

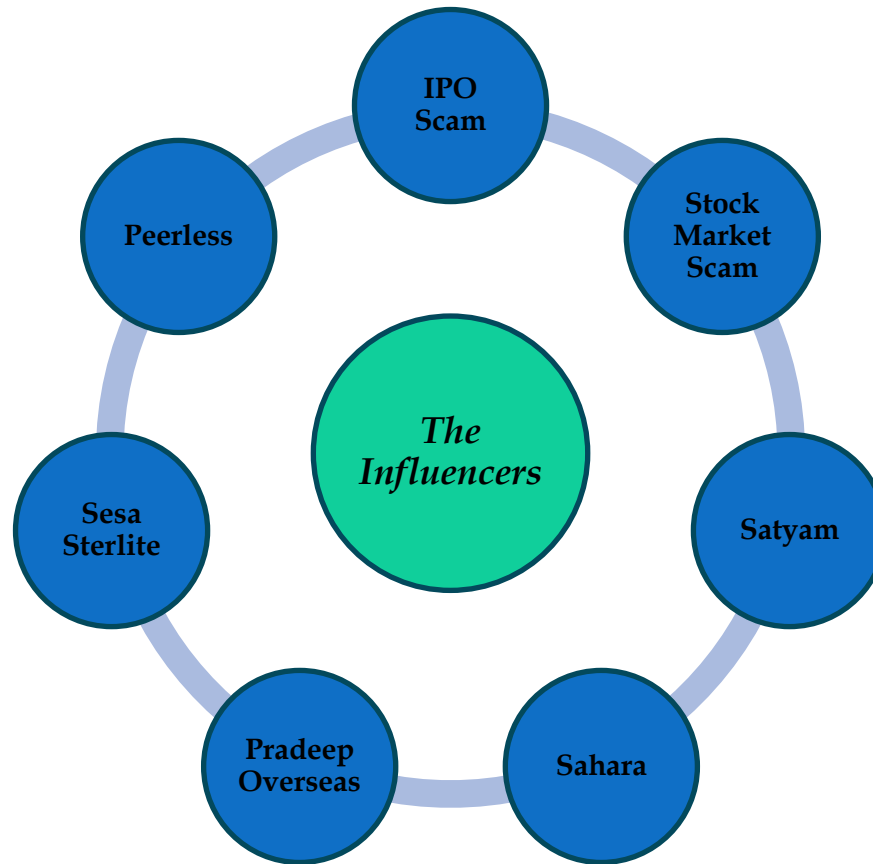
Major Changes brought by the Companies Act, 2013

a New look on Directors' Report

**The
Companies
Act, 1956**

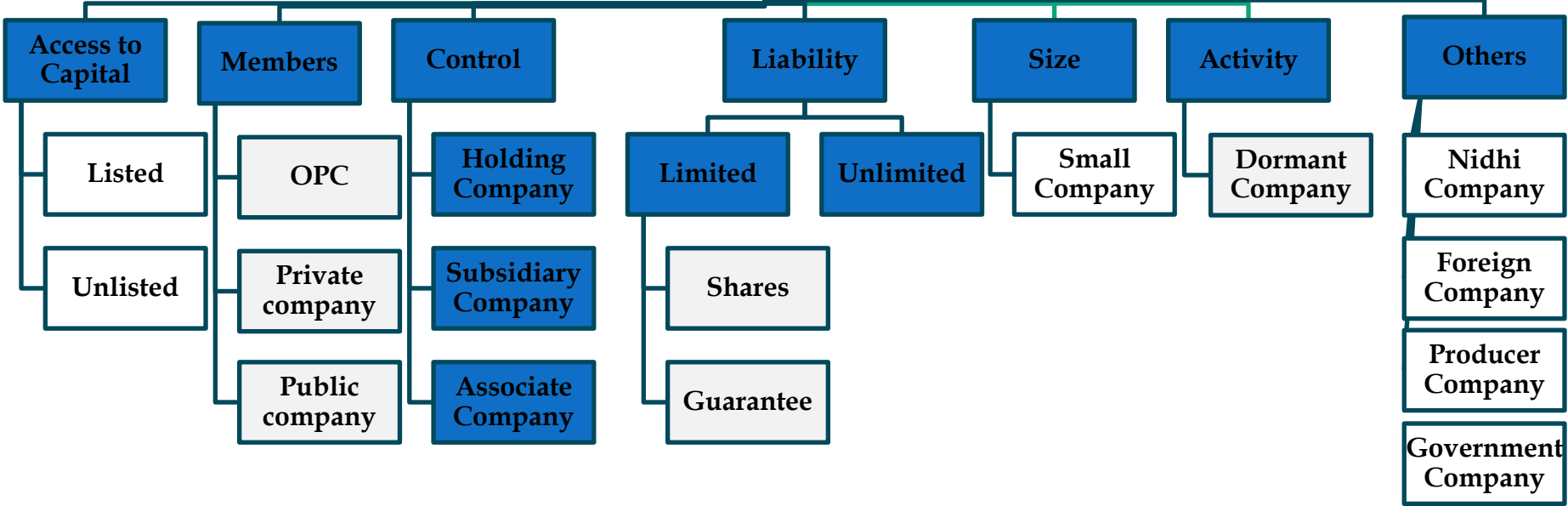
The Companies Act, 2013

PROMINENT INFLUENCERS TO THE NEW COMPANY LAW



		Green			Increased Regulatory Framework
	Dark Blue	Dark Blue	Dark Blue		Wider Director and Management Responsibility
Teal	Teal	Teal	Teal	Teal	Higher Professional Accountability
	Olive	Olive	Olive		Emphasis on Investor Protection
		Light Blue			To Set Global Benchmarks

Entity Structure Recognized under the law



ENTRENCHMENT

[Section -5]

The Articles of Association of the company may contain provisions for entrenchment whereby specified provisions of the Articles can be altered only if conditions or procedures that are more restrictive than those applicable in case of special resolution have been met with.

ONE PERSON COMPANY

[Section – 2(62) and 3(1)(c)]

- Promoter shall be a natural person, Indian citizen and resident in India (182 days during previous year);
- Has to appoint a nominee with his consent and he shall be natural person, Indian citizen and resident in India and in any event of death etc of the member, nominee becomes member;
- No person shall incorporate more than one OPC;
- Vacancy in nominee to be filled up in 15 days;
- OPC to convert in to Private Company or Public Company – when paid up exceeds Rs. 50 lakhs or Annual average turn over exceeds Rs. 2 crores or balance sheet total exceeds Rs. 1 crore;
- OPC can be a Section 8 Company (section 25 of CA 1956);
- Change the MOA and AOA within 6 months of conversion

ONE PERSON COMPANY - PROCEDURAL EXEMPTIONS

- Annual Return (Section 92) – The Annual Return is required to be signed by CS, or where there is no CS, by one Director of the company;
- Financial Statement (Section 2 (40)) states that no Cash Flow Statement is required;
- Board Meeting once in 6 months;
- Section 96 – No general meeting requirements etc. (Section 96);
- The filing requirements are simple

Issues

- No transfer provisions – even in model AOA . Only talks about transmission. (Sch I – Table F)
- In case of more than one director on minutes/ quorum etc

SMALL COMPANY

[Section 2(85)]

“Small Company” means a company other than a Public Company

- With paid-up capital not exceeding Rs.50 lakh or such higher amount as may be prescribed not exceeding Rs.5 crores; and
- Turnover of which does not exceed Rs. 2 crore or such higher amount as may be prescribed not exceeding Rs.20 crore rupees, as per last profit and loss account;

Provided this is not applicable to the following:

- A holding company or a subsidiary company
- A company registered under section 8
- A company or body corporate governed by any special Act

SMALL COMPANY - EXEMPTIONS / PRIVILEGES



- Annual Return needs to be signed only by one Director
- No cash flow statements
- Board meeting once in 6 months

ASSOCIATION OF PERSONS - SECTION 464

- The number for association or partnership not to exceed 100 (increased from 20) – Rule 29.10 restricts to 50.
- Restriction not to apply to HUF or an association or partnership constituted by professionals who are governed by special Acts.

PRIVATE LIMITED COMPANY

FEATURES :

➤ Minimum capital – Nil

No Requirement of Minimum Paid Up Capital (wef May 26, 2015) (Companies Amendment Act, 2015);

➤ Maximum members is 200 (from 50);

➤ Private Company which is a subsidiary of a company, not being a private company, shall be deemed to be a public company. However it is permitted to keep the same Articles of Association (AOA);

CONDITIONS :

- **restricts** the right to **transfer** its share
- except in case of One Person Company, **limits** the number of its **members** to two hundred excluding present and past employees
- **prohibits** any **invitation** to the public to subscribe for any **securities** of the company - for any shares in, or debentures has been replaced with **any securities**
- **Existing Fourth condition has been taken out –**
 - ✓ **Prohibits** any invitation or acceptance of deposits from persons other than its members, directors or their relatives
 - ✓ Hence the deposit can be accepted only from the members or Directors (Rule 5.2.(1) (8) of the Company.

Exemptions of a Private Limited Company

- Holding, Subsidiary and Associate Company will not cover under Related Party for the purpose of section 188.
- If anything else mentioned in MOA & AOA then MOA & AOA prevail over the section 43 and 47.
- Section: 62(1)(a)(i) and (2): In case 90%, of the members of a private company have given their consents in writing or in electronic mode then Offer Can Be Close Before 15 Days.
- Section 62(1)(b): Now for ESOP Ordinary Resolution is enough
- Section 67 – Buy Back
- Acceptance Of Deposits From Members Made Easier
- If anything else mentioned in AOA then AOA prevail over the section 101 to 107 and 109.

- Section 117(3)(g) will not apply on Private Limited Company
- Section 141(3)(g) - Number of Companies for Appointment of Auditors
- Section 160 - Candidature Not Required For Appointment of Director at General Meeting
- Section 162 - Appointment of directors need not to be voted individually.
- Section 180 - Restrictions on powers of Board - Not Apply
- Section 184(2) - Disclosure of interest by director.
- Section 185 - Loan to Director is allowed, subject to certain conditions.

- Section 188(1): Restriction On Voting Right In General Meeting In Case Of Related Party Transaction Not Applicable
- Section 196(4) & (5): Appointment of MD, WTD & Manager.

PRIVATE PLACEMENT

- It covers all Securities
- Offer Shall be made by issue of Offer Letter and by Special Resolution
- Offer shall be made to persons whose name appears in the register on the Record Date
- Offer of securities shall not be made to more than 50 persons or higher as may be prescribed in a Financial Year (excluding QIB's and employees offered securities under ESOP). The Rule has prescribed the same at 200 persons.
- No fresh offer shall be made unless earlier allotment is completed.
- The monies payable on subscription of securities not to be made in cash.
- Allotted within 60 days from the date of receipt of allotment money. If not allotted it shall be refunded within 15 days from the completion of 60 days.

- If the Company fails to refund the same within the stipulated time, it shall be liable to pay interest @ 12% from the expiry of sixtieth day.
- Complete details of the offer shall be filed with the Registrar within 30 days from the date of circulation of offer letter.
- Company shall not release any public advertisement or use marketing tools to inform the public at large.

- Application money parked in a separate account.
- The promoters and Directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or Rs. 2 Crore, whichever is higher.

LOAN TO DIRECTORS – SECTION 185



Public Companies cannot give any loan or provide any security or guarantee in connection with a loan to a Director or any other person in whom the Director is interested, except to MD & WTD under prescribed circumstances.

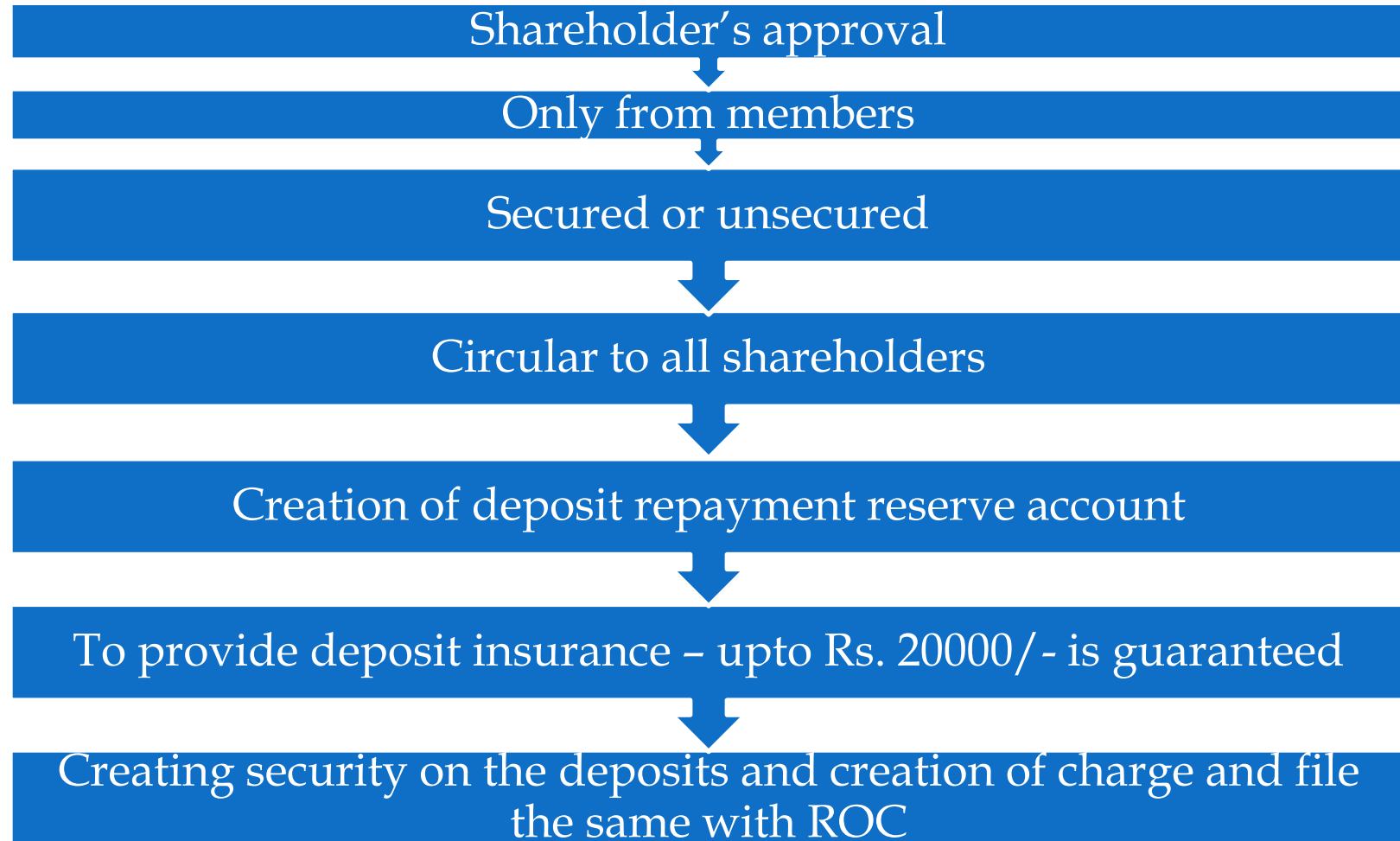
EXCEPTION: ORDINARY COURSE OF BUSINESS

DEPOSIT - 73 to 76

Deposit Section 2 (31)

Includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the RBI

DEPOSIT - SECTION 73



DEPOSIT - SECTION 73

One year to comply with new provision - file in 3 months details with ROC on outstanding deposits and repay in one year



Tribunal can extend the time



No more suo - moto action from NCLT on default - only on application

DEPOSIT - Rules

Public Company can accept deposit from other than members based on turnover or net worth

Net worth 100 crs or turnover 500 crs

Special Resolution

Credit rating

Rules

- Share Application money can be kept only for 60 days, if not allotted repay in another 15 days. Other wise treated as deposit.
- Exemption as per rules still continues (13 exemptions as per rules)
- Rule 2.(1) (b) VIII any amount received by a private company from a person who, at the time of the receipt of the amount, was a director of the company or any amount received from its shareholders including joint shareholders.
- Security deposit from employees (maximum one year salary)
- Bonds or debentures secured by a first charge or pari passu charge or bonds/debentures compulsorily convertible in to shares of the company within five years
- Supply advance - maximum of 365 days
- From promoters – provided it is pursuance of a Bank loan agreement – it can be from promoters or relatives

➤ Limits –

section 73 – 25% of paid up and FR

section 76 – 10% from members + 25% from public of paid up and FR

Govt. Company – 35% of paid up and FR

➤ Issues:

Less source now

Cost will go up

Repayment within one year is tough

Not more than two layers of investment companies

Exemption

Indian Company acquires a foreign company and that have more investment subsidiaries and that is allowed under laws of that country.

Investment subsidiary for the purpose of meeting the requirement under any law.

LIMITS FOR INVESTMENT

Any loan to person, body corporate, guarantee, security for a loan to any body corporate or acquiring the securities of any other body corporate

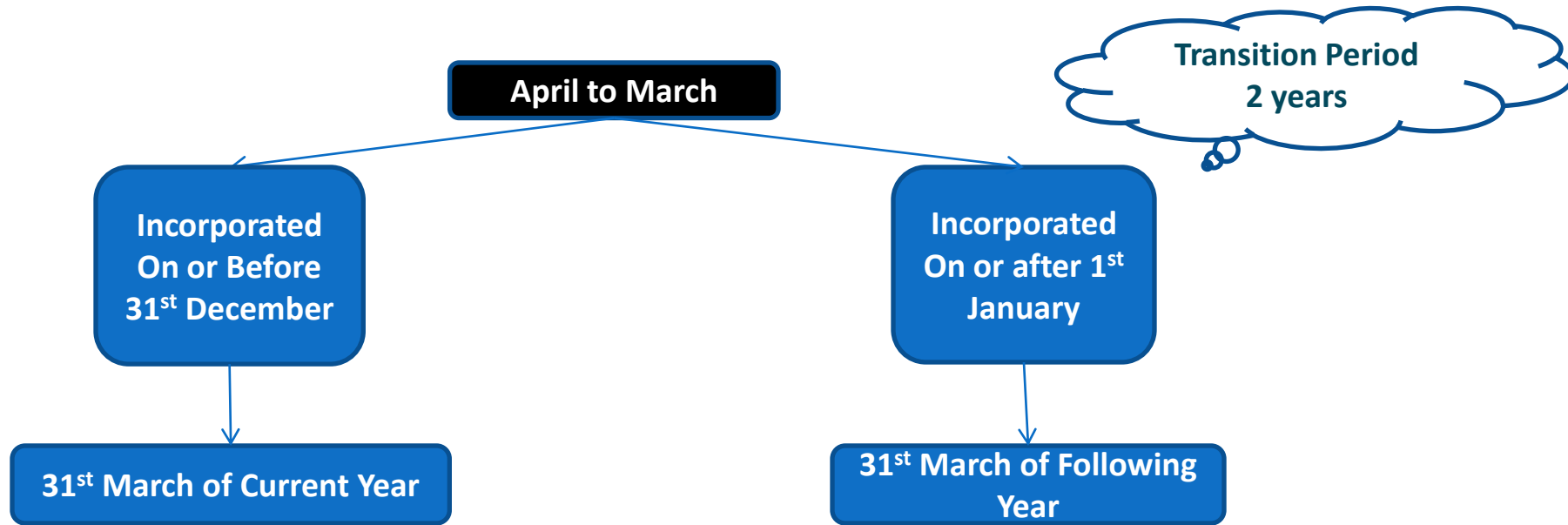
Unanimous approval of the Board at the meeting up to 60% of Paid up capital, free reserves and securities premium account or 100 % of free reserves and Securities premium account

Prior approval by special resolution at General meeting above 60% of Paid up Capital, free reserves and securities premium account or 100 % of free reserves and Securities premium account.

INDEX

- **Financial Year**
- **Financial Statement**
- **Consolidated Financial Statement**
- **Associate Company**
- **Subsidiary Company**
- **Reopening of Accounts**
- **Revision of Financial Statement**
- **Appointment of Auditor**
- **Disqualification of Auditor**
- **Duties of Auditor**
- **NFRA**
- **Depreciation**
- **Corporate Social Responsibility**
- **Dividend**
- **Related Party and Related Party Transactions**
- **Internal Audit**

Financial Year [Sec 2(41)]

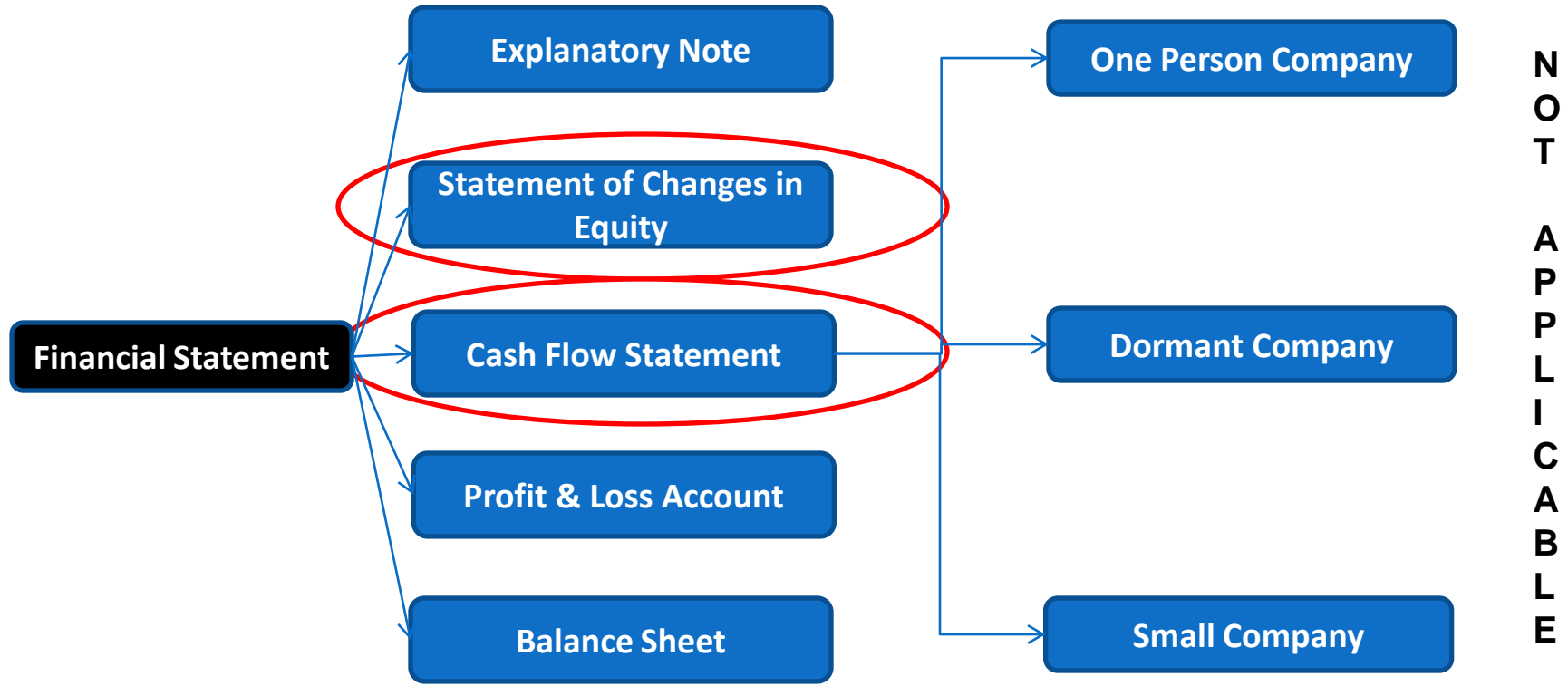


Adopt different Financial Year on Application to the Tribunal

Applicable to company having holding or subsidiary company outside India and Requires to prepare consolidation financial statements outside India.

(No other reason for application)

Financial Statement [Sec 2(40)]-



Financial Statement includes CFS

Consolidated Financial Statement (CFS)

NOW

Clause 32 of the Listing Agreement mandates Listed Companies to prepare CFS

Neither AS 21 nor Companies Act 1956 requires other company to prepare CFS

Companies Act 2013

Mandatory for all Companies to prepare CFS in respect of the following entities:

Subsidiary Company

Associate

Joint Venture Company

CFS will have to be done in addition to SFS

CFS should be prepared in same form and manner as Standalone Financial Statement (SFS) of holding company.

Impact

All companies including private companies need to gear up their financial reporting process for the same.

CFS should comply with notified AS

Reopen and revision of accounts mandatory to CFS also

Financial Statement Authentication [Sec 134]

Financial Statement

Part I

Chair person when authorised by Board

OR

Two Directors, out of which one shall be MD and CEO, when he is a director

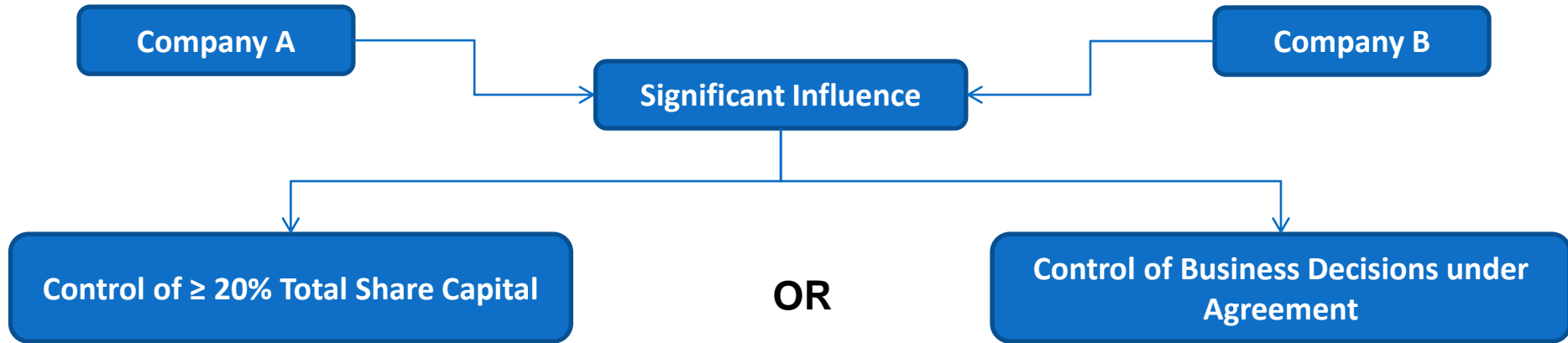
Part II

CFO

PART III

Company Secretary

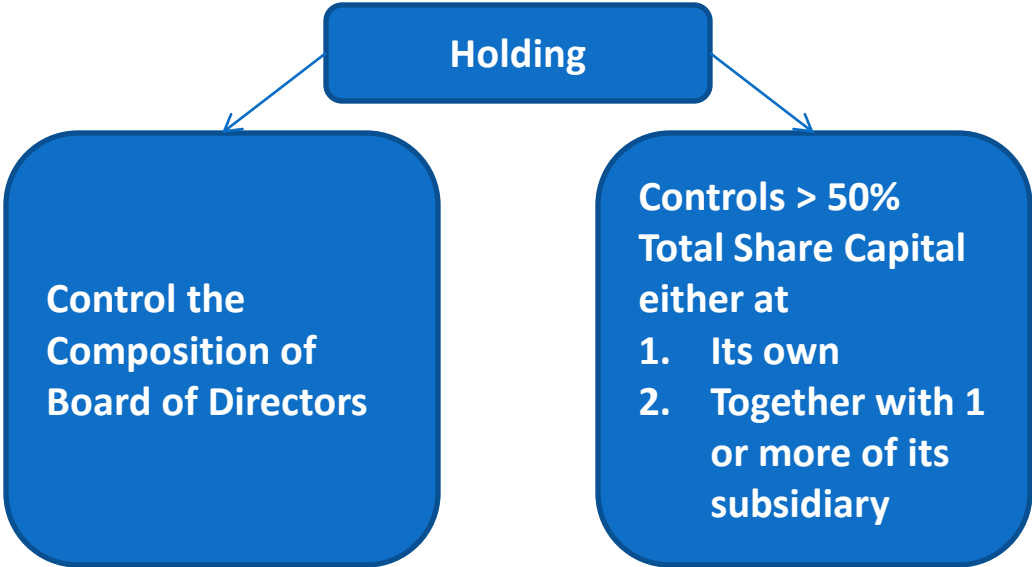
Associate Company [Sec 2(6)]



Implications

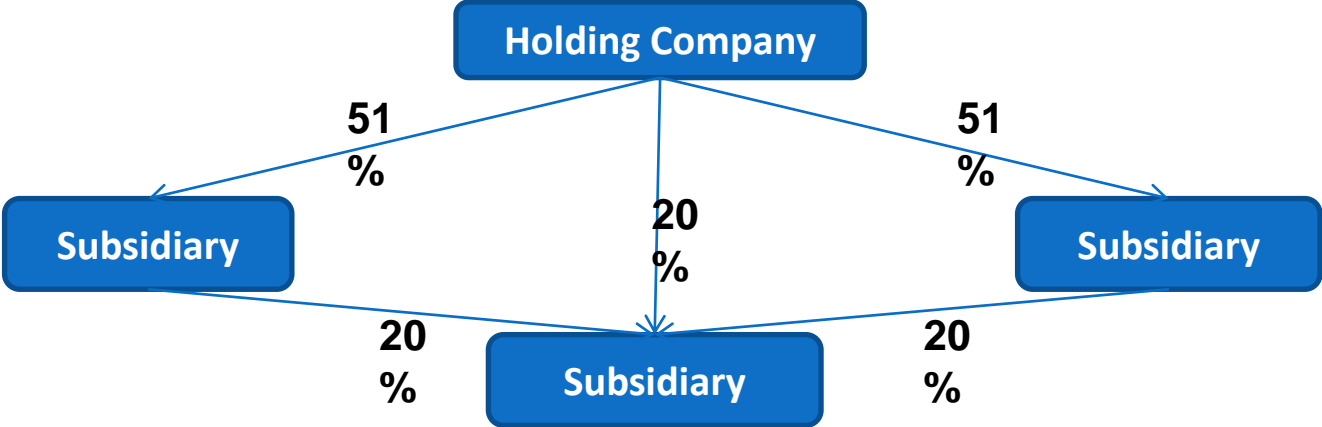
- Associate Company is not a subsidiary but includes Joint Venture Company
- Consolidated Financial Statements
- Considered as Related Party
- Auditor's Disqualification

Subsidiary company [Sec 2(87)]

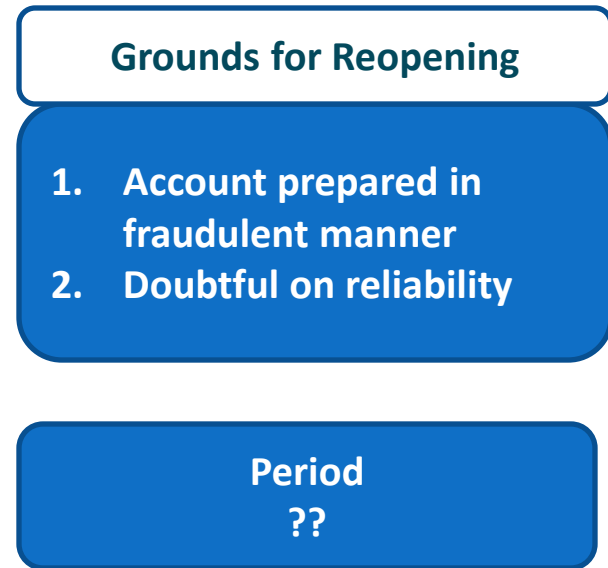
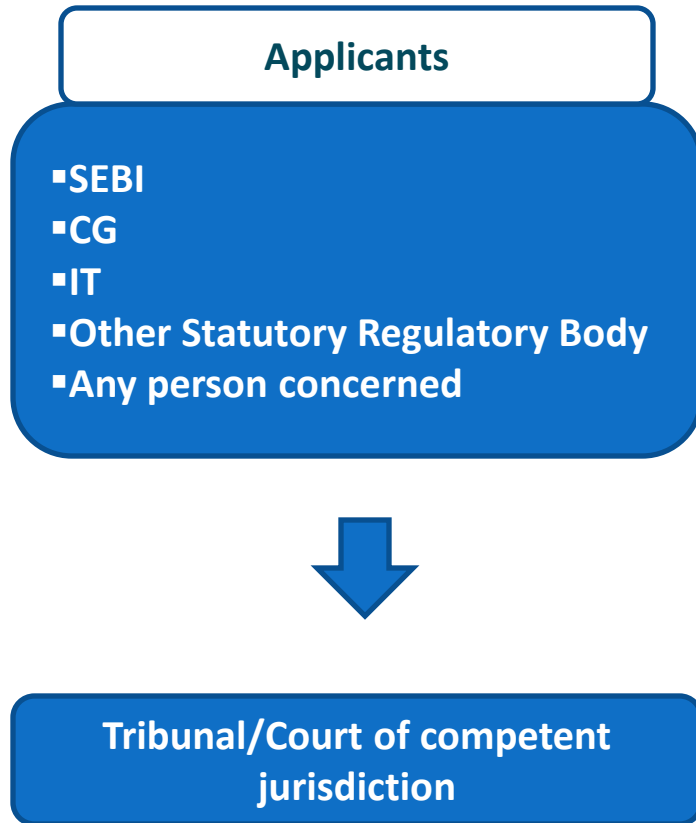


Total Share Capital includes both equity and Preference Share Capital

Restriction on number of layers of subsidiaries

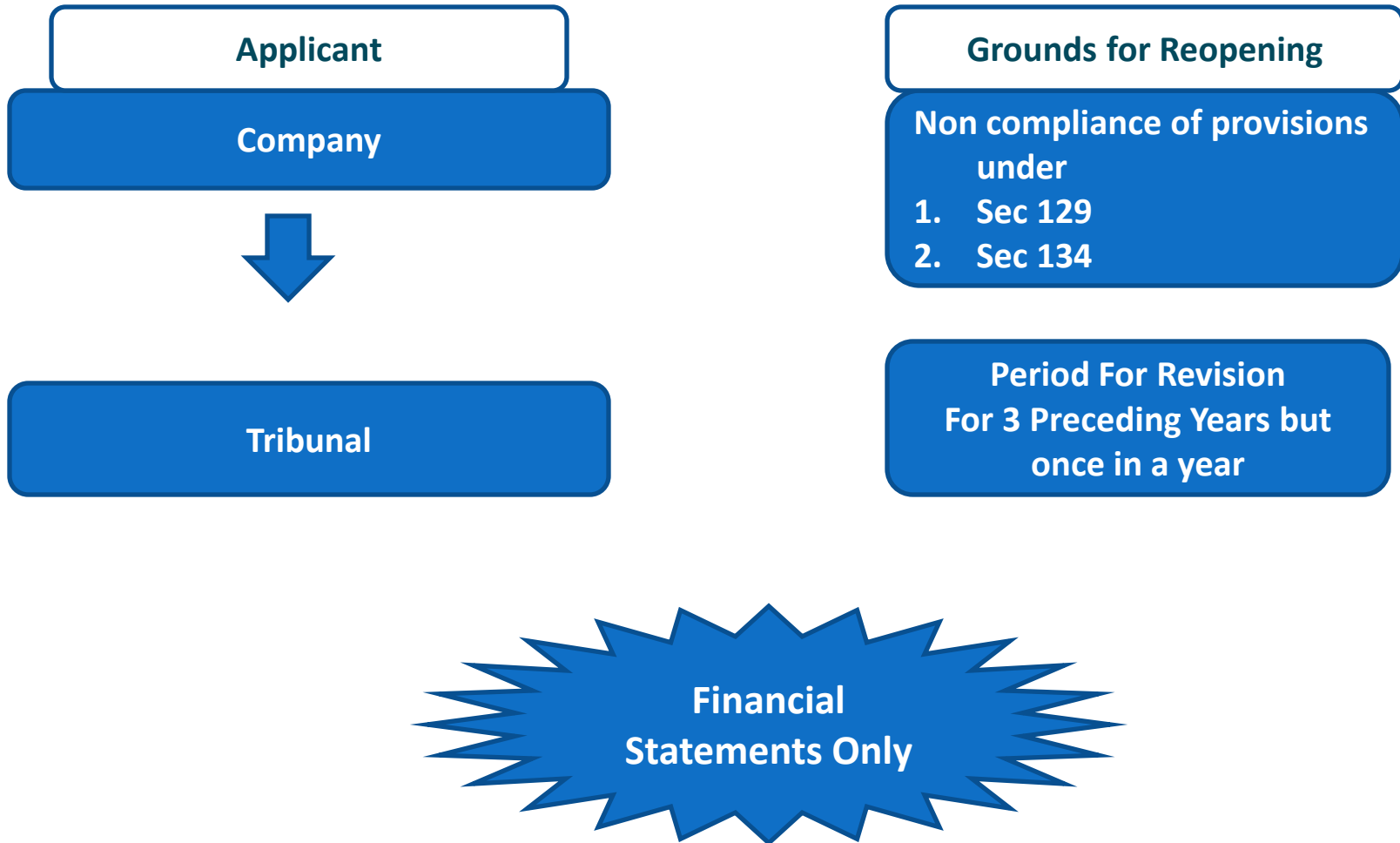


Reopening of Books of Accounts [Sec 130]



**Books of Accounts
as defined under
Section 2(13)**

Revision of Financial Statement [Sec 131]



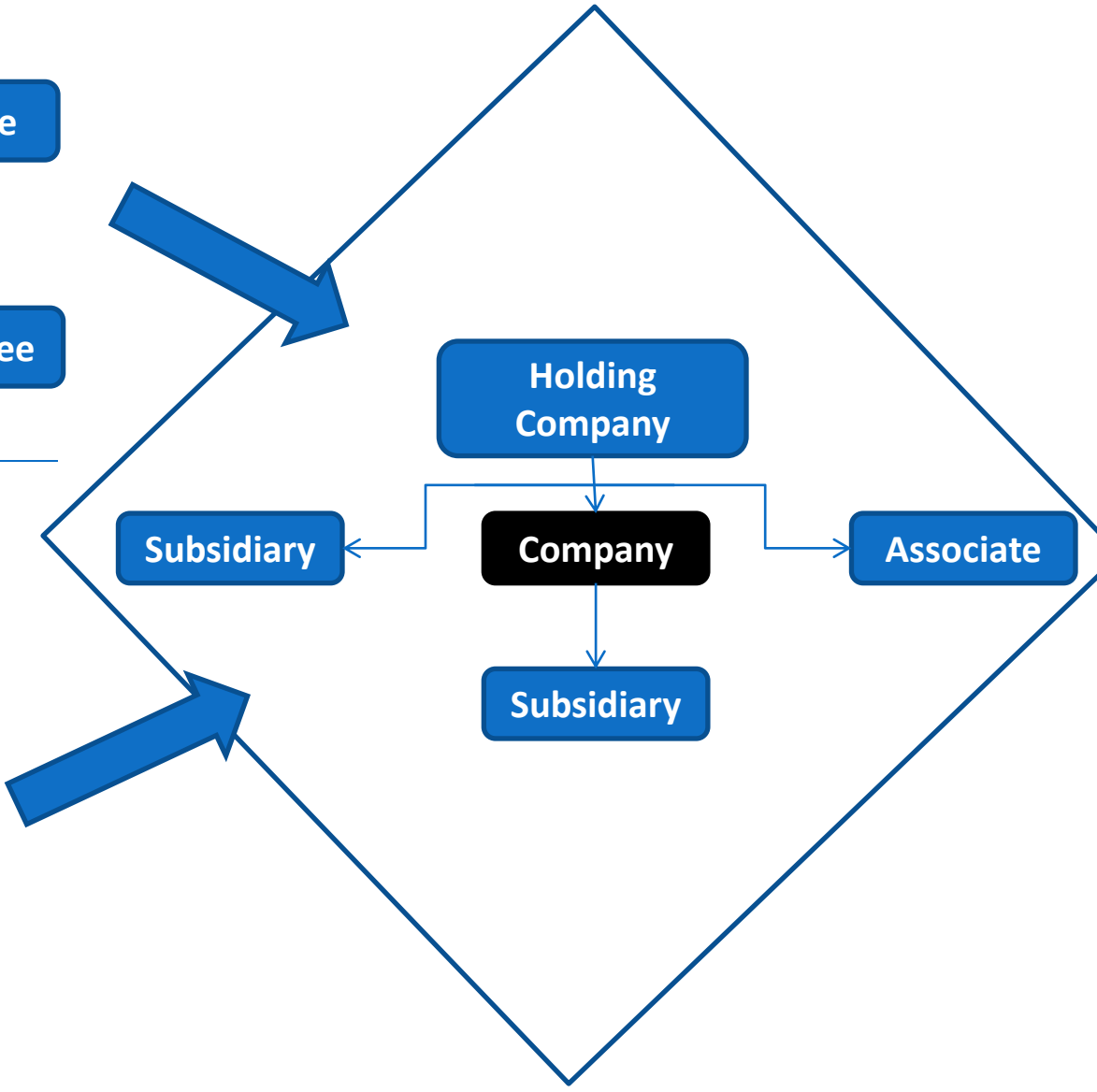
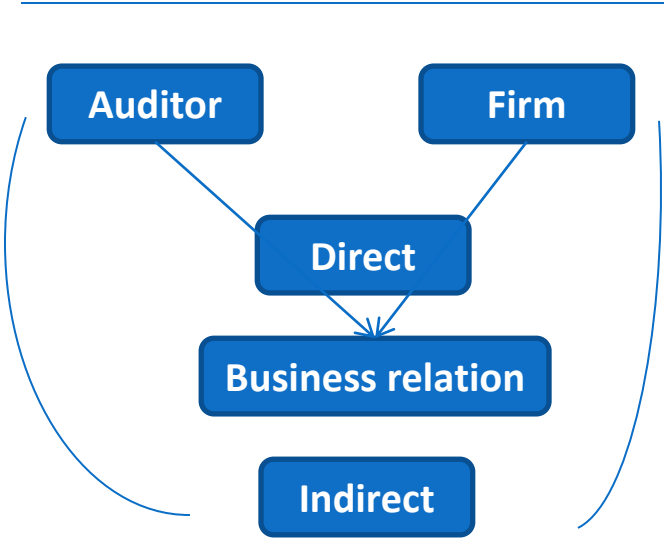
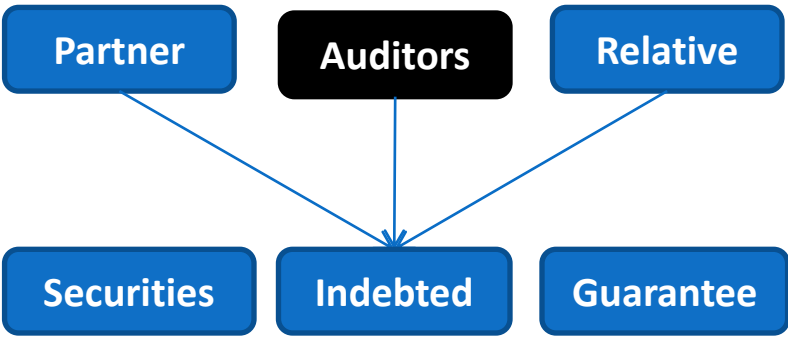
Appointment of Auditor [Section 139]

- LLP eligible to become Auditor
- Appointment for a term of 5 years and ratification in every AGM
- Requirement for rotation of Auditor introduced
- Applicable to all companies except small companies and OPC
- Individual Auditors - one term limited to 5 years
- Firm Auditor - two terms limited to 10 years
- Cooling Period of 5 years before the reappointment of the same firm.
- If no auditor re-appointed in AGM, existing auditor shall continue
- Transition period of three years for complying with the requirement

Discussion

- Period served by auditor earlier to this act counted in the number of years
- Whether rotation shall bring independence?
- Whether rotation is desirable when no public interest is involved?

Disqualification of Auditors [Sec 141]



DISQUALIFICATION FOR AUDITOR

- A Body Corporate
- An officer or employee of the Company
- a person who is a partner, or who is in the employment, of an officer or employee of the company
- a person who, or his relative or partner, holding any security or interest in the company, subsidiary company, holding or associate company, or subsidiary of such holding company
- is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 5 Lakh shall not be eligible for appointment;

Auditor - Duties

Upto 20 Companies EXCLUDING Private Companies for each partner

Comply with Auditing Standards also

To Attend GM unless exempted by the company

To Report Fraud to the Board



Report to CG in case fraud committed by officers or employees

Adverse Remarks in Auditors Report has to be commented

Adverse Remarks in Auditors Report has to be read in AGM

Report on internal financial reporting system

National Financial Reporting Authority [Sec 132]

- Renamed National Advisory Committee on Accounting Standards
- Formulation and laying down of accounting and auditing policies and standards
- Monitor and enforce the compliance with accounting standards and auditing standards
- Oversee the quality of service of the professions
- Suo motu or on reference made by Central Government-professional or other misconduct by CA's
- Quasi-judicial body
- 15 member team with part-time & full-time members
- Appeal available to Appellate Tribunal

Depreciation

Now

Schedule XIV of the Companies Act 1956

Specifies minimum rates of depreciation to be provided on assets.

Two methods WDV and SLM

Different rates for multiple shifts

Companies Act 2013

Schedule II of the Companies Act 2013

Specifies systematic allocation of depreciable amount over its useful life

Useful life of assets are mentioned in the Schedule

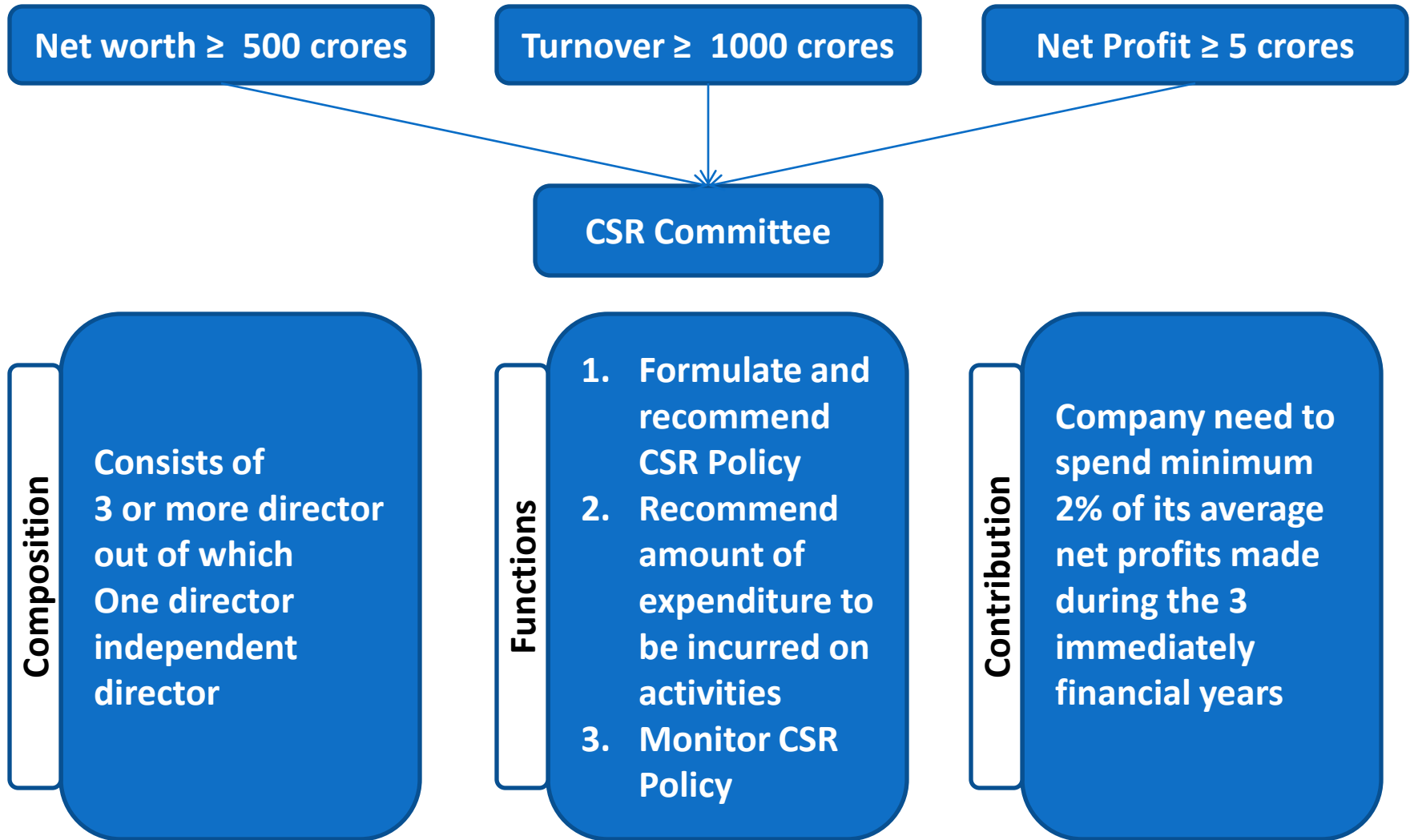
No other methods

Impact

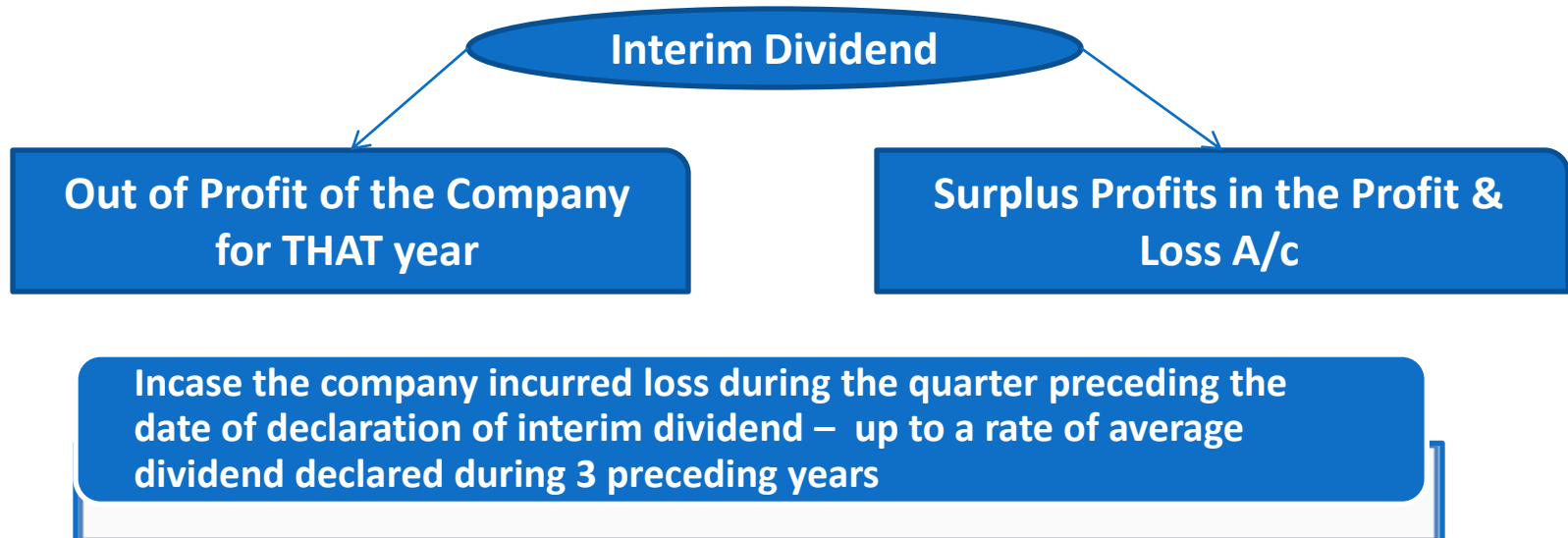
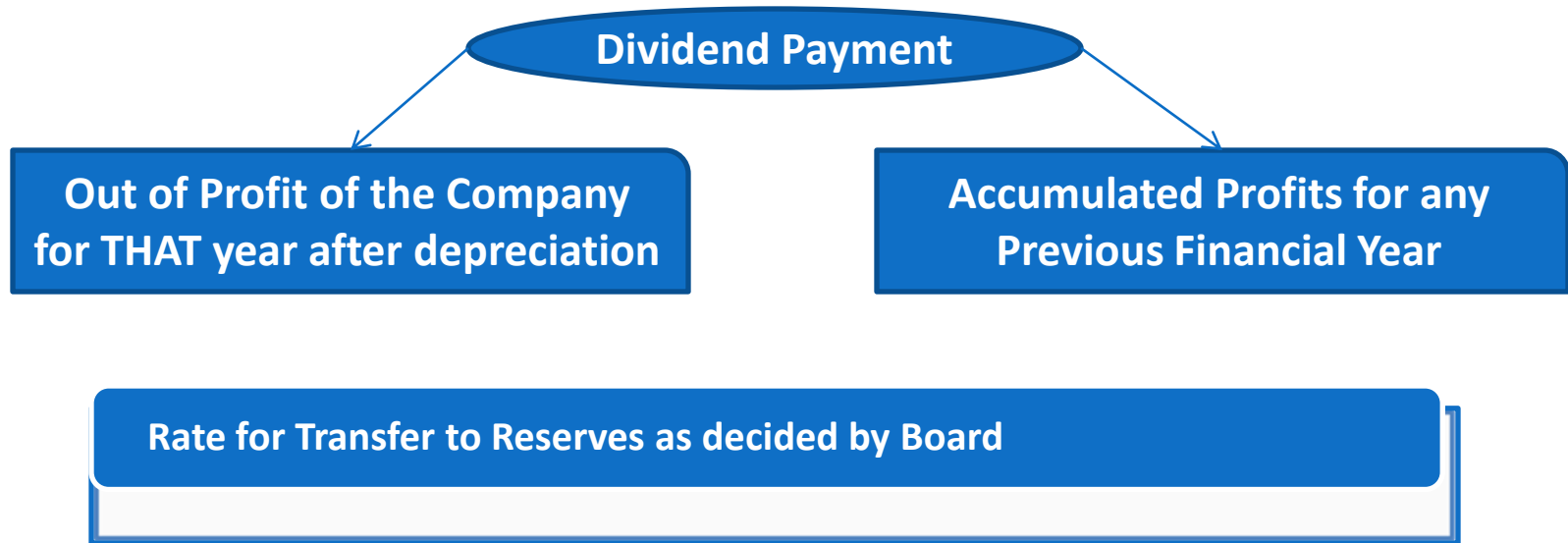
Companies will be divided into three classes to decide the application of depreciation rates

1. Classes of companies prescribed and who comply with AS
2. Classes prescribed by a regulatory authority
3. Other Companies

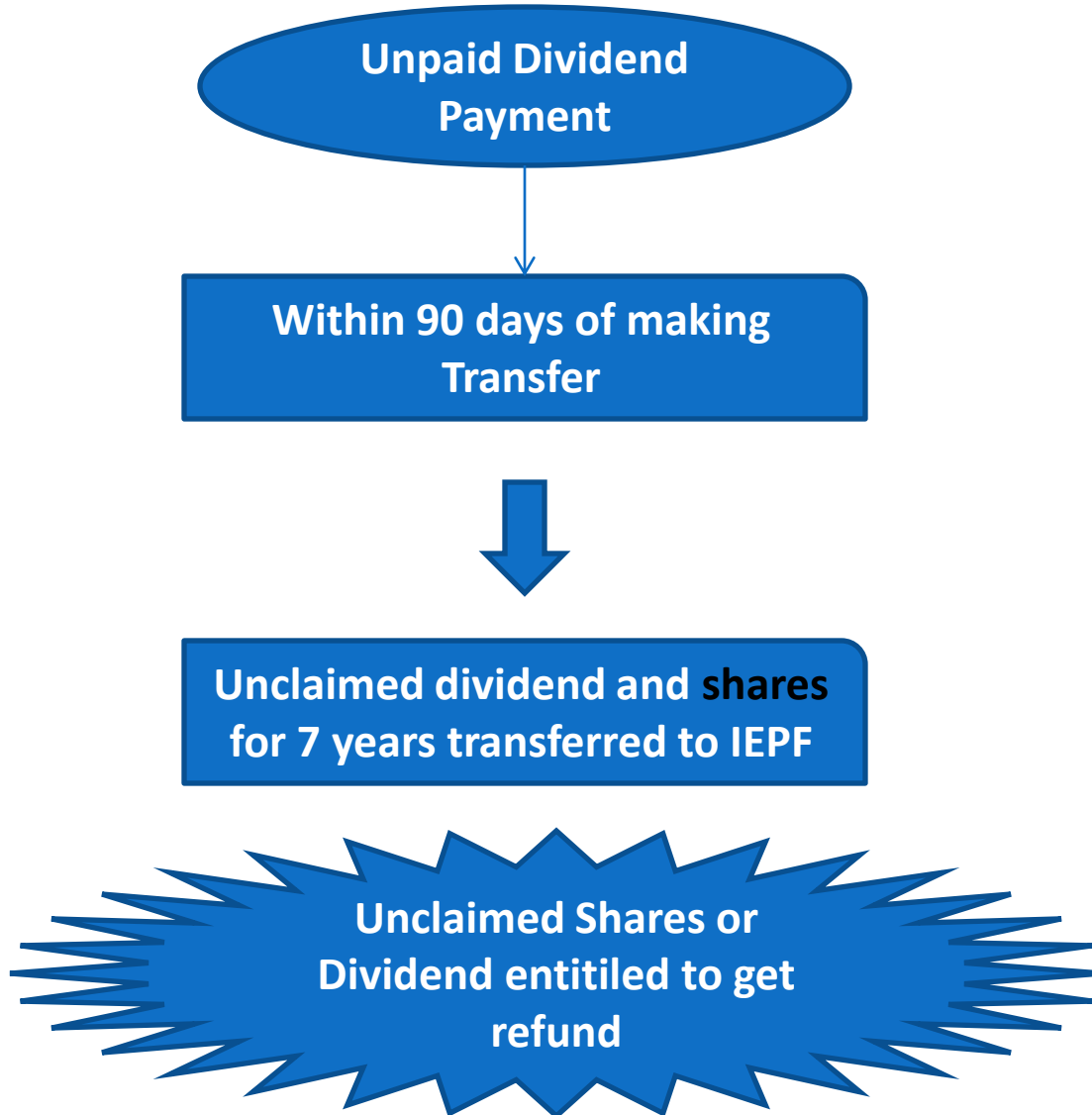
Corporate Social Responsibility [Sec 135]



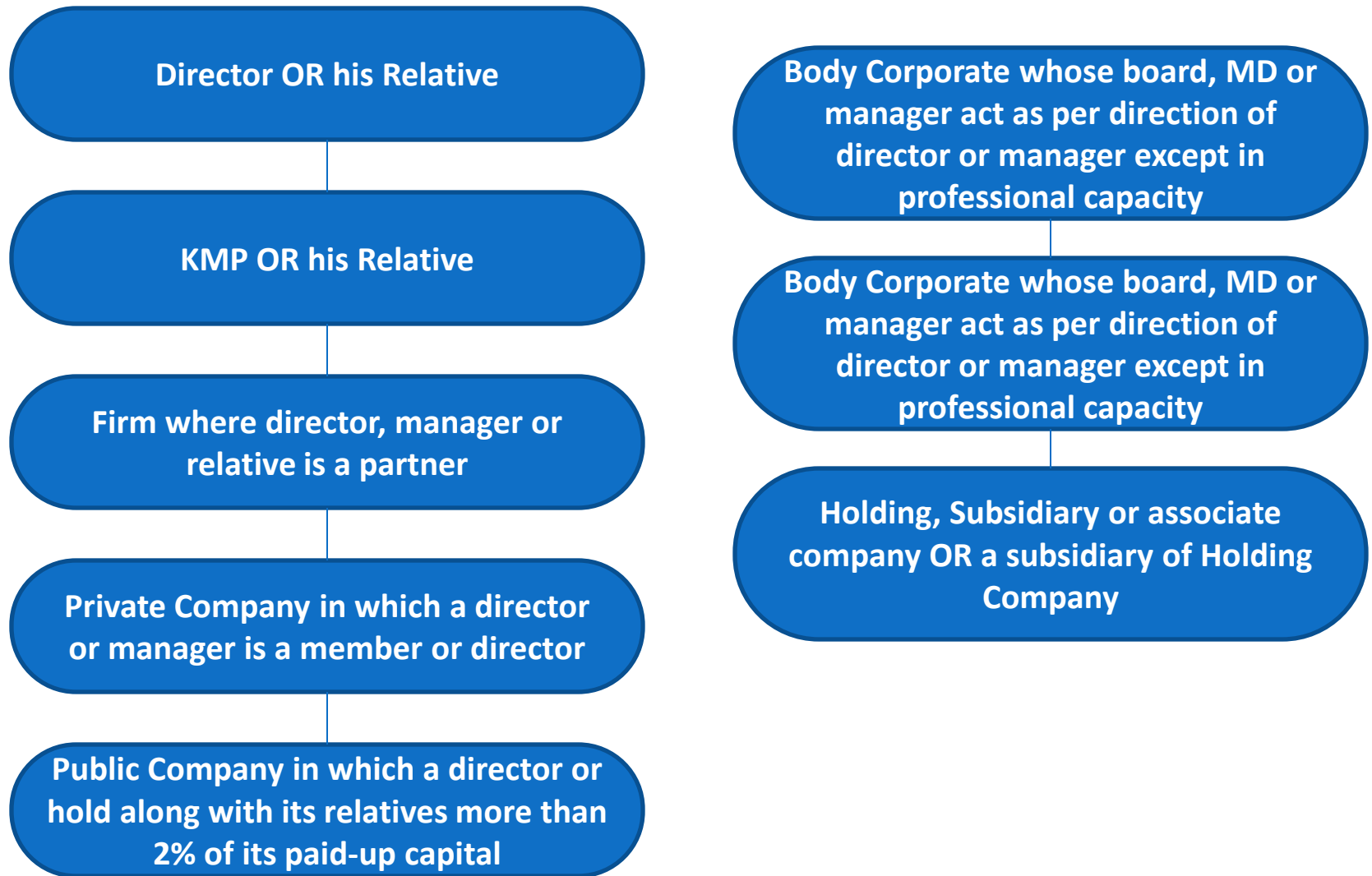
Dividend [Sec 123]



Unpaid Dividend [Sec 124]



Related Party [Sec 2(76)]



Related Party Transaction [Sec 188]

Inclusions

- Selling or otherwise disposing of, or buying, property of any kind
- Leasing of property of any kind
- Appointment of any agents for purchase or sale of goods, materials, services or property
- Appointment of any related party to any office or place of profit in the company or its subsidiary company or associate company
- Contract for underwriting the subscription of securities or derivatives thereof

Exclusions

- Ordinary Course of Business Transactions
- Arms length transactions

**Combined Provisions
for Sec 294, 294A, 297
and 314 of Companies
Act 1956**

Related Party Transactions [Sec 188]

Approvals

- Approval at the Board Meeting
- Approval by Special Resolution if
- Related party cannot vote on resolution
- No Government Approval required

Limits

- Paid-up capital of Rs. 1 crore or more OR
- Transaction value including the transactions during the year exceeds 5% of the annual turnover or 20% of the net worth as per the latest audited financial statement whichever ever is high

Internal Audit [Sec 138]

Internal Audit

Every Listed Company

Paid up Capital > 50 crores

Outstanding Loan & Borrowings > 100 crores

Accepted Deposits > 25 crore

Public Company

Internal Auditor Being:
Chartered Accountant
OR
Cost Accountant
OR
any other professional decided by the Board

DEFINITION

DIRECTOR



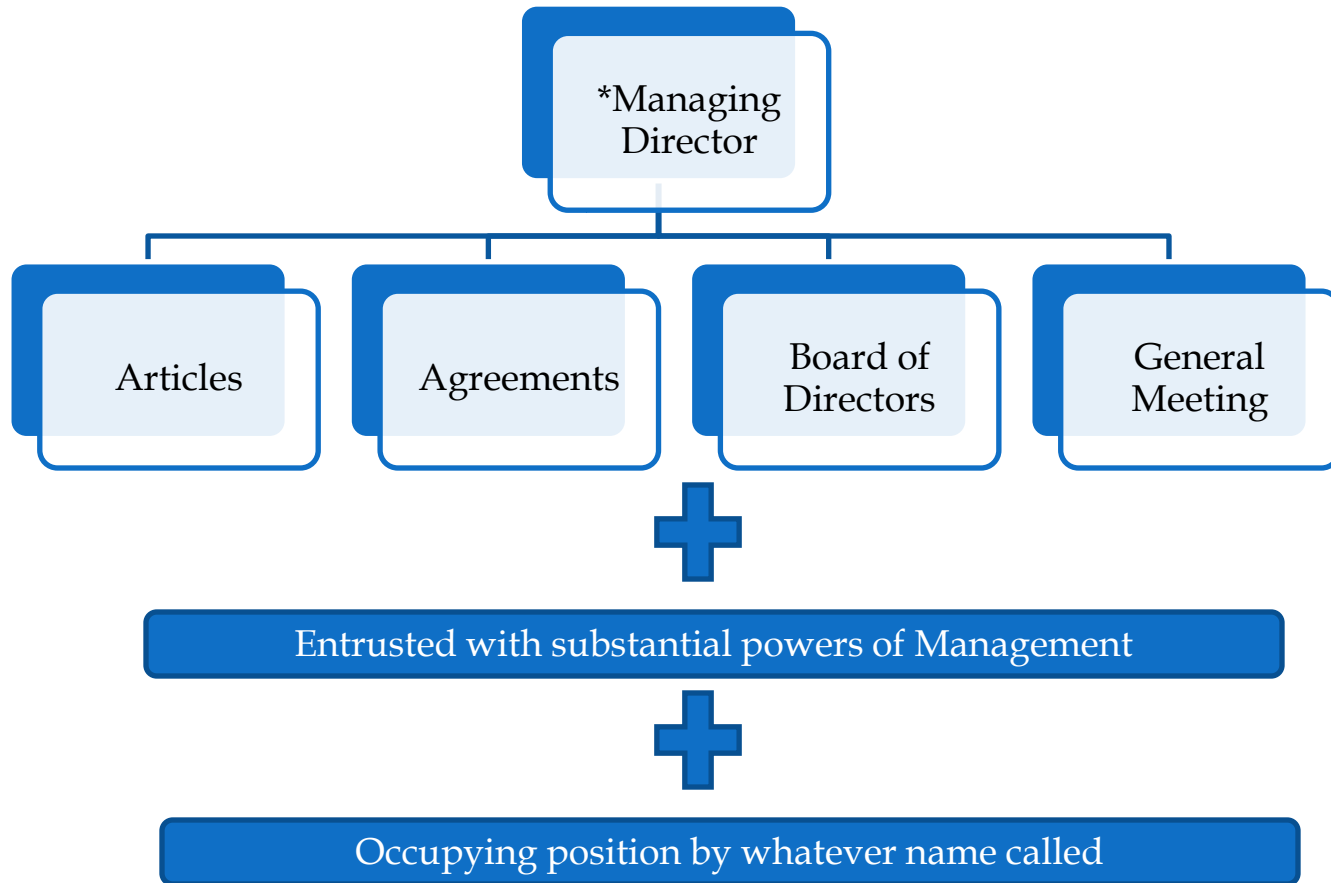
*Director appointed to
the Board of a
Company (*Section 2(34)*)

BOARD OF DIRECTORS
/ BOARD



*Collective body of
Directors of the
Company (*Section 2(10)*)

MANAGING DIRECTOR
(SECTION 2(54))



Explanation:

The following do not form part of substantial powers:

1. Affixing Common Seal of the Company;
2. Draw and endorse cheque and negotiable instruments on behalf of the Company;
3. Sign Share Certificate;
4. Direct registration of transfer of shares

MANAGER - SECTION 2(53)

Manager

Individual

Subject to

Superintendence

Control

Directions of Board

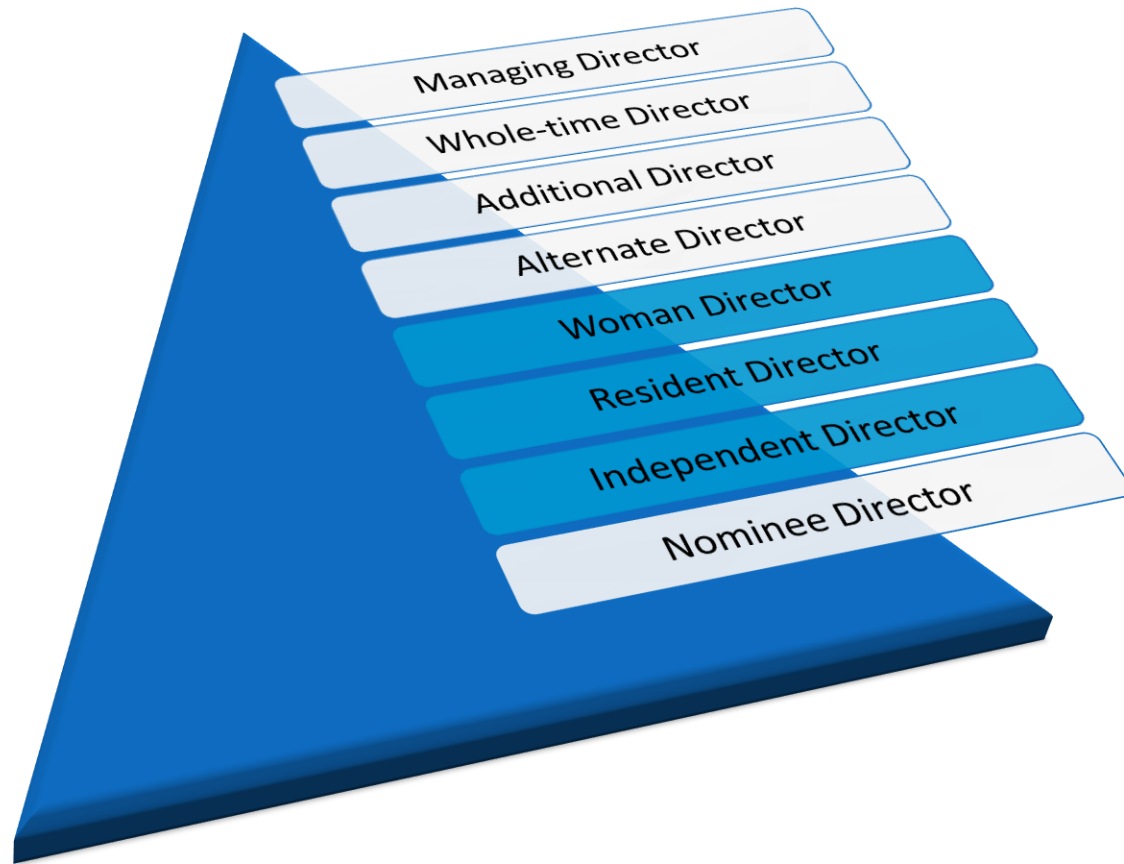
Management of the entire affairs of the Company

&

Includes Director occupying position by whatever name called

No Change

TYPE OF DIRECTOR



KEY MANAGERIAL PERSONNEL

DEFINITION (*Section 2(51)*)

CEO

OR

Managing
Director

OR

Manager

Company
Secretary

Whole-time
Director

CFO

Such other officer as may be prescribed –
Officer includes any director, manger or KMP

APPOINTMENT OF KMP

Appointment of KMP
(Section 203)

Listed Company

Company having a paid up share
capital of Rs.10Crore or more - Rule
No. 13.8

Managing Director

OR

CEO

OR

Manager

OR

WTD, in absence of
the above

Company Secretary

Chief Financial
Officer

NUMBER OF DIRECTORS – SECTION 149



Board of Directors consisting individuals as directors.

Private Company : 2 Directors

Public Company : 3 Directors

One Person Company : 1 Director

Maximum number :15 (earlier 12)

**(No. of Members can go beyond 15 by passing a
Special Resolution in General Meeting)**

WOMAN DIRECTOR, SMALL SHAREHOLDER DIRECTOR & RESIDENT DIRECTOR

At least 1 woman director for prescribed class or classes of companies. 2nd proviso to Section 149(1)

- As per the Rules: Listed Companies, and every other public company with paid up capital > Rs 100 Crore or more. (Rule 11.3) Turnover of > 300 crore

Companies with prescribed number of small shareholders or paid up capital and listed Companies to have 1 director elected by Small Shareholders
Section - 151

- As per Rules: A listed company may suo moto or upon the notice of > 500 or 1/10th of the total number of small shareholders, whichever is lower, elect a small shareholders' director from amongst the small shareholders)

Resident Director

At least 1 director to be a person who has stayed in India for at least 182 days in the previous calendar year

INDEPENDENT DIRECTOR – SECTION 149

Every listed public Company to have at least one-third of the total number of directors as Independent Directors (ID)

Central Government has prescribed the minimum number of Independent Directors in case of any class or classes of public Companies as two.
(As per Rules: Public Companies having paid up share capital of Rs. 10 crore or more or outstanding loans or borrowings or debentures or deposits, exceeding Rs. 50 cr) or Turnover of Rs.100 Cr

Every Company existing shall, within one year from such commencement or from the date of notification of the rules as may be applicable shall comply with the requirement of Section 149(4)

INDEPENDENT DIRECTOR – SECTION 149

A person of integrity. Not the promoter of Company/Holding/Subsidiary Associate Company. Even relative of Promoter is disqualified.

BOARD TO ENSURE - Appropriate balance of skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations other disciplines related to the company's business **AND DISCLOSE IN BOARD REPORT**

DATA BANK with details of the person eligible and willing to be appointed as independent director to be prepared by any **body, institutions as authorized by CG** (as may be notified by CG). (Rule 11.4)

Responsibility of due diligence for appointment of independent directors to be on company.

APPOINTMENT OF DIRECTOR – SECTION 152

Appointment of Managing Director, Whole Time Director or Manager to be approved by special resolution in a General Meeting

Consent for appointment to be filed by directors of private company to the ROC

When appointment not in accordance with Schedule V, approval of Central Government also required

Independent directors not to be included in the total number of directors while calculating retiring directors i.e. $\frac{2}{3}$ rd of the total number of directors

APPOINTMENT OF DIRECTOR – SECTION 152

Until the director duly appointed as per provisions in the OPC, individual being member shall be deemed to be its first director

Whole Time Director shall not be appointed for more than 5 years

Provisions to apply to Private Companies as well

In case of default the Company, such individual or director to be punishable with imprisonment upto 6 months or with fine which shall not be less than fifty thousand rupees but which may extend to five hundred rupees for every day after the first during which the default continues.

Amount to be deposited along with notice of nomination of any person to the office of director has been increased from Rs 500 to Rs 100,000 or such higher amount as may be prescribed

ADDITIONAL/ALTERNATE/NOMINEE DIRECTOR (SECTION 161) -

Person who fails to get appointed as a director in a general meeting cannot be appointed as an Additional Director

Alternate director can only be appointed in case director leaves India for period of not less than 3 months

Person to be appointed as Alternate Director shall be a person other than one holding any alternate directorship for any other Director in the Company

Person to be appointed as Director alternate to Independent Director shall possess all the qualifications that an Independent Director is required to possess.

NEW DISQUALIFICATIONS FOR DIRECTORS

Conviction for offence dealing with Related Party Transaction anytime during previous 5 years 164(g)

Not having obtained Director Identification Number (Section 152(3))

Conviction for any offence and **sentenced** for an imprisonment extending to 7 years or more

NUMBER OF DIRECTORSHIPS – SECTION 165

Director in maximum 20 companies



Directorship to include alternate directorship



Of these 20 companies, one cannot be a Director in more than 10 public companies (including private companies which are holding or subsidiary companies of public companies)



Members may specify lesser number by passing Special Resolution



Penalty for contravention: Minimum Rs. 5,000, and Maximum Rs. 25,000 for every day during which the default continues

DUTIES OF DIRECTORS- SECTION 166

A director to act in accordance with the articles of the company

A director to act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interest of the company, its employees, the shareholders, the community and for the protection of environment.

A director to exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment

A director not to get involved in a situation he may have direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company

A director not to achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates

VACATION OF OFFICE OF DIRECTOR

- When Director fails to attend all Board Meetings for consecutive period of 12 months *even when the leave of absence has been granted*
- When Director is disqualified by an order of court or Tribunal under any Act not only the Companies Act.
- When all directors have vacated the office:
 - the promoter shall appoint minimum number of Directors
 - Central Government may appoint Directors till company makes appointment in General Meeting

REMOVAL OF DIRECTOR

- Notice of Removal can be given only by the following:
- In Company Having Share Capital:
 - Member(s) having not less than 1/10th of the total voting power or holding shares the aggregate value of which is not less than Rs. 5 lakh
- In any other Company:
 - Member(s) having not less than 1/10th of the total voting power
- In case of default, company and every director or employee who is responsible for such contravention to be punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 Lac

PUNISHMENT FOR CONTRAVENTION

Punishment (if no specific punishment provided in this Chapter)

Fine > Rs.
50,000

Persons Covered:

1. Company
2. Officer in Default

Fine may
extend to Rs. 5
Lakhs

RESTRICTION ON NON-CASH
TRANSACTIONS INVOLVING DIRECTORS
APPLICABLE TO: SECTION 192

- Any Director of a company; or
- Director of the Holding Company; or
- Any person connected with such person
- Director cannot acquire assets for the consideration other than cash from the company & vice versa without the approval in general meeting

PROHIBITION ON FORWARD DEALING IN SECURITIES (NOTIFIED) SECTION 194

- Director and KMP prohibited w.r.t. to following in a Company, or its holding, subsidiary or associate Company –
- Right to call/make for delivery at specified price and within a specified time, of a specified number of relevant shares /debentures.
- Right to call for delivery or make delivery at a specified price and within a specified time, of specified number of relevant shares/debentures.

PROHIBITION ON INSIDER TRADING OF SECURITIES (SECTION 195)

- Director and KMP shall not enter into act of insider trading concerning
- Subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities either as principal or agent if such person is reasonably expected to have access to any non- public price sensitive information in respect of securities of company
- Counseling about, procuring or communicating directly or indirectly any non- public price sensitive information to any person.

BOARD'S REPORT

[Section 134]

A Report of the Board of Directors shall be attached to the financial statement laid before a company in general meeting.

ENHANCED DISCLOSURES & INFORMATION **IN BOARD OF DIRECTORS' REPORT**

- **Extract of the Annual Return in Form MGT 9;**
- **Number of meetings of the Board;**
- **Directors' Responsibility Statement;**
- **A statement on declaration given by IDs u/s 149(6) that they meet the criteria of independence;**
- **Particulars of loans, guarantees or investments u/s 186;**
- **In case of a company required to constitute a NRC u/s178(1), its policy on appointment & remuneration of directors, KMP etc.;**
- **Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made:-**
 - **by the auditor in his report; and**
 - **by the company secretary in practice in his secretarial audit report;**

ENHANCED DISCLOSURES & INFORMATION **IN BOARD OF DIRECTORS' REPORT**

- Particulars of contracts or arrangements with related parties referred to u/s 188(1);
- State of the company's affairs;
- Amounts proposed to carry to any reserves;
- Amounts recommended for dividend payment
- Material changes and commitments affecting the financial position of the company which have occurred between end of the FY and the date of the report;
- The conservation of energy, technology absorption, foreign exchange earnings & outgo;
- Development and implementation of risk management policy including identification of risks which may threaten existence of company;
- CSR policy and its implementation;

ENHANCED DISCLOSURES & INFORMATION **IN BOARD OF DIRECTORS' REPORT**

- A statement indicating the manner of formal annual evaluation made by the Board of its own performance and that of its committees and individual directors (for prescribed companies).
- Such other matters as may be prescribed.

RULE 8: MATTERS TO BE INCLUDED IN BOARD'S REPORT

- Board's Report shall be prepared based on stand alone FS of the company.
- Board's Report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated FS is presented.
- Every listed company and every other company having a paid up capital of Rs 25 crs or more calculated at the end of the preceding FY shall include a statement indicating the manner in which formal annual evaluation has been made by Board on its own performance and that of its committees and individual directors.
- Financial summary or highlights;
- Change in the nature of business, if any;

RULE 8: MATTERS TO BE INCLUDED IN BOARD'S REPORT

- Details of directors or KMPs who were appointed or have resigned during the year;
- Name of companies which have become or ceased to be the subsidiaries, joint ventures or associate companies during the year;
- Deposits covered under chapter V of the Act;
- Deposits which are not in compliance with the requirements of chapter V of the Act;
- Significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;
- Adequacy of internal financial controls with reference to the Financial Statements;

RULE 12 : EXTRACT OF ANNUAL RETURN IN **MGT-9**

- Registration and other details;
- Principle business activities of the company;
- Particulars of holding, subsidiary and associate companies;
- Shareholding pattern;
- Changes in promoters' shareholding;
- Shareholding pattern of top 10 shareholders;
- Shareholding pattern of directors & KMPs;
- Indebtedness;
- Remuneration of directors and KMPs;
- Penalties/punishment/compounding of offences.

DIRECTORS' RESPONSIBILITY STATEMENT

SHALL STATE THAT:-

- In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- The directors had selected such accounting policies and applied them consistently and made reasonable and prudent judgments and estimates so as to give true and fair view of the state of affairs of the company.
- The directors had taken proper and sufficient care for the maintenance of adequate accounting records for safeguarding the assets and for preventing and detecting fraud and other irregularities;
- The directors had prepared the accounts on a going concern basis; and

- The directors, in case of a listed company, had laid down adequate internal financial controls which were operating effectively.
- The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

ENHANCED DISCLOSURES & INFORMATION **IN ANNUAL RETURN**

- Principal business activities, particulars of its holding, subsidiary and associate companies
- Details of shares, debentures and other securities with shareholding pattern
- Indebtedness
- Members and debenture holders with changes therein
- Promoters, directors, KMP with changes therein
- Meetings of members or class thereof, board and other committees and details of attendance
- Remuneration of directors and KMP
- Penalties imposed on the company, its directors or officers and details of compounding of offence
- Shares held by FIIs

ADDITIONAL DISCLOSURES IN EXPLANATORY STATEMENT

- Nature of concern or interest, financial or otherwise, of director, manager, KMP and relatives of directors, manager and KMP
- Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business
- Failure to make such disclosure – promoter, director, manager liable to compensate the company to the extent of the benefits derived by them

WHO CAN BE PROSECUTED ?

OFFICER IN DEFAULT

- WHOLE TIME DIRECTOR
- KMP
- ANY DIRECTOR DELEGATED BY BOARD (WITH THE CONSENT OF SUCH DIRECTOR) OR ALL DIRECTORS
- ANY PERSON UNDER THE AUTHORITY OF THE BOARD/KMP WHO IS CHARGED WITH RESPONSIBILITY AND KNOWINGLY PERMITS DEFAULT
- A PERSON WHOSE DIRECTIONS BOARD IS ACCUSTOMED TO ACT
- EVERY DIRECTOR WHEN CONTRAVENTION TAKE PLACE WITH HIS CONSENT OR CONNIVANCE
- FOR ISSUE OR TRANSFER OF SHARES – REGISTRARS, TRANSFER AGENTS AND MERCHANT BANKERS;

NON COMPOUNDABLE OFFENCES

- Imprisonment
- Imprisonment and Fine
- Second or subsequent Compoundable Offence
- When the investigation against the Company is initiated or pending, no compounding is possible (Section 441(1) 3rd proviso)

Consequences

- Appearing before Criminal Courts
- Threat of Arrest
- Imprisonment
- Penalty
- Ineligibility to be appointed as MD/WTD in case of fine exceeding Rs.1,000 or imprisonment for any period of time

DEFENSES

SECTION 463

- “HAS ACTED HONESTLY AND REASONABLY”
- “THE COURT MAY RELIEVE HIM EITHER WHOLLY OR PARTLY”
- The Complaint has to establish malafide or ill motive (mens rea) without which no prosecution can occur
- Typographical errors cannot be ground to prosecute
- Delay caused by events beyond control

WHO CAN PROSECUTE

[SECTION 621]

- ROC
- SHAREHOLDER
- CENTRAL GOVERNMENT

High Court Has Power To Prevent Abuse Of The Process Of Any Court



THANK YOU