Module 1 · The Companies Act, 2013

P13 · Section A (Corporate Laws)

SM pp. 3–157 + exercise 158–172. **The heaviest module in P13: 381 marks in 7 papers, about 54 a paper.** One notes PDF per topic; this page is the map.

Topic (PDF)	SM pp.	J23	D23	J24	D24	J25	D25	J26	Total	Dec'26
1.5 Directors and KMP	82–115	13	21	13	11	8	7	14	**87**	A · 9–14
1.4 Accounts and Audit	51–81	12	10	–	7	2	15	18	**64**	A · 9–16
1.6 Board Meetings	116–132	6	7	9	–	21	14	–	**57**	A · 7–14
1.1 Formation and Conversion	3–33	4	9	9	9	–	9	13	**53**	A · 7–13
1.2 Loans, Investments, Deposits	34–43	–	7	7	2	14	9	–	**39**	A · 7–9
1.8 Compromises, Amalgamations	141–149	4	7	–	7	–	7	7	**32**	A · 7
1.9 Oppression and Mismanagement	150–157	4	–	7	7	7	2	2	**29**	B · 2–9
1.3 Dividends	44–50	5	2	–	–	–	–	7	**14**	B · 2–7
1.7 Inspection, Investigation	133–140	4	2	–	–	–	–	–	**6**	C · 0–2
Module 1		**52**	**65**	**45**	**43**	**52**	**63**	**61**	**381**	

HOW MODULE 1 IS EXAMINED (P13 ANALYSIS, 5 OCT)

- **Q2, Q3, Q4 and Q5(a): seven 7-mark halves are Companies Act**, and the topic in each position rotates. You choose 5 of the 7 long questions, so Module 1 alone can carry most of your long-answer marks.
- **Q1 MCQs:** a **4-MCQ case set on one Companies Act area** (Board meetings 100%, mergers 80%, directors 60%, audit 60% in our model), plus **2 single Companies Act MCQs**.
- **Due back: 1.6 Board meetings** (0 in Jun'26 after 3 + 2 halves) and **1.2 deposits / inter-corporate loans** (0 in Jun'26). **Overdue:** managerial remuneration (1.5; last long Jun'23).
- **The SM is outdated in places**: OPC rules, the conversion approval authority, fraud reporting, political contributions, small company. Each pack has ⚠ boxes; write the current law with one line on the SM version.

STUDY ORDER (2 HOURS A DAY)

1. **1.5** Directors (12 pp) · **1.6** Board meetings (8 pp)
2. **1.4** Accounts and audit (11 pp)
3. **1.1** Formation (10 pp) · **1.2** Loans and deposits (6 pp)
4. **1.8** Mergers (6 pp) · **1.9** Oppression (4 pp)
5. **1.3** Dividends (3 pp) · **1.7** Inspection (2 pp)
6. Before each mock: every pack's **revision page + model answers**

HOW TO USE EACH PACK

- **Page 1** of each pack: what was asked, the prediction, the map.
- Learn the **tables and flows**; they are the answer structure.
- **Model answers** show the layout: provision → facts → conclusion, in numbered points.
- ⚠ **boxes** = where the SM is wrong or outdated. **SM WORDS** = learn word for word.
- Small grey **[SM nn]** = study-material page, to look up anything.

M1 Mind map: the Companies Act on one page

1.1 Formation (53)

- public 7 / private 2–200 / OPC 1 · small company ₹10 cr / ₹100 cr
- OPC: Indian citizen, nominee, no minor (2021: residency dropped)
- RO: same city → Board · other State → special resolution + CG
- doctrines: constructive notice · indoor management (Turquand) · ultra vires
- conversions: special resolution; public → private needs CG (RD); LLP → co s.366
- s.8: licence, no dividend, ₹10 lakh–₹1 cr penalty

1.2 Loans and deposits (39)

- s.186: 60% (PUC+FR+SP) or 100% (FR+SP), higher → else special resolution
- interest ≥ G-sec yield closest to tenor (1/3/5/10 yrs)
- s.187: own name; nominee for the subsidiary minimum; 4 exemptions
- deposits: members 10% / public 25% / 6–36 months / DRRA 20% by 30 April
- eligible co: NW ₹100 cr or turnover ₹500 cr

1.3 Dividends (14)

- out of profits after depreciation; free reserves only
- from reserves: 3-yr average · 1/10 · losses first · 15% left
- separate account in 5 days · pay in 30 days · 18% interest (s.127)
- unpaid 7 yrs → IEPF (90 days, DIV-5)

Companies Act, 2013
Module 1

29 chapters · 470 sections · 7 schedules

≈ 54 marks a paper

1.4 Accounts and audit (64)

- books at RO, 8 yrs, e-form backup in India; any director inspects
- s.134: FS signed by chairperson / 2 directors incl. MD + CFO + CS · Board's report list · DRS
- auditor: Board 30 days / 1st AGM–6th AGM / ADT-1 15 days / rotation 5 or 2×5
- removal: special resolution + CG (ADT-2) · resignation ADT-3 in 30 days
- s.141 bars: debt > ₹5 lakh, relative's shares > ₹1 lakh, > 20 audits · s.144 services
- fraud s.143(12): 45 + 15 days, ADT-4 e-form

1.5 Directors and KMP (87)

- IDs: listed ⅓ · public ₹10 cr / ₹100 cr / ₹50 cr → 2 · woman: listed / ₹100 cr / ₹300 cr
- s.160: 14 days, ₹1 lakh, 25% · not for Govt / pvt / ballot companies
- s.161: additional till AGM · alternate 3 months abroad · nominee · casual
- remuneration: 11 / 5 / 10 / 1 / 3% · sitting fee ₹1 lakh
- removal: ordinary resolution + special notice · s.164 disqualification · s.167 vacation
- KMP: listed or ₹10 cr; one company + subsidiary · RPT s.188 + omnibus

1.6 Board meetings (57)

- first in 30 days · 4 a year · gap ≤ 120 days
- notice 7 days · shorter: 1 ID present or ratifies · video counts
- quorum ⅓ or 2 (round up; vacancies out; interested out; ≥ ⅔ interested → disinterested ≥ 2)
- circulation: majority; ⅓ can demand a meeting · minutes in 30 days
- audit committee: 3, majority IDs; recommendations not binding but reasons disclosed
- political contributions: Board meeting; 3 yrs old; ⚠ 7.5% cap restored 2024

1.8 Mergers (32)

- s.230: NCLT → meetings → ¾ in value → sanction → ROC in 30 days
- objection: ≥ 10% shares / ≥ 5% debt · dispense if 90% creditors agree
- s.233 fast track: small / holding + WOS / start-ups: 90% members, 9/10 creditors
- s.237: CG order in public interest; compensation; appeal in 30 days

1.9 Oppression (29) · 1.7 Inspection (6)

- s.244: 100 or 1/10 members (lower), or 1/10 capital; waiver by NCLT
- withdrawal after filing does not defeat the petition (Rajahmundry)
- Foss v. Harbottle + 6 exceptions · class action s.245
- 1.7: ROC inquiry s.206(4) · SFIO s.212 · s.213 NCLT: 100 / 1/10

1.5 · Board of Directors and Key Managerial Personnel P13 · Module 1

· Companies Act, 2013

SM pp. 82–115 (34 pages). **The highest-scoring topic in P13:** 87 marks in 7 papers, in every paper, with a long question in 6 of them.

Paper	What was asked	Marks
Jun'23	Q2(b) managerial remuneration case (MD 5%, others 1%) · Q3(b) minimum independent directors, unlisted vs listed	8 + 5
Dec'23	Q2(b) omnibus approval of RPTs: conditions · Q3(a) s.180 restrictions on the Board · Q5(a) acts of a director whose appointment is invalid	7 + 7 + 7
Jun'24	MCQs: ID threshold ₹10 crore; small shareholder ₹20,000; expert as additional director · Q4(b) AGM rejected him, Board makes him additional director: valid?	6 + 7
Dec'24	MCQs: removal by ordinary resolution; DIN application = Rule 9 · Q3(a) **board composition case** (IDs, related director, bank nominee, woman director)	4 + 7
Jun'25	Q1 (i)–(iv): the same board composition case as a 4-MCQ set	8
Dec'25	Q2(a) **s.160 candidature notice**: govt company / ballot / vernacular newspaper	7
Jun'26	Q2(b) KMP holding office in more than one company (s.203) · Q3(a) **s.160 again**, almost word for word	7 + 7

HOW IT IS EXAMINED

- **Case questions with numbers**: "is the board properly constituted?", "how many IDs?", "is this remuneration within limits?". Learn the **thresholds table** (next page) and the **case checker** flow.
- **Repeats:** the board composition case came in Dec'24 and again in Jun'25. s.160 came in Dec'25, again in Jun'26, and is in ICMAI's MQP. Model answers are at the end of this pack.
- **The exam copies the SM here too:** Dec'23 Q2(b) and Q3(a) are SM sentences. Dec'24 Q1(iii) and Jun'24 Q1(iii) are SM exercise MCQs 46 and 45.

DEC'26: OUR PREDICTION (A PREDICTION, NOT A PROMISE)

Tier **A** (must prepare). Expected **9–14 marks**: a 7-mark case or theory question plus 1–2 MCQs. Our model gives it a 60% chance of being the 4-MCQ case set in Q1. Likely questions:

1. Board composition case: IDs, woman director, nominee, related director (asked 2×)
2. Managerial remuneration limits with a calculation (last long question Jun'23, so overdue)
3. Resignation (s.168) and removal (s.169) of a director (ICMAI PTP)
4. Additional / alternate / casual-vacancy director (s.161; Jun'24)

MAP OF THIS PACK (★ = exam weight)

1. Board structure and thresholds, s.149 ★★★
2. Appointment, rotation, s.160 notice ★★★
3. Additional, alternate, nominee, casual; small shareholders ★★
4. Disqualification, vacation, resignation, removal ★★
5. MD, WTD, manager (s.196) and KMP (s.203) ★★
6. Remuneration s.197–202 ★★★
7. Powers s.179 and restrictions s.180 ★★
8. DIN s.153–159 + KYC amendment ★
9. Loans s.185, interest s.184, RPT s.188 ★★
10. Model answers · numbers · SM MCQs

1 Board structure: who must be on the Board (s.149)

WHAT IT IS Every company is run by a Board of individual directors who act **collectively**. The Act fixes how many directors there must be, and which companies need a woman director, a resident director and independent directors. Most case questions are just these thresholds applied to the facts. [SM 82–83]

Requirement	Rule	SM
Minimum directors	public company **3** · private company **2** · OPC **1** [SM 83]	149(1)
Maximum directors	**15**; more by **special resolution**. The limit does not apply to Government and section 8 companies [SM 83]	149(1)
Woman director (at least 1)	(1) every **listed** company; (2) every other **public** company with paid-up capital **≥ ₹100 crore** or turnover **≥ ₹300 crore**. A new company complies within **6 months** of incorporation. An intermittent vacancy is filled by the next Board meeting or within **3 months**, **whichever is later** [SM 83–84]	Rule 3
Resident director (at least 1)	stayed in India at least **182 days** in the financial year [SM 84]	149(3)
Independent directors (IDs)	**Listed:** at least **one-third** of all directors (a fraction counts as one). **Other public companies: at least 2 IDs** if paid-up capital **≥ ₹10 crore**, OR turnover **≥ ₹100 crore**, OR loans + debentures + deposits **> ₹50 crore** (on the last audited date). A higher number applies if the audit committee needs more. Intermittent vacancy: next Board meeting or **3 months**, whichever is later [SM 84]	149(4), Rule 4
Whole-time KMP	listed companies + public companies with paid-up capital **≥ ₹10 crore**: MD / CEO / manager (or WTD) + CS + CFO (see part 5) [SM 96]	203, Rule 8

⚠ SM SAYS TWO THINGS

For the resident director, the SM first says "182 days in the **financial year**" (the current Act) and then "in the previous calendar year" (the old wording). Write **financial year**. [SM 84]

Who is an independent director? s.149(6): a director other than an MD, WTD or nominee director

[SM 84–85]

a. a person of **integrity** with relevant expertise and experience, in the Board's opinion

b. is not and was not a **promoter** of the company or its holding, subsidiary or associate company, and is **not related** to its promoters or directors

c. has or had **no pecuniary relationship** with them (apart from remuneration as a director, or transactions up to **10%** of his total income) in the **2 preceding financial years** or the current year

d. no **relative** holds securities above **₹50 lakh** face value or **2%** of paid-up capital, is indebted or has given guarantees beyond prescribed limits, or has other transactions of **2%** or more of turnover or income

e. neither he nor a relative was a **KMP or employee** in the **3 preceding financial years**, or a partner or employee of its **audit, CS or cost-audit firm**, or of a legal or consulting firm with **10%**+ of its turnover from the company; does not hold **2%**+ of voting power with relatives; is not CEO or director of an NGO getting **25%**+ of its receipts from the company

f. has other prescribed qualifications. He registers in the **IICA databank** and passes its test; exempt with **10 years** as a KMP, advocate, or practising CA/CMA/CS, or in equivalent government service [SM 85–86]

Case checker: "Is the Board properly constituted?"

1 · KIND OF COMPANY listed? public or private? note paid-up capital, turnover, borrowings → **2 · NUMBER** ≥ 3 public / 2 private; ≤ 15 unless special resolution → **3 · IDs NEEDED** listed: ⅓ · public with ₹10 cr capital / ₹100 cr turnover / > ₹50 cr borrowings: 2 → **4 · WHO QUALIFIES** strike out MD, WTD or functional directors, nominees, promoters, relatives of promoters → **5 · WOMAN + RESIDENT** listed / ₹100 cr capital / ₹300 cr turnover → 1 woman; 1 resident (182 days) → **6 · KMP** listed / ₹10 cr capital → MD-CEO + CS + CFO

Write the answer in the same order: **provision** → **facts** → **conclusion** for each point, then **"what the company must do"**. A worked answer is in part 10.

2 Appointment, rotation and the s.160 notice

s.152: how directors are appointed [SM 86]

- If the articles name no first directors, the **individual subscribers to the memorandum** are deemed first directors; in an OPC, the individual member. [SM 86]
- Directors are appointed by the company **in general meeting**, unless the articles provide another method. [SM 86]
- No appointment without a **DIN**. The person gives his DIN and a declaration that he is **not disqualified**, and files his **consent** with the Registrar within **30 days** in **DIR-12**. Consent filing does not apply to Government appointees or section 8 companies. [SM 86]

ROTATION s.152(6)

- At least **two-thirds** of directors retire by rotation (articles may make it more, or all). Directors appointed by CG, BIFR or FIs/banks are not counted. [SM 86]
- At every AGM **one-third** of the rotational directors retire (nearest to one-third). The **longest in office** since their last appointment go first; if they were appointed the same day, by agreement or **by lot**. [SM 86]
- The retiring director's re-appointment is placed before the meeting by default, unless he is disqualified. [SM 87]

VACANCY NOT FILLED s.152(7)

- The meeting stands **adjourned to the same day next week**, same time and place (the next working day if that is a national holiday). [SM 87]
- If it is not filled there either, the retiring director is **deemed re-appointed**, unless: his re-appointment was put and **lost**; he said in writing he is **unwilling**; he is **disqualified**; a special or ordinary resolution is needed by the Act; or **s.162** applies. [SM 87]
- s.152(6)–(7) do not apply to a **100% Government company** or its wholly-owned subsidiary. [SM 87]

s.160: a person other than a retiring director stands for election [SM 87–88]

NOTICE the candidate or a member leaves a written notice at the registered office at least **14 days** before the meeting [SM 87] → **DEPOSIT** **₹1,00,000**, refunded if he is elected or gets **more than 25%** of valid votes. No deposit if NRC or Board recommends him [SM 87] → **COMPANY INFORMS MEMBERS** at least **7 days** before the meeting (Rule 13): individual notices (e-mail or in writing) + its website [SM 87–88] → **OR ADVERTISES** at least **7 days** before, once in a **vernacular** newspaper of the district **AND** once in an **English** newspaper circulating there [SM 88]

s.160 does not apply to: a Government company whose **entire** paid-up capital is held by Government(s) · its wholly-owned subsidiary · a **private company** · a company whose **articles provide for election by ballot**. [SM 88]

EXAM ANGLE: ASKED IN DEC'25 Q2(a) AND JUN'26 Q3(a), AND IN ICMAI'S MQP. THE THREE SITUATIONS AND THEIR ANSWERS

Situation	Answer
(i) the company is a **Government company** and the Government was told	s.160 **does not apply** to a Government company whose entire paid-up capital is held by Government, so the member has no right to propose under s.160; the deposit procedure does not arise. (If Government holds less than 100%, s.160 applies normally.)
(ii) the **articles provide for election by ballot**	s.160 **does not apply**; directors are elected by ballot as the articles say, so the proposal is not valid under s.160.
(iii) public company, no individual notices, advertised **only in a vernacular newspaper** 7 days before	**Not valid.** Rule 13 lets the company skip individual notices only if it advertises at least 7 days before in a vernacular newspaper **and** in an English newspaper circulating in the district. The member's own notice (14 days before, with ₹1 lakh) is in order.

Proportional representation, s.163 [SM 90–91]

The articles may provide for at least **two-thirds** of directors to be appointed by proportional representation (single transferable vote, cumulative voting or similar), once every **3 years**. It gives the minority fair representation. Casual vacancies are filled under s.161(4). It does not apply to 100% Government companies or their wholly-owned subsidiaries. [SM 90–91]

3 Additional, alternate, nominee and casual-vacancy directors (s.161); small shareholders' director (s.151)

Type	Who appoints · when · how long	Traps
Additional 161(1)	the **Board**, if the **articles** allow, at any time. Holds office **up to the next AGM** or the last date the AGM should have been held, **whichever is earlier** [SM 88]	a person who **failed to be appointed at a general meeting cannot be made an additional director** (Jun'24 Q4(b)) [SM 88]
Alternate 161(2)	the **Board**, if authorised by the articles or a general-meeting resolution, in place of a director absent from India for **at least 3 months** [SM 88]	not someone already an alternate in the company · for an ID, must qualify as an ID · vacates when the original **returns to India** · term no longer than the original's · whether to appoint is the **Board's** choice, not the original director's [SM 88–89]
Nominee 161(3)	the **Board**, subject to the articles, appoints the person nominated by an institution (under a law or an agreement) or by Government through its shareholding [SM 89]	"nomination" is not "appointment": the Board must still appoint properly · a nominee **cannot be an ID** (s.149(6)) [SM 84] [SM 89]
Casual vacancy 161(4)	a director appointed in general meeting leaves before his term ends → the **Board** fills it at a Board meeting, **approved at the next general meeting** [SM 89]	the new director holds office only until the date the vacating director would have held it [SM 89]

SM example: the retired CMD of a Government steel plant is appointed the next day as a full-time additional director of a private steel company; he holds office till the next AGM. [SM 88]

SMALL SHAREHOLDERS' DIRECTOR (s.151): LISTED COMPANIES

- **Small shareholder** = holds shares of nominal value **up to ₹20,000** [SM 89]
- Elected on notice from **1,000** small shareholders or **one-tenth** of them, **whichever is lower**; the company may also appoint one **suo motu** [SM 89–90]
- Notice of the candidate at least **14 days** before the meeting, with his DIN, a "not disqualified" statement and his consent [SM 90]
- Treated as an **ID** if he qualifies under s.149(6) [SM 90]

ITS LIMITS

- **not** liable to retire by rotation; tenure at most **3 consecutive years**; **no re-appointment** [SM 90]
- small shareholders' director in at most **2 companies**, and the second must not compete with the first [SM 90]
- for **3 years** after leaving, not associated with the company in any other capacity [SM 90]
- vacates on a s.164 disqualification, a s.167 vacancy, or losing independence [SM 90]

MEMORY HOOK: s.161 IN ONE LINE

A-A-N-C: **A**dditional till the AGM · **A**lternate while abroad 3 months · **N**ominee because someone nominated · **C**asual for the rest of the term. The Board appoints all four.

4 Disqualification, vacation, resignation and removal

s.164(1): NOT ELIGIBLE FOR APPOINTMENT IF HE ...

a. is of **unsound mind**, so declared by a court
b. is an **undischarged insolvent**
c. has **applied to be declared insolvent**, application pending
d. was **convicted** and sentenced to at least **6 months**, and **5 years** have not passed since the sentence ended. With a sentence of **7 years** or more: never, in any company
e. is under a court or Tribunal **disqualification order**
f. has **not paid calls** on his shares for **6 months** after the last date
g. was convicted under **s.188** (RPTs) in the last **5 years**
h. has **no DIN**
i. holds more directorships than **s.165(1)** allows

[SM 91]

s.164(2): THE DEFAULTING-COMPANY RULE

A director of a company that (a) has not filed financial statements or annual returns for **3 continuous financial years**, or (b) has not repaid deposits or debentures, interest, or preference dividend for **1 year or more** cannot be re-appointed there or appointed elsewhere for **5 years**. A new appointee in a defaulting company gets **6 months'** grace. Not applicable to **Government companies**. A private company's articles may add more disqualifications. [SM 91–92]

When (d), (e), (g) take effect: not for **30 days** from the conviction or order; if an appeal is filed within 30 days, until **7 days** after it is disposed of; if a further appeal is filed within 7 days, until that is disposed of. [SM 92]

s.167: the office becomes vacant if he ... [SM 93–94]

1. incurs a **s.164 disqualification**. Under s.164(2) he vacates in **all companies except the defaulting one**
2. **absents himself from all Board meetings for 12 months**, with or without leave
3. acts against **s.184** (contracts in which he is interested)
4. **fails to disclose** his interest under s.184
5. is **disqualified** by a court or Tribunal order
6. is **convicted** and sentenced to at least **6 months** (with the same 30-day and 7-day appeal relief)
7. is **removed** under the Act
8. was a director because of his **job in the holding, subsidiary or associate company**, and that job ends

If he acts as a director knowing the office is vacant: fine **₹1 lakh to ₹5 lakh**. If **all** directors vacate, the **promoter** (or else the Central Government) appoints directors until the general meeting does. A private company's articles may add grounds. [SM 94]

RESIGNATION s.168 (ICMAI PTP Q2(b))

1. the director gives **written notice** to the company
2. the **Board takes note** of it
3. the company files **DIR-12** with the Registrar within **30 days** and posts it on its **website**
4. it is mentioned in the **directors' report** at the next general meeting
5. the director **may** send a copy with detailed reasons to the Registrar within **30 days** in **DIR-11**

[SM 92]

REMOVAL s.169 (Dec'24 MCQ: ordinary resolution)

1. by **ordinary resolution**, after giving him a **reasonable opportunity of being heard**. Not for a director appointed by the **Tribunal (s.242)**. An ID in his **second term** can be removed only by **special resolution**. Directors elected by proportional representation (s.163) cannot be removed this way
2. **special notice** from members to remove him or to appoint someone in his place
3. the company sends him a copy at once; he may be **heard at the meeting** (member or not)
4. the vacancy may be filled at the **same meeting** if special notice was given; the new director serves the **remaining term**. Otherwise it is filled as a casual vacancy, but the **removed director cannot be re-appointed**
5. his right to **compensation or damages** stays

[SM 92–93]

5 Managing director, whole-time director, manager (s.196) and KMP (s.203)

Term	Meaning
Managing director 2(54)	a director entrusted with **substantial powers of management** by the articles, an agreement, or a general-meeting or Board resolution. Routine acts (affixing the seal, signing cheques or negotiable instruments, share certificates, registering transfers) are **not** "substantial powers" [SM 94]
Whole-time director 2(94)	a director in the **whole-time employment** of the company, e.g. Director (Finance) or Director (Commercial): an executive director [SM 94]
Manager 2(53)	an individual who, under the Board's control, manages the **whole or substantially the whole** of the affairs [SM 94–95]

s.196: APPOINTING MD / WTD / MANAGER

- never an MD **and** a manager at the same time [SM 95]
- term at most **5 years** at a time; re-appointment not earlier than **1 year** before the term ends [SM 95]
- **not** if: below **21** or has reached **70** (70+ allowed by **special resolution**); an undischarged or adjudged insolvent; has suspended payments to creditors; convicted and sentenced to more than **6 months** [SM 95]
- **Schedule V:** not jailed, or fined above **₹1,000**, under the **16** listed Acts; not detained under COFEPOSA; **resident in India**, i.e. stayed **12 months** continuously before appointment [SM 95]

PROCEDURE s.196(4)

1. the **Board** approves the appointment, terms and remuneration at a meeting
2. approval by **shareholders' resolution** at the next general meeting
3. if it departs from **Schedule V**: **Central Government** approval
4. the notice states the terms, remuneration and directors' interest
5. return in **MR-1** to the Registrar within **60 days**

s.196(5): if the general meeting does not approve, his acts **before** that are **deemed valid**. [SM 95–96]

⚠ SM SAYS TWO THINGS · AND A PAST QUESTION THE SM DOES NOT COVER

The SM's Schedule V list ends with "any act done by him deemed to be **invalid**", but s.196(5) on the next page says acts before non-approval are deemed **valid**. **Write "valid" (s.196(5)).** [SM 95–96]
Dec'23 Q5(a) "How far will the acts of a director be invalid if his appointment is not valid?" is answered by **s.176**, which is not in the SM. Acts done by a person as a director are **not invalid** just because a defect or disqualification in his appointment, or its termination, is noticed later. But this gives **no validity to acts done after** the company has noticed the defect.

s.203: Key Managerial Personnel [SM 96–97]

WHO AND WHEN

- **Listed** companies and **public** companies with paid-up capital ≥ **₹10 crore** must have whole-time KMP: (1) **MD or CEO or manager** (if none, a WTD); (2) **CS**; (3) **CFO** [SM 96]
- One person may **not** be both **chairperson** and **MD/CEO**, unless the **articles allow** or the company does not carry on **multiple businesses** [SM 96]
- Appointed by **Board resolution** stating terms and remuneration [SM 96]
- A KMP vacancy is filled by the Board within **6 months** [SM 97]

MORE THAN ONE COMPANY (JUN'26 Q2(b))

- A whole-time KMP shall **not hold office in more than one company** at the same time, **except in its subsidiary** [SM 96]
- He may be a **director** of any company **with the Board's permission** [SM 96]
- A company may appoint as its MD a person who is MD or manager of **one, and not more than one,** other company, by a **unanimous Board resolution** of the directors present, with **specific notice** to all directors in India [SM 97]
- *Example:* X is CFO of A Ltd. He can also be CFO of A's subsidiary B Ltd, and a director of C Ltd with A's Board permission, but not CFO of unrelated D Ltd.

6 Managerial remuneration (s.197–s.202)

Who (public companies)	Limit: % of net profits	To pay more
All directors incl. MD, WTD, manager, together	**11%**	general meeting, subject to Schedule V
One MD / WTD / manager	**5%**	special resolution
More than one MD / WTD / manager, together	**10%**	special resolution
Other directors, **when there is** an MD or WTD	**1%**	special resolution
Other directors, **when there is no** MD or WTD	**3%**	special resolution

If the company has defaulted to a bank, PFI, NCD holders or a secured creditor, their **prior approval** comes before the special resolution. The **auditor certifies** that the remuneration is within limits. Net profit is computed under **s.198**, **without deducting the**

directors' remuneration. [SM 97]

- **Fixed by** the articles, a resolution, or a special resolution if the articles require. It **includes** pay for any other capacity, except **professional services** where the NRC or Board finds he is qualified for that profession. [SM 98]
- **Sitting fees:** up to **₹1 lakh per meeting** of the Board or a committee. For IDs and women directors, not less than other directors get. Sitting fees are **outside** the % limits. [SM 98]
- **Mode:** monthly payment, a % of net profits, or both. Fidelity or misfeasance insurance premium is **not** remuneration. [SM 98]
- **No or inadequate profits:** pay only under **Schedule V**, otherwise with **Central Government** approval. No increase is effective unless it meets Schedule V. [SM 98–99]
- **Excess drawn:** refund within **2 years** (held in trust until then). Waiver only by **special resolution** within 2 years. [SM 99]
- **Listed company's Board report:** each director's pay as a **ratio to the median employee**; the **top 10** earners; anyone paid at least **₹1.25 crore** a year or **₹8.5 lakh a month** (SM: "eight lakh fifty thousand"), or more than the MD while holding **2%**+ equity with spouse and children. [SM 99]
- An MD or WTD on commission may also take pay or commission from the **holding or subsidiary company**, if disclosed in the Board's report. [SM 99]
- **Contravention:** fine **₹1 lakh to ₹5 lakh**. The **auditor's report** states whether the remuneration complies. [SM 100]
- **s.200:** when fixing pay with no or inadequate profits, the Government or company considers the financial position, pay from other capacities and companies, qualifications, performance in the **3 preceding years**, the pay-to-performance link, proportionality, and the director's securities and pledges. [SM 102]

⚠ SM SAYS TWO THINGS

On waiving a refund, the SM gives both "by **special resolution** within two years" (the current Act) and "unless permitted by the **Central Government**" (the old Act). **Write special resolution.** [SM 99]

s.198 NET PROFIT IN BRIEF

Add: Government bounties and subsidies. **Do not credit:** premium on shares or debentures, profit on forfeited shares, capital profits, profit on sale of fixed assets (except the part up to original cost), fair-value and revaluation gains. **Deduct:** working charges, directors' remuneration, staff bonus and commission, interest, repairs (not capital), depreciation under s.123, past losses, legal damages, bad debts. **Do not deduct:** income tax, voluntary compensation, capital losses, fair-value changes. [SM 100–101]

s.202: COMPENSATION FOR LOSS OF OFFICE

Payable **only to an MD, WTD or manager**. **Not** payable if he resigns on a reconstruction or amalgamation and is re-employed; resigns in the normal course; vacates under s.167(1); the winding up was due to his negligence; he committed fraud, breach of trust or gross mismanagement; or he brought about his own termination. **Cap:** his pay for the rest of the term or **3 years**, whichever is **shorter**, on his average pay over the last 3 years. Nothing is paid if winding up starts within **12 months** after he leaves and the assets cannot repay shareholders' capital. [SM 108–109]

Recovery on restatement: if the financial statements are restated for fraud or non-compliance, any excess pay (including stock options) is recovered from past or present MDs, WTDs, managers or CEOs. [SM 109]

7 Powers of the Board (s.179) and restrictions (s.180)

The Board may exercise **all powers the company has**, collectively. No individual director has any power unless specifically authorised. The articles and the general meeting may restrict it, but a later restriction does **not invalidate a prior valid act** of the Board. [SM 102]

ONLY BY RESOLUTION AT A BOARD MEETING, s.179(3) + Rule 8

1. make **calls** on unpaid shares
2. authorise **buy-back** (s.68)
3. **issue securities**, including debentures
4. **borrow** money
5. **invest** the company's funds
6. grant **loans**, guarantees or security
7. approve the **financial statements and Board's report**
8. **diversify** the business
9. approve **amalgamation, merger, reconstruction**
10. **take over** a company or acquire a controlling stake
11. Rule 8: **political contributions** · appoint or remove **KMP** · appoint **internal and secretarial auditors**

The Board may **delegate** borrowing, investing and lending to a committee, the MD, the manager or principal officer, or a branch's principal officer. [SM 102–103]

ONLY WITH SHAREHOLDERS' SPECIAL RESOLUTION, s.180(1) (DEC'23 Q3(a))

a. **sell, lease or dispose** of the whole or substantially the whole of an **undertaking**. Undertaking = investment above **20%** of net worth, or **20%** of total income. Substantially the whole = **20%** or more of its value
b. **invest** merger or amalgamation **compensation** other than in trust securities
c. **borrow** beyond **paid-up capital + free reserves + securities premium**. Temporary loans from bankers are excluded (repayable on demand or within **6 months**, not for capital purposes); so are bank deposits taken by a banking company. The resolution states the **maximum amount**
d. **remit** or give time to repay a **debt due from a director**

A buyer or lessee in **good faith** is protected, as are sales in the ordinary course of a company whose business is selling or leasing. The SM says s.180 does not apply to a **private company**. [SM 103–104]

Shareholders may step in when the directors act mala fide, the Board is incompetent (e.g. all directors interested, or no valid Board), or there is a deadlock. [SM 104]

8 Director Identification Number (DIN), s.153–159

APPLY (s.153, RULE 9)
DIR-3 online with photo, ID and address proof, signature; verified by the company's CS, MD, director, CEO or CFO. At incorporation via **SPICe INC-32** for up to **3** directors [SM 105]

→

ALLOT (s.154, RULE 10)
Central Government decides within **1 month**; defects cured within **15 days**; DIN valid **for life** [SM 105–106]

→

DIRECTOR → COMPANY (s.156)
within **1 month** of receiving the DIN (DIR-3B) [SM 106–107]

→

COMPANY → ROC (s.157)
within **15 days** (DIR-3C). Default: fine **₹25,000 to ₹1,00,000** on the company and each officer [SM 106–107]

- **Only one DIN** per person (s.155). Mention the DIN in every return (s.158). [SM 106–107]
- **s.159 penalty** for breaking s.152, 155 or 156: up to **₹50,000**, plus **₹500** a day if it continues. [SM 107]
- **Cancelled or deactivated** if: duplicate · obtained wrongfully · death · unsound mind · insolvency · surrendered in **DIR-5** (never used). [SM 107]
- **Change of particulars: DIR-6** within **30 days**, certified by a practising CA, CS or CMA; tell the companies within **15 days**. [SM 107–108]
- **Dec'24 MCQ:** the DIN application procedure is in **Rule 9**. [SM 105]

DEC'26 SUPPLEMENTARY: DIRECTOR KYC (COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) AMENDMENT RULES, 2025) · EFFECTIVE 31 MARCH 2026

- Annual KYC is replaced by an abridged KYC **once in every 3 consecutive financial years**: **DIR-3 KYC** web filing by **30 June** after every third year. [Supp Dec'26 p.2]
- A change in mobile number, e-mail or residential address is updated within **30 days** of the change. [Supp Dec'26 p.2]

9 Loans to directors (s.185), disclosure of interest (s.184), related party transactions (s.188)

s.185: LOANS TO DIRECTORS

- **Prohibited:** a loan, guarantee or security for a director of the company or its holding company, a partner or relative of such a director, or a firm in which such a director or relative is a partner. [SM 109]
- **Allowed to "a person in whom a director is interested"** (a private company where he is director or member; a body corporate where directors control **25%**+ of votes; a body corporate whose board follows his directions) if (a) a **special resolution** is passed with full particulars, and (b) the money is used for its **principal business**. [SM 109]
- **Exempt:** a loan to an MD/WTD under conditions of service for all employees, or a scheme approved by special resolution · a lending company charging at least the **G-sec yield** (1, 3, 5 or 10 years, nearest the tenor) · a holding company's loan to, or guarantee for, its **wholly-owned subsidiary** · a guarantee for a bank loan to a subsidiary (used for principal business). [SM 109–110]
- **Penalty:** company **₹5 lakh to ₹25 lakh**; director and borrower: up to **6 months** in jail, or a fine of ₹5–25 lakh, or both. [SM 110]
- **Private company exemption** if: no body corporate has invested in it; borrowings below **twice** its paid-up capital or **₹50 crore**, whichever is lower; no default. [SM 110]

s.184: DISCLOSURE OF INTEREST

- **When:** at the **first Board meeting** he attends, at the first meeting **each financial year**, and at the first meeting **after any change**, by written notice. [SM 111]
- **Contracts:** if he (alone or with another director) holds more than **2%** of the other body corporate, or is its promoter, manager or CEO, or is a partner, owner or member of the firm: he **discloses and does not participate**. [SM 111]
- **Result:** the contract is **voidable at the company's option**; penalty **₹1 lakh**. **Exception:** contracts between two companies where directors hold **2% or less**. [SM 111]
- **Cases:** a formal disclosure is not needed if the whole Board knows (*Ramakrishna Rao v. Bangalore Race Club*), but *Guinness v. Saunders* requires formal disclosure even when it is known. "Interest" includes family closeness (*Firestone Tyre v. Synthetics & Chemicals*). [SM 111–115]
- **Quorum:** if interested directors are **two-thirds or more** of the Board, the quorum is the non-interested directors present, at least **2** (s.174). [SM 114]

s.188: related party transactions (RPTs) [SM 112–114]

NEED BOARD CONSENT AT A MEETING

a. sale, purchase or supply of goods or materials
b. selling, disposing of or buying property
c. leasing property
d. availing or rendering services
e. appointing an agent for buying or selling
f. a related party's appointment to an **office or place of profit**
g. underwriting the company's securities

The related party **shall not vote** (except where **90%** of shareholders are related parties). **No shareholder approval** is needed for ordinary-course, arm's-length deals or holding–WOS deals. Unratified contracts are voidable. [SM 112]

ALSO NEED SHAREHOLDERS' RESOLUTION ABOVE ...

goods (sale, purchase, supply)	**10%** of turnover or **₹100 cr**, lower
property (buy, sell)	**10%** of net worth or **₹100 cr**, lower
leasing	**10%** of net worth or turnover, or **₹100 cr**
services	**10%** of turnover or **₹50 cr**, lower
office or place of profit	pay above **₹2.5 lakh a month**
underwriting	above **1%** of net worth

The limits apply per transaction or together during a financial year. [SM 113–114]

OMNIBUS APPROVAL, RULE 8A (DEC'23 Q2(b), 7 MARKS: THE SM'S OWN SENTENCE)

SM WORDS "All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions":

1. The Audit Committee, **after Board approval**, specifies the criteria: maximum value a year and per transaction; extent of disclosures; periodic review; transactions not allowed under omnibus approval.
2. It considers the **repetitiveness** of the transactions and the **justification** for omnibus approval.
3. It satisfies itself that the approval is **needed** and in the **company's interest**.
4. The approval states the **related parties**, the nature and duration, the **maximum amount**, and the indicative or current price and variation formula. For unforeseen needs: up to **₹1 crore per transaction**.
5. It is valid for at most **one financial year**.
6. Never for **selling or disposing of the undertaking**.
7. Any other conditions the Audit Committee thinks fit.

[SM 112–113]

10 Model answers: our top two Dec'26 questions on 1.5

MODEL ANSWER 1 · BOARD COMPOSITION CASE (DEC'24 Q3(a), JUN'25 Q1) · 7 MARKS

Facts (Dec'24): Mirinda Ltd, an unlisted public company with paid-up capital ₹40 crore and turnover ₹350 crore. Board: the promoter MD; a non-executive Chairman (not an ID); Director (Finance); Director (Operations), related to the promoter. CS: Ms Supriti. A nationalised bank will nominate a director (a woman, in Jun'25). Is the Board properly constituted, and what must be done?

Point	Provision	Applied to the facts
Number	public company: at least 3 directors (s.149(1)) [SM 83]	4 directors: **complies**
Independent directors	unlisted public company with paid-up capital ≥ ₹10 crore or turnover ≥ ₹100 crore: **at least 2 IDs** (s.149(4), Rule 4) [SM 84]	₹40 cr capital and ₹350 cr turnover, so 2 IDs are needed. **None qualifies:** the MD and the two functional directors are whole-time; Director (Operations) is **related to the promoter**; the Chairman is not an ID. → **Appoint 2 IDs**
Woman director	public company with turnover ≥ ₹300 crore: at least **1 woman director** (Rule 3) [SM 83–84]	turnover ₹350 cr, so one is needed; there is none → **appoint one**
Bank's nominee	the Board appoints a nominee under s.161(3); a nominee **cannot be an ID** (s.149(6)) [SM 84–89]	she can sit as nominee director. She **does not count as an ID**, but the rule asks only for "a woman director", so she can meet the woman-director requirement (Jun'25 Q1(iv), option C) ⚠
KMP	public company with paid-up capital ≥ ₹10 crore: MD/CEO + CS + **CFO** (s.203, Rule 8) [SM 96]	MD and CS exist; **designate or appoint a CFO** if Director (Finance) is not formally the CFO

Conclusion: the Board is **not properly constituted**. Mirinda must appoint **two independent directors** and **a woman director** (the bank's woman nominee can fill that), and make sure a **CFO** is in place.

⚠ ICMAI's suggested answer is not with us yet. The nominee-as-woman-director point follows the rule's wording; check it when the suggested answers are downloaded.

MODEL ANSWER 2 · MANAGERIAL REMUNERATION CASE (JUN'23 Q2(b), 8 MARKS · OVERDUE)

Facts: AB Ltd, a listed company managed by an MD. Proposal: (i) MD, Mr M: commission at **5%** of net profits. (ii) Other directors: **₹50,000 a month** each plus commission at **1%** of net profits, with all their pay together capped at **2%** of net profits. Examine.

1. **Provision.** s.197(1): total pay to all directors ≤ **11%** of net profits; one MD ≤ **5%**; other directors ≤ **1%** where there is an MD. Exceeding a limit needs a **special resolution**. Net profit is computed under s.198 without deducting directors' pay. Pay may be monthly, a % of profits, or both (s.197(6)). Sitting fees are outside the limits. [SM 97–98]
2. **MD's 5% commission:** exactly at the 5% limit for one MD, so it is **valid** without a special resolution (shareholders still approve his terms under s.196).
3. **Other directors:** their monthly pay plus commission may reach **2%**, above their **1%** limit, so this part needs a **special resolution** in general meeting. Monthly payment is a permitted mode.
4. **Overall:** 5% + up to 2% = up to 7%, **within 11%**.
5. **Conclusion:** the MD's commission is in order. The other directors' package is valid only if the shareholders pass a **special resolution**. The auditor must state in his report that the remuneration complies with s.197.

SM exercise MCQs on 1.5, with answers **(SM 164–171 = ICMAI MCQ bank Q39–83; ★ = asked in an exam)**

39 additional director's tenure up to	**next AGM**	48 s.203 provides for appointment of	**KMP**
40 alternate: original absent from India at least	**3 months**	49 MD eligibility and conditions are in Schedule	**V**
41 woman director required if	**listed, or ₹300 cr turnover (either)**	50 maximum pay to all managerial personnel	**11%**
43 WTD appointed for a term of	**5 years**	51 IDs are not entitled to	**stock options**
44 deposit with s.160 proposal	**₹1 lakh**	52 Board's report is addressed to	**members**
45 small shareholder: face value up to ★	**₹20,000**	53 Board's powers may be restricted by	**Act, articles, GM: any or all**
46 remove a director by ★	**ordinary resolution**	54 RPTs are in section	**188**
47 MD's appointment ratified in AGM by	**ordinary resolution**	56 IDs meet separately, a year	**once**
64 executive chairman: IDs at least	**half**	80 a CFO must be a	**none (no fixed qualification)**
81 sitting fee: Board vs committee	**may differ**	82 disclosure of interest is	**all or any (first meeting, yearly, on change)**
83 Board quorum	**⅓ or 2, higher**	MCQ bank 266: small sh. director in at most	**2 companies**

Not in the 1.5 SM text, but in the MCQ bank: Q51 (IDs get no stock options) and Q64 (half IDs with an executive chairman) come from the SEBI/governance rules in Module 3.

R Revision: every number in 1.5

Rule	Number
directors: public / private / OPC	3 / 2 / 1
maximum directors (more by special resolution)	15
woman director: paid-up / turnover (public)	₹100 cr / ₹300 cr
woman director in a new company within	6 months
ID or woman vacancy: next Board meeting or	3 months, later
resident director stay	182 days
IDs in a listed company	one-third
2 IDs if paid-up / turnover / borrowings	₹10 cr / ₹100 cr / > ₹50 cr
ID: pecuniary limit / look-back	10% income / 2 yrs
ID: relative's holding limit	₹50 lakh or 2%
ID: KMP/employee cooling-off	3 yrs
ID: voting power / NGO receipts	2% / 25%
ID databank test exemption	10 yrs experience
consent DIR-12 filed within	30 days
rotational / retire each AGM	⅔ / ⅓
s.160 notice / deposit / refund if votes >	14 days / ₹1 lakh / 25%
company informs or advertises members	7 days before
alternate: director abroad at least	3 months
small shareholder nominal value	≤ ₹20,000
small shareholders' notice: 1,000 or	1/10, lower
small sh. director: tenure / companies / cooling	3 yrs / 2 / 3 yrs
proportional representation: share / every	⅔ / 3 yrs
s.164: sentence / wait / bar for life	6 m / 5 yrs / 7 yrs
unpaid calls for	6 months
s.164(2): not filed / deposit default / bar	3 FYs / 1 yr / 5 yrs
grace for new appointee in defaulter	6 months
appeal relief	30 days / 7 days
absent from all Board meetings for	12 months
acting while vacated: fine	₹1–5 lakh
resignation DIR-12 / DIR-11	30 / 30 days

Rule	Number
MD/WTD term / re-appoint not before	5 yrs / 1 yr
MD/WTD age (70+ by special resolution)	21–70
Schedule V: Acts / fine / residence	16 / ₹1,000 / 12 months
MR-1 within	60 days
KMP mandatory: paid-up (public)	₹10 crore
KMP vacancy filled within	6 months
overall / 1 MD / >1 MD	11% / 5% / 10%
others with MD / without MD	1% / 3%
sitting fee per meeting, maximum	₹1 lakh
refund of excess pay within	2 years
disclosure: yearly / monthly pay	₹1.25 cr / ₹8.5 lakh
s.197 contravention fine	₹1–5 lakh
s.202 cap / winding-up window	3 yrs / 12 months
s.180 undertaking / substantially whole	20% / 20%
temporary loans repayable within	6 months
DIN: CG decides / defects / SPICe directors	1 month / 15 days / 3
DIN to company / company to ROC	1 month / 15 days
s.157 fine	₹25,000–₹1 lakh
s.159 penalty	₹50,000 + ₹500/day
DIR-6 change / tell companies	30 / 15 days
KYC (Dec'26 supp.): every / by	3 FYs / 30 June
s.185: controlled body corporate	25% votes
s.185 penalty: company / jail	₹5–25 lakh / 6 months
s.185 private-co exemption: borrowings <	2× capital or ₹50 cr
s.184 shareholding test / penalty	2% / ₹1 lakh
interested ≥ ⅔ → quorum at least	2
RPT: goods / property	10% or ₹100 cr
RPT: services / office of profit	₹50 cr / ₹2.5 lakh pm
RPT: underwriting / related holders	1% NW / 90%
omnibus: unforeseen / validity	₹1 cr / 1 FY

1.4 · Accounts and Audit

P13 · Module 1 · Companies Act, 2013 · s.128–148 + CARO 2020

SM pp. 51–81 (31 pages). **The second-highest topic in P13:** 64 marks in 7 papers, asked in 6 of them, with two halves in Jun'26.

Paper	What was asked	Marks
Jun'23	MCQ: who may inspect the books (any director) · Q8(a) **auditor case**: (i) can he be removed, and how? (ii) what if he resigns? (iii) a qualified report	2 + 10
Dec'23	MCQ: copies of FS at shorter notice (95%) · Q1 (xii)–(xv) **4-MCQ case** on authenticating the FS and the Board's report	2 + 8
Dec'24	Q2(b) books of account in **electronic form** (s.128)	7
Jun'25	MCQ: internal auditor criteria for a private company	2
Dec'25	Q1 (i)–(iv) **4-MCQ auditor case** (resignation without ADT-3, debt ₹2 lakh, charged with fraud, fees) · Q5(a) **fraud reporting**, s.143(12)	8 + 7
Jun'26	MCQs: statutory auditor = practising CA; Board's report signed by · Q3(b) **first and subsequent auditors, tenure, rotation, disqualifications** · Q5(a) **Board's report: contents, authentication, filing**	4 + 7 + 7

HOW IT IS EXAMINED

- **The auditor is the favourite:** appointment, rotation, removal or resignation, eligibility. It was asked 8 times, and ICMAI's MQP repeated the Dec'25 auditor MCQ case.
- **Board's report and authentication** (s.134): 6 times. **Books of account** (s.128) and **fraud reporting** (s.143(12)): once each as a 7-marker.
- **Never asked yet:** CARO 2020 and s.144 prohibited services. The ICMAI postal paper had "independence of the auditor" as an 8-marker.

DEC'26: OUR PREDICTION (A PREDICTION, NOT A PROMISE)

Tier **A**. Expected **9–16 marks**: a 7-mark theory or case question plus 2–4 MCQs, often a 4-MCQ case set. Likely questions:

1. Auditor wants to resign / company wants to remove him: procedure and filings (s.140, ADT-3)
2. Services an auditor cannot render (s.144) and his independence
3. Fraud reporting (s.143(12)), now only by e-form ADT-4 (Jun'26 supplementary)
4. Books of account (s.128) and internal audit (s.138)

MAP OF THIS PACK (★ = exam weight)

1. Books of account s.128 ★★
2. Financial statements s.129, 133 ★
3. Authentication + Board's report s.134 ★★★
4. Copies to members s.136, filing s.137 ★★
5. Internal audit s.138 ★
6. Appointing the auditor s.139 ★★★
7. Removal, resignation s.140 ★★★
8. Eligibility s.141, fees s.142 ★★
9. Powers, duties, fraud reporting s.143 ★★
10. s.144–148: services, signing, penalties, cost audit ★
11. CARO 2020 ★ · CSR pointer
12. Model answers · MCQ case set · numbers · SM MCQs

1 Books of account (s.128) · Dec'24 Q2(b)

WHAT IT IS Every company keeps **books of account**: records of money received and spent, sales and purchases, assets and liabilities, and cost items where s.148 applies. They are kept on an **accrual basis** and by **double entry**, and must give a **true and fair view**, branches included. [SM 51]

WHERE · WHO · HOW LONG

- At the **registered office**. The Board may choose another place **in India**, with a notice to the ROC giving the full address within **7 days** of the Board's decision. [SM 51]
- **Branch** (in India or abroad): the branch may keep its own books, but sends **summarised returns** periodically to the registered office. [SM 52]
- **Inspection:** by **any director**, during business hours. For records kept abroad, summarised returns come to the RO **quarterly**; other information is given within **15 days** of the director's written request, and he must ask **himself**, not through an agent. A subsidiary's books are inspected only by a person authorised by Board resolution. [SM 52–53]
- **Preserve:** for at least **8 financial years** before the current year, with vouchers (all years if the company is younger). Longer if the CG so directs during an investigation. [SM 53]
- **Responsible:** the MD, the WTD in charge of finance, the CFO, or another person charged by the Board. Fine **₹50,000 to ₹5 lakh**. [SM 53]

ELECTRONIC FORM (Rule 3): THE 7-MARK ANSWER

1. remain **accessible in India** for later reference
2. kept in the **original format** (or one that shows it accurately), **complete and unaltered**
3. information from branches is **not altered** and shows what the branch sent
4. can be **displayed in legible form**
5. a proper system for **storage, retrieval, display or printout**, as the Audit Committee or Board decides; not disposed of unless the law permits
6. **back-up kept on servers physically in India**, periodically, even if the books are kept abroad
7. every year, with the financial statements, the company tells the ROC the **service provider's name, IP address, location**, and the **cloud address** if kept on cloud

[SM 52]

Financial year: the year ending **31 March**. A company incorporated on or after **1 January** ends its first year on 31 March of the next year. The CG may allow a different year for a company with a foreign holding company or subsidiary. [SM 51]

2 Financial statements (s.129, 129A, 133)

WHAT AND HOW

- **"Financial statement"** (s.2(40)): balance sheet · P&L (or income and expenditure account) · **cash flow statement** · statement of changes in equity · notes. An **OPC, small company or dormant company** may leave out the cash flow statement. [SM 53]
- They must give a **true and fair view**, follow the **accounting standards** (s.133), and use the **Schedule III** format. Insurance, banking and electricity companies use their own Acts' formats. [SM 54]
- The Board **lays them before every AGM**. [SM 54]
- **Deviation from AS:** disclose (a) the deviation, (b) the reasons, (c) the financial effect. [SM 55]
- **Contravention:** the MD, WTD (finance), CFO or person charged (else all directors): up to **1 year** in jail, or a fine of **₹50,000 to ₹5 lakh**, or both. [SM 55–56]

CONSOLIDATED FS · s.129A · s.133

- A company with subsidiaries also prepares **consolidated FS** (an **associate counts** as a subsidiary here), lays them at the AGM, and attaches the subsidiaries' salient features in **AOC-1**. [SM 54]
- **Exempt from consolidating:** a wholly owned subsidiary (or a partly owned one whose other members, told in writing, do not object) that is **unlisted** and whose holding company files consolidated FS with the ROC. [SM 55]
- **s.129A** (2020): the CG may require periodic financial results, with Board approval and audit or limited review, filed within **30 days** of the period's close. [SM 56]
- **s.133:** the **CG prescribes the accounting standards** recommended by **ICAI**, after **NFRA** examines them. *SM MCQ 90: Central Govt.* [SM 56]

3 Authentication and the Board's report (s.134) · Jun'26 Q5(a), Dec'23 MCQ case

AUTHENTICATION s.134(1), (2), (7)

- The FS (consolidated too) are **approved by the Board** and then signed on its behalf by: the **chairperson**, if the Board authorises him, **or** two directors, one being the **MD**; the **CEO** if he is a director; the **CFO** wherever appointed; and the **CS** wherever appointed. [SM 56]
- **OPC:** signed by **one director**, for the auditor's report. [SM 56]
- The **auditor's report is attached** to every FS. A signed copy is issued with the **notes, the auditor's report and the Board's report**. [SM 56]

Dec'23 case: PQR has directors A–D, MD E and CS F; only directors B and C signed. That is **not valid**: with no authorised chairperson, the signatories must include the **MD (E)**, and the **CS (F)** must sign as he is appointed.

SIGNING THE BOARD'S REPORT s.134(6) · SM MCQ 31 · Jun'26 MCQ

Signed by the **chairperson if authorised by the Board**. Otherwise by at least **two directors, one of them the MD**, or by the director where there is only one. [SM 59]

OPC: the Board's report need only contain the Board's explanations on the auditor's qualifications. [SM 59]

Contravention of s.134: company **₹3 lakh**, each officer in default **₹50,000**. [SM 59]

What the Board's report contains, s.134(3) + Rule 8 [SM 57–59]

a. **web address** of the annual return (s.92(3))
b. **number of Board meetings**
c. **Directors' Responsibility Statement**
d. **frauds reported by the auditor** under s.143(12), other than those reported to the CG
e. the **IDs' declaration** of independence (s.149(6))
f. **NRC policy** on directors' appointment and remuneration (not for Government companies)
g. Board's **explanation of every qualification** or adverse remark by the **auditor** and the **secretarial auditor**
h. loans, guarantees, investments under **s.186**
i. **RPTs** under s.188(1) in **AOC-2**
j. the **state of affairs**; amounts to **reserves**; recommended **dividend**
k. **material changes** between the year-end and the date of the report
l. **energy conservation, technology absorption, foreign exchange earnings and outgo**
m. **risk management policy** statement
n. **CSR policy** and initiatives, with the web address
o. **annual evaluation** of the Board, its committees and directors: listed companies, and public companies with paid-up capital ≥ **₹25 crore**
p. prepared on the **standalone FS**, with highlights of subsidiaries, associates and JVs

JUN'26 SUPPLEMENTARY: COMPANIES (ACCOUNTS) SECOND AMENDMENT RULES, 2025 · EFFECTIVE 14 JULY 2025

- The Board's report must also disclose the number of **sexual harassment (POSH) complaints** received, disposed of, and pending for more than **90 days**, plus a declaration of compliance with the **Maternity Benefit Act, 1961**. [Supp Jun'26 p.2]
- Filing moves fully to **MCA V3**: e-AOC-1, e-AOC-2 and a revised **AOC-4**. Signed FS, Board's report extracts and auditors' reports go in PDF/XBRL on the V3 portal only. [Supp Jun'26 p.2]

DIRECTORS' RESPONSIBILITY STATEMENT, s.134(5) (SM MCQ 28: part of the Board's report)

a. the applicable **accounting standards** were followed, with material departures explained
b. accounting policies were applied **consistently**, with reasonable and prudent judgments, for a **true and fair view**
c. proper care was taken to keep **adequate accounting records**, safeguard assets, and prevent and detect **fraud**
d. the accounts were prepared on a **going concern** basis
e. (listed companies) **internal financial controls** were laid down, adequate and operating effectively
f. **systems to ensure compliance with all laws** are adequate and operating effectively

[SM 59]

4 Copies to members (s.136) and filing with the Registrar (s.137)

s.136: COPIES OF THE FINANCIAL STATEMENTS

- Sent to every **member**, every **debenture trustee** and every other person entitled, at least **21 days** before the meeting, with the consolidated FS, auditor's report and annexures. [SM 60–61]
- **Shorter period** is valid if agreed by members who are a **majority in number** and hold at least **95%** of the voting paid-up capital (no share capital: 95% of voting power). *Dec'23 MCQ.* [SM 61]
- **Listed company:** complies by keeping the documents open for inspection at the RO for **21 days** and sending a statement of salient features (**AOC-3**). **Section 8 company:** 14 days instead of 21. [SM 61]
- Members inspect at the RO during business hours. **Electronic sending** is allowed for listed companies and public companies with net worth above **₹1 crore** and turnover above **₹10 crore**. A listed company puts its FS on its website, plus separate accounts of each subsidiary. [SM 61–62]
- **Penalty:** company **₹25,000**; each officer **₹5,000**. [SM 62]

s.137: FILING WITH THE ROC (SM MCQ 33: 30 days of AGM)

- **Adopted at the AGM:** file within **30 days** of the AGM. [SM 62]
- **Not adopted:** file the unadopted FS within **30 days** of the AGM; the ROC treats them as **provisional**. Once adopted at the adjourned AGM, file within **30 days** of it (late filing with additional fees is allowed up to **270 days** under s.403). [SM 62]
- **OPC:** within **180 days** of the year-end. [SM 63]
- Attach the accounts of **foreign subsidiaries** without a place of business in India. [SM 63]
- **AGM not held:** file the signed FS with a statement of reasons within **30 days** of the last date the AGM should have been held. [SM 63]
- **Penalty:** company **₹10,000** + **₹100 a day**, up to **₹2 lakh**. MD and CFO (else the director charged, else all directors): **₹10,000** + ₹100 a day, up to **₹50,000**. [SM 63]

5 Internal audit (s.138) · Jun'25 MCQ

Company	Must appoint an internal auditor if, in the preceding financial year ...
Listed	always [SM 63]
Unlisted public	paid-up capital ≥ **₹50 crore** · OR turnover ≥ **₹200 crore** · OR bank/PFI loans above **₹100 crore** at any time · OR deposits ≥ **₹25 crore** at any time [SM 64]
Private	turnover ≥ **₹200 crore** · OR bank/PFI loans above **₹100 crore** at any time *(Jun'25 answer: "2 and 3")* [SM 64]

Who: a **chartered accountant or cost accountant**, **in practice or not**, or another professional the Board decides. He may be an **employee**. It may be an individual, a firm or a body corporate. **Scope, periodicity and method** are set by the Audit Committee or Board in consultation with him. Existing companies complied within **6 months**. [SM 63–64]

6 Appointing the statutory auditor (s.139) · Jun'26 Q3(b)

FIRST AUDITOR (non-Govt) the **Board** appoints within **30 days** of registration; till the first AGM [SM 67] → **BOARD FAILS** it tells the members; they appoint at an **EGM within 90 days**; till the first AGM [SM 67] → **AT THE FIRST AGM** members appoint an individual or firm from the end of the 1st AGM **till the end of the 6th AGM**, and so on [SM 64] → **CONSENT + CERTIFICATE** written consent, and a certificate that he is eligible, within limits, and with pending proceedings listed (s.141) [SM 65] → **ADT-1** the company tells the auditor and files ADT-1 with the ROC within **15 days** of the meeting [SM 65]

Selection (Rule 3): the **Audit Committee** (or the Board if there is none) weighs qualifications, experience and pending proceedings, and recommends. If the Board agrees, it recommends to members. If not, it refers back with reasons; if the AC holds firm, the Board records its reasons and sends **its own recommendation** to the AGM. Appointment includes re-appointment. [SM 64–65]

TERM LIMITS + ROTATION s.139(2)–(4)

- **Who is covered:** listed companies; unlisted public companies with paid-up capital ≥ **₹10 crore**; private companies ≥ **₹20 crore**; any company with borrowings or public deposits ≥ **₹50 crore**. **Not** OPCs or small companies. [SM 65–66]
- An **individual**: at most **one term of 5 consecutive years**. An **audit firm**: at most **two terms of 5 consecutive years**. [SM 65]
- **Cooling-off: 5 years** before re-appointment in the same company. A firm with a **common partner** with the outgoing firm is barred for 5 years. A firm in the **same network** (brand, trade name, common control) is not eligible. If the signing partner retires and joins another firm, that firm is barred for **5 years**. A **break of 5 years** counts as rotation. [SM 66]
- Members may resolve to rotate the **audit partner and team**, or to have **joint auditors**. Removal and resignation rights are not affected. [SM 66]

CASUAL VACANCY · RE-APPOINTMENT

- **Casual vacancy:** the Board fills it within **30 days**. If it arose from **resignation**, a **general meeting** within **3 months** of the Board's recommendation must approve. He holds office **till the next AGM** (MCQ bank 263). [SM 67]
- **A retiring auditor is re-appointed** unless he is disqualified, has refused in writing, or a **special resolution** appoints someone else or says he shall not be re-appointed. If no auditor is appointed, the existing one continues. [SM 68]
- Where an Audit Committee is required, all appointments, including casual vacancies, take its **recommendation** into account. [SM 68]

GOVERNMENT COMPANIES: THE CAG APPOINTS (s.139(5), (7), (8)) · MQP MCQ

- For a Government company, or any company owned or controlled by the CG or State Government(s), the **CAG** appoints the auditor within **180 days** of the start of the financial year, till the AGM. [SM 67]
- **First auditor:** the CAG within **60 days** of registration → else the Board within the next **30 days** → else members at an EGM within **60 days**. [SM 67]
- **Casual vacancy:** the CAG within **30 days** (MCQ bank 264) → else the Board within the next **30 days**. [SM 67]
- **Deemed Government company:** at least **51%** of paid-up capital held by Governments, Government companies or Government corporations, in any combination. [SM 68]

7 Removal and resignation of the auditor (s.140) · Jun'23 Q8(a), Dec'25 and MQP MCQ cases

1 · BOARD RESOLUTION to remove him before his term ends → **2 · CG APPROVAL** application in **ADT-2** within **30 days** of the Board resolution [SM 68] → **3 · HEARING** the auditor gets a **reasonable opportunity of being heard** [SM 68] → **4 · SPECIAL RESOLUTION** at a general meeting within **60 days** of the CG's approval; filed in MGT-14 [SM 68]

RESIGNATION s.140(2), (3)

- He files **ADT-3** with the **company and the ROC** within **30 days** of resigning, with the facts and reasons. For Government companies, also with the **CAG**. [SM 68–69]
- **Penalty for not filing: ₹50,000** or his remuneration, **whichever is lower**, plus **₹500 a day**, up to **₹2 lakh**. [SM 69]
- The resulting casual vacancy: the Board fills it in 30 days, approved by a general meeting within 3 months (part 6). [SM 67]

NOT RE-APPOINTING A RETIRING AUDITOR: SPECIAL NOTICE s.140(4)

- If he has not completed **5 years** (or **10**), a resolution to appoint someone else or not to re-appoint him needs **special notice**; a copy is sent to him. [SM 69]
- His **written representation** is mentioned in the notice and sent to members. If it arrived too late, it is **read out at the meeting**, and he may also be heard. If not circulated, it is **filed with the ROC**. [SM 69]

8 Who can be an auditor (s.141) and his fees (s.142)

Qualified: only a **chartered accountant** (*SM MCQ 30 = Jun'26 MCQ: a practising CA*), or a **firm (or LLP)** whose **majority of partners practising in India** are CAs. Only the CA partners act and sign for the firm. [SM 69]

#	Disqualified, s.141(3)
a	a **body corporate**, except an LLP [SM 69]
b–c	an **officer or employee** of the company, or a **partner or employee** of one [SM 69–70]
d	he, his partner or a relative: **holds securities** of the company or its group (a **relative may hold up to ₹1 lakh** face value; any excess is corrected within **60 days**) · is **indebted above ₹5 lakh** to it · has given a **guarantee above ₹1 lakh** for a third party's debt to it [SM 70]
e	has a **business relationship** with the company or its group. Allowed: professional services the law permits, and arm's-length ordinary-course dealings such as **telecom, airlines, hospitals, hotels** [SM 70]
f	a **relative is a director or KMP** of the company [SM 70]
g	is in **full-time employment elsewhere**, or already holds **more than 20 company audits** (not counting OPCs, dormant companies, and private companies with paid-up capital below **₹100 crore**) [SM 70]
h	was **convicted of fraud** and **10 years** have not passed [SM 70]
i	renders any **s.144 prohibited service** to the company, its holding or its subsidiary [SM 70]

Vacation: an auditor who becomes disqualified is deemed to have **vacated**, which creates a casual vacancy. [SM 71] · **Fees (s.142):** fixed in general meeting or as it decides; the **Board** fixes the first auditor's. They include expenses and facilities, **not** fees for other services. [SM 71]

9 Powers and duties of the auditor; fraud reporting (s.143)

POWERS s.143(1)

- **Access at all times** to the books and vouchers, wherever kept. [SM 71]
- Right to **information and explanations** from officers. [SM 71]
- **Must inquire:** (1) are loans on security properly secured and on fair terms? (2) do mere book entries harm the company? (3) were shares and securities sold below cost (non-investment, non-banking companies)? (4) are loans shown as deposits? (5) are personal expenses charged to revenue? (6) was cash really received for shares "allotted for cash"? [SM 71]
- The holding company's auditor may **access the subsidiaries' records** for consolidation. [SM 71]

DUTIES s.143(2)–(4), (9)

- Reports **to the members** (*SM MCQ 35: shareholders*) whether the FS give a **true and fair view**. [SM 72]
- The report also states: whether all information was obtained; whether **proper books** were kept and branch returns received; whether the FS **agree with the books**; whether they comply with AS; adverse observations; any director **disqualified under s.164(2)**; qualifications; **internal financial controls**. Rule 11 adds: **pending litigation**, foreseeable losses on long-term contracts and derivatives, and delays in transfers to the **IEPF**. [SM 72–73]
- Any "no" or qualified answer must **give the reason**. He follows the **auditing standards** (CG on ICAI's recommendation, after NFRA). [SM 73]

Fraud reporting by the auditor, s.143(12) + Rule 13 · Dec'25 Q5(a) [SM 73–74]

1 · REASON TO BELIEVE
a fraud by officers or employees, of the prescribed amount, in the course of his duties [SM 73]

→

2 · TO BOARD / AC
report **immediately**, asking for their reply within **45 days** [SM 73]

→

3 · TO THE CENTRAL GOVT
his report + their reply + his comments within **15 days** of the reply (if no reply: his report + a note). Overall **within 60 days** of knowing [SM 73]

→

4 · FORM
a statement in **ADT-4**, now filed **electronically only** (Jun'26 supplementary) [SM 73] [Supp Jun'26 p.3]

- **Good faith:** reporting does not breach any duty (s.143(13)). [SM 73]
- It applies equally to the **cost accountant** (cost audit) and the **CS in practice** (secretarial audit) (s.143(14)), and to **branch auditors** for their branch. [SM 74–75]
- **Not reporting:** fine **₹1 lakh** (unlisted company) or **₹5 lakh** (listed). [SM 74]
- Frauds **not reportable** to the CG are disclosed in the **Board's report** (part 3, item d). [SM 57]

⚠ OLD SM TEXT, AND A THRESHOLD THE SM LEAVES OUT

The SM still describes a **sealed cover by registered post / speed post on the auditor's letterhead**. The **Jun'26 supplementary** removed that: ADT-4 is now filed electronically and postal submission is discontinued. Write the e-form version. [Supp Jun'26 p.3]

The SM says only "amount as may be prescribed". Rule 13 sets it: a fraud of **₹1 crore or more** is reported to the CG; a smaller one goes to the Audit Committee or Board and is disclosed in the Board's report.

GOVERNMENT COMPANIES s.143(5)–(7)

The CAG appoints the auditor and **directs how** to audit. The report covers the CAG's directions, action taken and the impact. Within **60 days** of the report the CAG may conduct a **supplementary audit** and comment; the comments go to members and the AGM. The CAG may also order a **test audit**. [SM 74]

BRANCH AUDIT s.143(8)

Indian branch: the company's auditor or another qualified person. **Foreign branch:** the company's auditor, an accountant, or a person qualified under that country's law. The branch auditor reports to the company's auditor, who deals with it in his report. [SM 74–75]

10 Prohibited services, signing, attending, penalties, cost audit (s.144–148)

s.144: THE AUDITOR SHALL NOT RENDER (directly or indirectly, to the company, its holding or subsidiary)

1. **accounting and book-keeping**
2. **internal audit**
3. design and implementation of a **financial information system**
4. **actuarial** services
5. **investment advisory**
6. **investment banking**
7. **outsourced financial services**
8. **management services**
9. any other prescribed service

Other services need **Board or Audit Committee approval**. "Indirectly" covers services through a relative, connected person, partner, or a parent, subsidiary or associate entity, or any entity using his name, brand or trade mark. *SM MCQ 38: none of internal audit, book-keeping or investment advice. SM MCQ 79: he may be the tax auditor.* [SM 75]

s.145–147

- **s.145:** he **signs** the report (only CA partners sign for a firm). Qualifications or adverse comments are **read at the general meeting** and are **open to inspection** by members. [SM 76]
- **s.146:** he receives all **notices of general meetings**; he **attends** (or a qualified representative does) unless exempted, and has the **right to be heard**. [SM 76]
- **s.147 company: ₹25,000 to ₹5 lakh**; **officers** ₹10,000 to ₹1 lakh. [SM 76]
- **Auditor** (breach of s.139, 144, 145): **₹25,000 to ₹5 lakh** or **4×** his fee, whichever is lower. **Wilfully, to deceive:** up to **1 year** in jail and a fine of **₹50,000 to ₹25 lakh** or **8×** his fee, whichever is lower. If convicted, he **refunds his fee** and pays damages. [SM 76]
- **Audit firm:** if a partner acted fraudulently, the partner and the firm are **jointly and severally liable**. Non-monetary criminal punishment falls only on the guilty partners. [SM 77]

s.148 Cost audit: the CG may order specified companies (by product or service, net worth or turnover) to keep **cost records** (Form **CRA-1**) and to have them audited. The audit is by a **practising cost accountant**, appointed by the **Board** on the Audit Committee's recommendation, with the fee **ratified by shareholders**. It is in addition to the s.143 audit. [SM 77]

11 CARO 2020 (never asked yet) · and a CSR pointer

WHAT IT IS · WHO IS OUT

- The Companies (Auditor's Report) Order, 2020: **extra matters the statutory auditor reports**. Issued on 25 Feb 2020 with NFRA, replacing CARO 2016, and deferred by a year, so it applies from **FY 2020-21**. It covers foreign companies too. [SM 77]
- **Outside CARO:** banking, insurance and **section 8** companies, **OPCs**, **small companies**, and private companies (not holding or subsidiary of a public company) with capital + reserves ≤ **₹1 crore**, bank borrowings ≤ **₹1 crore** and revenue ≤ **₹10 crore**. [SM 78]

⚠ TWO UPDATES

Small company: the SM gives ₹4 cr capital / ₹40 cr turnover (up to a ceiling of ₹10 cr / ₹100 cr). The **Dec'26 supplementary** sets it at capital ≤ **₹10 crore** and turnover ≤ **₹100 crore** from 1 Dec 2025. [Supp Dec'26 p.2]
SM MCQ 36 "CARO 2020 is effective from": the MCQ bank key says 1.4.2021, but the SM text says it applies to **FY 2020-21**, which starts **1.4.2020**. Trust the SM text. [SM 77–78]

CLAUSE 3: WHAT THE AUDITOR REPORTS ON

i. **PPE**: records, physical verification, title deeds, revaluation (10%+ change), **benami** proceedings
ii. **Inventory**: verification (10%+ discrepancy); working capital limits above **₹5 crore**
iii. **loans and guarantees given**: terms, repayment, overdue above **90 days**
iv. compliance with **s.185 and s.186**
v. **deposits**: s.73–76 and RBI directions
vi. **cost records** maintained
vii. **statutory dues**: arrears above **6 months**; disputed dues and forum
viii. income **surrendered in tax assessments** but not in the books
ix. **defaults** on loans
x. use of **IPO/FPO money and term loans**
xi. **fraud** noticed or reported under s.143(12)
xii. **Nidhi** company: NOF to deposits **1:20**, **10%** unencumbered deposits
xiii. **RPTs** under s.188
xiv. **internal audit** system
xv. **non-cash transactions** with directors (s.192)
xvi. **RBI registration** (s.45-IA)
xvii. **cash losses** this year and last
xviii. **auditor's resignation**: were the outgoing auditor's concerns considered?
xix. **material uncertainty**: can it meet liabilities due within **1 year**?
xx. **unspent CSR** transferred (fund / special account)
xxi. CARO **qualifications in group companies** (consolidated FS)

[SM 78–81]

CSR (s.135) ALSO SITS ON SM 60: FULL NOTES WITH TOPIC 3.4

Applies with net worth ≥ **₹500 crore**, turnover ≥ **₹1,000 crore**, or net profit ≥ **₹5 crore** in the preceding year. A CSR committee of **3** or more directors, at least one an ID. Spend at least **2%** of the average net profit of the last **3 years** (s.198), preferring local areas. Unspent, not ongoing: transfer to a Schedule VII fund within **6 months**. Ongoing project: transfer to a special account within **30 days**, to use within **3 years**. [SM 60]

12 Model answers and the auditor MCQ case set

MODEL ANSWER 1 · REMOVAL / RESIGNATION / QUALIFIED REPORT (JUN'23 Q8(a), 10 MARKS · OUR TOP 1.4 PREDICTION)

Facts: the MD of ABC Ltd wants to remove the auditor, who is unhappy with management's explanations and threatens to resign. Advise on (i) removal, (ii) resignation, (iii) a qualified report.

(i) Removal (s.140(1)). The auditor can be removed before his term ends only by a **special resolution** after the **prior approval of the Central Government**. **Procedure:** (1) Board resolution; (2) application to the CG in **ADT-2** with fees within **30 days** of the Board resolution; (3) the auditor is given a **reasonable opportunity of being heard**; (4) general meeting within **60 days** of the CG's approval to pass the special resolution, filed in MGT-14. Note: disagreement over explanations is no ground in itself; the CG must be satisfied. [SM 68]

(ii) If he resigns (s.140(2), (3)). He files **ADT-3** with the company and the ROC within **30 days**, stating the facts and reasons (with the CAG too for a Government company). Default: ₹50,000 or his fee, whichever is lower, + ₹500 a day up to ₹2 lakh. The Board fills the casual vacancy within **30 days**, and a general meeting must approve within **3 months**. His reasons become public, so resignation does not make the issues disappear. [SM 67–69]

(iii) Qualified report. He states the **reasons** for every qualification (s.143(4)). The Board must give its **explanations or comments on every qualification** in the Board's report (s.134(3)). The qualifications are **read at the general meeting** and are **open to inspection** by members (s.145). [SM 57–76]

Advice to the MD: removal is slow and needs Government approval and a hearing. The proper course is to answer the auditor's points. If the qualifications stand, the Board must explain them to the members.

MODEL ANSWER 2 · FRAUD REPORTING BY AUDITORS (DEC'25 Q5(a), 7 MARKS · NOW WITH THE JUN'26 AMENDMENT)

1. **Provision:** under s.143(12), if the auditor, in the course of his duties, has **reason to believe** that a fraud of the prescribed amount is being or has been committed in the company **by its officers or employees**, he reports it to the **Central Government** within **60 days** of knowing. [SM 73]
2. **Step 1:** he sends his report to the **Board or Audit Committee immediately**, seeking their reply or observations within **45 days**. [SM 73]
3. **Step 2:** within **15 days** of their reply, he forwards his report, their reply and his comments to the CG. If no reply comes in 45 days, he sends his report with a note saying so. [SM 73]
4. **Form:** a statement in **ADT-4**, filed **electronically** on the MCA portal (the postal mode was discontinued by the 2025 amendment, Jun'26 supplementary). [Supp Jun'26 p.3]
5. **Protection and extension:** a report made in **good faith** breaches no duty. The same applies to **cost auditors, secretarial auditors and branch auditors**. [SM 73–75]
6. **Penalty for not reporting:** ₹1 lakh (unlisted) or ₹5 lakh (listed). Frauds below the CG threshold are disclosed in the **Board's report**. [SM 57–74]

THE AUDITOR MCQ CASE SET (DEC'25 Q1 (i)–(iv); ICMAI MQP REPEATED IT): HIGHWAY LTD

Facts: three State Governments hold **15% each (45%)**. Mr Parimal, CA, was appointed auditor by ordinary resolution; members objected that the CAG's approval and a special resolution were needed. He resigned mid-term; the Board appointed another auditor 10 days later.

Question	Answer and reason
Is it a Government company, so that the CAG appoints?	**No**: Governments hold 45%, below the **51%** needed. Members appoint at the AGM by ordinary resolution; the objection fails. [SM 68]
He resigned without ADT-3: penalty?	₹50,000 or his fee (₹2 lakh), **whichever is lower = ₹50,000**, + ₹500 a day up to ₹2 lakh. [SM 69]
The new auditor owes the company ₹2 lakh (MQP: ₹1.5 lakh): eligible?	**Yes**: the debt limit is **₹5 lakh** (Dec'25 option A). [SM 70]
Charged with a ₹1.5 crore fraud, not convicted: can he continue?	**Yes, unless convicted**: the bar is a conviction for fraud within **10 years** (option B). [SM 70]
Board appointed the new auditor after a resignation	valid if done within **30 days**, but a **general meeting must approve within 3 months**. [SM 67]

⚠ Q(iv) on fees for incomplete work turns on the terms of appointment; the SM has no rule. Our reading: option D, reasonable fees for work done, subject to the terms. Check against ICMAI's suggested answer.

SM exercise and MCQ-bank questions on 1.4, with answers (SM 162–172)

27 practising CA as auditor: term	**5 years**	34 private co internal auditor if turnover	**₹200 cr or more**
28 Directors' Responsibility Statement is part of	**Board's report**	35 auditor's report is addressed to	**shareholders**
29 NFRA	**National Financial Reporting Authority**	36 CARO 2020 effective from	**FY 2020-21 (1.4.2020)** ⚠
30 statutory auditor shall be ★	**practising CA**	37 first auditor appointed by	**Board of Directors**
31 Board's report signed by ★	**chairman with Board's authority**	38 extra service the auditor may render	**none of internal audit, book-keeping, investment advice**
32 CAG	**Comptroller and Auditor General**	79 statutory auditor can also be	**tax auditor**
33 FS filed with ROC within	**30 days of AGM**	89 books inspected by ★	**any director**
90 accounting standards prescribed by	**Central Government**	bank 231: OPC files FS within	**180 days (6 months)**
bank 259: notice of auditor's appointment	**ADT-1**	bank 263: casual-vacancy auditor holds till	**next AGM**
bank 264: CAG fills casual vacancy within	**30 days**	bank 265: resigning auditor files	**ADT-3 in 30 days**
bank 304: DRS is in section	**134(3)(c)**	bank 303: non-compliance with AS: disclose	**deviation, reasons, effect**

R Revision: every number in 1.4

Rule	Number
books elsewhere in India: notice to ROC	7 days
foreign records: returns to RO / director's request	quarterly / 15 days
preserve books for	8 FYs
s.128 fine	₹50,000–₹5 lakh
first FY if incorporated on/after	1 January
s.129 contravention: jail / fine	1 yr / ₹50,000–₹5 lakh
s.129A results filed within	30 days
Board evaluation statement: public paid-up	₹25 crore
s.134 penalty: company / officer	₹3 lakh / ₹50,000
POSH complaints pending more than	90 days
FS copies before meeting / s.8 company	21 / 14 days
shorter notice consent	95%
e-mode: net worth / turnover above	₹1 cr / ₹10 cr
s.136 penalty: company / officer	₹25,000 / ₹5,000
s.137 filing after AGM / OPC	30 days / 180 days
late filing with fees up to	270 days
s.137 penalty company: base / day / max	₹10,000 / ₹100 / ₹2 lakh
s.137 officers: maximum	₹50,000
internal audit (unlisted public): capital / turnover	₹50 cr / ₹200 cr
internal audit: bank loans / deposits	> ₹100 cr / ₹25 cr
internal audit (private): turnover / loans	₹200 cr / > ₹100 cr
CSR: net worth / turnover / profit	₹500 / ₹1,000 / ₹5 cr
CSR spend / unspent fund / special a/c	2% / 6 months / 30 days

Rule	Number
first auditor: Board / EGM	30 / 90 days
auditor term: 1st AGM till	6th AGM
ADT-1 filed within	15 days
rotation: individual / firm	1 × 5 yrs / 2 × 5 yrs
rotation covers: unlisted public / private / borrowings	₹10 cr / ₹20 cr / ₹50 cr
cooling-off / break counts as rotation	5 yrs / 5 yrs
casual vacancy: Board / GM if resignation	30 days / 3 months
CAG: appoint / first auditor / casual	180 / 60 / 30 days
deemed Government company	51%
removal: ADT-2 within / GM within	30 / 60 days
resignation ADT-3 within	30 days
no ADT-3: penalty / day / max	₹50,000 or fee / ₹500 / ₹2 lakh
special notice if term not completed	5 or 10 yrs
relative's holding / correct within	₹1 lakh / 60 days
auditor's debt / guarantee limit	₹5 lakh / ₹1 lakh
audit ceiling / private-co exclusion	20 / < ₹100 cr
fraud conviction bar	10 years
fraud: Board reply / to CG / overall	45 / 15 / 60 days
fraud non-reporting: unlisted / listed	₹1 lakh / ₹5 lakh
CAG supplementary audit within	60 days
s.147 company / officers	₹25,000–₹5 lakh / ₹10,000–₹1 lakh
auditor: fine or × fee / wilful	₹5 lakh or 4× / ₹25 lakh or 8×
CARO private-co exclusion: capital / loans / revenue	₹1 cr / ₹1 cr / ₹10 cr
CARO: discrepancy / WC limit / overdue	10% / ₹5 cr / 90 days
CARO: dues arrears / Nidhi ratio	6 months / 1:20
small company (Dec'26 supp.)	₹10 cr / ₹100 cr

1.6 · Board Meetings and Procedures

P13 · Module 1 · Companies Act, 2013 · s.118, 173–177, 182

SM pp. 116–132 (17 pages). 57 marks in 7 papers, with a long question in 5. **Zero in Jun'26**, after three halves in Jun'25 and two in Dec'25: **the strongest "due back" topic in P13.**

Paper	What was asked	Marks
Jun'23	MCQ: Board quorum · Q4(a)(ii) **120-day gap**; approving FS by video meeting; audit committee chairman abroad	2 + 4
Dec'23	Q4(a) the Board met **3 times**; the 4th failed for want of quorum: any contravention?	7
Jun'24	MCQ: AGM quorum (s.103, not in the SM) · Q3(a) **quorum cases**: 8 of 10, a section 8 company, an interested director with articles fixing 5	2 + 7
Jun'25	Q3(a) **quorum cases again**: 3 of 11; interested directors · Q5(a) **audit committee** duties; are its recommendations binding? · Q6(a) **registers**: list ten	7 + 7 + 7
Dec'25	Q3(a) **shorter notice**, no ID present, venue for a VC meeting · Q4(a) Sunday 8 pm meeting in Mumbai (RO Chennai), notice to a director in London, VC link drops	7 + 7
Jun'26	nothing	0

HOW IT IS EXAMINED

- **Calculation cases on quorum** (asked twice; in both ICMAI's MQP and PTP). Learn the **quorum calculator** on page 3 and the model answer.
- **Notice, shorter notice and video conferencing** cases: 4 times. Answer each sub-question as provision → facts → conclusion.
- Theory 7-markers: **audit committee**, **registers**. Not yet asked: circular resolutions, minutes, directors' duties, and **political contributions** (ICMAI PTP).

DEC'26: OUR PREDICTION (A PREDICTION, NOT A PROMISE)

Tier **A**. Expected **7–14 marks**. Our model gives it the **highest chance (100%) of being the 4-MCQ case set** in Q1, plus a 7-mark case. Likely questions:

1. Quorum with interested directors: 3 present of 11 (MQP + PTP)
2. Notice, shorter notice, ID's role, video conferencing (s.173(3)) (MQP)
3. Political contributions: conditions, limits, disclosure (s.182) (PTP)
4. Circular resolution (s.175) / minutes (s.118) / duties (s.166): never asked yet

MAP OF THIS PACK

1. How often the Board meets (s.173(1)) ★★
2. Video conferencing and notice (s.173(2)–(4)) ★★★
3. Quorum (s.174) + calculator ★★★
4. Resolution by circulation (s.175) ★
5. Minutes (s.118, 119) ★
6. Registers (s.94) ★★
7. Board composition and committees; audit committee and vigil mechanism (s.177) ★★
8. Duties (s.166) and liabilities of directors ★
9. Political contributions (s.182) ★★
10. Model answers · numbers · SM MCQs

1 How often the Board must meet (s.173(1))

FIRST MEETING
within **30 days** of incorporation [SM 116]

→

EVERY YEAR
at least **4 meetings** [SM 116]

→

GAP
no more than **120 days** between two consecutive meetings [SM 116]

→

OPC / SMALL / DORMANT
at least **one meeting in each half** of the calendar year, at least **90 days** apart (not for an OPC with one director) [SM 116]

Under the Secretarial Standards, committees meet as often as needed, and **independent directors meet separately at least once a calendar year** (SM MCQ 56). A company may convene a meeting at **any time and place, on any day except a national holiday** (26 January, 15 August, 2 October, and days the CG declares). [SM 116–118]

⚠ NOT IN THE SM: A MEETING WITHOUT QUORUM (needed for Dec'23 Q4(a))

Under **s.174(4)**, if a Board meeting cannot be held for want of quorum, then unless the articles say otherwise it **stands adjourned to the same day next week**, at the same time and place (or the next day if that is a national holiday). **Dec'23 answer:** the 4th meeting could have been held on the adjourned date. With only 3 meetings in the year, **s.173(1) (at least 4 meetings) is contravened**, and the 120-day gap may also have been crossed.

2 Video conferencing and notice of the meeting (s.173(2)–(4))

ATTENDING BY VIDEO (s.173(2), RULE 3)

- Directors may attend **in person, by video conferencing, or by other audio-visual means** that can record and recognise participation and record and store the proceedings with date and time. [SM 116–117]
- The company arranges against connection failure. The **chairperson and CS** ensure security and identification, proper equipment, recording and minutes, storage of recordings (at least until that year's audit is complete), that only the director concerned attends, and that everyone can see and hear clearly. [SM 117]
- A differently-abled director may ask to bring a person along. [SM 117]
- Directors on video **count for quorum**. [SM 118]

VENUE AND INTIMATION (RULE 3)

- The notice states the **video option** and how to use it. A director who wants it tells the chairperson or CS in advance; a declaration at the start of the calendar year is valid for **one calendar year**. If he says nothing, he is **assumed to attend in person**. [SM 117–118]
- **Venue (Dec'25 Q3(a)(iii)):** a notice offering video participation must name a **venue**, and that is the place where **all recordings of the proceedings are made**. [SM 118]

⚠ "MATTERS THAT CANNOT BE DONE BY VIDEO" (Jun'23 Q4(a)(ii); one of our Dec'26 picks)

The SM says only that the CG "may restrict" matters for video meetings. That list (Rule 4: approving annual FS and the Board's report, prospectus, mergers, etc.) was **omitted in 2021**, so today **any matter, including approving the annual FS, may be taken up by video**. In an answer, state the s.173(2) power, then that the restricted list no longer applies. [SM 117]

Notice of a Board meeting, s.173(3) + SS-1 [SM 117–118]

THE RULE

- At least **7 days' notice in writing** to **every director** at his registered address, **in India or abroad**, by **hand, post or electronic means**. A director abroad (Dec'25 Q4(a)(ii)) gets it the same way, usually by e-mail. [SM 117]
- **Shorter notice** for **urgent business** only: at least **one independent director** (if the company has one) must be present. If none is present, decisions are **circulated to all directors** and become **final only when at least one ID ratifies**. The notice must say it is at shorter notice. [SM 117]
- **Penalty** for failing to give notice: **₹25,000** on every officer whose duty it was. [SM 118]

SS-1 DETAILS

- sent by the **means the director specified**; issued by the **CS** (or a director or authorised person) [SM 118]
- states the **serial number, day, date, time and full address of the venue**, plus the video option and a contact [SM 118]
- **agenda and notes on agenda** go with the notice; meetings and items are **serially numbered**; **proof of sending** is kept [SM 118]
- any time, any place, any day except a **national holiday** [SM 118]

3 Quorum (s.174) and the quorum calculator

WHAT IT IS The **quorum** is the minimum number of directors who must be present for business to be validly done. Without it, the meeting is not properly held. [SM 118]

- **One-third of total strength, or 2, whichever is higher** (SM MCQ 57 = Jun'23 MCQ). [SM 118]
- A **fraction counts as one** (3.33 → 4). [SM 119]
- **Total strength excludes vacant places.** [SM 119]
- Directors on **video count**. [SM 118]
- An **interested director** (s.184) does not count for that item. If interested directors are **two-thirds or more of total strength**, the quorum is the **non-interested directors present, at least 2**. [SM 119]
- If directors fall below the quorum, the **continuing directors** may act **only to bring the number up to the quorum or to call a general meeting**. [SM 119]
- **Section 8 company: 8** members or **25%** of total strength, **whichever is less**, but not less than **2**. [SM 119]
- Not for an OPC with one director. The quorum must be present **throughout** the meeting (SS-1). A committee needs **all** its members unless provided otherwise. [SM 119]

1 · TOTAL STRENGTH sanctioned directors minus vacancies → **2 · ⅓, ROUND UP** compare with 2; take the higher. Section 8: lower of 8 and 25% (minimum 2) → **3 · ARTICLES** if the articles fix a higher number, use it → **4 · PER ITEM** leave out interested directors present. If interested ≥ ⅔ of strength: quorum = disinterested present (≥ 2) → **5 · VERDICT** meeting valid? each item valid? if not, adjourn or defer the item

Exam case (Jun'24 Q3(a), Jun'25 Q3(a), MQP, PTP)	Working	Verdict
public company, 10 directors, 8 present	10/3 = 3.33 → **4** (higher than 2); 8 ≥ 4	**valid**
section 8 company, 8 directors, 3 present	lower of 8 and 25% × 8 = 2 → **2**; 3 ≥ 2	**valid**
12 directors, 9 present, articles fix 5, one present director interested in an item	Act: 12/3 = **4**; articles raise it to **5**. For that item: 9 − 1 = 8 disinterested ≥ 5	**valid**
11 directors, 3 present, none interested	11/3 = 3.67 → **4**; 3 < 4	**no quorum**: adjourned
11 directors, 5 present; only 2 present are not interested in one item	quorum **4** (interested are fewer than ⅔ of 11 = 7.33, so the normal rule applies). For that item only **2** count: below 4	meeting valid; **that item deferred**

If the facts said 8 or more of the 11 directors were interested (two-thirds or more), the special rule applies and the 2 disinterested present would be enough.

4 Resolution by circulation (s.175): never asked yet

HOW IT IS PASSED

1. The **draft resolution with papers** is circulated to **all directors** (or committee members) at their registered addresses, by hand, post, courier or electronic means. [SM 119]
2. It is **approved by a majority** of directors entitled to vote. [SM 119]
3. If **one-third** of directors want it decided at a meeting, the chairperson must put it to a meeting (SM MCQ 58). [SM 119]
4. It is **noted at the next Board meeting** and made part of its minutes. [SM 120]
5. SS-1: directors get **at most 7 days** from circulation to respond. [SM 120]

NOT BY CIRCULATION (SS-1 Annexure A, selected)

General: noting committee minutes · approving **FS and the Board's report** · compliance certificate · list of applicable laws · appointing secretarial and internal auditors. **Specific:** borrowing (other than debentures), investing, loans and guarantees, **political contributions**, calls, MD/WTD pay, KMP appointment, MD of two companies, casual vacancies, non-arm's-length RPTs, selling subsidiaries, material assets, payment for loss of office. **Corporate actions: buy-back** (SM MCQ 63), issue of securities, mergers, diversification, takeovers. [SM 120–121]

5 Minutes (s.118, s.119)

- Minutes of every **general meeting**, **postal ballot** resolution, **Board meeting** and **committee meeting** are prepared, signed and kept within **30 days** of the meeting, in books with **consecutively numbered pages**. [SM 121]
- They contain a **fair and correct summary** and all **appointments**. Board minutes also record the **directors present** and the **dissenting directors**. [SM 121–122]
- The **chairman** may leave out matter he considers **defamatory, irrelevant or immaterial, or detrimental** to the company; his discretion is absolute. [SM 121–122]
- Signed by the chairman of **that meeting or the next** (SM MCQ 59). Draft minutes are circulated to directors within **15 days**. Board minutes are kept **permanently** at the **registered office** (SM MCQs 60, 61). [SM 121–122]
- Minutes are **evidence**: the meeting is deemed duly held and appointments valid, until the contrary is proved. Reports of general meetings may not be circulated at the company's expense. [SM 122]
- **Secretarial Standards** (SS-1 Board, SS-2 general meetings) must be observed (s.118(10)). [SM 122]
- **s.119:** general meeting minutes are kept at the RO and open to **members free of charge**, at least **2 hours** each business day. A copy is given within **7 days** of a request, on payment of fees. [SM 122]
- **Default:** company **₹25,000**, each officer **₹5,000**. [SM 122]

6 Registers to be maintained (Jun'25 Q6(a): "enumerate any ten")

Register	Section · form	Register	Section · form
investments not held in the company's name	187(3) · MBP-3	members (+ index)	88(1)(a) · MGT-1
deposits	73 · Rule 14	debenture holders (+ index)	88(1)(b) · MGT-2
securities bought back	68(9) · SH-10	beneficial owners	88
charges	85(1) · CHG-7	foreign register of members	88 · MGT-3
contracts in which directors are interested	189(1) · MBP-4	copies of annual returns	94(1)
directors and KMP	170(1)	minute books	118
loans, investments, guarantees	186(9) · MBP-2	postal ballot	110
renewed and duplicate share certificates	Rule 6 · SH-2	books of account; cost records	128
sweat equity shares	54 · SH-3	[SM 123]	

Where: at the **registered office**. They may be kept elsewhere in India where **more than 10%** of members live, by **special resolution**, with an advance copy to the ROC. **Inspection:** members, debenture holders and beneficial owners **free**; others for a fee; extracts free, copies for a fee. Electronic maintenance is allowed; **SS-4** on registers is recommendatory. [SM 123–124]

Powers and restrictions (s.179, s.180) repeat on SM 124–126: see **1.5 part 7**. One extra point here: a **borrowing beyond the s.180 limit** is not valid **unless the lender proves** he lent in **good faith** without knowing the limit was exceeded. [SM 126]

7 Board composition, committees, audit committee and vigil mechanism (s.177) · Jun'25 Q5(a)

LISTED COMPANY BOARD (LODR Reg 17)

- A mix of executive and non-executive directors, with at least **one woman** and at least **50% non-executive**. [SM 126]
- **Non-executive chairman:** at least **one-third** IDs. **Executive chairman:** at least **half** IDs (SM MCQ 64). [SM 126]
- At least **4 Board meetings** a year, gap at most **120 days**. A director may sit on at most **10 committees** and chair at most **5**. Disclosures: an MD&A report, a corporate governance report, and the **auditor's certificate** on governance compliance. [SM 128]

COMMITTEES (SM table)

Committee	Composition	Chair
Audit	at least **3**, majority IDs	ID
Nomination & Remuneration	at least **3**, all non-executive, at least **50%** IDs	ID
Stakeholders Relationship	as the Board decides	non-executive
Risk Management	majority Board members	Board member
CSR (s.135)	at least **3**, at least one ID (see 3.4)	–

[SM 127]

Audit committee, s.177 [SM 128–129]

WHO MUST HAVE ONE · COMPOSITION

- Every **listed company**, and every **public company** with paid-up capital ≥ **₹10 crore**, OR turnover ≥ **₹100 crore**, OR loans, debentures and deposits above **₹50 crore** (per the last audited FS). [SM 128]
- At least **3 directors**, **IDs forming a majority** (not needed for section 8 companies). The majority, **including the chairperson**, must be able to **read and understand financial statements**. Its composition is disclosed in the Board's report. [SM 129]

Are its recommendations binding? No: they are **recommendatory**. But if the Board **does not accept** one, it must disclose that in the **Board's report with reasons** (MCQ bank 141). [SM 129]

TERMS OF REFERENCE (the 7-mark list)

1. recommend the **appointment, remuneration and terms of the auditors** (Government company: remuneration only, as the CAG appoints)
2. review and monitor the auditor's **independence, performance and audit effectiveness**
3. **examine the FS** and the auditor's report
4. **approve RPTs** and later changes (omnibus approval allowed)
5. scrutinise **inter-corporate loans and investments**
6. **valuation** of undertakings or assets where needed
7. evaluate **internal financial controls and risk management**
8. monitor the **end use of funds** raised through public offers

[SM 129]

Powers: it may **investigate** these matters, take outside professional advice, and have full access to records. It may call for the **auditors' comments** on internal control, audit scope and the FS, and discuss them with internal and statutory auditors (MCQ bank 140). **Auditors and KMP may be heard** when it considers the audit report, but **cannot vote**. [SM 129]

VIGIL MECHANISM s.177(9) + RULE 7

Who: listed companies, companies **accepting public deposits**, and companies that borrowed above **₹50 crore** from banks or PFIs. **What:** directors and employees report **genuine concerns**, with safeguards against victimisation and **direct access to the audit committee chairperson** in exceptional cases. It is disclosed on the website and in the Board's report. The audit committee oversees it (conflicted members recuse); where there is no audit committee, the Board **nominates a director** for the role. Repeated frivolous complaints may lead to action, including **reprimand**. [SM 130]

8 Duties (s.166) and liabilities of directors: never asked yet

s.166: A DIRECTOR SHALL …

a. act according to the **articles**, subject to the Act
b. act in **good faith** to promote the company's objects, in the best interests of the **company, employees, shareholders, community and the environment**
c. use **due and reasonable care, skill and diligence**, and **independent judgment**
d. avoid **conflicts of interest**, direct or indirect
e. not seek **undue gain** for himself, relatives, partners or associates
f. not **assign his office**

Directors are **not agents of the shareholders**; even the group that nominated a director cannot instruct him. *Milan Sen v. Guardian Plasticate*: whether the company needs more capital (a rights issue) is for the directors, and courts do not interfere without mala fides. [SM 130–131]

LIABLE WHEN …

- **To outsiders:** contracts **ultra vires** the company or beyond their authority, or made in their own name · a misleading **prospectus** · **fraud** · **irregular allotment** · a court order for **fraudulent trading**. [SM 131–132]
- **To the company: negligence** causing loss · ultra vires acts · illegal acts or **breach of trust**. [SM 132]
- **To shareholders:** as **trustees** of the company's property and powers, they make good losses from breach of trust or negligence. [SM 132]
- **Statutory defaults** under the Act. [SM 132]

9 Political contributions (s.182) · ICMAI PTP Q3(a)

THE RULE AS THE SM GIVES IT

- A company may contribute, directly or indirectly, to a **political party registered under s.29A** of the Representation of the People Act, 1951. [SM 132]
- **Cannot contribute:** a **Government company**, or a company **less than 3 financial years old**. [SM 132]
- Only by a **resolution at a Board meeting** (not by circulation). [SM 132]
- "Contribution" includes donations or payments likely to affect public support for a party, and spending on **politically connected publications**. [SM 132]
- **Disclose** the amounts contributed in the **profit and loss account**. [SM 132]

⚠ THE SM SAYS "NO LIMIT": THAT CHANGED IN 2024

The 2017 amendment removed the old cap. In **February 2024** the Supreme Court (*Association for Democratic Reforms v. Union of India*, the electoral bonds case) **struck down that amendment**. That brings back the limit of **7.5% of the average net profits of the preceding three financial years**, and disclosure of the **party's name**. Write the SM rule, then add this update in one line. [SM 132]

10 Model answers: our top two Dec'26 questions on 1.6

MODEL ANSWER 1 · QUORUM CASE (JUN'25 Q3(a), REPEATED IN ICMAI'S MQP AND PTP) · 7 MARKS

Q. What is the quorum for a Board meeting? (1) Only 3 of 11 directors were present and none was interested. Is the meeting valid? (2) Of 11 directors, 5 were present, but only 2 of them were not interested in one transaction. How should the meeting deal with it?

Provision (s.174): the quorum is **one-third of the total strength or two directors, whichever is higher**; a fraction counts as one, and vacant places are excluded. Directors on video count. An **interested director** (s.184) is not counted for the item he is interested in. Where interested directors are **two-thirds or more of total strength**, the quorum is the non-interested directors present, provided they are at least two. The quorum must be present throughout (SS-1). [SM 118–119]

(1) Total strength 11 → 11/3 = 3.67 → **quorum 4**. Only 3 are present, so there is **no quorum**. The meeting is **not validly held**; no business can be done, and it stands adjourned (s.174(4)).

(2) The quorum is 4, and 5 are present, so the **meeting itself is valid**. For the transaction, only the 2 non-interested directors count. The interested directors present (3) are fewer than two-thirds of 11 (7.33), so the special rule does not apply and the normal quorum of 4 is needed. **2 < 4**, so **that transaction cannot be approved**; it is deferred to a meeting with enough disinterested directors. The interested directors must disclose their interest and stay out of the discussion (s.184).

Conclusion: (1) invalid, adjourned; (2) the meeting proceeds with other business; the interested transaction is deferred.

MODEL ANSWER 2 · NOTICE / SHORTER NOTICE / VIDEO CONFERENCE (DEC'25 Q3(a) + Q4(a)) · 7 MARKS

1. **Notice (s.173(3)):** at least **7 days' written notice** to every director at his registered address in India or abroad, by hand, post or electronic means. A director in **London** is served at his registered address there, normally **by e-mail**. [SM 117]
2. **Shorter notice:** allowed for **urgent business**, if the notice says so and **at least one independent director is present**. **Without an ID**, decisions may still be taken, but they are circulated to all directors and become **final only on ratification by at least one ID**. [SM 117]
3. **Venue, day, time:** under SS-1 a meeting may be held **at any time and place, on any day except a national holiday**. Sunday 5 January, 8 p.m., at a Mumbai hotel (RO in Chennai) is **valid**: it is not a national holiday, and there is no rule that the meeting must be at the RO. [SM 118]
4. **Video conference venue:** the notice must name a venue, and that is the place where the **recordings of the proceedings are made**. Here, the Mumbai venue. [SM 118]
5. **Quorum:** 14 posts, 2 vacant → strength **12** → quorum **4**. 7 attend (3 in person, 4 by video); video directors count. If the London link drops, **5 remain ≥ 4**, so the meeting continues validly. The quorum must exist **throughout**; the dropped directors are recorded as not present for later items. [SM 118–119]

SM exercise MCQs on 1.6, with answers (SM 166–171; ★ = asked in an exam)

57 Board quorum ★	**⅓ or 2, higher**	61 minutes kept at	**registered office**
58 circular resolution goes to a meeting if asked by	**one-third** of directors	63 buy-back authorised by Board	**only at a Board meeting**
59 Board minutes signed by	**chairman of that or the next meeting**	55 / 65 audit committee majority	**independent directors**
60 Board minutes preserved	**permanently**	56 IDs meet separately, a year	**once**
bank 140: audit committee may	**interact with statutory and internal auditors**	bank 141: its recommendation	**if not accepted, Board records reasons**

R Revision: every number in 1.6

Rule	Number
first Board meeting within	30 days
meetings a year / maximum gap	4 / 120 days
OPC, small, dormant: per half-year / gap	1 / ≥ 90 days
IDs meet separately	once a calendar year
video intimation valid for	1 calendar year
notice of Board meeting	7 days
shorter notice: IDs present	at least 1
penalty for no notice	₹25,000 per officer
quorum	⅓ or 2, higher
interested special rule at	≥ ⅔ of strength
section 8 quorum	8 or 25%, lower; ≥ 2
circulation: send to meeting if / reply within	⅓ / 7 days

Rule	Number
minutes kept within / draft circulated	30 / 15 days
GM minutes: inspection / copy within	2 hrs a day / 7 days
s.118 default: company / officer	₹25,000 / ₹5,000
registers elsewhere if members there exceed	10%
listed: women / non-executive	1 / 50%
IDs: non-exec / exec chairman	⅓ / half
committees: member / chair, at most	10 / 5
audit committee: paid-up / turnover / debt	₹10 cr / ₹100 cr / > ₹50 cr
audit / NRC committee size	≥ 3 / ≥ 3
NRC independent share	≥ 50%
vigil mechanism: bank borrowings above	₹50 crore
political contribution: company age	≥ 3 FYs

1.1 · Company Formation and Conversion P13 · Module 1 · Companies Act, 2013

SM pp. 3–33 (31 pages). 53 marks in 7 papers, asked in 6 of them, with a long question in 5. The Jun'26 long question was **private → public**, so the reverse, the LLP route or OPC is fresher.

Paper	What was asked	Marks
Jun'23	MCQs: foreign company definition; shifting the RO from one State to another	4
Dec'23	MCQ: RO moved to another ROC in the same State → Regional Director · Q4(b) **public → private: counting the 200 members**	2 + 7
Jun'24	MCQ: 35% holding but controls the Board → subsidiary · Q5(b) **constructive notice and indoor management, with exceptions**	2 + 7
Dec'24	MCQ: RO moved within the city → Board resolution · Q2(a) **OPC: nominee leaves India and withdraws; minor nominee; consequences**	2 + 7
Dec'25	MCQ: US company with no business in India · Q4(b) **not-for-profit consulting company: s.8 licence**	2 + 7
Jun'26	Q1 (i)–(iii) MCQ case: ultra vires contract, unauthorised borrowing (indoor management), prospectus misstatement · Q4(a) **private → public: procedure**	6 + 7

HOW IT IS EXAMINED

- **Conversion cases** (public ↔ private, LLP → company in ICMAI's MQP), **OPC**, **section 8** and the **three doctrines** (ultra vires, constructive notice, indoor management).
- **MCQs come from the SM exercise**: Jun'23 Q1(i) = SM MCQ 5; Jun'24 Q1(i) = SM MCQ 14; Dec'24 Q1(i) = SM MCQ 11; Dec'25 Q1(vi) = SM MCQ 92; Jun'23 Q1(v) = MCQ bank 96.
- **The SM is outdated in places** (OPC, conversion approval, small company): see the ⚠ boxes. The Dec'26 supplementary's **small company** limits are an ICMAI "Examination Point".

DEC'26: OUR PREDICTION (A PREDICTION, NOT A PROMISE)

Tier **A**. Expected **7–13 marks**: a 7-mark case plus 1–3 MCQs. Likely questions:

1. LLP converting into a company: procedure and effect (s.366) (MQP)
2. Start-up case: public or private, NRI investor, a section 8 company making profits (PTP)
3. Public → private: the 200-member count and approvals (Dec'23)
4. OPC nominee withdraws / minor nominee (Dec'24)

MAP OF THIS PACK

1. What a company is; lifting the veil ★
2. Kinds of companies ★★
3. One Person Company ★★
4. Incorporation, commencement, effect ★
5. Registered office ★★ (MCQs)
6. Memorandum, name, alteration ★
7. Articles; the three doctrines ★★★
8. Conversions: public ↔ private, LLP ★★★
9. Section 8 companies ★★
10. Foreign companies ★
11. Model answers · SM MCQs · numbers

1 What a company is, and lifting the corporate veil

WHAT IT IS A company is an **artificial, legal, juristic person, separate from its members, with perpetual existence**. Under s.2(20) it is a company incorporated under the Act or a previous company law. The Act has **29 chapters, 470 sections and 7 schedules**, and is administered by the **MCA** through the ROC, NCLT and NCLAT. [SM 3–4]

FEATURES

- **Separate legal entity**: *Salomon v. Salomon & Co.* [SM 4]
- **Limited liability**: up to the unpaid nominal value of shares, or the guaranteed amount [SM 4]
- **Perpetual succession**: "members may come and go" (*Gopalpur Tea Co.*) [SM 4]
- **Separate property**: shareholders do not own its assets (*Bacha F. Guzdar v. CIT*) [SM 4]
- **Transferable shares**: movable property, transferable as the articles provide (s.44) [SM 5]
- **Common seal optional** since 2015. Without a seal, documents are authorised by **two directors**, or a director and the CS [SM 5]

THE VEIL IS LIFTED (courts look at the people behind) ...

- trading with the **enemy** (test of control) · **taxes**, duties, stamps
- a subsidiary acting as the parent's **agent** (*Smith, Stone & Knight*)
- avoiding **welfare legislation** (*Workmen of Associated Rubber*)
- **fraud** or improper conduct · abuse for an unjust purpose
- **public policy** (*Connors v. Connors*) · **exchange control**, quasi-criminal cases
- using a company to **avoid legal obligations**
- *Estate Officer v. Esys IT* (SC 2016): a share transfer that was really a **prohibited sale of land**

[SM 5–6]

2 Kinds of companies

Basis	Kind and definition
Incorporation	**Statutory** (by a special Act, e.g. RBI, SBI, LIC; the Act applies only if that Act says so) · **Registered** (under this Act or earlier ones) [SM 7]
Liability	**Limited by shares** s.2(22): liability limited to the **unpaid amount** on shares · **by guarantee** s.2(21): the amount each member undertakes to contribute on winding up (similar to an LLP) · **unlimited** s.2(92): no limit [SM 7–8]
Members	**OPC** s.2(62): one member (part 3) · **Private** s.2(68): articles **restrict share transfers**, limit members to **200** (except OPC), and **prohibit public invitation**. Joint holders count as one; **employees and ex-employees who became members while employed are not counted** · **Public** s.2(71): not private; at least **7** members. A **subsidiary of a public company** is deemed public [SM 8–9]
Size	**Small company** s.2(85): a non-public company within the capital and turnover limits (⚠ new limits below). Not a holding or subsidiary company, a section 8 company, or one under a special Act [SM 9–10]
Control	**Subsidiary** s.2(87): the holding company **controls the composition of the Board**, OR controls **more than 50%** (SM: "one-half") of total voting power. *So 35% holding with the power to appoint the majority of directors = subsidiary (Jun'24 MCQ = SM MCQ 14).* · **Associate** s.2(6): **significant influence**, i.e. control of at least **20%** of share capital or of business decisions; includes a JV [SM 10–11]
Listing	**Listed** s.2(52): any securities listed. **Not counted as listed:** companies listing only privately placed NCDs or non-convertible redeemable preference shares, and public companies whose equity is listed only abroad [SM 10–11]
Others	**Government company** s.2(45): at least **51%** held by CG and/or SG(s), and its subsidiaries · **Foreign company** s.2(42) (part 10) · **Dormant** (s.455): formed for a future project or to hold an asset or IP, with **no significant accounting transaction** in the last **2 FYs**; applies to the ROC · **Nidhi** (s.406): mutual benefit; deposits from and loans to members only · **PFI** s.2(72): LIC, IDFC, UTI's specified company, notified institutions · **Section 8** (part 9) · **JV** (or a contractual JV without a company) · **Sectoral**: banking, insurance, electricity follow both the Act and their sector law · NBFC [SM 11–13]

PRIVATE vs PUBLIC (SM table)

Point	Private	Public
members	min 2, max 200	min 7, no max
directors	min 2, max 15	min 3, max 15 (more by special resolution)
public money	cannot raise	can raise
share transfer	restricted	free
name ends	"Pvt. Ltd."	"Ltd."

[SM 9]

Members below the minimum (s.3A): if a company carries on business for more than **6 months** below the minimum, every member who knows it is **severally liable for all debts** contracted in that period. [SM 9]

Large partnership (s.464, Rule 10): an association of more than **50** persons for gain must register as a company (except HUFs and professionals under special Acts). Otherwise it is an **illegal association**: fine up to **₹1 lakh**, personal liability, no legal existence. [SM 13]

Public sector: Government departments, statutory corporations, Government companies. **Joint sector** = Government holding **26–50%**. [SM 6]

DEC'26 SUPPLEMENTARY: SMALL COMPANY · COMPANIES (SPECIFICATION OF DEFINITION DETAILS) AMENDMENT RULES, 2025 · FROM 1 DEC 2025 · ICMAI "EXAMINATION POINT"

Small company = paid-up capital up to **₹10 crore** and turnover up to **₹100 crore**, with the usual exclusions (holding and subsidiary companies, section 8 companies, special-Act companies). **The SM's ₹4 crore / ₹40 crore are superseded.** [Supp Dec'26 p.2] [SM 10]

3 One Person Company (OPC) · Dec'24 Q2(a)

FEATURES AND RULES

- **One member**, a **natural person, Indian citizen**. It may be limited by shares, by guarantee, or unlimited. [SM 8]
- A **nominee** named in the memorandum becomes the member on the subscriber's **death or incapacity**. The nominee's **prior written consent** is filed with the ROC at incorporation. [SM 8–16]
- The nominee **may withdraw consent**. The member may **change the nominee** at any time by notice to the company, which tells the ROC. Changing the nominee is **not an alteration of the memorandum**. [SM 16]
- A person may not form **more than one OPC** or be a nominee in more than one. A person who becomes a member of a second OPC as a nominee must comply within **180 days**. [SM 16–17]
- **No minor** may be a member or nominee, or hold shares with beneficial interest. [SM 16]
- No **section 8** conversion; no **NBFI activity**, including investing in securities of a body corporate. [SM 16]
- At least **1** director, up to **15**. **No AGM**; FS signed by **one director**; **no cash flow statement**. "(One Person Company)" appears below its name. [SM 8–19]
- **Penalty** for breaking these rules: up to **₹10,000**, plus up to **₹1,000 a day**. [SM 17]

⚠ THE SM MIXES OLD AND NEW OPC RULES (2021 AMENDMENT)

On SM 8 the member and nominee must be "Indian citizen **and resident**", but on SM 17 the rule says Indian citizen "**whether resident in India or otherwise**". The 2021 amendment **removed the residency condition**, so **write the SM 17 version**. [SM 8–17]

SM 16(i) still says an OPC cannot convert voluntarily for **2 years** unless paid-up capital exceeds **₹50 lakh** or turnover exceeds **₹2 crore**. The same 2021 amendment **removed that lock-in and the forced conversion**; an OPC may now convert at any time. Write the SM figure and add the 2021 change. [SM 16]

Not in the SM, but needed for Dec'24 Q2(a): when the nominee withdraws, the member must **nominate another person within 15 days** of the withdrawal notice, with the new nominee's consent. The company then informs the ROC.

4 Incorporation, commencement of business, effect of registration

WHO MAY FORM (s.3) · FILING (s.7)

- **7** or more persons for a public company; **2** or more for a private company; **1** for an OPC. [SM 14]
- **File with the ROC:** MOA and AOA signed by all subscribers · **declaration by a professional** (advocate, CA, CMA or CS in practice) and by a director, manager or secretary named in the articles that the Act has been complied with · **declaration by each subscriber and first director**: not convicted, not guilty of fraud or misfeasance in the last **5 years**, documents true · correspondence address · particulars and ID proof of subscribers and first directors (with DIN), their other interests and **consent**. [SM 14–15]
- The ROC registers and issues the **certificate of incorporation** (SM MCQ 9) with the **CIN**. Copies are kept at the RO till dissolution. False information → **s.447** (fraud). [SM 15]
- **SPICe+ (INC-32)** with **e-MOA (INC-33)**, **e-AOA (INC-34)** and **AGILE-PRO-S (INC-35)**: name, incorporation, DIN, PAN, TAN, EPFO, ESIC, bank account, GSTIN, professional tax. **RUN** is now only for changing an existing name. A **Central Scrutiny Centre** checks STP e-forms (from 23 Mar 2021). [SM 15–16]

COMMENCEMENT (s.10A) · EFFECT (s.9, s.10)

- A company with share capital incorporated after the 2019 amendment may not start business or borrow until (a) a director files **INC-20A** within **180 days** of incorporation (verified by a CS, CA or CMA in practice) declaring that every subscriber has paid for his shares, and (b) it has verified its RO in **INC-22**. [SM 18]
- **Default:** company **₹50,000**; each officer **₹1,000 a day**, up to **₹1 lakh**. Without INC-20A in 180 days, the ROC may **strike off** the name. [SM 18]
- **Effect of registration:** a **body corporate** with perpetual succession, able to hold property, contract and sue in its own name. The **certificate is conclusive evidence** of incorporation. [SM 17]
- **s.10:** the MOA and AOA bind the company and members as if **signed by each member** (money due under them is a debt). They are a contract between the **company and members** and among **members inter se** (*Wood v. Odessa Waterworks*), but **not with outsiders**. [SM 17]
- **s.6:** the Act **overrides** the MOA, AOA, agreements and resolutions; anything inconsistent is void. [SM 20]

5 Registered office (s.12, s.13(4)): three past MCQs

Move	What is needed
within the same city, town or village	**Board resolution**; notice to the ROC within **15 days** (Dec'24 MCQ = SM MCQ 11) [SM 19]
outside local limits, same ROC	**special resolution** + notice to the ROC [SM 19]
to another ROC **in the same State**	special resolution + confirmation by the **Regional Director** (Dec'23 MCQ). The RD communicates within **30 days**; the company files it within **60 days**; the new ROC certifies within **30 days**. The certificate is conclusive; the change takes effect from its date [SM 19]
to **another State**	alter the memorandum by **special resolution + Central Government approval** (Jun'23 MCQ; MCQ bank 96). The CG decides within **60 days**, checking the creditors' consent or provision for debts. File the order with the ROC of each State; the new State's ROC issues a fresh certificate [SM 22–23]

Other s.12 rules: an RO from the **15th day** of incorporation; **verification within 30 days (INC-22)**. Name and RO address **painted outside every office**, in local characters too. Name, RO, **CIN**, phone, e-mail and website on **letters, bills and notices**. **Former names** of the last **2 years** shown too. Default: **₹1,000 a day**, up to **₹1 lakh**. [SM 18–20]

6 Memorandum, name and alteration of the memorandum (s.4, 13, 16)

CONTENTS OF THE MOA (s.4)

1. **Name** ending "Limited" or "Private Limited"
2. **State** of the registered office
3. **Objects**. A company whose activities change must change its name to match within **6 months**
4. **Liability**: limited by shares (unpaid amount) or guarantee (the amount, payable while a member or within **1 year** after ceasing)
5. **Capital**: amount and division; each subscriber takes at least **one share**
6. **OPC:** the nominee's name

The memorandum is a **public document** (**s.399**; MCQ bank 247): anyone contracting with the company is presumed to know it. [SM 20–21]

NAME RULES

- Not identical or too similar to an existing company's name; not an offence; not undesirable in the CG's view; nothing suggesting Government patronage without CG approval. [SM 21]
- **Reservation: 20 days** for a new company, **60 days** for a change of name. Extension for a new company: **40 days** (₹1,000), **60 days** (₹2,000 / ₹3,000). [SM 21–22]
- **Wrong information:** before incorporation, name cancelled and penalty up to **₹1 lakh**. After incorporation, the ROC may order a change within **3 months** by ordinary resolution, strike off, or petition for winding up. [SM 21]
- **s.16:** the CG may direct rectification of a name too like an existing company's or a registered trade mark within **3 months** (ordinary resolution); notice to the ROC within **15 days**. [SM 23]

Altering the memorandum (s.13): by **special resolution** · **name change** needs CG approval, except adding or deleting "Private" on conversion. Not allowed if the company is in default of filings or deposit/debenture repayment. Effective on the **fresh certificate** · **objects change** while prospectus money is unused: special resolution **by postal ballot**, published in one English and one vernacular newspaper and on the website, with an **exit offer to dissenting shareholders** under SEBI rules. The ROC registers it within **30 days** · no alteration has effect until **registered** · a guarantee company without share capital cannot give a non-member a share of profits. [SM 22–23]

7 Articles and the three doctrines · Jun'24 Q5(b), Jun'26 MCQ case

ARTICLES (s.5, 14, 15, 17)

- The **bye-laws** for management. They may contain **entrenchment** (provisions alterable only on conditions stricter than a special resolution), adopted on formation or later: **all members** agreeing in a private company, a **special resolution** in a public one. Notice to the ROC. [SM 23–24]
- **Model articles** apply to the extent not excluded or modified. [SM 24]
- **Alteration (s.14):** by **special resolution** (SM MCQ 94), including conversions. Filed with the ROC within **15 days** with the altered articles; once registered, valid as if original. [SM 24]
- **s.15:** every copy must show alterations; penalty **₹1,000 per copy**. **s.17:** copies of the MOA, AOA and s.117 resolutions to members within **7 days** of request; default **₹1,000 a day or ₹1 lakh, whichever is less**. [SM 24–25]

THE THREE DOCTRINES

- **Constructive notice:** the MOA and AOA are **public documents** (s.399), so an outsider is **deemed to know their contents**. He deals incompatibly at his peril; e.g. if the articles require two directors to sign a bill and only one signed, he cannot claim. It operates **only against the outsider**, not the company. [SM 25]
- **Indoor management** (*Royal British Bank v. Turquand*): an outsider may assume the **internal formalities have been complied with**. In Turquand, the bond was valid even though the authorising resolution had never been passed. It is the **limit on constructive notice**. *Jun'26: a bank lending without knowing that Board approval was missing → the company is liable (B).* [SM 25]
- **Ultra vires:** an act **beyond the objects** in the memorandum is void. An act beyond the **Board's** powers but within the company's may be **ratified** by the company, but an act ultra vires the **company cannot be ratified even by all members**. [SM 18]

⚠ EXCEPTIONS TO INDOOR MANAGEMENT: THE SM GIVES ONE, AN ANSWER NEEDS MORE

The SM's exception: no protection for information the outsider could reasonably have found with little effort. [SM 25] **The standard exceptions from case law (not in the SM):** (1) the outsider **knew** of the irregularity; (2) **suspicion** or negligence: circumstances should have put him on inquiry; (3) **forgery**: a forged document is void; (4) an act **outside the officer's apparent authority**; (5) the act is **void or illegal** in itself.

8 Conversions: public ↔ private, any class (s.14, s.18), LLP ↔ company (s.366) · Dec'23 Q4(b), Jun'26 Q4(a)

PRIVATE → PUBLIC (JUN'26 Q4(a))

1. pass a **special resolution** altering the articles to **remove the s.2(68) restrictions** (share transfer, 200 members, public invitation) [SM 9]
2. it **ceases to be private from the date of alteration**
3. file the alteration and printed altered articles with the ROC within **15 days**
4. delete "Private" from the name (no CG approval needed for that)
5. meet public company rules: at least **7 members, 3 directors**; the ROC issues a fresh certificate (s.18)

[SM 8–24]

PUBLIC → PRIVATE (DEC'23 Q4(b))

1. **special resolution** altering the articles to **add the s.2(68) restrictions**; binding on dissenters if bona fide and in the company's interest
2. members within **200** [SM 9] (count as in part 2: joint holders = 1; current and ex-employee members excluded)
3. **approval** on application (⚠ below)
4. file the alteration and approval order with the ROC within **15 days**; add "Private" to the name

[SM 8–24]

⚠ "APPROVAL OF THE TRIBUNAL" OR "OF THE CENTRAL GOVERNMENT"? THE SM SAYS BOTH

SM 13 says the **Tribunal**; SM 24 says the **Central Government**. The 2019 amendment moved this to the **Central Government** (exercised by the **Regional Director**). **Write the Central Government (Regional Director).** [SM 13–24]

s.18 (any class to another): alter the MOA and AOA, apply to the ROC, who **closes the former registration** and issues a **fresh certificate**. **Debts, liabilities, obligations and contracts** from before conversion are **unaffected**. [SM 26] The SM lists the possible conversions: private ↔ public, OPC → private/public, private → OPC, section 8 → other, LLP → company, private or unlisted public → LLP. [SM 30]

LLP (OR FIRM) → COMPANY, s.366 + AUTHORISED TO REGISTER RULES (MQP Q4(b))

1. partners' meeting: name (same name + "Ltd" or "Pvt Ltd"; valid **60 days**) and authority to act [SM 30]
2. **DSC and DIN** for the future directors [SM 31]
3. **advertisement** in a local and a national newspaper; **NOC** from the ROC where the LLP is registered [SM 30]
4. file **URC-1** with: a list of partners (as on a day not more than **6 clear days** before applying) and their shares (cash / non-cash); first directors' particulars and consent; the partnership deed and registration certificate (for a firm); **consent or NOC of all secured creditors**; **written consent of the majority** of members at a general meeting [SM 31–33]
5. at least **2 members**; with fewer than **7** it registers as a **private company** (the old minimum of 7 partners was relaxed in 2017) [SM 30–31]

COMPANY → LLP (LLP Act s.58, Schedules III–IV)

- Only a **private company** or an **unlisted public company**. [SM 31]
- Board resolution; **written consent of all shareholders**; name approval in **RUN-LLP** (with the Board resolution). [SM 31–32]
- LLP agreement: name, partners and designated partners, contribution, profit share, rights and duties, business, rules. Filed in **Form 3** within **30 days**. [SM 32]
- Apply in **Form 18** with a statement of shareholders and an **auditor-certified statement of assets and liabilities**. [SM 32]
- *SM MCQ 16: after converting into an LLP, intimation to the ROC within **15 days**.*

9 Section 8 (not-for-profit) companies · Dec'25 Q4(b), ICMAI PTP case

WHEN THE CG LICENSES IT

a. its **objects**: commerce, art, science, sports, education, research, social welfare, religion, charity, environment, or similar
b. it **applies its profits or income only to those objects**
c. it **prohibits dividends** to members (SM MCQ 12; MCQ bank 301)

The CG then licenses it to register **without "Limited" / "Private Limited"** in its name. Apply in **INC-12** with the MOA (**INC-13**), a declaration (**INC-14**) and **3-year** income and expenditure projections. An existing company may also apply (INC-12, with past FS and audit reports). [SM 26–27]

CONSEQUENCES

- It has all the privileges and obligations of a limited company; a **firm may be a member**. [SM 26]
- It may **alter its MOA or AOA only with prior CG approval**; it converts into another kind only on prescribed conditions. [SM 26]
- **Licence revoked** if its affairs are run fraudulently, against its objects, or against the public interest. It then adds "Ltd"/"Pvt Ltd", and may be **wound up** or **amalgamated** with another section 8 company. [SM 27]
- **Surplus assets** on winding up go to another section 8 company with similar objects, or are sold with the proceeds credited to the **Rehabilitation and Insolvency Fund** (s.269). It may **merge only with section 8 companies** with similar objects. [SM 27]
- **Penalty:** company **₹10 lakh to ₹1 crore**; directors and officers **₹25,000 to ₹25 lakh**; if fraud, **s.447**. [SM 27]
- **Dec'25 answer in brief:** earning only "marginal profits" does **not** make it non-profit. It needs the **three conditions in its MOA and a CG licence**, and it may operate pan-India from its RO. Profits are allowed, but **never distributed**.

10 Foreign companies (Chapter XXII, s.379–393)

DEFINITION AND THE MCQs

- **s.2(42):** a company or body corporate **incorporated outside India** that (a) has a **place of business in India**, itself or through an agent, physically or electronically, and (b) conducts any business activity in India in any other manner. [SM 11–27]
- **MCQ key (SM MCQ 5 = Jun'23):** "**either (a) or (b)**". A US company doing business only in the USA is **not** a foreign company, but becomes one once it starts business in India (**both**: SM MCQ 92 = Dec'25). An Indian company 100% owned by a UK company is an **Indian company** (SM MCQ 13). Chapter **XXII** (SM MCQ 17).
- **s.379:** if Indian citizens or Indian companies hold at least **50%** of its paid-up capital, it complies with Chapter XXII **as if incorporated in India**. [SM 28]
- Inspection and investigation (Chapter XIV) apply. It may **merge** with an Indian company (or vice versa) with **RBI's prior approval** (s.234(2)). If it stops business in India, it may be wound up as an **unregistered company** (s.376). [SM 27–28]

COMPLIANCE

- **s.380:** within **30 days** of setting up a place of business, file: its charter or MOA/AOA (with an English translation), its principal office address, directors and secretary, **persons resident in India authorised to accept service**, its principal place of business in India, earlier openings and closings, and a declaration that no director or representative is convicted or debarred. Alterations within **30 days**. [SM 28]
- **s.381:** every **calendar year**, a balance sheet and P&L (English translation) and a list of Indian places of business, filed with the ROC. [SM 28–29]
- **s.382:** display its name and **country of incorporation** outside every office (in English and the local language) and on letters and notices; state limited liability where it applies. [SM 29]
- **s.383:** service on the person registered under s.380, by post or electronically. Debentures (s.71), annual return (s.92), books in India (s.128) and charges (Chapter VI) also apply. [SM 29–30]

11 Model answers

MODEL ANSWER 1 · PUBLIC → PRIVATE: COUNTING THE 200 MEMBERS (DEC'23 Q4(b)) · 7 MARKS

Facts: KFR Ltd (public) has 230 members: directors and relatives 50; employees 15; ex-employees who got shares while employed 10; 5 couples holding jointly (10 persons); others 145. The Board wants to convert it into a private company. Must the number of members be reduced?

Provision: a private company's articles limit members to **200** (s.2(68)). **Joint holders count as one member**. **Employees**, and **ex-employees who became members while employed**, are **not counted**. Conversion needs a **special resolution** altering the articles and **Central Government (RD) approval**, with the order filed within 15 days (s.14). [SM 8–24]

Group	Persons	Counted	Why
directors and relatives	50	50	counted like any member
employees	15	0	excluded
ex-employees (shares allotted while employed)	10	0	excluded
5 joint-holding couples	10	5	joint holders = one member
others	145	145	counted
total	**230**	**200**	**exactly at the limit**

Conclusion: the members for the s.2(68) count are **200**, which is **within the limit**. **No reduction is needed.** KFR may convert by special resolution, with the altered articles adding the private-company restrictions, CG (RD) approval, filing with the ROC, and "Private" added to its name.

MODEL ANSWER 2 · OPC NOMINEE CASE (DEC'24 Q2(a)) · 7 MARKS

Facts: Gautam formed an OPC with his brother Rohit as nominee. Rohit moved permanently to Dubai and withdrew his nomination. (i) What must Gautam do, and by when? (ii) Can he nominate his minor son? (iii) What if he fails to nominate?

1. **Law:** an OPC's memorandum must name a **nominee** who becomes the member on the subscriber's death or incapacity; the nominee gives written consent and **may withdraw it**. The member may change the nominee by notice to the company, which informs the ROC; this is not an alteration of the memorandum. The member and nominee must be **natural persons and Indian citizens**; residency is **no longer required** (SM 17, 2021 rules). [SM 8–17]
2. **(i)** Rohit's withdrawal is valid. Gautam must **nominate a new person, with that person's written consent, within 15 days** of the withdrawal notice, and give notice to the OPC, which informs the ROC. (Moving to Dubai alone would not have disqualified Rohit after 2021, as long as he is an Indian citizen.)
3. **(ii) No.** A **minor cannot be a member or nominee** of an OPC. [SM 16]
4. **(iii)** The OPC and every officer in default are liable to a penalty of up to **₹10,000**, plus up to **₹1,000 a day** while the default continues. [SM 17]

MODEL ANSWER 3 · LLP CONVERTING INTO A COMPANY (ICMAI MQP Q4(b)) · 7 MARKS

Under **s.366** and the Companies (Authorised to Register) Rules, an LLP (or firm) may register as a company. Steps: (1) partners resolve on the **name** (the LLP name plus "Ltd"/"Pvt Ltd", valid 60 days) and authorise a partner; (2) obtain **DSC/DIN** for the future directors; (3) **advertise** in a local and a national newspaper and obtain an **NOC** from the ROC; (4) file **URC-1** with the list of partners and shares (as on a day not more than 6 clear days before), the first directors' particulars and consent, the LLP or partnership documents, **consent or NOC of all secured creditors**, and **majority consent** of members; (5) at least **2** members; with fewer than 7 it becomes a **private company**. **Effect:** a new body corporate; the incorporation provisions of Chapter II apply mutatis mutandis. [SM 30–33]

SM exercise MCQs on 1.1, with answers (SM 158–172; ★ = asked in an exam)

1 minimum members, public company	**7**	10 professional declaration at incorporation by	**practising CS, CA or CMA: any**
2 Govt company: 51% held by	**CG, SG or both: any**	11 RO moved within city ★	**Board resolution**
3 "limited" means limited	**liability of members**	12 section 8 companies cannot	**distribute dividend**
4 share transfer restricted in	**private company**	13 Indian co, 100% held by a UK co	**an Indian company**
5 foreign company: abroad and ★	**either place of business or business in India**	14 35% held + majority of Board ★	**subsidiary**
6 no significant accounting transaction	**dormant company**	15 guarantee company is similar to	**LLP**
7 LIC is	**statutory corporation and PFI**	16 company → LLP: intimate ROC within	**15 days**
8 those who sign the MOA	**subscribers to MOA**	17 chapter on foreign companies	**XXII**
9 certificate of incorporation issued by	**ROC**	92 US company doing business in US ★	**not foreign now; foreign once in India**
93 sectoral company complies with	**Companies Act + sector law**	94 articles altered by	**special resolution**
bank 96: RO to another State ★	**special resolution + CG**	bank 243 / 246 / 248	**OPC max 15 directors / INC-22 / INC-12**

R Revision: every number in 1.1

Rule	Number
Act: chapters / sections / schedules	29 / 470 / 7
members: OPC / private / public	1 / 2–200 / 7+
business below minimum members for	> 6 months
joint sector Govt holding	26–50%
Government company	≥ 51%
subsidiary voting power	> 50%
associate: significant influence	≥ 20%
dormant: no significant transaction for	2 FYs
small company (Dec'26 supp.)	₹10 cr / ₹100 cr
large partnership limit / fine	50 / ₹1 lakh
OPC: nominee in more than one / comply within	no / 180 days
OPC: SM conversion lock / capital / turnover ⚠	2 yrs / ₹50 lakh / ₹2 cr
OPC penalty	₹10,000 + ₹1,000/day
subscriber declaration look-back	5 years
INC-20A within / penalty	180 days / ₹50,000
officer: per day / max	₹1,000 / ₹1 lakh

Rule	Number
RO from the … day / verification INC-22	15th / 30 days
RO change notice to ROC	15 days
RD confirms / company files / ROC certifies	30 / 60 / 30 days
former names shown for	2 years
s.12 default	₹1,000/day, max ₹1 lakh
State change: CG decides within	60 days
name to match changed activities within	6 months
name reserved: new / existing	20 / 60 days
extension 40 / 60 days fee	₹1,000 / ₹2,000 or ₹3,000
wrong name info: penalty / change within	₹1 lakh / 3 months
objects change registered within	30 days
articles alteration filed within	15 days
s.15 / s.17 penalty	₹1,000 per copy / per day (max ₹1 lakh)
s.8 penalty: company / officers	₹10 lakh–₹1 cr / ₹25,000–₹25 lakh
s.8 projections for	3 years
s.379 Indian holding / s.380 filing	≥ 50% / 30 days
LLP → company: members / list date	≥ 2 (<7 private) / 6 clear days

1.2 · Investments, Loans and Deposits

P13 · Module 1 · s.73–76A, 186, 187 + debentures

SM pp. 34–43 (10 pages). 39 marks in 7 papers, with a long question in 4, **twice as a balance-sheet calculation**. Nothing in Jun'26, so it is due.

Paper	What was asked	Marks
Dec'23	Q2(a) the prohibition on accepting **deposits from the public** (s.73)	7
Jun'24	Q8(a) must investments be held in the **company's own name**? (s.187)	7
Dec'24	MCQ: meaning of "loan"	2
Jun'25	Q2(a) s.187 again, with its exemptions · Q4(a) **inter-corporate loan case** from a balance sheet: s.186 limit and interest rate	7 + 7
Dec'25	MCQ: who can be a debenture trustee · Q2(b) **public deposits case** from a balance sheet: eligibility and limits (repeated in ICMAI's MQP)	2 + 7

HOW IT IS EXAMINED · DEC'26 PREDICTION

- **Number cases:** you get a balance sheet; compute the **s.186 limit** or the **deposit limits**. Know **what counts**: paid-up capital, **free reserves** (P&L, general reserve) and securities premium. **Revaluation reserve is not free**.
- Theory: **s.187 own-name investments** (2×), **s.73 deposits**.
- **Prediction:** Tier A, **7–9 marks**. (1) deposits case (MQP) · (2) inter-corporate loan above the s.186 limit · (3) s.185 loans to directors, never asked long (see 1.5 part 9).

MAP

1. Loans and investments by a company (s.186) ★★★
2. Investments in own name (s.187) ★★
3. Deposits: s.73, rules, s.74–76A ★★★
4. Debentures ★ (MCQs)
5. Model answers (both number cases) · MCQs · numbers

Loans to directors (s.185) are in 1.5 part 9.

1 Loans, guarantees, security and investments by a company (s.186)

WHAT IT IS Lending to, guaranteeing for, or investing in other bodies is the **Board's** power (s.179). s.186 sets a **ceiling**: above it, a **special resolution** is needed. It also fixes the **minimum interest rate**. A guarantee is treated like a loan, because the company may have to pay. [SM 34]

LAYERS
invest through **not more than two layers** of investment companies (except buying a foreign company with more layers abroad, or a subsidiary legally required) [SM 34]

→

THE LIMIT
loans + guarantees + security + investments ≤ **60%** of (paid-up capital + free reserves + securities premium) **or 100%** of (free reserves + securities premium), **whichever is more** [SM 34]

→

ABOVE THE LIMIT
prior **special resolution** in general meeting. Not needed for a holding company's dealings with its **wholly owned subsidiary or JV** [SM 34–35]

→

ALWAYS
Board resolution with **consent of all directors present**, plus **PFI approval** if a PFI term loan subsists (not needed if within the limit and no default) [SM 35]

OTHER RULES

- **Interest**: never **below the prevailing yield** of the **1-, 3-, 5- or 10-year Government security closest to the tenor** of the loan. [SM 35]
- A company **in default on deposits** (or interest) may give **no loan, guarantee, security or investment** while the default lasts. [SM 35]
- **Disclose** full particulars and the **purpose** in the financial statements. [SM 35]
- Keep a **register** (MBP-2) at the RO; members inspect and take extracts free, and get copies for a fee. [SM 35]
- A SEBI-registered intermediary (s.12, SEBI Act) of a prescribed class may not take inter-corporate loans or deposits above the prescribed limit. [SM 35]

EXEMPT (all of s.186 except the layers rule)

- **Loans, guarantees, security** in the ordinary course by a **banking, insurance or housing finance company**, or a company financing industry or providing infrastructure. [SM 35]
- **Investments** by an **investment company**, an **NBFC**, or a company whose principal business is acquiring securities · **rights issue** subscriptions · shares under s.62(1)(a). [SM 35]
- **Penalty:** company **₹25,000 to ₹25 lakh**; each officer up to **2 years** in jail and a fine of **₹25,000 to ₹1 lakh**. [SM 35]

⚠ MCQ BANK vs SM
MCQ bank Q86 "not more than ___ layer of investment companies" gives **1**, but the SM text says **two layers**. Trust the SM. [SM 34]

2 Investments to be held in the company's own name (s.187) · Jun'24 Q8(a), Jun'25 Q2(a)

THE RULE

- **All investments** in any property, security or other asset are made and held **in the company's own name**. [SM 36]
- **Proviso:** shares in a **subsidiary** may be held in the name of **nominees** where needed to keep the subsidiary's membership above the **statutory minimum**. [SM 36]
- **SM example:** ABC holds 100% of XYZ Pvt Ltd, which needs 2 members. ABC may put **one** share in a nominee's name, but only one. [SM 36]
- Shares or securities **not held in its own name** are entered in a **register** (MBP-3), open to members and debenture holders **free** during business hours. [SM 36]

EXEMPTIONS: THE COMPANY MAY STILL …

1. deposit shares or securities with a **bank to collect dividend or interest**
2. deposit with, transfer to, or hold in the name of **SBI or a scheduled bank** (its bankers) to **facilitate transfer**
3. deposit or transfer them as **security for a loan**
4. hold them in the name of a **depository** as beneficial owner (demat)

[SM 36]

3 Deposits (s.73–76A + Acceptance of Deposits Rules) · Dec'23 Q2(a), Dec'25 Q2(b)

WHAT IT IS "**Deposit**" (s.2(31)) includes **any receipt of money by way of deposit or loan or in any other form**, except categories prescribed with the RBI. The Act allows only two routes: **from members** (s.73(2)) and **from the public** by an **eligible company** (s.76). Banks, NBFCs and companies the CG specifies are outside. [SM 36]

ROUTE 1: FROM MEMBERS, s.73(2)

By **resolution in general meeting**, on these conditions:

1. a **circular** to members showing the financial position, **credit rating**, number of depositors and dues on past deposits
2. the circular **filed with the ROC 30 days** before it is issued
3. by **30 April** each year, at least **20%** of deposits maturing in the year put in a **Deposit Repayment Reserve Account** in a scheduled bank
4. a certificate of **no default** on past deposits (or the default made good and **5 years** passed)
5. **security** if any; unsecured or partly secured deposits must be called "**unsecured deposits**" everywhere

[SM 36–37]

ROUTE 2: FROM THE PUBLIC, s.76 · "ELIGIBLE COMPANY"

- A **public company** with **net worth ≥ ₹100 crore OR turnover ≥ ₹500 crore**, which has passed a **special resolution**. [SM 38–41]
- It needs a **credit rating** from a recognised agency, **every year** of the deposit tenure. [SM 41]
- **Secured deposits:** a charge on assets, not less than the deposits, within **30 days** of accepting. [SM 41]
- Circular in the form of an advertisement: **DPT-1** (MCQ bank 234).

⚠ "AND" OR "OR"?
SM 38 says net worth ₹100 cr "**and**" turnover ₹500 cr; SM 41 (s.76) says "**or**". The Rules say **or**. Write **or**. [SM 38–41]

Limits and terms (Rule 3) [SM 37–38]

Rule	Limit
Tenure	not repayable on demand; at least **6 months**, at most **36 months** [SM 37]
Short-term (under 6 months)	up to **10%** of (paid-up capital + free reserves), repayable **not earlier than 3 months** [SM 37]
Members' deposits (s.73(2) company)	all outstanding deposits ≤ **35%** of (paid-up capital + reserves + securities premium) [SM 37–38]
Eligible company, from members	≤ **10%** of (paid-up capital + free reserves) [SM 38]
Eligible company, other (public) deposits	≤ **25%** of (paid-up capital + free reserves + securities premium) [SM 38]
Government company (s.76)	≤ **35%** of (paid-up capital + free reserves + securities premium) [SM 38]
Interest and brokerage	not above the **RBI's maximum for NBFC deposits** (SM MCQ 23) · joint names at most **3** · no term changed to the depositor's disadvantage after issue [SM 38]

⚠ For the members' 10% limit, the SM's base is paid-up capital + free reserves. A later amendment to the Rules also adds securities premium. In a calculation, show the SM figure and note the other.

SECURITY AND TRUSTEES (Rules 6–9)

- Secured deposits: a **charge** (not a pledge) on specific movable or immovable property, for at least the amount **not covered by deposit insurance**, in favour of a **trustee for depositors**. [SM 38]
- Trustee appointed and **deposit trust deed (DPT-2)** signed at least **7 days** before the circular. The trustee may not be a director, KMP, employee or depositor, indebted to the company, financially related to it, a guarantor, or a relative of these. [SM 38–39]
- He is removed before his term only with **consent of all directors present** (with at least one ID where IDs are required). [SM 39]
- **Duties:** check the security plus insurance covers the deposits; check the circular; prevent breaches; seek remedies; call meetings; supervise security; act when it becomes enforceable; protect depositors. [SM 39]
- **Depositors' meeting:** on a requisition by **one-tenth in value**, or on a default or any event affecting depositors. [SM 39]

REPAYMENT, REGISTERS, PENALTIES

- **Default:** the depositor may apply to the **Tribunal** for payment and damages. The **DRRA** is used only to repay deposits; its balance never falls below **15%** of deposits maturing in the current and next financial year. [SM 37–40]
- **Register of deposits** at the RO (name, PAN, nominee, amounts, dates, rate, insurance, security); entries within **7 days** of the receipt; kept for **8 years** (SM MCQ 20: mandatory, particulars as per the Rules). [SM 40–41]
- **s.74** (deposits from before the Act): statement to the ROC within **3 months**; repay within **3 years** or by maturity, whichever is earlier (the Tribunal may extend). Fine **₹1 crore to ₹10 crore**; officers up to **7 years** in jail and/or **₹25 lakh to ₹2 crore**. [SM 40]
- **s.75 fraud:** officers who accepted deposits to defraud are **personally liable without limit**; any person or group may sue. [SM 41]
- **s.76A** (breach of s.73 or s.76): company fine of at least **₹1 crore or twice the deposit, whichever is lower**; officers up to **7 years** in jail and a fine of **₹25 lakh to ₹2 crore**; if wilful, s.447. [SM 41–42]

4 Debentures (MCQ material)

s.2(30): "debenture" includes **debenture stock, bonds or any other instrument evidencing a debt**, whether or not it creates a charge on assets. [SM 42]

Type	Meaning
redeemable / irredeemable	fixed redemption date / none (perpetual: repaid on liquidation or by notice) [SM 42]
convertible / non-convertible / optionally convertible	must convert into equity / stays debt till redemption / the holder chooses [SM 42–43]
fully / partly convertible	all into equity / part converts, the rest redeemed. *SM example: a ₹100 debenture → 10 shares of ₹10 (fully), or ₹50 into 5 shares with ₹50 repaid after 10 years (partly)* [SM 42–43]
secured / unsecured	a charge on assets (mortgage) / naked. A **public issue maturing beyond 18 months must be secured**, with a **SEBI-registered debenture trustee** holding the security (SM MCQs 18, 21; Dec'25 MCQ) [SM 43]
fixed / floating rate · zero coupon	a fixed rate / one linked to a benchmark · no interest: issued at a **discount** ("discounted bonds"; "**deep discount**" if long-dated), sometimes with a warrant [SM 43]

5 Model answers: the two number cases

MODEL ANSWER 1 · INTER-CORPORATE LOAN (JUN'25 Q4(a)) · 7 MARKS

Facts (₹ lakh): XYZ Ltd: paid-up capital 40; P&L balance 22; share premium 10; machinery revaluation reserve 11; secured loan from a nationalised bank 35 (11%). ABC Ltd asks for a secured loan of **40** for **40 months**. G-sec yields: 1 yr 6.5%, 2 yrs 6.7%, 3 yrs 6.9%. Can the loan be granted, and at what rate?

Step	Working
Free reserves	P&L balance **22**. The **revaluation reserve (11) is not a free reserve**; leave it out.
Limit (a): 60% of (paid-up + free reserves + premium)	60% × (40 + 22 + 10) = 60% × 72 = **43.2**
Limit (b): 100% of (free reserves + premium)	22 + 10 = **32**
s.186 limit = the higher	**43.2 lakh**
Proposed loan	40 ≤ 43.2: **within the limit** (assuming no other loans or investments outstanding), so **no special resolution** is needed
Approval	a **Board resolution with the consent of all directors present**. PFI approval is not needed: the loan is within the limit, there is no default, and a nationalised bank is not a PFI
Interest rate	not below the G-sec yield **closest to the tenor**. 40 months is nearest the **3-year** security, so **at least 6.9%**

Conclusion: XYZ **can** grant the ₹40 lakh loan by a Board resolution with the consent of all directors present, at an interest rate of **at least 6.9%**, and disclose it in the financial statements and the s.186 register. If its existing loans and investments plus this loan crossed ₹43.2 lakh, a **prior special resolution** would be needed. [SM 34–35]

MODEL ANSWER 2 · PUBLIC DEPOSITS (DEC'25 Q2(b), ALSO ICMAI MQP Q2(a)) · 7 MARKS

Facts (₹ crore): Pearson Ltd (public, steel pipes): paid-up equity 100; general reserve 20; securities premium 5; term loan from SBI 75; turnover 575. It wants public deposits of 3 to 36 months.

1. **Eligible?** An eligible company is a **public company** with net worth ≥ ₹100 cr **or** turnover ≥ ₹500 cr that passes a **special resolution**. Net worth = 100 + 20 + 5 = **125**; turnover **575**. Both tests are met, so it is **eligible**, subject to a special resolution (filed with the ROC), a **credit rating**, and the circular (DPT-1). [SM 38–41]
2. **Limit for public deposits:** 25% of (paid-up capital + free reserves + securities premium) = 25% × 125 = **₹31.25 crore**. [SM 38]
3. **Less than 6 months?** Yes, up to **10%** of (paid-up capital + free reserves) = 10% × 120 = **₹12 crore**, repayable **not earlier than 3 months**. So the 3-month deposits are fine within ₹12 crore. Maximum tenure **36 months**. [SM 37]
4. **From members (separately):** 10% of (paid-up capital + free reserves) = **₹12 crore** (⚠ ₹12.5 crore if the securities premium is added, as the amended Rules do). [SM 38]
5. **Also:** by 30 April, **20%** of deposits maturing in the year go into the DRRA; interest and brokerage within RBI's NBFC ceilings; a charge within **30 days** if secured. The SBI term loan does not affect eligibility. [SM 37–41]

SM exercise / MCQ bank on 1.2, with answers

18 secured public-issue debentures: security in favour of	**debenture trustee**	21 a debenture trustee can be ★	**any entity registered with SEBI as such**
19 a fully convertible debenture is a	**debt instrument** (bank key)	22 "loan" in the Companies Act means ★	**cash credit** (bank key ⚠)
20 register of deposits	**mandatory, with particulars as per the Rules**	23 brokerage on deposits	**as per RBI**
bank 87: interest on deposits guided by	**RBI**	bank 233: trust deed before circular	**7 days**
bank 234: advertisement circular in form	**DPT-1**	bank 86: layers of investment companies	**bank key 1 ⚠ SM says two**

⚠ The SM text has no definition of "loan"; the Dec'24 MCQ answer follows ICMAI's MCQ bank key.

R Revision: every number in 1.2

Rule	Number
layers of investment companies	2
s.186 limit	60% (PUC+FR+SP) or 100% (FR+SP), higher
loan interest floor: G-sec tenors	1, 3, 5, 10 yrs
s.186 penalty: company	₹25,000–₹25 lakh
s.186 officer: jail / fine	2 yrs / ₹25,000–₹1 lakh
members' circular filed before issue	30 days
DRRA: deposit by / share of maturing	30 April / 20%
DRRA floor	15%
clean record after default	5 years
eligible company: net worth / turnover	₹100 cr / ₹500 cr
charge for secured public deposits within	30 days

Rule	Number
tenure: minimum / maximum	6 / 36 months
short-term: limit / earliest repayment	10% / 3 months
s.73(2) members / Govt company	35% / 35%
eligible company: members / public	10% / 25%
joint depositors, at most	3
DPT-2 trust deed before circular	7 days
depositors' meeting requisition	one-tenth in value
register entries / kept for	7 days / 8 years
s.74: statement / repay within	3 months / 3 years
s.74 / s.76A officer jail	7 years
s.76A company fine	₹1 cr or 2× deposit, lower
public debentures must be secured beyond	18 months

1.8 · Compromises, Arrangements and Amalgamations P13 · Module 1

· Chapter XV, s.230–240

SM pp. 141–149 (9 pages). 32 marks in 7 papers, **always as a 7-mark half** (5 papers). ICMAI's PTP turned the Jun'23 merger case into a 4-MCQ set.

Paper	What was asked	Marks
Jun'23	Q4(a)(I) **unlisted holding company (70%) merges with its listed subsidiary**: in order? shareholders' approval? dissenters? NCLT order needed?	4
Dec'23	Q5(b) **minority squeeze-out** in a reconstruction: price set by the promoters, more than 90% voted for it; can the minority reject?	7
Dec'24	Q8(b) **amalgamation by the Central Government** in the public interest (s.237)	7
Dec'25	Q3(b) s.237 again: **dissenting shareholders' remedy** on compensation (also ICMAI MQP)	7
Jun'26	Q4(b) **compromise and arrangement (s.230)**: procedure, role of the Tribunal, filing	7

DEC'26 PREDICTION · HOW TO ANSWER

- Tier A, **7 marks**; an **80%** chance of the 4-MCQ case set (PTP ran one on the Jun'23 facts).
- Likely: (1) **holding + listed subsidiary merger** case, and **when the fast track (s.233) applies** · (2) s.237 (asked twice running, so less likely a third time) · (3) **s.236/minority buy-out**.
- Write procedure questions as a **flow**: application → meetings → approvals → sanction → filing.

MAP

1. Meanings · s.230 compromise or arrangement ★★★
2. Tribunal's powers (s.231) · merger (s.232) ★★
3. Fast-track merger (s.233) ★★
4. Cross-border (s.234) · dissenters and minority (s.235, 236, 230(7)) ★★
5. Amalgamation by the CG (s.237) ★★
6. Model answers · MCQs · numbers

1 Meanings, and compromise or arrangement (s.230) · Jun'26 Q4(b)

MEANINGS

- **Compromise**: settling a **dispute** by mutual concessions. No dispute, no compromise; if members give up their rights entirely, it is not a compromise. [SM 141]
- **Arrangement**: very wide. Any reorganisation of share capital (consolidation or division of classes, varying special rights), between classes of shareholders, or between creditors and shareholders (*Investment Corp. of India*). [SM 141]
- **Amalgamation**: two or more companies join into a new one, or one is absorbed into another. The amalgamating company **loses its existence** and its shareholders become shareholders of the amalgamated company. **Not defined** in the Act. [SM 141]

WHO AND WITH WHOM

- Between the company and its **creditors** (or a class), or its **members** (or a class). [SM 141]
- Application to the **NCLT** by the **company, any creditor, any member, or the liquidator** (jointly too). [SM 141–142]
- The application discloses: the latest financial position and auditor's report, pending investigations, any **reduction of capital**, and any **corporate debt restructuring** consented to by **75% of secured creditors in value** (with a creditors' responsibility statement, safeguards, the auditor's liquidity-test report, RBI CDR guidelines and a **registered valuer's** report). [SM 142]

The s.230 procedure, step by step [SM 142–144]

1 · APPLY to the NCLT, with full disclosure [SM 142]

→

2 · NCLT ORDERS MEETINGS of the creditors or members (by class), held as it directs [SM 142]

→

3 · NOTICE individually (Form 15.3) with the scheme's effect, valuation, interests, and investigations; on the website; for listed companies to **SEBI and the exchanges**; in newspapers [SM 142–143]

→

4 · REGULATORS notice to the CG, income tax, RBI, SEBI, ROC, exchanges, OL, CCI and sector regulators: representations within **30 days**, else none presumed [SM 143]

→

5 · VOTE a **majority of persons representing three-fourths in value**, in person, by proxy or postal ballot [SM 144]

→

6 · SANCTION the NCLT's order makes it **binding on all**. File with the ROC within **30 days** [SM 144]

- **Who may object:** only persons with at least **10% of the shareholding** or at least **5% of total outstanding debt**. [SM 143]
- The notice includes directors', KMP's and promoters' shareholding and changes in the last **6 months**, approvals received, documents for inspection, and a declaration that the scheme is in the interest of employees, creditors and minority shareholders. [SM 143]
- **The NCLT may dispense with a creditors' meeting** if creditors holding at least **90% in value** consent by affidavit. [SM 144]
- **The NCLT's order provides for:** convertible preference shareholders choosing cash for dividend arrears or equity · protection of any class of creditors · variation of rights under **s.48** · an **exit offer to dissenting shareholders** and other matters. [SM 144]
- The company's **auditor certifies** that the accounting treatment conforms to the accounting standards. [SM 144]
- A **statement of compliance** is filed with the ROC within **210 days**. [SM 144]
- **Takeover offer within a scheme (s.230(11))**: by a member who, with others, holds at least **three-fourths** of the shares, to acquire the rest. For listed companies, under SEBI regulations. [SM 144]
- **s.231:** the NCLT **supervises implementation**, gives directions or modifies the scheme, and may call for reports. If the scheme cannot work and the company cannot pay its debts, it may order **winding up**. [SM 144]

2 Merger and amalgamation through the NCLT (s.232)

When the s.230 application is for a **reconstruction, merger or amalgamation** transferring an undertaking, property or liabilities to another company, the NCLT orders meetings and **s.230 applies with necessary modifications**. [SM 145]

CIRCULATED FOR THE MEETINGS

1. the **draft scheme** adopted by the directors of the merging company
2. confirmation that it has been **filed with the ROC**
3. the directors' report on its effect on each class, KMP, promoters and non-promoters, with the **share exchange ratio** and any valuation difficulties
4. the **expert's valuation report**
5. a **supplementary accounting statement** if the last accounts are more than **6 months** old at the first meeting

[SM 145]

THE NCLT'S ORDER PROVIDES FOR

- transfer of the undertaking, property and liabilities from the date the parties fix · allotment of shares and debentures · **continuation of pending legal proceedings** [SM 145]
- **dissolution of the transferor without winding up** (SM MCQs 70, 84) · provision for **dissenters** · allotment to non-residents per FDI norms · **transfer of employees** [SM 145–146]
- **Listed transferor, unlisted transferee:** the transferee **stays unlisted until it lists** (SM MCQ 73); shareholders who opt out are **paid** per a predetermined price formula or valuation [SM 146]
- the transferor's **authorised-capital fees are set off** against the transferee's [SM 146]
- the **auditor's certificate** on the accounting treatment (SM MCQ 71) [SM 146]

After sanction: property and **liabilities pass** to the transferee (SM MCQ 72: both) and charges may be released · certified order filed with the ROC within **30 days** · the scheme states an **appointed date** and is effective from it, not later · until completion, an **annual statement** certified by a practising CA, CMA or CS is filed with the ROC on compliance. [SM 146]

3 Fast-track merger (s.233): no NCLT

WHO MAY USE IT

- **Two or more small companies** (small company: SM 147; ⚠ now **₹10 cr / ₹100 cr** per the Dec'26 supplementary, see 1.1) [SM 146–147]
- a **holding company and its wholly-owned subsidiary** [SM 146]
- prescribed classes (Feb 2021): two or more **start-ups**; start-ups with small companies [SM 146]

Jun'23 case: a **70% subsidiary** is **not wholly owned**, and a listed company is not small. So the **fast track is not available**; the full s.230–232 NCLT route applies.

STEPS

1. notice inviting **objections from the ROC, the Official Liquidator** and affected persons within **30 days**
2. objections considered; scheme approved by members holding at least **90% of the total number of shares**
3. each company files a **declaration of solvency** with the ROC
4. approved by **nine-tenths in value of creditors** (meeting on **21 days'** notice, or in writing)
5. transferee files the scheme with the **CG, ROC and OL**
6. no objection → the **CG registers and confirms**. If the ROC or OL objects (within **30 days**), the CG may within **60 days** ask the NCLT to consider it under s.232; silence = no objection

[SM 147–148]

Effect of registration: the transferor is **dissolved without winding up**; property, liabilities and charges pass; pending proceedings continue against the transferee; unpaid dues to dissenters become the transferee's liability; shares the transferee holds in itself (or through trusts) are **cancelled**. [SM 148]

4 Cross-border merger, dissenters, minority buy-out, and amalgamation by the CG

s.234 · s.235 · s.230(7)(e) + RULE 27 · s.238

- **s.234 cross-border:** a foreign company (with or without a place of business in India) may merge into an Indian company, or vice versa, with **RBI's prior approval**. Consideration in **cash and/or depository receipts**; only with companies in **notified countries** (Rule 25A). [SM 148]
- **s.235:** where a scheme is approved by holders of **nine-tenths in value** of the shares, the transferee may acquire the **dissenters'** shares: notice to dissenters, their right to apply to the Tribunal, and the consideration kept in a **separate bank account**. [SM 149]
- **Minority exit (s.230(7)(e), Rule 27):** the NCLT may order an exit for dissenters. The minority's shares are valued by a **registered valuer**; their particulars are verified within a **fortnight** of receiving the money; the cut-off date for corporate actions is declared in advance. [SM 149]
- **s.238:** a circular recommending a s.235 offer must carry the prescribed information and the transferee's statement on **cash availability**, and is **registered with the ROC before issue**. Appeal against refusal to the NCLT (the SM misprints "NCCT"). [SM 149]

s.237: AMALGAMATION ORDERED BY THE CENTRAL GOVERNMENT (Dec'24, Dec'25, MQP)

1. If **essential in the public interest**, the CG may by an **order in the Official Gazette** amalgamate two or more companies into one, with the constitution, property, powers, rights, liabilities and duties the order specifies.
2. The order may continue **pending legal proceedings** by or against the transferee.
3. Every **member, creditor and debenture holder** keeps, as nearly as possible, the **same interest or rights** in the transferee as before.
4. Where the interest or rights are **less** than before, they get **compensation**, assessed by a **prescribed authority**, published in the Gazette, and paid by the transferee.
5. **Remedy:** anyone aggrieved by the assessment may **appeal to the Tribunal within 30 days** of its publication; the Tribunal assesses the compensation.

[SM 149]

5 Model answers

MODEL ANSWER 1 · HOLDING COMPANY + LISTED 70% SUBSIDIARY MERGER (JUN'23 Q4(a)(I), ICMAI PTP MCQ SET) · OUR TOP 1.8 PICK

Facts: ABC Ltd (unlisted public, ₹50 cr capital) holds 70% of BCG Ltd (listed, ₹20 cr). They decide to merge. (i) Is the decision in order? (ii) Must each company's shareholders approve? (iii) What if some shareholders do not consent? (iv) Is an NCLT order required?

1. **In order?** Yes. A merger is a scheme of **reconstruction or amalgamation** under **s.230 read with s.232**, a business decision of the Boards. The draft scheme is adopted by the directors and filed with the ROC. As BCG is **listed**, SEBI and stock-exchange requirements also apply. [SM 145]
2. **Shareholders' approval?** Yes. The NCLT orders meetings of the **members (and creditors) of each company**, and the scheme must be approved by a **majority of persons representing three-fourths in value** in each meeting. [SM 144–145]
3. **Non-consenting shareholders:** once approved and **sanctioned by the NCLT**, the scheme is **binding on all** members, dissenters included. The order may provide for **dissenters** or an **exit offer**. Here the listed transferor merges into an **unlisted** transferee, so ABC **stays unlisted until it lists**, and BCG shareholders who opt out are **paid the value of their shares** per a predetermined price formula or valuation. Only holders of at least **10%** of shares (or **5%** of debt) may object. [SM 143–146]
4. **NCLT order?** Yes. The **fast-track route (s.233)** covers only a holding company with its **wholly-owned** subsidiary, or small companies or start-ups. BCG is a **70%**, listed subsidiary, so the NCLT route under s.230–232 is compulsory. The certified order is filed with the ROC within **30 days**. [SM 146]

MODEL ANSWER 2 · MINORITY SQUEEZE-OUT IN A RECONSTRUCTION (DEC'23 Q5(b)) · 7 MARKS

Facts: a listed MNC's reconstruction scheme makes the minority sell their shares back to the promoters at a **price fixed by the promoters**, with no choice. Six non-promoter shareholders voted against; the scheme passed with over 90%. The minority say they can reject it. Will they succeed?

1. **Binding effect:** a compromise or arrangement approved by a **majority representing three-fourths in value** and **sanctioned by the NCLT** binds all members, dissenters included (s.230). A 90% vote meets this. [SM 144]
2. **Right to object:** only holders of at least **10%** of shares (or **5%** of debt) may object to the scheme. Six small shareholders below 10% **cannot block it**. [SM 143]
3. **But the price:** the NCLT may order an **exit for dissenting shareholders** (s.230(7)(e)), and the **minority's shares are valued by a registered valuer** (Rule 27), not at a price the promoters fix. The scheme must be **fair**, and the NCLT will not sanction an unfair or unilateral price. [SM 144–149]
4. **Conclusion:** the minority **cannot reject the scheme itself** on numbers. But they can **challenge the valuation before the NCLT** and insist on a price fixed by a registered valuer. If the price is fair and the procedure followed, the squeeze-out stands.
   (⚠ ICMAI's suggested answer is not with us. Courts have upheld such schemes where the majority was overwhelming and the price independently fair; the SM cites no case.)

SM exercise MCQs on 1.8 (SM 169–171)

70 in a merger the transferor company is	**dissolved**	72 transferred on amalgamation	**rights and liabilities (both)**
71 the auditor confirms the scheme	**conforms to the accounting standards**	73 listed transferor into an unlisted transferee	**stays unlisted unless it lists**
84 A Ltd merges with B Ltd: A Ltd is	**dissolved**	bank 252 "mutatis mutandis"	**subject to necessary modifications**

R Revision: every number in 1.8

Rule	Number
CDR consent: secured creditors in value	75%
regulators' representations within	30 days
objection only by: shareholding / debt	≥ 10% / ≥ 5%
shareholding changes disclosed for last	6 months
approval: majority + value	¾ in value
dispense with creditors' meeting if they consent	90% in value
order to ROC / compliance statement	30 / 210 days
takeover within scheme: holding at least	¾ of shares

Rule	Number
supplementary accounts if last accounts older than	6 months
s.233: objections / members / creditors	30 days / 90% shares / 9/10 value
s.233 creditors' meeting notice	21 days
s.233: ROC/OL objection / CG to NCLT	30 / 60 days
s.235 approval	9/10 in value
minority particulars verified within	a fortnight
s.237 appeal to Tribunal within	30 days

1.9 · Prevention of Oppression and Mismanagement P13 · Module 1 · s.241–246 + Foss v. Harbottle

SM pp. 150–157 (8 pages). 29 marks in 7 papers, asked in 6. Long questions in 4, **but only MCQs in the last two**. The eligibility rule (s.244) is asked again and again.

Paper	What was asked	Marks
Jun'23	Q3(a) petitioners hold **12%**; members holding 5% withdraw mid-way and ask for dismissal: maintainable?	4
Jun'24	Q2(a) **class action** (s.245) and the remedies	7
Dec'24	Q5(b) 600 members; **90 members** holding 10,000 of 5 lakh shares file: maintainable? 40 withdraw? fewer than required: **waiver**?	7
Jun'25	Q7(a) **exceptions to Foss v. Harbottle**	7
Dec'25	MCQ: who may apply under s.241 (= MCQ bank 97)	2
Jun'26	MCQ case: can a **12%** minority apply?	2

DEC'26 PREDICTION

Tier **B**, **2–9 marks**: an MCQ or a 7-marker. The likely 7-marker is **"who can apply; waiver; withdrawal of consent"** (asked in Jun'23 and Dec'24, and in ICMAI's PTP). The **Tribunal's powers (s.242)** have never been asked.

MAP

1. Majority rule and Foss v. Harbottle; exceptions ★★
2. Oppression: meaning, who applies (s.241, 244) ★★★
3. Powers of the Tribunal (s.242, 243) ★
4. Class action (s.245) ★★
5. Model answers · MCQs · numbers

1 Majority rule, Foss v. Harbottle and its exceptions · Jun'25 Q7(a)

THE RULE

- **Majority rules:** a resolution of the majority at a properly held meeting, on a matter within the company's powers, **binds the minority** (*North-West Transportation v. Beatty*). Where a **special resolution** is needed, a three-fourths majority is required (*Edwards v. Halliwell*). [SM 151]
- **Foss v. Harbottle (1843):** courts do **not interfere in internal management**. For a wrong done to the company, the **company is the proper plaintiff**, not an individual member (*Gray v. Lewis*). The reason: a member agrees to accept the majority's will. [SM 151]

EXCEPTIONS (common law): A MEMBER MAY SUE

a. **ultra vires or illegal acts**: an injunction to restrain them
b. **fraud on the minority**
c. **wrongdoers in control**, who would never let the company sue (*Birch v. Sullivan*; *Edwards v. Halliwell*)
d. a **special-majority act passed by a simple majority**, or a special resolution on insufficient notice (*Baillie v. Oriental Telephone*)
e. **personal rights**: to vote, have the vote recorded, stand for election (*Nagappa Chettiar v. Madras Race Club*; *Salmon v. Quin & Axtens*)
f. **breach of duty** by directors and the majority, even without fraud (*Daniels v. Daniels*: land sold to a director's wife for £4,250 and resold for £1,20,000)

[SM 151–152]

Statutory exceptions (the Companies Act): relief against **oppression and mismanagement** (s.241–244), **class action** (s.245), and the Central Government's power to apply. These are parts 2–4 below. [SM 151]

2 Oppression and mismanagement: meaning, grounds, who may apply (s.241, s.244)

WHAT IT IS "**Oppression**" and "**mismanagement**" are **not defined** in the Act (MCQ bank 250). Oppression is conduct showing **"a visible departure from the standards of fair dealing"** on which every shareholder is entitled to rely (*Elder v. Elder & Watson*, approved in *Shanti Prasad Jain v. Kalinga Tubes*). The burden on the shareholder must be **unjust, harsh or tyrannical** (*Scottish Co-op v. Meyer*). [SM 152–153]

GROUNDS (s.241(1)): A MEMBER MAY APPLY WHERE

a. the company's affairs are conducted **prejudicially to the public interest**, or **oppressively or prejudicially** to him or other members, or prejudicially to the company; or
b. a **material change in management or control** (Board, manager, share ownership, membership) makes such conduct likely

... provided he has the **right to apply under s.244**. Applications go to the **Tribunal (NCLT)**. [SM 153]

Central Government: may itself apply if affairs are prejudicial to the **public interest** (before the **Principal Bench**). Since the 2019 amendment it may also refer cases of **fraud, misfeasance, persistent negligence or breach of trust**, unsound business practice, injury to the trade, or an intent to defraud creditors or members (s.241(3)). [SM 153–154]

WHO MAY APPLY (s.244): LEARN THESE NUMBERS

Company with share capital	at least **100 members**, OR at least **one-tenth of total members**, **whichever is less**; OR members holding at least **one-tenth of the issued share capital**. All calls and dues on their shares must be paid
Without share capital	at least **one-fifth** of total members
Waiver	the Tribunal may, on application, **waive any or all** of these requirements
On behalf of all	one or more eligible members may apply with the **written consent of the rest**

[SM 153]

⚠ WITHDRAWAL OF CONSENT MID-WAY (Jun'23 Q3(a), Dec'24 Q5(b)(ii)): NOT IN THE SM

The Supreme Court held in *Rajahmundry Electric Supply Corp. v. A. Nageswara Rao* (1956) that the **validity of the petition is judged on the facts at the time it is filed**. If the consenting members met the s.244 requirement on that date, **later withdrawal of consent by some of them does not make the petition non-maintainable**. The case is from the old Act (s.399, 1956), but the principle is applied under s.244.

3 Powers of the Tribunal (s.242) and termination of agreements (s.243): never asked yet

If the Tribunal finds the affairs oppressive or prejudicial, and that **winding up would unfairly prejudice** the members although the facts would justify a "just and equitable" winding up, it may make **any order it thinks fit** to end the matters complained of, including: [SM 154]

1. **regulating** the company's future conduct
2. **purchase of shares** of members by other members or by the company, with the consequent **reduction of capital**
3. **restrictions** on transfer or allotment of shares
4. **terminating, setting aside or modifying agreements** with the MD, directors or manager, or (with notice and their consent) with others
5. **setting aside transfers, payments or acts** within **3 months** before the application that would be a **fraudulent preference** in insolvency
6. **removing the MD, manager or directors**, and deciding how a new MD is appointed
7. **recovering undue gains** of managerial persons
8. **appointing directors** who report to the Tribunal
9. **costs**, and anything else just and equitable; **interim orders**

The certified order is filed with the ROC within **30 days**. If the order alters the MOA or AOA, the company **cannot make inconsistent alterations**. [SM 155] (SM MCQ 78: powers in s.242.)

s.243: a terminated agreement gives **no claim** to damages or compensation for loss of office. The person may **not be appointed or act** as MD, director or manager of the company for **5 years** without the Tribunal's leave (with notice to the CG). A person held **unfit** under s.242(4A) cannot hold office for **5 years** without CG and Tribunal approval. Acting in breach: fine up to **₹5 lakh**. [SM 155]

4 Class action (s.245) · Jun'24 Q2(a)

WHAT IT IS Members or depositors (or a class of them) who think the company's affairs are conducted **prejudicially to the company, its members or depositors** may file **one application before the Tribunal on behalf of all of them**. Any person, group or association representing those affected may file it.

[SM 155–157]

REMEDIES THAT MAY BE SOUGHT

1. restrain an act **ultra vires** the MOA or AOA, or a breach of them
2. **declare void** a resolution altering the MOA or AOA passed by **suppressing material facts** or misstatement, and restrain acting on it
3. restrain acts **contrary to the Act or any law**, or contrary to members' resolutions
4. **damages or compensation** from: the company or directors (fraudulent, unlawful or wrongful acts); the **auditor or audit firm** (misleading audit report); any **expert, advisor or consultant** (misleading statements)
5. any other remedy the Tribunal thinks fit

[SM 155–156]

WHO, AND HOW THE TRIBUNAL HANDLES IT

- **Members:** at least **100**, or the prescribed % of members (whichever is less), or holders of the prescribed % of issued capital, with calls paid. Without share capital: **one-fifth**. **Depositors:** at least **100**, or the prescribed %, or those owed the prescribed % of deposits. [SM 156]
- On admission: **public notice** to the class · similar applications **consolidated**, with a **lead applicant** chosen by the class or appointed by the Tribunal · **no two class actions on the same cause** · **costs** borne by the company or the wrongdoer. [SM 156]
- The order **binds** the company, members, depositors, auditors, experts and advisors. [SM 157]
- **Non-compliance:** company **₹5 lakh to ₹25 lakh**; officers up to **3 years** in jail and a fine of **₹25,000 to ₹1 lakh**. [SM 157]
- Does **not apply to banking companies**. Sections **337–341** (fraud and damages) apply to s.241 and s.245 proceedings (s.246). [SM 157]

5 Model answers

MODEL ANSWER 1 · WHO CAN APPLY, WITHDRAWAL, WAIVER (DEC'24 Q5(b)) · 7 MARKS

Facts: a public company has **600 members** and issued capital of ₹5 crore (**5 lakh shares** of ₹100). **90 members** holding **10,000 shares** petition the Tribunal against oppression and mismanagement. (i) Is it maintainable? (ii) What if 40 members later withdraw consent? (iii) If the members are fewer than required, can they still apply?

1. **Law (s.244):** in a company with share capital, at least **100 members or one-tenth of the members, whichever is less**, OR members holding at least **one-tenth of the issued capital**, with calls paid, may apply under s.241. The Tribunal may **waive** the requirements. [SM 153]
2. **(i)** One-tenth of 600 = **60**, which is less than 100, so **60 members** suffice. The 90 petitioners exceed 60, so the petition is **maintainable**, even though their 10,000 shares are only 2% of capital. Either test is enough.
3. **(ii)** If 40 withdraw, 50 remain, below 60. But maintainability is judged **on the date of filing**; on that date 90 members had consented. Later withdrawal **does not make the petition non-maintainable** (*Rajahmundry Electric Supply v. Nageswara Rao*, SC). The Tribunal continues.
4. **(iii)** Yes. Under the **proviso to s.244(1)**, the Tribunal may, on an application, **waive all or any of the requirements** so that the members can apply under s.241. [SM 153]

MODEL ANSWER 2 · THE 12% CASES (JUN'23 Q3(a); JUN'26 MCQ (iv))

Jun'23: petitioners hold **12%** of issued capital; some, holding **5%**, withdraw and join the majority asking for dismissal. At filing, 12% was at least **one-tenth of the issued capital**, so the petition was validly filed. On the *Rajahmundry* principle, the **later withdrawal does not affect maintainability**, and the contention of the withdrawing group and the majority **fails**. [SM 153]

Jun'26 MCQ: can a 12% minority apply? **(B) Yes, directly under s.241**. 12% exceeds the one-tenth test, so no waiver or permission is needed. Option (C), "with the Tribunal's permission", applies only when the s.244 numbers are **not** met. [SM 153]

SM exercise / MCQ bank on 1.9

74 powers of the majority are subject to	**the Act, common law, MOA: all**	78 the Tribunal's powers are in section	**242**
75 an act beyond the directors' authority	**ultra vires**	bank 97: who may apply under s.241 ★	**any of the above**
76 an oppression application may be made on	**fraud on minority, ultra vires, breach of duty: any or all**	bank 250: oppression and mismanagement are defined in	**none (not defined)**
77 relief against oppression is sought from	**the Tribunal (NCLT)** ⚠	bank 251: may also apply if affairs prejudice the public interest	**Central Government**

⚠ The MCQ bank's key for SM MCQ 77 says "ROC". That is wrong: s.241 and s.244 applications go to the **Tribunal (NCLT)**, as the SM text says.

R Revision: every number in 1.9

Rule	Number	Rule	Number
s.244: members (share capital)	100 or 1/10, less	s.243 bar on re-appointment	5 years
s.244: share capital held	≥ 1/10 of issued	s.243 fine	≤ ₹5 lakh
s.244: no share capital	1/5 of members	class action: members / depositors	100 (or prescribed %)
fraudulent preference look-back	3 months	s.245 company fine	₹5–25 lakh
s.242 order to ROC within	30 days	s.245 officer: jail / fine	3 yrs / ₹25,000–₹1 lakh
special resolution majority	¾	s.246 applies sections	337–341

1.3 · Dividends P13 · Module 1 · Chapter VIII, s.123–127 + IEPF

SM pp. 44–50 (7 pages). 14 marks in 7 papers. Long in Jun'23 (a case) and **Jun'26 (declaration and payment, 7 marks)**; the rest MCQs. ICMAI's PTP repeated the Jun'26 question.

Paper	What was asked	Marks
Jun'23	MCQ: dividend distribution policy is decided by the **Board** · Q3(c) **failure to pay**: a bank mandate failed and the shareholder was not told; a court order stopped payment	2 + 3
Dec'23	MCQ: dividend deposited in a separate account within **5 days** (s.123(4))	2
Jun'26	Q2(a) **statutory provisions on declaration and payment of dividend**	7

DEC'26 PREDICTION

Tier **B**, **2–7 marks**. Dividend was the long question in Jun'26, so expect an **MCQ**. If a long question comes, the fresh part is the **unpaid dividend account and the IEPF** (s.124/125, never asked).

1 Meaning, sources of dividend, and dividend out of reserves (s.2(35), s.123)

WHAT IT IS **Dividend** (s.2(35)) **includes interim dividend**: the part of profit **not retained** but distributed to shareholders in proportion to the amount paid up on their shares. A **final dividend** is declared at the **AGM on the Board's recommendation**; an **interim dividend** is declared by the **Board** between AGMs. **Section 8** companies cannot pay dividend. [SM 44]

DECLARED ONLY OUT OF (s.123(1))

a. the **current year's profit**, after **depreciation**
b. **undistributed profits of previous years**, after depreciation
c. both

- Profits **exclude unrealised or notional gains, revaluation** and fair-value changes. [SM 45]
- **Not out of reserves other than free reserves.** Carried-forward losses and depreciation are set off first. [SM 45]
- A company that has **failed to repay public deposits** or interest (s.73, 74) **cannot declare dividend**. [SM 45]
- It may first transfer any percentage of profits to reserves. [SM 45]

OUT OF FREE RESERVES, IN A LOSS OR LOW-PROFIT YEAR (Rule 3)

1. rate not above the **average rate of the 3 preceding years** (not applicable if no dividend was declared in each of those 3 years) (MCQ bank 254)
2. amount drawn not above **one-tenth** of (paid-up capital + free reserves) per the latest audited FS
3. the amount drawn is **first used to set off the year's losses**, before any equity dividend
4. reserves left must be at least **15%** of paid-up capital

[SM 45]

2 Interim dividend, depositing, payment, and failure to pay (s.123(3)–(5), s.127)

INTERIM DIVIDEND s.123(3)

- Declared by the **Board** (SM MCQ 88; PTP and postal MCQs) during the year, or between the year-end and the AGM, out of the P&L surplus or the year's profits (up to the quarter before declaration). [SM 46]
- If there is a **loss** up to the end of the preceding quarter: rate not above the **average of the 3 preceding years**. [SM 46]
- **Ratified at the AGM** with the final dividend. [SM 46]

Deposit (s.123(4)): the dividend, interim included, goes into a **separate account in a scheduled bank within 5 days** of declaration (Dec'23 MCQ; SM MCQ 26). Not for 100% Government companies. [SM 45–46]

PAYMENT s.123(5)

- A dividend **once declared at the AGM cannot be revoked** (SM MCQ 24). [SM 46]
- Payable **in cash**: by cheque, warrant or electronic mode, only to the **registered shareholder**, his order or his banker. [SM 46]
- **Bonus shares** (capitalisation of profits) are not dividend. [SM 46]

s.127: FAILURE TO DISTRIBUTE

- Every director **knowingly party** to the default: up to **2 years** in jail, and a fine of at least **₹1,000 a day** while it continues. [SM 46]
- The company pays **simple interest at 18% a year** for the period of default. [SM 46]

No offence where: (1) a **law** prevented payment; (2) the **shareholder's directions** could not be complied with **and this was communicated to him**; (3) there is a **dispute** about the right to receive it; (4) it was **lawfully adjusted** against a sum the shareholder owed; (5) the failure was **not due to any default** of the company. [SM 46–47]

⚠ TIME LIMITS THE SM DOES NOT STATE

s.127: a declared dividend must be **paid within 30 days** of declaration; the offence is not paying within that time.
s.124(1): any amount still unpaid is moved to an **Unpaid Dividend Account** within 7 days after those 30 days end.
s.124(6): shares on which dividend has gone unpaid for **7 consecutive years** are also transferred to the IEPF. Use these in a full answer.

3 Unpaid dividend and the IEPF (s.124, s.125): never asked yet

TRANSFER TO THE IEPF

1. Money in the **unpaid dividend account** unclaimed for **7 years** from its transfer goes, with interest, to the **Investor Education and Protection Fund** (SM MCQ 25; MCQ bank 256). [SM 48]
2. Remitted within **90 days** of becoming due; a statement in **Form DIV-5** goes to the IEPF Authority. [SM 48]
3. The company keeps records (names, addresses, amounts, folio and certificate numbers) of those whose money was transferred, for **8 years**. [SM 48]
4. A claimant applies to the **IEPF Authority** for a refund. [SM 48]

WHAT GOES INTO THE FUND · WHAT IT IS USED FOR

Credited: CG grants; donations from Governments and companies; unpaid dividend accounts; old s.205A/205C balances; income on investments; s.38(4) penalties; application money due for refund; **matured deposits** and **debentures** with interest; sale proceeds of **fractional shares** and **unpaid preference redemption** amounts after **7 years**. [SM 47–48]

Used for: refunds of unclaimed amounts · investor education, awareness and protection · distributing **disgorged amounts** to victims · **legal expenses of class actions** (s.37, s.245) sanctioned by the Tribunal. The **Authority**: a chairperson, up to **7** members and a CEO. [SM 48–49]

Dividend distribution policy (LODR Reg 43A): the **top 1,000 listed entities** by market capitalisation (as on 31 March) must have one, disclosed in the annual report and website. It covers: when shareholders may or may not expect dividend; financial parameters; internal and external factors; use of retained earnings; parameters for each class of shares. The **Board** decides it (Jun'23 MCQ). Types: interim, final, special. [SM 49–50]

4 Model answers

MODEL ANSWER 1 · FAILURE TO DISTRIBUTE (JUN'23 Q3(c)) · 3 MARKS

Facts: VS Computers paid all its dividend on time except (i) Mrs AB's: her bank returned it because of a surname mismatch, and the company **did not inform her**; (ii) ₹50,000 due to the successor of the late Mr PR, which a **court order restrained** because of a family succession dispute.

Law: under s.127, failure to pay a declared dividend makes every director knowingly party to it liable to up to **2 years** in jail and a fine of at least **₹1,000 a day**, and the company pays **18%** interest. No offence where the shareholder's directions **could not be complied with and this was communicated to him**, or where a **law** or a **dispute over entitlement** prevents payment. [SM 46–47]

(i) Mrs AB: her mandate could not be complied with, but the company **did not communicate this** to her, so the exception is **not available**. The company is **in default**; the directors responsible are liable and interest at 18% is payable. **(ii) Mr PR's successor:** payment was stopped by a **court order** in a **dispute regarding the right to receive** the dividend. Both exceptions apply, so **no offence**.

ANSWER FRAME · DECLARATION AND PAYMENT OF DIVIDEND (JUN'26 Q2(a), ICMAI PTP Q2(a)) · 7 MARKS

1. **Meaning** (s.2(35)); final dividend at the AGM on the Board's recommendation; interim dividend by the Board.
2. **Sources** (s.123(1)): current or past profits after depreciation; no unrealised gains; free reserves only; carried-forward losses set off; **no dividend while public deposits are in default**.
3. **Out of free reserves**: the four Rule 3 conditions (3-year average, one-tenth, losses first, 15% left).
4. **Interim dividend**: the loss-quarter limit (3-year average); ratified at the AGM.
5. **Deposit** in a scheduled bank within **5 days**; **payment** in cash or electronically to the registered holder; cannot be revoked.
6. **Failure (s.127)**: penalties, 18% interest, exceptions; unpaid amounts → Unpaid Dividend Account → IEPF after 7 years.

[SM 44–48]

SM exercise / MCQ bank on 1.3

24 once declared at the AGM, a dividend	**cannot be revoked**	85 dividend distribution policy decided by ★	**Board of Directors**
25 IEPF	**Investor Education and Protection Fund**	88 interim dividend decided by	**Board of Directors**
26 / bank 255: separate account within ★	**5 days**	bank 254: rate cap = average of last	**3 years**
bank 256: unclaimed 7 years goes to	**IEPF**	bank 260: not a type of dividend	**"mid-term dividend"**

Numbers

deposit within **5 days** · rate cap: average of **3** years · draw at most **1/10** of (PUC + FR) · reserves left **≥ 15%** · s.127: **2 years**, **₹1,000/day**, **18%** · IEPF after **7 years**, remit in **90 days**, DIV-5, records kept **8 years** · Authority: up to **7** members · Reg 43A: top **1,000** listed entities.

1.7 · Inspection, Inquiry and Investigation P13 · Module 1 · Chapter XIV, s.206–229

SM pp. 133–140 (8 pages). The **lowest-weight** Companies Act topic: 6 marks in 7 papers (Jun'23 4-mark case; Dec'23 MCQ on "seizure"). Tier **C**: learn the definitions and numbers for an MCQ.

THREE WORDS (SM)

- **Inspection**: a careful look or official visit to check that everything is **correct and legal**; **routine, not negative**. [SM 133]
- **Inquiry**: an official process to **discover facts** about something bad; negative unless the report is clean. [SM 133]
- **Investigation**: a **deeper probe** to gather evidence for prosecution of a suspected violation; always negative. Inspection may lead to investigation. [SM 133]
- **Seizure**: the **forcible taking of property** by a law-enforcement official from a person suspected of violating the law (Dec'23 MCQ). **Search**: an examination of records to confirm ownership and claims. [SM 135]

REGISTRAR'S POWERS (s.206, s.207)

- **Call for information:** on scrutiny of documents or information received, the ROC may by **written notice** require information, explanations or documents within a reasonable time; past officers too. If not given, inadequate, or affairs unsatisfactory → a **further notice** to produce books for inspection (reasons recorded). [SM 133–134]
- **Inquiry (s.206(4)):** if satisfied (on information or **anyone's representation**) that the business is carried on for a **fraudulent or unlawful purpose**, or in breach of the Act, or **investor grievances** are not addressed: the ROC informs the company of the allegations in a **written order**, gives it a **reasonable opportunity of being heard**, and inquires. The **CG may direct** the ROC or an inspector to inquire. Fraud → officers liable under **s.447**. [SM 134]
- The CG may also order **inspection** by an inspector or a statutory authority (s.206(5)). [SM 134]
- Directors, officers and employees must produce documents and assist. The ROC or inspector has **civil court powers (CPC)**: discovery, summons and examination on oath, inspection anywhere (SM MCQ 69). [SM 135]
- **Disobedience:** up to **1 year** in jail and a fine of **₹25,000 to ₹1 lakh**. On conviction, the director or officer **vacates office** and is disqualified. [SM 135]

1 Search and seizure, inspection report, investigation, SFIO

SEARCH AND SEIZURE (s.209) · REPORT (s.208)

- If the ROC or inspector believes books of the company, its KMP, directors, auditor or CS are likely to be **destroyed, mutilated, altered, falsified or secreted**: with an order of the **Special Court**, he may enter, search and seize. [SM 135–136]
- Return them as soon as possible; they may be called for again for a further **180 days**. The CrPC applies to searches. [SM 136]
- **s.208:** the inspecting person reports to the **CG**, possibly recommending further investigation. [SM 136]

⚠ The SM prints the return deadline as the "one hundred and eighteenth day". The Act says the **180th day**.

INVESTIGATION (s.210, 212, 213)

- **s.210:** the **CG** may order an investigation on an ROC or inspector's report, on the company's **special resolution**, or in the **public interest**. It **must** order one if a court or the **Tribunal** so orders. [SM 136]
- **s.212 SFIO** (Serious Fraud Investigation Office, SM MCQ 62): the CG may assign the investigation to the SFIO on the same grounds, or **on request of a CG or State department**. Then **no other agency** proceeds under this Act and records are transferred. The SFIO Director appoints an investigating officer with inspector's powers; interim and final reports go to the CG, which may direct **prosecution**. [SM 136–137]
- **s.213 (on application to the NCLT):** by at least **100 members** or holders of **one-tenth of voting power** (share capital), or **one-fifth** of members (no share capital), with evidence. Or by any person, if there is intent to defraud, oppression, fraud or misfeasance in formation or management, or members are denied information. The Tribunal may order an investigation by inspectors appointed by the CG; if allegations are proved, **s.447** applies. [SM 137]

OWNERSHIP, INSPECTORS, EMPLOYEES

- **s.216:** the CG may investigate **ownership**: who is financially interested, who controls or influences policy, and who are the **beneficial owners**. [SM 137–138]
- **s.217:** officers, employees and agents (past ones too) preserve and produce books and assist. The inspector keeps books at most **180 days** (+ **180** more if needed again). **Civil court powers**; help from police and authorities; reciprocal arrangements with foreign States. [SM 138]
- **s.218:** during an investigation, the company needs **Tribunal approval** to discharge, suspend, punish or worsen the terms of any employee (SM MCQ 68: NCLT). If there is no reply within **30 days**, it may proceed; appeal to the NCLAT within **30 days**. [SM 138–139]

RELATED BODIES, SEIZURE, RESTRICTIONS, AFTERMATH

- **s.219:** an inspector may also investigate the **holding or subsidiary** companies, bodies managed by the same MD, bodies whose Board follows the company, and past MDs or employees, **with CG approval**. [SM 139]
- **s.220:** the inspector may **seize** books likely to be destroyed, after allowing copies, and keep them until the investigation ends. [SM 139]
- **Restrictions on securities:** the Tribunal may impose them for up to **3 years**, and freeze assets. [SM 139–140]
- **s.224:** the CG may **prosecute**, or bring proceedings in the company's name for **damages or recovery of property** (with indemnity for costs). **s.225:** expenses are paid first by the CG and recovered from convicted persons, the company, or the applicants. [SM 140]

ANSWER FRAME · ROC INQUIRY ON SHAREHOLDERS' COMPLAINT (JUN'23 Q2(a))

(i) Power: yes. Under s.206(4) the ROC may inquire where, on information or a **representation by any person**, he is satisfied that the business is carried on for a **fraudulent or unlawful purpose**. **(ii) Procedure:** inform the company of the allegations by **written order** → call for information or explanations → give a **reasonable opportunity of being heard** → inquire, with **civil court powers** → report to the CG (s.208). **(iii) Complaint withdrawn:** the inquiry is the ROC's **statutory function** in the public interest once he is satisfied, so it is not tied to the complainants and **may continue** (reasoning; the SM is silent). **(iv)** The **CG may direct** the ROC or an inspector to carry out the inquiry. [SM 134–136]

62 SFIO	**Serious Fraud Investigation Office**	68 punishing an employee during investigation needs	**NCLT approval**
67 investigation is in chapter	**XIV**	69 investigator's powers per	**Civil Procedure Code**

Numbers: s.207 jail **1 yr**, fine **₹25,000–₹1 lakh** · seized books returned by the **180th** day (SM misprint) + **180** · s.213: **100** members / **1/10** voting power / **1/5** members · inspector holds books **180 + 180 days** · s.218: **30 days** / appeal **30 days** · securities restricted up to **3 years**.