4th SEMESTER B.B.A

CALICUT UNIVERSITY

CORPORATE REGULATIONS

2019 ADMISSION

SEMESTER NOTE

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Syllabus **BBA4C03 CORPORATE REGULATIONS**

Module I : Introduction to Companies Act, 2013: Objects of the Act – Salient features of the Act - Meaning and definition of company – Features – Kinds of companies – Private company - Public company – Associate company – Dormant company - One person company – Small company - Government company - Lifting of corporate veil. (**8 Hours, 10 Marks)**

Module II : Formation of Companies : Promotion – Role of promoters – Incorporation – Capital subscription – Commencement of business – Pre-incorporation and provisional contracts - Document of companies: Memorandum of Association – Definition - Contents and alteration - Doctrine of Ultravires – Articles of Association – Definition - Contents and alteration – Distinction between Memorandum and Articles - Constructive notice of Memorandum and Articles – Doctrine of Indoor management – Prospectus – Contents – Statement in lieu of prospectus – Liabilities for misstatement. (**13 Hours, 18 Marks)**

Module III : Share Capital : Shares – Kinds of shares – Public issue of shares – Book building - Allotment of shares - Irregular allotment – Issue prices of shares – Listing of shares - Employees stock option scheme - Sweat equity shares - Right shares – Bonus shares - Shares with differential rights – Share certificate and share warrant - Calls - Forfeiture – Surrender of shares – Buyback of shares – De materialisation and re materialisation of shares – Transfer and transmission of shares – Transfer under Depository system. (**13 Hours, 17 Marks)**

Module IV : Management of Companies : Board and Governance – Directors: Appointment – Position – Powers - Rights - Duties and liabilities – Qualification – Disqualification – Removal of directors – Key Managerial Personnel – Introduction to Corporate Governance – Need and importance of Corporate Governance – Corporate social responsibility - Securities and Exchange Board of India Act 1992 – Objects – Establishment and management of SEBI – Powers and functions of SEBI– Securities Appellate Tribunal (SAT). (**18 Hours, 20 Marks)**

Module V : Company Meetings and Winding up : Requisites of a valid meeting – Statutory meeting – Annual general body meeting – Extra ordinary meeting – Board meetings – Resolutions – Types - Company Secretary : Qualification – appointment – duties - Winding up : Meaning – Modes of winding up – Winding up by Tribunal - Members' voluntary winding up – Creditors' voluntary winding up – Liquidator: Powers - Duties and liabilities – Consequences of winding up. (**12 Hours, 15 Marks)**

Reference Books:

1. M.C. Shukla&Gulshan :Principles of Company Law, S. Chand and Co., New Delhi.

2. N.D. Kapoor : Company Law and Secretarial Practice, Sultan Chand & Sons, New Delhi.

3. Mannual of Companies Act, Corporate Laws and SEBI Guidelines", Bharat Law House, New Delhi.

4. M.C. Bhandari : Guide to Company Law Procedures, Lexis NexisInia, New Delhi.

5. Tuteja :Company Administration and Meetings, S. Chand, New Delhi.

6. M.C. Kuchal :Company Law and Secretarial Practice, Vikas Publishing House, New Delhi.

7. Dr. P.N. Reddy and H.R. Appanaiah : Essentials of Company Law and Secretarial Practice, Himalaya Publishers, Mumbai.

8. M.C. Kuchal : Secretarial Practice, Vikas Publishing House, New Delhi.

9. AshokBagrial : Secretarial Practice, Vikas Publishing House, New Delhi.

10.Relevant Bare Act.

MODULE 1

INTRODUCTION TO COMPANIES ACT 2013

The 1956 Act has been in need of a substantial revamp for quite some time now, to make it more contemporary and relevant to corporates, regulators and other stakeholders in India. While several unsuccessful attempts have been made in the past to revise the existing 1956 Act, there have been quite a few changes in the administrative portion of the 1956 Act. The most recent attempt to revise the 1956 Act was the Companies Bill, 2009 which was introduced in the Lok Sabha, one of the two Houses of Parliament of India, on 3 August 2009. This Companies Bill, 2009 was referred to the Parliamentary Standing Committee on Finance, which submitted its report on 31 August 2010 and was withdrawn after the introduction of the Companies Bill, 2011. The Companies Bill, 2011 was also considered by the Parliamentary Standing Committee on Finance which submitted its report on 26 June 2012. Subsequently, the Bill was considered and approved by the Lok Sabha on 18 December 2012 as the Companies Bill, 2012 (the Bill). The Bill was then considered and approved by the Rajya Sabha too on 8 August 2013. It received the President's assent on 29 August 2013 and has now become the Companies Act, 2013.

Companies Act 2013 is an Act of the Parliament of India which regulates incorporation of a company, responsibilities of a company, directors, and dissolution of a company. The 2013 Act is divided into 29 chapters containing 470 sections as against 658 Sections in the Companies Act, 1956 and has 7 schedules. The Act came into force on 12 September 2013 with few changes like earlier private companies maximum number of member was 50 and now it will be 200. A new term of "one person company" is included in this act that will be a private company and with only 98 provisions of the Act notified. On 27 February 2014, the MCA stated that Section 135 of the Act which deals with corporate social responsibility will come into effect from 1 April 2014. On 26 March 2014, the MCA stated that another 183 sections will be notified from 1 April 2014. The Ministry of Company Affairs thereafter proposed a draft notification for exempting private companies from the ambit of various sections under the companies act.

Purpose/Objective of the Act

The Act broadly seeks to achieve the following objectives:

a) To promote the development of the economy by encouraging entrepreneurship and enterprise efficiency and creating flexibility and simplicity in the formation and maintenance of companies;

b) To encourage transparency, accountability and high standards of corporate governance;

c) To recognize various new concepts and procedures facilitating ease of doing business while protecting interests of all the stakeholders;

d) To enforce stricter action against fraud and gross non-compliance with company law provisions;

e) To set up institutional structure in the form of various authorities, bodies and panels as well as by including recognition of various roles for professionals and other experts; and

f) To cater to the need for more effective and time bound approvals and compliance requirements relevant in the present context.

g) To introduce good governance in companies by creating independent directors and woman directors.

h) To introduce provisions dealing with prohibition of insider trading and forward dealings in the securities of companies.

i) Creation of the National Company Law Tribunal and the National Company Law Appellate Tribunal so as to reduce the burden on the courts which have a huge backlog of other cases to deal with.

j) Creating National Financing Reporting Authority (NFRA) to take over several functions including the setting of accounting and auditing standards.

k) Corporate Social Responsibility is introduced so as to encourage a socially, environmentally and ethically responsible behaviour by companies.

Salient Features of the Act, 2013

The Companies Bill 2013 contains 29 Chapters, 7 Schedules, and 470 clauses as against the Companies Act, 1956 which consists of 658 sections under 13 Parts and 15 schedules. In so far as section numbers are concerned more than 200 sections have been deleted from the Companies Act, 1956. While this is on one side of it, number of provisions have been removed or discontinued or dispensed with in the existing but revised section/clause numbers. The clauses to the Companies Bill, 2013 have been categorized into Introduced, Amended sections for easy and quick reference.

Following are the important features of the Companies Act 2013.

1. **One Person Company (OPC)** [Clause 2(62)]: It may have only one director and one shareholder.
2. **Corporate Social Responsibility (CSR)**: Every qualifying company has to appoint a CSR committee to formulate and recommend a CSR policy and its working also.
3. **National Company Law Tribunal (NCLT)**: *National Company Law Tribunal* and *the National Company Law Appellate Tribunal* were introduced to replace the Company Law Board and Board for Industrial and Financial Reconstruction.
4. **Class Action Suits** (Clause 37) : A new concept, known as class action suit has been introduced with a view of making shareholders and other stakeholders more informed, knowledgeable and conscious of their rights.
5. **Cross-border mergers:** Merger or Amalgamation of an Indian Company with Foreign Company and vice versa (Clause 234) with prior permission of RBI. The Act also proposes a fast track and simplified procedure for merger and amalgamations of certain class of companies.
6. **Prohibition of insider trading and forward dealings** (Clause 195)**:** It prohibits the directors and key managerial personnel from purchasing call and put options of shares of the company, if such person is reasonably expected to have access to price-sensitive information.
7. **Strict rules for auditors:** Auditor not to render certain services (Clause 144). If the auditors acted knowingly with the intention to deceive the company or its shareholders or creditors or tax authorities he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to twenty five lakh rupees. An auditor will be able to audit a maximum of 20 companies.
8. **Financial year:** the period ending 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year.
9. **Number of members:** the maximum number of members allowed in a private company is 200.
10. **Entrenchment Provisions in Articles of Association (Clause 5):** Articles may provide for more stringent or restrictive procedure than passing of special resolution for altering certain provisions of the Articles.
11. **Duties of directors defined:** Duties of directors of all companies are spelt out in section 166
12. **Composition of Board:** prescribed class of companies are required to appoint at least one woman director. At least one director should be a person who has stayed in India for a period

not less than 182 days in previous year. Listed companies to have at least one third independent directors.

13. **Notice and participation in Board meeting:** Minimum 7 days' notice to be given to all directors whether or not in India. Participation of directors are in person or by video conferencing or any other audio visual means capable of recording, recognising and storing the participation of directors with date and time.
14. Expert [Clause 2(38)]
15. Inclusive definition : of Financial Statement [Clause 2(40)]
16. Public Offer and Private Placement deals with issue of securities by a public and a private company (Clause 23)
17. E-governance in all company processes (Clause 120)
18. Mandatory Internal Audit for prescribed classes of companies (Clause 138)
19. Mandatory Rotation of auditors for listed companies and other prescribed classes of companies after 1 terms of 5 consecutive years in case of individual auditor and after 2 terms of 5 consecutive years for audit firm (Clause 139)
20. 5 year tenure for auditor appointed at AGM of company (other than Government Company/ Government controlled Company) instead of annual appointment/ reappointment
21. Limited Liability Partnership eligible to be appointed as Auditor of Company (Clause 141)
22. Nomination and Remuneration committee [Clause 178(1)]
23. Stakeholders relationship committee [Clause 178(5)]
24. Key Managerial Personnel [Clause 2(51) and Clause 203] Key managerial personnel (KMP) to include Manager or Managing Director (MD) or Chief Executive Officer (CEO), Whole time director, Chief Financial Officer (CFO) and Company Secretary (CS).
25. Statutory Status to the Serious Fraud Investigation Office (SFIO) (Clause 211)
26. Specific framework for Merger and Acquisitions of companies. Single forum for approval of mergers and acquisitions (Clause 233)

Meaning and definition of company

The term "Company" was originally derived from 2 Latin words

- Com (means together)
- Panis (means bread/meal)

Thus the term "Company" was originally used for that group of person who took their meal together.

According to Section 2(20) of Companies Act, 2013, "a company means a company incorporated (formed and registered) under this Act or under any previous Company law".

Lord Justice Lindley has defined a company as "an association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business and who share the profit and loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contributed in it or form it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his "share". The shares are always transferable although the right to transfer them may be restricted.

According to W.H Haney " A company is an incorporated association, which is an artificial person created by law, having separate entity with a perpetual succession and a common seal"

Justice James defines a company as "a company is an association of persons united for common object."

Features/characteristics of a Company

Following are the main characteristics of company form of business:

1) **Voluntary association of persons:** It can neither compel a person to become its member nor to give up his membership. It is the personal choice of people and their desire to get profit or some other object of their own which inspires them to become members of the company
2) **Corporate personality (separate legal entity):** Being an artificial person, a company is a legal entity different and separate from its promoters, members, directors, and other stake holders.
   - It has its own corporate name and work under that name.
   - It can hold its assets in its own name,
   - It can sue or be sued in its own name,
   - It can borrow/lend funds, open bank accounts, enter into contracts in its own name

   Any of its shareholders or directors or other officers cannot be held liable for the acts of the company even if he/it holds the entire share capital. Further, the shareholders or individual directors are not the agents of the company and so they cannot bind company by their personal acts.
3) **Perpetual Succession:** Perpetual Succession means existence forever. According to Section 9, from the date of incorporation mentioned in the certificate of incorporation, every company has perpetual succession. A company is an artificial person created by law; therefore it can be dissolved or wind up by law. In other words, members may come and go, but company can go forever.
4) **Limited liability**: The liability of the members of a company is generally limited. In the case of company limited by shares the liability of the members towards the company is limited to the amount unpaid on their shares only. In the case of company limited by guarantee, the liability of the members towards the company is limited to the amount of guarantee prescribed in the MOA. Further, in such companies the members can be made liable only in the event of winding up of the company. The Act does not prevent the Companies from making the liability of its members unlimited.
5) **Transferability of Shares**: According to Section 44 of Companies Act, 2013, the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

   According to Section 2(68) (i) of Companies Act, 2013, private company may restricts the right to transfer its shares through its AOA. But a generally, a public company cannot restrict the transfer of its shares.
6) **Artificial legal person**: A company is created by a process other than natural birth. It does not possess the physical attributes of a natural person. At the same time, it is clothed with many of the rights of a natural person. It is invisible, intangible, immortal and exists only in the eyes of law.
7) **Common Seal**: On incorporation, a company may have a common seal. Since a company has no physical existence, therefore it has to act through its agents only. To put restriction on the misuse of the powers of those agents, contracts entered into by anyone on behalf of the company may be under the common seal of the company. Thus common seal acts as official signature of the company. Now, after Companies (Amendment) Act, 2015, it is not compulsory for the company to have common seal. Thus a company may or may not have common seal.
8) **Capacity to sue and be sued**: A company is separate legal entity having its own corporate name. Therefore, according to Section 9, company may sue or may be sued in its own name (not in the name of its directors or members).
9) **Separate Property**: A company is separate legal entity having its own corporate name. It can hold properties in its own name. No member can claim himself to be the owner of the

company's property during its existence. In other words, the property of a company is not the property of the individual members.

10) **Contractual Rights:** A company is an artificial person created by law. Therefore like natural person, it can enter into contract in its own name through its agent (directors or other authorised persons).
11) **Demutualization (separation of management and ownership):** Demutualization means separation of management and ownership. Under company form of business, management (directors) is different from owners (members). Members of the company do not get engaged into day-to-day business of the company. Members appoint directors who run company on their behalf. Such directors may or may not be members of the company.
12) **Large amount of capital**: Large numbers of shareholders are there, it can raise huge amount by way of shares from among the shareholders, and can carry its business activities in a better manner without any shortage of funds.
13) **Winding up:** winding up is the last stage in company life. The company's assets are disposed off the debts paid off out of the realised assets, and the surplus any is then distributed among the members in proportion to their holdings in the company.

KINDS OF COMPANIES

companies can be classified;

1. **On the basis of incorporation**
   i. **Chartered companies**:- The Company which is incorporated under a special royal charter issued by the king or head of the state is called chartered company. Such companies are popular in England. In India such type of company is not found and entrepreneur cannot start this type of company. The East India Company, Bank of England, Hudson's Bay Company were incorporated as chartered companies.
   ii. **Statutory companies: -** These are constituted by a special Act of Parliament or State Legislature. The provisions of the Companies Act, 2013 do not apply to them. Examples of these types of companies are Reserve Bank of India, Life Insurance Corporation of India, etc.
   iii. **Registered companies:-** The companies which are incorporated under the Companies Act, 2013 or under any previous company law. Such companies come into existence only when they are registered under the Act and a certificate of incorporation has been issued by the Registrar. So public registration is an essential feature of these type of companies. These companies derive their powers from the companies Act and from Memorandum of Association, and its internal rules and regulations are described in its Articles of Association.
2. **On the basis of Liability**
   i. **Companies limited by shares:-** A company that has the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares. For example, a shareholder who has paid Rs. 75 on a share of face value ` 100 can be called upon to pay the balance of Rs. 25 only. Companies limited by shares are by far the most common and may be either public or private.
   ii. **Companies limited by guarantee**:- A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee. The members of a guarantee company are, in effect, placed in the position of guarantors of the company's debts up to the agreed amount.
   iii. **Unlimited companies:-** In this type of company, the members are liable for the company's debts in proportion to their respective interests in the company and their liability is unlimited. Such companies may or may not have share capital. They may

be either a public company or a private company. These companies are very are due to its unlimited liability.

3. **On the basis of Number of members**
   i. **Private company**:- According to Section 2(68) of the Companies Act, 2013 "Private Company" means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,

   a) restricts the right to transfer its shares;

   b) except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: Provided further that:

   a) Persons who are in the employment of the company; and

   b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

   c) prohibits any invitation to the public to subscribe for any securities of the company;

   ii. **Public company**:- According to Section 2(71) of the Companies Act, 2013 "public company" means a company which

   a) is not a private company;

   b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up 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 purpose of this Act even where such subsidiary company continues to be a private company in its articles.

   As per section 3 (1) (a), a public company may be formed for any lawful purpose by seven or more persons, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

DIFFERENCES BETWEEN PRIVATE COMPANY AND PUBLIC COMPANY

Basis	Private company	Public company
Number of members	Minimum 2 Maximum 200	Minimum 7 Maximum unlimited
Public invitation of capital	No public invitation in the share capital	Public invitation is allowed
Transferability of shares	It is restricted	Freely transferable
Number of directors	2 (1 director in case of OPC)	3
Issue of Prospectus	Not required	Required
Minimum subscription	Need not wait for minimum subscription for proceeding issue of shares	It can carry out allotment only after receiving minimum subscription.
Provision for entrenchment in Articles	Provision for entrenchment in the Articles are concerned, it is to be agreed and approved by all the members	It is to be agreed and approved through a special resolution.
Quorum of meeting	Two members personally present	5 members(number of members 1000), 15 members(number of members more than 1000 but up to 5000), 30 members(members exceed 5000)

Managerial remuneration	No restriction to payment of managerial remuneration	There are legal restrictions on remuneration of directors and the total managerial remuneration cannot exceed 11% of net profits
Special privileges	Special privileges are enjoyed	No such privileges
Use of the word 'Limited'	It must have the words 'Private Limited' in its name	Must have only the word 'Limited'

Privileges or advantages of a Private Company

1. Only 2 persons are required to form a private company
2. Need not observe the provisions regarding the issue of prospectus, receiving minimum subscription, allotment of shares etc.
3. It can raise capital privately
4. Minimum number of directors is only two
5. No restrictions with regard to the remuneration payable to the directors
6. Quorum for meeting is two members
7. Annual evaluation in the board's report is not applicable
8. The requirement of retirement by rotation of directors does not apply and all its directors can be permanent directors.
9. Not required to offer further issue of share capital to existing shareholders, and it can allot new issues to outsiders.
10. All the directors may be appointed by a single resolution.

iii. **One Person Company**:- The 2013 Act introduces a new type of entity to the existing list i.e. apart from forming a public or private limited company, the 2013 Act enables the formation of a new entity a 'one-person company' (OPC). An OPC means a company with only one person as its member [section 3(1) of 2013 Act]. The draft rules state that only a natural person who is an Indian citizen and resident in India can incorporate an OPC or be a nominee for the sole member of an OPC.

The Memorandum of OPC shall indicate the name of the other person with his prior written consent in the prescribed form who shall in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the OPC along with its Memorandum and Articles.

Privileges of an OPC

1. It need not hold an annual general meeting
2. Need not prepare a report on AGM
3. Minimum no. of directors is one.
4. Need not appoint independent directors
5. Retirement of directors by rotation is not applicable
6. The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company. In other words, it need not be signed by a company secretary in practice.
7. Provisions relating to AGM, extra ordinary general meeting and notice convening to general meeting are not applicable to OPC

Restrictions on One Person Company

1. No minor shall become member or nominee or can hold share with beneficial interest.
2. Cannot carry out non-banking financial investment activities, including investment in securities of any body corporates.

3. It cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except threshold limit is increased beyond 50 lakh rupees or its average turnover during the relevant period exceed two crore rupees.

4. **On the basis of Ownership**
   i. **Government companies**:- Section 2(45) defines a "Government Company" as any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.eg:- State Trading Corporation of India, Minerals and Metals Trading Corporation of India
   ii. **Non-Government companies:-** all companies which are registered under the Companies Act but not a Government company

5. **On the basis of Control**
   i. **Holding company:-** a company is known as holding company of another company, if it has control over that other company. According to section 2(46) of Companies Act, 2013 "holding company" in relation to one or more other companies means a company of which such companies are subsidiary companies.
   ii. **Subsidiary company:-** According to section 2(87) of the Companies Act 2013, a company is known to be 'subsidiary company' or 'subsidiary' in relation to any other company(that is to say the holding company) means a company in which the holding company –
      (i) Controls the composition of the Board of Directors; or
      (ii) Exercises or controls more than one-half of the total voting power either of its own or together with one or more of its subsidiary companies

6. **On the basis of Nationality**
   i. **National companies:-** a company formed under a specific company act of nation is known as national company. Eg: a company formed and registered under the Indian Companies Act, 2013 is known as an Indian Company.
   ii. **Foreign companies:-** foreign company is one incorporated outside India. As per section 2(42) of the Companies Act 2013, "Foreign Company" means any company or body corporate incorporated outside India which
   (a) Has a place of business India whether by itself or through an agent physically or through electronic mode; and
   (b) Conducts any business activity in India in any other manner.

Documents, etc. to be delivered to Registrar by Foreign Companies. [Section (380)].

Every foreign company shall, within 30 days of the establishment of its place of business in India deliver to the Registrar for registration.

• a certified copy of the charter, statutes or memorandum and articles, of the company or other instruments constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the

• English language;

• The full address of the registered or principal office of the company;

• A list of directors and secretary of the company containing such particulars as may be prescribed;

• the name and address or names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notice or other documents required to be served on the company ;

• The full address of the office of the company in India which is deemed to be its principal place of business in India;

• Particulars of opening and closing of a place of business in India on earlier occasions;

• Declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

• Any other information as may be prescribed.

Display of Name, etc. of Foreign Company (Section 382)

(a) The company should exhibit on the outside of every office or place where it carries on business in India the name of the company and the country in which it is incorporated.

(b) The name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company

(c) If the liability of the members is limited, it is.

(i) to be stated in every prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters

(ii) is to be exhibited on the outside of every office or place where it carries on business in India, in legible English characters.

OTHER FORMS OF COMPANIES

a. **Small Company**

A small company has been defined as a company, other than a public company(section 2(85).

1) Paid-up share capital of which does not exceed 50 lakh INR or such higher amount as may be prescribed which shall not be more than five crore INR

2) Turnover of which as per its last profit-and-loss account does not exceed two crore INR or such higher amount as may be prescribed which shall not be more than 20 crore INR:

As set out in the 2013 Act, this section will not be applicable to the following:

• A holding company or a subsidiary company
• A company registered under section 8
• A company or body corporate governed by any special Act [section 2(85) of 2013 Act]

b. **Defunct Companies(section 248)**

When a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 or a company has failed to commence its business within one year of its incorporation empowers the Registrar to remove the name of the company from the register of companies. These companies are known as Defunct Companies.

c. **Dormant Company (section 455)**

The Companies Act, 2013 has recognized a new set of companies called as dormant companies. As per section 455 (1) where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to

the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

■ Explanation appended to section 455(1) says that for the purposes of this section,—

(i) "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

(ii) "significant accounting transaction" means any transaction other than—
(a) Payment of fees by a company to the Registrar;
(b) Payments made by it to fulfil the requirements of this Act or any other law;
(c) Allotment of shares to fulfil the requirements of this Act; and
(d) Payments for maintenance of its office and records.

■ as per section 455(2), the Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

■ Section 455(3) provides that the Registrar shall maintain a register of dormant companies in such form as may be prescribed.

■ Further a dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. [Section 455(5)]

Suo Moto Action by ROC (Registrar Of Companies)

According to section 455(4), in case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies. Further as per . [Section 455(6)], The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

d. **Listed Company(section2(52))**

A company which has any of its securities listed on any recognised stock exchange. So the new Act covers all types of companies and not only Public companies.

e. **Associate Company(section 2(6))**

As per Section 2(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 to section 2(6) provides that "significant influence" means control of at least twenty percentages of total share capital, or of business decisions under an agreement.

f. **Producer Company**

The Companies Act 2013 does not contain any provisions of producer companies. But it states that (section 465) the Companies Act of 1956 shall be applicable mutatis mutandis to a producer company in a manner as if the Companies Act 1956 has not been repealed until a special Act is enacted for producer companies. So the producer companies are still governed by the Companies Act, 1956. Companies (Amendment) Act 2002 had added a new part IX A to the main Companies Act, 1956 consisting of 46 new sections from 581A to 581 ZT. According to the provisions as prescribed under section 581A (I) a producer company means a body corporate having objects or activities specified in Section 581 B and registered as Producer Company under this Act. The membership of producer companies is open to such people who themselves are the primary producers, that is persons engaged in an activity connected with or related to primary produce.

Primary produce means produce of farmers arising from agriculture including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry etc.: produce of persons engaged in handloom, handicraft etc.

Objects

(i) Production, harvesting, procurement, grading, pooling, handling, marketing, selling export of primary produce of members or import of goods or services for their benefit.

(ii) Processing including preserving, drying,distilling,brewing,venting,canning and packaging of produce of its members ; and

(iii) Manufacture, sale or supply of machinery, equipment or consumables mainly to its members. The other objects include rendering technical or consultancy services, insurance, etc.

g. Nidhis

A company which has been incorporated with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies(section 406)

h. Association Not for Profit (Companies with charitable objects, etc.)

Any person or association intending to be registered as a limited company for charitable purpose can apply for registration of companies with charitable objects. However it shall prove to the satisfaction of the Central Government that [section 8(1)]

(a) Its objects included the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object.

(b) The company on incorporation intends to apply its profit if any, of other income in promoting such objects

(c) The company intends to prohibit the payment of any dividend to its members

CORPORATE VEIL

Juristic point of view, a company is a legal person distinct from its members. This recognition of the company as a separate legal entity and liable for its own acts and liabilities, is known as the corporate veil. The effect of this principle is that there is a fictional veil (and not a wall) between the company and its members. This separates the personality of a company from the personalities of its shareholders and protects them from being personally liable for the firm's debts and other obligations.

Lifting of corporate veil

The term ' lifting of corporate veil ' means looking behind the company as a legal person; i.e.., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the courts ignore the company and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted only in appropriate circumstances, are the courts willing to lift the corporate veil and that too, when questions of control are involved rather than merely a question of ownership.

The various cases in which corporate veil have been lifted are as follows.

1. **Under judicial interpretation:**

In the following circumstances different courts found it necessary to lift the corporate veil and punish the actual persons who did wrong or unlawful acts under the name of company:

a. Protection of Revenue

The Court may ignore the Separate Legal Entity status of a Company, where it is used for tax invasion or circumventing tax obligation.

b. **Prevention of fraud or improper conduct**

Where a Company is used for committing frauds or improper conduct, Court may lift the corporate veil and look at the realities of the situation.

c. **Determination of enemy character of the Company**

Company being an artificial person cannot be enemy or friend. But during war, it may become necessary to lift the corporate veil and see the persons behind it to determine whether they are friends or enemy. This is due to the reason that though a company enjoys Separate Legal Entity but its affairs are run by individuals.

d. **Where the Company is mere a sham or cloak**

Where the Company is a mere sham and was really a ploy used for committing illegalities and to defraud people, the Court shall lift the Corporate Veil.

e. **Company avoiding legal obligations**:

Where the use of an incorporated company is being made to avoid legal obligations; the court may disregard the legal personality of the company and proceed on the assumption as if the company existed.

f. **Where a Company acts as an agent of its shareholders**

If there is an arrangement between the shareholders and a Company to the effect that the Company will act as agent of shareholders for the purpose of carrying on the business, the business is essentially of that of the shareholders and will have unlimited liability.

g. **Avoidance of Welfare Legislation**

Where a Company tries to avoid its legal obligations, the corporate veil shall be lifted to look at the real picture.

h. **Protection of public policy**

The Court shall lift the Corporate Veil without any hesitation to protect the public policy and prevent transaction opposed to public policy.

2. **Under express statutory provision:**

The veil of corporate personality may be lifted under express statutory provisions of the Companies Act 2013, as follows.

a. **Punishment for incorporation of company by furnishing false information (section 7(7))**

Where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the document or declaration filed or made for incorporating such company, the Tribunal may, on an application made to it pass an order for winding up of the company.

b. **Fraudulent application for removal of name(section 251(1)):**

Where it is found that, an application by a company has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other person, the person in charge of the management of the company shall, not withstanding that the company has been notified as dissolved, be jointly and severally liable to any persons who had incurred loss or damage as a result of the company being notified as dissolved.

c. **Liability for fraudulent conduct of business (section 339)**

If in the course of the winding up of a company it appears that any business of the company has been carried on with the intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may if it thinks it proper to do so, declare that any person who is or has been a director, manager or officer of the company, or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct.

MODULE 2

FORMATION OF COMPANIES

1) A company may be formed for any lawful purpose by—

a) **Seven or more persons**, where the company to be formed is to be **a public company;**

b) **Two or more persons**, where the company to be formed is to be **a private company**; or

c) **one person**, where the company to be formed is to be **One Person Company** that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber‘s death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be prescribed:

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

2) A company formed under sub-section (1) may be either—

a) A company limited by shares; or

b) A company limited by guarantee; or

c) An unlimited company.

Company is an artificial person created by following a legal procedure. Before a company is formed, a lot of preliminary work is to be performed which can be divided into four distinct stages:

1. Promotion;
2. Incorporation or registration;
3. Capital subscription; and
4. Commencement of business.

I. PROMOTION

The term ‘promotion’ is a term of business and not of law. It is frequently used in business.

Haney defines promotion as ***“the process of organizing and planning the finances of a business enterprise under the corporate form”***.

Gerstenberg has defined promotion as “the discovery of business opportunities and the subsequent organization of funds, property and managerial ability into a business concern for the

purpose of making profits there from." First of all the idea of carrying on a business is conceived by promoters. Promoters are persons engaged in, one or the other way; in the formation of a company.

Company promoter

Justice Cockbourn, "a promoter is one who undertakes to form a company, with reference to a given project and to set it going, and who takes the necessary step to accomplish that purpose.

The term promoter has also been defined as "any individual, syndicate, association, partnership or a company which puts into motion the machinery by which a company is brought into existence".

Under Companies Act, 2013 promoter means a person who –

¬ Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

¬ Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

¬ in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clauses (b) and (c) shall apply to a person who is acting in a professional capacity; (Clause 2(69))

Types of Promoters

1. **Professional promoters** – they take promotion as their profession. They float the company and hand it over to the shareholders or their representatives.
2. **Occasional promoters** – they do promotional activity whenever they find an opportunity coming their way. They do not generally search for opportunities. They do promotion only when the opportunities are very attractive.
3. **Entrepreneur promoters** – they are both promoters and entrepreneurs. They conceive idea of a new business unit, do the ground work to establish it and subsequently become a part of the management.
4. **Financial promoters** – they undertake the promotion of a company, complete the promotional activities and then purchase the entire share capital of the company promoted. Later on, they sell the shares at some profit. As they provide and offer the financial services also, they are known as financial promoters.

Functions of promoter

■ Discovery of business idea

■ Detailed investigations about the projects

■ Assembling of resources like land, labour, capital and management personnel's

■ Preparing preliminary documents such as memorandum of association etc.

■ Entering into preliminary contracts

■ Naming the company

■ Appointment of bankers, brokers and underwriters

Duties of Promoters

1. The promoter gets memorandum and articles prepared, executed and registered and he deals with merchant bankers, brokers and legal advisors.
2. He should make all disclosures regarding accounts and formation so as to maintain transparency at the time of transfer of management to the directors.

3. He should not make any secret profit out of the promotion of the company.
4. He should make all disclosures regarding transactions entered by him on behalf of the company as promoter.

Role of promoters

The promoters stand in a fiduciary position towards the company about to be formed. From the fiduciary position of promoters, the following important results follow:

1. A promoter cannot be allowed to make any secret profits. If any secret profit is made in violation of this rule, the company may, on discovering it, compel the promoter to account for and surrender such profit.

2. The promoter is not allowed to derive a profit from the sale of his own property to the company unless all material facts are disclosed. If he contracts to sell his own property to the company without making a full disclosure, the company may either rescind the sale or affirm the contract and recover the profit made out of it by the promoter.

3. The promoter must not make an unfair or unreasonable use of his position and must take care to avoid anything which has the appearance of undue influence or fraud.

Promoter's remuneration

A promoter has no right to get compensation from the company for his services in promoting it unless the company, after its incorporation, enters into a contract with him for this purpose. If allowed, remuneration may be paid in cash or partly in cash partly in shares and debentures of the company.

Promoter's liability

If a promoter does not disclose any profit made out of a transaction to which the company is a party, then the company may sue the promoter and recover the undisclosed profit with interest.

II. INCORPORATION OR REGISTRATION

This is the second stage of the company formation. It is the registration that brings a company into existence. A company is legally constituted on being duly registered under the act and after the issue of certificate of incorporation by the registrar of companies. For the incorporation of a company the promoters take the following preparatory steps:

i) To take approval of the name, an application has to be made in the prescribed form along with requisite fee;
ii) To get a letter of intent under industries (development and regulation) act, 1951, if the company's business comes within the purview of the act.
iii) To get necessary documents i.e. Memorandum and articles of association prepared and printed.
iv) To prepare preliminary contracts and a prospectus or statement in lieu of a prospectus. The application should be accompanied by the following.

A company is an association of both natural and artificial persons incorporated under the existing law of a country. In terms of the Companies Act, 2013 a "company means a company incorporated under the Companies Act, 2013 (the Act) or under any of the previous company law" [Section 2(20)]. In common law, a company is a "legal person" or "legal entity" separate from, and capable of surviving beyond the lives of its members.

Procedure for Incorporation of company

There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:—

a) The memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

d) The address for correspondence till its registered office is established;

e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;

f) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and

g) The particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

Certificate of Incorporation (section 7(2))

The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that subsection in the register and issues a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

On and from the date mentioned in the certificate of incorporation issued under subsection (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act. If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of

the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of subsection (1) shall each be liable for action under section 447.

Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

b) Direct that liability of the members shall be unlimited; or

c) Direct removal of the name of the company from the register of companies; or

d) Pass an order for the winding up of the company; or

e) Pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

- The company shall be given a reasonable opportunity of being heard in the matter; and

- The Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

III. CAPITAL SUBSCRIPTION

A private company can start business immediately after the grant of certificate of incorporation but public limited company has to further go through 'capital subscription stage' and 'commencement of business stage'. In the capital subscription stage, the company makes necessary arrangements for raising the capital of the company.

Kinds of share capital:

The share capital of a company limited by shares shall be of two kinds, namely:—
a) Equity share capital—
(i) With voting rights; or
(ii) With differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

b) Preference share capital

Explanation.—for the purposes of this section,—

- "Equity share capital", with reference to any company limited by shares, means all share capital which is not preference share capital.

- "Preference share capital", with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—
a) Payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

b) Repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;
- Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—
a) That in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;
b) That in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

IV. COMMENCEMENT OF BUSINESS (section 11)*

A private company can commence business immediately after the grant of certificate of incorporation, but a public limited company will have to undergo some more formalities before it can start business.

The provisions with regard to Certificate of Commencement of business have been dispensed with under the Companies Bill, 2013.
Only declaration and verification is required by the Public Company under the Companies Bill, 2013. These provisions were as follows:
(1) A company having a share capital shall not commence any business or exercise any borrowing powers unless—
a) A declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and
b) The company has filed with the Registrar a verification of its registered office as provided in subsection (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty which may extend to five thousand rupees and every officer who is in default shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.

(3) Where no declaration has been filed with the Registrar under clause (a) of subsection (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

*This section has been omitted by the Companies (Amendment) Act 2015 w.e.f. 29-05-2015. So certificate of incorporation is sufficient to commence the business of companies.

Pre-incorporation and provisional contracts

The promoter is obligated to bring the company in the legal existence and to ensure its successful running; and in order to accomplish his obligation he may enter into some contract on behalf of prospective company. These types of contract are called ‘Pre-incorporation Contract’.

Nature of Pre-incorporation contract is slightly different to ordinary contract. Nature of such contract is bilateral, be it has the features of tripartite contract. In this type of contract, the promoter furnishes the contract with interested person; and it would be bilateral contract between them. But the remarkable part of this contract is that, this contract helps the perspective company, who is not a party to the contract.

Provisional contract as the expression `provisional' indicates, is a `contract in waiting'. Such contracts are meant only for public companies; because a public company has dual life span – one after incorporation and another after commencement of business; or in other words one before commencement of business and another after commencement of business. A contract entered into before commencement of business is `provisional' in nature but becomes `regular and enforceable' automatically on its obtaining the certificate of commencement of business. However, the company doesn't obtain the said certificate of commencement of business; the contract will continue to remain in abeyance.

DOCUMENTS OF THE COMPANY

1. MEMORANDUM OF ASSOCIATION

Definition

As per Section 2(56) of the Companies Act, 2013

"Memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

Memorandum of Association (MOA) is the supreme public document which contains all those information that are required for the company at the time of incorporation.

It can also be said that, a company cannot be incorporated without memorandum. At the time of registration of the company, it needs to be registered with the ROC (Registrar of Companies).

It contains the objects, powers and scope of the company, beyond which a company is not allowed to work, i.e. it limits the range of activities of the company.

Any person who deals with the company like shareholders, creditors, investors, etc. is presumed to have read the company, i.e. they must know the company's objects and its area of operations.

The Memorandum is also known as the charter of the company.

CONTENTS OF MEMORANDUM

There are six conditions of the Memorandum:

■ **Name Clause** – Any company cannot register with a name which CG may think unfit and also with a name that too nearly resembles with the name of any other company.

■ **Situation Clause** – Every company must specify the name of the state in which the registered office of the company is located.

■ **Object Clause** – Main objects and auxiliary objects of the company.

■ **Liability Clause** – Details regarding the liabilities of the members of the company.

■ **Capital Clause** – Total capital of the company.

■ **Subscription Clause** – Details of subscribers, shares taken by them, witness etc.

Alteration of memorandum

(1) Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.

(2) Any change in the name of a company shall be subject to the provisions of subsections (2) and (3) of section 4 and shall not have effect except with the approval of the Central Government in writing:

Provided that no such approval shall be necessary where the only change in the name of the company is the deletion therefrom, or addition thereto, of the word ―Private, consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act.

(3) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(4) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(5) The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.

(6) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar—
a) The special resolution passed by the company under sub-section (1);
b) The approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

(7) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

(8) A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—
a) The details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;
b) The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(9) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (a) of sub-section (6) of this section.

(10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(11) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Doctrine of ultravires

'Ultra' means beyond and 'vires' means powers.

The term ultra vires a company means that the doing of the act is beyond the legal power and authority of the company.

The doctrine of ultra vires is important in defining the limits of the powers conferred on the company by its Memorandum of Association.

According to this doctrine, the vires (power) of a company to enter into a contract or transaction is limited by the ambit of the Objects Clause of the Memorandum and the provisions of the Companies Act.

Whatever is not permitted by the Objects Clause and the Act is prohibited by the Doctrine of ultra vires. If a company engages in any activity or enters into any contract which is ultra vires (outside the power conferred by) the Memorandum or Act, it will be null and void so far as the company is concerned and it cannot be subsequently ratified or validated even if all the shareholders give their consent. Thus under this doctrine, a company has powers to engage in only such activities or enter into such transactions:

- Which are essential to the attainment of the objects specified in the Memorandum;
- Which are reasonably and fairly incidental to the main objects; and
- Which are permitted by the provisions of the Companies Act.

Effects of Ultra Vires Transactions

If a company enters into transactions, which are ultra vires, it will have the following effects:

(1) Injunction: Whenever a company goes beyond the scope of the object clause, any of its members can get an injunction from the court to restrain the company from undertaking the ultra vires act.

(2) Personal Liability of Directors: If the transaction is ultra vires, for instance, if the funds of the company are misapplied, the directors will be held personally liable.

(3) Ultra Vires Contracts: Contracts entered into by a company, which are ultra vires, are void ab initio and unenforceable.

(4) Property Acquired Ultra Vires: If a company acquires any property under an ultra vires transaction, it has the right to hold the property and protect it against damage by other persons.

(5) Ultra Vires Torts: A company is not liable for torts committed by its agents or employees in the course of ultra vires transactions.

2. ARTICLES OF ASSOCIATION

Definition

As per Section 2(5) of the Companies Act, 2013 "articles" means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.

An article of Association (AOA) is the secondary document, which defines the rules and regulations made by the company for its administration and day to day management. In addition to this the articles contain the rights, responsibilities, powers and duties of members and directors of the company. It also includes the information about the accounts and audit of the company. Every company must have its own articles,

However, a public company limited by shares can adopt ***Table A*** instead of Articles of Association. It comprises of all the necessary details regarding the internal affairs and the management of the company.

It is prepared for the persons inside the company, i.e. members, employees, directors, etc. The governance of the company is done according to the rules prescribed in it. The companies can frame its articles of association as per their requirement and choice.

Contents of Articles

1. The execution or adoption of preliminary contracts; if any,
2. The share capital and its division into different classes of shares;
3. Rights of different classes of shareholders and the procedure for variation of their rights;
4. Payment of underwriting commission;
5. Lien on shares;
6. Calls on shares;
7. Transfer of shares;
8. Transmission of shares;
9. Forfeiture of shares;
10. Alteration of capital:
11. Conversion of shares into stock;
12. Capitalization of profits;
13. Buy-back of shares;
14. General meetings and proceeding at general meetings;
15. Adjournment of meeting;
16. Voting rights of members;
17. Proxy and their appointment;
18. Board of directors;
19. Proceedings of the Board;
20. Appointment, terms & remuneration of CEO, manager, company secretary or chief finanvial officer.
21. Seal of the company;
22. Dividend and reserves;
23. Books of account and audit;
24. Winding up of the company;
25. Indemnity

Entrenchment provisions in Articles

The 2013 Act introduces the entrenchment provisions in respect of the articles of association of a company. An entrenchment provision enables a company to follow a more restrictive procedure than passing a special resolution for altering a specific clause of articles of association. In legal sense, it means the addition of the provision which makes amendments either more difficult or almost impossible. The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Alteration of Articles of Association of a Company

Section 14 of the Companies Act, 2013 lays down that subject to the provisions of the Act and to the conditions contained in its memorandum, a company may, by a special resolution, alter its articles.

Every alteration of articles shall be filed with the Registrar together with a printed copy of the altered articles within a period of fifteen days. [Section 14(2)

Any alteration of the articles so registered, shall be valid as if it were originally in the articles. A company may alter its articles in accordance with the above provisions in any of the manners mentioned below:

(i) By adoption of new set of articles;
(ii) By addition/insertion of a new article;
(iii) By deletion of an article;
(iv) By amendment of a specific article; or
(v) By substitution of a specific article.

Procedure for Altering Articles of Association

A company which proposes to alter its articles of association has to follow the procedure detailed below:

(1) Convene and hold a Board meeting to –
a) Consider and decide which of the articles are to be altered and pass a formal resolution in this respect.
b) Fix time, date and venue for holding a general meeting of the company for passing a special resolution as required by Section 14 of the Companies Act, 2013.
c) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per 102 of the Act.
d) Authorise the Company Secretary or any other competent officer of the company to issue notice of the general meeting as approved by the Board.
(2) On the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of the proposed alteration of the articles of association of the company.
(3) Issue notice of the general meeting along with the explanatory statement, to all the members, directors and the auditor of the company. Also forward three copies of the notice of the general meeting to the concerned stock exchanges as per the Listing Agreement.
(4) Hold the general meeting and have the special resolution passed.
Note: If the company is a listed company and the alteration of articles of association relates to insertion of the provisions defining a private company then ensure that the Special Resolution as aforesaid is passed only through postal ballot.
(5) Forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the Listing Agreement.
(6) File with the ROC, Form MGT – 14 along with a certified copy of the special resolution and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and a copy of the Articles of Association, within fifteen days of the passing of the resolution along with the prescribed filing fee.
(7) Make necessary changes in all the copies of the articles of association of the company lying in the office of the company

Distinction between Memorandum and Articles

The major differences between memorandum of association and articles of association are given as under:

Basis	Memorandum of Association	Articles of Association
Condition	The memorandum contains the conditions upon which alone the company is granted incorporation. These conditions are fundamentals and unalterable.	The articles are the internal regulations of the company and over these the members have full control and they can be easily altered.
Power	The memorandum cannot give the company power to do anything contrary to the provision of the Companies Act.	The articles are not only limited by the Act, but they are also subsidiary to the memorandum and cannot exceed the powers contained therein.
Contract	The memorandum is in the nature of a contract between the company and the outsider dealing with it.	The articles do not create a contract between the company and the outsiders
Objectives	The memorandum contains the objectives and powers of the company.	The articles provide the regulations by which those objectives and powers are to be carried into effect.

Provision	A person dealing with a company is supposed to know the provisions of its memorandum.	A person dealing with a company is supposed to know the provision of its articles, if there is a breach of those provisions.
Alteration	The memorandum cannot be altered except as regards certain specified particulars and in accordance with the provisions of the law.	The articles can be altered by a special resolution at any time.
Relation	The memorandum limits the area beyond which articles cannot go.	In this sense, articles is subsidiary to the memorandum.
Validity	The memorandum is the dominant instrument and controls articles.	Any provision, contrary to memorandum of association, is invalid.
Deed of the company	Every company must have its memorandum of association.	A company limited by shares may have its own articles of association.
Registration	Memorandum must be registered at the time of incorporation.	The articles may or may not be registered.
Scope	The memorandum is the charter, which defines and confines powers and limitations of the company. .	The articles indicate duties, rights and powers of members, who are entrusted with the responsibility of running the administration and management

Constructive notice of Memorandum and Articles

Constructive notice is the legal fiction that signifies that a person or entity should have known, as a reasonable person would have, even if they have no actual knowledge of it.

For example, if it is not possible to serve notice personally then a summons may be posted on a court house bulletin board or legally advertised in an approved newspaper.

The person is considered to have received notice even if they were not aware of it.

In companies law the doctrine of constructive notice is a doctrine where all persons dealing with a company are deemed (or "construed") to have knowledge of the company's articles of association and memorandum of association. The doctrine of indoor management is an exception to this rule.

Doctrine of Constructive Notice

The Memorandum and Articles, on registration, assume the character of public documents.

The office of the Registrar is a public office and documents registered there are open and accessible to the public at large. Therefore, every outsider dealing with the company is deemed to have notice of the contents of the Memorandum and Articles. This is known as Constructive Notice of Memorandum and Articles.

Under the doctrine of 'constructive notice', every person dealing or proposing to enter into a contract with the company is deemed to have constructive notice of the contents of its Memorandum and Articles. Whether he actually reads them or not, it is presumed that he has read these documents and has ascertained the exact powers of the company to enter into contract, the extent to which these powers have been delegated to the directors and the limitations to such powers.

He is presumed not only to have read them, but to have understood them properly. Consequently, if a person enters into a contract which is ultra vires the Memorandum, or beyond the authority of the directors conferred by the Articles, then the contract becomes invalid and he cannot

enforce it, not-withstanding the fact that he acted in good faith and money was applied for the purposes of the company.

Doctrine of indoor management

The doctrine of indoor management follows from the doctrine of 'constructive notice' laid down in various judicial decisions. The hardships caused to outsiders dealing with a company by the rule of 'constructive notice' have been sought to be softened under the principle of 'indoor management'. It affords some protection to the outsiders against the company.

According to this doctrine, after satisfying themselves that the proposed transaction is intra vires the memorandum and articles, persons dealing with the company are not bound to enquire whether the internal proceedings were correctly followed.

They are entitled to assume that the internal proceedings relating to the contract are regular as per the memorandum and articles.

When an outsider enters into a contract with the company, he is presumed to have knowledge of the provisions of memorandum and articles as per the doctrine of constructive notice. But he is not required to go beyond that and to enquire whether the internal proceedings required by these documents have been regularly followed by the company.

They need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. This is known as the Doctrine of Indoor Management.

Exceptions to the Doctrine of Indoor Management

No benefit under the doctrine of indoor management can be claimed by a person under the following circumstances:

1) Where a person dealing with the company has actual or constructive notice of any irregularity in the internal proceedings of the company.

2) Where a person did not in fact consult the Memorandum and Articles of the company and consequently did not act on knowledge of these documents.

3) Where a person dealing with the company was negligent and, had he not been negligent, could have discovered the irregularity by proper enquiries.

4) Where a person dealing with the company relies upon a forged document or the act done by the company is void.

5) Where a person enters into a contract with an agent or officer of the company and the act of the agent/officer is beyond the authority granted to him.

3. PROSPECTUS

According to Companies Act, 2013 define "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 [Clause (70) of Section 2 of this Bill].

Matters to be stated in Prospectus (section 26):

A prospectus may be issued by or behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company.

Contents or Information in Prospectus:

Every prospectus shall state following information:-

(1) Names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

(2) Dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

(3) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;
(4) Details about underwriting of the issue;
(5) Consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;
(6) The authority for the issue and the details of the resolution passed there for;
(7) Procedure and time schedule for allotment and issue of securities;
(8) Capital structure of the company in the prescribed manner;
(9) Main objects of public offer, terms of the present issue and such other particulars as may be prescribed;
(10) Main objects and present business of the company and its location, schedule of implementation of the project;
(11) Particulars relating to—
- a) Management perception of risk factors specific to the project;
- b) Gestation period of the project;
- c) Extent of progress made in the project;
- d) Deadlines for completion of the project; and
- e) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;

(12) Minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
(13) Details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and
(14) Disclosures in such manner as may be prescribed about sources of promoter's contribution.

Statement in lieu of prospectus

Statement in lieu of prospectus is similar to actual prospectus but without the invitation to the public for subscribing to the shares of the company. This statement is prepared when a company issues shares by private placement. The statement in lieu of prospectus is prepared for the purpose of record, and it is filed with the Registrar of Companies before allotment of share.
1. The prospectus contains a summary of the past, present and prospects of the company
2. The prospectus expressly invites the public to buy shares issued by the company
3. It is the basis of share issue. The contents of prospectus are considered legal evidence in the event of dispute between share holder and the company.
4. A misleading clause in the prospectus will be taken seriously by the courts.

Liabilities for misstatement

Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447:
Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

Civil liability for misstatements in prospectus

(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

a) is a director of the company at the time of the issue of the prospectus;

b) Has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;

c) Is a promoter of the company;

d) Has authorised the issue of the prospectus; and

e) Is an expert referred to in sub-section (5) of section 26, shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub-section (1), if he proves—

a) That, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

b) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

CPA COLLEGE OF GLOBAL STUDIES

MODULE 3

SHARE CAPITAL AND SHARES

The term ‘share capital' refers to the amount of capital raised (or to be raised) by a company through the issue of shares. It generally means the money subscribed pursuit to memorandum of association of the company.

Classes /types or kinds of share capital:

The various kinds or sub-divisions of share capital are:

1. **Authorized capital, registered capital or nominal capital**: authorized capital is the sum stated in the capital clause of the memorandum of association as the capital of a company. It is the maximum amount of share capital, which the company is authorized by its memorandum of association to raise through the issue of shares

2. **Issued capital:** the part of the authorized capital which is issued or offered, for the time being, to the public for subscription is, usually, called the issued capital.

3. **Subscribed capital**: part of the issued capital, which is subscribed or taken up by the public, is called subscribed capital.

4. **Called-up capital:** part of the subscribed capital, which has been called up or demanded by the company is known as called - up capital.

5. **Paid -up capital**: part of the called-up capital, which has been actually paid, by the subscribers or shareholders is called paid- up capital.

SHARES

A share can be defined as, "a share is a fractional part of the capital of a company which forms the basis of certain rights of a member of the company as well as his liabilities vis-à-vis (i.e., as against) the company"

Section 2(84) of the Companies Act, 2013 (hereinafter referred to as Act) “share” means a share in the share capital of a company and includes stock. It represents the interest of a shareholder in the company, measured for the purposes of liability and dividend. It attaches various rights and liabilities.

Kinds or types of shares

A public company can issue only Two types of shares, viz.,

(1) Preference shares.

(2) Equity shares.

1. Preference shares.

Meaning of preference shares: Preference shares are shares, which have preferential rights (i.e., first priority over other kinds of shares) in respect of payment of dividend during the existence of the company, and also in respect of repayment or refund of share capital in the event of the winding up of the company Types of preference shares:

1. *Cumulative preference shares*: the holders of cumulative preference share are entitled to receive a fixed percentage of dividends before anything is given, tot other classes of shareholders

2. *Non-cumulative preference shares*: noncumulative preference shares are entitled to a fixed rate of dividend in the first instance (i.e., before anything is given to other types of shareholders).

3. *Participating preference share*: the holders of these shares, in addition to a fixed percentage of dividends, are also entitled to participate in the surplus profits of the company along with the equity shareholders

4. *Non-participating preference share*: the holders of non-participating preference shares will get only a fixed rate of dividend, of course, in the first instance (i.e., before any dividend is paid to equity shareholders). But they are not entitled to participate in the surplus profits of the company.

5. *Convertible preference shares*: the holders of convertible preference shares are given the rights to convert their shares into equity shares later on (i.e., after a certain period).

6. *Non-convertible preference share*: the holders of non-convertible preference share are not given the right to convert their shares into equity shares later on.

7. *Redeemable preference shares*: redeemable preference shares are those preference shares, which can be redeemed (i.e., returned or paid back) even during the existence of the company.

8. *Irredeemable preference shares*: irredeemable preference shares are those preference share, which are not (i.e. Refundable) until the company is wound up.

Merits of preference shares

i) The payment of dividend to preference shares is not a legal obligation.
ii) Issue of preference shares does not create any charge against the assets of the company.
iii) The promoters of the company can retain control over the company
iv) In the case of redeemable preference shares, there is the advantage that the amount can be repaid as soon as the company is in possession of funds flowing out of profits.
v) Preference shares are entitled to a fixed rate of dividend and the company may declare higher rates of dividend for the equity shareholders
vi) If the assets of the company are not of high value, debenture holders will not accept them as collateral securities
vii) Preference shares are particularly useful for those investors who want higher rate of return with comparatively lower risk
viii) Preference shares add to the equity base of the company and they strengthen the financial position of it additional equity base increases the ability of the company to borrow in future.
ix) Preference shares have variety and diversity, unlike equity shares; companies have thus flexibility in choice.
x) Preference shareholders have only limited voting rights.

Demerits of preference shares

I) Usually preference shares carry higher rate of dividend than the rate of interest on debentures.
II) Compared to debt capital, preference share capital is a very expensive source of financing
III) In the case of cumulative preference shares, arrears of dividend accumulate. It is a permanent burden on the profits of the company.
IV) From the investors' point of view, preference shares may be disadvantageous because they do not carry voting rights. Their interest may be damaged by a equity shareholders in whose hands the control is vested.

2. Equity shares.

Equity shares are those, which are not preference shares. In other words, these are shares, which do not enjoy any preferential right either in respect of payment of dividend or in respect of the repayment of capital at the time of the winding up of the company. These shares are known as

equity shares, as they are the 'ownership shares' conferring the ownership of the company on the holders of these shares, i.e., the holders of these shares are the real owners of the company.

Merits of equity shares

♣ Permanent capital

♣ There is no capital obligation

♣ Enhance credit worthiness

♣ Can be used for long term purposes

♣ Can strengthen its financial base

♣ Equity holders can enjoy the sense of ownership

♣ Reward is very high

Differences between preference shares and equity share:

There are many differences between preferences shares and equity shares. The main differences between them are:

1. Generally, the face value of preference shares is relatively higher than that of equity shares.

2. Preference shares have priority over equity shares in the payment of dividend as will in the repayment of capital in the event of the winding up of the company.

3. The rate of dividend on preference shares remains fixed from year to year. But the rate of dividend on equity shares varies from year to year depending upon the amount of profits available for distribution.

4. The rate of dividend on preference shares, in generally, fixed by the articles of association. But the rate of dividend on equity shares is dependent on the discretion of the board of directors.

5. Preference shares cannot participate in the surplus profits and in the surplus assets in the event of the winding up to the company

6. Except those preference shares which are issued as non-cumulative, all preference shares are preference shares can get the arrears of dividend. But equity shares cannot get the arrears of dividend.

7. As the rate of dividend on preference shares is fixed or stable, the market value of preference shares remains more or less stable. On the other hand, as the rate of dividend on equity shares fluctuate from year to year, the market value of equity shares fluctuates greatly from year to year.

8. Preference shares, i.e., redeemable preference shares, are redeemable during the existence of the company. But equity shares are not redeemable during the life of the company.

9. Preference shares have limited voting rights. On the other hand, equity shares have full voting rights.

10. As there is steady dividend like rent, preference shares capital is considered as renter capital. On the other hand, as there is much risk in equity shares, equity share capital is considered as risk capital.

11. As there is not much risk in preference shares, on the other hand, equity shares appeal to adventurous investors who are prepared to assume risks.

12. The holders of preference shares do not have much control over the management On the other hand, the holders of equity shares have much control over the management.

Public Issue of Shares

Public Issue is the process of selling and marketing of securities for subscription by public by issue of prospectus. The Issuer has to comply with the provisions of the SEBI (ICDR) regulations, 2009 along with the provisions of the Companies Act, 2013 and the SCR Act, 1956 and the Listing agreement.

Types of Public Issue:

When the offer of securities is made to the general public inviting them to take up securities in the company and thereby enabling them to be a part of the shareholding of the Company, it becomes a public issue.

Public Issues can be in the nature of an Initial Public Offering (IPO) or a Follow on Public Offering (FPO). The issue of shares may be at premium, discount (as sweat equity shares) A company may issue securities at a premium if it is able to sell them at a price above par or above nominal value. The Companies Act, 2013, does not stipulate any conditions or restrictions regulating the issue of securities by a company at a premium But the Act does impose conditions regulating the utilization of the amount of premium collected on securities.

Employees stock option scheme(ESOPs)

Employee stock option plans (ESOPs) & employee stock purchase schemes (ESPSs) are employee benefit plans, which makes the employee of the company owners of stock in that company. Stock options are the instruments that are offered to employees, allowing them to buy a certain number of shares in the company at a specific price. This price could either be lower than the current market-price of scrip

Different terms used in an ESOP

Grant date - the date on which the company grants an option to its employee.

Option price - the price at which such shares in a scheme are offered. It is also known as the ‘strike price’ or ‘grant price’.

Vesting date - an ESOP would provide for a date on which an option is vested with employees and time frame over which the stock option would vest with employees Exercise period - the employees would be given a time period, called exercise period, within which they are required to exercise the option.

<u>Different types of ESOPs</u>

Employee stock option scheme (ESOS) - under this scheme, the company grants an option to its employees to acquire shares at a future date at a pre-determined price. Eligible employees are free to acquire shares on vesting within the exercise period. Generally exercise price is lower than the prevalent market price.

Employee stock purchase plan (ESPP) - this is generally used in listed companies, wherein the employees are given the right to acquire shares of the company immediately, not at a future date as in ESOS, at a price lower than the prevailing market price.

Share appreciation rights (SAR)/ phantom shares - under this scheme, no shares are offered or allotted to the employee. The employee is given the appreciation in the value of shares between two specified dates as an incentive or performance bonus, that is linked to the performance of the company as a whole, as reflected in its share value.

Book building

It is basically a capital issuance process used in initial public offer (IPO). It is a mechanism where, during the period for which book for the IPO is open, bids are collected from investors at various prices, which are above or equal to the floor price.

Allotment of shares

Allotment is the acceptance of the offer by the company. Allotment is a binding contract between the company and the prospective shareholders. The rules and regulations with regard to the allotment are as follows

1. General principles regarding allotment

2. Statutory restrictions on allotment.

1. **General principles regarding allotment**

With regard to the allotment of shares the following general principles should be observed in addition to the provisions of the companies act.

i - **Allotted by proper authority** Allotment should be made by proper authority, ie, the board of directors of the company or a committee authorized to allot shares on behalf of the board. An allotment made without proper authority will be invalid.

ii - **allotment against application only** No valid allotment can be made on an oral request. Section 41 provides that for becoming a member, a person should agree in writing. Thus no allotment can be made without a written application for allotment.

iii - **Reasonable time** Allotment must be made within a reasonable period of time, otherwise, the application lapses. Reasonable time is a question of facts depending on circumstances of the case. With regard to reasonable time section 6 of the contract act becomes applicable

iv - **Communication** As per the contract act, for a legal offer and acceptance communication is essential. The allotment is an acceptance and be communicated to the applicant.

v - **Absolute and unconditional** The allotment must be absolute and unconditional, that means it must be made on the same terms as stated in the application. The legal rules regarding offer and acceptance is applicable in allotment also.

2. Statutory restrictions on allotment of shares

i) **a prospectus must be issued and a copy of the same should be filed with the registrar**. The company cannot allot the shares immediately after issuing the prospectus. No allotment can be made until the beginning of the fifth day from the date of issue of prospectus.

ii) **Minimum subscription**: no company can proceed to allot shares to the public until the minimum subscription (which is usually 90% of the issue amount) has been subscribed, and the sum payable on applications for it has been received by the company in cash

iii) **Statement in lieu of prospectus**: where a company having a share capital does not issue a prospectus, it can allot shares only after submitting statement in lieu of prospectus for registration.

Irregular allotment and its consequences

An allotment of shares shall be termed irregular if it is made without fulfilling the conditions precedent to a regular allotment. The allotment of shares will irregular in the following cases:

1) Where an allotment is made without receiving the minimum subscription.

2) Where an allotment is made without receiving at-least five per cent of the nominal value of shares as application money.

3) Where an allotment is made without depositing the application money in a scheduled bank.

4) in the case of a company which does not invite public to subscribe its shares, if the allotment is made without filing with the registrar the 'statement in lieu of prospectus' at least three days before the first allotment of shares.

5) Where the company fails to apply for listing of its shares in one or more recognized stock exchanges before the tenth day after the first issue of prospectus

6) Where the allotment is made before the expiry of the fifth day after the date of issue of the prospectus.

Allotment procedure

The directors of the company take decision regarding allotment. Allotment is an act of the directors by accepting the offer of an applicant to purchase the shares of the company. The decision is taken after complying with the provisions of the act by passing a resolution at the board meeting Letter of regret

These letters are sent to those applicants to whom shares have not been allotted. Such a letter will contain the regret of the directors for their inability to allot shares. A cheque also will be enclosed with the letter for the refund of the application money.

Splitting of allotment

When a large block of shares has been allotted to a single person, the company at his request split or divide the original allotment letter into a number of small allotment letters. This facility is usually enjoyed by speculators of shares who are interested to sell part of their holdings.

Renunciation of allotment

To renounce means to give up. An allottee is permitted under the act to give up the right over shares allotted to him either wholly or partly and transfer allotment made to him to some other person. This is known as renunciation of allotment. The right of renunciation is exercised by an allottee when he is not in a position to retain the Shares to himself,

Underwriting

Underwriting is an act of guarantee by an organization for the sale of certain minimum amount of shares and debentures issued by a public limited company. According to the companies act, when a person agrees to take up the shares specified in the underwriting agreement, when the public or others have failed to subscribe for them, it is called underwriting agreement.

Underwriting commission

The consideration for the work done by the underwriter is known as underwriting commission. Section 76 permits the payment of underwriting commission subject to the compliance of the following conditions:-

1. It should be authorized by the articles of the company.

2. The commission payable should not exceed 5% in case of share and 21/2 % in the case of debentures.

3. Underwriting commission may be paid in cash or kind

4. Underwriting commission shall be disclosed in the prospectus or statement in lieu of prospectus as the case may be.

5. Details of shares undertaken are also disclosed in the prospectus or statement in lieu of prospectus.

6. A copy of contract relating to the payment of the commission should be delivered to the registrar.

Brokerage

Broker is a person connecting a purchaser and a seller. In the process of subscribing shares to the public, company appoints brokers. Brokerage is the reward for the work. It is the reward paid to the middlemen who brings about a bargain between the seller and a purchase of shares or debentures. Brokerage is different from the underwriting commission. Underwriters are liable for the under subscription of shares, but there is no such liability for brokers.

Issue of shares or terms of issue of shares :

a) Issue of shares at par When shares are issued by a company to the public at a price equal to their face value (i.e., the price written on the face of the share certificates), they are said to be issued at par.

b) Issue of shares at a premium (section 78) When a company finds at there is a great demand for its shares, it may issue shares at a premium. Issue of shares at a premium means the issue of shares by a company at a price higher than the face value of the shares. (The difference between the issue price, i.e., the price at which the shares are issued, and the face value of the shares is called share premium) the share premium may be utilized for the following purposes:-

1. to issue fully paid bonus shares to the members

2. To write off preliminary expenses of the company.

3. To write off expenses or commissions paid or discounts allowed on an issue of shares or debentures.

4. To provide for the premium payable on redemption of any redeemable preference shares or debentures.

c) Issue of shares at a discount section (79) when a company wants to raise further capital at a time when its shares are not demanded, and so, quoted in the market below par, it may issue shares at a discount. Issue of shares at a discount means the issue of shares at a price less than the face value of the shares. (The differences between the face value and the issue price of the shares are the discount allowed on the shares. The discount allowed is a capital loss to the company.). Section (79) of the companies act lays down that a company may issue shares at a discount, if the following conditions are satisfied.

¬ The issue of shares at discount must be of a class of shares already issued.

¬ At least one year have lapsed at the date of the issue from the date of commencement of business by the company.

¬ The issue is authorized by a resolution (ordinary) in the general meeting which must state the maximum rate of discount.

¬ The resolution shall specify the maximum rate of discount which shall not exceed 10%

¬ The resolution shall sanctioned by the central government.

¬ Shares are issued within two months of the date on which the issue is sanctioned by the central government

¬ The prospectus relating to the issue shall contain particulars of discount allowed on the issue of shares.

Sweat equity: Sweat equity shares' to mean equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing the knowhow or making available rights in the nature of intellectual property rights

Rights shares If a public company issues additional or further shares at any time after the expiry of two years of its formation or one year of the first allotment of shares, whichever is earlier, such additional shares must be offered to the existing equity shareholders of the company in proportion to the capital paid up on their shares, such shares are called rights shares. Such shares are called rights shares, as the existing equity shareholders are given preferential rights (i.e., first preference) in the allotment of such shares.

Bonus shares Bonus shares are shares issued by a company out of its accumulated reserves or profits to the existing equity share holders either as fully paid shares or partly paid shares free of cost.

Differences between bonus shares and rights shares:-

1. Bonus shares are issued to the existing members (i.e. Free of costs. But rights shares are issued to the existing member for money.

2. Bonus shares can be issued by a company only when it has sufficient accumulated reserves or profits. But the issue of rights shares is not at all related to the availability of accumulated reserves or profits.

3. The purpose of bonus issue is to bring the issued capital of the company in line with the true worth of the undertaking so that the net profit of the company may not appear to be excessively high as compared to its paid -up capital. But the purpose of rights issue is to raise additional share capital for the company.

4. For the issue of bonus shares, the permission of the controller of capital issues is necessary; on the other hand, for the issue of right shares, the permission of the controller of capital issues is necessary only when the issue exceeds rs.1 crore in a period of 12 months.

5. For the issue of bonus shares, sanction of the shareholders is necessary always. But for the issue of rights shares, the sanction of the shareholders is necessary only when the rights issue involves increase in the authorized capital.

Calls on shares

When shares are issued, the terms of issue may specify the installment by which the issue price shall be payable. A member of a company is bound to pay the nominal amount of share which he has purchased. As noted earlier section 69 provides that not less than five percent of the nominal value of share can be called by way of application money and another sum at allotment. The balance may be payable as and when called for. The power to make call is exercised by the board in the meeting by means of a resolution. The board, making a call, must observe the provision of the articles, otherwise the call will be invalid and the shareholder is not bound to pay.

Notice of call

A call must be made by serving upon members a notice of payment in accordance with the provision of section 53. It should be a formal notice, not a demand or request for payment. Every share-holder is under a statutory obligation to pay the full amount of his shares.

Calls in advance

According to sec.92 of the companies act, a company may if so authorized by its articles, accept from a shareholder either the whole or part of the amount remaining unpaid on any shares held by them, as calls in advance.

Surrender of shares: -

a shareholder who is not able to pay the call money may surrender its shares to the company. The company cancels such surrender shares. Surrender is a voluntary act on the part of the shareholder, whereas forfeiture is a compulsory act on part of the company

Forfeiture of shares:-

When shares are allotted to an applicant, it becomes a contract between the shareholder & the company. The shareholder is bound to contribute to the capital and the premium if any of the company to the extent of the shares he has agreed to take. As & when the directors make the calls. If the fails to pay the calls then his shares may be forfeiture by the directors if authorized by the articles of association of the company. The forfeiture can be only for non-payment of calls on shares and not for any other reasons.

Re-issue of forfeited shares:-

Shares are forfeited because only a part of the due amount of such shares is received and the balance remains unpaid. On forfeiture the membership of the original allottee is cancelled. He/she cannot be asked to make payment of the remaining amount. Such shares become the property of the company. Therefore company may sell these shares.

Difference between forfeiture and surrender of shares

• Forfeiture of shares is a compulsory action taken by a company as a last resort to recover the calls on arrears. But surrender of share is a voluntary act done by a Shareholder either to avoid forfeiture of shares or to exchange his share for new shares

• For forfeiture the company takes the initiative. But in surrender, shareholder takes the initiative.

• Complicated procedures are required for forfeiture, while surrender requires easy procedures.

• There cannot be forfeiture of fully paid shares, as there is no outstanding call on such shares. But there can be surrender of fully paid shares in exchange of new issues.

Stock

Stock can be defined as, "stock is a bundle of fully paid shares put together for convenience". In other words, it is the aggregate of fully-paid shares of a company consolidated or put together for the purpose of facilitating its division and transfer in fraction of any denomination or amount

Share certificate:

A share certificate is a document issued by a company under its common seal specifying the number of shares held by a member and the amount paid on each share and evidencing the title of the member to those shares. It is a prima facie evidence of the title of a member of the shares specified therein.

Contents of a share certificate:

A share certificate must contain the name and the registered office of the company. It must bear the common seal of the company. It must contain the signatures of at least two directors who are authorized to sign and also the counter signature of the secretary of the company. In addition to the above, it must contain the following particulars:

a. Name and address of the member

b. Share certificate no.

c. Number and class of shares.

d. Distinctive numbers of the shares included in the certificate.

e. Face value of the amount paid on each share.

f. Date of issue of the share certificate.

g. A revenue stamp.

Share warrants

A share warrant is a document issued by a public limited company under its common seal to its shareholders in respect of fully paid shares, stating that the bearer of the instrument (i.e., the share warrant) is entitled to the shares mentioned therein. In short, it is bearer document of title to the shares issued by a public limited company to its shareholders.

Differences between a share certificate and share warrant:

There are many differences between a share certificate and a share warrant. They are

1. Share certificates can be issued by public companies as well as private companies. But share warrants can be issued only by public companies limited by shares.

2. Share certificates can be issued for fully paid as well as partly paid shares, whereas share warrants can be issued only for fully paid shares.

3. No authorization by the articles of association is necessary for the issue of shares certificates. But share warrants cannot be issued by a company unless their issue is authorized by the articles of association.

4. No sanction or approval of the central government is necessary for the issue of shares certificates, whereas the approval of the central government is necessary for the issue of share warrants.

5. Shares represented by a share certificate are considered as qualification shares for the directorship of a company. But the shares represented by a share warrant are not considered as qualification shares for the directorship of a company.

6. The stamp duty payable on the issue of share certificates is just nominal, whereas the stamp duty payable on the issue of share warrants is heavy

7. The name of the bolder of a share certificate appears in the register of members. But the name of the holder of a share warrant does not appear in the register of members.

8. A share certificate is not a negotiable instrument, whereas a share warrant is considered as a negotiable instrument under mercantile usage and custom.

9. A share certificate can be issued originally. But a share warrant cannot be issued originally. Only share certificates can be converted into share warrants later on.

10. A share certificate is only a prima facie evidence of the title of the holder to the shares specified therein. On the other hand, a share warrant is a conclusive evidence of the title of the holder to the shares specified therein, provided he is a bona fide holder for value.

Transfer of shares:

When a registered shareholder passed on the property or interest in his shares by sale or otherwise (say) by gift) to another person voluntarily) there is said to be transfer of shares. So,

transfer of shares refers to the passing on of the property or interest in the shares by a registered shareholder to some other person voluntarily for a valuable consideration.

Power to directors to reject transfer

A) *Where in the articles no clause for reject the transfer*

In such a case the shareholder may freely transfer his shares and may carry the direction to register the transfer

B) *Where the articles have provision*

If the articles contain a clause empowering the director to reject the transfer they can do so.

Certification of transfer –

section 112 Where a shareholder desires to sell away some of the shares represented by a share certificate or to sell them to different buyers, the problem of single share certificate arise. To overcome this problem, a practice has grown up whereby the transferor lodges the certificate and transfer form with the company with a request to certify the transfer.

Forged transfer

An instrument of transfer which is not signed by the true owner of shares, but is signed by some other person as the true owner is called a forged transfer. In other words, an instrument of transfer which contains the forged signature of the transferor is called a forged transfer.

Blank transfer

When an instrument of transfer duly completed and signed by the transferor, but the name, address and signature of the transferee left blank, is delivered by the transferor to the transferee along with the relevant share certificate, there is said to be a blank transfer.

Transmission of shares:

Transmission of shares refers to the passing of property in shares by the operation of law, and not by sale by the original owner, on the happening such events as death, insolvency or lunacy of a shareholder, to his legal representative.

Differences between transfer of shares and transmission of shares:

1. Transfer of shares is the result of a voluntary and deliberate act of the holder of shares, whereas transmission of shares is the result of the operation of law.

2. Transfer of shares is a common or general method of passing of property in the shares from one person to another. But transmission of shares takes place only under certain special circumstances, such as the death, lunacy or insolvency of a shareholder.

3. As the transfer of shares is a voluntary act of the parties, there must be adequate and valid consideration for the transfer of shares. On the other hand, as the transmission of shares is the result of the operation of law

4. As the transfer of shares take place for valid consideration, stamp duty is payable in case of transfer of shares. But as the transmission of shares take place without any consideration, no stamp duty is payable in the case of transmission of shares.

5. For the transfer of shares, an instrument of transfer is required to be executed by the transferor in favour of the transferee. On the other hand, for the transmission of shares, there is no need for an instrument of transfer.

6. In the case of transfer of shares, as soon as the transfer is complete, the liability of the transferor ceases completely. But in the case of transmission of shares, the shares transmitted continue to be subject to the liability of the original holder to the company.

Lien on shares

Company's lien over partly paid shares :- If a shareholder has not fully paid the allotment price of any share or owes money to the company, the company has a lien over all shares registered for that shareholder alone (except fully paid shares). This lien is for the amount outstanding, even if it is not immediately payable.

Dematting of shares

Dematerialization (commonly known as 'demat') signifies conversion of a share certificate from its present physical form to electronic form for the same number of holding. It offers scope for paperless trading through state-of-the-art technology, whereby share transactions and transfers are processed electronically without involving any share certificate or transfer deed after the share certificates have been converted from physical form to electronic form.

Listing of securities

Listing means the enrolment of a name of company in an official list maintained in the stock exchanges. These securities are only allowed to be traded in stock exchanges. Listing is compulsory in the case of companies which intend to offer securities for public issue through the issue of prospectus.

Objectives of listing

♣ Creation of ready marketability, liquidity to securities.

♣ Mobilize savings for economic development

♣ Protect interest of investors

♣ Ensure control of trading

Advantages of listing

- **High liquidity**: listing ensures liquidity to the public and free transferability.
- **Helps to know the performance**: the investing public gets periodic reports of the listed companies, which help them to know the performance of the company.
- **Get regular information**: the transaction of the listed companies is reported in daily and the investors get regular information of the securities.
- **Tax advantages**
- **Facilitates buying and selling of securities**
- **Helps to raise finance for companies**
- **Protects the interest of investors**
- **Fair price**: prices on the stock exchange are determined by two way bids under the operation of the law of supply and demand. So it provides fair price for securities.
- **Collateral security**: it can be used as collateral securities for obtaining loans.

Limitations

- **Speculation**: listing of securities can bring wide fluctuations in the value of shares in the market. It provide ample scope for speculators.
- No regular price quotation
- Large amount of listing fees

• Information of competitors

Operation in depository system

The operations in the depository system involve the participation of a depository, depository participants, company/registrars and investors. The company is also called the issuer. **A depository** (NSDL and CDSL) is an organization where the securities on an investor are held in electronic form, through **depository participants**. A depository participant is the agent of the depository and is the medium through which the shares are held in the electronic form. They are also the representatives of the investor, providing the link between the investor and the company through the depository. In both systems, the transfer of funds or securities happens without the actual handling of funds or securities. Both the banks and the depository are accountable for safe keeping of funds and securities respectively.

MODULE 4

BOARD AND GOVERNANCE

A company is an artificial person created by law. Thus a company is not a natural person and yet it acts as a natural person through the persons who conducts his business, and they are known as directors of the company. The directors of the company are collectively known as board of directors or the board. The board of directors entrust the day to day management of the company to a chief executive, who may be managing director or manager by delegating necessary powers. So the chief executive looks after the day to day managerial functions of the company, with or without whole time director or directors.

The Companies Act, 2013 does not contain an exhaustive definition of the term "director". Section 2 (34) of the Act prescribed that "director" means a director appointed to the Board of a company. A director is a person appointed to perform the duties and functions of director of a company in accordance with the provisions of the Companies Act, 2013.

Board of Directors

The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board. The directors are the brain of a company. They occupy a pivotal position in the structure of the company. Directors take the decision regarding the management of a company collectively in their meetings known as Board Meetings or at the meetings of their committees constituted for certain specific purposes. Section 2 (10) of the Companies Act, 2013 defined that "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company.

The Companies Act 2013 has introduced significant changes in the composition of the board of directors of a company.

The key changes introduced are set out below:

NUMBER OF DIRECTORS: The following key changes have been introduced regarding composition of the board:

Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required. A period of one year has been provided to enable the companies to comply with this requirement.

1. A one person company shall have a minimum of 1 (one) director;

2. Companies Act 1956 permitted a company to determine the maximum number of directors on its board by way of its articles of association. Companies Act 2013, however, specifically provides that a company may have a maximum of 15 (fifteen) directors.

3. Companies Act 1956 required public companies to obtain Central Government's approval for increasing the number of its directors above the limit prescribed in its articles or if such increase would lead to the total number of directors on the board exceeding 12 (twelve) directors. Companies Act 2013 however, permits every company to appoint directors above the prescribed limit of 15 (fifteen) by authorizing such increase through a special resolution.

DIRECTORS

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The companies act says that the term ‘director’ includes ‘any person occupying the position of director regardless of title’. The definition of ‘director’ includes ‘any person occupying the position of a director, by whatever name called’. Directors of the company may therefore be trustees, governors, managers, officers etc., they will have the legal status of a director if that is their function

APPOINTMENT OF DIRECTORS

The directors are the brain of a company. They occupy a very important position in the structure of the company. Only individuals can be appointed as directors. Legally, no firm or association or company can be appointed as directors

A. Appointment of first directors

1. by articles of the company

2. by the subscribers to the memorandum of association

The first directors are generally nominated by the promoters of the company, and their names are mentioned in the articles of association of the company. If the first directors are not nominated by the promoters of the company, the subscribers to the memorandum, who are individuals, shall be deemed to be the first directors of the company, subject to the regulations of the company’s articles. They shall held office until directors are duly appointed in the first annual general meeting In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member in accordance with the provisions of Section 152.

The subsequent directors of a company are appointed in any of the following ways

Appointment By the company in annual general meeting

Except for the first directors, the subsequent directors are appointed by the company in the general meeting. In case of a public company or a subsidiary thereof, unless the article provide for the retirement of all directors at every annual general meeting, at least 2/3 of the total number of directors shall be liable to retire by rotation.

Appointment of Directors by the Board

a. Appointment of Additional Director-

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Section 161 (1) The board of directors can appoint additional directors, if such power is conferred on them by the articles of association. Such additional directors hold office only up to the date of next annual general meeting or the last date, on which the annual general meeting should have been held, whichever is earlier. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.

b. **Appointment of Alternate Director**- Section 161 (2) of the Act allowed the followings:

(i) The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of alternate director.

(ii) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.

(iii) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the Company.

(iv) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria for Independent Directors.

(v) An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

(vi) If the term of office of the original director is determined before he so returns to India, any provision for the automatic reappointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

c. **Appointment of Directors in causal vacancy**- Section 161 (4) If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

Appointment of Directors by Third Parties (Nomination) Section 161(3) This new sub-section now provides for appointment of Nominee Directors. It states that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company.

Appointment of directors by proportional representation: provides an option to companies to appoint directors by way of proportional representation.

Appointment by the central government: the central government can appoint such number of directors in a company on an order passed by tribunal under the winding circumstances.

Woman Director

• Listed companies and certain other public companies shall be required to appoint at least 1 (one) woman director on its board.

• Companies incorporated under Companies Act 2013 shall be required to comply with this provision within 6 (six) months from date of incorporation. In case of companies incorporated Under Companies Act 1956, companies are required to comply with the provision within a period of 1 (one) year from the commencement of the act.

Independent Directors

The Companies Act 1956 did not require companies to appoint an independent director on its board. Provisions related to independent directors were set out in Clause 49 of the Listing Agreement ("Listing Agreement"). Section 149 recognizes the concept of an “Independent Director”. This term is defined to mean a person:-

(i) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience.

(ii) Who possess such other qualifications as may be prescribed.

(iii) Who is or was not a promoter of the company, or its holding, subsidiary or associate company (hereinafter referred to as Group Companies)

(iv) Who is not related to promoters or directors of the company or any of its group companies.

(v) Who has or had no pecuniary relationship with any of the above persons/companies during the current or two immediately preceding financial years.

(vi) None of his relatives has or had pecuniary relationship or transaction with the above persons amounting to 2% or more of its gross turnover or total income or Rs.50 lacs (or such higher amount which is prescribed) – whichever is lower during the current or two preceding financial years.

(vii) Who or any of his relatives –
(a) Holds or held the position of a key managerial personnel or as employee of the company or any of its group companies in any of the 3 financial years immediately preceding the year of his appointment.
(b) Is or has been an employee, proprietor or partner of the following during any of the 3 preceding financial years.
• A firm of Auditors, Company Secretaries or Cost Auditors of the company or any of its group of companies.
• Any legal or consulting firm which has or had transaction with the company in or any of its group companies amounting to 10% or more of the gross turnover of the firm.
(c) Holds, together with his relatives, 2% or more of the Voting power of the company. or,
(d) Is a Chief Executive or director of any non-profit organization that receives 25% or more of its receipts from the company, any of its promoters, directors or its group companies or that hold 2% or more of the total voting power of the company.

(viii) Who is not a Managing/Whole Time/Nominee Director.

REMOVAL OF DIRECTORS

Removal of director by shareholders – shareholders may remove any director before the expiration of his or her term of office by special resolution. In that event, the shareholders may elect, or appoint by ordinary resolution, a director to fill the resulting vacancy.

Removal of director by directors – the directors may remove any director before the expiration of his or her term of office if the director is convicted of an indictable offence, or if the director ceases to be qualified to act as a director of a company and does not promptly resign, and the directors may appoint a director to fill the resulting vacancy.

Removal by central government: central govt. has the power to remove the directors when the management follow illegal and unsatisfied conducts.

Removal by tribunal: the tribunal is also has authority to remove the directors on an application for prevention of mismanagement.

QUALIFICATION OF A DIRECTOR

Indian Companies Act 2013 does not laydown any particular qualification for a director, not even qualification shares. The articles of association of a company generally provide that a certain number of shares will have to be held by each director. Such shares are called qualification shares.

Qualifications:

1. Director should possess a variety of knowledge and experiences while being a professional with an ethical mind.

2. Director should fully understand his obligations and practices with a commitment to create long-term values to the business and shareholders.

3. Director should have enough time to perform his duties effectively.

4. Director should be able to assess himself and is ready to notify the board of Directors upon change or if there is anything that prevents him from performing his job effectively.

DIS-QUALIFICATION OF DIRECTORS

A person shall not be eligible for appointment as a director of a company, if —

- He is of unsound mind and stands so declared by a competent court
- He is an undischarged insolvent
- He has applied to be adjudicated as an insolvent and his application is pending
- He has been convicted and sentenced to imprisonment for at least 6 months and 5 years from expiry of sentence have not got over
- He has been convicted and sentenced for a period of 7 years or more
- An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force
- He has not paid any calls in respect of any shares of the company held by him & 6 months have elapsed from the last day fixed for the payment of the call
- He has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years
- He has not obtained DIN
- A person who is director of a company which has not filed financial statements or annual returns for 5 continuous years, till expiry of 5 years from date of default
- A person who is director of company which has failed to repay deposits, debentures or distribute dividend for a period of one year, till expiry of 5 years from date of default
- Private Companies can provide for additional disqualifications in their Articles

LEGAL POSITION OF DIRECTORS/ ROLE (POSITION) OF DIRECTORS IN A COMPANY

A Director is part of a collective body of Directors called the Board, responsible for the superintendence, control and direction of the affairs of the Company. It is difficult to define the exact legal position of the director of a company. In the words of Bowen. L.j. "directors are described sometimes as agents, sometimes as trustees and sometimes as managing directors

Directors as Agents: A company as an artificial person, acts through directors who are elected representatives of the shareholders and who execute decision making for the benefit of shareholders. In the theory of the English law, the agent is a connecting line between the principal & third parties. He is an intermediary who has the power to create legal relationships between the principal and the third parties. Directors of a company are in the eye of law agents of the company for which they act and the general principles of the law of principal and agent regulate in most respects the relationship of the company and its directors. A director of a company is not necessarily the agent of the company or of its shareholder, but the true position of the directors of a company may that be of agents for the company with powers and duties of carrying on the whole of its business, subject to the restrictions imposed by the articles of association.

Director as trustees: In the non-profit world, "directors" and "trustees" are often used interchangeably; intended to refer to the group of individuals responsible for the management of the activities and affairs of the corporation (e.g., "board of directors," "board of trustees," "board of governors"). Most state non-profit laws provide a common structure from which these individuals

(whether directors, trustees, or governors) may carry out those responsibilities. Director is treated as trustees of the company, money and property: and of the powers entrusted to and vested in them only as trustee.

Directors as managing partners: Directors are elected representatives of the shareholders and therefore they are in a position as managing partners. In addition to that, they themselves are the shareholders of the company; this also makes them partners with other shareholders. They do almost all the functions of the Company in the capacity of its proprietor but they are not the managing partners of the company in full sense. Because, if they are the managing partners, why are they not authorized to bind other directors and shareholders by their acts and why do they compulsorily retire.

Directors as employees: Although directors are agent of the company, they are not employees or servants to the company. Hence they cannot claim their remunerations as a preferential creditor in the event of winding up of a company under section 327 of the companies act 2013. But where any director, besides being a director, is also in the service or employment of the company such as secretary, manager or otherwise, he will be treated as an employee. He will be entitled to the remuneration and other benefits of the employee in addition to his rights as a director to sitting fee etc. When the director is appointed as whole time employee of the company then that particular directors shall be considered as employee director or whole time director.

Directors as officers: Director treated as officers of an company. They are liable to certain penalties if the provisions of the companies act are not strictly complied with.

Director as "Key Managerial Personnel"- 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;

Director as "Officer in default" - Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;
(ii) key managerial personnel;
(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer

POWERS OF DIRECTORS

- To make calls on shares
- To authorise buy-back of securities under section 68
- To issue debentures
- To borrow money
- To invest the funds of the company
- To make loans
- To forfeit shares
- To fill up casual vacancy in the office of a director
- To make contracts for the purchase of land, patents etc.
- To recommend to the general body, the rate of dividend.
- To appoint major executives like md, manager, secretary etc.
- To determine internal organization
- To formulate major policies
- To approve financial statement and the Board's report
- To diversify the business of the company
- To approve amalgamation, merger or reconstruction
- To take over a company or acquire a controlling or substantial stake in another company.
- Any other matter which may be prescribed.

RIGHTS OF DIRECTORS

1. Has a right of access to a company's statutory registers, minutes and accounting records.
2. Are normally entitled to claim reimbursement of all reasonable, legitimate expenses incurred on company business.
3. Entitled to get remuneration.
4. To discharge their duties without interference from co-directors.
5. To participate in the strategic management of the company and attend and vote at board meeting.
6. To receive reasonable notice of meetings.
7. To remain in office until he resigns or is properly removed.
8. Subject to the Articles, a director has a right to hold any number of directorships.
9. Subject to the Articles, a director's powers may be delegated.
10. Subject to the Articles, all directors have equal rights to attend board meetings and all directors' votes have equal weight.
11. The company secretary must call a board meeting if so instructed by any director.
12. Directors can take independent professional advice at the expense of the company.

DIRECTORS' DUTIES

Statutory Duties

1. To verify the truthiness of a prospectus to be issued by the company.
2. To determine the amount of minimum subscription.

3. To see that the shares are not allotted until the minimum subscription has been subscribed for.
4. To see that all money received from applicants for shares is deposited in a scheduled bank until the certificate to commence business is obtained.
5. To see that application money received from those applicants who have not been allotted any shares is returned.
6. To purchase and pay for their qualification shares within the specified time.
7. To see that proper accounts are kept, P/L a/c and balance sheet are prepared and presented to the shareholders at the annual general meeting together with the directors' report.
8. To keep the register of members.
9. To send to the Registrar notice of conversion of shares into stocks or consolidation or division of shares.
10. To convene annual general meeting, and extra ordinary general meeting.
11. To submit statement of affairs during the winding up of the company.

General Duties (section 166)

1. A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole.
2. He shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgement.
3. He shall not involve in a situation in which he may have a direct or indirect interest that conflicts with the interest of the company.
4. He shall not achieve or attempt to any undue gain or advantage.
5. He shall not assign his office and any assignment so made shall be void.

LIABILITY OF DIRECTORS

a) **Liability to the outsiders.**
b) **Liability to the company.**
c) **Criminal liability.**

A.Liability to the outsiders.

1. **As an agent:**

i. If the directors enter into any contract with any outsider in their personal name, they will be held personally responsible to complete the contract.

ii. If they have knowingly entered into any ultra vires contract, they will be held responsible to make good the loss caused to other parties.

2. **Misleading prospectus:**

A director is liable to compensate a person who has subscribed shares in the faith of a prospectus which contained untrue statement.

3. **With regard to allotment:**

Directors may also incur personal liability for-

a. Irregular allotment- to refund the money paid by the applicants along with interest.
b. If there is failure to repay the application money within the specified time, the officers in default shall jointly and severally liable to repay that money with interest at the rate of 15% per annum.
c. If default is made in complying with the provisions of section 40(securities to be dealt with in Stock Exchanges) the company shall be punishable with a fine which shall not be less than 5 lakh rupees, but which may extend to 50 lakh rupees and every officer of the company shall be punishable with imprisonment or with fine.

B. Liability to the company.

The directors stand liable to the company in the following cases.

1. Ultra vires acts
2. Breach of fiduciary duty
3. Negligence
4. Malafide acts

C. Criminal Liability

Directors may be held criminally liable for any offence committed, under which they may be penalised with fine or imprisonment or both. Following are some of the cases where directors shall be criminally liable.

1. If the prospectus contain an untrue statement(section 34)
2. If the application money on shares is not deposited in a scheduled bank (section 40).
3. If the return of allotment is not filed with the Registrar (section39 (4).
4. If the register of members and debenture holders is not maintained(section 88)
5. If a default in filing with the Registrar, the particulars of any charge created by the company(section 86)
6. If the annual general meeting is not called within specified time (section 99).
7. If the annual accounts of the company are not placed before the company at every annual general meeting.
8. Failure to obtain Director Identification Number(DIN) or obtaining more than DIR (section 152&155)
9. Failure on the part of the existing directors to intimate the company within one month of the receipt of DIN from the Central Government(section 156)
10. If the share allotments are made without receiving the minimum subscription.

KEY MANAGERIAL PERSONNEL

While the Companies Act, 1956 recognised only Managing Director, Whole Time Director and Manager as the Managerial Personnel, the Companies Act, 2013 has brought in the concept of Key Managerial Personnel which not only covers the traditional roles of managing director and whole time director but also includes some functional figure heads like Chief Financial Officer and Chief Executive Officer etc. These inclusions are in line with the global trends. “Company Secretary” has also been brought within the ambit of Key Managerial Personnel giving them the long deserved recognition of a Key Managerial Personnel of the Company. Another noteworthy feature of this concept is that it combines the important management roles as a team or a cluster rather than as independent individuals performing their duties in isolation to others.

WHO IS A KEY MANAGERIAL PERSONNEL?

The definition of the term Key Managerial Personnel is contained in Section 2(51) of the Companies Act, 2013. The said Section states as under: “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;

The above definition is an exhaustive definition but point number (v) gives the power to the legislature to include some other personnel also within the definition of Key Managerial Personnel as may be deemed fit by them from time to time. As of now, no further prescription has been made

pursuant to point number (v) and therefore, as on date, the definition is confined to the six personnel mentioned above.

The above definitions depict that in the case of CEO and CFO, the designation is crucial to deem the person as CEO and CFO whereas in the case of MD and Manager the functions discharged or the role performed by an individual is taken as the test to deem them as the MD or Manager. The definition of whole time director is an inclusive definition and CS is defined to mean a CS as per the Company Secretaries Act, 1980who is duly appointed to perform the functions of a company secretary.

WHICH COMPANIES ARE MANDATORILY REQUIRED TO APPOINT KEY MANAGERIAL PERSONNEL

As per Section 203 of the Companies Act, 2013 read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following class of Companies, namely - Every listed company, and Every other public company having paid up share capital of Rs. 10 Crores or more shall have the following whole-time key managerial personnel,—

(i) Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director;
(ii) Company secretary; and
(iii) Chief Financial Officer Further, as per recently notified Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a company other than a company which is required to appoint a whole time key managerial personnel as discussed above and which is having paid up share capital of Rs. 5 Crores or more shall have a whole time Company Secretary

MANNER OF APPOINTMENT OF KMP

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration. If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of 6 months from the date of such vacancy.

CORPORATE GOVERNANCE

In a narrow sense, corporate governance involves a set of relationships amongst the company's management, its board of directors, its shareholders, its auditors and other stakeholders. These relationships, which involve various rules and incentives, provide the structure through which the objectives of the company are set, and the means of attaining these objectives as well as monitoring performance are determined. Corporate governance essentially involves balancing the interests of the many stakeholders in a company - these include its shareholders, management, customers, suppliers, financiers, government and the community. Corporate governance broadly refers to the mechanisms, processes and relations by which corporations are controlled and directed. Corporate governance includes the processes through which corporations' objectives are set and pursued in the context of the social, regulatory and market environment.

Definition of Corporate Governance

"Accountability to providers of capital." — Bruce Weber

John L. Weinberg "Corporate governance is the control of management in the best interests of the company, including accountability to shareholders who elect directors and auditors and vote on say on pay

NEED OF CORPORATE GOVERNANCE:

The need for corporate governance has arisen because of the increasing concern about the non-compliance of standards of financial reporting and accountability by boards of directors and management of corporate inflicting heavy losses on investors. The collapse of international giants likes Enron, World Com of the US and Xerox of Japan are said to be due to the absence of good corporate governance and corrupt practices adopted by management of these companies and their financial consulting firms. The failures of these multinational giants bring out the importance of good corporate governance structure making clear the distinction of power between the Board of Directors and the management which can lead to appropriate governance processes and procedures under which management is free to manage and board of directors is free to monitor and give policy directions. In India, SEBI realised the need for good corporate governance and for this purpose appointed several committees such as Kumar Manglam Birla Committee, Naresh Chandra Committee and Narayana Murthy Committee.

IMPORTANCE OF CORPORATE GOVERNANCE:

1) Investors and shareholders of a corporate company need protection for their investment due to lack of adequate standards of financial reporting and accountability. It has been noticed in India that companies raised capital from the market at high valuation of their shares by projecting wrong picture of the company's performance and profitability. Therefore, for encouraging Indian investors to make adequate investment in the stock of corporate companies and thereby boosting up rate of growth of the economy, the protection of their interests from fraudulent practices of corporate of boards of directors and management are urgently needed.
2) Corporate governance is considered as an important means for paying heed to investors' grievances. Kumar Manglam Birla Committee on corporate governance found that companies were not paying adequate attention to the timely dissemination of required information to investors in by India. Though some measures have been taken by SEBI and RBI but much more required to be taken by the companies themselves to pay heed to the investors grievances and protection of their investment by adopting good standards of corporate governance.
3) The importance of good corporate governance lies in the fact that it will enable the corporate firms to (1) attract capital and (2) perform efficiently. This will help in winning investors confidence. Investors will be willing to invest in the companies with a good record of corporate governance.
4) **Indispensable for healthy and vibrant stock market**:- An important advantage of strong corporate governance is that it is indispensable for a vibrant stock market. A healthy stock market is an important instrument for investors' protection. In addition to prohibiting inappropriate actions (which might not necessarily be prohibited) self-regulation is also considered an effective means of creating shareholders value. Companies can always regulate their directors/officers beyond what is prohibited by the law".
5) **Changing Ownership Structure:** In recent years, the ownership structure of companies has changed a lot. Public financial institutions, mutual funds, etc. are the single largest shareholder in most of the large companies. So, they have effective control on the management of the companies. They force the management to use corporate governance. That is, they put pressure on the management to become more efficient, transparent, accountable, etc. They also ask the management to make consumer-friendly policies, to protect all social groups and to protect the environment. So, the changing ownership structure has resulted in corporate governance.
6) **Importance of Social Responsibility:** Today, social responsibility is given a lot of importance. The Board of Directors have to protect the rights of the customers, employees, shareholders, suppliers, local communities, etc. This is possible only if they use corporate governance.

7) **Growing Number of Scams:** In recent years, many scams, frauds and corrupt practices have taken place. Misuse and misappropriation of public money are happening everyday in India and worldwide. It is happening in the stock market, banks, financial institutions, companies and government offices. In order to avoid these scams and financial irregularities, many companies have started corporate governance.
8) **Indifference on the part of Shareholders:** In general, shareholders are inactive in the management of their companies. They only attend the Annual general meeting. Postal ballot is still absent in India. Proxies are not allowed to speak in the meetings. Shareholders associations are not strong. Therefore, directors misuse their power for their own benefits. So, there is a need for corporate governance to protect all the stakeholders of the company.
9) **Globalisation:** Today most big companies are selling their goods in the global market. So, they have to attract foreign investor and foreign customers. They also have to follow foreign rules and regulations. All this requires corporate governance. Without Corporate governance, it is impossible to enter, survive and succeed the global market.
10) **Takeovers and Mergers:** Today, there are many takeovers and mergers in the business world. Corporate governance is required to protect the interest of all the parties during takeovers and mergers.
11) **SEBI:** SEBI has made corporate governance compulsory for certain companies. This is done to protect the interest of the investors and other stakeholders.

CORPORATE SOCIAL RESPONSIBILITY (CSR)

Corporate social responsibility refers to a business practice that involves participating in initiatives that benefit society. Corporate social responsibility (CSR) is a business approach that contributes to sustainable development by delivering economic, social and environmental benefits for all stakeholders. There is no agreed definition of CSR.

According to EU commission (2002), "….CSR is a concept where by companies integrates social and environmental concern in their business operations and in their interaction with their stakeholders on a voluntary basis."

Types of corporate social responsibility

CSR can encompass a wide variety of tactics, from giving nonprofit organizations a portion of a company's proceeds, to giving away a product or service to a worthy recipient for every sale made. Here are a few of the broad categories of social responsibility that businesses are practicing:

Environment: One primary focus of corporate social responsibility is the environment. Businesses, both large and small, have a large carbon footprint. Any steps they can take to reduce those footprints are considered both good for the company and society as a whole.

Philanthropy: Businesses also practice social responsibility by donating to national and local charities. Whether it involves giving money or time, businesses have a lot of resources that can benefit charities and local community programs.

Ethical labour practices: By treating employees fairly and ethically, companies can also demonstrate their corporate social responsibility. This is especially true of businesses that operate in international locations with labour laws that differ from those in the United States.

Importance of corporate social responsibility to societies

Corporate social responsibility generates direct and indirect business benefits and advantages to the corporation that adopt it (Bueble, 2009). In synthesis, the benefits and advantages that corporations adopting Corporate social responsibility initiatives may obtain the following (Campbell, 2007):

1. Increased employee loyalty and retention.

2. Gaining legitimacy and access to markets.

3. Less litigation.

4. Increased quality of products and services.

5. Bolstering public image and reputation and enhanced brand value.

6. Less volatile stock value.

7. Avoiding state regulation.

8. Increased customer loyalty.

Corporate social responsibility activities amongst various corporations and its stakeholders could contribute to the macroeconomic development of a developing country through sustainable benefit to all. At the same time, optimum national impact, cooperation, and communication would be encouraged and socialized. The following are the various benefits of corporate social responsibility to the society.

Local community and society

- Improved quality of life and Changed habits.
- Capacity building creates wealth and employment.
- Balanced ecosystems.
- Waste management.
- Clean and Green environment.

Corporations

- Goodwill and Community acceptance.
- Profit, Growth, competitive edge and image.
- Genuine dialog with stakeholders.
- Spiritual and Pride values to their families and employees.

SEBI (SECURITIES EXCHANGE BOARD OF INDIA)

In 1988 the Securities and Exchange Board of India (SEBI) was established by the Government of India through an executive resolution, and was subsequently upgraded as a fully autonomous body (a statutory Board) in the year 1992 with the passing of the Securities and Exchange Board of India Act (SEBI Act) on 30th January 1992. In place of Government Control, a statutory and autonomous regulatory board with defined responsibilities, to cover both development & regulation of the market, and independent powers has been set up.

The basic objectives of the Board are as follows:

- To protect the interests of investors in securities;
- To promote the development of Securities Market;
- To regulate the securities market and
- For matters connected therewith or incidental there to.

SEBI has introduced the comprehensive regulatory measures, prescribed registration norms, the eligibility criteria, the code of obligations and the code of conduct for different intermediaries like, bankers to issue, merchant bankers, brokers and sub-brokers, registrars, portfolio managers, credit rating agencies, underwriters and others. It has framed by-laws, risk identification and risk management systems for Clearing houses of stock exchanges, surveillance system etc. which has made dealing in securities both safe and transparent to the end investor.

Management of the board

1. The board shall consist of the following members, namely:-

(a) A chairman;

(b) Two members from amongst the officials of the ministry of the central government dealing with finance and administration of the companies act, 1956

(c) One member from amongst the officials of the reserve bank;

(d) Five other members of whom at least Three shall be the whole-time members to be appointed by the central government.

2. The general superintendence, direction and management of the affairs of the board shall vest in a board of members

3. The chairman shall also have powers of general superintendence and direction of the affairs of the board

4. The chairman and members shall be nominated by the central government and the reserve bank respectively.

5. The chairman and the other members shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration.

Functions of SEBI

The Following are some of the main functions of SEBI:

Regulatory Functions

- Registration of brokers and sub-brokers and other players in the market
- Registration of collective investments schemes and Mutual Funds
- Regulation of stock exchanges and other self-regulatory organisations (SRO) merchant banks etc
- Prohibition of all fraudulent and unfair trade practices
- Controlling Insider Trading and takeover bids and imposing penalties for such Practices

Developmental Functions

- Investor education
- Training of intermediaries
- Promotion of fair practices and Code of conduct for all SROs
- Conducting Research and Publishing information useful to all market Participants

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Powers of SEBI - Securities and Exchange Board of India

1. Powers relating to stock exchanges & intermediaries: SEBI has wide powers regarding the stock exchanges and intermediaries dealing in securities. It can ask information from the stock exchanges and intermediaries regarding their business transactions for inspection or scrutiny and other purpose.

2. Power to impose monetary penalties: SEBI has been empowered to impose monetary penalties on capital market intermediaries and other participants for a range of violations. It can even impose suspension of their registration for a short period.

3. Power to initiate actions in functions assigned: SEBI has a power to initiate actions in regard to functions assigned. For example, it can issue guidelines to different intermediaries or can introduce specific rules for the protection of interests of investors.

4. Power to regulate insider trading:

5. SEBI has power to regulate insider trading or can regulate the functions of merchant bankers.

6. Powers under Securities Contracts Act: For effective regulation of stock exchange, the Ministry of Finance issued a Notification on 13 September, 1994 delegating several of its powers under the Securities Contracts (Regulations) Act to SEBI. SEBI is also empowered by the Finance Ministry to nominate three members on the Governing Body of every stock exchange.

7. Power to regulate business of stock exchanges: SEBI is also empowered to regulate the business of stock exchanges, intermediaries associated with the securities market as well as mutual funds, fraudulent and unfair trade practices relating to securities and regulation of acquisition of shares and takeovers of companies.

SECURITIES APPELLATE TRIBUNAL

Securities Appellate Tribunal is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992 to hear and dispose of appeals against orders passed by the Securities and Exchange Board of India or by an adjudicating officer under the Act and to exercise jurisdiction, powers and authority conferred on the Tribunal by or under this Act or any other law for the time being in force.

Section 15K of SEBI Act, 1992 empowers the Central Government to set up one or more Tribunals, for the purpose making appeals against the orders of SEBI and its adjudicating officers. These tribunals will be known as Securities Appellate Tribunal (SAT). In exercise of the power conferred, the Central Government has set up one Tribunal at Mumbai.

Composition of SAT

SAT shall consist of the following:

1. One Presiding officer
2. Two other members

Presiding Officer

- The Presiding Officer of SAT shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

- The person to be appointed as the Presiding Officer must;

    a) Be a sitting or retired Judge of the Supreme Court ; or

    b) Be a sitting or retired Chief Justice of a High Court ; or

c) Be a sitting or retired Judge of a High Court, who has completed atleast 7 years of service.

d) The person so appointed shall hold office, earlier of the two for a period of 5 years ; or

e) Up to the age of 68 years

Members

The two members of SAT shall be appointed by the Central Government. The person to be appointed must;

- A person of ability, integrity and standing who has shown capacity in dealing with problems relating
  to securities market.
- Have qualification and experience of Corporate Law, Securities Law, Finance, Economics or
  Accountancy.
- Person shall hold office, earlier of the two, For a period of 5 years; or
- Upto age of 62 years.

Appeal to SAT [Sec. 15T]

Who can make appeal?

- Any person aggrieved,
- By an order of the SEBI; or
- By an order made by an adjudicating office may prefer an appeal to SAT.

Exceptions: – No appeal shall lie to SAT from an order made with the consent of the parties.

Time Limit: – The appeal to SAT shall be filed within a period of 45 days from the date of receiving the copy of the order of SEBI or adjudicating officer, as the case may be. However, SAT may entertain an appeal after the expiry of 45 days, if it is satisfied that there was sufficient cause for not filing it within that period.

SAT shall send copy of every order made by it to the following person:

- SEBI
- Concerned Adjudicating Officer
- Parities to Appeal.

Appeal against the Orders of SAT [Sec 15Z]

- Any person aggrieved by any decision or order of SAT may file an appeal to the Supreme Court. It may be noted that the appeal can be made only on any Question of Law.

- The appeal shall be filed within 60 days from the date of receiving a copy of the decision or order of SAT. However, the Supreme Court may allow a further period of 60 days for making an appeal, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the first 60 days.

Powers of SAT [Sec 15U]

The SAT shall have, for the purpose of discharging their functions under SEBI Act, 1992, the same powers as are vested in a Civil Court under the CPC, 1908, while trying a suit, in respect of the following matters, namely:

1. Summoning and enforcing the attendance of any person and examining him on oath.

2. Requiring the discovery and production of documents.

3. Receiving evidence on affidavits.

4. Issuing commissions for the examination of witness or documents.

5. Reviewing its decisions.

6. Dismissing an application for default or deciding it ex parte.

7. Setting aside any order of dismissal of any application for default or any order passed by it ex parte.

8. Any other matter which may be prescribed

MODULE 5

INTRODUCTION

Holding of meetings periodically to discuss matters of common interest and taking decisions on various matters are absolutely necessary in a company form of organisation. A meeting may be defined as a gathering or assembly of two or more persons in a particular place to discuss some common issues and take decisions on the basis of the opinion expressed in the meeting. Since company is an artificial person, it cannot take decision of its own just like a natural person. A company is managed by representatives of shareholders. Therefore it becomes necessary to meet at periodical intervals and take decisions.

REQUISITES OF A VALID MEETING (ESSENTIALS OF A VALID MEETING)

A meeting must be called and convened as per the provisions of the Act and the Articles of Association. If there are any irregularities in the procedure followed for convening and conducting a meeting, the proceedings of that meeting become invalid and the decisions taken in the meeting will not be binding. A meeting should be properly convened and legally constituted. Following are the important requisites of a valid meeting:

(1) Proper authority to convene a meeting

The board of directors is the proper authority to convene a general meeting of a company and for this purpose the board should pass a resolution at a duly convened meeting of the board. If the directors fail to call the meeting on request, the Tribunal is the proper authority to call the meeting

(2) Proper notice to be served in the prescribed manner

A notice with the required length of time must be given to every member entitled to receive it. The notice shall state the kind of meeting, date, time and the place of meeting and the business to be transacted at the beginning. For example, in the case of general meeting a 21 days' notice should be given to the members.

(3) Required quorum must be present in the meeting

The quorum is the minimum number of persons that should be present at the meeting either in person or by proxy. Usually the quorum is fixed by the Articles. If the quorum is not present with half an hour from the appointed time for the meeting, the meeting shall be dissolved or adjourned.

(4) Business to be transacted in the meeting

Notice of the meeting should state the business to be transacted. The business may be a general business or special business.

(5) Chairman of meeting: - Before a meeting of a company can start its business, it is required to have a chairman. It is the chairman who is to preside at the meeting of the company. He is to conduct the meeting and to maintain the order. *Duties of the chairman*:-

(a) He must take care that the minority is not oppressed in any way.
(b) He must give the members who are present a reasonable opportunity to discuss any proposed resolution
(c) He must see that the meeting is properly convened and constituted
(d) The chairman must conduct the proceedings in accordance with the provisions of the act, the company's articles of association
(e) He should adjourn the meeting when it is impossible.
(f) He must take care that the opinion of the meeting is properly ascertained with regard to the questions before it
(g) He must keep order in the meeting.
(h) He should exercise his casting vote, if any,
(i) The minutes of the meeting should be properly recorded and signed by the chairman.

(6) Minutes of the meeting

The term 'minutes' means the official record of the meetings of a company. These are the summary of the business transacted; decisions and the resolutions arrived at the meeting. Every company must keep a record of all proceedings of the meetings. Minutes should be signed by the Chairman of the meeting

A detailed discussion of the essentials of meeting are given below:

Notice of Meeting

One important requirement of a valid meeting is that a proper notice of the meeting shall be given by the proper authority to all the members who are entitled to receive it. The length of notice varies with the nature or type of the meeting. A general meeting may be called by giving a notice of not less than 21 days in writing. The directors, meeting requires a notice as determined by the directors themselves or as fixed by the Articles.

The notice of a general meeting shall be given to every member of the company, legal representatives of the deceased members, the auditors of the company and public trustees. Deliberate omission to give notice will make the meeting invalid. Every notice shall specify the place, day and time of the meeting, the class of meeting (whether statutory, annual, general or extra-ordinary), the section, if meeting is convened under any section, the business to be transacted and a statement regarding the method of and the rule relating to the appointment of proxies, Notice may be served either personally or by post.

Quorum

Quorum means the minimum number of members required to be present in person before any business is validly transacted. If the quorum is not present, the meeting shall not be valid and therefore the proceedings of the meeting become invalid. The quorum of the meeting is generally fixed by the articles subject to provisions of the Act. In general meetings, if the Articles do not fix the quorum, two members personally present in the case of private company and five members in the case of a public company shall constitute the quorum.

If within half an hour from the time fixed for the meeting a quorum is not present, the meeting requisitioned by members shall stand dissolved. In any other case, the meeting shall be adjourned to the same day in the next week at the same time and place. If at the adjourned meeting also, the quorum is not present within half an hour, the members present in the meeting shall constitute the quorum

In Directors' meeting, if the Articles are silent, the quorum shall be one third of the total member of directors or two directors, whichever is higher. The quorum must be present at the time when the meeting proceeds to the business. It means the quorum need not be present throughout or at the time of taking vote.

Voting and roll:-A vote is the formal expression of the will of the members of the house either for or against a proposal. The matters proposed and duly recommended in a general meeting of the company are decided by the voting of the members of the company. The procedure of voting is regulated by the articles subject to the provisions of the act.

1. **Voting by a show of hands** at any general meeting, unless the articles otherwise provide, a resolution put to the vote is in the first instance decided by a show of hands except when a poll is

2. **Voting by poll [sec. 179]** if there is dissatisfaction among the members about the result of voting by the show of hands, they can demand a poll. 'Poll' means counting the number of votes cast for and against a motion

Proxies: - A meeting has right to vote either in person or by proxy. Any member of a company who is entitled to attend and vote at a meeting of the company can appoint another person (whether a member or not) as his proxy to attend and vote instead of himself but a proxy so appointed will have no right to speak at the meeting.

KINDS OF MEETINGS

Broadly speaking, company meetings may be classified under the following four heads:

(1) Meeting of Shareholders

(2) Meeting of Directors

(3) Meeting of Creditors

(4) Meeting of Debenture holders

Meeting of Shareholders

Meeting of shareholders may be:

(A) Statutory meeting

(B) Annual General Meeting; and

(C) Extra Ordinary General Meeting

(A) Statutory Meeting

There is no provision for statutory meeting as per Companies Act, 2013. But as per the Act of 1956 every company limited by shares every company limited by shares and every company limited by guarantee and having share capital must hold a general meeting of its shareholders within a period not more than six months but not less than one month from the date at which the company is entitled to commence its business. Such a first meeting of shareholders is called the statutory meeting. It is held only once in the life time of a company. Private companies are not required to hold such a meeting. Similarly companies limited by guarantee and not having share capital need not hold a statutory meeting.

Purpose of the meeting

The purpose or objective of convening a statutory meeting is to discuss the Statutory Report prepared by Directors which contains particulars relating to the formation of the company to enable them to know the working of the company from the date of its incorporation and also its financial position. The meeting also enables the members to discuss the matters not included in Statutory Report provided they have given prior notice to that effect.

Notice of the meeting

A notice for calling the meeting must be given at least 21 days before the meeting, clearly stating that it is a statutory meeting and mentioning the time and place of the meeting.

Statutory report

Statutory report is a report drafted by the Directors of the company and certified as correct by at least two Directors (including the Managing Director). It contains particulars relating to the formulation of the company. It is presented in the statutory meeting. A copy of the report must be sent to every member along with the notice of the meeting. A certified copy of the report should be filed with the Registrar of companies.

A statutory report shall contain:

(a) the total number of shares fully paid up and partly paid up allotted
(b) the number of shares allotted for consideration other than cash
(c) the total amount of cash received in respect of shares allotted
(d) the abstract of the receipts and payments of the company up to a date within seven days of the date of statutory report
(e) the names, addresses and occupations of Directors, Auditors, Managing director or manager and secretary
(f) estimated amount of preliminary expenses
(g) particulars of any commission or discount paid or to be paid on the issue of share and debentures
(h) particulars of any contract to be submitted to, in meeting for approval with proposed modifications, if any
(i) the extent to which underwriting contracts, if any, have not been carried out and the reasons for the same
(j) the arrear, if any, due on call from directors, managing director or manager
(k) particulars of commission and brokerage paid to directors or manager in connection with the issue of shares or debentures

Certification and Filing of Statutory Report

The statutory report must be certified by not less than two directors, one of whom shall be managing director, if any. The auditors of the company should also certify it as correct in respect of the shares and receipts and payments of the company. A copy of the certified report shall be filed with the Registrar of companies for registration, immediately after the copies are sent to the members of the company.

Rights of Members in the Statutory Meeting

As the first official meeting of the shareholders of the company, statutory meeting gives an opportunity to members to check up the performance of the company from the date of its incorporation. Because of the importance of the meeting, the members are given the following rights in the meeting:

i. right to discuss any matter relating to the formation of the company (i) or arising out of the statutory report
ii. right to adjourn the meeting from time to time and to discuss at the adjourned meetings any resolution for which previous notice has been given either before or after the original meeting
iii. right to inspect the list of members

iv. Right to file petition to the courts for compulsory winding up of the company if the company makes default in issuing and filing statutory report as per the Act.

Procedure at the Meeting

At the meeting, the Board of directors shall place the list of members showing the name, address and occupation and also the number of shares held by them. The members present at the meeting may discuss any matter relating to the formation of the company or matters arising out of statutory report. At the commencement of the meeting, the Chairman will ask the Secretary to read the notice of the meeting and also to place the list of members before the meeting and keep it open for inspection by members during the meeting. The Chairman will explain to the members the purpose of the meeting and the present position of the company. He will invite discussions and questions on the statutory report and other matters connected with the formation of the company. The Secretary shall prepare the minutes of the meetings and get the same approved at the next Board meeting

If default is made in complying with the provisions of Section 165, every director and officer of the company who is in default will be liable to a fine which may extend to 5,000. If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting, the company may be wound up by NCLT.

B. Annual General Meeting (Section 96)

Every company other than a One Person Company shall each year hold a general meeting as its annual general meeting in addition to any other meeting, specifying the meeting as annual general meeting in the notices calling it. Not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next. The Registrar may extend the time within which any annual general meeting shall be held not exceeding three months for any special reason.

Every annual general meeting shall be called during business hours, that is, between 9 am and 6 pm on any day that is not a national holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. The Central Government may exempt any company from the provisions of this sub section subject to such conditions as it may impose.

First Annual General Meeting

The first annual general meeting of the company shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case within a period of six months from the date of closing of the financial year. If a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.

Default in Holding Annual General Meeting

According to section 97, if any default is made in holding the annual general meeting of a company under section 96, the Tribunal may call or direct the calling of an annual general meeting, on the application of any member of the company. In that case the Tribunal shall give necessary ancillary or consequential directions as it thinks fit, Such direction may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

If any default is made in holding a meeting of the company in accordance with sections 96 and 97, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for everyday during which such default continues.

Extra Ordinary General Meeting (Section 100)

Any general meeting other than annual general meeting is called extra ordinary general meeting. It is convened to transact any urgent or extra-ordinary business. Such meetings are held to transact business which falls outside the usual business which cannot be postponed till the next annual

general meeting. Whenever it deems fit, the Board of directors may call an extra-ordinary general meeting of the company, at the requisition made by the following:
(a) In the case of a company having a share capital, such number of members who hold not less than one-tenth of the paid up share capital of the company, on the date of the requisition:
(b) In the case of a company not having a share capital, such number of members who have not less than one-tenth of the total voting power, on the date of the requisition.

The requisition shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company. If the Board does not, within twenty-one days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than forty-five days from the date of receipt of requisition, the meeting may be called and held by the requisitionists themselves within three months from the date of requisition. Any reasonable expense incurred by the requisitionists in calling a meeting shall be reimbursed by the company to the requisitionists and the sums so paid shall be deducted from any fee or other remuneration payable to the directors who were in default in calling the meeting.

Notice of Meeting (Section 101)

A general meeting of a company may be called by giving not less than clear twenty-one day's notice either in writing or through electronic mode. A general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting. The notice shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting. The notice shall be given to:-
(a) Every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
(b) The auditor or auditors of the company, and
(c) Every director of the company.

Any accidental omission to give notice or the non-receipt of such notice by any member or other person who is entitled to such notice shall not invalidate the proceedings of the meeting.

Statement to be annexed to notice (Section 102)

(1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting shall be annexed to the notice calling such meeting namely:
(a) The nature of concern or interest, financial or otherwise, if any, in respect of each items of every director and the manager, every other key managerial personnel and relatives of the persons mentioned above, and
(b) Any other information and facts that enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.
(2) In the case of an annual general meeting, all business to be transacted shall be deemed special, other than -
(i) The consideration of financial statements and the reports of the board of directors and auditors;
(ii) The declaration of any dividend;
(iii) The appointment of directors in place of those retiring;
(iv) The appointment of, and the fixing of the remuneration of the auditors.
In the case of any other meeting, all business shall be deemed to be special.
(3) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the statement.
(4) If any default is made in complying with the above provisions regarding notice, every promoter, director, manager, or other key managerial personnel who is in default shall be punishable with fine which may extend to fifty thousand rupees only or five times the amount of benefit accruing to the promoter, director, manager, or other key managerial personnel or any of his relatives, whichever is more.

Quorum for Meetings (Section 103)

Quorum means the minimum number of members to be present to make the proceedings of the meeting valid. In general meeting of a company the quorum in case of public company is:

(i) Five members personally present if the number of members as on the date of meeting is not more than one thousand;

(ii) Fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(iii) Thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.

In the case of a private company, two members personally present shall be the quorum.

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

(a) the meeting shall be adjourned to same day in the next week at the same time and place or to such other date and time and place as the Board may determine; or

(b) The meeting, if called by the requisitionists under section 100, shall stand cancelled.

In case of an adjourned meeting or of a change of day, time or place of meeting the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

If at the adjourned meeting also, a quorum is not present within half-an hour from the time appointed for holding the meeting, the members present shall be the quorum.

Chairman of Meetings (Section 104)

Unless the articles of the company so provide, the members personally present at the meeting shall elect one among themselves to the chairman thereof on a show of hands. If a poll is demanded, it shall be taken forthwith in accordance with the provisions of the Act and the chairman elected on a show of hands shall continue to be the chairman of the meeting until some other person is elected as chairman as a result of the poll and such other person shall be the chairman for the rest of the meeting.

Proxies (Section 105)

A proxy is a person who is authorised by a member of the company to attend and vote at a meeting on his behalf. Any member of a company entitled to attend and vote at a meeting shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. But a proxy shall not have the right to speak at the meeting and shall not be entitled to vote except on a poll. A person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.

The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy. In every notice calling a meeting of a company which has a share capital, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy and that a proxy need not be a member.
If default is made in this, every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

The instrument appointing a proxy shall be in writing and be signed by the appointer or his attorney duly authorised in writing or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it. Every member entitled to vote at a meeting of the company shall be entitled to inspect the proxies lodged at any time during the business hours of the company during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, provided not less than 3 days notice in writing of the intention to inspect is given by the company.

Restriction on voting rights

As per section 106, the articles of the company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or in regard to which the company has exercised any right of lien. Except on the above ground, a company shall not prohibit any member from exercising his voting right on any other ground.

Voting

According to section 107, a resolution put to vote of the general meeting shall be decided on a show of hands. According to section 108, the Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by electronic means. The chairman of the meeting is empowered to order a poll on his own motion or on a demand by members present in person or by proxy having not less than one-tenth of the total voting power or holding shares of not less than five lakh rupees in aggregate.

Postal Vote

A company shall, in respect of such items of business as the Central Government may by notification, declare to be transacted only by means of postal ballot. If a resolution is assented to by the requisite majority of shareholders by means of postal ballot, it shall be deemed to have been duly passed at general meeting.

A copy of every resolution or any agreement together with the explanatory statement shall be filed with the Registrar within thirty days of passing the resolution or making the agreement with the prescribed fees.

Report on Annual General Meeting

According to section 121, every public listed company shall prepare a report on each annual general meeting and file with the Registrar a copy of the report within 30 days of the conclusion of the meeting with the prescribed fees. If a company fails to file the report, the company shall be punishable with fine of not less than one lakh rupees which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with a fine of not less than twenty-five thousand rupees which may extend to one lakh rupees.

Class Meetings

Where the share capital of the company consists of different classes of shares, meetings of different classes of shareholders may have to be called in order to discuss matters affecting them. For example, meetings of preference shareholders. Such a meeting can be attended only by that class of shareholders, Class meetings are to be held if the rights attaching to a particular class of shares are to be changed. Similarly, under Section 394, where a scheme of arrangement is proposed, meetings of different classes of shareholders are held. The Companies Act says that the provisions of the Act as applicable to general meetings also apply to class meetings.

Meetings of Board of Directors

According to section 173, every company shall hold the first meeting of the Board of directors within thirty days of the date of incorporation and thereafter hold a minimum of four meetings every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings. The participation of directors in a Board meeting may be either in person or through video conferencing or other audiovisual means which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of the meeting along with the date and time.

Notice

A meeting of the Board shall be called by giving not less than seven days notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. A meeting may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present

at the meeting. In case of absence of independent directors from such a meeting, decisions taken at the meeting shall be circulated to all the directors and shall be final only on ratification by at least one independent director. Every officer in default of the above shall be punishable with a penalty of twenty-five thousand rupees.

In the case of a one person company, small company and dormant company at least one meeting of the Board shall be held in each half of a calendar year and the gap between two meetings is not less than ninety days.

Quorum

According to section 174, the quorum for a board meeting shall be one third of its total strength or two directors, whichever is higher. The participation of directors by video conferencing or by other audio visual means shall be counted for the purpose of quorum. Where the number of interested directors exceeds or equal to two-thirds of the total strength of the Board, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum. Where a meeting of the Board would not be held for want of quorum, then the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day at the same time and place.

Passing of Resolution by Circulation (Section 175)

A resolution shall be deemed to be passed by the Board or a committee only if the resolution has been circulated in draft, together with the necessary papers to all the directors or members of the committee at their registered addresses by hand delivery or post or by courier or through electronic means and majority of directors or members who are entitled to vote on the resolution has approved it.

Meetings of Committees of the Board

Usually, the Articles of Association of the company empowers the Board of Directors to appoint small committees consisting of two or three Directors to investigate and report on various matters relating to the company. Generally, the rules and regulations for convening such meetings will be prescribed by the Board. The Secretary should maintain separate minute book for recording the proceedings of these committee meetings. These committees may be standing committee (permanent nature) or ad hoc committee (temporary nature).

CHAIRMAN

Chairman is the person who presides over the meeting and conducts the proceedings of the meeting. He occupies the chair provided for the purpose. The appointment of chairman is usually regulated by the Articles of Association.

Election of Chairman

The Chairman of the Board is usually elected by the directors. If no such Chairman is elected or if the chairman is not present within 15 minutes after the time fixed for holding the meeting, the directors present may elect one among them as Chairman. Usually, the Articles lay down that the Chairman of the Board shall be the Chairman of the general meeting in the absence of any such provision, one of the members present is elected as Chairman of the meeting.

Qualities of a Chairman

As the Chairman has to nduct the proceedings of the meeting successfully, he should have certain qualities. Some of the qualities are:

(a) an impressive personality and leadership quality

(b) courteous, good natured and impartial (c) cool and patient and tactful

(d) firm in enforcing rules

(e) strict disciplinarian

(f) good knowledge of the provisions regarding meetings of companies (g) knowledge of the powers and duties of a Chairman

Powers of a Chairman

The powers of a Chairman can be summarized as follows:

(a) power to preside over the meeting

(b) power to decide priority of speakers

(c) power to stop discussion on a matter after it has been reasonably discussed

(d) power to put motions to vote by show of hands first and if properly demanded by poll

(e)power to give ruling on point of order (questions relating to rules and regulations relating to the meeting)

(f)power to use casting vote (second vote) in case of equality of votes

(g)power to expel disorderly persons and to maintain order and decorum at the meeting

(h) power to declare results of the voting

(i) power to adjourn the meeting under certain circumstances

(j) power to reject the decisions of the meeting even if it is arrived at by a majority of the members

Duties of a Chairman

The following are the important duties of the Chairman of a meeting:

(1) To see that the meeting is duly convened and properly constituted

(2) To see that the minutes of the last meeting are read, confirmed and signed by him

(3) To see that the proceedings of the meeting are conducted according to the rules and the business of the meeting is discussed according to the order set out in the agenda

(4) To see that the motions and amendments are within the scope of the meeting and they are properly moved and recorded

(5) To see that proper order and decorum is maintained in the meeting

(6) To see that a poll is conducted if it is demanded by the prescribed number of members

(7) To see that all members including the minority get equal opportunity to express their views

(8) To see that the persons attending the meeting are prevented from discussing matters in whispers among themselves and in small groups

(9) To see that the minutes of the business conducted at the meeting are kept and signed by him

(10) To see that his ruling is given when a point of order is raised during the meeting

(11) To exercise his casting vote in the best interest of the company

Agenda

Agenda means the programme of business to be transacted at a meeting. It also means the items to be discussed or things to be done at the meeting. The agenda is generally prepared by the Secretary of the company in consultation with the Chairman of the company. The preparation of agenda is considered necessary in order to conduct the business at the meeting systematically. The items in the agenda are to be arranged in order of importance. Each item in the agenda should be serially numbered.

Proxies

Any member entitled to attend and vote at a meeting can appoint another person as his proxy to attend and vote on his behalf. A proxy is a person who is authorised by a member of the company to attend and vote at a meeting on his behalf. The instrument authorising a person to attend the meeting is also called proxy. The instrument appointing proxy must be in writing and must be signed by the person who authorises another person. The following are the relevant provisions:

(1) The proxy may or may not be a member of the company

(2) Every notice convening the meeting should state that proxy can be appointed

(3) A proxy has no right to speak in the meeting

(4) Unless the Articles provide:

(a) a proxy cannot vote except on a poll

(b) a member of a company not having a share capital cannot appoint a proxy

(c) a member of a private company cannot appoint more than one proxy to attend on the same occasion

(5) The proxy form must bear prescribed revenue stamp which should be duly signed by an authorized agent

(6) The proxy form should be deposited with the company 48 hours before the meeting

(7) A minor cannot be appointed as a proxy

Ascertaining the Sense of the Meeting (Voting and Poll)

The object of holding meetings is to discuss some specific issues and take decisions on them. Generally, after discussion, decision in favour of or against is taken to vote. This is known as ascertaining the sense of the house. There are several methods of ascertaining the sense of the house. They are:

1. By acclamation
2. By voice vote
3. By show of hands
4. By standing vote
5. By division
6. By ballot
7. By poll

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1. By acclamation

Under this method, the members indicate their approval or disapproval of the motion by thumping of tables or clapping of hands or cheering. This method is used only when the meeting is unanimous on any matter. For example, the motion of thanks to the Chairman is generally adopted by this method.

2. By voice vote

When there is perfect or near unanimity on a motion, this method is used. After sufficient discussion on a motion, the Chairman calls all those who are against the motion to say 'No'. Based on the volume of the voice, he declares the result of voting.

3. By show of hands

This is the most common method of voting at company meetings. In this case, the chairman will ask the members who are in favour of the motion to raise their hands and then ask those who are against the motion to do the same. After counting the total number of hands on both the sides, the Chairman will declare the result of the voting. Under this method, proxies are not allowed to vote and each person, irrespective of the number of shares held has only one vote.

4.By standing vote

This is a variation of voting by show of hands. Under this method, members in favour of and those against the motion stand up in their seats in turn and are counted by the Secretary or any other person so appointed. Then the chairman, on the basis of count, will announce the result.

5. By division

Under this method, the Chairman will request the members to form two blocks, one block consisting of members who are in favour of the motion and the other block consisting of members who are against the motion. He counts the number in each block and declares the result.

6.By ballot

Under this method, the members present are required to vote on ballot paper either for the motion or against it and deposit it in the ballot box, After counting the ballots, the results are declared by the Chairman. Under this method every member has only one vote and proxies are also allowed to vote. The most important advantage of this method is that it ensures secrecy.

7. By poll

Under this method, every member casts a number of votes based on shares held by him. Each member will have one vote for every share possessed by him. Proxies can cast their vote. Under this method the members present and proxies record the vote before an officer in writing.

If the Chairman or a prescribed number of members is dissatisfied with the result of voting by show of hands or any other method, a poll can be ordered by the Chairman. The Chairman is bound to order a poll if demand is made by any member present in person or by proxy and holding shares not being less than one-tenth of the total voting power and on which the aggregate sum of not less than fifty thousand rupees has been paid up. The most common methods are voting by show of hands and by poll.

Motions

The term *'motion'* can be defined as a definite proposal or proposition put before a meeting for consideration and decision. No decision on one important matter can be taken without a motion being

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put before the meeting. The person who puts the motion called the *proposer.* Ordinarily the motion is required to be seconded. A motion when passed is called a *resolution.*

Requisites of a Valid Motion

A motion must satisfy certain conditions:

(1) It must be within the scope of the notice.

(2) It must be in writing, framed in a positive form and it should commence with the word 'that'.

(3) Language of the motion must be clear and free from ambiguity.

(4) It must be drafted in such a manner that a definite decision can be arrived at.

(5) It must be proposed by one and seconded by another,

(6) it must be duly signed by the proposer.

Procedure of Moving a Motion

If a member has given previous notice regarding the motion, the Chairman asks him to formally move the motion at the meeting. In the absence of any previous notice, he can move the motion after obtaining permission of the Chairman. Any member can second the motion. When a motion is duly moved and seconded, the chairman invites a debate on it. When the debate or discussion is going on, the motion may be interrupted by members in various ways. They are in the form of amendments, formal motions and points of order.

(a) ***Amendments:*** An amendment is an alteration or modification proposed by a member in the wordings or terms of the original motion before it is voted upon and adopted.

(b) ***Formal motions***: Formal motions are those motions which are concerned with the procedure of business at a meeting. They are usually moved for the purpose of interrupting or delaying or speeding up the discussion on a motion. The principal types of formal motions are (1) previous question (2) closure (3) next business and (4) adjournment of debate.

'Previous question' means moving a motion by a member present in the meeting worded "I move that question be not now put" with an intention to stop the discussion on the original motion. In "closure", if a member feels that sufficient discussion has taken place on a motion, he may move "that the question be now put" with an intention that the motion is put to vote at once. In "next business", if a member is interested in delaying or avoiding a decision on a particular motion, he may move "that the meeting do proceed to the next business". If the motion is carried, the main motion is dropped from discussion. In adjournment motion, a member present may move that the debate on the motion may be postponed or adjourned to some other time.

(c)***Point of order****:* When the discussion on a particular motion is in progress, any member may raise a point of order to draw the attention of the Chairman to some irregularity in the procedure of the meeting. When a point of order is raised, the chairman may allow a short debate on the point of order or may give him ruling which is binding on the member.

RESOLUTION (SECTION 114)

A resolution is the formal decision of a meeting on any proposal before it. Decisions of a company are made by resolutions of its members passed at meetings of members. Motions which are duly proposed, seconded and passed become resolutions.

Kinds of Resolutions

Under the Companies Act, there are different kinds of resolutions.

They are:

(1) Ordinary resolution

(2) Special resolution

(3) Resolution requiring special notice

(4) Resolution by postal ballot

I. Ordinary Resolution

As per Section 114(1), an ordinary resolution is a resolution passed by a simple majority of votes cast by members personally or by proxy. A simple majority means the votes cast in favour of the proposal must exceed the votes cast against the proposal. Usually ordinary resolution is used to transact ordinary business of the company. An ordinary resolution is necessary to transact the following business:

(a) to approve annual accounts and directors' report

(b) to approve statutory report

(c)to appoint and remove directors

(d)to appoint, remove and fix the remuneration of auditors

(e) to declare dividend

(f)to issue shares at a discount

(g) to increase share capital

(h) to subdivide or consolidate shares

(i) to borrow money over and above the paid up capital and free reserves of the company

j) to appoint sole selling agents

(k) to sell whole or part of the company's undertaking or business

A copy of the ordinary resolution need not be filed with the Registrar except when it is concerned with the change in the capital clause of the memorandum of association

Specimen of an ordinary resolution

"Resolved that Messrs Sri. Vinod, director of the company retiring by rotation be, and is hereby, elected and re-appointed a director of the company".

II.Special Resolution

As per Section 114 (2), a resolution is called a special resolution.

(1) when expressly stated that the resolution to be moved is a special resolution

(2) which is passed by a majority of three-fourths of the members voting by show of hands or electronically or on poll either in person or by proxy

(3) the notice required under the companies Act must have been duly given.

The object of requiring a three-fourths majority is to protect the interests of minority shareholders. The following businesses are to be transacted with the help of special resolution:

(a) to change the name of the company

(b) to alter the objects clause of the company

(c) to change the domicile of the company from one State to another

(d) to alter the Articles of Association

(e) to create reserve capital

(f) to reduce share capital

(g)to pay interest out of capital

(h)to request the Central Government to appoint inspectors to investigate the affairs of the company

(i)to sanction loans or give guarantee to companies under the same management

(j) to fix the director's remuneration

(k) to permit a director to hold an office or place of profit in the company

(l) to make the liability of directors or managers unlimited

(m) to wind up the company voluntarily.

A copy of every special resolution together with the copy of the explanatory statement shall be filed with the Registrar of Companies within 30 days of the passing of the resolution.

Specimen of a special resolution

"Resolved that the name of the company be and is hereby altered from "Young Ltd to Youth Ltd" and the Secretary be and is hereby directed to communicate with the Central Government for obtaining their consent to ***such*** *alteration".*

III. Resolution Requiring Special Notice (Section 115)

Where, by any provision contained in the Act or in the articles of the company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding five lakh rupees has been paid up and the company shall give its members notice of the resolution in the manner prescribed.

DISTINCTION BETWEEN ORDINARY RESOLUTION AND SPECIAL RESOLUTION

Ordinary resolution	**Special resolution**
1. Required to transact ordinary business of routine nature 2. Notice need not specify the nature of resolution 3. Only a simple majority is required (more than 50%)	1.Required to transact business of an important and serious nature 2.Notice must specify that it is a special resolution 3.A three-fourths majority is required

4. No need of filing a copy of the resolution 5. The Chairman can use his casting vote	4.A copy of the resolution shall be filed with the Registrar within 15 days 5.The Chairman cannot use his casting vote
	DIFFERENCES BETWEEN MOTION AND RESOLUTION
Motion	**Resolution**
1. Motion is only a proposal put before the meeting 2. It is a proposed resolution 3. It can be amended or altered 4. It should be moved and seconded 5. Begins with the words "To" or "to resolve 6. If withdrawn cannot be entered in the minutes 7. Cannot be withdrawn	1. A motion duly voted upon or duly accepted by the meeting 2. It is a motion accepted by the meeting 3. Cannot be amended or altered 4. No such formalities are required 5. Begins with the words "resolved that" 6. Becomes a part of minutes as it cannot be withdrawn 7. Can be withdrawn

Minutes (Section 118)

Minutes are the official record of the proceedings of the meeting. Every company shall prepare minutes of the proceedings of every general meeting and every meeting of its Board of Directors or of every committee of the Board. It should be prepared and kept within thirty days of the conclusion of every meeting. Minutes is to be prepared in respect of every resolution passed by postal ballot. The pages of the minutes book kept for the purpose shall be consecutively numbered. The minutes of each meeting shall contain a fair and correct summary of the proceedings of the meeting. All appointments made at the meeting shall be included in the minutes.

The minutes of the meeting of the Board shall contain the following:

(a) the names of the directors present at the meeting;

(b) the names of the directors dissenting from or not concurring with each resolution

If, in the opinion of the chairman of the meeting, any matter is irrelevant or immaterial or is detrimental to the interest of the company or is or could be regarded as defamatory of any person, such matters shall not be included in the minutes. The chairman shall exercise absolute discretion regarding the inclusion or non-inclusion of any matter in the minutes.

The minutes shall be evidence of the proceedings of the meeting. Where the minutes are kept properly, the meeting shall be deemed to have been duly called and held and all proceedings, resolutions and appointments shall be deemed to be valid. Every company shall observe secretarial standards with respect to general meetings and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980.

If any default is made in complying the provisions of section 118, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall

be liable to a penalty of five thousand rupees. If a person is found guilty of tampering with the minutes he shall be punishable with imprisonment for a term up to two years and with fine which shall not be less than twenty five thousand rupees which may extend to one lakh rupees.

As per section 119, the minutes book shall be kept at the registered office of the company and be open, during business hours, to the inspection by any member without charges. Any member shall be entitled to get a copy of any minutes on a request made and on payment of prescribed fees within seven working days. If any inspection of the minutes book is refused, or if any copy is not furnished within the prescribed time, the company shall be liable to a penalty of twenty five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each such refusal or default. In the case of any such refusal or default, the Tribunal may direct an immediate inspection of the minutes book or direct that the copy required shall be sent to the person requiring it.

COMPANY SECRETARY

According to Section 2 (24) of the Companies Act, 2013, Company Secretary or Secretary means a Company Secretary as defined in clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.

"Company Secretary in practice" means a Company Secretary who is deemed to be in practice under sub-section (2) of Section 2 of the Company Secretaries Act 1980 (Section 2(25)).

The Company Secretary is responsible for the efficient administration of a company. He is the principal officer responsible for secretarial work and management of the company as laid down by the Companies Act. He has to ensure compliance with statutory and regulatory requirements of the company.

According to Companies Act 1956 and the Companies (Amendment) Act 1988, a Company Secretary means a person who is a member of the Institute of Company Secretaries of India and includes any other individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a Secretary under this Act and any other ministerial or administrative duties.

According to Companies Act, a Secretary must be an individual. A firm or a company cannot be appointed as Company Secretary. The Secretary guides the management in the day-to-day work of company law and mercantile law and of accounts, taxation, holding of meetings, drafting of reports, resolutions, etc. His duties are of ministerial and administrative nature and is not concerned with direction, control or management of the affairs of the company. He is an officer of the company and his duties consists of duties to the Board, duties to the shareholders and duties to the company.

Qualification of Secretary

According to "Comapnies (Appointment and Qualifications of Secretary) Rules 1988, and subsequent amendments, in case of companies having a paid up share capital of two crore rupees or more, a whole-time secretary must be a member of the Institute of the Company Secretaries of India. In case of companies having a paid up share capital of less than two crore rupees, the secretary must possess any one of the following qualifications:

(a) A degree in law granted by any University

(b) Membership of the Institute of Chartered Accountants of India or Institute of Cost and Works Accountants of India.

(c)A post graduate degree or diploma in Management granted by any University or the Indian Institute of Management.

(d) A post-graduate degree in Commerce granted by any University.

(e) A diploma in company law granted by any Indian Law Institute,

(f) Membership of the Association of Secretaries and Administrators, Kolkata.

(g) A postgraduate diploma in Company Secretaryship.

Other Qualifications

In order to be a Company Secretary, statutory qualifications are not enough A company secretary should possess the following special qualifications:

(1) Knowledge of Company law

(2) Knowledge of Mercantile law

(3) Knowledge of Economics

(4)Knowledge of Accounting and Taxation

(5) General knowledge

Appointment of Company Secretary

According to Section 203 of the Companies Act, 2013, every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel:

(1) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(2) Company Secretary; and

(3)Chief Financial Officer

The above section provides that a secretary shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remunerations. A whole-time secretary shall not hold office in more than one company except in its subsidiary at the same time. If the office of the whole-time secretary is vacated the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

The Procedure for Appointment of Company Secretary

The following is the procedure for appointment of Company Secretary.

(1)Arrange for Board meeting after giving proper notice to every director:

(2)Pass necessary resolution appointing the person as Company Secretary and also approve the terms and conditions at which the Company Secretary is appointed.

(3)Obtain a written consent from the person who is to be appointed as Company Secretary.

(4) Inform the stock exchange with which the shares of the company are listed.

(5)File the relevant form with the concerned Registrar of Companies within 30 days from the date of appointment.

(6) Pay the requisite fee for the same

(7) Make necessary entries in the Register of Secretary.

Functions of Company Secretary

According to Section 205 of Companies Act 2013, the functions of the Company Secretary shall include:

(a) to report to the Board about compliance with the provisions of the Act,the rules made thereunder and other laws applicable to the company.

(b) to ensure that the company complies with the applicable secretarial standards;

(c) to discharge such other duties as may be prescribed.

"Secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under Section 3 of the Company Secretaries Act 1980 and approved by the Central Governance.

According to Section 204, every listed company and a company belonging to other class of companies as may be prescribed shall prepare a "Secretarial audit report" issued by Company Secretary in the prescribed form as an annexure of Board's report.

Legal Position of a Company Secretary

(1)Servant of the Company: - A Secretary is expected to act in accordance with the instructions given by the Board Hence he is a servant of the company

(2) Officer of the Company. He is the chief officer of the company and a key managerial personnel. He has to guide and supervise all administrative and ministerial duties of a company. Hence he is an officer of the company.

(3) Agent of the Company: - The Secretary can enter into contracts as the chief administrative officer of the company, on behalf of the company. Hence he is an agent of the company.

Duties of Company Secretary

The duties of a Company Secretary vary from company to company, depending upon the nature of business, size of the company and the powers enjoyed by and responsibilities entrusted with the secretary. The duties of a Company Secretary may be classified under the following broad heads:

(1) Statutory duties

(2) Duties in relation to directors

(3) Duties in relation to shareholders

(4) Duties towards organization and office

(5) Duties in relation to the public

(6) Duties before incorporation

(7) Duties after incorporation

(1) Statutory Duties

The statutory duties are those prescribed by the Companies Act and other statutes. The important statutory duties under this Act are:

(a) Maintenance of books and registers of the company

(b) Filing of the necessary returns with the Registrar

(c) Supervising the issue, allotment, transfer and forfeiture of shares and debentures

(d) Attending to meetings and recording their proceedings

(e) Allowing inspection of books and documents when required by statute.

(f)Safe custody and proper use of common seal of the company

(g) Comply with the provisions of Income tax Act, Stamp Act, Goods and Services Tax Act, Factories Act and other industrial laws, etc.

(2)Duties in relation to Directors

The Secretary has to look after the correspondence with the directors, convene board meetings, prepare minutes and execute the orders of the Board. He has to advise the directors during the deliberations at the meeting regarding the provisions of various Acts.

(3) Duties in relation to Shareholders

The Secretary is the medium of communication between the company and the shareholders. As the shareholders are the owners of the company, the secretary has to safeguard their interests. He has to organize and supervise correspondence with shareholders with regard to application and allotment of shares, calls on shares, forfeiture of shares, distribution of dividend, notices and circulars to shareholders, meetings of shareholders, etc.

(4) Duties towards organization and office

The Secretary is generally recognized as the head of office of the company and has control over departments such as shares, records and filing, accounts and statistics. He has to ensure that the office works with maximum efficiency. He has to supervise and co-ordinate the various activities of the office.

(5)Duties in relation to public

The Secretary being in possession of all important information about the various aspects of the company has to function as a medium of communication between the directors and general public consisting of debenture holders, bankers, solicitors, creditors and the prospective investors. He has to be in touch with them and provide information they may require. At the same time he should take care to see that no confidential information is divulged to the public.

(6) Duties before the incorporation

Before incorporating the company, the Secretary has to attend the preliminary meetings of the promoters and prepare the minutes of the meetings. He has to guide the promoters regarding the provisions of the Companies Act relating to the incorporation of the company. He should also help them in the preparation of various documents for the purpose of incorporation.

(7) Duties after incorporation

After incorporation of the company, the Secretary has to arrange for the first board meeting and get the necessary resolutions passed. He should take steps to get certificate to commence business by filing necessary documents with the Registrar of Companies. He has to look after the work in connection with statutory meeting, issue of shares, contracts to be entered into, etc.

WINDING UP OF A COMPANY

Winding up is the process of putting an end to the life of a company. As a company is created by law it can come to an end only by a legal process. In the process of winding up the assets of the company are collected and realized and distributed among the creditors and shareholders of the company as per the provisions of the Companies Act. Thus, winding up can be defined as the legal process of ending the life of a company and administering its property for the benefit of its creditors and members,

Reasons for Winding Up

The need for winding up arises because of the following reasons:

(1) The main objects of the company for which it was established have been accomplished.

(2) The company is not in a position to pay off its debts in full.

(3) It has become impossible to carry out the main objects of the company.

(4) The company is under a scheme of amalgamation or reconstruction.

MODES OF WINDING UP

A company may be wound up in any of the following ways under section 270(1) of the Companies Act.

(i) Winding up by the Tribunal

(ii) Voluntary winding up

I. Winding up by the tribunal (compulsory winding up) (Section 271)

Circumstances in which company may be wound up by National Company Law Tribunal

A company may be wound up by NCLT under the following circumstances:

(a) On inability to pay debts of the company [Section 433(e)]:-If the company is unable to pay its debts, the Tribunal may order winding up of the company. A company shall be deemed to be unable to pay its debts in the following situations:

(a) If a creditor to whom a company owes 1,00,000 or more have served a notice on the company and the company has neglected it for three weeks

(b) If execution or other process issued on a decree or order of any civil Court in favour of a creditor is returned unsatisfied wholly or partly. (c) If it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts after considering the contingent and prospective liabilities of the company.

(b) By passing a special resolution: - If the company by a special resolution resolved that it may be wound up by the Tribunal, the Tribunal may pass an order to that effect under section 271(1)(b)

(c) Acts of the company against sovereignty and integrity of India :-If the company has acted against the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality.

(d) On an order of Tribunal under section 258:-On the basis of the report of the interim administrator under section 256, if the Tribunal is satisfied that the creditors representing three-fourths in value of the amount outstanding against the sick company has resolved that it is not possible to revive and rehabilitate such company, the Tribunal shall order for winding up of such company.

(e) On an application made by the Registrar:-If on an application made by the Registrar or any other person authorised by the Central Government, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection there with and that it is proper that the company be wound up.

(f) Default in filing the annual return or financial statements:-If the company has made a default in filing with the Registrar its annual returns or financial statements for immediately preceding five consecutive financial years.

(g)If it is just and equitable [Section 271(g)):-When the Tribunal is of the opinion that it is just and equitable that the company should be wound up, the Tribunal can order the winding up of the company. Following are some of the instances where the Tribunal may order winding up under this clause:

(a) The main object of the company has failed

(b) The subject matter of the company has become invalid

(c) The business of the company cannot be carried on except at a loss

(d)Assets are insufficient to pay off its liabilities

(e) There is a deadlock in the management of the company

(f) The majority of the shareholders are using their powers unfairly

(g) The business of the company has become illegal or there is no business to carry on

(h) The company is devoid of any property of its own or the company will never have resources to carry on business.

(i) It is impossible and impractical to conduct the business of the company.

(j) The company was conceived and brought forth in fraud.

(k) The company has no business to carry on.

(l) The company was insolvent and was being carried on for the benefit of the debenture holders who had taken possession.

Petition for Winding up (Section 272)

Under Section 272, the petition for the winding up may be presented by any one of the following parties:

(1) Petition by the company:-A company may present to the Tribunal a petition for winding up on passing a special resolution for the purpose provided it is accompanied by a statement of affairs in the prescribed manner.

(2) Petition by contributories:-A contributory means a person liable to contribute company when the company is wound up to the assets of the

(3) Petition by creditors:-One or more creditors including any contingent or prospective creditors may file a petition on the ground that the company is unable to pay its debts.

(4) Petition by registrar:-The Registrar of companies can present a petition for winding up after getting previous sanction of the central government on the following grounds:

(a) If the company has acted against the sovereignty and integrity of India.

(b) If the company is unable to pay its debts.

(c) If the Tribunal is of the opinion that it is just and equitable that the company be wound up.

(d) If there is a default in filing with the Registrar its financial statements for any five consecutive financial years.

(5) Joint petition:-A company, contributories and creditors may jointly present a petition for winding up

(6)Petition by any person authorised by the central government:-The Central Government may appoint an inspector to investigate into the affairs of the company and on the basis of his report; the Central Government may authorize any person including the Registrar to apply to the Tribunal for winding up of the company.

(7) By the central or a state government

COMMENCEMENT OF WINDING UP

Power of Tribunal:-As per section 273, the Tribunal may, on receipt of the petition for winding up pass any of the following orders:

(i) dismiss it, with or without costs;

(ii) Make any interim order as it thinks fit:

(iii) Appoint a provisional liquidator of the company till the making of a winding up order:

(iv) Make an order for the winding up of the company with or without costs; or

(v) Any other order as it thinks fit

An order under this section shall be made within 90 days from the date of presentation of the petition. Before appointing a provisional liquidator, the Tribunal shall give notice to the company and give a reasonable opportunity to it to make its representation, if any, unless for special reasons to be recorded in writing.

Directions for filing statement of affairs

As per section 274, where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall direct the company to file its objections along with a statement of affairs within 30 days of the order. The Tribunal may allow a further period of 30 days in a situation of contingency or special circumstances. The Tribunal may also direct the petitioner to deposit a reasonable amount as security towards costs. The directors and other officers shall submit the books of accounts of the company completed and audited up to the date of the order within a period of 30 days of the order to the liquidator. The directors or officers in default of the above shall be punishable with imprisonment up to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

APPOINTMENT OF LIQUIDATORS (SECTION 275)

For the purpose of winding up, the Tribunal shall appoint an official Liquidator or a Liquidator from the panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants having at least ten years experience in company matters. The terms and conditions of appointment and the fee payable to him shall be specified by the Tribunal

DUTIES OF A LIQUIDATOR

The following are the important duties of a liquidator:

(1) File a declaration:-On his appointment, the liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing the conflict of interest or lack of independence in respect of his appointment with the Tribunal

(2) Application to the Tribunal:-Within three weeks from the date of passing of winding up order, the liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings in carrying out the functions.

(3)Submit the report of winding up committee:-The liquidator shall place before the Tribunal a preliminary report along with the minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting till the final report for dissolution of the company is submitted to the Tribunal.

(4) Submit the preliminary report:-As per section 281, the liquidator shall, within sixty days of the order, submit to the Tribunal a report containing the following particulars:

(a) The nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, and the negotiable securities held by the company;

(b) Amount of capital issued, subscribed and paid up;

(c) The existing and contingent liabilities including names and addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts and particulars of securities given;

(d) The debts due to the company and the names, addresses and occupations from whom they are due and the amount likely to be realized on account thereof;

(e) Guarantees, if any, extended by the company:

(f) List of contributories and dues payable by them and details of any unpaid call:

(g) Details of trademarks and intellectual properties, if any, owned by the company:

(h) Details of subsisting contracts, joint ventures and collaborations, if any:

(i) Details of holding and subsidiary companies, if any,

(j) Details of legal cases filed by or against the company, and (k) any other information which the Tribunal may direct or the company liquidator may consider necessary to include.

The company liquidator shall include in his report the manner in which the company was promoted and whether in his opinion any fraud has been committed by any person in its promotion. The liquidator shall also make a report on the viability of the business of the company or the steps for maximizing the value of the assets of the company.

(5) Submit the final report:-The final report approved by the winding up committee shall be submitted to the Tribunal.

(6)Direction of tribunal on report of liquidator:-As per section 282, the Tribunal shall fix a time limit within which the entire proceedings shall be completed and the company be dissolved. The Tribunal may revise the time limit within which the entire proceedings shall be completed. The Tribunal may also order sale of the company as a going concern or its assets or part thereof for which it may appoint a sale committee.

Winding up Committee

As per section 277(4), the winding up committee shall be formed to assist and monitor the progress of liquidation. The committee shall comprise the following persons:

(i) Official liquidator attached to the Tribunal;

(ii) Nominee of the secured creditors, and

(iii) A professional nominated by the Tribunal.

The **company liquidator** shall be the convener of the meetings of the committee which shall assist and monitor the liquidation proceedings in following areas of **liquidation functions**:

(i) Taking over assets;

(ii) Examination of the statement of affairs;

(iii) Recovery of property, cash or any other assets;

(iv) Review of audit reports and accounts of the company:

(v) Sale of assets;

(vi) Finalization of list of creditors and contributories;

(vii) Compromise, abandonment and settlement of claims;

(viii) Payment of dividends, if any, and

(ix) Any other function, as the Tribunal may direct from time to time.

Effect of Winding up Order

(1) Order operates in favour of creditors and contributories:-According to section 278, the order of winding up of a company shall operate in favour of all the creditors and all contributories of the company as if, it had been made out on the joint petition of creditors and contributories.

(**2) Stay of suits, etc.**:-When a winding up order has been passed no suit or other legal proceedings shall be commenced against the company.

(3) **Custody of company's properties**:-When a winding up order is made, the liquidator shall take into his custody or control all the property, effects and actionable claims to which company is entitled to

(4) Promoters and directors to co-operate:-The promoters, directors, officers and employees shall extend full co operation to the liquidator in discharging his functions and duties.

(5)Settlement of list of contributories and application of assets:-A contributory is a person who is liable to contribute to the assets of the company in the event of winding up of the company. The Tribunal shall settle a list of contributories, rectify the register of members if required, because the assets of the company to be applied for the discharge of its liability make calls or adjust the rights of contributories.

Advisory Committee (Section 287)

While passing a winding up order the Tribunal may direct to form an advisory committee to advise the company liquidator and to report to the Tribunal on matters as the Tribunal may direct. The committee shall consist of not more than twelve members being creditors and contributories in such properties as the Tribunal may direct. The liquidator shall convene a meeting of creditors and contributories within 30 days from the date of winding up order in order to determine the members to the committee. The ttee shall have the right to inspect the books of account and other documents, assets and properties of the company. The meetings of the committee shall be chaired by the liquidator.

POWERS OF LIQUIDATOR (SECTION 290)

The following are the powers of liquidator:

(1) To carry on the business of the company so far as may be necessary for the beneficial winding up of the company:

(2) To do all acts and to execute in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose, to use the company's seal;

(3) To sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate or to sell the same in parcels;

(4) To sell the whole of the undertaking as a going concern;

(5) To raise money required on the security of the assets of the company,

(6) To institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(7) To invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under the Act;

(8) To inspect the records and returns of the company on the files of the Registrar or any other authority:

(9) To prove and claim in the insolvency of any contributory for any balance against his estate and to receive dividends in the insolvency in respect of that balance;

(10) To draw, accept, make, and endorse any negotiable instruments;

(11) To take out in his official name, letters of administration to any deceased contributory and to do any act necessary for obtaining payment of any money from a contributory;

(12) To obtain any professional assistance from any person in discharge of his duties;

(13) To take all such actions or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument for the winding up of the company, for distribution of assets and in discharge of his duties;

(14) To apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.

The exercise of powers by the company liquidator shall be subject to the overall control of the Tribunal.

Dissolution of the Company by the Tribunal (Section 302)

A company is said to be dissolved when it ceases to exist as a body corporate. On dissolution, the company is no more in existence and its name is removed from the Register of Companies. On dissolution, the role of liquidator comes to an end. The following procedure is to be followed by the liquidator on dissolution:

(1) When the affairs of the company have been completely wound up, the company liquidator shall make an application to the Tribunal for dissolution of the company.

(2) The Tribunal shall make an order for the dissolution of the company, when it thinks that it is just and reasonable and make an order that the company be dissolved from the date of the order and the company shall be dissolved accordingly.

(3) A copy of the order shall be forwarded by the company liquidator to the Registrar within thirty days, who shall record in the register relating to the company a minute of the dissolution of the company.

II. Voluntary Winding up (Members Voluntary Winding up)

Voluntary winding up means winding up by the members or creditors of the company without the interference of the Tribunal. The object of a voluntary winding up is that the company as well as the creditors is free to settle their affairs without any outside help.

Circumstances in which a company can be wound up voluntarily

A company may be wound up voluntarily:

(a) By passing an ordinary resolution:-When the period for the duration of the company by its Articles of Association has expired, the company in general meeting may pass an ordinary resolution for its voluntary winding up. The company may also go for voluntarily winding up when the event upon which the company is to wind up has happened.

(b) By passing a special resolution:-A company may pass a special resolution under Section 304(b) at any time for voluntary winding up. No reason need be given for passing a special resolution.

A resolution for voluntary winding up must be advertised in the official gazette and also in some newspapers, having circulation in the district where the registered office of the company is situated within 14 days of the passing of the resolution. If default is made in complying with this provision, the company and every defaulting officer of the company shall be punishable with fine which may extend up to 500 per day for every day during which default continues.

A voluntary winding up commences from the date of passing the resolution.

Steps in Voluntary Winding up

I. Declaration of Solvency (Section 305):-Where it is proposed to wind up a company voluntarily, its director or directors or in case the company has more than two directors, the majority of its directors shall, at a meeting of the Board, make a declaration verified by an affidavit to the effect that they have made a full enquiry into the affairs of the company and they have formed an opinion that the company has no debt or whether it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up. The declaration shall be made within five weeks immediately preceding the date of passing of the resolution for winding up and it is delivered to the Registrar for registration before that date. It shall contain a declaration that the company is not being wound up to defraud any person or persons. It shall be accompanied by a copy of the report of the auditors of the company on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company as on that date which would also contain a statement of the assets and liabilities of the company on that date. Where there are any assets of the company it should be accompanied by a report of the valuation of the assets of the company prepared by a registered valuer.

Where the declaration of the directors proved to be wrong, such directors shall be punishable with imprisonment or with fine or both.

II.Meeting of Creditors (Section 306):-The Company shall call a meeting of the creditors either on the day of general meeting or on the next day for which a notice shall be sent by registered post to the creditors. The Board of directors shall present a full statement of the position of the affairs of the company together with a list of creditors of the company. The Board shall appoint one of the directors to preside at the meeting. Where two-thirds in value of creditors are of the opinion that the company be wound up in the interests of all parties, the company shall be wound up voluntarily. The company may not be able to pay for its debts in full from the proceeds of assets sold in voluntary winding up and pass a resolution that it shall be in the interests of all parties if the company is wound up by the Tribunal, the company shall within fourteen days thereafter file an application before the Tribunal. The resolution so passed at the creditors meeting is required to be filed with the Registrar within ten days of the passing of the resolution.

III. Publication of Resolution (Section 307):-When a resolution for voluntary winding up is passed, within fourteen days of the passing of the resolution, a notice of the resolution should be given by advertisement in the Official Gazette and also in a newspaper which is in circulation in the district where the registered office or the principal office of the company is situated. Company and every officer who is in default shall be punishable with fine up to five thousand rupees for everyday during which such default continues.

IV. Commencement of Voluntary Winding up:-As per section 308, a voluntary winding up shall be deemed to commence on the date of passing of the resolution for voluntary winding up.

V. Appointment of Company Liquidator (Section 310):-The Company shall appoint a company liquidator in the general meeting from the panel prepared by the Central Government for the purpose of winding up affairs. In case the creditors do not approve the appointment, creditors shall appoint another company liquidator. The liquidator shall file a declaration within seven days of the date of his appointment disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and creditors and such obligation shall continue throughout the term of appointment.

VI. Notice of Appointment to Registrar:-As per section 312, the company shall give notice of the appointment of a company liquidator to the Registrar along with his name and particulars within ten days of such appointment. In case of contravention, company and every officer of the company who is in default shall be punishable with fine up to five thousand rupees for everyday during which such default continues.

VII. Appointment of Committees (Section 315):-The company in its general meeting or by the creditors can appoint such committees as considered appropriate to supervise the voluntary liquidation and assist the company liquidator in discharging his or its functions.

VIII. Submit Report on Progress of Winding up:-As per section 316, the company liquidator shall submit quarterly report on progress of winding up to its members and creditors and shall also call at least one meeting each of members and creditors in every quarter and appraise them of the progress of the winding up. If the liquidator fails to comply with this requirement, he shall be punishable with fine up to ten lakh rupees for each such failure.

IX. Report of Company Liquidator to Tribunal for Examination of Persons:-Section 317 empowers the Tribunal to consider the report of the company liquidator and order for investigation if the report specifies that a fraud has been committed by any person in respect of the company. It also empowers the Tribunal for examination and attendance of any person indulging in the promotion or formation or conduct of the business of the company.

X**. Final Meeting and Dissolution (Section 318)**:-As soon as the affairs of the company are fully wound up, the company liquidator shall prepare a report of winding up showing that the property and assets of the company have been disposed of and is fully discharged or discharged to the satisfaction of the creditors and thereafter call a general meeting of the company for the purpose of laying the final winding up accounts before it and giving any explanation. If the majority of the members of the company are satisfied that the company shall be wound up after considering the report, they may pass a resolution for its dissolution. Within two weeks after the meeting, the company liquidator shall:

(a) Send to the Registrar a copy of the final winding up accounts and copies of the resolutions passed in the meetings

(b) File an application along with the report along with the books and papers of the company relating to the winding up before the Tribunal for passing an order of dissolution of the company.

If the Tribunal is satisfied that the process of winding up has been just and fair, the Tribunal shall pass an order dissolving the company within sixty days of the receipt of the application. The company liquidator shall file a copy of the order with the Registrar within thirty days. The Registrar, on receipt of the copy of the order passed by the Tribunal, shall publish a notice in the Official Gazette that the company is dissolved. If the company liquidator fails to comply with the above, he is punishable with fine which may extend to one lakh rupees.

Powers and Duties of Company Liquidator in Voluntary Winding up (Section 314)

The following are the powers and duties of company liquidator in voluntary winding up:

(1) Perform such functions and discharge such duties as may be determined from time to time by the company or the creditors

(2) Settle the list of contributories

(3) Call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution maintain regular and proper books of accounts (4)

(5) Prepare quarterly statements of accounts and file such statement of accounts duly audited within thirty days from the close of each quarter with the Registrar

(6) Pay the debts of the company and adjust the rights of the contributories among themselves

(7) Observe due care and diligence in the discharge of his duties.

Difference between Winding up by Tribunal and Voluntary Winding up

Winding up by Tribunal	Voluntary Winding up
1. Winding up by the Tribunal	1.Winding up by passing resolution by the company
2. Tribunal appoints the official liquidator	2.The members or creditors appoint liquidator in their meeting
3. Winding up process controlled by the Tribunal	3.Winding up process controlled by the members or creditors
4. Declaration of solvency required	4. Declaration of solvency not required
5. Winding up Committee not needed	5. Winding up Committee is needed

Creditors' Voluntary Winding Up (Companies Act 2013 eliminated creditors' voluntary winding up)

If a company proposes to wind up voluntarily and Directors are not in a position to make the statutory declaration of solvency, the winding up is a creditors' voluntary winding up. Creditors' voluntary winding up is done by insolvent companies. Sections 500 to 509 of Indian Companies Act 1956 deal with creditors' voluntary winding up. The important provisions are:

(1) The company must call a meeting of the creditors on the same day or the day next to the day on which a general meeting was to be held for passing a resolution for voluntary winding up.
(2) Notice of the meeting of the creditors should be sent by post to the creditors simultaneously with the notice of the general meeting of the company. The notice of the meeting must also be advertised in the official Gazette and at least in two newspapers.
(3) The Directors shall prepare a statement of the affairs of the company and a list of creditors and a statement of their claims and present them to the creditors' meeting.

(4) The Board shall appoint one of the Directors to preside over the meeting.
(5) Both the meeting of members and creditors shall pass a resolution for the voluntary winding up of the company.
(6) Copies of all resolutions passed are to be filed with the Registrar within 10 days of passing the resolutions.
(7) The members and creditors at their respective meetings may each nominate a liquidator. In case the members and creditors name different persons as liquidators, the person named by the creditors shall be the liquidator, unless the Court appoints somebody else as liquidator.
(8) The creditors' meeting may also appoint a committee of inspection consisting of not more than five members to act with liquidator. The members may also appoint not more than five persons to the committee.
(9) The remuneration of the liquidator is to be fixed by the committee of inspection or in the absence of a committee by the creditors.
(10) On the appointment of the liquidator, the powers of the Board of Directors come to an end.
(11) Where the winding up continues for more than one year, the liquidator must call a general meeting and a meeting of creditors and place before the meetings, the accounts of his acts and dealings.
(12) The final meeting of the members and the creditors is convened by the liquidator as soon as the affairs of the company are wound up. Within a week of the meeting, the liquidator shall send to the Registrar, a copy of the account and a return which will be registered.

Dissolution of the Company

A company is said to be dissolved when it ceases to exist as a body corporate, on dissolution the company is no more in existence and its name is removed from the Register of Companies. On dissolution, the role of liquidator comes to an end. When the name of the company is removed from the register of companies by the Registrar it becomes a defunct company.

The following are the **differences** between winding up and dissolution:

(1) Winding up is the first stage in which the assets are realized, liabilities are discharged and the surplus is distributed to members. Dissolution is the second stage in which the life of the company is finally ended.

(2) Winding up is the legal process and dissolution is the end result.

(3) In the process of winding up, liquidator represents the company but in dissolution the liquidator ceases to represent the company.

CONSEQUENCES OF WINDING UP

The following are the consequences of voluntary winding up:

(1) The company ceases to carry on the business:-On voluntary winding up, the company loses the right to carry on its business except so far as may be required for the beneficial winding up of the business. However, the corporate status and corporate powers of the company will continue till it is dissolved.

(2) Powers of Board of Directors to cease:-On the appointment of a liquidator on voluntary winding up of the company, all the powers of the board of directors, managing or whole-time directors and the manager shall cease, except for the purpose of giving notice to the Registrar of companies for the appointment of the liquidator.

(3) No transfer of shares and no alteration of the status of the members of the company:-On voluntary winding up any transfer of shares and any alteration of the status of the members of the

company shall be void. However, any transfer made to or with the sanction of the liquidator is allowed.

(4) Discharge of employees:-On voluntary winding up the employees of the company will be discharged except:

(a) When the liquidation is only for the 'reconstruction' of the company: or

(b) When the business is continued by the liquidator for the beneficial winding up of the company.

(5) Documents of the company:-Every document in the nature of an invoice, order for goods or business letter issued in the name of the company after the commencement of winding up, must contain statement that the company is being wound up.

(6)Secured creditors:-Secured creditors get first preference while applying assets available to the liquidator for payment.

(7) Unsecured creditors

All debts due to unsecured creditors are to be treated equally and paid proportionately. The unsecured creditors are considered for payment after considering secured creditors, cost of liquidation, preferential payments and debenture holders secured by floating charge.