

AUDITORS' RESPONSIBILITY UNDER COMPANIES ACT, 2013 AUDIT OF PRIVATE COMPANY

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Past President ICAI

SA 250- Consideration of Laws and Regulations in an audit of Financial Statements

Responsibilities of an auditor-

- Obtaining reasonable assurance that financial statement as a whole are free from material misstatement.
- To take into account the applicable legal and regulatory framework.
- Obtaining Written Representation that all instances of non-compliances has been disclosed to the auditor.
- Auditor is not responsible for preventing non-compliance. It is duty of management.



Definitions

➤ **Section 2(62)- One Person Company**

- Member – Only 1 Person
- Turnover should not be more than Rs. 2 Crores and Share capital should not be more than Rs. 50 Lakhs. (Finance Act 2021 removed such limits)

➤ **Section 2(85)- Small Company**

- Means a company, other than a public company.
- Turnover should not be more than Rs. 20Crores and Share capital should not be more than Rs. 2crores

➤ **Section 455- Dormant Company**

- ▶ It is formed and registered for
 - future projects
 - holding assets/intellectual property.
 - ▶ No current significant transactions.
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Section 139- Appointment of auditors

➤ Auditor to provide consent and the certificate that

- ▶ The individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- ▶ The proposed appointment is as per the term provided under the Act;
- ▶ The proposed appointment is within the limits laid down by or under the authority of the Act;
- ▶ The list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

➤ Appointment of first auditors Section 139(6)

- To be appointed by BOD within 30 days from the date of incorporation
- To hold office till the conclusion of the 1st AGM
- If the Board fails, then by members within next 90 days at an EGM.

Company to file the ADT 1 with the ROC within 15 days of the meeting.



Section 139- Appointment of auditors

➤ **Subsequent Appointment**

- The auditor appointed in the annual general meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, with the meeting wherein such appointment has been made being counted as the first meeting.
- *Requirement for ratification of the appointment every year has been omitted by the Companies (Amendment) Act, 2017*

➤ **Appointment in case of casual vacancy**

- To be filled by the Board of Directors within thirty days,
- If casual vacancy is due resignation, to be approved by shareholders within 3 months
- Auditor to hold office till the conclusion of the next AGM

Company to file the ADT 1 with the ROC within 15 days of the meeting.



Section 139- Appointment of auditors

➤ Requirements under the Code of Ethics

- To communicate with the previous auditor in writing
- To ensure compliance with the provisions of section 139 and 140 have been complied with, including filing of ADT 1 by the company.
- To ensure the undisputed audit fees of the previous auditor is paid before accepting the appointment



Section 140- Removal/Resignation

- Removal of auditor before completion of term requires special resolution & prior approval of the CG.
 - Auditor who has resigned , shall file within 30 days from the date of resignation, ADT-3 ,with the company and registrar , indicating reasons and other facts.
 - In case of non-compliance he shall be liable with a penalty of 50,000 or an amount equal to its remuneration , whichever is lower. On continuing failure, Rs. 500 per day subject to a maximum of 2,00,000.
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Section 141- Disqualifications of Auditors

- Body corporate other than LLP
 - An officer, employee of the company
 - a person who is a partner, or who is in the employment, of an officer or employee of company.
 - a person who, or his relative or partner—
 - (i) is holding any investment in the company or its subsidiary, holding or associate company or a fellow subsidiary, **exceeding one lakh rupees** or
 - (ii) is indebted to the company, or its subsidiary, or its holding or associate company or fellow subsidiary, **in excess of five lakh rupees** or
 - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its subsidiary, its holding, associate company or a fellow subsidiary, **in excess of one lakh rupees.**
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Disqualifications of Auditors...contd

- a person / firm who, whether directly or indirectly, has *business relationship* with the company, its subsidiary, its holding ,associate company or fellow subsidiary or associate company of such holding company.
- ▶ commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;
- ▶ commercial transactions which are in the ordinary course of business of the company 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 of Auditors...contd

- a person who already holds audit of *20 companies* or more (other than OPC, dormant ,small company and private company whose paid up share capital is less than 100 crore) at the date of appointment or reappointment.
- Ceiling of 30 to apply in all cases other than OPC and Dormant Companies [Chapter VIII Central Council Guidelines, 2020]

Record to be maintained of the Company Audit Assignments

S. No.	Name of the Company	Registration Number	Date of Appointment	Date of Acceptance
1	2	3	4	5



Disqualifications of Auditors...contd

- a person *whose relative is a director or key managerial personnel* of company.
- a person who has been convicted by a court of an offence involving fraud.



Section 144- Non Audit Services



Inquiry u/s 143(1)

Inquire into the following matters, namely:—

- (a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;
- (b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
- (c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;
- (d) whether loans and advances made by the company have been shown as deposits;
- (e) whether personal expenses have been charged to revenue account;
- (f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:

CARO 2016 Applicable to Pvt companies other than

- The private companies which is not a holding or subsidiary of a public company and whose -
 - ✓ Gross receipts (including revenue from discontinuing operations) does not exceed Rs. 10 crore in the financial year
 - ✓ Whose paid up share capital including reserves is less than or equal to Rs.1 crore as on the balance sheet date
 - ✓ Whose borrowings from banks or financial institutions is less than or equal to Rs 1 crore at any time during the financial year
- CARO 2020 is applicable from FY 2021-22.



CARO 2016 Applicable to Pvt companies **other than**

➤ **Paid up Capital and Reserves**

- Sub-section (64) of section 2 of the Act defines the term “paid-up capital” as such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid up in respect of shares issued and also includes any amount credited as paid up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.
- Paid up capital includes Equity and Preference Share Capital
- Share application money received pending allotment not to be considered
- All reserves to be considered, whether Capital or Revenue or Revaluation Reserve
- Debit Balance of Profit and Loss to be netted



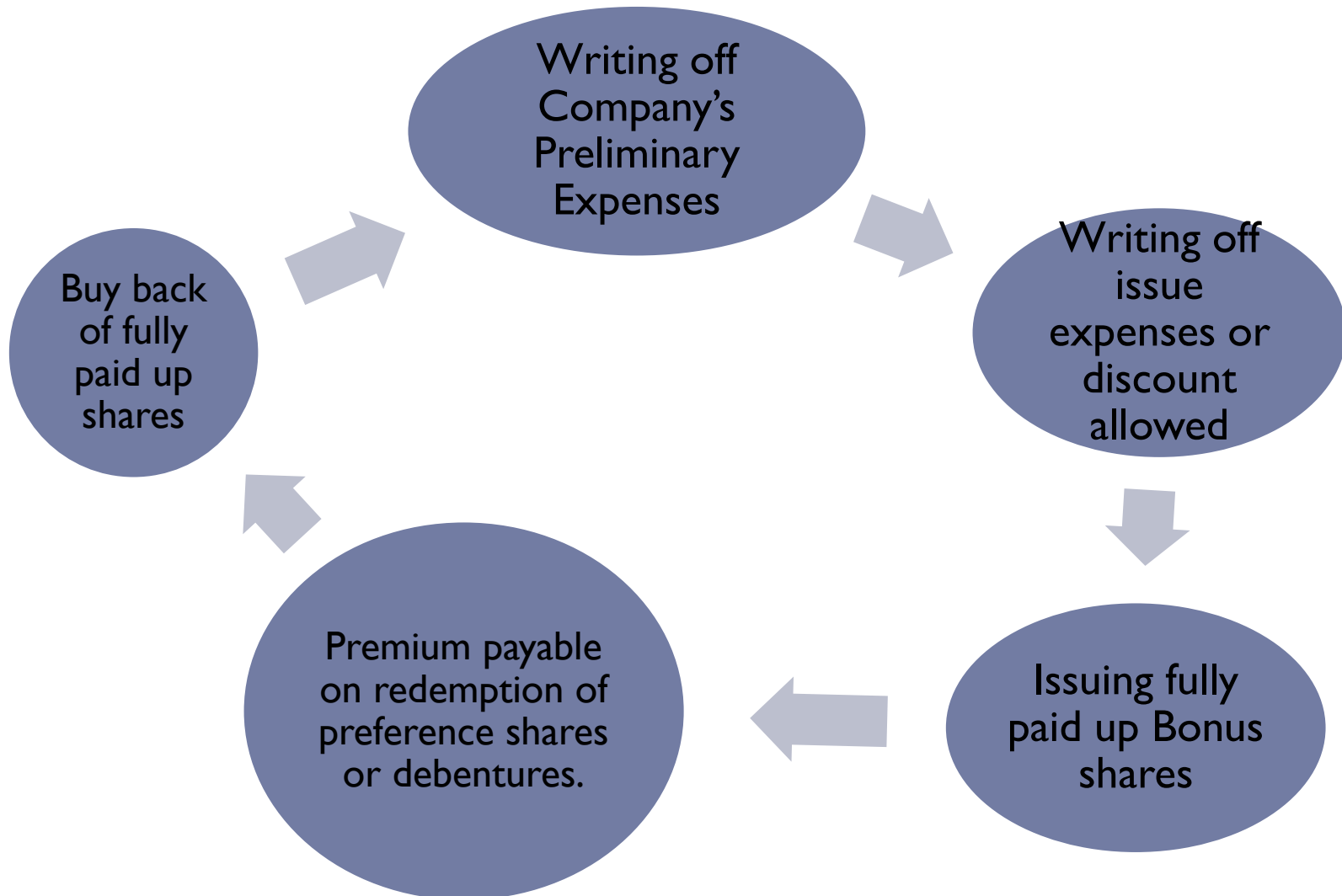
Exemption Notification to Private Companies

F. No.1/1/2014 –CL.V, dated 5-6-2015 as amended by Notification dated 13th June 2017



SERIAL NO.	SECTION NO.	ANALYSIS
1	Second proviso of Section 188(1) Voting by related party	In private company, even a related party member can also vote on resolutions, to approve any contract or arrangement with the related party
2	184(2) Disclosure of Interest by Director	This means that a director can participate in a meeting wherein such matters are discussed in which he / she is interested, only after he/she discloses his/her interest.
3	173(5) Minimum number of Board Meeting	Minimum number of board meetings to be conducted in every year has been at least one in each half of a calendar year and min gap between two meetings is not less than 90 days.
4	143(3)(i) Reporting of internal financial controls (IFC) in Financial statements by auditor	Reporting not required for OPCs, Small Companies and Specified Private Companies
5	2(40) Financial Statement definition	Small Company, OPC and Dormant Co and Private Start Up Co – Not required to

Section 52- Uses Of Security Premium Account



▶ Ind AS companies Preliminary Exp & Premium on redemption - Not Available

Raising of Share Capital

- Compliance with the following sections and rules to be verified
 - Section 42 Offer or invitation for subscription of securities on private placement
 - Section 62 Further Issue of Share Capital
 - Companies (Prospectus and Allotment of Securities) Rules, 2014
 - Companies (Share Capital and Debentures) Rules, 2014



Section 42- Private Placement of Securities

- No private placement of securities unless the offer has been previously approved by shareholders by Special Resolution.
- Company shall issue offer and application form to identified person and their names and records should be kept in records
- Allotment shall be made within 60 days from the date of receipt of application money, otherwise it shall repay money within 15 days of expiry of 60 days. Failure to do so, will attract interest at the rate of 12% p.a.
- Money received on application shall be kept in separate bank account in scheduled bank and shall be utilised for following purpose-
 - (i) for adjustment against allotment of securities,
 - (ii) for repayment of money where the co is unable to allot the securities



Section 62- Issue of Right shares

- A company can raise fresh capital by sending a letter of offer to existing shareholders specifying no of shares offered and limiting a time not being less than 15 days and not exceeding 30 days from the date of offer for acceptance or denial of offer.
- A private company may reduce time below 15 days with written/electronic consent of 90% members.
- Shares can be issued to non members, subject to following conditions-
 - (i) to employees under a scheme of employees' stock option
 - (ii) to any persons, if it is authorised by special resolution (ordinary resolution in case of private co.)



Section 63- Issue of Bonus Shares

Only fully paid up shares should be allotted to the members out of free reserves, security premium account and capital redemption reserve account only if:

- a) Authorized by AoA
 - b) Ordinary resolution in general meeting has been passed.
 - c) Company has not defaulted in the payment of interest of deposit and debt securities and in statutory dues of employees.
 - d) Bonus shares shall not be issued in lieu of dividend.
 - e) Bonus cannot be made out of reserves created by revaluation of assets.
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Disclosures under Schedule III & Calculation of EPS

- Aggregate number and class of shares allotted as fully paid up by way of bonus shares, only if such event has occurred during a period of 5 years immediately preceding the Balance Sheet date.
 - In Comparatives of previous years, EPS (Basic and Diluted) shall be calculated after giving effect of number of shares issued as bonus shares and disclosure of the same needs to be given in Notes to Accounts.
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Section 68- Buyback of Shares

- To be authorized by Articles and special resolution in general meeting
- Buy back in a financial year of
 - a) equity shares shall not be more than twenty-five percent of paid up equity share capital .
 - b) any other security shall not be more than twenty-five percent of paid up capital and free reserves of the company.
- The ratio of the debt owned by the company (both secured and unsecured) after buyback shall not be more than twice of paid up capital and free reserves of the company.
- Shares for buy back are fully paid-up.



Section 73- Acceptance of Deposits from Members/ Shareholders

Exemption to Private Company (Notification dated 13th June 2017) from 73(2) if

- Monies accepted from members not exceeding one hundred percent of total of paid up capital and free reserves and security premium account, or
- which is a startup, for 5 years from the date of incorporation

Conditions Applicable

- not an associate or subsidiary company of any other company
 - borrowings (from banks, financial institutions and body corporate) is less than twice of its paid up share capital or fifty crore rupees, whichever is lower and which did not defaulted in repayment of such borrowings at the time of accepting deposits.
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Section 73- Acceptance of Deposit

Companies (Acceptance of Deposit)Rules, 2014

Rule 2(c) “deposit” includes any receipt of money by way of deposit or loan, or in any other form, by a company, but does not include:

Proper understanding of loans and deposits which are exempted is essential while conducting the audit



Section 73 Loan from Directors

- Any amount receipt from Director of the Company or his relative, provided he submits a declaration that amount is not being given out of funds acquired by him by borrowing/accepting loans or deposits from others.
- Whether loan from Director can be continued after he ceased to be a director of the Company??



Section 77 to 87- Registration of Charges

- any property subject to a charge, or any modification in the terms or conditions or the extent or operation of any charge registered.
- Classification of borrowings in case the charge on assets not created
- Charge created can be checked from MCA Portal which is open for inspection on payment of fees.
- If a charge is still appearing on Portal without any outstanding amount in books, it means no intimation to the Registrar is made regarding satisfaction.




Section 123- Declaration of Dividend

- Dividend for any financial year shall be declared only out of the profits for that year or the profits for any previous financial years and remaining undistributed.
- No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company of the current year.
- Amount of dividend shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of such dividend.



Section 123

- **In case of inadequate profit**, company may declare dividend out of the accumulated profits of previous years;
- (i) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year.
 - (ii) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
 - (iii) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
 - (iv) The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.
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Section 135- Corporate Social Responsibility (CSR)

- A company having
 - turnover is 1000 crore or more, or
 - net worth is 500 crore or more, or
 - net profit is 5 crore or more during the immediately preceding financial year should form CSR committee.
- It is allowed to private companies to form CSR Committee with two or more directors.
- The amount should be spent on activities mentioned in Schedule VII.



Section 135...Unspent Amount

➤ **Unspent amount is not related to ongoing project**

Company has to transfer such unspent amount to a Fund (PM National relief fund or other fund set up by the central govt for this purpose), within a period of 6 months of the expiry of that financial year.

➤ **Unspent amount on ongoing CSR projects**

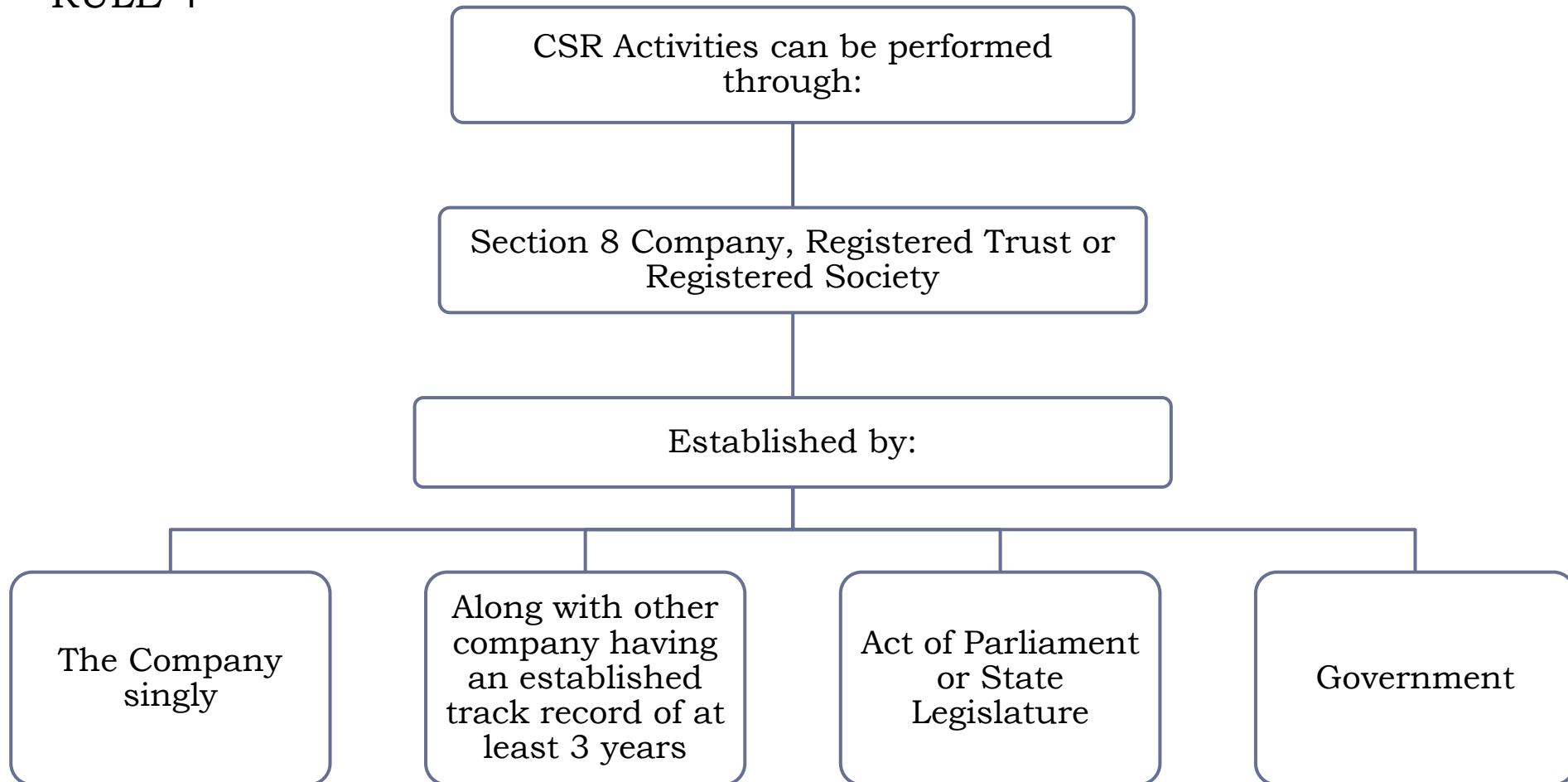
Transfer unspent contribution amount to a special account to be opened in any scheduled bank, to be called '**Unspent Corporate Social Responsibility Account**' within 30 days from the end of the financial year which is to be utilized within a period of next 3 financial years from the date of such transfer.

➤ If the Company fails to utilize the said amount, it is required to transfer the same to a Fund specified in Schedule VII, within a period of 30 days from the date of completion of the third financial year.



Amendments in section 135

RULE 4



Amendments in Section 135

- To perform CSR activity entity shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar **with effect from the 01st day of April 2021.**
- This rule **shall not affect the CSR projects or programs approved prior to the 01st day of April 2021.)**
- It **may also collaborate with other companies** for undertaking CSR activities in such way that the CSR committees of respective companies are in a position to report separately on such projects.
- The Board shall satisfy itself that the funds marked for CSR have been utilized for it and in the manner as approved by it and the **Chief Financial Officer or the person responsible for financial management shall certify to the effect.**



Amendments in Section 135

- The CSR amount may be spent by a company for the creation or acquisition of a capital asset, which **shall be held by** :
 - (a) section 8 Company, Registered Public Trust or Registered Society, having charitable objects and Company established under CSR Registration Number under Rule 4(2).
 - (b) Beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
 - (c) A public authority.

- Any capital asset created by a company prior to the commencement of the Companies CSR Amendment Rule 2021, shall **within a period of 180 days** from such commencement **comply with the requirement of this rule.**

- The board shall ensure that the **administrative overheads shall not exceed 5%** of the total CSR expenditure of the company for the financial year.



Amendments in Section 135

- Every company having an average CSR obligation of **Rs 10 Crores** or more **in the three immediately preceding financial years**, shall undertake impact assessment, through an independent agency, of their **CSR projects having outlays of one crore rupees or more**, and which have been completed not less than one year before undertaking the impact study.
 - The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
 - The Board shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.
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Section 185- Loans to Directors

- A company cannot give loan to its
 - Director or Relative of Director or
 - Partner of Director or Relative or
 - Firm in which Director or Relative is partner

- Company is permitted to-
 - (i) advance/ give/provide any loan/guarantee/security to any person in whom any of the director of co is director or member

 - (ii) Such loans can be given only if Special resolution is passed and loans are utilised by borrowing company for its principal business activity



Section 185....continued

Exemptions to Private companies-

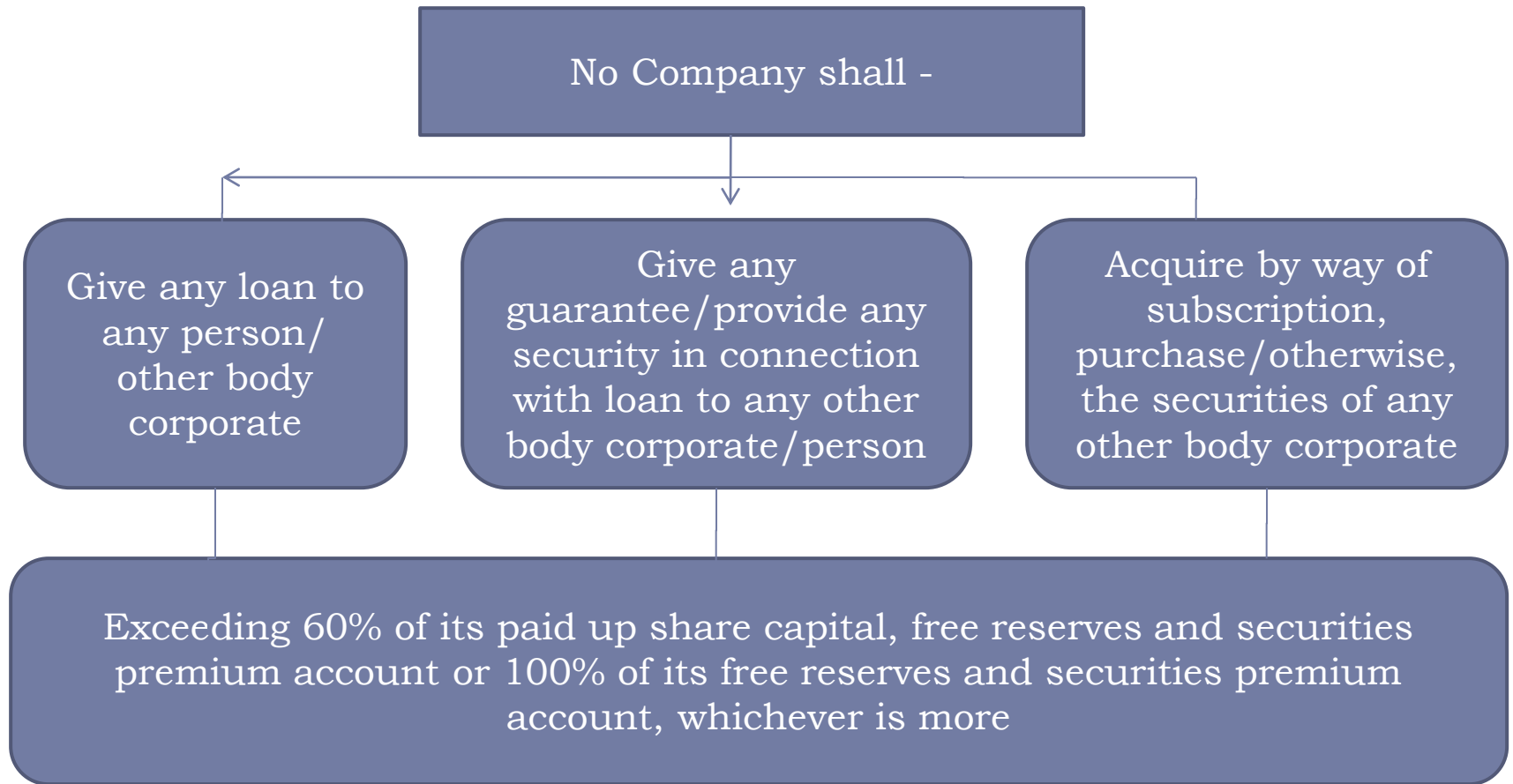
- Section 185 is not applicable to following Private Companies-
 - a) In whose share capital no other body corporate has invested any money
 - b) Borrowings from Banks/ Financial Institution/ Body Corporate is less than twice of its paid up share capital or Rs. 50 Crores, whichever is lower; and
 - c) Company has no subsisting default in repayment of borrowings.

- The above exemption is applicable if no default under section 92 or section 137 has been committed.



Section 186- Loan and Investment by Company

Investment permitted through 2 layers of Investment Company



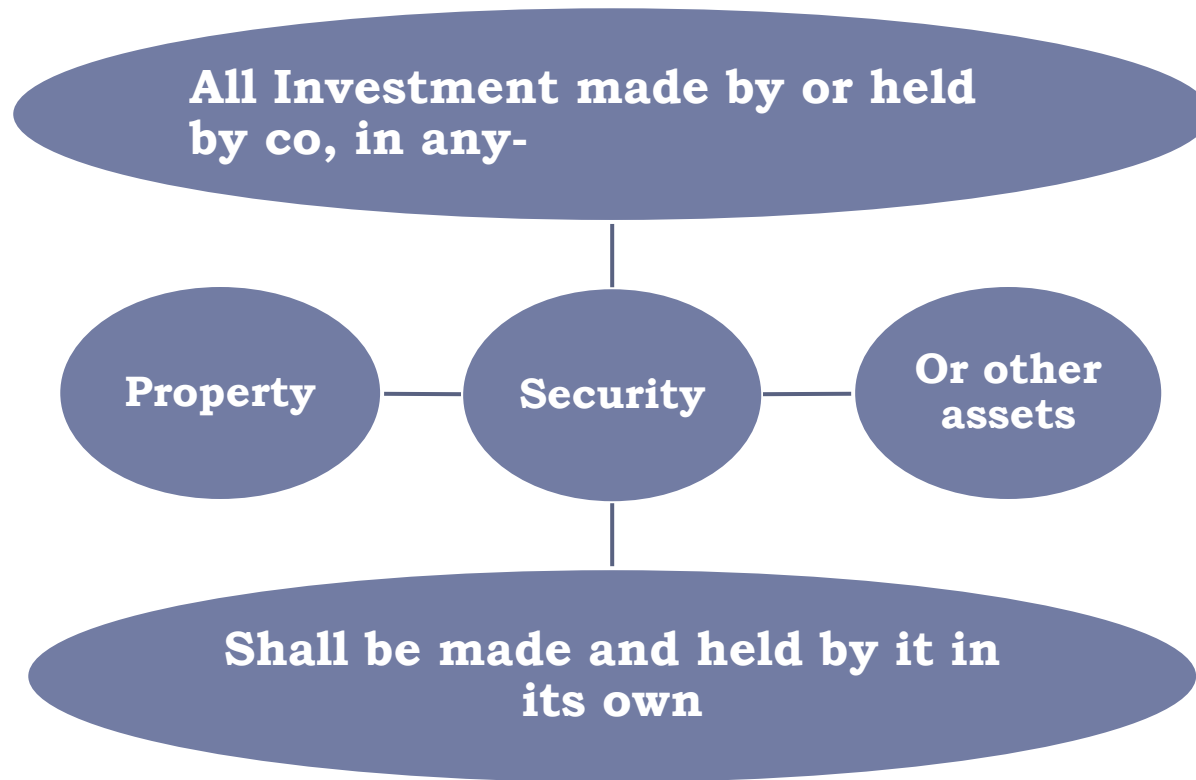
Section 186....continued

- Prior approval by a special resolution for exceeding limit
- Unanimous resolution of the board for any investment/ loan/guarantee/ security by the company.
- Prior approval of the public financial institution where any term loan is subsisting and the limit as specified under 186(2) is breached
- Rate of interest of loan shall be prevailing yield of 1 year, 3year, 5 year or 10 year Govt. security closest to the tenor of the loan.
- No loan shall be given, till default in respect of deposits is subsisting
- Maintenance of Register in Form MBP 2 and entry to be passed in such register within 7 days of any such transaction
- Company should disclose in the financial statement details of loan given, investment made or security provided or guarantee give and the purpose for which it is proposed to be utilised.



Section 187- Investment of company to be held in its own name

➤ As per Section 187(1)



Section 188- Related party transactions

- As per Section 188(1), certain transaction shall be termed as 'related party transactions if a company undertakes them with a related party covered under Section 2(76). Such transaction are depicted in following diagram-

Transactions referred to in sub-section (1) of Section 188:



Section 188....continued

- In case of Related party transactions entered into by the company in its ordinary course of business and at an arms length basis, no approval is required
- In case of transactions, which are not at arms length price and also does not require approval of the shareholders, consent of Board of directors shall be obtained.
- Approval of members is required by ordinary resolution in following cases-

Details of transaction to be entered	Prescribed limit for seeking approval by resolution relating to specific transaction
1. Sale, purchase or supply of any goods or materials, as mentioned in clause (a) and clause (e) of sec. 188(1)	If the value of such transaction amounting to 10% or more of the turnover of the company
2. Selling or otherwise disposing of or buying property of any kind, as mentioned in clause of (b) and clause (e) of sec. 188(1)	If the value of such transaction amounting to 10% or more of the networth of the company

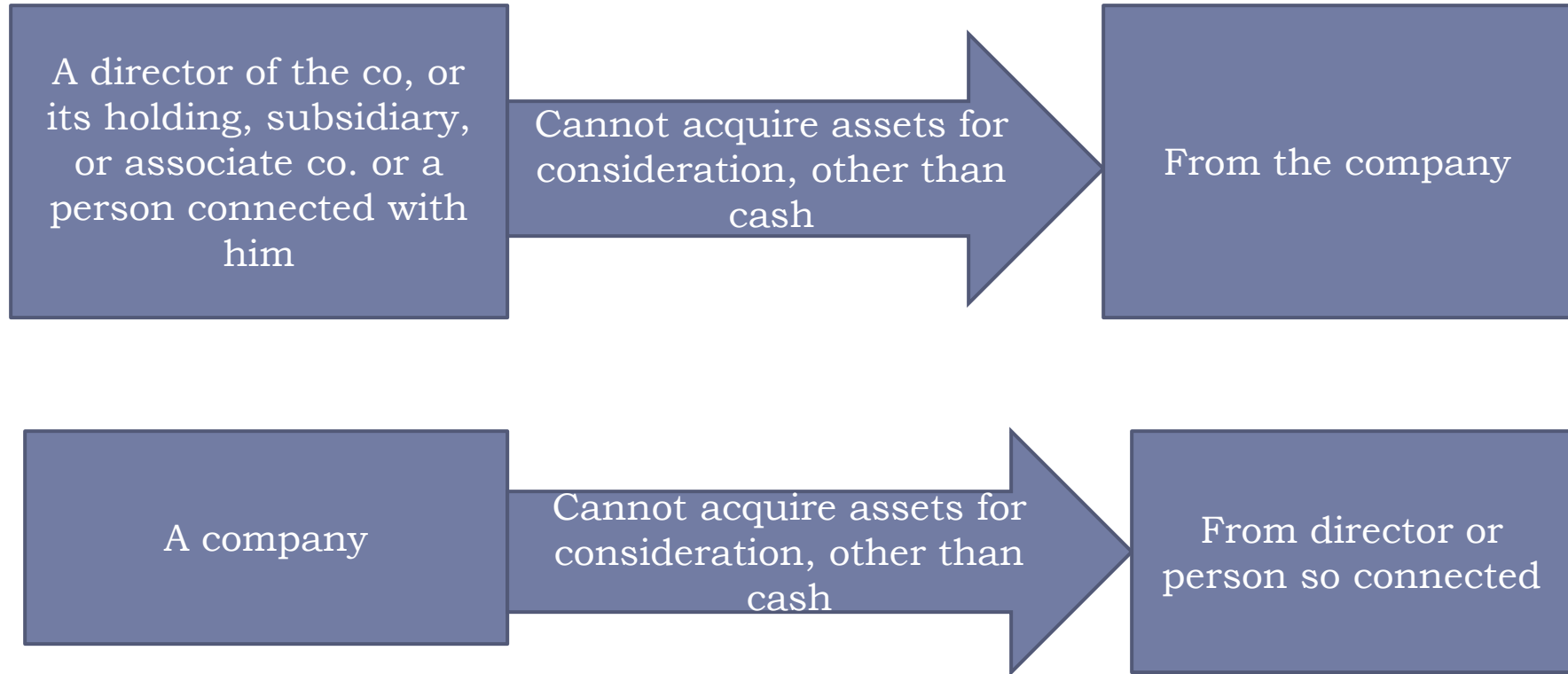
Section 188....continued

Details of transaction to be entered	Prescribed limit for seeking approval by resolution relating to specific transaction
3. Leasing of property of any kind as mentioned in clause (c) of sec. 188(1)	If the value of such transaction amounting to 10% or more of the turnover of the company
4. Availing or rendering on any services, as mentioned in clause (d) and (e) of sec. 188(1)	If the value of such transaction amounting to 10% or more of the turnover of the company
5. Appointment to any office or place of profit in the company, subsidiary or associate company	If the monthly remuneration is exceeding Rs. 2.5 lakh per month
6. Remuneration for underwriting the subscription of any securities	If the value of remuneration is exceeding 1% of networth of the company



Section 192- Restriction on Non-Cash transaction involving directors

➤ Section 192 restricts following transactions-



Section 192...continued

- However, if prior approval for such transaction is received by a resolution in the general meeting, then such transaction can be entered into.
- Provided further that, in case of transaction involving director of holding company, then resolution needs to be passed in general meeting of holding company also.



Section 148- Cost Audit

➤ Maintenance of cost records-

As per Section 148, class of companies as prescribed in the rule 3, having an overall turnover from all its products and services of Rs.35 Crore or more during the immediately preceding financial year, shall include cost records.

➤ Applicability of Cost Audit-

Requirement of Maintaining of Cost Records	Overall Annual Turnover from all its products and services	Aggregate turnover of the individual product or products or service
As per Item A of Rule 3 of Section 148	50 Crores or more	25 Crores or more
As per Item B of Rule 3 of Section 148	100 Crores or more	35 Crore or more

Section 204- Secretarial Audit

- Secretarial Audit for private company is mandatory when it has outstanding loans or borrowings from Banks or public financial institutions of 100 Crores or more,
- Outstanding loans or borrowings existing on the last date of latest audited financial statements shall be taken into account.



Managerial Remuneration

- ▶ As per the provisions of Companies Act, 2013, the restriction under Section 197 and Section 198 shall apply only when managerial remuneration or remuneration paid by a public Company. Hence, any remuneration paid or payable by a private company to its director **shall be out of purview of the above said section** and shall not be counted for the purpose of maximum remuneration payable by the company.
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Disposal of Property, Plant & Equipment

- Approval of members u/s 293(1)(a) is not required.
- Provisions relating to interested directors not participating in the discussions are also not applicable.
- Company can go ahead with the transaction after passing Board resolution.



Certificate for Commencement of Business

- Introduction of Section 10A by Companies (Amendment) Ordinance, 2018
- Applicable to Companies having share capital incorporated after 2nd November, 2018



Procedural Details

Who needs to apply	When to apply	Documents required	Consequences of non filing	Forms to be filed	Penal Provision
All companies incorporated on/after 2 nd Nov 2018	Within 180 days from the date of incorporation	Signed copy of bank statement showing credit of subscription money	Business activity cannot be commenced/ No borrowings are permitted	INC 20A and INC 22	Company: Rs.50,000/- Directors: Rs.1,000/- per day Max. up to Rs.1 lakh



thank
you

