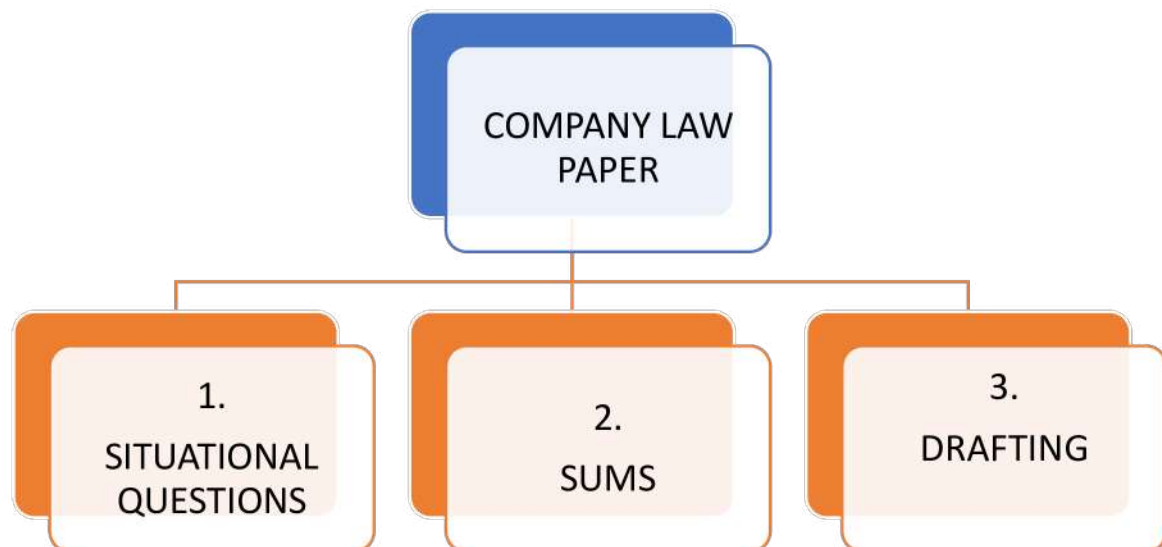


# COMPANY LAW EXEMPTION MASTER GUIDE BY PROF ZUBAIR JAHANGIR

# HOW TO GET EXEMPTION IN COMPANY LAW

# WHY ONE DOES NOT GET EXEMPTION?



## Companies Act, 2013

### Chapter I Preliminary

#### 1 Short title and Application of Act

This Act may be called the Companies Act, 2013.

It extends to the whole of India.

#### 2 Definitions.

6. “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation .—For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

11. “body corporate” or “corporation” includes a company incorporated outside India, but does not include—

- i. a co-operative society registered under any law relating to co-operative societies; and
- ii. any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

13. “books of account” includes records maintained in respect of—

- i all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- ii all sales and purchases of goods and services by the company;
- iii the assets and liabilities of the company; and
- iv the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

16. “charge” means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;

20. “company” means a company incorporated under this Act or under any previous company law;

27. “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

30. "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

31. "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

34. "director" means a director appointed to the Board of a company;

35. "dividend" includes any interim dividend;

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### **Financial Year Definition for Companies**

Section 2(41) of the law defines the "financial year" for any company or body corporate. It states that the financial year concludes on March 31st each year. If a company is incorporated on or after January 1st of a year, its financial year ends on March 31st of the following year.

### **Exceptions**

If a company is a holding, subsidiary, or associate company of a foreign-incorporated entity and must follow a different financial year for consolidating its accounts outside India, it can request the Central Government. The government may grant permission for any period as the financial year, irrespective of its duration.

### **Transition for Existing Entities**

Moreover, existing companies or body corporates must adjust their financial years to comply with this clause within two years of the Act's commencement.

(43) "free reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that--

- (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- (ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;

46. "holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;

51. "key managerial personnel", in relation to a company, means—

- i. the Chief Executive Officer or the managing director or the manager;
- ii. the company secretary;
- iii. the whole-time director;
- iv. the Chief Financial Officer; and
- v. such other officer as may be prescribed;

53. "manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

(54) "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation.--For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

(55) "member", in relation to a company, means--

- (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
- (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
- (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

(57) "net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account,]

after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

70. "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

(71) "public company" means a company which--

(a) is not a private company; [and]

(b) has a minimum paid-up share capital as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

(76) "related party", with reference to a company, means--

- i a director or his relative;
- ii a key managerial personnel or his relative;
- iii a firm, in which a director, manager or his relative is a partner;
- iv a private company in which a director or manager [or his relative] is a member or director;
- v a public company in which a director or manager is a director [and holds] along with his relatives, more than two per cent. of its paid-up share capital;
- vi any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- vii any person on whose advice, directions or instructions a director or manager is accustomed to act:  
Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- viii any body corporate which is--
  - (A) a holding, subsidiary or an associate company of such company;
  - (B) a subsidiary of a holding company to which it is also a subsidiary; or
  - (C) an investing company or the venturer of the company.

Explanation.-- For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate];

(ix) such other person as may be prescribed;



85. “**small company**” means a company, other than a public company, —

- i. paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
- ii. turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

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

Limits	Till 31 <sup>st</sup> March, 2021	1 <sup>st</sup> April 2021 till 14 <sup>th</sup> September, 2022	15 <sup>th</sup> September 2022 onwards
Paid-up share capital	Maximum paid-up share capital can be <b>Rs. 50 Lakhs</b>	Maximum paid-up share capital is increased to <b>Rs. 2 Crores</b>	Maximum paid-up share capital is increased to <b>Rs. 4 Crores</b>
Turnover (In the immediately preceding financial year)	Maximum turnover for qualifying as a Small Company was <b>Rs. 2 Crores</b>	Maximum turnover for qualifying as a Small Company is increased to <b>Rs. 20 Crores</b>	Maximum turnover for qualifying as a Small Company is increased to <b>Rs. 40 Crores</b>

As per section 2(87) of the Companies Act, 2013, "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company:

- controls the composition of the Board of directors; or
- exercise or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiaries.

88. “**sweat equity shares**” means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

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SS-6	Secretarial Standard on Transmission
SS-7	Secretarial Standard on Passing Resolutions by Circulation
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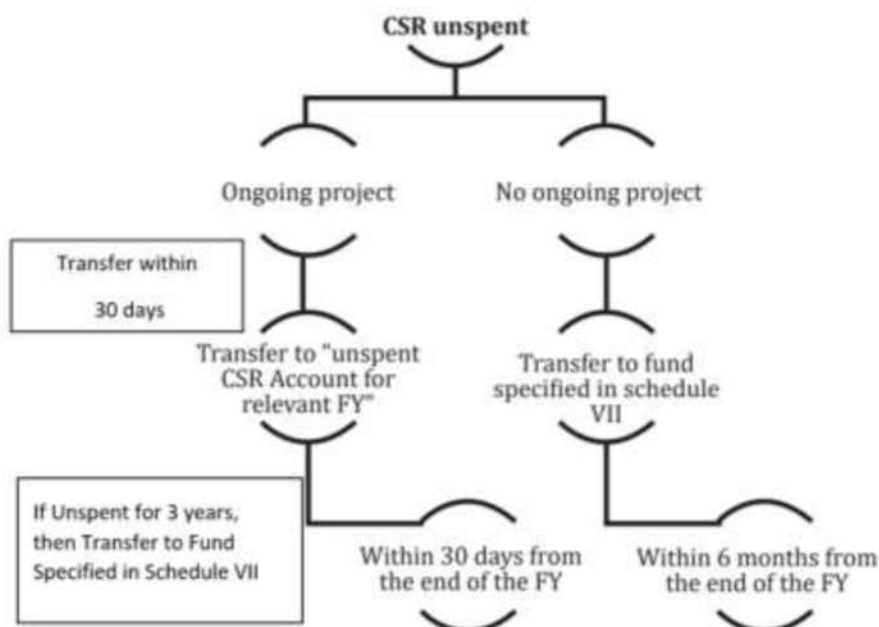
Sr. No.	Provision	Section Applicable	Threshold Limit Prescribed for the Provision
1.	Certification of Annual Return by a Company Secretary	Section 92 of Companies Act, 2013 read with Rule 11(2) of Chapter VII – Companies (Management and Administration) Rules, 2014	1. All listed companies, or 2. Any company having a paid-up share capital of Rs. 10 crore or more or a turnover of Rs.50 crore or more.
2.	Corporate Social Responsibility Committee	Section 135 of Companies Act, 2013	1. Every company having a net worth of Rs.500 crore or more, or 2. Every company with a turnover of Rs.1000 crore or more, or 3. Every company with a net profit of Rs.5 crore or more, during the immediately preceding financial year.
3.	Internal Auditor	Section 138 of Companies Act, 2013 read with Rule 13(1) of Chapter IX – Companies (Accounts) Rules, 2014	1. Every listed company, 2. Every unlisted public company having – i) Paid-up share capital of Rs.50 crore or more during the preceding financial year, or ii) Turnover of Rs.200 crore or more during the preceding financial year, or iii) Outstanding loans or borrowings from banks or from public financial institutions

			<p>exceeding Rs.100 crore or more at any point of time during the preceding financial year, or</p> <p>iv) Outstanding deposits of Rs.25 crore or more at any point of time during the prior financial year,</p> <p><b>3. Every Private Company having –</b></p> <p>i) Turnover of Rs.200 crore or more during the preceding financial year, or</p> <p>ii) Outstanding loans or borrowings from banks or public financial institutions exceeding Rs.100 crore or more at any point of time during the preceding financial year.</p>
4.	Appointment & Reappointment of Auditor	Section 139 of Companies Act read with Rule 5 of Chapter X – Companies (Audit and Auditors) Rules, 2014	<p>1. All listed companies, or</p> <p>2. Every unlisted public company having paid-up share capital of Rs.10 crore or more, or</p> <p>3. All private limited companies having paid-up share capital of Rs.20 crore or more, or</p> <p>4. Every company which has borrowed from financial institutions, banks or public deposits of Rs.50 crore or more.</p>

5.	Women Director	Section 149 of Companies Act, 2013 read with Rule 3 of Chapter XI – Companies (Appointment and Qualification of Directors) Rules, 2014	<ol style="list-style-type: none"> <li>1. All listed companies, or</li> <li>2. All other public companies having a paid-up share capital of Rs.100 crore or more, or</li> <li>3. All other public companies having a turnover of Rs.300 crore or more.</li> </ol>
6.	Independent Director	Section 149 of Companies Act read with Rule 4 of Chapter XI – Companies (Appointment and Qualification of Directors) Rules, 2014	<ol style="list-style-type: none"> <li>1. Every listed company, or</li> <li>2. All public companies having paid-up share capital of Rs.10 crore or more, or</li> <li>3. Public companies having a turnover of Rs.100 crore or more, or</li> <li>4. All public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding rupees Rs.50 Crore.</li> </ol>
7.	Auditors Committee	Section 177 of Companies Act, 2013 read with Rule 6 of Chapter XII – Companies (Meetings of Board and its Powers) Rules, 2014	<ol style="list-style-type: none"> <li>1. Every listed company, or</li> <li>2. Every public company having a paid-up share capital of Rs.10 crore or more, or</li> <li>3. Every public company having a turnover of Rs.100 crore or more, or</li> <li>4. Every public company having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 crore or more.</li> </ol>

8.	Nomination and Remuneration Committee	Section 177 of Companies Act, 2013 read with Rule 6 of Chapter XII – Companies (Meetings of Board and its Powers) Rules, 2014	<ol style="list-style-type: none"> <li>1. Every listed company, or</li> <li>2. Every public company having a paid-up share capital of Rs.10 crore or more, or</li> <li>3. Every public company having a turnover of Rs.100 crore or more, or</li> <li>4. Every public company having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 crore or more.</li> </ol>
9.	Vigil Mechanism	Section 177 of Companies Act read with Rule 7 of Chapter XII – Companies (Meetings of Board and its Powers) Rules, 2014	<ol style="list-style-type: none"> <li>1. Every listed company, or</li> <li>2. All companies accepting deposits from the general public, or</li> <li>3. All companies which have borrowed money from banks and public financial institutions above Rs.50 crore or more.</li> </ol>
10.	Key Managerial Personnel	Section 203 of Companies Act read with Rule 8 of Chapter XIII – Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014	<ol style="list-style-type: none"> <li>1. Every listed company, or</li> <li>2. All other public companies having a paid-up share capital of Rs.10 crore or more.</li> </ol>

11.	Whole-time Company Secretary	Section 203 of Companies Act, 2013 read with Rule 8A of Chapter XIII – Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014	<ol style="list-style-type: none"> <li>1. Every listed company, or</li> <li>2. All other public companies having a paid-up share capital Rs.10 crore or more, or</li> <li>3. All other private companies having a paid-up share capital of Rs.10 crore rupees or more.</li> </ol>
12.	Secretarial Audit	Section 204 of Companies Act, 2013 read with Rule 9 of Chapter XIII – Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014	<p>i. Every Listed Company; ii. Every Public Company having:</p> <ul style="list-style-type: none"> <li>Ø Paid-up Share Capital of 50 Crores rupees or more;</li> <li>Ø Turnover of 250 Crores rupees or more;</li> </ul> <p>iii. Every Company having Outstanding loans or borrowings from Banks/PFIs of 100 Crores rupees or more</p> <p>x “Format of Secretarial Audit Report: MR-3”</p>
13.	XBRL	MCA General Circular No. 16/2012 dated: 06.07.2012	<ol style="list-style-type: none"> <li>1. Every company listed with any Stock Exchange(s) in India and their Indian Subsidiaries, or</li> <li>2. Every company having a paid-up capital of Rs.5 crore and above, or</li> <li>3. Every company having a turnover of Rs.100 crore and above.</li> </ol>



### **Section 181. Company to contribute to bona fide and charitable funds, etc.**

The Board of Directors of a company **may contribute to bona fide charitable and other funds:**

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, **exceed five per cent. of its average net profits for the three immediately preceding financial years.**

### **Section 182 . Prohibitions and restrictions regarding political contributions.**

A company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in sub-section (1 ) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year **~~shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years:~~**

Provided further that no such contribution shall be made by a company **unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors** and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

### **Business Responsibility and Sustainability Report (BRSR) The Securities and Exchange Board of India**

SEBI has now introduced new requirements for sustainability reporting by listed entities.

It provides that the annual report shall disclose the initiatives taken by them from an environmental, social and governance aspects.

#### **Applicability of BRSR**

The BRSR shall be applicable to the top 1000 listed entities (by market capitalization) from FY 2022 –23.



## SEBI LODR 2015

### Regulation 17 - Board of Directors.

(1) The composition of board of directors of the listed entity shall be as follows:

(a) board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and

not less than fifty per cent. of the board of directors shall comprise of non-executive directors;

**Provided that the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;**

Example:

ABC Limited is a listed entity and having on Board one-woman Director as Executive Director. The Company is within the top 1000 listed entities. Whether the Company still requires to appoint another woman Director.

In the given case, the Company will be required to appoint one Independent woman Director as the Company is having Executive woman Director and not independent.

### Regulation 17A - Maximum number of directorships.

The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -

**(1) A person shall not be a director in not more than seven listed entities:**

**Provided that a person shall not serve as an independent director in more than seven listed entities.**

**(2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.**

[Explanation,—] For the purpose of this [regulation], the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.]

## **Regulation 21 - Risk Management Committee.**

Introduction .

A company needs to have a proactive approach to convert a risk into an opportunity.

A risk management Committee's role is to assist the Board in establishing risk management policy, overseeing and monitoring its implementation.

The provisions of this regulation shall be applicable to:

the top 1000 listed entities, determined on the basis of market capitalization as at the end of the immediate preceding financial year.

## **Regulation 23 - Related party transactions.**

### **(1) Material Related Party Transactions**

The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly:

Provided that **a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year,**

**exceeds rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity** as per the last audited financial statements of the listed entity, **whichever is lower**

(1A) A transaction **involving payments made to a related party with respect to brand usage or royalty shall be considered material if** the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed five two percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity

**Regulation 24 - Corporate governance requirements with respect to unlisted material subsidiary.**

(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.

Explanation - For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term “material subsidiary” shall mean a subsidiary, **whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.**

W

**Section 174 - Quorum of Board Meeting**

The required quorum for a board meeting must be 1/3rd of the total number of directors or two (2) directors whichever is the higher number at every board meeting

**For Top 2000 Listed Company - Quorum of Board Meeting**

Reg 17 (2A) The quorum for every meeting of the board of directors of the top 2000 listed entities with effect from April 1, 2020

shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.

### Practical Sums

QUESTION 1- The following summarized information is available in respect of a company for the year ended 31st March, 2019:

₹ Lakh

Equity Share Capital 10,000 shares of the face value of ₹100 each	10
Free Reserve	2
Revaluation Reserve	1
Profit and Loss Account (Dr.)	0.35
Net loss for the year 2018-2019	0.25

The company has paid dividends to the equity shareholders @ 8%, 10% and 12% during the immediately preceding three financial years. Advise the Board of directors the maximum amount they can pay this year by way of dividends.

ANSWER- As per Section 123 (1) of the Companies Act, 2013, a company can distribute dividends out of profits of the current year or from profits of previous financial years.

In the event of inadequacy or absence of profits in any financial year, if the company wants to propose declaration of dividend, it can pay it out of accumulated profits earned by it in previous years and transferred by the company to the free reserves, according to the conditions prescribed under Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

In the instant case, the net loss for the year 2018-19 is ₹25000.

According to Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 the following conditions must be fulfilled:

- (i) The rate of dividend cannot exceed the average of the rates at which dividend was declared in the three years immediately preceding that year i.e.  $(8\%+10\%+12\%)/3 = 10\%$ , so in this case, the amount of dividend should not exceed ₹1 Lakh.
- (ii) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement. Thus the company can draw only upto ₹1.2 lakh.
- (iii) The balance of reserves after such withdrawal shall not fall below 15% of its paid up capital as appearing in the latest audited balance sheet. Accordingly the maximum that may be withdrawn cannot exceed ₹ 50000.
- (iv) However, the amount so withdrawn must be used to set-off losses of the current year i.e. ₹25000.

Therefore, the maximum amount in this instant case that can be paid by way of dividend is ₹25000.

**December 2020**

**QUESTION 1-** HIJ Engineers Ltd. has a paid-up capital of ₹20 lakh, Free Reserves of 3 lakh and Securities Premium of ₹ 2 lakh. It has granted a loan of ₹ 14 lakh to KLM Traders Ltd. The Board of Directors is proposing the following transactions without securing approval of the members :

- (I) Sanctioning a loan of ₹ 2 lakh to KLM Cement Ltd. and
- (II) Sanctioning a loan of ₹ 3 lakh to an employee of the company.

Can the Board of Directors sanction the aforesaid loans ?

**ANSWER-** Section 186 (2) of the Companies Act, 2013 provides that, no company shall directly or indirectly give any loan to any person or other body corporate exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.

Further, Section 186(3) of the Companies Act, 2013 provides that where the aggregate of the loans and investment so far made, along with the investment or loan, proposed to be made or given by the Board, exceed the limits specified under section 186(2), no investment or loan shall be made unless previously authorised by a special resolution passed in a general meeting. Hence, as per section 186(2) of the Companies Act, 2013, the limits for the loan and investment will be the amount whichever is more of the following:

- (a) 60% of paid up share capital, free reserves and securities premium account = ₹15 lakh or
- (b) 100% of free reserves and securities premium account = ₹5 lakh

In the instant case, since the company has already given loans of ₹14 lakh to KLM Traders Ltd and further proposed to grant loan, of ₹2 Lakh to KLM Cement Ltd, it will exceed the limit of ₹15 lakh, hence prior approval by special resolution in the general meeting will be required to be passed by HIJ. Engineers Ltd. in terms of Section 186(3) of the Companies Act, 2013.

As per Explanation w.r.t. to Section 186(2) of the Companies Act, 2013, the word person, used under this sub-section does not include any individual who is in the employment of the company.

Accordingly, there are no limit imposed on the right of a company to sanction a loan to an employee of the company under Section 186(2) of the Companies Act, 2013, the Board of directors can grant a loan of ₹3 lakhs to the employee. It does not require any approval from the members.

**QUESTION 2-** The following information as per latest balance sheet figures as on 31st March, 2019 is made available to you:

	₹ crore
Paid-up Share Capital	150
Free Reserve	50
Securities Premium Account	20
Capital Redemption Reserve	10

The company has not accepted any deposits as of now. The Board of Directors want to know what is the maximum amount it can accept by way of deposits from

(i) members and (ii) the public.

Advise them.

**ANSWER-** As per Rule 3(4) of the Companies (Acceptance of Deposits) Rules, 2014, no eligible company can accept or renew-

- any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company;
- any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in clause (a), outstanding on the date of acceptance or renewal exceeds 25% of aggregate of the paid-up share capital, free reserves and securities premium account of the company.

In the instant case, as the net-worth of the company is exceeding ₹100 crore, so the company is assumed to be an eligible company. Further, aggregate of the paid-up share capital, free reserves and securities premium account is ₹220 crores and the company has not accepted any deposits as of now.

Accordingly, from the members, the eligible company can accept upto 10% of ₹220 crores i.e. ₹22 crores. From the public it can accept upto 25% of ₹220 crores i.e. ₹55 crores.

**The Quantum of deposits in nutshell:**

Type of company	Members	Public
Eligible Company	Upto 10% of aggregate of the <u>paid up</u> share capital, free reserves and securities premium account	Upto 25% of aggregate of the <u>paid up</u> share capital, free reserves and securities premium account
Company referred in section 73(2) <u>i.e.</u> Non-eligible Companies	Upto 35% of aggregate of the <u>paid up</u> share capital, free reserves and securities premium account	Prohibited
Government Company (eligible under section 76)	–	Upto 35% of aggregate of the <u>paid up</u> share capital, free reserves and securities premium account



**June 2021**

**QUESTION 1-** Jupiter Ltd. intends to acquire shares in another company. How much amount can be invested by Jupiter Ltd. without passing special resolution considering the facts mentioned below ?

Particulars	Amount (₹ crore)
Paid-up Share Capital	1,000
Free Reserves	-340
Securities Premium Account	780
Investment in another company	780

Examine.

**ANSWER-** As per section 186(2) of the Companies Act, 2013, no company shall, directly or indirectly:

- give any loan to any person or other body corporate;
- give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,  
exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.

Further, where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under Section 186(2) of the Companies Act, 2013, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.



Particulars	Amount in Rs. (Crore)
Paid-up share capital _____A	1000
Free Reserves. _____B	-340
Securities Premium Account____C	780
60% of paid-up capital, free reserves and securities premium account (A+B+C) x 60%= D i.e., 1440 * 60%	864
100% of free reserves and securities premium account (B+C) x 100% = E (780 – 340) ) i.e., 440 *100%	440
Higher of the two is D i.e., Rs.864 crore	
Investment in another company	780
Therefore, further investment that can be made by Jupiter Ltd. without passing special resolution will be higher of D or E reduced by investment already made i.e. (Rs.864- Rs.780= Rs.84 Crore) Answer 2(d)	

December 2021

**QUESTION 1-** XYZ Ltd is an investment company whose principal business is acquisition of shares and debentures of other companies. The following figures were derived from the books of XYZ Ltd. :

Assets :

Investment in shares and debenture	₹95 Lakh
Other Assets	₹105 Lakh
Total	₹200 Lakh

Income :

Income from investment business	₹12 Lakh
Other Income	₹18 Lakh
Total	₹30 Lakh

Whether the company is an investment company as per section 186 and eligible to claim exemption given thereunder ? (3 marks)

**ANSWER-** As per the explanation given under section 186 of the Companies Act, 2013, investment company means a company whose principal business is the acquisition of shares, debentures or other securities and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent of its total assets, or if its income derived from investment business constitutes not less than fifty per cent as a proportion of its gross income.

In light of the above explanation, the assets of XYZ Ltd. in form of investment in shares or debentures is less than fifty percent of the total assets of the company and also the income derived from the investment business is less than fifty percent of the total income of the company. Hence, either of the two conditions need to be satisfied to make an investment company and, in this case, neither of this condition is satisfied. So, XYZ Ltd. cannot be an investment company for the purpose of Section 186.

(c) The Board of directors of Well Ltd., wants to contribute `60,000 to a charitable trust during the financial year 2022-2023. During the financial year 2021-2022, the company suffered losses; however, during the financial years 2019-20 and 2020-21 the net profits were `12,00,000 and `5,00,000 respectively. The directors are contemplating to contribute the said amount in spite of the losses. In this connection, state whether the directors can do so ? Whether contribution towards Gratuity Fund for employees of the company can be considered as contribution to charitable trust under the Companies Act, 2013 ?

Suitable assumptions can be made. (4 marks)

Ans- As per section 181 of the Companies Act, 2013, company can contribute to bona- fide charitable funds or other funds which are not directly connected to business of company upto 5% of its average net profits during the preceding three financial years.

If the contribution is proposed for more than this limit, prior approval in General Meeting is required.

In present case, we assume Well Ltd. has incurred Loss of Rs. 2,00,000 during the financial year 2021-22

Year	Average Profits/Loss
2019-20	12,00,000
2020-21	5,00,000
2021-22	-2,00,000

Average net profits =  $12,00,000 + 5,00,000 - 2,00,000 / 3 = \text{Rs. } 5,00,000$  5% of Average Net Profits = 5% of 5,00,000 = Rs. 25,000

Pursuant to Section 181, if contribution to charitable trust is more than 5% of average net profits for three financial years , it requires prior approval in General Meeting.

Hence, in the above case, where Well Ltd. wants to contribute more than Rs. 25000

i.e. Rs. 60,000 (in the present case) to charitable fund, the directors have to ensure that:

- Prior approval by ordinary resolution in the general meeting is obtained to make contribution to charitable fund.
- The trust is bonafide.

Contribution towards Gratuity Fund for employees of company cannot be considered as contribution towards charitable fund or trust. Gratuity Fund is directly related to business of company or welfare of employees

- (a) With the scenarios described below, examine whether any of the following companies is required to constitute Audit Committee as per provisions of the Companies Act, 2013 ?

<i>Name of Company</i>	<i>Paid up capital (Rs. in crore)</i>	<i>Turnover (Rs. in crore)</i>	<i>Aggregate outstanding loan, debenture and deposits (Rs. in crore)</i>
<i>A Ltd. (Unlisted)</i>	<i>8</i>	<i>75</i>	<i>55</i>
<i>B Ltd. (Listed)</i>	<i>10</i>	<i>75</i>	<i>11</i>
<i>C Pvt. Ltd.</i>	<i>8</i>	<i>110</i>	<i>11</i>
<i>D Ltd. (Unlisted)</i>	<i>10</i>	<i>51</i>	<i>5</i>

**Ans-** Section 177 of the Companies Act, 2013 read with Rule 6 of the Companies (Meetings of the Board and its Powers) Rules, 2014 provides that the Board of directors of following companies are required to constitute an Audit Committee of the Board:

- Every listed company;
- All public companies with paid up capital of Rs. 10 crore or more; or
- All public companies having turnover of Rs. 100 crore or more; or
- All public companies, having in aggregate outstanding loans, debentures and deposits exceeding Rs. 50 crore or more

In view of the above provisions, it can be suggested that:

- A Ltd. is required to constitute Audit Committee as it has aggregate outstanding loans, deposit and debenture of Rs. 55 crore (in excess of Rs. 50 crore).
- B Ltd. is required to constitute Audit Committee as it is a listed company.
- C Pvt. Ltd. is not required to constitute Audit Committee as it is a private company.

D Ltd. is required to constitute Audit Committee as it has a paid up capital of Rs. 10 crore

Question:

ABC Limited is having three subsidiaries A Ltd, B Ltd and C Ltd. The consolidated income of ABC Limited is Rs. 300 Cr and networth is Rs. 600 Cr.

The income and networth of A Ltd, B Ltd and C Ltd. are as follows –

	Income	Networth
A Ltd	10 Cr	65 Cr
B Ltd	45 Cr	14 Cr
C Ltd	10 Cr	18 Cr

Please examine if there is any material subsidiary of ABC Limited.

Answer:

In the given case,

10 % of consolidated income and networth of ABC Limited would be 30 Cr and 60 Cr respectively. Hence, A Ltd since crossed threshold in terms of Networth, would be a material subsidiary.

B Ltd since crossed threshold in terms of income, would be a material subsidiary.

C Ltd since does not cross either of the threshold, would not be a material subsidiary.

**Important List of Forms Prescribed under the Companies Act, 2013**

Form Number	Description
INC 18	Application to Regional Director for the conversion of Section 8 company to any other kind of company
INC 32	Simplified Proforma for Incorporating Company electronically (SPICe)
INC 33	e-Memorandum of association
INC 34	e-Articles of association
INC 35	Application for Goods and services tax Identification number, employees state Insurance corporation registration plus Employees provident fund organisation registration (AGILE-PRO)
PAS 2	Information Memorandum
PAS 3	Return of allotment of securities
PAS 4	Private placement offer cum application letter
PAS 5	Record of Private placement offers
SH 1	Certificate of shares
SH 2	Register of renewed and duplicate share certificates
SH 7	Notice to Registrar for the alteration of share capital
SH 8	Letter of offer to be filed with the Registrar of Companies (RoC) in relation to buyback of shares or other securities
SH 9	Solvency declaration to be filed with the Registrar and additionally with the SEBI in case of listed companies in relation to buyback of shares or other securities
SH 10	Register of shares or other securities bought back
SH 11	Return on completion of the buyback of shares or other securities
SH 12	Debenture trust deed
SH 13	Nomination by securities holders

<b>SH 14</b>	Notice to the company of cancellation or variation of nomination
<b>SH 15</b>	Certificate of compliance in respect of buyback of securities by two directors
<b>DPT 1</b>	Circular or advertisement in a newspaper inviting deposits
<b>DPT 2</b>	Deposit trust deed
<b>DPT 3</b>	Return of deposits
<b>DPT 4</b>	Statement on existing deposits as on the date of commencement of the companies act
<b>CHG 1</b>	Application to register the creation or modification of charge (other than debentures)
<b>CHG 2</b>	Certificate of registration of charge
<b>CHG 3</b>	Certificate of modification of charge
<b>CHG 4</b>	Intimation to the Registrar regarding particulars for the satisfaction of charge
<b>CHG 5</b>	Certificate of registration of satisfaction of the charge
<b>CHG 6</b>	notice of appointment or cessation of a receiver or a manager
<b>CHG 7</b>	Register of charges created, modified and satisfaction by the company
<b>CHG 8</b>	Application to Central Government requesting an extension of time to file details of registration of creation or modification or satisfaction of charge as well as rectification any omission or misstatement of any details
<b>CHG 9</b>	Application for registering the creation or modification of charge for debentures including its rectification
<b>CHG 10</b>	Application to ROC requesting an extension of time
<b>MGT 1</b>	Register of members of the company
<b>MGT 2</b>	Register of Debenture Holders or Any Other Security Holders
<b>MGT 3</b>	Location where a foreign register is kept
<b>MGT 7</b>	Annual return form to be filed by a company
<b>MGT 8</b>	Certification by a practising Company Secretary of the annual return

	filed by a listed company or a company comprising paid-up share capital of Rs 10 crore and above or turnover of 50 crore and above
<b>MGT 9</b>	Extract of the annual return
<b>MGT 14</b>	Filing of company resolutions and agreements with the
<b>MGT 15</b>	Form for filing report on the Annual General meeting
<b>BEN 1</b>	Declaration by the significant beneficial owner in case of an individual
<b>BEN 2</b>	Return of significant beneficial owners in shares
<b>BEN 3</b>	Register of significant beneficial owners to be maintained by the company
<b>BEN 4</b>	Notice issued by a company to a person believed to be a significant beneficial owner of the company
<b>IEPF 1</b>	Statement of credits made to the Investor Education and Protection Fund (IEPF)
<b><u>IEPF 2</u></b>	<b><u>Statement of investor-wise details of unclaimed and unpaid dividend/debenture/deposit amount</u></b>
<b>IEPF-3</b>	Statement of shares and unpaid or unclaimed dividend not transferred to the Investor Education and Protection Fund
<b>IEPF 4</b>	Statement of shares transferred to the Investor Education and Protection Fund
<b><u>IEPF 5</u></b>	<b><u>Application made to the authority for claiming unpaid amounts and shares out of the Investor Education and Protection Fund by the claimant</u></b>



### What is the procedure to file details of unclaimed and unpaid amount?

Form IEPF-2 is required to be filed by the company which shall contain investor wise details of unclaimed and unpaid amounts in respect of dividends, debentures, deposits, etc.

The form is to be filed every year within a period of 60 days after the holding of Annual General Meeting or the date on which the AGM should have been held.

After the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019 vide Notification No. G.S.R. 571(E) dated 14th August, 2019, w.e.f. 20.08.2019, Companies are required to file IEPF -2 within a period of 60 days (earlier limit was 90days ) after the holding of Annual General Meeting.”

<b>AOC 1</b>	Statement containing salient features of financial statements of subsidiaries/ associates/joint ventures
<b>AOC 2</b>	Details containing contracts or arrangements entered into with related parties
<b>AOC 3</b>	Statement containing salient features of the audited financial statements
<b>AOC 3A</b>	Detailed statement on the financial statements to be filed by companies complying with the Companies (Indian Accounting Standards) Rules 2015
<b>AOC 4</b>	Form to file a financial statement and other documents of the company with the Registrar
<b>AOC 4(XBRL)</b>	XBRL document in respect of financial statement and other documents to be filed with the Registrar
<b>AOC 4 CFS</b>	Form to file consolidated financial statements and other documents with the Registrar
<b>AOC 5</b>	Notice to declare the address of the location in which the books of accounts are maintained

ADT 1	Form to inform the Registrar regarding the appointment of auditor by the company
ADT 2	Application for removing the auditor before the expiry of their term by the company
ADT 3	Notice of resignation of auditor
ADT 4	Form to report any suspected fraud by the auditor to the Central Government

## Audit reporting under Companies Act, 2013...

### ➤ Sec 143(12) - Reporting of frauds

If an auditor of a company, in the course of the performance of his duties as auditor,

- has reason to believe that an offence involving fraud is being or has been committed
- against the company
- by officers or employees of the company,
- he shall immediately report the matter to the CG within the time prescribed.
- In case of frauds involving amounts **lesser than amount specified \*\*** he shall report to the Audit Committee or Board
- Frauds reported only to Audit Committee and Board to be disclosed in Directors' Report

**\*\* Rs. 1 crore**

<b>DIR 2</b>	Consent given by a person to act as the director
<b>DIR 12</b>	Particulars of Directors and the key managerial personnel appointed and any changes
<b>MBP 1</b>	Disclosures by a director of his interest or concern in any other companies
<b>MBP 2</b>	Register of loans, security, guarantee, and acquisition made by the company
<b>MBP 3</b>	Register of investments that are not held in its own name by a company
<b>MBP 4</b>	Register of contracts or arrangements with a related party or in which directors are interested
<b>STK 1</b>	Notice by Registrar of Companies for company's name removal from the register of companies
<b>STK 2</b>	Application by the company to ROC seeking the removal of its name from the register of companies

### Form CSR 1

The Ministry of Corporate Affairs (MCA) mandated entities undertaking Corporate Social Responsibility (CSR) to file eForm CSR-1 for all their CSR projects from 1 April 2021.

All these entities that intends to undertake a CSR activity should mandatorily register themselves with the Registrar of Companies by filing the Form CSR-1 electronically.

The eForm CSR-1 needs to be verified digitally by a Chartered Accountant (CA), Company Secretary (CS), or a Cost Accountant (CA) in practice.

After verification of the form by a CA, CS or cost accountant, submit the Form CSR-1 on the portal.

A unique CSR Registration Number will automatically be generated by the system upon submission of the form.

### Form CSR-2

The Ministry of Corporate Affairs (MCA) vide a Notification dated February 11, 2022, states that , **every company covered under Section 135 of the Companies Act, 2013 shall furnish a report on Corporate Social Responsibility in E-Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards.** Now corporate must furnish the details of the CSR spent to the Ministry through this form.

The shall come into force from February 11, 2022.

#### (9) Exemption from Constitution of CSR Committee

Where the amount to be spent by a company does not exceed fifty lakh rupees, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

June 2022

Mind-Game Ltd., is a subsidiary company of Mind-Guru Ltd. Mind-Game attracts the provisions of section 135 of the Companies Act, 2013 and it has minimum average obligation to spend Corporate Social Responsibility (CSR) amount of

₹15 crore during each of the preceding 5 years. In this connection, Board of directors need your expert views on the following matters :

- (i) What is the meaning of “impact assessment” ?
- (ii) Whether impact assessment is required to be undertaken by all the companies ?
- (iii) Who can conduct impact assessment ? (5 marks)

### Answer

- i. The impact assessment is exercise to assess the social impact of a particular project. Impact assessment intends to evaluate "social return on investment". Impact assessment is the exercise of taking a retroactive view on the Corporate Social Responsibility (CSR) activities completed by the entity.

Impact assessment is seemingly another step to encourage companies to take considered decisions before deploying CSR amounts and assess the impacts of their investments to capture the impact being generated by them. This shall not only serve as feedback for companies to plan and better allocate resources, but shall also deepen the impact of CSR.

- ii. Since impact assessment is cost-intensive and time consuming, the idea is to obligate only certain classes of companies which have large amounts of spending and have completed their large CSR projects.
- iii. Accordingly, Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 **requires following class of companies to conduct impact assessment:**

- **companies with minimum average CSR obligation of Rs. 10 crore or more** in the immediately preceding three (3) financial years; **and**
- **having CSR projects of outlays of minimum Rs. 1 crore** and which have been completed not less than 1 year before undertaking impact assessment.

iv. The impact assessment shall be conducted by an independent agency.

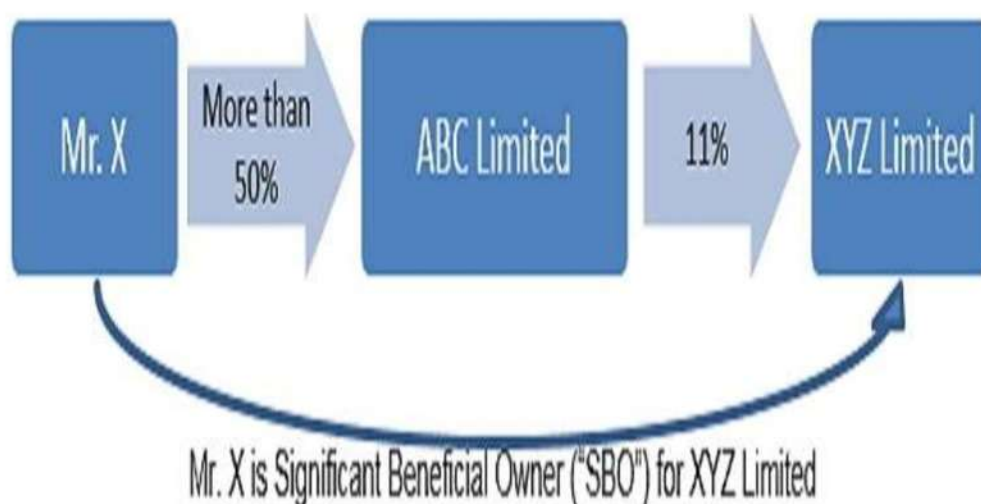
### **CSR – Impact Assessment**

Cost of social impact assessments, which can be considered as CSR spending, cannot be greater than 2% of all CSR expenditures for the applicable financial year or Rupees 50 lakh, whichever is higher.

## Who is Significant Beneficial Owner?

“Significant Beneficial Owner” in relation to a reporting company means **an individual** referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons (i.e. along with relatives) or trust, **possesses one or more of the following rights or entitlements in such reporting company**, namely: –

- (i) holds indirectly, or together with any direct holdings, not less than ten per cent of the shares;
- (ii) holds indirectly, or together with any direct holdings, not less than ten per cent of the voting rights in the shares;
- (iii) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- (iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.



<b>BEN 1</b>	Declaration by the <b>significant</b> beneficial owner in case of an individual
<b>BEN 2</b>	<b>Return of significant beneficial owners</b> in shares to be filed by Company to ROC
<b>BEN 3</b>	<b>Register of significant beneficial owners</b> to be maintained by the company
<b>BEN 4</b>	Notice issued by a company to a person believed to be a significant beneficial owner of the company







# Certificate

of

## Signature Completion

This document has been signed through



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