


COMPANIES ACT 2013

**IMPORTANT ASPECTS FOR
CHARTERED ACCOUNTANTS**



CA. PRAMOD JAIN

FCA, FCS, FCMA, MIMA, DISA

LUNAWAT & CO.

Chartered Accountants

GENERAL

- ✘ It applies to the whole of India and is also applicable to certain companies or bodies corporate governed by Special Acts
- ✘ Substantial part of the Companies Act, 2013 in form of rules, prescribed separately.
- ✘ **98 Sections** made applicable w.e.f. **12th September 2013**
- ✘ **183 Sections and Rules** made applicable w.e.f. **1st April 2014, Restructuring, NCLT & NFRA pending**

FORMS

- ✘ **Are Alpha Numeric and Chapter-wise now**
- ✘ **Chapter 2 – Incorporation – INC**
- ✘ **Chapter 5 – Deposits – DPT**
- ✘ **Chapter 10 – Audit – ADT**
- ✘ **46 e-forms available w.e.f. 28.04.2014**
- ✘ **No pre-certification in case of OPC & Small Co.**
- ✘ **Extension upto 30.05.2014, where forms were to be filed in April 2014**
- ✘ **Prescribes procedure for taking action against Professionals for false per-certification in e-Forms**

MAJOR FORMS

Related to	Old Forms	New Forms
Name Reservation	1A	INC - 1
Allotment of Securities	2	PAS - 3
Alteration in Authorised Capital	5	SH - 7
Registered Office	18	INC - 22
Directors	32	DIR - 12
Financial Statements	23AC, 23ACA	AOC - 4
Annual Return	20B	MGT - 7
Secretarial Audit	66	Nil
Auditor Appointment	23B	ADT - 1

PRE-CERTIFICATION

CA, CS, CMA

- INC 21, 22, 28
- PAS 3, SH7
- CHG 1,4,9,
- MGT 14,
- DIR6, 12
- MR 1,2
- MSC 1,3,4
- GNL3
- ADT1
- NDH 1, 2, 3
- GNL 1
(Optional)
- DIR 3 (all cos)

CA

- DPT 3
(Deposits)
(Auditors)
- AOC 4 (Old
23ACA)

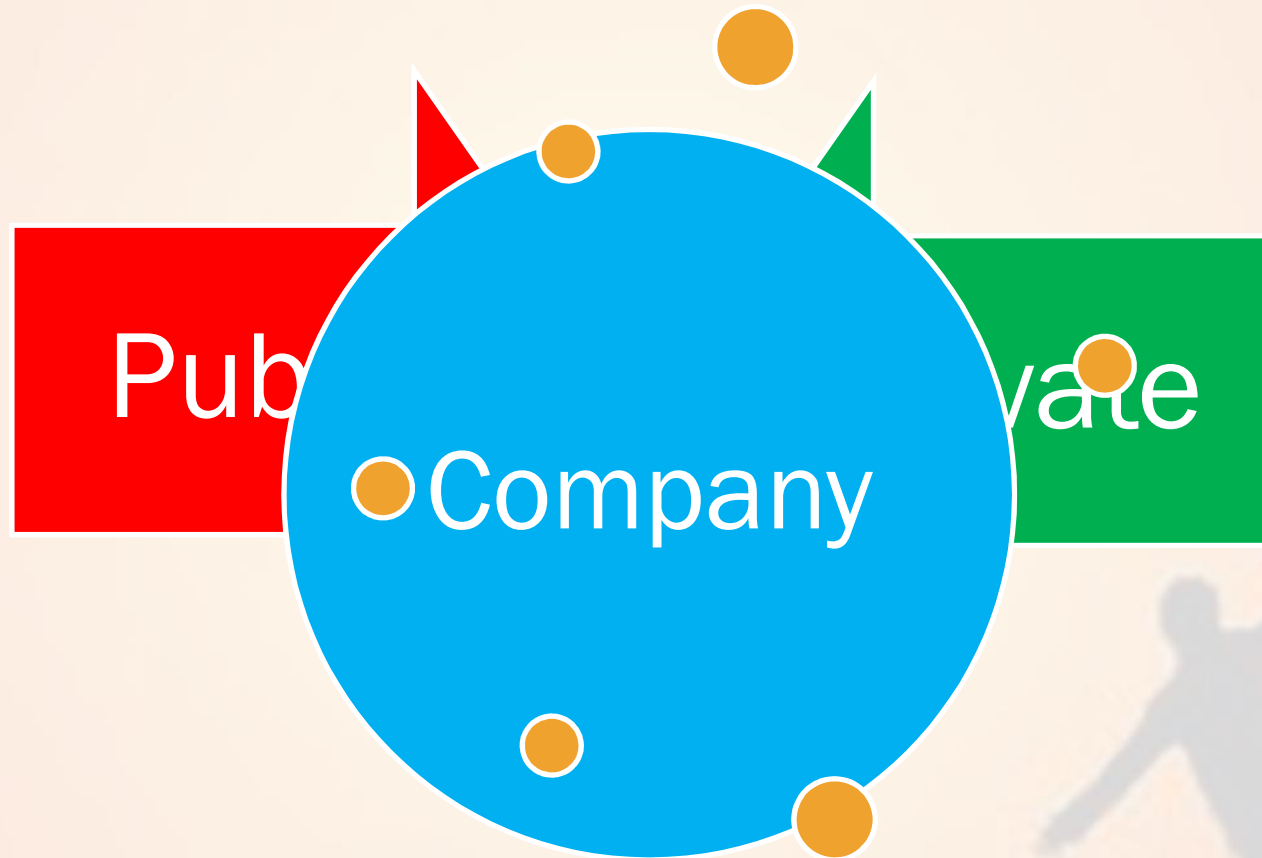
CS in Practice

- MGT 10 (listed
Co. change in
shareholding)


NEW PROVISIONS

- **OPC**
- **Small Co.**
- **Dormant Co**
- **NCLT & NCALT**
- **CSR**
- **NFRA**
- **Registered Valuers**
- **Fraud**





STRESS CREATORS

- **Huge Penalties & Prosecution**
 - **Class Suit Actions**
 - **Penalties even for late filings**
 - **Even Board Resolutions to be filed**
 - **Bringing in monies made tough**
 - **Annual Returns and Directors Reports**
- detailed
 - **Importance of AS & SA**
 - **Cash Flows and Consolidation**
- 

OPPORTUNITIES

- **More work for Professionals**
- **Women Directors**
- **Independent Directors**
- **Resident Directors**
- **Registered Valuers**
- **OPC, Small & Dormant Cos**
- **Fast Track Merger**
- **NCLT**



PARTNERSHIPS

- ✘ Earlier limit of Max. 20 in partnerships.
- ✘ Now 50 but shall not exceed 100
- ✘ Limits not applicable for an association or partnership, if it is formed by professionals who are governed by special Acts (464)



IMPORTANT DEFINITIONS

2(6)

- Associate Co
- Includes JV
- Significant influence – 20% of total capital or business decisions in an agreement

2(40)

- Financial Statement
- B/S, P&L, Cash Flow, statement of changes in equity, any explanatory note to before items

2(41)

- Financial Year
- 31/3, if incorporated after 1/1 – 31/3 of next yr. – align in 2 Yrs

2(68)

- Private company
- 1 L, restricts right to transfer; no of members 200 (employees excluded); prohibits public invitation for securities

IMPORTANT DEFINITIONS

2(76)

- **Related Party**

2(85)

- **Small Company**
- **Capital < 50 L / < 5 Cr or Turnover , 2Cr / <20 Cr – NA to holding, subsidiary, S. 8, Special Act Co**

2(69)

- **Promoter**
- **Prospectus , A/R, control over affairs of company, on whose instructions Board acts**

2(51)

- **KMP**
- **CEO or MD or Manager; CS, whole-time director; CFO; other prescribed**

NEW CONCEPT - OPC

A company which has only one person as member.

It would be a private company.

MOA to indicate name of person who shall become member in case of death or his incapacity to contract.

Consent of that person to be filed with ROC.

Other person can withdraw his consent any time.

Member can change the name of other person at any time.

"One person company" has to be mentioned in (bracket) below the name of company.

OPC

- **Can be formed by resident, individual, citizen**
- **Only resident, individual, citizen can be nominee**
- **Not more than 1 OPC or nominee**
- **If nominee becomes member in 2 OPC – comply in 180 days**
- **Minor cannot be member / nominee**
- **No AGM / BOD etc. provisions**
- **No Cash Flow**
- **FS filing within 180 days**
- **Can not be incorporated or converted as s. 8 co**



OPC

- **No NBFC activities**
- **Cannot be converted voluntary within 2 years**
- **Compulsory conversion if:**
 - **Paid up capital increase by 50 Lacs; or**
 - **Average annual turnover exceeds 2 Crs**
 - **Two convert within 6 months from happening**
 - **To file form INC-5 within 60 days that it has ceased to be OPC and is required to be converted**
 - **Contravention – F 10K + 1k per day**
- **A private co can be converted into OPC**

DORMANT COMPANY

Future Project +
No Significant
A/cing
Transaction

To hold asset + No
Significant A/cing
Transaction

Dormant

Hold intellectual
Property + No
Significant A/cing
Transaction

Inactive Company

SIGNIFICANT ACCOUNTING TRANSACTION

Any transaction other than:

Payment of fee to Registrar

**Payment to fulfill the requirement of this Act
or any other law**

Allotment of Shares

Payment for maintenance of office or record

INACTIVE COMPANY

Not carrying business – 2 Yrs

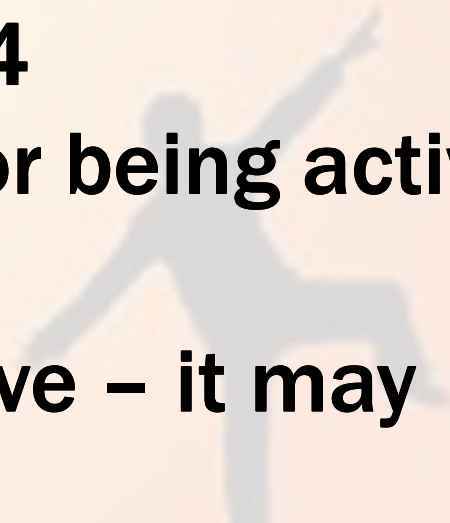
No significant A/cing Transaction – 2 Yrs

Not filed Financial Statements or Annual Return – 2 Yrs


CONDITIONS TO BE COMPLIED

- **To obtain at least $\frac{3}{4}$ shareholders consent in value or Special Resolution**
- **No pending inspection, inquiry or investigation**
- **No prosecution has been initiated and pending**
- **No outstanding public deposits or default**
- **No outstanding secured / unsecured loans. If unsecured, consent would do**
- **No dispute for ownership / management of co.**
- **No outstanding statutory dues, taxes, etc.**
- **No default in payment of workmen dues**
- **Not a listed co.**

COMPLIANCE

- **Apply in Form MSC 1**
 - **Annual Return in MSC 3 within 30 days from end of year – financials to be audited by CA**
 - **Cannot remain dormant for consecutive 5 years**
 - **Can apply to be active in MSC 4**
 - **If does some activity – apply for being active within 7 days**
 - **If ROC finds that it is not inactive – it may treat it as active**
- 

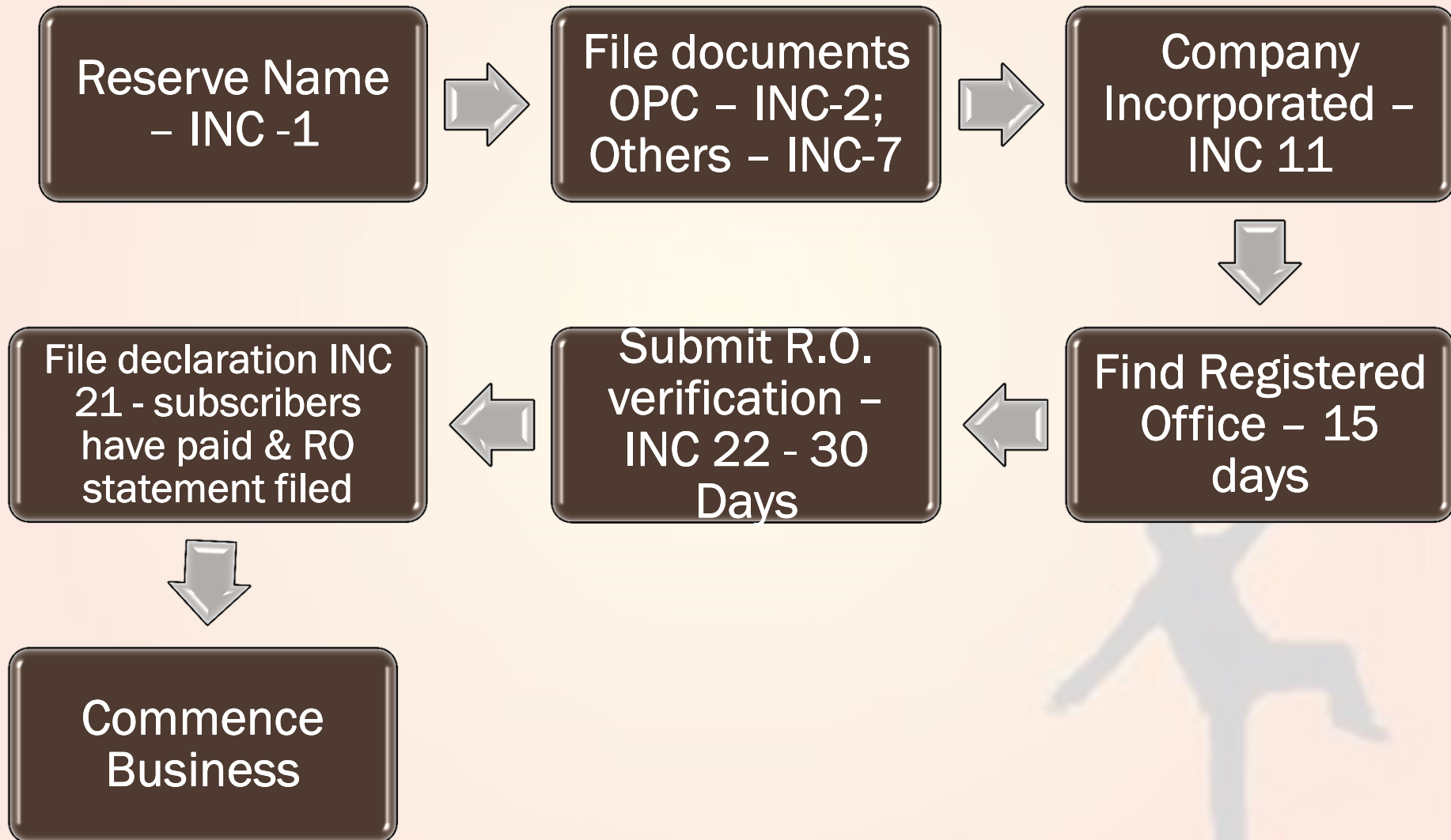
BENEFITS

- **No cash flow statement**
 - **No rotation of auditors**
 - **Audit to be done**
 - **Only single return**
 - **Minimum 2 meetings not 4 required**
 - **Can file return of allotment or change in directors returns**
- 

Incorporation



COMMENCEMENT



COMMENCEMENT - PENALTIES

Name obtained by wrong particulars [4(5)(ii)]

If incorporated

- Strike off/remove
- Action u/s 447 / 448

If not incorporated

- Cancel name
- Penalty upto 1 L

Start of business / borrowing without filing statements [11(2)]

P – Co -5 k

OID - F upto 1k p.d.

Removal of name if subs. do not pay in 180 days & Declaration not filed [248(1)(b)]

IMPORTANT ISSUES - INCORPORATION

MOA

- Main Objects

AOA

- Private Limited Definition
- Entrenchment Clauses

Documents

- Letter, bill, notice, official publication
- Name, Address, CIN; Tel, fax, e-mail, website (if any)
- Penalty: Co + OID - 1K p.d. - max - 1 L

After Inc.

- If proved at any time that co was incorporated with false particulars - promoters, 1st directors, declarants - 447

NAME RESERVATION - RULES

- **Name guidelines**
- **If company has changed its activities & change is not reflected in its name – change name - 6mnths**
- **If you use name of other than promoter or their close blood relative – no objection from them**
- **If you use name of relatives – proof of relation to be attached.**
- **Mandatory to furnish the significance and proof for use of coined words made out of the name of the promoters or their relatives.**

NAME RESERVATION

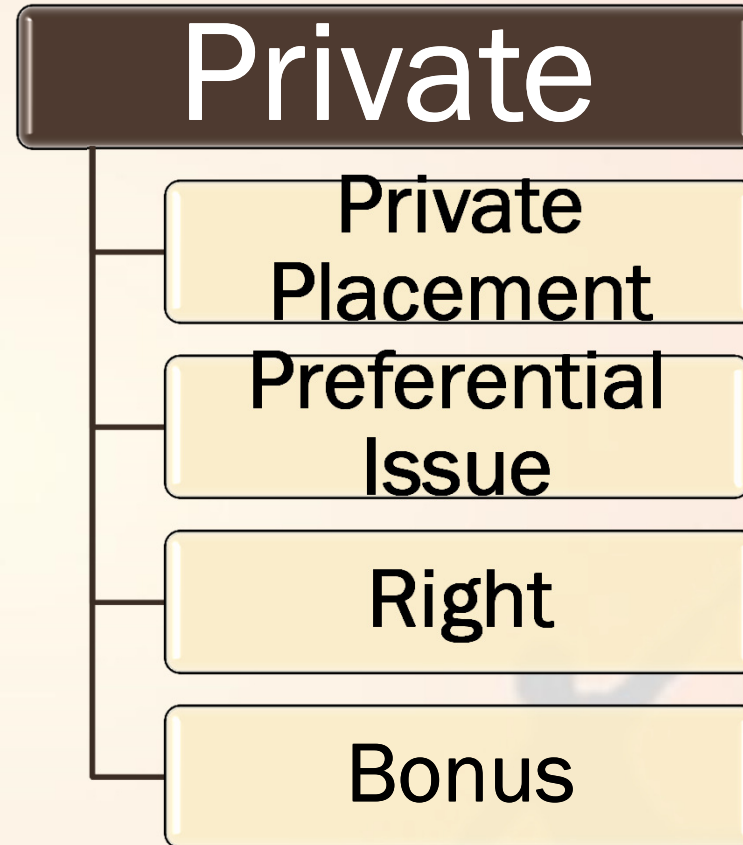
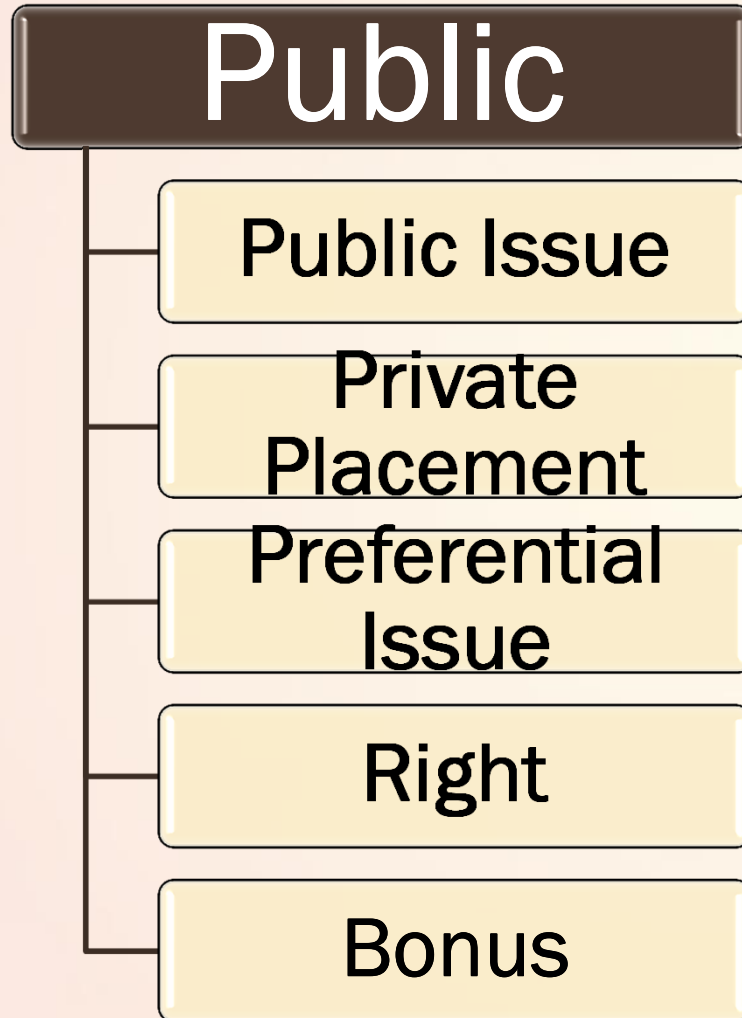
- **To declare in affirmative or negative whether they are using or have been using in the last 5 years in prop. or partnership – NOC.**
- **INC 1 - Attention is drawn to provisions of ss. 7(5) & 7(6) which, inter-alia, provides that furnishing of any false or incorrect particulars of any information or suppression of any material information shall attract punishment for fraud under section 447.**
- **Attention is also drawn to provisions of section 448 and 449 of the Companies Act, 2013 which provide for punishment for false statement and punishment for false evidence respectively.**

DOCUMENTS FOR INCORPORATION

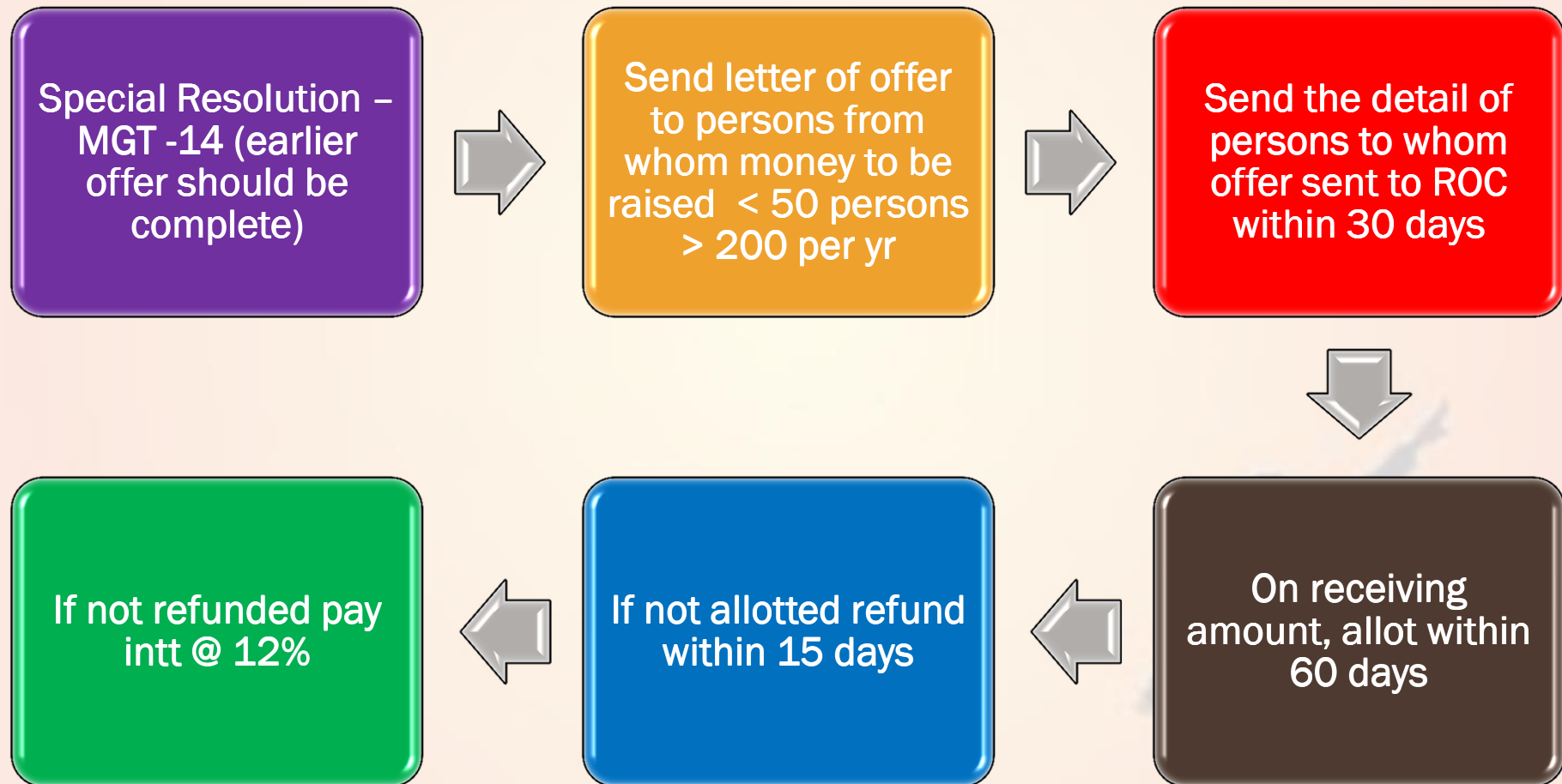
- **MOA & AOA**
- **Declaration by Professional in INC – 8**
- **Affidavit from subscribers & 1st Directors –INC - 9**
- **Particulars of Subscribers to include – Photo, Date & Place of Birth, educational qualification, PAN, 1 ID proof , residential proof, if duration of stay at present address <1 Yr prev. address**
- **Specimen signature & latest photo duly verified by banker or notary in INC – 10**
- **Director's interest in other concerns and consent in DIR – 2 & DIR - 12**



ISSUE



PRIVATE PLACEMENT




PRIVATE PLACEMENT - PROCEDURE

- Offer letter in PAS 4 + application form serial numbered + addressed to specific person – to be sent in writing or electronic mode
- While passing special resolution – basis or justification of pricing (including premium) to be made in explanatory statement
- Offer per person can not be for less than Rs. 20K
- Payment to be made from bank A/c of person subscribing
- Company to keep record of such Bank A/c
- To maintain complete record in PAS – 5 and PAS 4 to be filed with ROC

PRIVATE PLACEMENT – OFFER LETTER

- **Business carried out by Co & subsidiaries**
- **Management's perception of risk factors**
- **Details of default including interest – statutory dues, deposit, loan, etc**
- **Time schedule for which offer is valid**
- **Price of offer and its justification**
- **Name & Address of the valuer who did valuation**
- **Purpose and object of offer**
- **Contribution by promoters or directors**
- **Disclosure of interest of director, promoter or KMP**
- **Details of litigation pending**

PRIVATE PLACEMENT – OFFER LETTER

- **Remuneration of directors for current + last 3 yrs**
 - **Related party transaction for last 3 years relating to loans, guarantee or securities**
 - **Auditors' reservations or qualifications or adverse remarks for last 5 years – its impact on FS & corrective action taken / proposed for each comment**
 - **Material frauds last 3 years**
- 


PRIVATE PLACEMENT – OFFER LETTER

- **Financial position –**
 - **Capital structure before & after;**
 - **Profit before & after tax for 3 years**
 - **Dividend last 3 years**
 - **Interest coverage ratio for last three years (Cash profit after tax plus interest paid/interest paid)**
 - **Summary of financial position including Cash Flows - last 3 years – audited**
 - **Change in Accounting policies in last 3 years and its effect on profits & Reserves**
- **Declaration by director of compliance**

PRIVATE PLACEMENT - CAUTION

- **Money to be kept in separate bank A/c**
- **On allotment file PAS -3 in 30 days, detail to include PAN & e-mail id**
- **Cannot be in cash**
- **If not followed - Penalty on company, promoters and directors**
 - **Amount involved or 2 Cr, whichever is **high****
 - **Refund money within 30 days of imposing penalty**
- **Effective from 01.04.2014**

RIGHTS ISSUE (62)

- **To existing shareholders**
 - **To send letter of offer by notice – time – 15- 30 days**
 - **Right to renunciation unless articles provide otherwise**
 - **After time board to dispose of them in such manner not disadvantageous to shareholder & Co.**
 - **ESOP subject to SR and Rules**
 - **Preferential Issue – to comply with PP**
 - **Not applicable to**
 - **Conversion of deb. into equity & earlier SR already passed**
 - **Conversion when loan or debenture taken from Govt.**
- 

SHARES OTHER THAN CASH

- **No specific provision in the Act (Other than 62(1) (c))**
- **Form PAS 3 - SR required**
 - **Property and assets required**
 - **Goodwill**
 - **Services**
 - **Conversion of debentures**
 - **Conversion of Loans**
- **Debt structure of co after allotment of securities to be given in PAS 3**



DEPOSITS

- ✘ Chapter V
- ✘ Sections 73-76
- ✘ Applicable from 1.4.2014
- ✘ Companies (Acceptance of Deposits) Rules, 2013.



DEPOSITS

- ✘ **Following may invite, accept or renew deposits :**
 - + **Banking companies - (RBI);**
 - + **Non Banking Financial Companies (NBFC) – (RBI);**
 - + **Notified companies;**
 - + **Public company having net worth > 100 Cr or turnover > 500 Cr (Rules)**
- ✘ **Others – only from its members subject to certain conditions (73(2)).**

ACCEPTANCE OF DEPOSIT RULES 2014

- ✘ **Apply to all companies except Bank, NBFC & HFC**
- ✘ **Deposit includes receipt of money by way of loan, deposit or other form, but does not include:**
 - + **Amount received from CG, SG, L Auth., Stat. Auth.**
 - + **Amount from foreign govt, bank, etc as per FEMA**
 - + **Amount received from Banks, PFIs, CPs**
 - + **ICD**
 - + **Share appl. money, except not allotted/refunded**
 - + **Amount received from director out of his own funds**
 - + **Convertible bond / debenture – shares within 5 years**
 - + **Interest free security deposit – employee – 1 yr salary**

ACCEPTANCE OF DEPOSIT RULES 2014

- ✘ **Interest free amount received in Trust**
- ✘ **Business advances:**
 - + **Supply of goods / services – within 365 days**
 - + **Against property – if adjusted as per agreement**
 - + **Security deposit for performance of contract for supply of goods or provision of services**
 - + **Advance under long term projects or for supply of capital goods**
- ✘ **If Co. accepting money does not have necessary permission or approval to deal in goods or properties or services -Deposit**

ACCEPTANCE OF DEPOSIT RULES 2014

- × **Promoters - stipulation of any FI or a banks:-**
 - + loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance; and
 - + loan is provided by the promoters themselves and/or by their relatives.
 - + Exemption available only till loans are repaid
- × **Amt. received by Nidhi companies**
- × **Public / Eligible – deposit – 6 m to 36 m**
- × **If <6, 3 months - 10% of capital + free reserves**
- × **Total deposit from members <25% of C + F. Reserve**
- × **Rate of Intt & commission not to exceed NBFC norms**

EXISTING DEPOSITS

- ✘ **Prepare a list and file with ROC within 3 months from 1.4.2014**
- ✘ **Repay to the depositors within 1 year**
- ✘ **Non-compliance:**
 - + **amount to be repaid along with interest**
 - + **fine on Company –**
 - ✘ **minimum Rs. 1 Crore,**
 - ✘ **Maximum Rs. 10 crore**
 - + **on every officer in default –**
 - ✘ **imprisonment upto 7 years or**
 - ✘ **fine minimum Rs. 25000,**
 - ✘ **maximum Rs. 25 L or both**



FILING RESOLUTIONS



RESOLUTIONS TO BE FILED WITH ROC

- **Special Resolutions**
- **Appointment, renewal or variation in terms of appointment of MD**
- **To borrow money in excess of paid up capital and free reserves other than temporary loans (w.e.f. 12.9.13) – Late filing – F – Co - 5 L - 25 L, OID F – 1 L – 5 L**
- **Others u/s 117**

BOARD RESOLUTIONS FILE WITH ROC (117 R/W 179)

- To make calls on shareholders in respect of money unpaid on their shares;**
- To authorise Buy-back of securities;**
- To issue securities, including debentures, whether in or outside India;**
- To approve amalgamation, merger or reconstruction;**
- To take over a Company or acquire a controlling or substantial stake in another company.**

BOARD RESOLUTIONS FILE WITH ROC (117 R/W 179)


- To borrow monies;**
- To invest the funds of the company**
- To grant loans or give guarantee or provide security in respect of loans**
- To approve FS and Board's Report;**
- To diversify the business of the Company;**
- To make political contribution**
- To appoint or remove KMP**
- To note appointment / removal of 1 level below KMP**

BOARD RESOLUTIONS FILE WITH ROC (117 R/W 179)

- **To appoint internal auditor and secretarial auditor**
- **To take note of disclosure of director's interest and shareholding**
- **To buy, sell investments (other than trade investments), constituting 5% or more of the paid up share capital & free reserves of investee co.**
- **To invite or accept or renew public deposits;**
- **To approve quarterly, half yearly & annual FS**
- **Filing after date with additional fee – penalty of Rs. 5 L – 25 L**



FINANCIAL STATEMENTS


- **Includes notes on B/s, Profit & Loss statement, Cash Flow**
 - **Cash Flow for all except OPC, SC, DC.**
 - **Shall give true and fair view.**
 - **Shall comply with Accounting Standards**
 - **Shall be in form of Schedule III.**
 - **To be laid before AGM**
- 

FINANCIAL STATEMENTS

✘ Has to be AS compliant:

- + FS to disclose deviation from AS
- + Reason for deviation
- + Financial effect arising of deviation

✘ Non- compliance

- + MD,
 - + WTD incharge of finance
 - + CFO
 - + Any other person charged by Board
 - + If no one – all directors
 - + Imprisonment upto 1 yr or F – 50 k to 500 k or both
- 

FILING OF FS

- ✘ **To be filed with ROC in Form AOC -4 within 30 days of AGM – To be certified by CA only**
- ✘ **After 300 days –**
- ✘ **Fine on**
 - + **Company – 1k p. d > 10 L;**
 - + **MD, etc in charge by Board- if no one – all directors**
 - ✘ **Imp. upto 6mnths or**
 - ✘ **Fine – 1L k to 5L or**
 - ✘ **Both**



DEPRECIATION SCH - II

- ✘ **No rate for Intangible assets (except toll) – as per AS**
- ✘ **The useful live of asset is period over which an asset is expected to be available for use or the no of production unit expected to be obtained.**
- ✘ **3 classes:**
 - + **Prescribed and follow AS – Sch. II or different**
 - + **Class of Co or asset, where useful lives prescribed by regulator constituted by parliament or CG**
 - + **Others – useful life / residual value not longer than sch II**

DEPRECIATION SCH - II

- ✘ **No separate rates for shifts. Double shift – increase by 50%, triple shift – 100%**
- ✘ **100% on assets below 5K – not required**
- ✘ **Useful lives changed – Eg: Building from 58Yrs to 30 Yrs: General FF– 15 to 10**
- ✘ **On commencement – asset would be depreciated over remaining useful life**
- ✘ **Where remaining useful live - nil –trf to Surplus**
- ✘ **Component Accounting mandatory where relevant & material**

AUDIT

Lunawat & Co.



QUALIFICATION

- ✘ **Must be a CA**
- ✘ **a firm including LLP whereof majority of partners practicing in India are qualified for appointment as auditor**
- ✘ **Where such firm/LLP is appointed as an auditor of a company, only the partners who are CAs shall be authorized to act and sign on behalf of the firm.**


DISQUALIFICATIONS

- ✘ a body corporate other than LLP;
- ✘ an officer or employee of the company;
- ✘ a person who, or his relative or partner—
 - + is holding any security of or interest in Co. or its subsidiary, or of its holding or associate Co. or a subs. of such holding co. Relative – Rs. 1 L
 - ✘ Corrective action to bring within limits (relative) – 60 days
 - + is indebted to the co.... – Rs. 5 L
 - + has given a guarantee /provided security – 1 L

DISQUALIFICATIONS

- ✘ a person or a firm who, whether directly or indirectly, has business relationship with co., or its of nature i.e., any transaction entered for commercial purpose except:
 - + In nature of professional services permitted
 - + In the ordinary course of business of the co. at arm's length price - like
 - ✘ sale of products or
 - ✘ services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses

DISQUALIFICATIONS

- ✘ a person who is a partner, or who is in the employment, of an officer or employee of Co
 - ✘ a person whose relative is a director or is in the employment of the co. as a director or KMP;
 - ✘ a person who is in full time employment elsewhere
 - ✘ a person or a partner of a firm holding appointment as auditor of more than 20 cos
- 

DISQUALIFICATIONS

- ✘ a person who has been convicted by a court of an offence involving fraud & a period of 10 Yrs has not elapsed from date of such conviction;
- ✘ any person whose:
 - + subsidiary or
 - + associate company or
 - + any other form of entity,
 - + is engaged as on the date of appointment in consulting and specialized services as provided in s. 144.



RELATIVES 2(77)

Father (Step. F)
Mother (Step. M)

Brother (Step. B.)
Sister (Step. S)


**Husband
/ Wife**

Son (Step Son);
Son's Wife

Daughter ;
Daughter's
Husband

OTHER SERVICES BY AUDITOR

✘ Auditor not to provide other services directly or indirectly to the company or its holding company or subsidiary company:

- + accounting and book keeping services;
 - + internal audit;
 - + design and implementation of any financial IS;
 - + actuarial services;
 - + investment advisory services;
 - + investment banking services;
 - + rendering of outsourced financial services;
 - + management services; and others
- 

OTHER SERVICES BY AUDITOR

- ✘ **Other services restriction in case of firm applies to:**
 - + **Audit firm itself**
 - + **Any of its partners**
 - + **Its parent, subsidiary or associate entity**
 - + **Any other entity in which the firm or any of its partners has significant influence / control , or whose name / trade mark / brand, is used by firm or any of its partners**
- ✘ **Compliance to be made by 31.03.2015**


OTHER SERVICES BY AUDITOR

- ✘ **Other services restriction in case of individual applies to:**
 - + himself or
 - + through his relatives or
 - + any other person connected or associated with such individual or
 - + through any other entity whosoever, in which such individual has significant influence or control or whose name, trade mark, or brand is used by such individual.

APPOINTMENT

- ✘ **1st appointment to be within 30 days by Board, if not then members in 90 days in EGM**
- ✘ **Appointment, at the first AGM, of an individual or a firm who shall hold office till the conclusion of its sixth AGM (139)**
- ✘ **Co to inform auditor & ROC in 15 days in ADT 1**
- ✘ **Appointment for 5 Years - to be ratified annually at AGM**
- ✘ **Automatic reappointment of existing auditor at AGM if not re-appointed.**

APPOINTMENT

- ✘ **Members of the co. may resolve to rotate auditing partner & his team at specific interval**
 - ✘ **Casual vacancy to be filled by Board. If caused by resignation - by members in 3 months**
- 

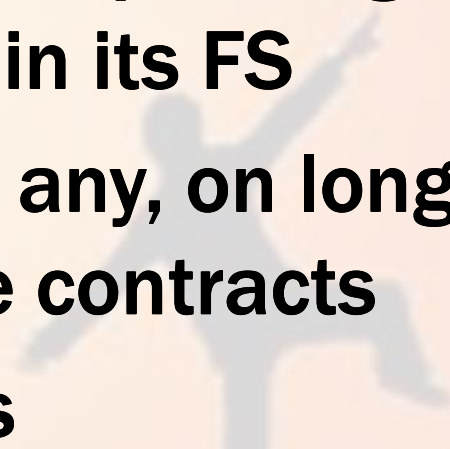
CONDITION FOR APPOINTMENT

- ✘ **Board/Audit Committee to consider qualification & experience of auditor. To be commensurate with size & requirements of co.**
- ✘ **Board/Audit Committee to consider completed and pending proceedings against auditor before ICAI/NFRA/Tribunal/Other Court.**
- ✘ **CA to issue certificate that:**
 - + **He is eligible for appointment and is not disqualified under the Act, the CA Act, & related Rules**
 - + **The proposed appointment is within the term allowed**
 - + **The proposed appointment is within the limit**
 - + **List of proceedings against auditor pending w.r.t. professional matters of conduct, as disclosed, is true & correct**

AUDIT REPORT

- ✘ Whether he has **sought and obtained all the information.....**
- ✘ Whether any director is disqualified to be appointed as director u/s 164(2) – now applicable to P. Ltd. co. also
- ✘ Observation or comments which may have adverse effect on functioning - thick or italics no longer required.
- ✘ Reasons for negative or qualified report

AUDIT REPORT

- ✘ Any qualification, reservation or adverse remark relating to maintenance of accounts
 - ✘ Adequacy of internal financial controls & operating effectiveness of such controls.
 - ✘ Company to disclose effect, if any, of pending litigations on its financial position in its FS
 - ✘ Provision for foreseeable losses, if any, on long term contracts including derivative contracts
 - ✘ To comply with Auditing Standards
- 

REMOVAL / RESIGNATION

- ✘ Removal before term - by Special Resolution & CG approval**
- ✘ Auditor who has resigned to file a statement with ROC in ADT 3 as well as the Co. within 30 days, indicating reasons – non compliance – penalty – 50K to 500K**
- ✘ Special notice required at AGM to appoint other auditor than the retiring auditor except in case of rotation**

REMOVAL

- ✘ In case CG /Tribunal / any person concerned is satisfied, that auditor has directly or indirectly:
 - + Acted in fraudulent manner, or
 - + Abetted, or
 - + Colluded in any fraud,
- ✘ Change the auditor
- ✘ If on CG application – tribunal on satisfaction change in 15 days
- ✘ And in case final order is passed - shall not be appointed for 5 yrs in any other Co.
- ✘ And shall be liable u/s 447

POWER & DUTIES

- ✘ **To have access to books of accounts & vouchers**
- ✘ **Sign Audit report**
- ✘ **Has to attend AGM unless otherwise exempted**
- ✘ **If in course of audit he has reason to believe that an offence involving fraud is being or has been committed against co. by officers or employees – to report matter to CG in ADT 4 within 60 days after following procedure (Rule 13)**
- ✘ **Non- compliance fine - Rs. 1 Lac to Rs. 25 Lacs [143(15)]**

PENALTIES (147)


- ✘ General – Co - Fine 25 K to Rs. 500K;
OID – imp upto 1 yr or fine 10k to 100k
or both**
- ✘ Auditor – 25k to 500 k if**
 - + Wrong appointment (139);**
 - + Duty to audit & comply auditing standards (143);**
 - + Rendering other services (144); or**
 - + Fail to sign audit report (145)**

PENALTIES (147)

- ✘ **Imprisonment up to 1 yr & fine from 1 L to 25 L in case there is intention to deceive**
 - + **Company; or**
 - + **Shareholders; or**
 - + **Creditors; or**
 - + **Tax authorities.**

- ✘ **Where he is convicted for above, then liable to:**
 - + **Refund the remuneration received to the company;**
 - + **Pay damages to co, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his report.**

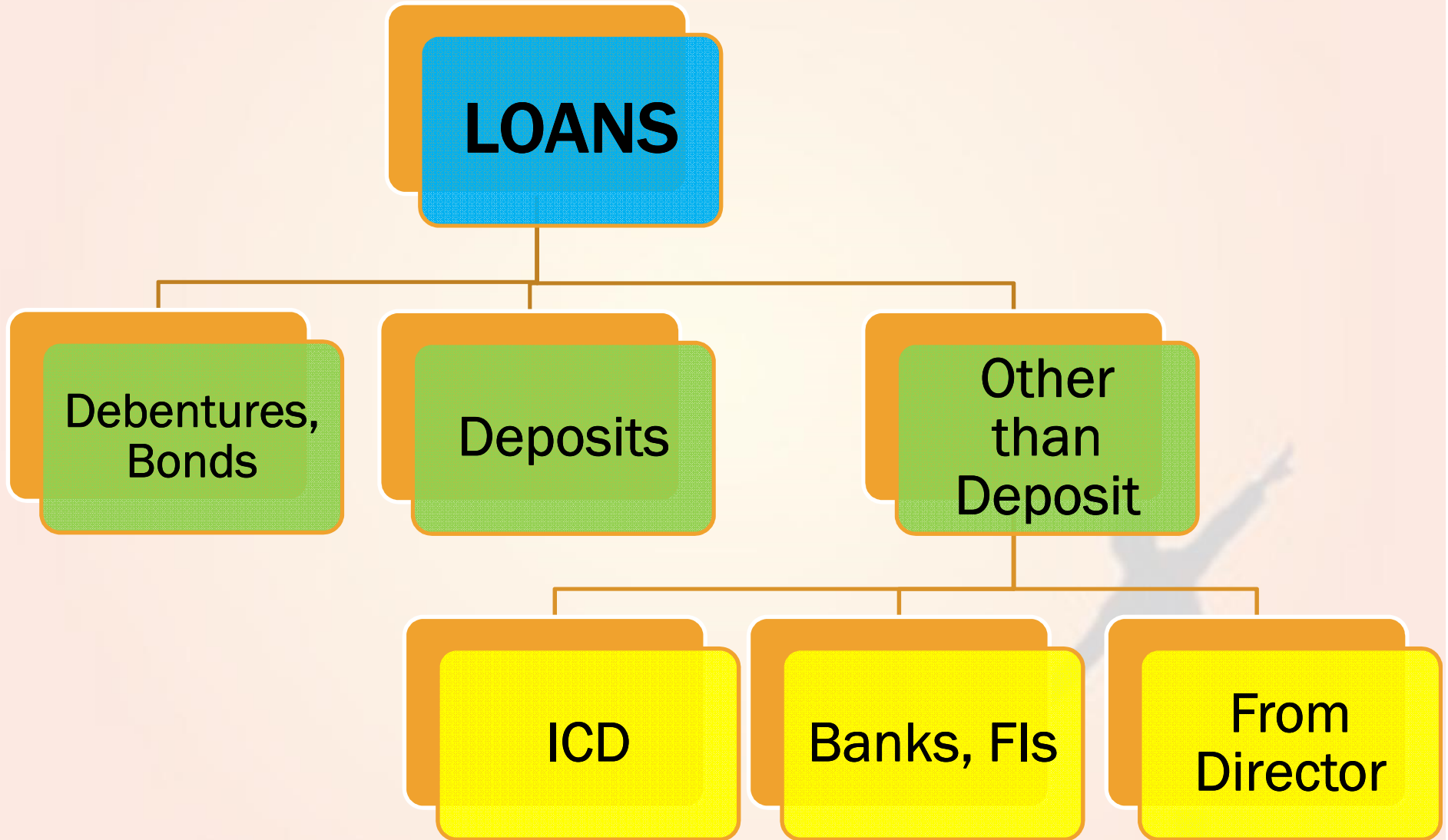
PENALTIES (147)

- ✘ **When it is proved that partner or partners of the audit firm has or have acted in fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the co. or its directors or officers, then liability of the firm jointly and severally for civil as well as criminal liability**
 - ✘ **Penalties by NFRA**
 - ✘ **Can ABC & Co. being statutory auditors issue Form 15CB certificate related to co?**
 - ✘ **If yes, what is to be done?**
- 

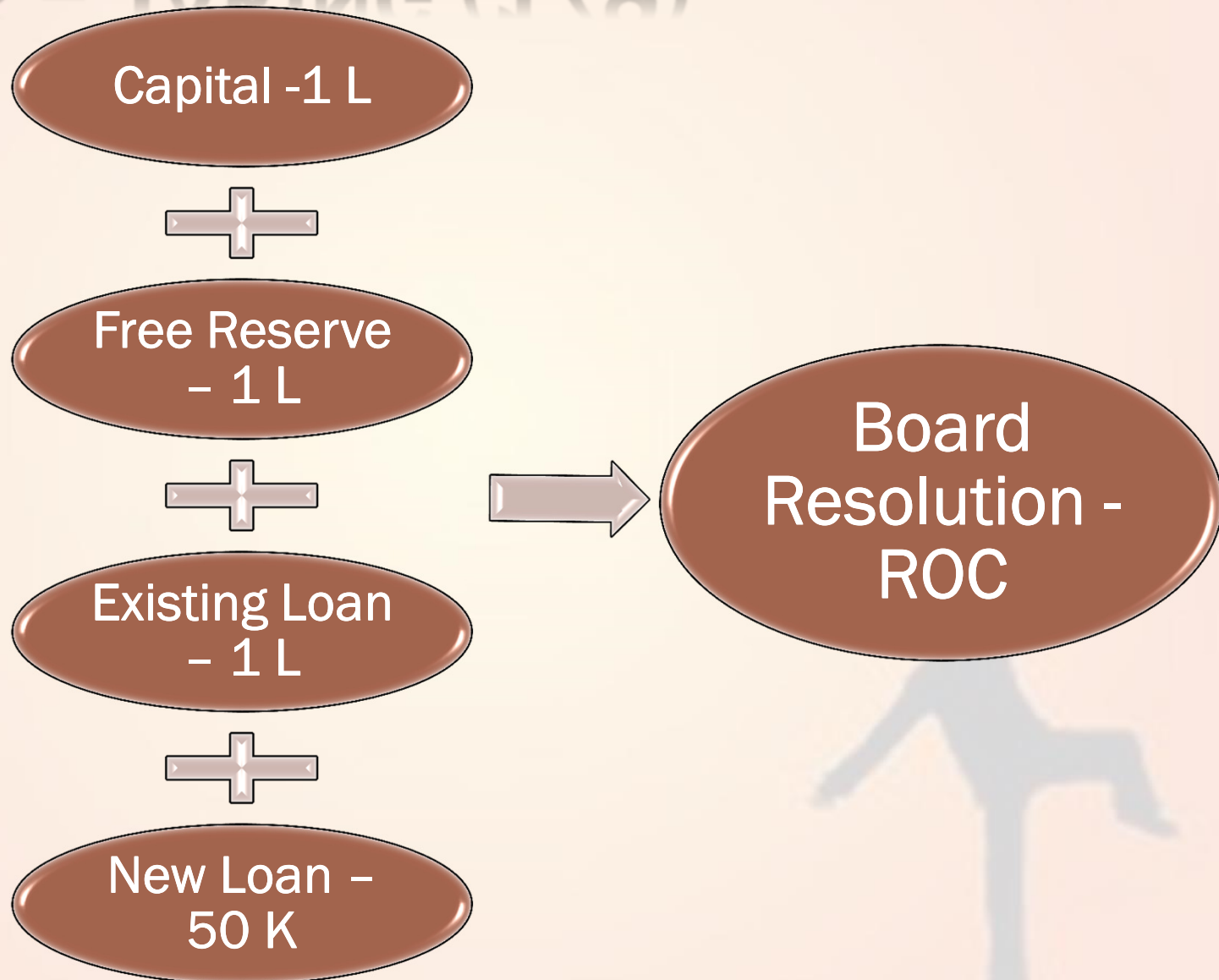
PENALTIES (147)

- ✘ **The saving grace:**
- ✘ **In case of criminal liability of any audit firm, the liability other than fine, shall devolve only on the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud (Rule 9)**

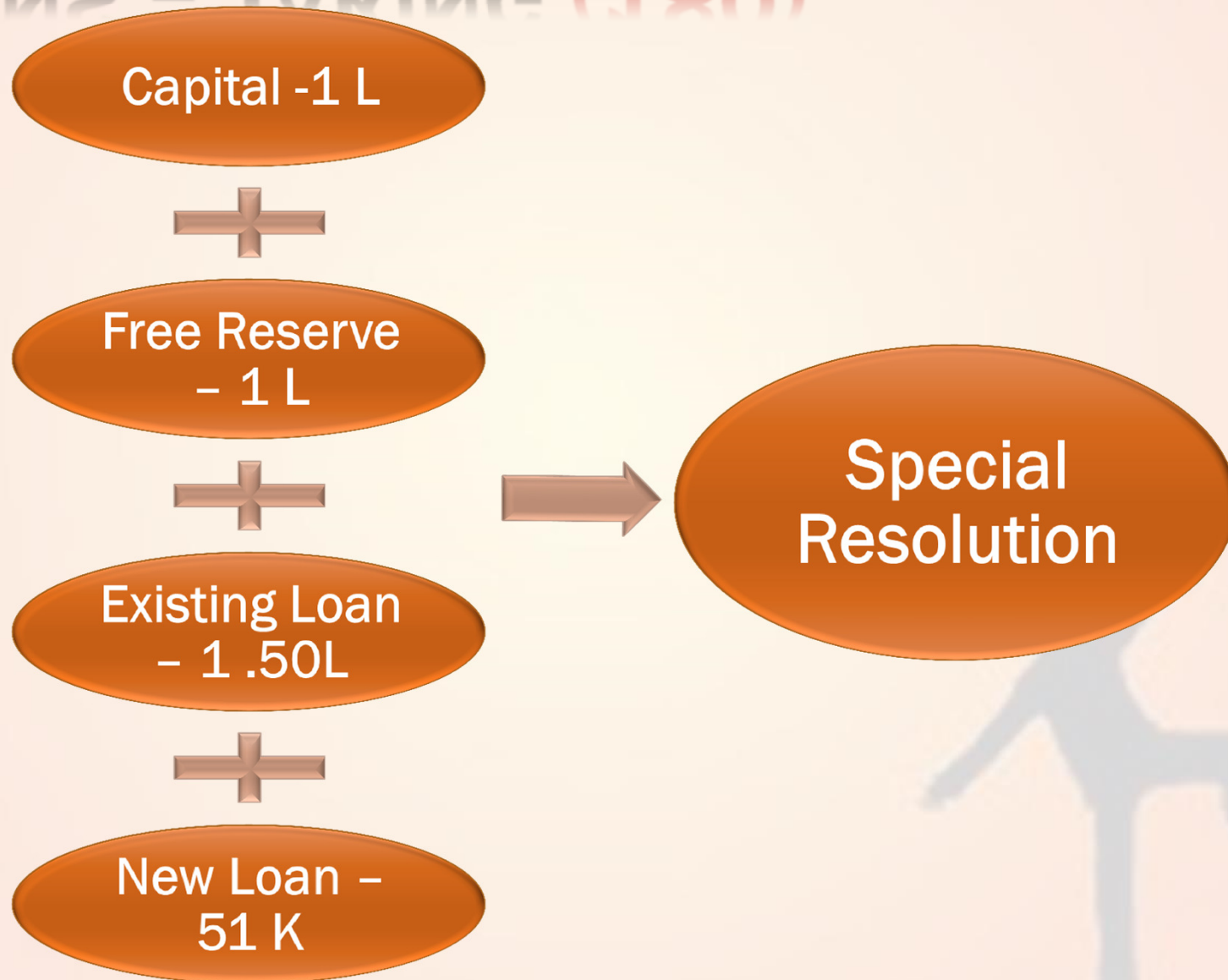




LOANS - TAKING (179)



LOANS – TAKING (180)



TAKING LOANS (180)

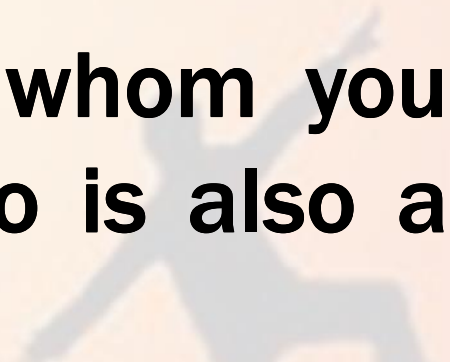
- ✘ **For s. 180, loans includes loans from banks too**
- ✘ **Temporary loans from bankers in ordinary course of business not included in limits**
- ✘ **Temporary loans means repayable on:**
 - + **Demand**
 - + **Within 6 months – short term**
 - + **CC, Bill discounting, short term seasonal loans**
 - + **But does not include loan for capital purpose**

PENALTY FOR DELAY IN FILING

- **Delay upto 270 days – 12 times filing fee**
- **After 300 days:**
 - **On company – fine Rs. 5 L – 25 L; and**
 - **On officer in default – fine Rs. 1 L – 5 L**



INTER CORPORATE DEPOSIT (ICD)

- ❑ **Can a company take ICD?**
 - ❑ **What if the company from whom you take ICD has same director as your company?**
 - ❑ **What if the company from whom you take ICD has a member who is also a director in your company?**
- 

LOAN TO DIRECTOR (185)

- ✘ **Co. not allowed directly or indirectly to advance any loan or any loan represented by book debt or give guarantee or provide security in connection with loan taken to:**
 - + **Director of lending co or its partner or relative**
 - + **Director of its holding co or its partner or relative**
 - + **Firm in which such director or relative is partner**
 - + **Pvt. Co. in which such director is Dir. or member**
 - + **Co in which all directors hold >25% voting power**
 - + **Co. or BOD or MD or Manager acts in direction or instruction of such director or BOD of lending co.**

LOAN TO DIRECTOR – EXCEPTIONS

- ✘ **MD or WTD if condition of service - all employees**
- ✘ **Any scheme approved by members by spl resolution**
- ✘ **Co in business of providing loans - Intt rate > bank rate by RBI**
- ✘ **Loan, Guarantee, etc by holding co. to its WOSC**
- ✘ **Guarantee given or security provided by a holding in respect of loan made by bank or FI to its subsidiary**
- ✘ **However, it should utilised by Subs. Co. for principle business activities**

LOAN TO DIRECTOR – PENALTY

× On Giver i.e., Company:

+ Minimum Rs. 5 Lacs

+ Maximum Rs. 25 Lacs

× On Taker i.e., director:

+ Imprisonment upto 6 months

+ Penalty - Minimum Rs. 5 Lacs

+ Penalty - Maximum Rs. 25 Lacs



GIVING LOAN & INVESTMENT (186)

- ✘ **Company can make investment through not more than 2 layers of invest. Co. Exceptions:-**
 - + Acquisition of any other company incorporated outside India if such other company has investment beyond two layers as per the laws of that country.
 - + Investment by subsidiary company in investment subsidiary for the purpose of meeting any requirement under any law in force.
- ✘ **Disclosure of details and purposes of loan, guarantee, investment in financial statement.**
- ✘ **Cannot give any loan/investment if company is in default of paying deposit or interest and said default subsists.**

GIVING LOAN & INVESTMENT (186)

- ✘ Giving of loan / investment exceeding limits – SR required. Intt > govt. security
- ✘ Compliance sufficient if SR is passed by 31.3.2015.
- ✘ Register to be maintained
- ✘ No SR required if a loan or guarantee given or security provided to its WOSC or a JV or for purchase / subscription of securities of WOSC. However disclosure required in FS

GIVING LOAN & INVESTMENT (186)

× Exemption of provisions to

+ Loan/Guarantee/Security provided by a Banking Co., Insurance Co., Housing Finance Co., Co.engaged in business of Financing of Cos., a Co. providing Infrastructural facilities

+ Acquisitions by :-

- × NBFC whose principal business is acquiring Securities**
- × A Company whose principal business is acquisition of securities**
- × Right Issue.**

PENALTIES

- × On company**

- + Minimum Rs.25000/-**

- + Maximum Rs.5,00,000/-**

- × On every Officer in Default**

- + Imprisonment up to 2 yrs; or**

- + Fine**

- × Minimum Rs.25000/-**

- × Maximum Rs.1,00,000/-; or**

- + both**



VARIOUS REGISTERS TO BE MAINTAINED

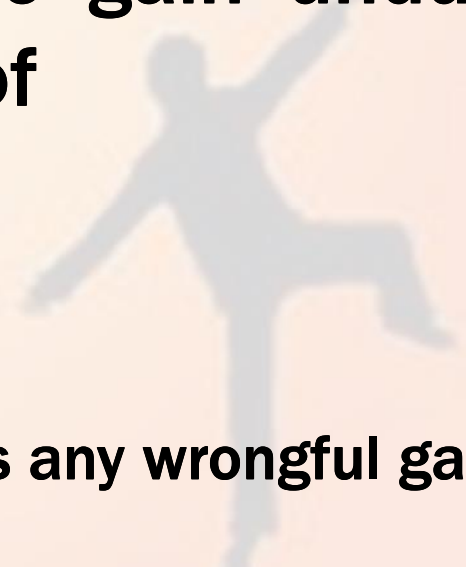
S. No.	Name	Name of Register	Relevant Provision
1	MGT - 1	Register of Members	S.88(1)(a) & R.3(1) - MANAGEMENT & ADMIN
2	MGT - 2	Register of Debenture / Other Securities Holders	S.88(1)(b) & (c) & R.4 - MANAGEMENT & ADMIN.
3	Register	Register of Directors & KMP & their Shareholding	S.170 & R.17 - APPOINTMENT & QUALIFICATION OF DIRECTOR
4	SH - 2	Register of renewed & duplicate share Certificate	S.46(3) & R.6(3)(a) - SHARE CAPITAL & DEB.
5	SH - 3	Register of Sweat Equity	S.54 & R.8(14) - SHARE CAPITAL & DEB.
6	SH - 6	Register of ESOP	S.62(1)(b) & R.12(10) - SHARE CAP. & DEB.
7	SH - 10	Register of Shares/Other Securities Bought Back	S.68(9) & R.17(12) - SHARE CAPITAL & DEB.
8	CHG - 7	Register of Charges	S.85 & R.10(1) - REGISTRATION OF CHARGES
9	MBP - 2	Register of Loans, Guarantee, etc.	S.186(9) & R.12(1) - MEETINGS OF BOARDS & ITS POWERS
10	MBP - 3	Register of Investment not held in its own name	S.187(3) & R.14(1) - MEETINGS OF BOARDS & ITS POWERS
11	MBP - 4	Register of Contracts in which Directors are	S.189(1) & R.16(1) - MEETINGS OF BOARDS & ITS POWERS

FRAUD

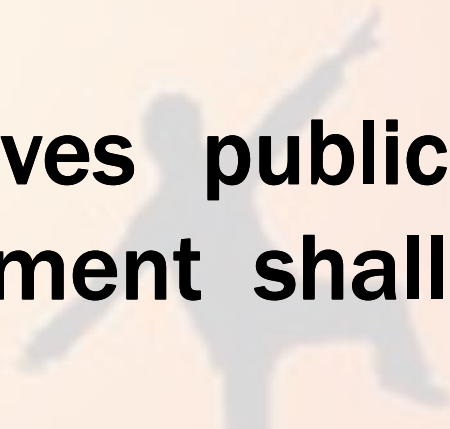


DEFINED (447)

- ✘ Any act or omission,
- ✘ Concealment of fact or
- ✘ Abuse of position of any person (by him or herself or by any other person in connivance in any manner).
- ✘ With the intent to deceive or to gain undue advantage to injure the interest of
 - + Company, or
 - + Shareholders, or
 - + Creditors, or
 - + Any other person (whether or not there is any wrongful gain or loss).



PUNISHMENT

- ✘ Imprisonment not less than 6 months to 10 years**
 - ✘ + Fine not be less than amount involved in the fraud which may extend to 3 times.**
 - ✘ If fraud in question involves public interest then the imprisonment shall not be less than 3 years.**
- 

FALSE STATEMENT (448)

- ✘ If any person makes a false statement in any:
 - + Return
 - + Report
 - + Certificate
 - + FS
 - + Prospectus
 - + Other document under this Act
 - ✘ Is false in any material particulars, knowing it to be false
 - ✘ Omits any material fact knowing it to be material
- ✘ Action u/s 447

FALSE EVIDENCE (449)

- ✘ If any person gives intentionally a false evidence:
 - + Upon examination on
 - ✘ oath or
 - ✘ solemn affirmation
 - + In an
 - ✘ Affidavit
 - ✘ Deposition
 - ✘ Solemn affirmation
- ✘ Imp. 3 years to 7 years; and
- ✘ Fine upto Rs. 10 Lacs



CLASS SUIT ACTIONS

- ✘ **Misleading prospectus (37)**
- ✘ **Oppression & mismanagement (245)**
 - + **Company**
 - + **Directors**
 - + **Auditors**
 - + **Expert or advisor or consultant**
- ✘ **Auditors (147)**





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