Semester III

		L	T	P	C
17CMU301	COMPANY LAW	6	2	-	6

SCOPE:

Company Law gives the fundamental knowledge and exposure of the Company's Act. This paper impart the knowledge on procedure for formation of companies and board of directors, their qualification and disqualification , writing of minutes and agenda and qualities of company secretary.

OBJECTIVES:

The objective of the course is to impart basic knowledge of the provisions of the Companies Act 2013. Case studies involving issues in company law are required to be discussed.

Unit I

Introduction: Administration of Company Law 2013 - National Company Law Appellate Tribunal (NCLAT), Special Courts- Characteristics of a Company- Lifting of Corporate Veil - Types of Companies Including One-Person Company, Small Company and Dormant Company - Association not for Profit- Illegal Association- Formation of Company- On-line Filing of Documents- Promoters- Legal Position, Pre-Incorporation Contract - On-line Registration of a Company.

Unit II

Documents : Memorandum of Association - Articles of Association- Doctrine of Constructive Notice and Indoor Management - Prospectus-shelf and Red Herring Prospectus- Misstatement in Prospectus- GDR- Book Building- Issue, Allotment and Forfeiture of Share- Transmission of Shares, Buyback and Provisions Regarding Buyback- Issue of Bonus Shares.

Unit III

Management: Classification of Directors -Women Directors- Independent Director- Small Shareholder's Director- Disqualifications- Director Identity Number (DIN)- Appointment- Legal Positions - Powers and Duties - Removal of Directors- Managing Director, Manager; Meetings of Shareholders and Board- Types of Meeting, Convening and Conduct of Meetings, Postal Ballot, Meeting Through Video Conferencing - e- Voting - Committees of Board of Directors - Audit Committee - Nomination and Remuneration Committee - Stakeholders Relationship Committee - CorporateSocialResponsibilityCommittee.

Unit IV

Dividends, Accounts, Audit– Provisions Relating to Payment of Dividend - Provisions Relating to Books of Account- Provisions Relating to Audit - Auditors' Appointment- Rotation of Auditors - Auditors' Report- Secretarial Audit.

Unit V

Winding Up - Concept and Modes of Winding Up - Insider Trading - Whistle Blowing – Insider-Trading - Meaning and Legal Provisions- Whistle blowing- Concept and Mechanism.

Suggested Readings:

Text Book:

1. MC Kuchhal, (2014), Modern Indian Company Law, Shri Mahaveer Book Depot (Publishers), Delhi.

Reference Books:

1. GK Kapoor & Sanjay Dhamija, Company Law, Delhi. Bharat Law House.
2. Anil Kumar, Corporate Laws, Delhi, Indian Book House.
3. Reena Chadha & Sumant Chadha, Corporate Laws, Delhi.Scholar Tech Press.
4. Gower and Davies, Principles of Modern Company Law, Sweet & Maxwell.
5. Sharma, J.P., An Easy Approach to Corporate Laws, Ane Books Pvt. Ltd., New Delhi.

Karpagam Academy of Higher Education

(Deemed to be University Established Under section 3 of the UGC Act, 1956)

Coimbatore – 641 021.

DEPARTMENT OF COMMERCE

II B.COM - COMPANY LAW -17CMU301

THIRED SEMSTER

LECTURE PLAN

UNIT I

S.NO	LECTURE DURATION (HR)	TOPICS TO BE COVERED	SUPPORT MATERIAL
1	1	Company meaning and Administration of company law 2013	**W1**
2	1	NCLT and NCLAT special court	**W1**
3	1	Impact of NCLT & NCALT special court	**W1**
4	1	Company ,characterterstics /advantages	**T.P:9-16**
5	1	Kinds of companies	**T.P:9-16**
6	1	Kinds of companies	**T.P:9-16**
7	1	Comparison of public company and pvt company	**R.P:48**
8	1	Lifting of corporate veil	**R.P:26**
9	1	Formation of company ,documents used	**T.P:66**
10	1	Association not for profit, illegal association	**T.P:66**
11	1	Promoters legal position of promotors,pre-incorparation	**R.P:52-56**
12	1	Conversion of pvt company into public company	**T.P:72**
13	1	One man company (or)family company	**T.P:72**
14	1	Consequences of illegal association	**T.P:72**
15	1	Comparison of private company with public,partnership,IHF	**T.P:73**
16	1	Online filing of documents for formation of a company	**T.P:73**
17	1	Promoters and their liabilities	**T.P:73**
18	1	Recapitulation and importance questions discussion	
19	1	Recapitulation and importance questions discussion	
		Total no.of Hours planned for unit-1	**19**

UNIT II

S.NO	LECTURE DURATION (HR)	TOPICS TO BE COVERED	SUPPORT MATERIAL
1	1	Memorandum of association :meaning and definition	**T.P:111-117**
2	1	Content of memorandum of association	**T.P:111-117**
3	1	Articles of association : meaning and definition forms ,table, contents	**T.P:111-117**
4	1	Content of AOA and alteration	**T.P:111-117**
5	1	Difference between AOA and MOA &doctrine of constructive notice	**T.P:135**
6	1	Prospector meaning Red herring prospectus	**T.P:135**
7	1	Misstatement in prospectus	**W1**
8	1	Allotment of shares & forfeiture of shares	**T.P:256-271**
9	1	Transmission of shares, issue of bonus shares	**T.P:265-270**
10	1	Buyback and provision regarding buyback Book building	**W1**
11	1	Alteration on MOA	**R.P:73**
12	1	Limits in alteration of registered office	**R.P:73**
13	1	Doctrine of ultravires,meaning	**W1**
14	1	Effects of ultravires act	**W1**
15	1	Statements of lieu of prospectus	**T.P:271-272**
16	1	Kinds of shares	**T.P:273-274**
17	1	Doctrine of indoor management and is exception	**T.P:273-274**
18	1	Recapitulation and importance questions discussion	
19	1	Recapitulation and importance questions discussion	
Total no.of Hours planned for unit-2			**19**

UNIT III

S.NO	LECTURE DURATION (HR)	TOPICS TO BE COVERED	SUPPORT MATERIAL
1	1	Directors: ➢ meaning, classification of directors	**R.P:230-277**
2	1	Directors qualification, Disqualification	**R.P:230-277**
3	1	Director identity number(DIN) Appointment of directors, legal position.	**R.P:230-277**
4	1	powers and duties of directors Removal directors	**R.P:230-277**
5	1	managing director ,manager	**R.P:230-277**
6	1	Meetings-types	**T.P:330**
7	1	Convening and conduct of meeting	**T.P:332**
8	1	Postal ballot meeting through video conferencing	**T.P:333**
9	1	e-voting , Committees: board of director, audit committee	**T.P:334**
10	1	Nomination and remuneration committee	**T.P:334**
11	1	Stake holders relationship committee	**T.P:334**
12	1	Qualification of directors	**R.P:241**
13	1	Retirement of director by rotation	**R.P:241**
14	1	Number of directorship	**R.P:241**
15	1	Liabilities of director	**T.P:340**
16	1	Remuneration of managing director	**T.P:342**
17	1	Recapitulation and importance questions discussion	
18	1	Recapitulation and importance questions discussion	
19	1	Recapitulation and importance questions discussion	
Total no.of Hours planned for unit-2			**19**

UNIT IV

S.NO	LECTURE DURATION (HR)	TOPICS TO BE COVERED	SUPPORT MATERIAL
1	1	Divined : ➢ Meaning ,features, importance	**T.P:239**
2	1	Declaration of dividend	**T.P:239**
3	1	Eligibility and payment of dividend ,dividend warrant	**T.P:239**
4	1	Procedure regarding payment of dividend	**T.P:239**
5	1	Books of accounts, provision of audit	**T.P:401**
6	1	Auditors report	**T.P:401**
7	1	Right powers and duties of auditors	**T.P:401**
8	1	Appointment of auditors	**T.P:401**
9	1	Rights, powers and duties	**T.P:401**
10	1	Secretarial audit	**T.P:402**
11	1	Investigation and discussion of companies affairs	**T.P:402**
12	1	Legal provision relating to the books of accounts	**R.P:327**
13	1	Rules regarding to the annual accounts at company	**R.P:327**
14	1	Restriction on number of auditor ship	**R.P:327**
15	1	Provisions of investigation	**R.P:327**
16	1	Central govt powers on the basis of inspector report	**R.P:327**
17	1	Investigation of the ownership & the company	**R.P:327**
18	1	Recapitulation and importance questions discussion	
19	1	Recapitulation and importance questions discussion	
		Total no.of Hours planned for unit-2	**19**

UNIT V

S.NO	LECTURE DURATION (HR)	TOPICS TO BE COVERED	SUPPORT MATERIAL
1	1	Winding up: ➢ Dissolution and insolvency	**R.P:398**
2	1	Modes of winding up :	**T.P:415**
3	1	Member voluntary winding up and creditors voluntary winding up	**T.P:415**
4	1	Difference between compulsory and voluntary winding up	**T.P:415**
5	1	Insider trading meaning	**T.P:415**
6		Legal provision of insider trading	**T.P:416**
7	1	Mechanism of insider trading	**W1**
8	1	Whistle blowing concept & features	**W1**
9	1	Whistle blowing concept & Mechanism	**W1**
10	1	Person entitled to apply for winding up	**W1**
11	1	Legal provision relating to compulsory winding up	**R.P:382**
12	1	Preparation of auditors report	**R.P:382**
13	1	Duties and powers of liquidators	**R.P:384**
14	1	Legal provisions of members voluntary winding up	**R.P:386**
15	1	Legal provision of creditors voluntary winding up	**R.P:386**
16	1	Common provision of voluntary winding up	**R.P:382**
17	1	Recapitulation and importance questions discussion	
18	1	Discussion of ESE question papers	
19	1	Discussion of ESE question papers	
Total no.of Hours planned for unit-2			**19**

SUPPORT MATERIALS :

Text Book :

1.MC Kuchhal (2014) ,modern Indian company law , Shri Mahaveer Book Depot(publishers),Delhi

Reference books:

1.GK Kapoor &sanjay Dhamija, Company law, Delhi.Bharat Law House

2.Anil Kumar , Corporate Laws,Delhi,Indian Book House.

3.Reena chadha &Sumant chadha Laws, Delhi. Scholor tech press

4.Gower and Davies ,principles of modern company law, sweet &Maxwell

5.sharma .J.P .,An easy approach to corporate laws, Ane Books pvt.ltd.,New Delhi

Website Reference :

W1- www.yourarticlelibrary.com/accounting/.../**book-building**...of.../70527/

W2- https://blog.cleartax.in/my-only- income-is-from-selling-**shares**-do-i-need..

UNIT-I- Administration of Company Law

SYLLABUS

Introduction: Administration of company law (NCLT and NCLAT; special court), Characteristics of a company, lifting of corporate veil, types of companies, formation of companies

COMPANIES ACT

Meaning of Company Law:

Company law is that branch of law which deals exclusively with all aspects relating to companies, such as incorporations of companies allotment of shares and share capital membership in companies management and administration of companies, winding up of companies. etc. Company law in India is that branch of Indian law which regulates companies in India.

Constitutio n o f Boa rd o f Co mpany Law Administration.

(1) As soon as may be after the commencement of the Companies (Amendment) Act, 1988, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration.

(1A) The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it by the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law.

(2) The Company Law Board shall consist of such number of members, not exceeding nine, as the Central Government deems fit, to be appointed by that Government by notification in the Official Gazette :

Provided that the Central Government may, by notification in the Official Gazette, continue the appointment of the chairman or any other member of the Company Law Board functioning as such immediately before the commencement of the Companies (Amendment) Act, 1988, as the chairman or any other member of the Company Law Board, after such commencement for such period not exceeding three years as may be specified in the notification.

(2A) The members of the Company Law Board shall possess such qualifications and experience as may be prescribed.

(3) One of the members shall be appointed by the Central Government to be the chairman of the Company Law Board.

(4) No act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board.

(4A) Omitted w.e.f. 31st May,1991.

(4B) The Board may, by order in writing, form one or more Benches from among its members and authorize each such Bench to exercise and discharge such of the Board's powers and functions as may be specified in the order ; and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.

(4C) Every Bench referred to in sub-section (4B) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :

(a) discovery and inspection of documents or other material objects producible as evidence ;
(b) enforcing the attendance of witnesses and requiring the deposit of their expenses ;
(c) compelling the production of documents or other material objects producible as evidence and impounding the same ;
(d) examining witnesses on oath ;
(e) granting adjournments ;
(f) reception of evidence on affidavits.

(4D) Every Bench shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860), and for the purpose of section 196 of that Code.

(5) Without prejudice to the provisions of sub-sections (4C) and (4D), the Company Law Board shall in the exercise of its powers and the discharge of its functions under this Act, or any other law be guided by the principles of natural justice and shall act in its discretion.

(6) Subject to the foregoing provisions of this section, the Company Law Board shall have power to regulate its own procedure.

NCLT AND NCLAT ON COM PAN Y LAW:

The Ministry of Corporate Affairs ('MCA') on 1st June 2016 notified the constitution of National Company Law Tribunal ('NCLT') and National Company Law Appellate Tribunal ('NCLAT') in exercise of powers conferred under §408 and §410 of the Companies Act 2013 ('Companies Act'). This notification has been in abeyance for almost 14 years since it was first introduced by the Companies (Second Amendment) Act 2002 based on the recommendations of Eradi committee. However, in recent times the Government of India has been emphasising on easing the process of carrying out business in India. Thus, in recent times, various legal reforms have been carried out and the constitution of the NCLT and the NCALT is one more step in this direction.

The newly setup NCLT will, initially, have 11 benches including two benches in the national capital, New Delhi. Retired Supreme Court judge Hon'ble Justice SJ Mukhopadhaya will be the first Chairperson of NCLAT and Retired Justice MM Kumar will be the first President of the NCLT

IM PACT OF THE CONSTITUTION OF NCLT AND NCLAT ON COM PAN Y LAW LITIGATION:

The constitution of the NCLT is likely to have a fundamental impact as far as company law litigation is concerned. Some of the more important consequences of this development are enumerated below:

a. Single Window: The most significant benefit likely to arise from the constitution of the NCLT and the NCLAT is that the tribunals will, effectively, act as a single window for settlement of all company law related disputes. The newly constituted tribunals will replace the existing Company Law Board ('CLB'), the Board of Industrial and Financial Reconstruction ('BIFR') and its appellate authority. Thus, the unnecessary fragmentation and multiplicity of the proceedings before various courts and tribunals in the same matter will be now be curbed.

The constitution of the NCLT is in consonance with the recently enacted Insolvency and Bankruptcy code and the liquidation process of companies and corporate debtors will now be considerably simplified.

Further, in the previous regime most powers were reserved either for the Central Government, the CLB or the High Courts. However, with the formation of the NCLT, the intent is to consolidate these powers and jurisdiction and assign them to a single authority, thereby simplifying the dispute adjudication process as far as companies are concerned.

b. Class Action Claims: Shareholders are allowed to file class action suits before the NCLT, against the company for the breach of provisions of the Companies Act. Per this provision, if 100 or more shareholders or depositors find that the company's affairs are

not being managed in its best interests, they may approach the NCLT. In a class action suit, shareholders can collectively sue directors or auditors of the company for their misconduct or unwarranted acts. This remedy will be crucial for the minority shareholders who seek redressal against arbitrary/oppressive decisions of their management. In addition, with the increase of shareholder activism in India such a remedy would be a valuable remedy in the hands of shareholders against their boards.

c. Greater Field Impact: Under the old law, the CLB was operating through only 5 benches. However, the NCLT will commence with 11 benches, with the Principal Bench being in New Delhi. This will undoubtedly aid in ensuring a wider reach for adjudicating company law matters in India.

d. Speedy Disposal of Cases: The NCLT has been given the powers to regulate its own procedure which will assist them in disposing matters in a simplified manner. Further, the NCLT and the NCLAT are under a mandate to dispose of cases before them as expeditiously as possible. In this context, a time limit of 3 months has been provided to dispose of cases, with an extension of 90 days for sufficient reasons to be recorded by the President or the Chairperson, as the case maybe. This time limit is expected to ensure the speedy disposal of cases by the NCLT and the NCLAT.

e. Limitations and Unanswered Questions: The notification does not expressly specify

the manner or procedure for transferring pending cases from the CLB and High Courts to the NCLT. It is likely the process of transfer will be commenced and implemented as a gradual process. The objective may be to transfer the matters to the new body in a

gradual manner, so as to give the NCLT ample amount of time to structure itself in the company law litigation of the country. However, effective steps will need to be taken to prevent unnecessary confusion amongst litigants.

In addition, provisions relating to the winding up of the companies and those under Chapter XV of the Companies Act have not yet been notified. Therefore, these matters will continue to be governed by the provisions of Companies Act 1956. There is no updated information available in terms of when the provision of Chapter XV are likely to be brought into force.

The NCLAT will act as the appellate forum and all appeals from the orders of the NCLT will be heard by it. Appeals from the NCLAT will be heard by the Supreme Court of India.

COM PAN Y

A Company is formed when registered under the Indian Companies Act, 1956.

A Private Company is formed with a minimum of 2 persons and a public company with 7 persons at least

A private Company is limited to 50 members excluding its present and past employees. There is no limit to the maximum numbers of members in case of a public company.

A Company has a separate legal entity distinct from the members who constitute it.

Properly belongs to the Company and not to the individual members.

The liability of the shareholders is limited.

Shares are freely transferable. In a private company the articles restrict the right of members to transfer their shares.

A Company has a perpetuaI succession. It comes to an end in the event of winding up.

But the capital of a Joint stock companies is very large, as it is contributed by a large number of Shareholders.

Audit of account by qualified auditor is compulsory.

PAR TNERSHIP:

I. Partnership is created when agreed between the individuals. Registration of partnership firm is optional under the partnership Act.

II. A partnership can be created by two persons.

III. The maximum number of members in a partnership firm is limited to 10 in case of banking business and 20 in case of any other business.

IV. A partnership firm has no legal exisience apart from its members i.e., the partners and the firms are one and the same.

V. Property of the partnership firm belongs to individual partners comprising the firm. VI. The liability of partnership is unlimited.

VII. The partner cannot transfer his share without the consent of his co-partners.

VIII.Partnership comes to an end when a partner dies or becomes insolvent, unless otherwise provided in the partnership deed.

IX. The capital of a partnership firm is limited, as it is contributed only by a few persons

X. Audit of account is not compulsory.

NATURE AND CHARACTERISTICS OF A COMPANY

Since a corporate body (i.e. a company) is the creation of law, it is not a human being, it is an artificial person (i.e. created by law); it is clothed with many rights, obligations, powers and duties prescribed by law; it is called a „person". Being the creation of law, it possesses only the properties conferred upon it by its Memorandum of Association. Within the limits of powers conferred by the charter, it can do all acts as a natural person may do.

The most striking characteristics of a company are:

(i) Corporate personality

By incorporation under the Act, the company is vested with a corporate personality quite distinct from individuals who are its members. Being a separate legal entity it bears its own name and acts under a corporate name. It has a seal of its own. Its assets are separate and distinct from those of its members. It is also a different „person" from the members who compose it. As such it is capable of owning property, incurring debts, borrowing money, having a bank account, employing people, entering into contracts and suing or being sued in the same manner as an individual. Its members are its owners but they can be its creditors simultaneously as it has a separate legal entity.

A shareholder cannot be held liable for the acts of the company even if he holds virtually

the entire share capital. The shareholders are not the agents of the company and so they cannot bind it by their acts. The company does not hold its property as an agent or

trustee for its members and they cannot sue to enforce its rights, nor can they be sued in respect of its liabilities. Thus, „incorporation" is the act of forming a legal corporation as a juristic person. A juristic person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law [Shiromani Gurdwara Prabandhak Committee v. Shr Sam Nath Dass AIR 2000 SCW 139].

EXAMPLE

The case of Salomon v. Salomon and Co. Ltd., (1897) A.C. 22 The above case has clearly established the principle that once a company has been validly constituted under Companies Act, it becomes a legal person distinct from its members and for this purpose it is immaterial whether any member has a large or small proportion of the shares, and whether he holds those shares beneficially or as a mere trustee. In the case, Salomon had, for some years, carried on a prosperous business as a leather merchant and boot manufacturer. He formed a limited company consisting of himself, his wife, his daughter and his four sons as the shareholders, all of whom subscribed for 1 share each so that the actual cash paid as capital was £ 7. Salomon sold his business (which was perfectly solvent at that time), to the Company for the sum of £ 38,782. The company"s nominal capital was £ 40,000 in £ 1 shares. In part payment of the purchase money for the business sold to the company, debentures of

the amount of £10,000 secured by a floating charge on the company"s assets were issued to

Salomon, who also applied for and received an allotment of 20,000 £ 1 fully paid shares. The remaining amount of £8,782 was paid to Salomon in cash. Salomon was the managing director and two of his sons were other directors.

The company soon ran into difficulties and the debentureholders appointed a receiver and the company went into liquidation. The total assets of the company amounted to £6050, its liabilities were £10,000 secured by debentures, £8,000 owning to unsecured trade creditors, who claimed the whole of the company‟s assets, viz., £6,050, on the ground that, as the company was a mere

„alias‟ or agent for Salomon, they were entitled to payment of their debts in priority to debentures. They further pleaded that Salomon, as principal beneficiary, was ultimately responsible for the debts incurred by his agent or trustee on his behalf.

(ii) Limited Liability

“The privilege of limited liability for business debts is one of the principal advantages of doing business under the corporate form of organisation.” The company, being a separate person, is the owner of its assets and bound by its liabilities. The liability of a member as shareholder, extends to contribution to the assets of the company up to the nominal value of the shares he ld and not paid by him. Members, even as a whole, are neither the owners of the company‟s undertakings, nor liable for its debts. In other words, a shareholder is liable to pay the balance, if any, due on

the shares held by him, when called upon to pay and nothing more, even if the liabilities of the company far exceed its assets. This means that the liability of a member is limited. For example, if A holds shares of the total nominal value of Rs. 1,000 and has already paid Rs. 500/- (or 50% of the value) as part payment at the time of allotment, he cannot be called

upon to pay more than Rs. 500/-, the amount remaining unpaid on his shares. If he holds fully-paid shares, he has no further liability to pay even if the company is declared insolvent. In the case of a company limited by guarantee, the liability of members is limited to a specified amount mentioned in the memorandum. Buckley, J. in Re. London and Globe Finance Corporation, (1903) 1 Ch.D. 728 at

731, has observed: „The statutes relating to limited liability have probably done more than any legislation of the last fifty years to further the commercial prosperity of the country.

They have, to the advantage of the investor as well as of the public, allowed and encouraged aggregation of small sums into large capitals which have been employed in undertakings of "great public utility largely increasing the wealth of the country". There are, however, some statutory exceptions to the principle of limited liability. As provided by Section

45 of the Companies Act, 1956, the members become personally liable if the membership falls

below prescribed minimum and the business is carried on for more than six months thereafter. It is also provided in the Act vide Section 323 that a limited company may, if so authorised by its articles, alter its memorandum by special resolution so as to render the liability of its directors or of any of its director or manager as unlimited. Further, where in the course of winding up it appears that any business of the company has been carried on with intent to defraud creditors, the Court may declare the persons who were knowingly parties to the transaction as personally liable without limitation of liability for all or any of the debts/liabilities of the company.

(iii) Perpetual Succession

An incorporated company never dies except when it is wound up as per law. A company, being a separate legal person is unaffected by death or departure of any member and remains the same entity, despite total change in the membership. A company"s life is determined by the terms of its Memorandum of Association. It may be perpetual or it may continue for a specified time to carry on a task or object as laid down in the Memorandum of Association. Perpetual succession, therefore, means that the membership of a company may keep changing

The membership of an incorporated company may change either because one shareholder has transferred his shares to another or his shares devolve on his legal representatives on his death or he ceases to be a member under some other provisions of the Companies Act. Thus, perpetual succession denotes the ability of a company to maintain its existence by the constant succession of new individuals who step into the shoes of those who cease to be members of the company. Professor

L.C.B. Gower rightly mentions, "Members may come and go, but the company can go on for

ever. During the war all the members of one private company, while in general meeting, were killed by a bomb, but the company survived — not even a hydrogen bomb could have destroyed it".

(iv) Separate Property

A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. The company is the real person in which all its property is vested, and by which it is controlled, managed and disposed off. Their Lordships of the Madras High Court in R.F.Perumal v. H. John Deavin, A.I.R. 1960 Mad. 43 held that "no member can claim himself to be the owner of the company"s property during its existence or in its winding-up". A member does not even have an insurable interest in the property of the company.

EXAMPLE

Mrs. Bacha F. Guzdar v. The Commissioner of Income Tax, Bombay, A.I.R. 1955 S.C. 74

The Supreme Court in this case held that, though the income of a tea company is entitled to be exempted from Income-tax up to 60% being partly agricultural, the same income when received by a shareholder in the form of dividend cannot be regarded as agricultural income for the assessment of income-tax. It was also observed by the Supreme Court that a shareholder does not, as is erroneously believed by some people, become the part owner of the company or its property; he is only given certain rights by law, e.g., to receive or to attend or vote at the meetings of the shareholders. The court refused to identify the shareholders with the company and reiterated the distinct personality of the company.

(v) Transferability of Shares

The capital of a company is divided into parts, called shares. The shares are said to be movable property and, subject to certain conditions, freely transferable, so that no shareholder is permanently or necessarily wedded to a company. When the joint stock

companies were established, the object was that their shares should be capable of being easily transferred, [In Re. Balia and San Francisco Rly., (1968) L.R. 3 Q.B. 588]. Section 82 of the Companies Act, 1956 enunciates the principle by providing that the shares held by the members are movable property and can be transferred from one person to another in the manner provided by the articles. If the articles do not provide anything for the transfer of shares and the Regulations contained in Table "A" in Schedule I to the Companies Act, 1956, are also expressly excluded, the transfer of shares will be governed by the general law relating to transfer of movable property.

A member may sell his shares in the open market and realise the money invested by him. This provides liquidity to a member (as he can freely sell his shares) and ensures stability to the company (as the member is not withdrawing his money from the company). The Stock Exchanges provide adequate facilities for the sale and purchase of shares. Further, as of now, in most of the listed companies, the shares are also transferable through Electronic mode i.e. through Depository Participants instead of physical transfers.

(vi) Common Seal

On incorporation, a company acquires legal entity with perpetual succession and a common seal. Since the company has no physical existence, it must act through its agents and all such contracts entered into by its agents must be under the seal of the company. The Common Seal acts as the official signature of a company. The name of the company must be engraved on its common seal. A rubber stamp does not serve the purpose. A document not bearing common seal of the company is not authentic and has no legal force behind it.

(vii) Capacity to Sue and Be Sued

A company being a body corporate, can sue and be sued in its own name. To sue means to institute legal proceedings against (a person) or to bring a suit in a court of law. All legal proceedings against the company are to be instituted in its own name. Similarly, the company may bring an action against anyone in its own name. A company‟s right to sue arises when some loss is caused to the company, i.e. to the property of the personality of the company. Hence, the

company is entitled to sue for damages in libel or slander as the case may be [Floating Services Ltd. v. MV San Fransceco Dipaloa (2004) 52 SCL 762 (Guj)]. A company, as a person separate from its members, may even sue one of its own members for libel. A company has a right to seek damages where a defamatory material published about it, affects its business. Where video cassettes were prepared by the workmen of a company showing, their struggle against the company‟s management, it was held to be not actionable unless shown that the cassette would be defamatory. The court did not restrain the exhibition of the cassette. [TVS Employees Federation v. TVS and Sons Ltd., (1996) 87 Com Cases 37]. The company is not held liable for contempt committed by its officer. [Lalit Surajmal Kanodia v. Office Tiger Database
Systems India (P) Ltd., (2006) 129 Comp Cas 192 Mad].

(viii) Contractual Rights

A company, being a separate legal entity different from its members, can enter into contracts for the conduct of the business in its own name. A shareholder cannot enforce a contract made by his company; he is neither a party to the contract nor entitled to the benefit of it, as a company is not a trustee for its shareholders. Likewise, a shareholder cannot be sued on contracts made by his company. The distinction between a company and its members is not confined to the rules of privity, however, it permeates the whole law of contract. Thus, if a director fails to disclose a breach of his duties to his company, and in consequence a shareholder is induced to enter into a contract with the director which he would not have entered into had there been disclosure, the shareholder cannot rescind the contract. Similarly, a member of a company cannot sue in respect of torts committed against the company, nor can he be sued for torts committed by the company. [British Thomson-Houston Company v. Sterling Accessories Ltd., (1924) 2 Ch. 33]. Therefore, the company as a legal person can take action to enforce its legal rights or be sued for breach of its legal duties. Its rights and duties are distinct from those of its constituent members.

(ix) Limitation of Action

A company cannot go beyond the power stated in the Memorandum of Association. The Memorandum of Association of the company regulates the powers and fixes the objects of the company and provides the edifice upon which the entire structure of the company rests. The

actions and objects of the company are limited within the scope of its Memorandum of Association. In order to enable it to carry out its actions without such restrictions and limitations in most cases, sufficient powers are granted in the Memorandum of Association.

But once the powers have been laid down, it cannot go beyond these powers unless the Memorandum of Association is itself altered prior to doing so.

(x) Separate Management

As already noted, the members may derive profits without being burdened with the management of the company. They do not have effective and intimate control over its working and elect their representatives to conduct corporate functioning. In other words, the company is administered and managed by its managerial personnel.

(xi) Voluntary Association for Profit

A company is a voluntary association for profit. It is formed for the accomplishment of some public goals and whatsoever profit is gained is divided among its shareholders or restored for the future expansion of the company. Only a Section 25 company can be formed with no profit motive.

(xii) Termination of Existence

A company, being an abstract and artificial person, does not die a natural death. It is created by law, carries on its affairs according to law throughout its life and ultimately is effaced by law. Generally, the existence of a company is terminated by means of winding up. However, to avoid winding up sometimes companies change their form by means of reorganisation, reconstruction and amalgamation. To sum up, "a company is a voluntary association for profit with capital divisible into transferable shares with limited liability, having corporate entity and a common seal with perpetual succession".

LIFTING OF OR PIERCING THROUGH THE CORPORATE VEIL

It means the company has a separate legal entity from the persons constituting its members.

Indeed, the theory of corporate entity is still the basic principle on which the whole law of corporations is based. But as the separate personality of the company is a statutory privilege, it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is

made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will breakthrough the corporate shell and apply the principle of what is known as "lifting of or piercing through the corporate veil". The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company

The corporate veil is lifted when in defence proceedings, such as for the evasion of tax, an entity relies on its corporate personality as a shield to cover its wrong doings. [BSN (UK) Ltd. v. Janardan Mohandas Rajan Pillai [1996] 86 Comp. Cas.371 (Bom).].

However, the shareholders cannot ask for lifting veil for their purposes. This was upheld in Premlata Bhatia v. Union of India (2004) 58 CL 217 (Delhi) wherein the premises of a shop were allotted on a licence to the individual licence. She set up a wholly owned private company and transferred the premises to that company with the Government consent. She could not remove the illegality by saying that she and her company were virtually the same person.

Statutory Recognition of Lifting of Corporate Veil

The Companies Act, 1956 itself contains some provisions (Sections 45, 147,

212, 247 and 542) which lift the corporate veil to reach the real forces of action. Taxation Laws have also made deep inroads to crack the corporate shell for efficient administration of tax laws. For the purpose of Wealth Tax and Estate Duty Legislation, new statutory formulae have been enacted for shares of private companies which substantially disregard the separate corporate entity and proceed on the basis that the ownership of such corporate property belongs to the shareholders. In terms of Income-tax Law, directors of private companies have been made personally liable for the tax liabilities of such companies. The face of the corporation is examined in order to pay regard to the economic realities behind the legal facade.

Lifting of Corporate Veil under Judicial Interpretation

Ever since the decision in the Salomon v. Salomon & Co. Ltd., (1897) A.C. 22 normally Courts are reluctant or at least very cautious to lift the veil of corporate personality to see the real persons behind it. Nevertheless, Courts have found it necessary to disregard the separate personality of a company in the following situations:

(a) Where the corporate veil has been used for commission of fraud or improper conduct. In such a situation, Courts have lifted the veil and looked at the realities of the situation.

(b) Where a corporate facade is really only an agency instrumentality.

(c) Where the doctrine conflicts with public policy, courts lifted the corporate veil for protecting the public policy.

(d) Further, In Daimler Co. Ltd. v. Continental Tyre & Rubber Co., (1916) 2 A.C. 307, it was held that a company will be regarded as having enemy character, if the persons having de facto control of its affairs are resident in an enemy country or , wherever they may be, are acting under instructions from or on behalf of the enemy.

(e) Where it was found that the sole purpose for which the company was formed was to evade taxes the Court will ignore the concept of separate entity, and make the individuals liable to pay the taxes which they would have paid but for the formation of the company.

(f) Avoidance of welfare legislation is as common as avoidance of taxation and the approach in considering problems arising out of such avoidance has necessarily to be the same and, therefore, where it was found that the sole purpose for the formation of the new company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction.

(g) Another instance of corporate veil arrived at by the Court arose in Kapila Hingorani v. Stateof Bihar.

(h) Where it is found that a company has abused its corporate personality for an unjust and inequitable purpose, the court would not hesitate to lift the corporate veil. Further, the corporate veil could be lifted when acts of a corporation are allegedly opposed to justice, convenience and interests of revenue or workman or are against public interest. Thus, in appropriate cases, the Courts disregard the separate corporate personality and look behind the legal person or lift the corporate veil.

Lifting the Corporate Veil of Small Scale Industry

Where small scale industries were given certain exemptions and the company owning an industry was not controlled by any group of persons or companies, it was held that it was permissible to lift the veil of the company to see whether it was the subsidiary of another company and, therefore, not entitled to the proposed exemptions. [Inalsa Ltd. v. Union of India, (1996) 87 Com. Cases. 599 (Delhi).]

Use of Corporate Veil for Hiding Criminal Activities

Where the defendant used the corporate structure as a device or facade to conceal his criminal activities (evasion of customs and excise duties effected through the company), the Court could lift the corporate veil and treat the assets of the company as the realisable property of the shareholder.

For example, in a case, there was a prima facie case that the defendants controlled the two companies, the companies had been used for the fraudulent evasion of excise duty on a large scale, the defendant regarded the companies as carrying on a family business and that they had benefited from companies‟ cash in substantial amounts and further no useful purpose would have been served by involving the companies in the criminal proceedings. In all these circumstances it was therefore appropriate to lift the corporate veil and treat the stock in the companies‟ warehouses and the companies‟ motor vehicles as realisable property held by the defendants. The court said that excise department is not to be criticized for not charging the companies. The more complex commercial activities become, the more vital it is for prosecuting authorities to be selective in whom and what they charge, so that issues can be presented in as clear and short form as possible. In the present case, it seemed that no useful purpose would have been served by introducing

into criminal proceedings. [H. and Others (Restraint Order : Realisable Property), Re, (1996) 2 BCLC 500 at 511, 512 (CA).]

KINDS OF COM PANIES

Companies may be classified into different kinds or types from different points of view:

1. Classification of companies from the point of view of incorporation or registration:

From the point of view of their incorporation, companies can be classified into three types.

they are.

a) **Chartered companies**: If a Company is incorporated under a special charter granted by the monarch it is called a chartered companies and is regulated by that charter. Chartered companies were common in the 17th and 18th centuries. For eg. British East India companies, Bank of England, Chartered Bank of Australia etc. are examples of chartered companies. This form of organization does not exist in India, as there is no monarchy.

b) **Statutory Companies**: A statutory Company is a company which is incorporated under a special or separate act of the legisiature (i.e.., parliament). A statutory company requires special powers and privileges which it does not get under the companies Act. So, it is registered under a special act of the legislature. The powers and activities of a statutory companies are regulated by the special act under which it is established. This method of

incorporation is adopted for companies of national importance and public utility companies, such as railway companies, electricity supply companies, etc. The RBI, SBI, LIC, UTI, etc are examples of statutory companies.

c) **Registered Companies**: A company is brought into existence by registration with the registrar of companies under the companies Act of 1956, is called a registered company. The activities of these companies are governed by the comapanies Act. These constitute the most important Joint stock companies.

2. Classification of Registered Companies on the basis of the liability of members: From the point of view of the liability of the members, registered companies may be classified into three categories. They are:

a) **Companies Limited by Shares**: Companies limited by share are companies in which the liability of a member is limited to the nominal or face value of the shares held by him. In short, these are the companies in which the liability of a member is limited only to the amount unpaid on the shares held by him. These companies are mostly trad ing companies. Most of the companies registered under the companies Act are of this type.

b) **Companies Limited by Guarantee**: Companies limited by guarantee are companies in which the liability of each member is limited to a fixed amount which he has guaranteed ie., agreed to contribute to the assets of the company to meet the liabilities of the company in the event of its winding up. The amount guaranteed by each member is

mentioned in the Memorandum of Association or Articles of Association of the Company. The members are required to pay the amount guaranteed by them, not during the life of the company but only when the company is wound up and the assets of the company are not sufficient to meet the liabilities of the company. These are mostly non- trading companies formed for the purpose of promoting art, culture, charity , science and education, etc.

c) **Unlimited Companies**: Unlimited companies are companies in which the liability of members is unlimited i.e., members are liable for the debts of the company to a n unlimited extent in the event of its winding up. Each member is liable to contribute from his private assets in proportion to his capital, in the company towards the amount required for the payment of the entire or full liabilities of the company. If any of the members is unable to contribute anything from his private assets, then, that addltlonal deficiency is to be shared among the remaining members in proportion to their respective capital in the company.

3. **Classification of companies on the basis of ownership**: On the basis of ownership,

companies may be classified into two kinds. They are: Government companies

Non-gnvemment companies

a) Government contpanies: A Company in which not less than 51% of the share capital is held by the central government and or by any state government or governments is called a goverment companies. It may be a public company or a private company. Some of the

prominent government companies are: Hindustan Machine Tools, Bharat Electronic Limited, Indian Telephone Industries and Hindustan Aeronautics limited.

A Government company may be permitted by the central government to drop the words "

Private Limited" or the word "Limited" from its name. The Central Government can by notification in the official gazette, restrict or modify the application of certain provision of the companies Act in regard to government conlpanies.

b) Non- Government companies: A non-government company is a company which is owned and managed by private investors.

4. Classifications of companies on the basis of nationality: On the basis of nationality, companies may be classified into two kinds, Theyare.

a) Domestic companies

b) Foreign companies

a) Domestic companies: A Domestic company is a company which is inccrporated in India

.Today most of the Joint stock companies in India are domestic companies.

b) Foreign Company: A foreign Company is a Company which is incorporated in a foreign country, but which has established a place of business in India. Although; foreign Companies are not registered or incorporated in India, some of the provisions of the

companies Act, are applicable to them. The companies (Amendment) Act, 1974, has made several sections of the Act applicable to foreign companies in order to bring into the ambit of the provisions applicable to Indian companies.

Under section 592 of the companies Act, every foreign company must file with the registrar of companies within 30days of the establishment of its business in India, the following documents.

A certified copy of its charter, statute; memorandum and articles or other documents defining its constitution.

The full address of the registered or principal office of the company.

List of the directors and secretary of the company with the required particulars

The name and address of the person authorized to receive any notice or document etc., required to be served on the companies

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

Under section 593 of the companies Act, in case there is any alteration in any of the

above particulars, the company is required to file a return of such alteration with the registrar of companies within the prescribed time.

5. Classification of companies on the basis of control: On the basis of control companies may be classified into

i) Holding companies

ii) Subsidiary companies.

i) Holding Companies and Subsidiary Companies: As per section 4 of the companies Act of

1956," a holding Company is a company which is controlling a subsidiary company". In other words, a holding con-tpany is a company

a) Which holds more than 70% of the nominal value ofihe equity share capitai of another company or

b) Which controls the composition of the board of directors of another Company c) Which controls more than 50% of the total voting power of another Company

d) Where a Company is a subsidiary of another Company which is a subsidiary of a holding Company, that is, Company C is a subsidiary of Company B , whereas Company B is a subsidiary of holding Company A.

As per section 4 of the companies Act of 1956, " a subsidiary Company is a Company which is controlled by a holding Company". In other words, a Company becomes the subsidiary of another Company if:

a) The other Company holds more than 50% of the nominal value of its equity share capital or

b) The other Company controls the composition of its board of directors or c) The other Company controls more than 50% of its total voting powers

d) It is a subsidiary of another Company which is subsidiary of the controlling company

Eg. When Company A has a control over company B, company A is known as a holding company and company B which is so controlled is known as a subsidiary company.

6. Classification of companies on the basis of number of members: Registered companies with share capital may be divided into two classes from the point of view of the the number of members

i) PrivateCompanies ii) Public Companies

i) Private Companies: Section 3(1) (iii) of the companies Act of 1956 defines a private company as a company which by its articles of association,

a) Restricts the right of its members to transfer shares, if any,

b) Limits the number of its member to fifty, excluding those members who are its present or past employees

c) Prohibits any invitation to the public to subscribe to its shares or debentures

ii) Public Companies: Section 3 (I) (iv) of the companies Act of 1956 states that a "Public company is a company which is not a private company". In other words, a public company is a company

7. Other Kinds of Companies:

a) One Man Companies / Family Companies: One man company refers to a company in which one man holds practically the hole of or the substancial no. of shares of the companies, and has controlling powers over the company and some dummy members who are mostly his relations or friends, hold one or two shares each. The dummy members are included only to comply with the statutory requirements of the minimum no. of members.

b) Licenced Companies: Association formed not for profit, but for promoting non trading purposes, such as art, science, education, sports, regligion, charity, etc., can obtain a licence from the central layout and get themselves registered as compaines with limited liability under Sec. 25 (U/S 25) of the companies act. They are called companies not for profit or licenced companies.

Eg. Education institutions, cultural association, sports, clubs, charitable association, etc.

COM PAN Y FORM ATION

In the formation of a public limited company having share capital, mainly four stages are involved namely:

1. Promotion

2. Incorporation

3. Capital Subscriptions, and

4. Commencement of business or trading certificate.

In the case of the formation of a private company, only the first two stages are involved, because, a private company can commence its business immediately after securing the certificate of incorporation from the Registrar of companies. But in the case of formation of a public company, having share capital, there is need for the promoters to secure from the Registrar, the certificate to commence business in addition to the certificate o~ incorporation.

1. **Promotion of Company**

The person or persons who undertake responsibility of bring the company into existence are called' Promoters. In other words, the work of promotion is done by a person called "Promoter" or group of persons called "Promoters". Promotion involves discovery of specific business opportunity and subsequent organisation of the factors of production. According to Haney, promotion may be defined as the process of organizing and

planning the finances of a business enterprise under the corporate form in other words, the steps which are taken to persuade a number of persons to come together for the achievement of a common objective through the company form of organisation is called promotion. Promotion may be undertaken either for starting a new business or for expanding the existing concern or for forming a holding company for a merger.

Steps in Company Promotion:

The work of promotion of a company involves four stages namely;

a) Discovery of an idea and Preliminary investigation b) Detailed investigation

c) Assembling and

d) Financing the promotion

a) Discovery of an Idea: The promoter starts out with an idea to start some business either in a new field which has not been commercially exploited or in some existing lines of

manufacture or business. He makes a preliminary investigation to find out whether it is worthwhile to make a detailed investigation. He makes a rough estimate of probable revenues and expenditure.

b) Detailed Investigation: The promoter need to make a detailed investigation of his idea with the assistance of many experts like engineer, chemist, market analyst, financial expert, management consultant, etc,. On the basis of the reports of these experts, the promoters would be in a position to know the capital requirements, place of location, size of the unit, demand condition in the market, price of product, cost of production, probable return on capital, etc,. A detailed investigation will help the promoter to decide...whether the estimated income will be adequate to take care of the estimated cost of production and compension to the owner for risks and services.

c) Assembling: After a detailed investigation, if the promoter is satisfied with the

practicability and profitability of the proposed concern, he starts assembling the proposition. 'Assembling' means getting the support and consent of some other persons to act as directors or founders, arranging for patents, a suitable site for the company! .machinery and equipment and making contracts for filling the positions.

d) Financing the Proposition: After assembling, the proposition, the promoter prepares a

'prospectus' to present to the public and to under writers to persuade them to, finance the

'proposition'. A prospectus contains complete details of the proposition and also the reports of various experts who have investigated the proposition. The promoter also takes

steps to incorporate the company, and to secure the certificate to commence the business. For incorporating the company and also for obtaining the certificate to commence business, -the promoter has to full fill many legal formalities.

2. Incorporation

After taking all the preliminary steps for registration, an application along with the necessary documents, stamp duty, registration and filing fees, has to be made to Registrar for the issue of the 'certificate of incorporation. The Registrar will scrutinize the documents and if satisfied will enter the name of the company in the register .and will issue the company its birth certificate called the Certificate of Incorporation.

Steps and Formalities for Incorporation of a Company

Promoters have to take certain steps for getting the certificate of incorporation from the Registrar of Companies, on hearing from the Registrar about the availability of names for the proposed company; they have to prepare the following documents and file them with Registrar of Companies' of the state in which the registered office of company is to be situated.

A. The Memorandum of Association to which at least seven persons have subscribed, their names and each one of them has taken at least one share. In the case of a private company, then number of persons required to subscribe their names is only two.

B. The Articles of Association similarly signed except where Table' A' attached to the

Companies Act 1956, has been adopted as the Company's Articles. C. The Address of the registered office of the company.

This is to be delivered in any case within 30 days of incorporation.

D. A, list of directors with their names, addresses and occupations. The return containing the particulars of the directors should be filed within 30 days of their appointment.

E. Consent in writing of the directors to act as directors.

F. An Undertaking by the directors to take and pay for qualification shares, if any,

G. The statutory declaration by an advocate or an attorney or a chartered accountant practicing of India, who is engaged in the formation of an company or by a person named in the articles as a director manager, or secretary of the company.

At the time of filing these documents with the Registrar of Companies, necessary stamp duty, registration fees and filing fees 'are to be paid. The Registrar will examine these documents and if he is satisfied with the documents, he will enter the name of the company in the Registrar and will issue to the company its birth certificate called the "Certificate of Incorporation".

3. Capital Subscription

A private company and a public company not having any share capital can commence business immediately after obtaining the Certificate of Incorporation, but a public company having a share capital can commence business only after obtaining another certificate called the 'Certificate of Commence Business' from the Registrar of companies. Hence, a public company having a share capital has to undergo two additional stages, namely

1. The subscription stage and

2. Commencement of business stage.

In the capital subscription stage, the company has to make arrangements for obtaining the necessary capital of the company. For this purpose, immediately after getting the certificate of incorporation, the company convenes a board meeting to deal with the following business:

1. Appointment or confirmation of the appointment of the secretary if one has already been appointed by the promoters at the promotion stage.
2. Adoption of preliminary contracts.

3. Appointment of bankers, solicitors, legal advisors, brokers, auditors, etc.,

4. Adoption of draft prospectus or statement in lieu of prospectus.

5. Listing shares on the stock exchange.

6. Adoption of underwriting contracts.

Adoption of Preliminary Contracts

Before registering the company, the promoters enter into several contracts on behalf of the proposed company such as contract for the purchasing of properties and assets, or contract for purchasing existing business, if any. As these contracts were entered into by the promoters, when the company was not in existence, they become valid only when they are ratified by the company. Hence, these contracts are ratified in the first board meeting of the company.

Appointment of Bankers

According to the Companies Act, all money received by the company with the application for shares must be deposited in a scheduled bank. Hence, before issuing prospectus, the Board of Directors appoint bankers by passing a resolution to that effect. For opening an account with the bank, the secretary has to make an application to the bank along with a copy of the memorandum of association, certificate of incorporation, a certified copy of the board resolution authorizing the opening of a bank account and specimen signatures of the persons who operate the account.

4. Commencement of Business

A public company cannot commence business without obtaining from the Registrar a certificate called 'certificate to commence business'. To obtain this certificate the following conditions must be fulfilled:

1. .A prospectus or a 'statement ill lieu of prospectus' has to be filed with the Registrar of companies. A statement in lieu of prospectus has to be prepared by those companies, which do not find it necessary to issue a prospectus for the issue of their shares. The statement must include all the information which a prospectus must contain under the law; that is:
2. The number of shares allotted is not less than the minimum subscription mentioned in the prospectus (or a statement in lieu of prospectus).
3. The directors have taken up and paid for their qualification shares. The amount paid on a share by them is not less than the amount paid by other members.

4. The declaration that no money is liable to become refundable to applicants for shares for reason .of failure on the part of the company to apply for, or to obtain permission for, the shares or debentures dealt !n any recognized stock exchange.
5. A declaration by one of the directors or the secretary, or secretary in whole time to the effect that all the conditions regarding the commencement of business have been complied with.
6. An application must be made by the company to the register of companies requesting him to agent the Business Commencement Certificate

Minimum Subscription

The minimum subscription is the minimum amount, which in the opinion of the directors or signatories to the memorandum, is required to commence business. In the case of a public company the registrar will issue the certificate to commence business only when the amount raised by allotting shares, is not less than the amount equivalent to the minimum subscription mentioned in the prospectus.

The amount fixed, as 'minimum subscription' must be sufficient to provide for: (a) Purchase price of any property bought or to be bought;

(b) Preliminary expenses and commission payable by the company;

(c) The repayment of sums borrowed to provide for the foregoing; (d) Working capital; and

(e) Any other expenditure. Certificate of Commence of the Business

The Registrar after receiving the declaration of compliance with the provisions of Section

149 from the secretary or one of the directors along with the required filing fees, will scrutinize the declaration and, if satisfied, will issue a certificate to commence business. From the date of the issue of this certificate, the company is entitled to commence business and also e mpowered

'to exercise its borrowing powers.

Further the company should get this certificate within one year of its incorporation. All ccntracts entered into between the date of incorporation and the date of commencement of

business are provisional and would become binding on the company automatically only after it is entitled to commence business.

Duties of the Secretary be fore and afterincorporation

Duties before incorporation

Before incorporation, the secretary has to assist the promoters in performing preparatory work and in fulfilling many legal formalities. He has to assist the promoters in convening and conducting meetings, .drawing up preliminary contracts and documents required for registration. At this stage, he may also take the help of specialists such as a solicitor and a chartered accountant. The duties to be performed by the secretary before incorporation are as follows:

1. To help the promoter in making a detailed, investigation of the proposed venture.

2. If necessary, on the advice of the promoters to secure the opinion of the experts in different fields on the proposed venture.
3. To help the promoters in drawing up the financial plan for the proposed venture.

4. To attend to all preliminary meetings of the promoters, keep a record of proceeding of their meetings and to help in the discussion
5. To secure the approval of the Registrar for the proposed name of the venture.

6. To help the promoters in the preparation of preliminary contracts

7. To help the promoters in the drafting and finalizing of documents such as memorandum, articles of association etc,.
8. To follow the guidelines issued by SEBI

9. To see that all requirements of the Acts as to incorporation and registration are complied with and that documents such as memorandum, articles, etc., with the required stamp duty, filing fees and registration charges are duly filed with the Registrar.
10. To collect the certificate of incorporation from the Registrar.

11. To send a notice of the registered address of the company to the Registrar within 30 days of the date of registration.

Duties of the Secretary after Incorporation:

1. To make himself thoroughly conversant with the contents of the memorandum and articles of association.
2. To prepare the draft of prospectus or statement in lieu of prospectus.

3. To call the first board meeting and get the draft prospectus, preliminary contract etc,. approved by the board.
4. To see that his own appointment is made and confirmed at the first board meeting

5. To get the necessary resolution passed for the appointment of bankers, legal advisers a nd other responsible officers of the company.

6. To arrange for the listing of securities of the company

7. To arrange for the opening of a bank account as per the directors of the board.

8. To secure the necessary forms and stationery and to arrange for the preparation of the common seal of the company.

9. To see that the prospectus or statement in lieu of prospectus is filed with the Registrar

and to arrange for the issue of the prospectus to the public.

10. To arrange with the bankers to receive the application money from the intending investors

11. To arrange a board meeting as soon as the minimum subscription is reached and to get the necessary resolution passed for allotment of shares.

12. To arrange for the refund of application money to those who have not been allotted shares.

13. To issue letters of allotment/regret to applicants as per the decision of the board.

14. To see that all the legal requirements for commencement of business are complied with.

POSSIBLE QUESTIONS.

PART A (One Marks – Online Examination)

PART B (2 Marks)

1.Define Company

2.Write a short note on NCLT

3.Explain Lifting of the corporate Veil

4.Write a short note on unlimited Liabilities

5.Explain Companies limited by guarantee

6.What are the steps in formation of companies?

7.Write a short note on Promoters?

8.Explain Perpetual Succession

9.What is common seal?

10.Write a short note on Transferability of Shares.

PART C (6 Marks)

1.Explain the characteristics of the Company?

2.What are the Different types of Companies?

3.Explain about formation of the company?

4.Write about the Various Administration of company?

5.Difference between private limited and public limited companies?

6.Explain "A company is a legal entity district from its members."?

7.Discuss the merits and demerits of company form of organisation?

8.How is company formed under the companies Act? Enumerate the various documents to be filled with the Registrar.

9.Briefly state the different types of incorporated companies.

10.Explain NCLT and NCLAT?

s.no	unit -I	Option A	Option B	Option C	Option D	**ANSWERS**
1	The traditional form of business does not consists of _____	Company	Sole Proprietorship	Hindu undivided Family	Partnership Firms	**Company**
2	the companies in India are regulated by the	Companies Act 1956	Companies Act 1961	Companies Act 1946	Companies Act 1986	**Companies Act 1956**
3	Company is an _____	natural Person	artificial person	normal person	non-natural	**artificial person**
4	A group of persons associated together for the attainment of some common end, social is a _____	Partnership firm	Sole proprietorship	co-operative society	company	**company**
5	The term "Company" also referred to a _____	local authority	body corporate	juridical person	natural person	**body corporate**
6	Perpetual succession means _____	continuity of life	lifetime of the company	duration	Winding up date	**continuity of life**
7	Any contract entered into by a company, to be valid, must bear _____	the seal in the name of the company	Logo of the Company	Auditor Signature	Members Signature	**the seal in the name of the company**
8	The minimum number of members for a public limited company is _____	2	3	7	10	**7**
9	The existence of a company comes to a close _____	on the death of all its promoters	on death of all the directors of the Board	on transfer of shares by most of its original members	on winding up of the company	**on winding up of the company**
10	A preference share has priority in _____	dividend only	only in return of capital at the time of winding up	voting rights	both dividend and return of capital on winding up	**dividend only**
11	Shareholders are the _____ of the Company	Creditors	Owners	Debtors	Financiers	**Owners**
12	The persons or representatives elected by the shareholders to manage the day-to-day affairs of the company are individually known as _____	Members	Group	Board	Crowd	**Board**
13	Appointment of director to be voted	individually	group	set	crowd	**individually**

	_____					
14	_____ continues its business even though members of the business come or go or death of its members	Partnership firm	Sole proprietorship	co-operative society	company	**company**
15	____ is an artificial person created by law	Company	Trustee	Partnership Firm	Sole Proprietor	**Company**
16	A manager is appointed for a period of not more than _____	3 years	Seven Years	Five years	Two years	**Five years**
17	Shares means share in the _____ of the company.	Liability	Capital	Assets	Loan	**Capital**
18	The first directors of a company are appointed by the_____	Subscribers to the memorandum	Central Government	Shareholders	Debenture holders	**Subscribers to the memorandum**
19	At least _____of the total number of directors of a public company shall be rotational directors	one – third	two – fourth	two – fifth	two – third	**two – third**
20	__ is the passing of title or property in shares by operation of law	Transfer	Transmission	Estopel	Legal Deed	**Transmission**
21	Director has to acquire qualification shares within _____ after his appointment	six months	three months	one month	two months	**two months**
22	The approval of the _____ is required for the appointment or re-appointment of a managing director	Central Government	Promoters	Shareholders	Board of Directors	**Central Government**
23	___ is a person who is incompetent to enter into any contract	Minor	Foreigners	Trustee	Married Women	**Minor**
24	A manager can only be _____	a firm	a body corporate	an individual	HUF	**an individual**
25	A person can be the manager in _____ company at a time	three	ten	twenty	one	**one**
26	The business of the Company is regulated and controlled by the _____	Central Government	Company Law Board	Shareholders	Board of Directors	**Board of Directors**
27	The person who holds the share or shares of a company is called _____	a shareholder	a debenture holder	creditors	debtors	**a shareholder**
28	Preference shares are shares, which have _____	preferential rights	voting right	right o attend meeting	right to call for meeting	**preferential rights**
29	_____ are those, which are not preference shares	Preference shares	Equity shares	debenture	redeemable preference shares	**Equity shares**
30	Equity shares are also called as _____	preferential shares	Ownership shares	creditorship shares	debenture	**Ownership shares**

31	Any excess profit paid over the preference shares are distributed to _____	equity shareholders	board of directors	debenture holders	chairman	**equity shareholders**
32	The rate of dividend on preference shares remains _____	flexible	minimum	fixed	maximum	**fixed**
33	Equity share capital is considered as _____ capital	risk free	safe	secured	risk	**risk**
34	Bonus shares are shares issued only to _____	existing shareholders	new shareholders	creditors of the company	financial institutions	**existing shareholders**
35	A _____ is a document issued by a company under its common seal specifying the number of shares held by a member	share transfer certificate	register	share certificate	list of members	**share certificate**
36	A shareholder is a person who buys and holds shares in a company having a _____	profit	share capital	members	capital	**share capital**
37	Members of the company may delegate certain powers to the company's _____ to run the company on their behalf	secretary	government	directors	chairman	**directors**
38	Any person who is_____ may become member of a company	competent	lunatic	insolvent	unsound mind	**competent**
39	The subsequent directors are elected by the _____ at the general meeting	directors	shareholders	secretary	chairman	**shareholders**
40	The directors have right to recommend the payment of _____	share capital	dividend	interest	profit	**dividend**
41	The duties of directors may be classified in to _____ categories	four	five	two	three	**two**
42	The position of directors in respect of the property of the company is that of a _____	agent	security	promoters	trustee	**trustee**
43	If there is any misstatement in the prospectus., in such case, directors may be awarded _____ imprisonment and a fine of Rs.5,000/-	two years	ten years	five years	seven years	**two years**
44	The companies Act defines a managing director under Section _____	265	262	267	269	**267**
45	The sanction of the _____ is required for any change in the managing director's agreement	State Government	Shareholders	Board of Directors	Central Government	**Central Government**
46	A person cannot be appointed as a managing director of more than	two	five	three	Seven	**Two**

	_____ public companies at a time					
47	The directors are appointed for a period not exceeding _____ at a time	two years	five years	three years	seven years	**three years**
48	The managing director is considered as an _____ of the board of directors	servant	brokers	dealers	agent	**agent**
49	The directors are considered as agents of the _____ of the company	Creditors	shareholders	debenture holders	bankers	**shareholders**
50	A company can appoint a _____ along with a managing director or a manager.	secretary	part time secretary	chairman	whole time director	**whole time director**
51	The appointment of a managing director does not require the consent of the _____	employees	manager	shareholders	member	**shareholders**
52	A managing director must be a _____ of the company.	director	Member	employee	manager	**director**
53	The remuneration of manager must not exceed _____ of the net profits	3%	10%	2%	5%	**5%**
54	A manager is appointed by the _____	managing director	board of directors	secretary	chairman	**board of directors**
55	A managing director is a _____ of the board and can participate in board meetings	servant	employee	member	officer	**member**
56	A manager is only an _____ of the company and cannot be a member of the board	employee	servant	agent	dealer	**employee**
57	The 2013 Act increases the limit for number of directorships that can be held by an individual from 12 to _____	13	14	15	16	**15**
58	The _____ in the draft rules has prescribed the minimum number of independent directors in case of public companies	central government	Company Law Board	promoters	state government	**central government**
59	The 2013 Act requires every listed public company to have at least _____ of the total number of directors as independent directors	one-fourth	two – fourth	one-third	two-third	**one-third**
60	The _____ Act makes an attempt to distinguish between the liability of an independent director and non-executive director from the rest of the board	2003	2013	2015	1993	**2013**

UNIT-II- Documents

SYLLABUS

Introduction: Documents - memorandum of association, Articles of association, Doctrine of constructive notice and indoor management, prospectus- shelf and red herring prospectus, Misstatement in prospectus, GDR; Book building, Issue, Allotment and Forfeiture of shares, Transmission of shares, Buyback and provision regarding buyback; issue of bonus shares.

Meaning;

The Board of directors also have the same right to decline registration as they would have had in the case of transfer of shares before death. But if the company unduly refuses to accept a transmission, the same remedies are available to the legal representative as in the case of a transfer namely, an appeal to the tribunal under Section 111.

For the incorporation or registration of a company two important documents are required to be prepared and filed with the Registrar of Companies. They are:

1. Memorandum of Association

2. Article of Association

The Memorandum of Association is compulsory for every company. But the Articles of Association are not compulsory for a Public Limited Company. Having share capital. A public limited company having share capital can have its own Article of Association or can adopt Table 'A' (i.e. model articles given in the companies Act) as its Articles of Association by ,merely making an endorsement on Memorandum ofAssociation to that effect. If a public limited

company wishes to raise capital or subscribe shares/debentures public, in such cases, the public limited company must issue a prospectus. Therefore, Memorandum of Association, Article of Association & prospectus are important documents of companies.

M EM ORANDUM OF ASSOCIATION

The Memorandum of Association is the basic or most important document for the incorporation or registration of every Joint Stock company. The Memorandum of Association is the life-giving document of the company. In other words, it is the document which brings the company into existence. It is the charter or constitution of the company containing the fundamental conditions upon which the company is incorporated. It is the foundation on which

the structure of the company is built. It contains the objects or purposes of the incorporation of the company and defines or determines the external operations of the company (i.e. company's relationship or dealing with the creditors & other outsides).

Memorandum of association can be defined as," The purpose of the memorandum is to enable the shareholders, creditors and those who deal with the company to know what is its permitted range of enterprise"

The Memorandum has to be divided into-suitable paragraphs, constructively numbered and printed. It must be signed by every one of the subscribers in the presence of a witness who shall attest the signature. Every subscriber must give his address and descriptions and must take at least one share. The Memorandum of a company limited by shares must contain the fo llowing clauses:

- Name clause

- Situation clause

- Object clause
- Liability clause
- Capital clause
- Association clause

Importance:

The Memorandum of Association is important for a joint stock company for the following reasons:

1. It is necessary for the incorporation of the company.
2. It determines the jurisdiction of the Registrar and the court by stating the registered office of the company.
3. It states the objectives and powers of the company for the information of the public.
4. It binds the company to carry out only those acts included in the object clause.
5. It states the authorized capital of the company and its division into shares of fixed amount.
6. It throws light on the liability of the members of the company.
7. It governs the articles of association.

CONTENTS:

The Memorandum of association of every company must contain the following clauses:

1. Name Clause:

This clause states the name of the company.

In the context of the name clause, the following points may be borne in mind:

1) A name is considered undesirable, when it includes words like 'Government', 'State', 'Municipality', etc., implying patronage or support of the Government, State or

Municipality, without the express permission of such authority.

2) A name is considered undesirable when it is identical with or too closely resembles the name of an existing company.

3) The name of the company must end with the word "Limited" in the case of a public company or the words "Private Limited" in the case of a private limited company.

4) The purpose of adding the word "Limited" or the words "Private limited" is to enable all those dealing with the company to know that the liability of the members of the company is limited.

5) Once a company is registered with a name, the name of the company must be painted on signboards and displayed outside every office or place of business of the company. The name must also be engraved in legible characters on the seal-of the company, on its letter heads, notices, invoices, receipts, bills of exchange, advertisements, etc, .

However, if a company is 'formed not with the object of declaring dividends, but to promote science, culture, etc, .The Central Government may permit the company to drop the word 'limited'.

2. Situation Clause or Domicile Clause:

1) This clause states the state in which the registered office of the company is to be situated.

2) The name of the State, in which the registered office of the company is to be situated, is stated in the Memorandum.

3) The provision insisting on the mere 'State' has been made to avoid any unnecessary legal formalities and expenses, if there is a subsequent change in the address of the company.

4) It determines even the nationality of the company, i.e., whether the company is an

Indian company or a foreign company.

3. Object clause:

1) Of all the clauses in the memorandum, the object clause is the most important.

This clause states the objects or purposes and powers of the company. It should specify in unambiguous languages the objects for which the company is formed. Great care should be taken in drawing up this clause, as the company will not be allowed to do any business, which is not specifically mentioned here.

2) The objects stated in this clause must not be contrary to the provisions of the

Companies Act and the general law of the country. The objects stated should be as wide as possible because a company cannot carry out objects which are not included in this clause. Acts done by 'the company which are not included in this clause are 'Ultra Vires' and void [i.e., invalid}. "Ultra" mean "beyond" and "Vires" means "authority or right". Therefore "Ultra Vires" means acting beyond authority

3) As it is difficult to alter the object clause later, it is necessary that promoters

should include in this clause all possible types of business (activities) in which a company may engage in the future.

4) According to the amendment to the Companies Act made in 1965, the object

clause of a company formed after the commencement of the Amendment Act, must contain

i. (a) Main objects of the company and objects incidental or ancillary, to the attainment of these main objects.

(b) Other objects of the company not included above

ii. In case the objects are not to remain confined to one state, states whose territories the objects extend.

4. Liability Clause

This clause states that the liability of members is limited to the face value of the shares held by them. If a member has already paid some amount on the shares, he can be called upon to pay only the unpaid amount on the shares.

5. Capital Clause

1) The capital clause states the registered, authorized or nominal capital of the company (i.e. the minimum capital with which the company is proposed to be registered) and the division of the authorized share capital into shares of fixed amount.

2) In case the capital of the company consists of different classes of shares, then, the division of the total authorized capital into different classes of shares and the face value of shares of each class are also stated in this clause.

3) The rights and privileges attached to the different classes of shares are specified in

the Articles of Association.

4) It is better to fix the authorized capital at a sufficiently higher figure so that there would be adequate provision for further issue of shares later on to finance the extension or expansion of the company's business.

6. Association Clause, Subscription Clause or Declaration Clause:

1) This clause contains a declaration by the subscribers to the memorandum that they are desirous of forming themselves into a company in pursuance of the memorandum and agreed to take up and pay for the number of shares in the capital of the company noted against their names. The subscribers should sign their names and state their full addresses and the number of shares taken up by them.

2) The declaration clause should be signed by at least seven persons in the case of

a public company, and by two persons in the case of private company.

3) Further, the signatures of the subscribes must be witnessed by at least one who should give his signature, name, full address, description and occupation.

ALTERATION OF M EM ORANDUM OF ASSOCIATION

The fundamental conditions or compulsory clauses found in the memorandum of association cannot be altered ordinarily as a routine thing. Such a provision is made in order to protect the interests of the creditors and other members of the public who deal with the company as well as the interests of the shareholders of the company. It is because of this provision that the memorandum of association is considered as an unalterable charter of a company.

However, the Companies Act has made provision for the alteration of the memorandum of

association in certain cases and to certain extent.

1. Alteration of the Name clause:

The alteration of the name clause can be considered under three heads. They are

a) When a company is registered with a name which is identical with or similar to the name of an existing company by inadvertence (i.e. by mistake) ---ordinary resolution should be passed at Extraordinary General Meeting.

b) When the Central Government directs a company to change its name--- ordinary

resolution should be passed at Extraordinary General Meeting.

c) When a company wants to change its name on its own accord --special resolution should be passed at Extraordinary General Meeting.

Procedure to be followed to change the Name clause:

1. The name of a company can be altered by passing a specie' resolution at the

Extraordinary General Meeting.

2. Obtaining the approval of the Central Government for the change of name

3. Filing of a copy of the special resolution with the Registrar.

4. Filing of the Central Government's approval for the change with the Registrar.

5. Obtaining the fresh or new certificate of incorporation with the changed name.

6. Filing of the altered copies of Memorandum of Association and Article of Association with the Registrar.

7. Incorporating the change of name in various documents.

Duties of the Secretary:

The procedure to be followed by the secretary to change th~ name clause can be summed up as follows:

a) The secretary has to ascertain from the Registrar of Companies whether the proposed name is undesirable.

b) If the Registrar informs him that the proposed name is undesirable, the secretary has to obtain a written consent from the Central Government for the change of name.

c) The secretary has to arrange a board meeting for the purpose of recommending the changed name to be members and to convene an Extraordinary General Meeting.

d) The Secretary has to get a special resolution passed at the extraordinary general meeting and get copies of the special resolution signed by the chairman of the meeting.

e) The secretary has to file a copy of the special resolution with the Registrar within 30 days of passing of the resolution.

f) On filing of the resolution, the registrar makes the necessary change in the register and issues a fresh certificate of incorporation with the changed name.

g) The secretary has to arrange for the changing at name on all the documents of the company, and for getting the new seal approved by the board, he should also notify all parties dealing with the company, of the change of name.

h) Finally, the secretary has to arrange for the changing of name on all the documents of the Company, and for getting the new seal approved by the board. He should also notify all parties dealing with the Company, of the change of name.

2. Alteration of Domicile clause situation clause or registered office clause.

The alteration or change of the domicile clause is possible only when such a change enable s the company to meet any of the purposes. Such as:

a) To carryon its business more economically or efficiently. b) To attain its main purpose by new or improved means.

c) To enlarge or change its local area of operations.

d) To carry on some business which under existing circumstances can be conveniently or advantageously combined with present business of the company.

e) To restrict or abandon any of the objects specified under the objects clause of the

memorandum of association.

f) To sell or dispose of the whole or any part of undertaking of the company. g) To amalgamate the company with any other company or body of persons.

To change of the registered office of a company can be considered under three heads:

a) Change of the registered office of a company from one locality to another locality inthe same city, town or village.

b) Change of the registered office of a company from one city, town or village to another city, town or village in the same state.

c) Change of the registered office of a company from one state to another state.

a) Change of the registered office of a company from one locality to another locality in the same city, town or village.

Change of the registered office from one locality to another locality in the same city,

town or village can be easily effected by a company. For this purpose, the following procedure or steps should be taken:-

Passing of a resolution at the board meeting.

Giving of a notice of change of location to the Registrar.

Giving a public notice.

b) Change of the Registered Office of a company from one city, town or village to another city, town or village in the same state.

A company can change its registered office from one city, town or village to another

c) Change of Registered office of a company from one state to another state. A company can also change its registered office from one state to another state. But, for such a change of location,

a lengthy procedure has been prescribed by the Companies Act. The procedure to be followed for such a change is as follows:

- Passing a special resolution at the extraordinary general meeting.
- Obtaining the sanction of the Company Law Board for the change.
- Filing of a copy of the special resolution with the Registrar.

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DUTIES OF SECRETARY

a) He must convene a board meeting to decide about the change of location and to fix the date, time, place and agenda of the extraordinary general meeting of the shareholders required to be held for approving the change of location.

b) He must give notice of the extraordinary general meeting to all the members along

with the draft special resolution and the explanatory statement giving the reasons for the change.

c) He should make the necessary arrangements for the extraordinary general meeting.

d) At the extraordinary general meeting of the members, he should see that the special resolution is passed, approving the change of location.

e) He should give a copy of the special resolution passed at the extraordinary general

meeting along with the explanatory statement to the Registrar of Companies within

30 days of passing the resolution.

f) He should obtain the confirmation or sanction of the Company Law Board for the change of location,

g) He should file copies of the Company Law Board's sanction for the change of

Procedure to be followed to change the objects clause:

The objects clause can be altered by adopting the following procedure

1. Passing of a special resolution at the extraordinary general meeting.

2. Filing of a copy of the special resolution with the registrar.
3. Obtaining the confirmation or sanction of the company law board.
4. Filing of a certified copy of confirmation order of the company law board with the registrar.
5. Filing of the altered copy of the memorandum of the association with the registrar.
6. Obtaining the certificate of registration of the change.

Steps (Secretarial Procedure) to change the objects clause:

The Secretary has to take the following steps to change the objects clause:

1. To arrange a board meeting at which the directors discuss the propo sed change and also approve the explanatory statement which will be sent to the members along with the notice. The board also resolves to call an extraordinary meeting to pass a special resolution.
2. To send notice of the extraordinary general meeting with an explanatory statement to

all members and also to debenture holders and creditors whose interest may be affected by the proposed change.

3. T o get the special resolution passed and to make a petition to the Central Government for its sanction for the change. At the same time notice of the company's petition should be sent to the Registrar.
4. If any person objects to the alteration, either his consent to the alteration has to be obtained or his debt or claim has to be discharged or secured by adequate provision of security. This arrangement should also be brought to he notice of the Central Government.
5. On receipt of the confirmation order from the Central Government, a copy of the

order and a copy of the altered memorandum should be filed with Registrar within three months from the date of the board's order.

The Registrar will register the change and will issue a certificate of registration within a month. The alteration will be effective only on getting a certificate of registration from the Registrar.

4. Alteration of Liability clause:

The liability clause can be altered so as to make the liability of the directors unlimited. However, the liability of the shareholder cannot be made unlimited. The liability clause can be altered by passing a special resolution. A copy of the resolution must be filed with the Registrar within 30 days.

5. Alteration of Subscription Clause

The subscription clause of the memorandum of association cannot be altered.

6. Alteration of Capital

The procedure for alteration of capital and power to make such an alteration is generally provided in the articles of a company. If the power and procedure are not laid down in the articles, the company must first alter the articles suitably by passing a special resolution. If so authorized by the articles, a company may in a general meeting alter its capital for the following purposes:

(a) For increasing the capital. (b) For the reduction of capital.

In order to increase its share capital, the company has to pass only an ordinary resolution. But to reduce the share capital, there is a need for the company to pass a special resolution and also to obtain the sanction of the court.

1. Increase of Share Capital

A company may increase its share capital in two way, viz. (a) by the issue of un issued shares, and (b) by increasing its authorized capital.

Increase of Share Capital by the Issue of Unissued shares (sec.81)

When the issued capital is less than the authorized capital, a company after the expiry of two years from the date of its formation or one year from the first allotment of shares, whichever is earlier, may increase its shares capital by a further issue of unissued shares and make it nearer or equal to the authorized capital. For instance, if the authorized capital of the company is Rs.25

Lakhs and the issued and subscribed capital is Rs.15 lakhs, the company may increase its capital

by a further issue of shares to the maximum extent of Rs.10 Lakhs, i.e. the amount of the unissued capital.

The provisions with regard to increase of subscribed capital by the issue of unissued shares are as follows:

a. The offer of shares shall be made to the present equity shareholders on a pro-rata basis.

b. The offer for such shares must be made by a notice specifying the number of shares offered and the offer should be open to members for at least 15 days.

c. The members shall also be given the right of renunciation of the offer in favour of any other person.

d. After the expiry of the time limit of 15 days, the board can dispose of the balance of the shares not taken up by the members in the manner most beneficial to the company.

e. Shares may be offered to any member of the public in the open market. However I they have to pass a special resolution or pass an ordinary resolution in the general meeting and also obtain the permission of the Central govt.

2. Increase in the authorized capital:

If the company has already issued the shares for the entire amount of its authorized capital, and if it wants to increase its authorized capital by further issue of shares, it can do so by passing a resolution in the general meeting. First of all a company has to alter the capital clause of the memorandum of

association of the company. Usually the articles empower the company to alter its share capital by passing an ordinary resolution. The steps involved for increasing the authorized capital of the company are as follows:-

a) If the articles do not empower the company to increase its authorized capital it must first alter the articles suitably by passing a special resolution in the general meeting.

b) A meeting of the board will be held to consider the plan of the issue, the terms of issue

and to fix the date of the extra ordinary general meeting.

c) The register of transfer will be closed for the purpose of preparing the list of members. d) The secretary will issue notices to the members relating to the general meeting.

e) The company will pass a resolution at the general meeting for increasing the authorized capital.

f) The secretary files with the registrar a notice of increase of capital specifying the amount within 30 days of passing the resolution and pays the necessary fees and capital duties.

g) Necessary changes in the memorandum and articles of association will be effected, and

altered copies of these documents will be filed with the Registrar within three months of alteration.

h) To arrange with the company's bankers to receive the letter of acceptance, along with the application money.

i) After the expiry of the time limit for receiving letters of acceptance, and checking the

entries and particulars in the provisional allotment sheet. j) To file a copy of letter of rights with the registrar.

k) To arrange another board meeting to finalize the allotment and to, approve the issue of final allotment.

l) Disposal of the balance of shares not taken up by the existing members by the, directors

in the manner, which is beneficial to the company.

m) To issue allotment letters to all the allotees and file a return of allotment with the registrar within 30 days of the final allotment.

n) Finally the secretary will have to make the final entries in the registrar of members and issue the shares certificate to all the allotees.

REDUCTION OF SHARE CAPITAL

It means reduction of issued, subscribed and paid-up capital of company by a special resolution under section 100 of the act. The act provides that the company can reduce its share capital only if:

a) When it is authorized by its articles to do so.

b) By a special resolution passed at the general meeting. c) By obtaining the permission of creditors.

d) By obtaining the sanction of the court. However a company may feel the necessity of

reducing Its share capital under the following circumstances:

When its capital is more than its requirements.

When it wants to write down its asset at their real value.

When it is unable to declare a satisfactory rate of dividend on the paid-up share capital.

Methods of reducing share capital

Following are the methods of reducing share capital:

a) By extinguishing the liability of members for uncalled capital.

b) By canceling any part of the paid-up capital, which is lost or unrepresented by available assets.

c) By repaying of capital, which is in excess of the need of the company.

Duties of the secretary in connection with reduction of share capital

The steps to be taken by the secretary in their connection are as follows:

a) To arrange a broad meeting to consider a plan of reduction and fix the date of extra ordinary general meeting.

b) To send notice of extra ordinary general meeting to all the shareholders along with the

explanatory statement.

c) To get a special resolution passed at the extra ordinary general meeting for reduction of capital and to get the minute signed by the chairman of the meeting.

d) To file the copies of the special resolution and minutes with the registrar.

e) To make an application to the court along with the copies of special resolution and minutes for the confirmation order.

f) To take necessary steps for the settlement of the list of objecting creditors and for the satisfaction of their clients.

g) To receive the court order of confirmation for reduction of share capital.

h) To file a copy of the court order describing particulars of reduction with the registrar. i) To obtain the certificate of registration of the court order.

j) To file altered copies. of memorandum of association and articles of association with the registrar.

k) To take necessary steps to execute the scheme of reduction of the capital.

l) To add the words "and reduced" in the company's name for a certain period.

ARTICLES OF ASSOCIATION

The articles of association constitute the second important document for the incorporation of a joint stock company. The articles of association are a document, which contains the bye- laws or the rules and regulations for the internal management of a company, i.e., for the day-to- day conduct of the business of the company. They govern the relationship between the company and its members and also the relationship between members themselves. However, they have nothing to do with the outsiders.

The preparation of articles by a company limited by shares is not compulsory. In case the articles are not prepared, the company must adopt Table 'A' of the Companies Act, which

contains model rules and regulations. If the company's own articles are silent on any point, the relevant provisions of Table 'A' will apply. It may be noted here that a private company cannot adopt Table 'A' and it should have its own articles. Similarly, an unlimited company and a company limited by guarantee should have its own articles.

Importance of Articles of Association

The articles of association are next in importance to the memorandum of association. While the memorandum of association lays down the objects or purposes for which a company is formed, the articles of association prescribe the rules and regulations for the attainment of the objects contained in the memorandum of association. The articles of association provide the rules and regulations for the internal management or the day-to-day administration of the company and embody the powers of the directors and the officers of the company as well as the rights and duties of the shareholders or members of the company. They also regulate the relationship between the company and its employees, between the company and its members and between the members themselves.

Contents or Provisions:

The Articles contain rules and regulations regarding:

1. Share capital and variation of rights.

2. Exercise of lien by the company.

3. Calls on shares.

4. Transfer, transmission, forfeiture and surrender of shares.

5. Issues of share warrant.

6. Alteration and reduction of capital.

7. Voting powers of members.

8. Borrowing Powers.

9. Proceeding at the board and at the general body meetings.

10. Appointment, powers, duties qualifications! remuneration etc,. of directors

11. Appointment of manager, managing director and secretary .

12. Dividends and reserves.

13. Maintenance of books of accounts and their audit

14. The company's seal.

15. Winding up. ,

Alteration of Articles of Association;-

The articles of association of a company can, at any time, be altered by a special resolution, but the alteration should be restricted to within the scope of the company's powers as laid down by its memorandum. Thought there is no need to get the sanction of the court for alteration of Articles, he court can disallow any alteration if it is unfair or inequitable between the members and contains something that is illegal.

The power to alter the Articles is wide, but it is subject to a large number of limitations such as:

1. It should not violate any provision of the Companies Act and general or common law of the country.
2. It must be within the scope of Memorandum of Association of the company.

3. It should not break any existing contact.

4. It must be just and equitable. It must be in the best interests of the company as a whole and should not constitute a fraud on a small minority.
5. It must not impose on any member the obligation to subscribe for more shares or to increase

his liability on his existing shares.

6. The alteration must not be inconsistent with the alteration ordered by the court. The court has the power to alter a company's memorandum of association and articles of association in any way it thinks fit. As such, if the court has altered the articles of association of a company, the company cannot make any alteration, which is inconsistent with the court's order without the leave of the court.

7. No alteration should be made so as to enable the company to commit any breach of contract

with outsiders.

8. Any alteration requiring the approval of the Central Government can be made only with the approval of the Central Government. The approval of the Central Government is, usually, necessary to alter the following:

a. Conversion of public company into a private company.

b. Appointment or re-appointment of managing director, whole-time director, director not liable to retire by rotation and manager.

c. Increase in the remuneration of a managing director, whole-time director or manager.

Procedure to be followed for the alteration of the Articles of Association

1. Passing of a special resolution at the extraordinary general meeting.

2. Filing of a copy of special resolution with the registrar.

3. Obtaining the approval of the Central Government

4. Filing of the copy of the altered articles with the registrar.

5. Incorporating the alteration in the articles.

6. Making the copies of the altered articles of association available to the members.

the conditions of incorporation and defines the limits and powers of the company. Articles on the other hand, contain the bye-laws of the company for the conduct of its internal administration. They define the rights and duties of the directors, members, etc,

2. The Memorandum states the objects for which the company is established, whereas the Articles state the rules or manner of carrying out the business as stated in the Memorandum. They cannot provide anything contrary to the powers and objects set forth in the Memorandum.

3. A company cannot be incorporated without preparation and filing of the Memorandum

with the Registrar, whereas the preparation of article is not compulsory. If the articles are not prepared by any company, Table 'A' of the Companies Act is applied.

4. The Memorandum governs the external relations of the company i.e., relations between the company and the public including creditors, buyers, sellers, debtors, etc,: outsiders dealing with the company know what its permitted range of business is. The articles, on the other hand, define the

relationship between the members and the management of the company. Their main concern is to provide rules and regulations for the internal working of the company.

5. The Memorandum is a primary and fundamental document. It is the foundation of the company's structure and is responsible for the company's birth. It is .unchallenged on statutory matters. Articles of association are a secondary, subordinate and subsidiary document. They should be read and understood in the light of the memorandum. They complement and supplement the memorandum.

6. The Memorandum lays down the scope or area of the company beyond which the company cannot go. All acts of the company which are beyond its scope are ultra vires or illegal and they cannot be ratified by the company.

As Articles are subordinate to Memorandum, their activities should be confined to the area of scope of the Memorandum. However, all acts which are ultra vires the articles(beyond the scope of articles), but intra virus (within) the Memorandum are not void and can be ratified by the company by a special resolution.

7. The Memorandum can be altered only by a special resolution and subject to sanction of

the court or the Central Government as the case may be. The articles can be altered by a special resolution and sanction either from the court or the government is not necessary.

8. The Memorandum of association is subordinate only to the companies act. But the

articles of association are subordinate not only to the companies act, but also to the memorandum of association.

9. A memorandum of association is deemed to be an unalterable document, as far as the conditions are concerned. So, the conditions in the memorandum of association cannot be altered except in the mode and in the cases and to the extent for which express provision is made in the

Companies Act. On the other hand, the articles of association can be altered at any time and any number of times.

10. The procedure required by law to alter the memorandum of association is complicated.

But the procedure required bylaw to alter the articles is simple. The articles can be altered by passing a simple resolution.

TABLE 'A'

Meaning of Table 'A'

At the end of the Companies Act, in Schedule 1, a set of 99 articles are given as model articles of association for the benefit of public companies limited by shares. These model articles of association are known as Table 'A'.

Items found in Table 'A'

The items found in Table 'A' i.e., the model articles are:

1. Interpretation of certain terms.
2. Share capital and variation of rights
3. Lien on shares.
4. Calls on shares.

5. Transfer of shares,

6. Transmission of shares.

7. Forfeiture of shares.

8. Conversion of shares into stocks.

9. Share warrants.

10. Alteration and reduction of capital.

11. General meetings and proceedings at general meetings.

12. Votes of members.

13. Board of Directors.

14. Proceeding at board meetings.

15. Manager, managing directors and secretary.

16. Company's seal

17. Dividends and reserves.

18. Accounts.

19. Capitalisation of profits.

20. Winding up.

21. Indemnity to officers or agents of the company.

DOCTRINE OF INDOOR MANAGEMENT

While the doctrine of ‗constructive notice‘ seeks to protect the company against the outsiders, the principal of indoor management operates to protect the outsiders against the company. According to this doctrine, as laid down in Royal British Bank v. Turquand, (1856)

119 E.R. 886, persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum and articles, are not bound to inquire the regularity of any internal proceedings. In other words, while persons contracting with a company are presumed to know the provisions of the contents of the memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see that the company carries out its own internal regulations.

In Royal British Bank v. Turquand, the directors of a banking company were authorised by the articles to borrow on bonds such sums of money as should from time to time, by resolution of the company in general meeting, be authorised to borrow. The directors gave a bond to Turquand

without the authority of any such resolution. It was held that Turquand could sue the company on the strength of the bond, as he was entitled to assume that the necessary resolution had been passed. Lord Hatherly observed : ― Outsiders are bound to know the external position of the company,

but are not bound to know its indoor management‖. Section 290 Provides for the Validity of Acts of Directors - Acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason or any defect or disqualification or had terminated by virtue of any provisions contained in this Act or in the articles:

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown in the company to be invalid or to have terminated.

The object of the section is to protect persons dealing with the company outsiders as well as

members by providing that the acts of a person acting as director will be treated as valid although it may afterwards be discovered that his appointment was invalid or that it had terminated under any provision of this Act or the Articles of the company [Ram Raghubir Lal v. United Refineries (Burma) Ltd.,

(1932) 2 Com Cases 359; AIR 1931 Rang 139].

Relation of company with members and outsiders

The validation of the acts of unqualified directors may apply to circumstances from two different angles : (1) as between outsiders, strangers and the company as in Royal British Bank v. Turquand, (1956) 5 E&B 327, British Asbestos Co. Ltd. v. Boyd. (1903) 2 Ch 439 : (1900-3) All ER Rep 323; and Ram Buran Singh v. Mufassil Bank Ltd. AIR 1925 All 206; and (2) in relation to the internal affairs of the company as in Dawson v. African Consolidated Land & Trading Co., (1898) 1 Ch 6

(CA), where calls made by unqualified directors were held valid. Even if the public documents of the company, and the facts which are apparent, would make it clear that a director was not duly qualified to act, this will not oust the effect of the Section 290 (British Asbestos case) (supra). Similarly in Boschoek Proprietary Co. Ltd., v. Fuke, (1906) 1 Ch 148, a resolution of a general meeting convened by de facto directors was upheld.

Forgery and incompetent acts

This section does not apply where the act itself is not in the competence of the Board of directors, e.g. compromising unpaid calls under the guise of forfeiture, the transaction being ultra vires and invalid [Bhagirath Spinning & Wvg. Co. v. Balaji Bhavani Pawar, AIR 1930 Bom. 267].

Directors not aware of their disqualification The allotment and forfeiture of shares made by the directors who continued to act even after they were disqualified but were not aware of it, were saved by the Section 292. [Shiromani Sugar Mills Ltd. v. Debi Prasad, (1950) 20 Comp Cas 296: AIR 1950 All 508]. Where this section does not save the situation, the company may in general meeting ratify allotment of shares even if made by de facto directors with mala fide intentions [Bamford v. Bamford, (1969) 39 Com Cases 838 : (1969) 2 WLR (1107) (CA) and an appeal (1969) : 1All ER 969].

Where the directors in question were not aware of the fact that by virtue of certain provisions in the articles, they had vacated their office, their acts in passing resolutions for starting certain business transactions were held to be valid [Seth Mohan Lal v. Grain Chambers Ltd., (1968) 38 Comp Cases 543 : AIR 1968 SC 772; Shiromani Sugar Mills Ltd. v. Debi Prasad, (Supra).]

It is important to remember that the doctrine of ― constructive notice‖, can be invoked by the company and it does not operate against the company. It operates against the person who has failed to inquire but does not operate in his favour. But the doctrine of ― indoor management‖ can be invoked by the person dealing with the company and cannot be invoked by the company. An outsider is entitled to act on a certified copy of the resolution of the Board of directors delegating the powers of borrowing money to the managing director subject to the limitation mentioned therein [C.K. Siva Sankara Panicker v. Kerala State Financial Corporation, (1980) 50 Comp. Cas. 817 (Ker.)].

EXCEPTIONS TO THE DOCTRINE OF INDOOR M ANAGEM ENT

The above noted _doctrine of indoor management is, however, subject to certain exceptions. In other words, relief on the ground of _indoor management cannot be claimed by an outsider dealing with the company in the following circumstances.

1. Where the outsider had knowledge of irregularity —The rule does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company. Thus, a person knowing fully well that the directors do not have the authority to make the transaction but still enters into it, cannot seek protection under the rule of indoor management. In Howard v. Patent Ivory Co. (38 Ch. D 156), the articles of a company empowered the directors to borrow upto one thousand pounds only. They could, however, exceed the limit of one thousand pounds with the consent of the company in general meeting. Without such consent having been obtained, they borrowed 3,500 pounds from one of the directors who took debentures. The company refused to pay the amount.Held that, the debentures

were good to the extent of one thousand pounds only because the director had notice or was deemed to have the notice of the internal irregularity.

2. No knowledge of memorandum and articles — Again, the rule cannot be invoked in favour of

a person who did not consult the memorandum and articles and thus did not rely on them. In Rama Corporation v. Proved Tin & General Investment Co. (1952) 1All. ER 554, T was a director in the company. He, purporting to act on behalf of the company, entered into a contract

with the Rama Corporation and took a cheque from the latter. The articles of the company did provide that the directors could delegate their powers to one of them. But Rama Corporation people had never read the articles. Later, it was found that the directors of the company did not delegate their powers to T. The Plaintiff relied on the rule of indoor management. Held, they could not because they even did not know that power could be delegated.

3. Forgery — The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal abinitio. In the case of forgery it is not that there is absence of free consent but there is no consent at all. The person whose signatures have been forged is not even aware of the transaction, and the question of his consent being free or otherwise does not arise. Consequently, it is not that the title of the person is defective but there is no title at all. Therefore, howsoever clever the forgery might have been the personates acquire no rights at all. Thus, where the secretary of a company forged signatures of two of the directors required under the articles on a share certificate and issued certificate without a uthority, the applicants were refused registration as members of the company. The certificate was held to be nullity and the holder of the certificate was not allowed to take advantage of the doctrine of indoor management [Rouben v. Great Fingal Consolidated (1906) AC 439]. Forgery, in the case of a company, can take different forms. It may, besides forgery of the signatures of the authorised officials, include the execution of a document towards the personal discharge of an official‘s liability instead

of the liability of the company. Thus, a bill of exchange signed by the manager of a company with his own signature under words stating that he signed on behalf of the company, was held to be forgery when the bill was drawn in favour of a payee to whom the manager was personally indebted [Kreditbank Cassel v. Schenkers Ltd. (1927) 1 KB 826]. The bill in this case was held to be forged because it purported to be a different document from what it was in fact; it purported to be issued on behalf of the company in payment of its debt when in fact it was issued in payment of the manager's own debt.

4. Negligence — The _doctrine of indoor management', in no way, rewards those who behave negligently. Thus, where an officer of a company does something which shall not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer's authority. If he fails to make an enquiry, he is estopped from relying on the Rule. In Al Underwood v. Benkof Liverpool (1924) 1 KB 775, a person who was a sole director and principal shareholder of a company paid into his own account cheques drawn in favour of

the company. Held, that, the bank should have made inquiries as to the power of the director. The bank was put upon an enquiry and was accordingly not entitled to rely upon the ostensible authority of director.

Similarly, in B. Anand Behari Lal v. Dinshaw & Co. (Bankers) Ltd. AIR 1942

Oudh 417, an accountant of a company transferred some property of a company in favour of Anand Behari. On an action brought by him for breach of contract, the Court held the transfer to be void. It was observed that the power of transferring immovable property of the company could not be considered within the apparent authority of an accountant.

5. Again, the doctrine of indoor management does not apply where the question is in regard to the very existence of an agency. In Varkey Souriar v. Keraleeya Banking Co. Ltd. (1957) 27

Comp. Cas. 591 (Ker.), the Kerala High Court held that the _doctrine of indoor management' cannot apply where the question is not one as to scope of the power exercised by an apparent agent of a company but is in regard to the very existence of the agency.

6. This Doctrine is also not applicable where a pre-condition is required to be fulfilled before company itself can exercise a particular power. In other words, the act done is not merely ultra vires the directors/officers but ultra vires the company itself — Pacific Coast Coal Mines v. Arbuthnot (1917) AC
607.

In the end, it is worthwhile to mention that section 9 of the Companies Act, 1956 gives overriding force and effect to the provisions of the Act, notwithstanding anything to the contrary contained in the memorandum or articles of a company or in any agreement executed b y it or for that matter in any resolution of the company in general meeting or of its board of directors. A provision contained in the memorandum, articles, agreement or resolution to the extent to which it is repugnant to the provisions of the Act, will be regarded as void.

RED-HERRINGPROS PECTUS

"Red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered. The information memorandum and red-herring prospectus carry same obligations as are applicable in the case of prospectus. Every variation between the information memorandum and the red-herring prospectus shall be highlighted by the issuer company and shall be individually intimated to the

persons invited to subscribe to the securities. Section 60B(7) provides that the applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters.

The company or underwriters or bankers shall not encash subscription moneys or post-

dated cheques or stock-invest received in advance, before the date of opening of the issue, without having individually intimated the prospective subscribers of the variation and without having offered an opportunity to such prospective subscribers to withdraw their application and cancel their post-dated cheques or stock-invest or return of the subscription paid.

If a company or underwriter or banker to the issue acts contrary to this stipulation i.e. without

giving enough information of any variations or the particulars of withdrawing the offer or opportunity for cancelling the post-dated cheques or stock invest, such action shall be void and the applicant shall be entitled to receive a refund or return of his post-dated cheques or stock invests or subscription money or cancellation of application. The applicants are entitled to receive back their original applications and interest at the rate of 15% from date of encashment till payment or realisation.

Once the offer for securities is closed, a final prospectus stating therein the total capital raised whether by way of debt or share capital, the closing price of the securities and any other details which are not complete in the red-herring prospectus shall be filed with SEBI in the case of listed public company and in any other case with the Registrar of companies only.

ALLOTMENT OF SHARES

"Allotment" of shares means the act of appropriation by the Board of directors of the company out of the previously un-appropriated capital of a company of a certain number of shares to persons who have made applications for shares (In Re Calcutta Stock Exchange Association, AIR 1957 Cal. 438). It is on allotment that shares come into existence.

The re-issue of forfeited shares does not constitute appropriation out of unappropriated capital, and therefore is not an allotment within the meaning of Section 75(1) of the Companies Act,

1956 and a company need not file return in e-Form No. 2 in respect of the re-issue of forfeited shares.

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Notice of Allotment

An allotment is the acceptance of an offer to take shares by an applicant, and like any other acceptance it must be communicated. Thus, a binding contract between the company and the applicant could emerge only when the allotment is made by a resolution of the Board of directors and notice of such allotment has been given to the allottee. If the notice (i.e. the Allotment Advice/Letter of Allotment) is posted to the proper address of the allottee, the contract will result even if the allotment letter does not reach him or is delayed in post. It should be noted that the allotment and its communication result in a contract between the company and the allottee. The allottee does not automatically become a member of the company, until his name is placed on the register of members.

2. GENERAL PRINCIPLES REGARDING ALLOTMENT

The following general principles should be observed with regard to allotment of shares: (1) The allotment should be made by proper authority, i.e. the Board Directors of the company, or a committee authorised to allot shares on behalf of the Board.

(2) Allotment of shares must be made within a reasonable time (As per Section 6 of the Indian Contract Act, 1872, an offer must be accepted within a reasonable time). What is a reasonable time is a question of fact in each case. An applicant may refuse to take shares if the allotment is made after a long time

(3) The allotment should be absolute and unconditional. Shares must be alloted on same terms on

which they were applied for and as they are stated in the application for shares. Allotment of shares subject to certain conditions is also not valid. Similarly, if the number of shares alloted is less than those applied for, it cannot be termed as absolute allotment.

(4) The allotment must be communicated. As mentioned earlier posting of letter of allotment or allotment advice will be taken as a valid communication even if the letter is lost in transit

(5) Allotment against application only — No valid allotment can be made on an oral request. Section 41 requires that a person should agree in writing to become a member.

(6) Allotment should not be in contravention of any other law — If shares are allotted on an

application of a minor, the allotment will be void. Judicial pronouncement relating to allotment of shares

(A) Allotment made without proper authority will be invalid. Allotment of shares made by an

irregularly constituted Board of directors shall be invalid [Changa Mal v. Provisional Bank

(1914) ILR 36 All 412].

(B) It is necessary that the Board should be duly constituted and should pass a valid resolution of allotment at a valid meeting [Homes District Consolidated Gold Mines Re (1888) 39 Ch D 546 (CA)].

(C) An allotment may be valid even if some defect was there in the appointment of directors but which was subsequently discovered.(Section 290 and the Rule in Royal British Bank v. Turquand (1856) 6 E & B 327 : (1843-60) All ER Rep 435)

(D) An allotment by a Board irregularly constituted may be subsequently ratified by a regular

Board [Portugese Consolidated Copper Mines, (1889) 42 Ch. D 160 (CA)].

(E) A director who has joined in an allotment to himself will be estopped from alleging the invalidity of the allotment [Yark Tramways Co. v. Willows, (1882) 8 QBD 685 (CA)].

(F) The interval of about 6 months between application and allotment was held unreasonable

[Ramsgate Victoria Hotel Company v. Montefione (1866) LR 1 EX 109].

(G) Where an applicant applied for shares on the condition that he will be appointed as branch manager of company but later on the condition was breached, it was held that he is not bound by the allotment of shares [Ramanbhai v. Ghasi Ram (1918) BOM. LR 595].

(H) Grant applied for certain shares in a company, the company dispatched letter of allotment to

him which never reached him. It was held that he was liable for the balance amount due on the shares. [Household Fire And Carriage Accident Insurance Co. Ltd. Grant (1879) 4 E.D. 216]

(I) The mere entry of a shareholder‟s name in the company‟s register is insufficient to establish that an allotment was in fact made [Official Liquidator, Bellary Electric Supply Co. v. Kanni Ram Ramwoothmal (1933) 3 Com Cases 45; AIR 1933 Med 320].

(J) There can be no proper allotment of shares unless the applicant has been informed of the allotment [British and American Steam Navigation Co. Re. (1870) LR 10 Eq 659].

(K) A formal allotment is not necessary. It is enough if the applicant is made aware of the allotment. [Universal Banking Corpn. Re. Gunn's Case (1867) 3 Ch App 40].

3. STATUTORY PROVISIONS REGARDING ALLOTMENT

The Companies Act lays down the following conditions to be fulfilled before a Company can proceed to allot shares:

(a) The Company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchange(s) for permission for the shares or debentures to be dealt with in the re gional stock exchange or each of such stock exchanges [Section 73(1)]. If permission is not granted by any one of the stock exchanges named in the prospectus, the consequence by virtue of Section 73(1A) would render the entire allotment void. [Rishyashringa Jewellery Ltd. v. Stock Exchange

1995 6 SCL 227].

(b) The company shall file with the Registrar, a prospectus or a statement in lieu of prospectus in e-form 19 or e-form 20, as the case may be, before making an allotment signed by every person who is named therein as a director.

(c) The company shall receive in cash the amount payable on application which shall not be less than 5 percent of the nominal value of the shares and must keep in deposit the amount so received in a scheduled bank in a separate account till the allotment is made and until the certificate to commence business has been obtained under Section 149 of the Companies Act, 1956. [Section 69]

(d) Where such certificate has already been obtained, until the entire amount payable on application for shares in respect of the minimum subscription, as provided in the prospectus, has been received by the company. Share application money collected should be kept deposited in a separate account with bankers to the issue only [Rich Paints Ltd. v. Vadodara Stock Exchange Ltd. (1998) 15 SCC 128/92-Comp Cas 8 (Guj.)]. If the above conditions are not fulfilled within 120 days of the first issue of prospectus, all moneys shall be refunded forthwith. If not refunded within 130 days, the directors are jointly and severally liable to repay the amount together with interest @ 6% p.a. from the expiry of the one hundred and thirtieth day.

(e) No allotment shall be made where a prospectus is issued generally until the beginning of the fifth day after the date on which the prospectus is so issued or such later date as may be specified in the prospectus. This date is known as the "date of opening of the subscription list" (Section 72).

(f) Closing of the Subscription List — SEBI Issue of Capital and Disclosure Requirements Regulations, 2009 (ICDR)] provide that the subscription list must be kept open for atleast 3 working days and not more than 10 working days and in the case of infrastructure company, the maximum period is 21 working days. In case of Rights issue, the SEBI ICDR Regulations provide that the issue shall remain open for atleast 15 days and not more than 30 days.

(g) If the company having a share capital does not issue a prospectus, it cannot proceed with the allotment unless it files with the Registrar of Companies atleast 3 days before the first allotment, a Statement in lieu of prospectus in e-form 20 in Schedule III and must contain the particulars and reports set out therein.

3. ALLOTMENT OF SHARES/DEBENTURES TO BE LISTED ON STOCK

EXCHANGE

Section 73(1) provides that every company intending to offer shares or debentures to the public for subscription by issue of prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for enlistment of its shares or debentures.

Sub-section 73(1) was inserted by the Companies (Amendment) Act, 1988 making the

listing of all public issues compulsory with atleast one recognised stock exchange.

Section 73(1A) provides that where a prospectus states that application under Sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, then the allotment shall be void if the permission has not been granted by the stock exchange or each such stock exchange as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists.

However, where a stock exchange refuses to grant an application or fails to dispose it off within

10 weeks, the company may, under Section 22 of the Securities Contracts (Regulation) Act, 1956 appeal to the Securities Appellate Tribunal against the refusal:

(1) within 15 days from the date of the refusal, or

(2) within 15 days from the date of the expiry of 10 weeks. It can be seen that the obtaining of permission to deal is a condition precedent to allotment once the prospectus has stated that it has been or will be applied for.

Section 73(2) of the Companies Act, 1956 states that where the allotment is void under Section 73(1) because either the application has not been made for listing or the permission has not been granted, the company must repay the application money at once to the applicants, and if

it is not repaid within 8 days after the company becomes liable to repay, the company and every director of company who is an officer in default shall on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest not less than @ 4% but not more than @ 15% p.a.

Section 73(2A) provides that where permission has been granted by the recognised stock

exchange or exchanges, and the moneys received from applicants for shares or debentures are in excess of the aggregate of the application moneys relating to the shares or debentures allotted, the company must repay the excess amount forthwith without interest. If such money is not repaid within 8 days, then the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, (from the day the compa ny becomes liable to pay) be, jointly and severally, liable to repay the money with interest at such rate, not less than four percent and not more than fifteen percent as may be prescribed, having regard to length of the period of delay in making the repayment of such money [vide Rule 4D of the Companies (Central Government's) General Rules & Forms, 1956, 15 percent interest has been prescribed]. If default is made in complying with this provision then the company and every officer in default shall be liable to be fined upto Rs. 50,000 and where the repayment is not made within 6 months from the expiry of the 8th day, also with imprisonment upto one year [Section 73(2A) and (2B)].

Section 73(3) states that all moneys received from applicants for shares must be kept in a separate account maintained with a scheduled bank and they shall not be utilised for any purpose other than adjustment against allotment of shares or for repayment to the applicants.

As per Section 73(5), it shall be deemed that the permission has not been granted if the application for permission, for listing of companies shares, has not been disposed of within 10 weeks from the date of the closing of the subscription list. In CIT v. Henkel Spic India Ltd.

Comp. Cases 189 (2004) the Madras High Court held that any interest earned on application money deposited with the bankers, pending receipt of permission of listing on a stock exchange cannot be treated as money available to the company. The interest is an amount which accrues on a fund which is itself held in trust, until the allotment is completed and monies are returned to those to whom shares are not allotted. Therefore, only at a point, when the trust terminates, it can be stated that amount has accrued to the company as its income.

Basis of Allotment

Clause 45 of listing agreement requires that the allotment of securities offered to public shall be made within 30 days of closure of public Issue. In case the allotment is not made or refund order not dispatched to investors within 30 days from the date of closure of issue, then the Company shall pay interest @ 15% p.a. as per the listing agreement.

Over Subscription

According to SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009, no allotment shall be made by the issuer in excess of the specified securities offered through the offer document. However, in case of oversubscription, an allotment of not more than ten per cent of the net offer to public may be made for the purpose of making allotment in minimum lots. Minimum Subscription

Section 69(1) states that no shares shall be offered to the public until the minimum subscription stated in the prospectus has been subscribed and the amount payable on application has been received in cash by the company. In this context, SEBI has prescribed that any company making public or right issue must receive a minimum of 90 percent of the issue including devolvement on underwriters subscription against the entire issue before making allotment.

The amount of minimum subscription must be stated in the prospectus. Any amount other

than in cash should not be included in the minimum subscription. If the minimum subscription is not raised within 120 days after the issue of the prospectus the money paid by the subscribers must be returned forthwith. If it is not so returned, the directors become liable to repay the money with 6% interest from the end of the 130th day. All money received from the applicants should be kept deposited in a separate account with a scheduled bank until the company obtains the certificate to commence business. In case the company has already obtained the said certificate the amount so received should be kept in a scheduled bank until the entire amount payable on application for shares in respect of minimum subscription has been received by the company.

Letter of Allotment

The company is required to issue letter of allotment to persons who are allotted shares. Such letter is called Letter of Allotment. Such persons are required to surrender this letter of allotment to company for issue of share certificate.

Letter of Renunciation

Under Section 81, when the Public Company, at any time after 2 years from the formation of company or at any time after the expiry of the one year from the allotment of shares in that company made for the first time after its formation whichever is earlier, proposes to increase the subscribed capital of company by allotment of further shares, then the Board of directors are required to offer the shares first to existing shareholders.

Such shareholders are also given an option to renounce the shares in favour of any other person. The letter, through which such shareholders renounce shares in favour of other person is called "Letter of renunciation". If the person to whom offer is made or the person in whose favour offer is

renounced does not accept the shares, the Board may dispose of them in such manner as they think fit for the benefit of the company.

4. EFFECT OF IRREGULAR ALLOTMENT

An allotment is irregular if it is made without complying with the conditions precedent to a regular allotment as discussed above, viz, the provisions of Section 69 and 70 of the Act. Consequences of irregular allotment depend upon the nature of irregularity involved. These may be noted as follows:

1. Failure to deliver a copy of the prospectus to the Registrar before its issue — In case an allotment has been made without delivering to the Registrar of Companies, a copy of the prospectus along with other specified documents either before or on the date of its issue, the company and every person who is knowingly a party to the issue of the prospectus shall be punishable with fine which may extend to Rs. 50,000 [Section 60(5)]. The allotment, however, shall remain valid.

2. Non-compliance with provisions of Section 69 and Section 70 — In the event of non-

compliance with the provisions of Section 69 and Section 70 (viz allotment without raising minimum subscription or without either collecting application money or collecting less than 5 percent as application money or failure to deliver a copy of statement in lieu of prospectus at least three days before allotment), the following consequences shall follow (as mentioned in Section 71):

(a) The allotment is rendered voidable at the option of the applicant. The option must however be exercised — (i) within 2 months after the holding of the statutory meeting of the company and not later; or (ii) where the company is not required to hold a statutory meeting, or where the

allotment is made after the holding of the statutory meeting, within 2 months after the date of allotment and not later.

The irregular allotment is voidable even if the company is in the course of being wound up.

(b) Any director who has knowledge of the fact of the irregular allotment of shares shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby. Proceedings to recover any such loss, damages or costs cannot be commenced after the expiration of 2 years from the date of allotment. Rectification by company of irregular allotment An irregular allotment of shares made by the directors in excess of their powers may be subsequently ratified by the shareholders at a general meeting [Bamford v. Bamford, (1969) 39 Com Cases 369]

Lapse of application on undue delay in allotment

An application to take shares lapses if allotment is delayed unreasonably [Ramsgate

Victoria Hotel v. Montefiore (1866) LR 1 Ex 109 (C Ex)].

Cases where applicant cannot avoid allotment

We had noted earlier, that an allottee can avoid the allotment within the time frame mentioned in Section 71(1) of the Companies Act, 1956. However, the applicant cannot avoid the allotment if he unequivocally affirms the allotment by endeavouring to sell the shares, [Ex. P. Briggs 1866 LR 1 Eq 483]; (2) by executing a transfer of the shares [Crawley"s case (1969) LR 4

Ch App 322]; (3) by paying calls or receiving dividends, [Scholey v. Central Railway of Venezuela (1868) LR 9 Eq 266]; (4) by attending and voting at a general meeting in person or by proxy, [Sharpley v. Louth Co. (1876) 2 Ch. 663 (CA)].

3.Non-compliance of Section 72 — In case allotment is made in contravention of the provisions of Section 72 (viz, before the beginning of the fifth day from the date of issue of the prospectus), the

company and every officer of the company shall be punishable with fine which may extend to Rs. 50,000 [Section 72(3)]. However, allotment in such a case shall be valid.

4.Condition as to listing of shares on a stock exchange is not observed — Where the prospectus of a company states that an application has been made for permission for the shares offered thereby to be dealt in one or more recognised stock exchanges, the allotment shall be void, if either the permission has not been applied for or refused or not granted before the expiry of 10 weeks from the date of the closing of the subscription list [Section 73(1) and (2)].

In a particular case, a company proposed public issue at a premium and it stated in the prospectus that it had applied for listing of the shares in four recognised stock exchanges. Three of the stock exchanges granted permission for listing after the Central Government had issued orders in this regard. The petitioner contended that the allotment made is void under Section 73 of the Companies Act. The court held that the question of public issue being declared void does not arise as three exchanges had granted listing permission [Smt. Urmila Barutha v. Conventry Spring& Engineering Co. Ltd. and Other (1997) 2 CLJ 48 (Cal)]. However, where an appeal against the decision of any recognised stock exchange refusing permission has been preferred with Securities Appellate Tribunal, under Section 22 of the Securities Contracts (Regulation) Act, 1956 such allotment shall not be void until the dismissal of the appeal [Section 73(1A)].

In case of allotment becoming void, the money becomes due to be refunded forthwith and must therefore be repaid.

5. REVOCATION BY APPLICANT/ALLOTTEE

Ordinarily the provisions of Law of Contract apply to applications and allotment of shares. An application is an offer by the applicant and allotment is an acceptance of the offer by the

company. An offer can be revoked at any time before there is an acceptance to allot shares b y the company subject to the provisions and restrictions of the Companies Act.

6. ULTRA VIRES ALLOTMENT

Where the directors have no authority under the company‟s Articles of Association to make an allotment, the allotment would be irregular and may be ratified by the company. But it would be void where the company itself has no power to make an allotment. At common law any subscription money was returnable to the allottee. [Waverly Hydropathic Co. v. Barrowman, 1895 23 R. 136]. Allotment of shares to a charitable Institution by way of donation If there is no payment in monies worth for the shares; the allotment would be ultra vires. In case of allotment for consideration, other than cash, there is a requirement for companies to disclose in the return of allotment the number of shares allotted by it for consideration otherwise than in cash. Allotment of shares by the company as fully paid up shares to charitable trust by way of donation shallnotbevalid.

7. ALLOTMENT PROCEDURE

Where the company has received from bankers all the share applications, the directors shall proceed with the allotment of shares. If the issue is fully subscribed, then there is no difficulty in allotment of shares. If, however, the issue is oversubscribed, then shares are allotted on the basis of scheme of allotment worked out in consultation with the Stock Exchange(s) where shares are to be listed, by a Board/Committee resolution. The Board also authorises the Secretary, by a resolution, to issue letter of allotment or Allotment Advice-cum-Allotment Money Notice and letters of regret, as the case may be, to all the applicants. The resolution should also provide for the refund of the application money.

When the company‟s issue is over-subscribed, the directors allot less shares to all or some

applicants than applied for, it is called partial allotment. Allotment of lesser than the number of shares applied for is not binding on the applicant. He may accept or refuse the shares allotted to him, as the allotment of fewer shares is a counter-offer by the company to the applicants. Hence, in order to guard against any

such problem, the application forms provide for such clauses accepting the partial allotment by

the applicants.

Return of Allotment

Section 75 of the Companies Act provides that after allotment of shares by any company, a return of allotment in the prescribed e-form 2 even if it is of a single share, must be filed with the Registrar of Companies within thirty days of the allotment of shares.

(a) Where shares are allotted for cash

The return of allotment must state:

(i) The number and nominal amount of the shares allotted. (ii) The amount paid or payable on each share.

(iii) The class of shares-equity or preference.

(iv) The amount of premium paid/discount.

The company shall in no case show in such return any shares as having been allotted for cash if cash has not actually been received in respect of such allotment [Proviso to Section 75(1)(a)]. As per the

Department of Company Affairs (Now, Ministry of Corporate Affairs) allotment of shares by a company to a person in lieu of a genuine debt due to him is in perfect compliance with the provisions of Section 75(1). In this connection, it has been clarified that the act of

handing over cash to the allottee of shares by a company in payment of its debt and the allottee in turn returning the same cash as payment for the shares allotted to him is not necessary for treating the shares as having been allotted for cash. What is required is to ensure that the genuine debt presently payable by a company is liquidated to the extent of the value of shares [Circular 8/32 (75) 77-CL/V dated 13th March 1978].

(b) Where shares (other than bonus shares) are allotted fully or partly paidup otherwise than in cash (e.g. where consideration for allotment of shares is paid by way of property, goods or services), the following are required:

(i) A copy of contract, if any, for allotment of such shares is required to be attached with the e- form.

(ii) The contract of sale or for services or other consideration for which the allotment was made;

and

(iii) A return stating the number and nominal amount of the shares so allotted, to the extent to which they are paid-up, and the consideration for which they are allotted.

Where shares are issued as fully or partly paid up in consideration of a property thereafter to be

sold to the company or services to be rendered to the company or in consideration of the release of a claim or by way of compromise, the issue is for consideration other than cash.

(c) Where bonus shares have been issued, a return must be filed with the Registrar stating:

(i) The number and nominal amount of such shares comprised in the allotment; (ii) The names, addresses and occupation of the allottees; and

(iii) A copy of the resolution authorising the issue of such shares is required to be attached with the e-form 2.

(d) Where the shares have been issued at a discount, A copy of the resolution passed by the

company authorizing such issue and a copy of the order of the Central Government sanctioning the issue must be filed with the Registrar. If rate of discount exceeds 10% the relevant order of the Central Government must also be filed with the Registrar as an attachment with e-form 2.

It should be ensured that filing of e-form 23 precedes filing of e-form 2, in case e-form 23 is required to be filed in relation to the resolution passed for issue of shares under Section 81(1A) of the Act.

The following items are also required to be attached with e-form 2 along with the earlier stated

attachments:

1. List of allottees.

2. Copy of board or members‟ resolution approving the allotment of shares.

3. In case of allotment of shares for consideration otherwise than in cash, attach copy of contract.

4. In case of issue of bonus shares, attach copy of said resolution.

5. In case of issue of shares at discount, attach copy of resolution with copy of order of Central Government (Company Law Board). E-form 2 is required to be digitally signed by managing

director or director or manager or company secretary of the company. Further the e-form is required to be precertified by certifying professionals (Chartered Accountant or Cost Accountant or Company Secretary in whole time practice).

Penalty: If default is made in complying with the provisions of Section 75, as stated above, every

officer of the company who is in default shall be punishable with fine which may extend to Rs.

5000 for every day during which the default continues.

However, where the default relates to contravention of proviso to clause (a) Subsection (1), viz showing in the return that shares have been allotted for cash, when such is not the case, every promoter and every officer of the company who is guilty of the contravention shall be punishable with fine which may extend to Rs. 50,000 [Section 75(4)].

Judicial Pronouncement about return of Allotment

1. In Sri Gopal Jalan & Co. v. Calcutta Stock Exchange Association Ltd. 1963-(033)-Comp Cas-

0862-SC, the Supreme Court held that the exchange was not liable to file any return of the forfeited shares under Section 75(1) of the Companies Act, 1956, when the same were re-issued. The Court observed that when a share is forfeited and re-issued, there is no allotment, in the sense of appropriation of shares out of the authorised and unappropriated capital and approved the observations of Harries C.J. in S.M.

Nandy's case that: "On such forfeiture all that happened was that the right of the particular shareholder disappeared but the shares considered as a unit of issued capital continued to exist and was kept in suspense until another shareholder was found for it".

2. Alote Estate v. R.B. Seth Hiralal Kalyanmal Kasliwal [1970] 40 Comp.In case of inadequacy of consideration, the shares will be treated as not fully paid and the shareholder will be liable to pay for them in full, unless the contract is fraudulent.

3. Harmony and Montage Tin and Copper Mining Company; Spargo's case (1873) 8 Ch. App.

407. Any payment which is presently enforceable against the company such as consideration

payable for property purchased, will constitute payment in cash

4. Chokkalingam v. Official Liquidator AIR 1944 Mad. 87. Allotment of shares against promissory notes shall not be valid. Cases where return of allotment is not required to be filled

(a) Issue of debentures

(b) Re-issue of forfeited shares

(c) Shares subscribed by subscribers to memorandum of association

(d) On conversion of debentures or loan into equity by an order of Central Government u/s 81(4).

FOR FEITURE OFSHARES

Forfeiture may be termed as penalty for violation of terms of contract. Forfeiture of shares means taking back of shares by the company from the shareholders. If the shareholder makes

default in payment of calls on shares, then the company can use the option of forfeiting the shares. For a valid forfeiture, satisfaction of following conditions is necessary:

1. Articles of Association must authorise the forfeiture of shares. Where power is given in the articles, it must be exercised in accordance with the regulation regarding notice, procedure and manner stated therein; otherwise the forfeiture will be void. The power of forfeiture must be exercised bona fide and in the interest of the company. It should not be collusive or fraudulent If Articles authorise, the forfeiture shall include forfeiture of all dividends declared in respect of the forfeited shares and such dividend is not actually paid before the forfeiture of the shares

2. Resolution for Forfeiture - Article 31 of the Table A provides that if the defaulting shareholder

does not pay the amount within the specified time as required by the notice, the directors may pass a resolution forfeiting the shares.

3. Proper Notice - Before the shares of a member are forfeited, a proper notice to that effect must

have been served. Regulation 30 of Table A provides that a notice shall name a further day (not less than 14 days from the date of service of the notice) on or before which the payment is to be made. The notice must also mention that in the event of non payment, the shares will be liable to be forfeited.

4. Power of forfeiture must be exercised bona fide and for the benefit of the company - The

power to forfeit be exercised bona fide and for the benefit of the company. The power must be used in order to coerce reluctant shareholders into paying their calls. The power of forfeiture cannot be exercised to relieve unwilling shareholders from the liability of making the payment.

Such a shareholder continues to be responsible for the unpaid part of the shares When forfeiture of shares takes place, shareholder ceases to be a member and the forfeited shares become the

property of the company. Regulation 33(2) of table A further provides that the liability of a person whose shares have been forfeited ceases if and when the company receives payment in full of all such money in respect of the shares forfeited. If liquidation takes place, the original holder shall remain liable as a past member to pay calls within one year of forfeiture. However, a company cannot recover from him more than the difference between the amount payable and the amount received on forfeited shares.

In case, the defaulting shareholder approaches the Board to cancel the forfeiture, the Board is empowered to cancel such forfeiture and claim the due amount with interest

Some Legal Pronouncement about forfeiture of shares

1. Shah J. in Naresh Chandra Sanyal v. Calcutta Stock Exchange Assn. Ltd. AIR 1971 SC 422, As per Regulation 29 of Table A, shares can be forfeited only against non-payment of any call, or instalments of a call. The Articles of a company may, however, lawfully incorporate any other grounds of forfeiture

2. Linkmen Services (P.) Ltd. v. Tapas Sinha (2008) 83 SCL 143 (CAL), a company amended its articles of association for the purpose of (i) forfeiting the shares of any defaulting member and (ii) expelling member who desert the company by not doing business with it. The respondents challenged the above amendments on the grounds of oppression. The CLB held that the articles of company could not empower to forfeit the shares on account of dues other than unpaid calls. The appellant company appealed to the High Court. Allowing the appeal the Court held that forfeiture on grounds as mentioned in the articles of company is not alien to corpo rate jurisprudence as the CLB found in the impugned judgment. It is a power that the articles can confer.

3. Hope v. International Finance Society (1876) 4 Ch. D 598. Where the articles authorise the

directors to forfeit the shares of a shareholder, who commences an action against the company or the directors, by making a payment of the full market value of his shares, it was held that such a clause was invalid as it was against the rights of a shareholder.

4. Re Exparto Trading Co. [1879] 12 Ch. D 191 Where two directors were allotted qualification shares, without any payment, and these shares were forfeited by a Board resolution passed at the request of those two directors, the forfeiture was held to be invalid and the directors were held

liable to pay the nominal value of the shares.

5 .Public Passenger Services Ltd. v. M.A. Khader 1966 1 Comp. LJ1: A proper notice is a condition precedent to the forfeiture, and even the slightest defect in the notice will invalidate the forfeiture.

6. Johnson v. Lyttle's Iron Agency 1877 Ch D 687. The notice should mention that the payment

of interest should be made from the date of the. call.

7. Sparks v. Liverpool Water Works Co., 1807 13 Ves 428. Accidental non receipt of notice of forfeiture by the defaulter is not a ground for relief against forfeiture regularly effected.

8. Sha Mulchand & Co. v. Jawahar Mills Ltd. 1953 23 Comp. Cas 1 (SC).Even a slight irregularity in effecting a forfeiture would be fatal and render the forfeiture null and void. The aggrieved shareholder may bring an action for setting aside the forfeiture as well as for damages. Mere waiver or acquiescence would not deprive him of his rights against an invalid forfeiture of his shares.

9. Sha Mulchand & Co. v. Jawahar Mills (supra). After shares have been forfeited, no further notice intimating forfeiture is required

Forfeiture of fully paid shares

The clauses of Table A on forfeiture do not make specific provision for forfeiture of fully paid up shares. On the other hand in Shyam Chand v. Calcutta Stock Exchange Assn. [1945] 2 I.L.R. Cal 313 fully paid up shares could be forfeited in cases like expulsion of members where the articles authorise.

In any case, right of recovery of call money expires three years after the date of allotment.

Re-issue of Forfeited Shares

Shares forfeited by a company may either be cancelled or re-issued to another person at the discretion of the Board. Generally, such shares are re-issued at a discount which cannot exceed the amount already paid on such shares. This is done by a Board resolution.

After the money due is received from the new member(s), the company executes a transfer deed and issues a share certificate, and if the original holder has already surrendered the share certificate, it is duly transferred, otherwise after a public notice in a newspaper, a new share certificate is issued.

If the shares are re-issued at a price more than the face value, the excess of the proceeds of sale is not payable to the former owner, if the articles provide otherwise (Calcutta Stock Exchange Assn. Ltd Re AIR 1957 Cal 438). The excess of the proceeds so retained shall constitute a premium and must therefore be transferred to the securities premium account. However, in the case of Naresh Chandra Sanyal v. Calcutta Stock Exchange Ass. Ltd., AIR 1971 SC 422, Supreme Court held that, where the articles are silent with regard to such surplus, the right of a company upon the forfeiture and sale of forfeited shares is to use the proceeds for

discharging the liability for which the forfeiture was effected and if there is any balance, it belongs to the defaulter and cannot be appropriated by the company.

Where shares are sold for non payment of calls, the purchaser is liable to a fresh call in respect of

the total amount of the prior calls. But, if any amount is recovered from the ex-holder in respect of the calls, the purchaser will be entitled to the benefit of any amount so recovered. Likewise, any payments by the purchaser will reduce the liability of the ex-holder.

Where the forfeited shares are re-issued, the new shareholders will not only be liable for the balance amount remaining on the shares but he will also not be entitled to voting rights so long as calls payable by the original shareholder remain unpaid, if the company"s articles so provide, as stated in Section 181. A listed company for reissuing forfeited shares should comply with the relevant clause of the listing agreement and due approval of the regional stock exchange and others as well. No return of allotment in respect of re-issue of Forfeited Shares - No return of allotment of the shares re-issued need to be filed with the Registrar [Section 75(5)]. Such re-issue, in fact, cannot be called allotment.

Surrender of shares

A company cannot accept a surrender of its shares "as every surrender of shares, whether fully paid-up or not involves a reduction of capital which is unlawful...forfeiture is a statutory exception and is the only exception". [Bellerby v. Rowland and Marwood's S.S. Co. Ltd., (1902)

2 Ch 14]. But a surrender may be dealt with in the manner indicated in Re Castiglione's Willtrusts, Hunter v. Mackenzie, (1958) 1 All ER 480 viz., directing that the shares be held in the name of a nominee as trustee for the company. However, a surrender can be accepted in circumstances absolutely parallel to the requirements of a forfeiture, the only difference being that instead of going to the length of the formalities of a forfeiture, the company accepts in good faith in its own interest the shares which the shareholder is voluntarily surrendering. The other advantage to

the company is that the shareholder becomes estopped from questioning the validity. [Collector of Moradabad v. Equity Insurance Co. Ltd., AIR 1948 Oudh 197].

TRANSMISSION OF SHARES

Transmission of shares has not been defined by the companies act. _Transmission by operation of law‘ is not a transfer. It refers to those cases where a person acquires an interest in property by operation of any provision of law, such as by right of inheritance or succession or by reason of the insolvency or lunacy of the shareholder or by purchase in a Court-sale Thus, transmission of shares takes place when the registered shareholder dies or is adjudicated as an insolvent, or if the shareholder is a company, it goes into liquidation. Because a deceased person cannot own anything, the ownership of all his property passes, after his death, to those who legally represent him. Similarly, when a person is declared insolvent, all his property vests in the Official Assignee or Official Receiver. Upon the death of a sole registered shareholder, so far as the company is concerned, the legal representatives of the deceased shareholder are the only persons having title to the shares unless shareholder had appointed a nominee, in which case he would be entitled to the exclusion of all others. Section 108(1) of the Companies Act, 1956 states that the transfer of shares must be effected by a proper instrument of transfer and that a provision in the articles of an automatic transfer of shares of a deceased shareholder is illegal and void. Such transfer does not amount to transmission which takes place by operation of law. The second proviso to Section 108(1) of the Act provides that nothing in the sub-section shall prejudice the powers of the company to register as shareholder any person to whom the right to any shares has been transmitted by operation of law. It follows that, for such transmission, instrument of transfer is not required, and, merely an application addressed to the company by the legal representative is sufficient.

Articles of companies generally provide for formalities to be observed for transmission of

shares. In the absence of such provision in the articles of the company, Regulations 25 to 28 of Table A of Schedule I to the Act will govern the procedure for transmission. According to these regulations, the legal representatives are entitled to the shares held by deceased member and the company must accept the evidence of succession e.g., a succession certificate or letter of administrations or probate or any other evidence properly required by the Board of directors. He is, however, not a member of the company by reason only of being the legal owner of the shares. But he may apply to be registered as a member. On the contrary, instead of being registered himself as a member, he may make such transfer of the shares as the deceased could have made.

The Board of directors also have the same right to decline registration as they would have had in the case of transfer of shares before death. But if the company unduly refuses to accept a transmission, the same remedies are available to the legal representative as in the case of a transfer namely, an appeal to the tribunal under Section 111.

POSSIBLE QUESTIONS

PART A (One Marks –OnlineExamination)

PART B (2Marks)

1. Define MOA
2. Define AOA
3. What is prospectus?
4. Explain Doctrine of constructive notice?
5. What is shelf prospectus ?
6. Write short notes on GDR?
7. What is forfeiture of shares?
8. Explain the transmission of shares?
9. Explain buyback shares?
10. Write a short notes on issue of bonus shares?

PART C (6 Marks)

1. Difference between AOA & MOA
2. Write short notes on prospectus and its types ?
3. Write short notes of issues of shares and allotment ofshares?
4. Explain forfeiture of shares

5. What is transmission of shares ?
6. Briefly explain Book Building?
7. Explain Doctrine of indoor management
8. Discuss about buyback shares?

s.no	Unit - II	Option A	Option B	Option C	Option D	**Answer**
1	Secretary is one of _____officers of the company	the principal	the Chief	the Primary	the Major	**the principal**
2	The word "Secretary" is derived from the Latin word _____	Secretarius	Secretais	Secret	Secretarum	**Secretarius**
3	The word secretary means _____	personal officer	secret officer	executive officer	Confidential Officer.	**Confidential Officer.**
4	A _____ is usually appointed by an important person such as a minister in the government, professionals like doctors, lawyers, etc	Private Secretary	Association Secretary	Secretary of Co-opeartive Society	Official Secretary	**private secretary**
5	Generally, full-time secretaries are appointed in _____	Co-operative Society	Government Department	Trade union	private secretary	**cooperative society**
6	Each department of the government is under the control of a _____	minister	secretary	governor	collector	**secretary**
7	The secretary of a company _____ the management in the day-to-day work of Company Law and mercantile law and of accounts, etc.,	assist	help	guides	advise	**guides**
8	In addition to the performance of the routine office work, if he also acts as the Chief Executive Officer of the company, he becomes an _____	Routine Secretary	whole time secretary	executive secretary	part time secretary	**executive secretary**
9	A copy of the compliance certificate should be attached with _____, where the company does not have a whole–time Company Secretary	Directors' Report.	Auditors Report	Statutory report	annual report	**Directors' Report.**
10	The first secretary is often referred to as _____ Secretary	routine	executive	Protem	whole time	**Protem**
11	In the eyes of law, the secretary is a mere _____ of the company	servant	agent	dealer	broker	**servant**
12	What is the time limit for conducting statutory meeting? - _____	1 Month	2 Months	3 Months	6 Months	**6 Months**
13	Appointment of Secretary should be intimated to Registrar of Companies within ___ days from the date of his appointment	30	60	90	120	**30**
14	Any person occupying the	manger	director	managing	additional	**Director**

	position of a director is _____			director	director	
15	If the, Board entrusts the Secretary with routine duties, he is called, _____	Routine Secretary	executive secretary	part time secretary	whole time secretary	**Routine Secretary**
16	Compliance Certificate can be issued by a company secretary in whole-time practice or a firm of company secretaries is restricted to_____ in the calendar year	forty	sixty	twenty	fifty	**fifty**
17	A routine secretary is just the_____ of the Board of Directors	mouth-piece	hand-piece	head-piece	tongue-piece	**mouth-piece**
18	The secretary has to do only what he is directed to do by the _____	chairperson	directors	manager	Shareholders	**directors**
19	_____ advises the 'union on various matters connected with labour	Secretary of Trade Union	Company Secretary	Secretary of a Local Body	**Secretary of Trade Union**	
20	The Board, however, cannot alter the _____ of the secretary as they are determined by the law	powers	duties	rights	liabilities	**duties**
21	_____ helps the secretary in guiding the chairman and board of directors, and in performing his duties confidently	Impressive personality	General Knowledge	Knowledge of the Industry	Knowledge of Mercantile Law	**General Knowledge**
22	The Companies Act also states that no individual can hold the office 'of 'secretary in more than _____ such company	five	fifteen	one	ten	**one**
23	A company having paid-up capital of Rs. 2 crores must have a _____secretary	whole time	part time	routine	executive	**whole time**
24	If the person appointed as secretary functions as secretary in any other company, he has to notify the other company within _____ of his appointment	15 days	20 days	30 days	45 days	**20 days**
25	A Secretary cannot be appointed as _____	director	Chairman	auditor	managing director	**auditor**
26	The services of a secretary may be terminated by giving him _____ as per the terms of the service agreement	intimation	notice	instruction	letter	**notice**

27	A secretary being a servant of the company, his suspension and dismissal are governed by the normal law applicable to _____	owner and servant	management and staff	employer and employee	supervisor and employee	**employer and employee**
28	The services of the secretary may be terminated without notice if he makes _____ secretly	incomes	profits	records	books	**profits**
29	The rights of a company secretary mostly flow out of his _____ agreement with the company	loan	share	dividend	service	**service**
30	A company secretary is not only a servant of the company but also a servant of the _____	government	directors	law	Shareholders	**law**
31	Under _____, the secretary has to arrange for timely submission of returns and payment of tax	Income Tax Act	Sales-tax Act	Indian Stamp Act	Companies Act 1986	**Sales-tax Act**
32	As the _____ are the owners of the company, the secretary has to safeguard their interest	shareholders	debenture holders	creditors	debtors	**shareholders**
33	The_____ has to function as a medium of communication between the directors and the general public consisting of debenture holders, bankers, solicitors, creditors and the 'prospective investors	chairperson	directors	Secretary	members	**Secretary**
34	_____ liabilities refer to all those liabilities imposed on the secretary by the Companies Act	General	Statutory	Universal	Common	**Statutory**
35	Under _____ the company secretary is responsible for collection and payment of income tax	Companies Act 1956	Indian Stamp Act	Income Tax Act, 1961	Finance Act	**Income Tax Act, 1961**
36	The Secretary has to file various returns and statements with the _____ of Companies as per the requirements of the Companies Act	director	Registrar	chairman	members	**Registrar**
37	In actual practice, a _____ occupies a position of	Board of Directors	Chairman	managing director	company secretary	**company secretary**

	importance in the administrative set-up of the company					
38	In the company set up, both the board of directors and the: secretary play .a _____ role to each other	substitute	unlike	complementary	unusual	**complementary**
39	The board of directors is responsible for the overall management of the company's _____	business	shares	shareholders	meeting	**business**
40	The directors are the _____ of the company, the secretary is its eyes, ears and hands of the company.	head	nose	heart	brain	**brain**
41	It is the secretary who carries out the orders of the _____	chairperson	board of directors	shareholders	members	**board of directors**
42	The company secretary is in close touch with the work of the board and has access to the _____ matters of the company	public	civic	confidential	open	**confidential**
43	The secretary possess a thorough knowledge of the various legislative enactments relating to _____	firm	HUF	sole proprietorship	companies	**companies**
44	In matters relating to staff, shareholders and. outsiders, generally, the secretary is allowed .to exercise his _____	discretionary power	compulsory power	mandatory power	fixed power	**discretionary power**
45	The Secretary acts as the agent of the board of directors and carries out the instructions of the _____	manager	Managing Director	board of directors	chairman	**board of directors**
46	The Secretary is also required to act as a _____of the company and improve the image of the company in the minds of the public	confidential officer	Public liaison officer	public relations officer	an adviser	**public relations officer**
47	The Secretary acts as a _____ and ensures that the confidential matters of the company are not leaked out	Public liaison officer	confidential officer	an adviser	an executive officer	**confidential officer**

48	The Secretary acts as a _____ between the board of directors on the one side and the staff, shareholders and the general public on the other side	liaison officer	an adviser	an executive officer	confidential officer	**liaison officer**
49	The Secretary acts as _____ and advises the directors and the chairman on important matters affecting the business of the company	an co-ordinator	an officer	an adviser	an executive officer	**an adviser**
50	Generally speaking, the role of a secretary is _____	three – fold	two - fold	five - fold	six - fold	**three – fold**
51	Under the _____ secretary is responsible for the duties of a secretary and such other ministerial and administrative duties as may be assigned to him	Income Tax Act	Companies Act	Indian Stamp Act	Customs Act	**Companies Act**
52	The important responsibilities of the company concerning to statutory as well as legal commitments vest within the hands of _____	The directors	the Secretary	the Chairman	the members	**the Secretary**
53	Under the _____ it is duty of a secretary to see that the documents such as letter of allotment, share certificate, debenture and mortgages are issued duly stamped	Companies Act 1956	Income Tax Act	Customs Act	Indian Stamp Act	**Indian Stamp Act**
54	In _____ co – ordination the secretary has to make a link between Shareholders, Government and the Society	domestic	internal	external	inner	**external**
55	In _____ co – ordination the secretary has to link Management level such as Chairman, Board of Directors, Managing Director, employees of the business, auditors	external	exterior	internal	outdoor	**internal**
56	_____ is considered as the link between the Company, Shareholders, Society and the Government	Board of Directors	Company Secretary	Chairman	Registrar	**Company Secretary**
57	The secretary has to report the day to day affairs of the company to the _____	managing director	Chairman	Secretary	Board of Directors	**Board of Directors**

58	As an _____, secretary is the person who has to look after every aspect of the business such as financial, functional and other human relations inside the organization	administrative officer	personnel officer	Co - ordinator	Statutory Officer	**administrative officer**
59	The personnel administration of the secretary is a _____ role	easy	difficult	simple	primary	**difficult**
60	The _____ administration of the secretary includes recruitment, training, promotion, discharge and dismissal of the staff in case of any mischievous behavior	official	legal	Personnel	individual	**Personnel**

UNIT-III - Management

SYLLABUS

Introduction: Director- board of director-classification of director, managing director,manager,meeting ,meeting of director and shareholder, postal ballot, meeting through video conferencing , e-voting, committee of BOD

Definition:

Directors:

Person who leads, manages, or supervises an organization, program, or project. See also company director.

Board of directors:

Governing body (called the board) of an incorporated firm. Its members (directors) are elected normally by the subscribers (stockholders) of the firm (generally at an annual general meeting or AGM) to govern the firm and look after the subscribers' interests. The board has the ultimate decision-making authority and, in general, is empowered to

(1) set the company's policy, objectives, and overall direction,

(2) adopt bylaws,

(3) name members of the advisory, executive, finance, and other committees,

(4) hire, monitor, evaluate, and fire the managing director and senior executives,

(5) determine and pay the dividend, and

(6) issue additional shares.

Classification of Directors under Companies Act 2013:

Classification of Directors:

1. Residential Director –

According to Act – "Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year." The Definition says that the director should be resident of India which shows the director is responsible for the company and has not been making trips without any worry about the company.

2. Additional Director –

According to the Act – "The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier." This definition says that the articles of the company has authorized the board of directors to appoint the additional directors whenever needed, this additional director would hold the office up to the date of next AGM.

3. Alternate Director –

According to the Act – "The Board of Directors of a company may, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months." This director is to be specifically appointed when the original director or the whole time director is not present in the office due to any of the factors.

4. Women Director –

According to the Companies Act 2013, some companies have been compulsory ordered to get at least 1 director as the women director. The list of companies who are required to get there director as women are:

A listed Company

Any Public company having –

Turnover of Rs. 300 crore or more

Paid up capital of Rs. 100 crore or more

5. Independent Director –

Independent director basically means the director other than Whole time director, Managing Director, or Nominee Director. There are certain reserved criteria for companies to appoint independent directors. The following companies need to have at least 2 independent directors :

- Public limited companies having outstanding loans, deposits of Rs. 50 Crores or more.
- Public limited company having turnover of Rs. 100 Crore or more.
- Public limited share capital of Rs. 10 Crores or more.

6. Nominee Director –

The nominee directors are the directors which are appointed in case of any of the non executive director is not able to continue. Generally they are appointed by the shareholders, but in some cases it may also be appointed by banks or Central government as the case may be.

7. Shadow Director –

Shadow director is the new term which has been arrived which means that the person who is not officially appointed by the board but he/she gives such advice to the directors which they are accustomed to follow except when such shadow director provides the same in his professional capacity.

Independent director:

 An independent director (also sometimes known as an outside director) is a director (member) of a board of directors who does not have a material or pecuniary relationship with company or related persons, except sitting fees.

 The need for the ID's aroused due to the need of a strong framework of corporate governance in the functioning of the company. There is a "growing importance" of their role and responsibility. The Act, 2013 makes the role of ID's very different from that of executive directors. An ID is vested with a variety of roles, duties and liabilities for good corporate governance. He helps a company to protect the interest of minority shareholders and ensure that the board does not favour any particular set of shareholders or stakeholders.

 The role they play in a company broadly includes improving corporate credibility, governance standards, and the risk management of the company. The whole and sole purpose behind.

 introducing the concept of ID is to take unbiased decisions and to checks various decisions taken by the management and majority stakeholders. An ID brings the accountability and credibility to the board process. These ID's are the trustees of good corporate governance.

ROLE AND DUTIES OF INDEPENDENT DIRECTORS:

The role of an ID is considered to be of a great significance. The guidelines, role and functions and duties and etc are broadly set out in a code described in Schedule IV of the Act, 2013. The code lays down certain critical functions like safeguarding the interest of all stakeholders, particularly the minority holders, harmonizing the conflicting interest of the stakeholders, analyzing the performance of management, mediating in situations like conflict between management and the shareholder's interest and etc.

The code also lays down certain important duties like keeping themselves updated about the company and the external environment in which it operates, not disclosing important and confidential information of the company unless approved by the board or required by law, actively

participating in committees of the board in which they are chairperson or members, keeping themselves update and undertaking appropriate induction and refreshing their knowledge, skills and familiarity with the company, regularly attend the general meetings of the company and etc.

MEETINGS & COMMITTEES

o The Act, 2013, requires all the ID's to meet at-least once in a year. The meeting must be convened without the presence of the non-independent directors and members of the management. An ID would also evaluate the performance of the chairperson of the company. Also, the Act, 2013 requires an ID to review the performance of the non-independent directors and the Board as a whole of the company. These measures would immensely aid in ensuring the smooth and proper functioning of the Board of Directors of a company.

o The Act, 2013 has also emphasized on the appointment of an ID as a member or as a chairperson in various committees. For instance in the Audit committee which shall comprise of minimum three directors, ID's should form a majority. In the same way, the Nomination and Remuneration Committees which shall consist of three or more non-executive directors, ID's should not be less than half of the total number of members. For the Stakeholders Committee, the Board of Directors of the Company which consist of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders-relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the board.

Small Shareholders' Director under Companies Act, 2013:

Section 151 read with Rule 7 of Companies Appointment & Qualification of Directors Rules, 2014

Section 151 –Appointment of director elected by small shareholder.

What is 'small shareholder'?

Explanation of section 151(1) defines 'small shareholder' as a shareholder holding shares of nominal value of not more than twenty thousand.

Here person elected by small shareholder as 'director' may or may not be a shareholder of a company but a person electing such 'director' shall be the 'small shareholders'.

Subsection (1) states that a listed company 'may' have one director elected by such small shareholders in such manner as may be prescribed (i.e. Rule 7).

The term 'may' makes it clear that there is no mandatory requirement for a listed companies to have a director elected by such small shareholders on its Board.

Rule 7 (Appointment and qualification of directors)

Sub rule (1) – A listed company , may upon a notice of at least 1000 small shareholders or 1/10th of total number of 'such' shareholder (.i.e.1/10th of total no. of small shareholders), whichever is lower, have a director elected by the small shareholders.

Proviso to sub rule (1) makes it clear that company may suo moto appoint a director representing small shareholders and in such case sub rule (2) shall not apply which is nothing but the procedure for the appointment of person as director by the small shareholders.

Sub rule (2) requires that the small shareholders intending to propose a person as a candidate for the post of small shareholder shall leave a notice of their intention with the company at least 14 days before the meeting under their signatures specifying the name, address, shares held, folio no. of the

person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

Proviso to sub rule provides that if the person being proposed does not hold any shares in the company, the details regarding shares held, folio no. need not be specified in the notice. The above proviso makes it clear that the person being proposed need not to be a shareholder of the company.

Sub rule (3) – The notice given under sub rule (2) shall be accompanied by the statement signed by the person whose name is being proposed for the name of small shareholders' director stating-

a) His DIN;

b) That he is not disqualified to become a director under the Act;

c) His consent to act as a director.

Sub rule (4) states that if the director elected by small directors fulfills the criteria of independent director laid down under section 149(6) and gives the declaration of his independence in accordance with section 149(7) then such director shall be considered as independent director. In nutshell, we can say that a small shareholders' director shall be considered as independent director subject to 2 conditions-

a) If he fulfills the criteria of independent director specified under section 149(6);and

b) If he gives the declaration under section 149(7).

Sub rule (5) – All the provision of section 152 shall apply for the appointment of small shareholders' director except 3 given below-

a) Such director shall not be liable to retire by rotation;

b) Tenure of such director shall not exceed 3 consecutive years ;and

c) On the expiry of the tenure, such director shall not be eligible for re-appointment.

Sub rule (6) – A person shall not be appointed as small shareholders' director if person is not eligible for appointment in terms of section 164.

Sub rule (7) deals with the vacation of office of small shareholders' director. It states that a person appointed as small shareholders' director shall vacate the office if-

a) He incurs any disqualification specified under section 164.

b) The office of director becomes vacant in pursuance of section 167.

c) The director ceases to meet the criteria of independence as provided under section 149(6).

Language of Clause (c) of sub rule (7) above makes it general that every small shareholders' director shall vacate his office if he cease to meet the criteria of independent director even if he is not considered as independent director as stated above in sub rule (4). If we assume that clause (c) of sub rule (7) only deals with the small shareholder's director which are considered as independent

director then it make sense but if we analyze this a bit more we will find that still there is an uncertainty which I would like to explain with an example given below-

Mr. A is appointed as small shareholders' director of ABC ltd. By satisfying the condition laid down under sub rule (4) he is considered as independent director. After a while he ceases to meet the criteria of independent director and according to clause (c) of sub rule (7) he has to vacate his office as small shareholders' director but logically he should vacate his office as independent director and continue to hold his office as small shareholders' director.

We can say that under the Companies Act, 2013 there are two classes of independent directors.

1st- Those who are appointed under section 151 as small shareholders' director and fulfill the conditions given under Rule (7) (4) of Appointment and qualifications of director. Tenure of such directors is maximum of 3 years and are not eligible for re-appointment.

2nd-Those who are appointed under section 149(4) as independent directors. Tenure of such director is 5 years and are eligible for re-appointment for further period of 5 years

Sub rule (8) – No person shall hold office of small shareholders' director in more than 2 companies at same time.

Whereas proviso states that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of first company.

However it is important to mention that if a small shareholders' director accepts appointment in any other company which is in competition with the 1st company or he accepts the appointment in more

than 2 companies then he does not automatically vacate office as this ground is not mentioned under sub rule (7) although he may be removed on this ground.

Sub rule (9) – After the completion of tenure as a small shareholders' director, such director shall not be appointed or be associated with such company in any other capacity, either directly or indirectly for a period of 3 years.

DIN:

Director Identification Number (DIN) is a mandatory requirement for all existing and new directors (or proposed directors) of a company. A DIN is issued in accordance with the directions provided by the amendment to the Companies Act. It is an 8-digit Unique Identification Number allotted to all directors. It has lifetime validity.

Purpose of a DIN:

a) The Director Identification Number provides a unique identity to the director helps in maintaining information of all directors in a database. In past decades, several Indian cities have had chit fund companies promise its residents incomparable returns, then escape with their money to another city.

b) To be able to cross-check such persons, and to ensure the director's identity is valid and all information provided is true, the government introduced the DIN. Accordingly, the

c) DIN directory will contain all information regarding the directors, such as their name, PAN number and also their present address. Any change in the address or other information needs to be updated immediately.

d) The best part of DIN is that, irrespective of the number of companies a person floats, they can use their DIN obtained for a lifetime. What it means is that the DIN is specific to the individual who has obtained it, and not for the company he/she has obtained it.

e) For instance, if a director of one company applies for a DIN and he wants to start another company, and act as a director, he can do so, with the same DIN.

Procedure for DIN Application:

A DIN is a mandatory entity for registering any company in India. Without a DIN, one cannot be a director. A DSC certificate, or a Digital Signature Certificate, is a requirement for applying for the DIN. The DSC is obtained in the form of a USB, and is valid for one to two years.

To obtain a DSC, you must fill an application for the same, which will, of course, include your signature, and also an identity proof and residence proof. All of these documents must be self-attested.

For foreign nationals and NRIs, the self-attested copies and identity proofs must be notarized or verified by their embassy or, in case of NRIs, the Indian Embassy.

The following proofs are acceptable:

Address Proof

1. Driving license
2. Voter ID card
3. Utility bills
4. Passport
5. Tax receipts (corporation, property tax, service tax and sales tax, registration and so on)
6. Bank Statement (attested)
7. PF statement

Identity Proof

1. PAN card of the applicant (for Indian nationals)

2. Passport of the applicant, if they are foreign nationals and NRI's.

Once the DSC is obtained, you can apply for a DIN.

DIN Registration:

1. The DIN application, duly signed with the DSC, should be submitted to the Ministry of Corporate Affairs, along with a photograph and identity and address proofs.

2. If the application is complete, and all information provided is relevant, a DIN number is provided immediately. In case of clarifications sought by the DIN cell, they need to be furnished by the applicant.

3. The DIN application gets processed in 2 to 3 days, making it easy for directors to obtain them during the company registration procedure. An intimation, with the DIN allotment letter, is sent to the applicants to complete the process.

4. A DIN is a permanent number supplied to a director, and thus, all information is stored in the Ministry database. A DIN can be searched through the DIN/DPIN search.

Managing Director [Clause (26)]

Managing or Wholetime Director or Manager

A managing director, as defined in Section 2(26), means a director who is encrusted with substantial powers of management which would not otherwise be exercisable by him. The "substantial powers" of management may be conferred upon him by virtue of an agreement with the company, or by a resolution of the company or the Board or by virtue of its memorandum and articles. The powers so conferred are alterable by the company. He is also removable the same way as he was appointed irrespective of the fact that his appointment has been approved by the Central Government. But if he is prematurely removed from office he is entitled to compensation. A managing director is an employee of the company, but not to the extent so as to be entitled to preferential payments.

Procedure of Appointment [S. 269]

Section 269 has been recast by the amendment of 1988. In the case of public companies or their subsidiary private companies, Teaching a figure of paid-up share capital which may be prescribed [Rs 5 crores or more] the appointment of a managing director, whole-time director or manager has been made compulsory. The appointment has to correspond withthe conditions specified in Parts I and II of Schedule XIII, which parts are subject to the provisions of Part III. The appointment and remuneration require approval of shareholders in general meeting. The auditor of the company or company secretary has to certify that requirements have been complied with. A return of the appointment in a prescribed form must be filed with the Government within 90 days. Approval of the Central Government is not necessary in such cases. But if the appointment does not comply with the schedule, the approval becomes necessary. Application for approval must be made within 90 days.

The Central Government may not accord the approval if it is satisfied that the candidate is not a fit and proper person for the post and his appointment is not in public interest and the terms and conditions of the appointment are not fair. The Government may accord the approval for a shorter period than proposed.

If there is no approval, the appointee should vacate the office from the date of the communication of the refusal to the company, failing which he incurs a penalty of Rs 500 for every day of usurpation of the office.

Where the Government suo motu or on information received is prima facie of opinion that an appointment has been made without approval in contravention of the requirements of the schedule, the Government shall be competent to refer the matter to the Company Law Board for a decision.The Board has to give notice to the company, the appointee and any other officer of the company who was responsible for compliance of Schedule XIII to show cause why the appointment should not be terminated and the penalty of sub-section (10) imposed. The Board should give

appropriate opportunity and then may make an order declaring that there has been a contravention. The declaration will have the following effects: (1) the company is liable to a fine extending upto Rs 5000 ; (2) every officer of the company who is in default is liable to a fine of Rs 10,000 ; (3) the appointment comes to an end and the appointee is liable to a fine of Rs 10,000 and is also liable to refund the entire amount of salaries, commissions and perquisites received by him upto the date of the order.

Any violation of the order of the Board or any default in meeting its consequences is further punishable under sub-section (II). Every officer of the company who is in default and the managing or whole-time director or the manager, shall be punishable with imprisonment extending upto three years and also fine extending upto Rs 50 for every day of default. Whether such a double penalty amounts to a violation of the doctrine of double jeopardy, only time will decide.

Sub-section (12) provides that the acts of such a person done by him upto the date of the finding that his appointment was void would be valid provided that they were otherwise valid.

Disqualifications [S. 267]

The following cannot be appointed managing or whole-time directors:

(1) A person who is an undischarged insolvent or has at any time been adjudged insolvent.

(2) A person who suspends or has at any time suspended, payment to his creditors or makes or has made a composition with them.

(3) A person who is or has been convicted by a court of an offence involving moral turpitude. The first Part of Schedule XIII gives the list of statutes and provides that any person convicted for violating them and sentenced to imprisonment or fine up to Rs 1000 shall not be appointed without the approval of the Central Government.

Where a person is already a managing director of another company he can be appointed only with the unanimous resolution of the board of directors. 16 The Central Government may permit Any person to be appointed managing director of more than two companies if the Government is satisfied

that it is necessary that the companies should, for their proper working, function as a single unit and have a common managing director [S 316(2), proviso]

The maximum term of appointment can be five years at a time and a new term cannot be sanctioned earlier than two years from the date on which it is to come into force. The terms of appointment can be changed, when they are to be different from those prescribed by Schedule XIII, only with the approval of the Central Government.

The remuneration of a managing director cannot exceed five per cent of the net profits and if there are more than one managing directors, ten per cent for all of them together, [S. 309] Where a managerial personnel is working in more than one company, he can draw remuneration from one or both companies provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial personnel.

DUTIES OF A DIRECTOR OR TRUSTEE

1. Duties on Appointment as a Director or Trustee

A new director or trustee should know the purposes of the charity. These will be found in the Letters Patent if the charity is a corporation or in the document which creates the trust (the constitution for an unincorporated association or the trust deed for a trust). New directors or trustees should be familiar with the general requirements of charities law and if the charity is a corporation, of the Corporations Act.

The director or trustee should review the past administration of the charity. They have a duty to investigate any suspicious circumstances which suggest the charity's property has not been properly used. Action should be taken to correct any problems.

2. Duty to be Reasonable, Prudent and Judicious

Directors and trustees must handle the charity's property with the care, skill and diligence that a prudent person would use. They must treat the charity's property the way a careful person would

treat their own property. They must always protect the charity's property from undue risk of loss and must ensure that no excessive administrative expenses are incurred.

3. Duty to Carry Out the Charitable Purposes

The charity's property can only be used for purposes of the charity. It cannot be used for any other purpose.

Charities may have more than one purpose. If a charity is incorporated the purposes are found in the corporation's Letters Patent. If the charity is not incorporated, they will be found in the document which creates the trust. If property is improperly used, directors or trustees may be required by a court to repay the money.

Some charities have funds or property that are supposed to be used for one specific purpose. The directors or trustees must make sure that the property is used for that purpose.

4. Duty to Avoid Conflict-of-Interest Situations

Directors and trustees should avoid conflicts of interest. A conflict of interest arises when a director or trustee has a personal interest in the result of a decision made by the charity.

Directors and trustees must always consider the interests of the charity and not allow their personal interests or preferences to affect their conduct and decisions.

Directors and trustees must also avoid the appearance of conflict of interest. Certain investments, such as loans to donors, directors or trustees of the charity, or to companies in which they have shares can be a breach of the duty of a director or trustee. Even if these investments are made at market rates, there may be an appearance of conflict of interest.

Removal of directors:

Power to remove directors has always been bestowed on shareholders, as we all know that at the end of the day, directors are answerable to shareholders. Nothing has changed in the procedural aspect under Companies Act, 2013 as well. Shareholders can remove any director before the expiry of his

tenure, except any director appointed by Tribunal for prevention of oppression and mismanagement u/s 242 and a director appointed under principle of proportional representation u/s 163.

Right to Remove a Director is Legal Right of Share Holders:

Section 169 and Chapter 7 of Companies Act, 2013 Right of Shareholders to remove a director in the General Meeting through Ordinary Resolution is a Legal Right. This legal right cannot be damaged or taken away by MOA, AOA or any other documents or Agreement.

Section 169 and Chapter 7 details the procedure of removal of director by shareholders as follows: –

A company MAY, by ordinary resolution, remove a director,

Not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.

The provision relating to removal shall not apply where the company has availed itself of the option to appoint not less than two – thirds of the total number of directors according to the principle of proportional representation.

A special notice shall be required of any resolution, to remove a director, or to appoint somebody in place of a director so removed.

As per Section- 115 of Companies Act, 2013:-

o Special notice to Company-There is a criteria, who can send the notice to the Company. Only shareholder/s holding not less than 1% of total voting power or holding shares on which an aggregate sum of not less than Rs. 5,00,000 has been paid up as on the date of notice, can send special notice to the Company for removal of director. The same should be signed by the concerned shareholder/s.

o Date of meeting-Shareholders have the right to decide the date of meeting. However, the special notice shall not be sent earlier than three months from the date of meeting but at least 14 clear days before the date of the meeting, at which the resolution is to be moved.

managing director:

Alternative term for chief executive officer (CEO). Managing director is generally more common in British English than in American English.

A managing director coordinates the activities for a specific organization. He also keeps business goals and objectives in mind and makes sure employees are all on board with those goals and objectives. In other words, he controls resources and expenditures

RESPONSIBILITIES:

(a) Implement operational strategies as per the company's Strategic Business Plans.

(b) Monitor and control the company's performance and finances in accordance with the budgets approved by the Board of Directors.

(c) To ensure that all staff are effectively employed and adequately trained to perform their responsibilities and operational tasks in an ethical and responsible manner.

(d) To ensure that the products produced and sold to clients are of high quality in accordance with the company's quality policies.

(e) To ensure that the company meets all its legal requirements, including those relating to Occupational Health and Safety.

(f) Overall responsibility for raw material selection and timely purchasing and utilisation.

(g) Acquisition, maintenance and efficient utilisation of the company's physical assets.

Manager:

An individual who is in charge of a certain group of tasks, or a certain subset of a company. A manager often has a staff of people who report to him or her.

As an example, a restaurant will often have a front-of-house manager who helps the patrons, and supervises the hosts; or a specific office project can have a manager, known simply as the project manager. Certain departments within a company designate their managers to be line managers, while others are known as staff managers, depending upon the function of the department.

Definition of meeting

1 : an act or process of coming together: such as

a : an assembly for a common purpose (such as worship)

b : a session of horse or dog racing

2 : a permanent organizational unit of the Society of Friends

shareholder meeting:

Definition

A gathering of company officers, board of directors (BOD), and shareholders. An annual shareholder meeting is held after the close of each fiscal year when the company's performance over the past year is reviewed, the shareholders elect the board of directors, and vote on matters affecting the company's operation. The board of directors can also call special shareholder meetings to discuss business that cannot be deferred until the next annual meeting

Companies Act 2013- Meetings Of The Board & Committees:

MEETINGS OF THE BOARD

1. Frequency of Meeting:

– First Meeting:First Meeting of Board of Directors within 30 (Thirty) days from the date of Incorporation of company. –

– Subsequent Meetings:

One person Company, Small company and Dormant company:

At least one meeting of Board of directors in each half of calendar year

Minimum Gap B/W two meetings at least 90 days.

Other than Companies mentioned above:

Minimum No. of 4 meetings of Board of Director in a calendar year

Maximum Gap B/W two meetings should not be more the 120 days.

2. Calling of Meeting:

Meeting of Board of Director should be called by giving 7 days notice to Directors at his registered address through:

By hand delivery

By post

By Electronic means

Meeting at shorter Notice: A meeting of Board of Directors can be called by shorter notice subject to the conditions:

If the company is require to have independent director:

– Presence of at least one Independent director is required.

– In case of absence, decision taken at such meeting shall be circulated to all the directors, and

– shall be final only on ratification thereof by at least one Independent Director

If the company doesn't require to have independent director: The meeting can be called at a shorter notice without any conditions to be complied with.

3. Quorum of Board Meeting:

1/3 rd of total strength OR 2 (Two) Directors, whichever is higher.

Where meeting of Board could not be held for want of quorum, the meeting shall automatically adjourn to same time, same place at next week (Not being national holiday).

If number of directors reduced below quorum, then the remaining directors may hold the meeting for the following purposes:

To call a General meeting

Increase the number of directors.

Quorum in case of Interested Directors:

If interested director exceed or equal to 2/3 of total strength the remaining directors not being less than 2 (two) shall be the quorum.

Company Meetings:

8 Main Types of Company Meetings:

Company Meeting Type

1. Statutory Meeting:

Every public company limited by shares—and every company limited by guarantee and having a share capital—must, within a period of not less than one month and not more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members which is to be called the Statutory Meeting.

In this meeting the members are to discuss a report by the Directors, known as the Statutory Report, which contains particulars relating to the formation of the company.

Section 165(3) provides that the Statutory Report must con-tain the following particulars:

(i) The total number of fully paid-up and partly paid-up shares allotted;

(ii) The total amount of cash received by the company in respect of the shares;

(iii) An abstract of the receipts, classifying them according to source and mention-ing the expenses incurred for commis-sion, brokerage etc.

(iv) The names, addresses and occupations of directors, auditors, managers and sec-retaries and changes of the names, ad-dresses etc.

(v) Particulars of contracts which are to be submitted to the meeting for approval, with proposed modifications, if any;

(vi) If any underwriting contracts have not been carried out, the reasons therefor;

(vii) The arrears due on calls from directors and others;

2. Annual General Meeting:

General Meeting of a company means a meet-ing of its members for specified purposes.

There are two kinds of General Meetings:

(i) The Annual General Meeting and

(ii) Other General Meetings.

The statutory provisions regarding the Annual Gen-eral Meeting are:

(a) Section 166:

The first Annual General Meeting of a company may be held within a period of not more than 18 months from the date of its incorpora-tion. If such a meeting is held within the period, it is not necessary for the com-pany to hold any annual general meet-ing in the year of its incorporation or in the following year.

3. Extraordinary General Meeting:

Any general meeting of the company which is not an Annual General Meeting or a Statutory Meet-ing is called Extraordinary General Meeting. An Extraordinary General Meeting is held for dealing with some business of special or extraordinary na-ture and which is outside the scope of the Annual General Meeting.

This meeting is also held to trans-act some urgent business that cannot be deferred till the next Annual General Meeting. This meeting may be called by the Directors or requisitioned by the member's according to Sec.169 of the Companies Act, 1956. The Board of Direc-tors can be compelled to hold

4. Meeting of the Board of Directors:

The management of the company is vested on the Board of Directors. Therefore, the Directors are to meet frequently to decide both policy and rou-tine matters.

The provisions regarding Board Meeting are:

- . Board Meeting must be held once in every three calendar months and at least four times in every year. This provision may be exempted by the Central Govt.
- Notice of Board Meeting shall be given in writing to every director for the time being in India and at his usual address in India.
- The Quorum :Quorum means the mini-mum number of members required to hold a meet-ing. According to the Act, quorum is constituted by 5 members personally present in the case of a public company and 2 members personally present in the case of other companies.

• . The Agenda: Agenda means "things to be done" at the meeting. It is the list of businesses to be transacted at the meeting. The Secretary prepares the agenda in consultation with the Chairman. The notice of every meeting must specify the business to be transacted in the meeting.

The Act states that the notice must annex an "Explanatory Statement" at which some special business is to be transacted. The statement must contain all the ma-terial facts relating to each item of the business, in-dicating the nature and extent of the interest of every director and manager of the company. The state-ment must mention the time and place where all documents relating to special business can be in-spected.

5. Class Meeting:

These meetings are held by a particular class of shareholders for the purpose of effecting varia-tion in the Articles in respect of their rights and privileges or for conversion of one class into an-other.

The provision for variation must be contained in the Memorandum or Articles and this variation must not be prohibited by the terms of issue of shares of that particular class. Such resolutions are to be passed by three-fourth majority of the mem-bers of that class.

6. Meeting of Creditors:

These meetings are called when the company proposes to make a scheme of arrangement with its creditors. The Court may order a meeting of the creditors or a class of creditors on the application of the company or of liquidator in case of a com-pany being wound-up.

Such a meeting is held and conducted in such a manner as the Court directs. If arrangement is passed by a majority of three-fourth in value of creditors and the same is sanctioned by the Court, it is binding on all the creditors.

7. Meeting of Debenture Holders:

These meeting are called according to the rules and regulations of the Trust Deed or Debenture Bond. Such meetings are held from time to time where the interests of debenture holders are in-volved at the time of re-organisation, reconstruction, amalgamation or winding-up of the

company. The rules regarding the appointment of Chairman, no-tice of the meeting, quorum etc. are contained in the Trust Deed.

8. Meeting of Creditors and Contributories:

These meetings are held when the company has gone into liquidation to ascertain the total amount due by the company to its creditors. The main purpose of these meetings is to obtain the approval of the creditors and contributories to the scheme of compromise or rearrangement to save the company from financial difficulties. Sometimes, the Court may also order for such a meeting to be held.

Convening

To come together usually for an official or public purpose; assemble formally.

The convocation to the General Meeting of Shareholders must contain the following information:

- The place, date and time of the General Meeting. The Meeting will be held in Leuven, unless the convocation stipulates another location.
- The agenda for the Meeting, containing the matters to be discussed and the draft resolutions.
- The formalities that must be met by shareholders in order to be admitted to the General Meeting and exercise their voting right, in particular the period within which shareholders must make known their intention to participate in the Meeting, as well as information on:

- The periods within which shareholders – who meet the relevant conditions – are able to place new items on the agenda and submit written questions, as well as the e-mail address to which such requests/questions may be sent. For more detailed information on this point, the notice of convocation refers to the website.
- the procedure for voting by proxy, notably the forms to be used to vote by proxy and the means by which the company is prepared to accept electronic notifications of the appointment of proxy holders, and the period within which the right to vote by proxy must be exercised.

- The record date and an explanation that only those who are shareholders on that date shall have the right to participate and vote in the General Meeting.
- An indication of where and how the full, unabridged text of the documents that must be made available and of the draft resolutions may be obtained.

Conducting a Meeting:

If appropriate preparations have been made, then the scene is set for an effective meeting.

Agendas will have been produced and circulated. Participants will arrive knowing what is to be discussed and with sufficient background information to make relevant contributions. If appropriate, they will have consulted with people they represent and discussed any pertinent issues.

Procedure for Conducting Board Meeting:

The shareholders elect the director sin the annual general meeting of the company. The elected directors manage the affairs of the company in accordance with the policy approved by the shareholders. They hold the meetings frequently for the transaction of business of the company. These meetings which the directors hold are called board meetings or the directors meetings.

- Telephonic conversation:

The members of the board may transact urgent business of the company on telephone and then sign a resolution confirming the telephonic conversation.

- Circular resolution:

The board of directors of a company, if the articles permit, can do business of the company through circular resolution. These resolutions should be signed by all the directors and duly entered in the director's minute book.

- Board meetings.

The directors of a company function as a board. They elect chairman by determining the period for which he is to hold office and transact the business of the company.

- Notice of board meeting.

For a board meeting to be valid, it is necessary that a notice of the meeting is issued to all the directors of the company. This notice should mention the date, time, place of the meetings and the business to be transacted.

- Quorum for board Meetings.

If the quorum is not prescribed by the articles, the majority of the directors present in the meeting will constitute a quorum. However according to section 193 of the companies ordinance, the quorum for a meeting of directors of a listed company shall not be less than 1/3 of their number or four whichever is greater.

Postal Ballot Companies Act 2013 (Meaning Notice Procedure):

According to Section 110, A company shall transact businesses notified by Central Government through postal ballot only not in general meeting. A company may transact any business through postal ballot except –

ordinary business in an annual general meeting; and

business in respect of which directors or auditors have a right to be heard at any meeting.

A resolution passed through postal ballot shall be deemed to have been passed at a general meeting.

Postal Ballot Meaning

Postal Ballot is defined under section 2(65) means “voting by post or through any electronic mode”. Postal Ballot definition was never given in the Companies Act, 1956 because the concept of Postal Ballot was introduced into the Companies Act, 1956 by the 2001 Amendment and postal ballot under the 1956 Act included only voting by postal ballot not by electronic mode.

Postal Ballot Voting

Postal Ballot is not same as voting through electronic mode. The concept of Postal Ballot is a unique provision which gives shareholders the right to vote on items of business of a corporate body without actually attending its general meetings either personally or through their proxies/representatives.

The of Postal Ballot provides an opportunity even to such shareholders to take part in the decision making process The facility now provided to all shareholders, regardless of their location or their ability to be physically present at an appointed day and place, to approve or reject a proposal of the Board and to vote on items of business by postal or electronic mode, is a further step to encourage corporate democracy and to promote good corporate governance.

Items of business to be transacted through postal ballot:

Pursuant to clause (a) of sub-section (1) of section 110, the following items of business shall be transacted only by means of voting through a postal ballot-

a. Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;

b. Alteration of articles of association in relation to insertion or removal of provisions which, under subsection (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;

c. Change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;

d. Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;

e. Issue of shares with differential rights as to voting or dividend or otherwise under subclause (ii) of clause (a) of section 43;

f. Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;

g. Buy-back of shares by a company under sub-section (1) of section 68;

h. Election of a director under section 151 of the Act;

i. Sale of the whole or substantially the whole of an undertaking of a company as specified under subclause (a) of sub-section (1) of section 180;

j. Giving loans or extending guarantee or providing security in excess of the limit specified under subsection (3) of section 186. [Rule 22(16)]

Procedure for Postal Ballot:

Notice to Shareholders:

Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons there for and requesting them to send their assent or dissent in writing on a postal ballot because postal ballot means voting by post or through electronic means within a period of 30 days from the date of dispatch of the notice.

Mode of dispatch:

The notice shall be sent either : by Registered Post or speed post, or

through electronic means like registered e-mail id or

through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.

Publish advertisement:

An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying therein.

Company Board Meeting through Video Conference:

Companies registered in India are required to hold the first meeting of Board of Directors within 30 days of company registration. After the first board meeting, companies must conduct a minimum of

4 board meetings a year, with no more than 120 days gap in between meeting. With the growth and use of video conferencing and teleconferencing on the rise, many Board Meetings are now being conducted electronically. In this article, we look at the procedures to be followed in conducting a Board meeting through video or telephone conference.

- Requirement for Conducting Board Meeting on Video Conference

While conducting a company board meeting on video conference, the Chairperson and the company secretary should take steps to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures. Further, steps must be taken to provide proper video conferencing or audio visual equipment or facilities for effective participation of the directors

Also, there must be procedure for recording board meeting proceedings and storing the recording for safekeeping atleast until the completion of audit of that particular year.

- Notice of Board Meeting for Video Conferencing

If video or telephone conferencing facility is available for a board meeting, the notice of board meeting sent to all the Directors should inform of the facilities and procedure for participating through video conferencing.

Directors intending to participate through video or teleconferencing must intimate the Chairperson or the Company Secretary at the beginning of the calendar year. Once the intimation has been provided, the declaration would be valid for one year. In the absence of any intimation, it would be assumed by the company that the director would attend the board meeting in person.

1. At the commencement of the Board Meeting, the Chairperson should take a roll call and every Director participate in the Board Meeting through video or telephone conferencing must state the following:

- Name
- Location from where he is participating
- He/she has received the agenda and all the relevant material for the meeting; and

- That no one other than the concerned director is attending or having access to the proceedings of the meeting at the location from where he/she is participating.
- After the roll call, the Chairperson or the Company Secretary can inform the Board about the names of persons other than the directors who are present for the said meeting and confirm that the required quorum is complete.

2. The following types of matters cannot be discussed in a board meeting conducted through video conference:

- Approval of the annual financial statements.
- Approval of the Board's report.
- Approval of the prospectus.
- Audit Committee Meetings for consideration of accounts.
- Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

e-voting (electronic voting):

E-voting is an election system that allows a voter to record his or her secure and secret ballot electronically. In 2004, it's estimated that approximately 30 percent of the voting population in the United States used some form of e-voting technology, including direct electronic recording (DER) touch screen s or optical scanner s, to record their vote for President. Electronic votes are stored digitally in a storage medium such as a tape cartridge, diskette , or smart card before being sent to a centralized location where tabulation programs compile and tabulate results. Advocates of e-voting point out that electronic voting can reduce election costs and increase civic participation by making the voting process more convenient. Critics maintain that without a paper trail, recounts are more difficult and electronic ballot manipulation, or even poorly-written programming code, could affect election results.

Benefits of electronic voting

Electronic voting

Electronic voting is a term used to describe the act of voting using electronic systems to cast and count votes.

Forward-thinking countries and election commissions are keen to explore how it can help them improve their elections.

o Auditable, transparent, secure and accurate

For some nations, automated elections mean that people can trust the results because it allows for a process that is so auditable, transparent and secure. Of course, electronic voting also helps reduce human error.

o Faster results and build trust

For other countries, particularly large ones like Brazil, India and the Philippines, electronic voting and electronic counting means that people can get official election results within hours, instead of weeks. Again, this builds trust.

o Can increase engagement and turnout

For others countries, technology will be a useful way of improving voter education and registration, to increase engagement and voter turnout.

o Increases accessibility

It's also vitally important that everyone who is eligible to participate in elections can do so. And electronic voting is very good at making voting more accessible, meaning it's easier for disable people to vote independently.

o Smartmatic: the world leader in electronic voting

We lay claim to this title because we've processed more electronic votes (3.7 billion) in over 3,500 elections around the world – more than any other organisation.

The electronic voting system we've developed has been called the 'best in the world' by the world's leading, independent election observer, The Carter Center.

o Electronic voting that is completely auditable

One of the reasons our electronic voting system has been praised so highly is that it's designed around the idea that all parties, citizens and election commissions are able to audit the electoral process at every stage, including before an election has even begun.

The key to our success is what's known as the voter-verified paper audit trail (VVPAT). Our voting machines print a paper receipt every time a vote is registered electronically. This makes it easy to perform recounts and audits because you can compare the electronic count with the paper count. It's become the de facto standard worldwide for transparent electronic voting. What else does the VVPAT lead to?

o Electronic voting that is visibly secure

The VVPAT also helps people see that our electronic voting system is completely secure. If anyone was able to hack into our system, there would be a discrepancy between the electronic count and the paper count. In over 2.5 billion votes, there never has been. Needless to say, our system also protects the secrecy of the vote.

Committees of the Board of Directors

The Company constituted Audit Committee, Stakeholders Relationship Committee, Compensation and Remuneration Committee, Executive Committee, Nomination and Governance Committee and Corporate Social Responsibility (CSR) Committee. All committees have a combination of Executive, Non-Executive and Independent Directors. The Chairman of all the committees is an Independent Director.

As per the charter of respective committees, committees deliberate on the matters referred to it by the Board. Information and data that is important to the committees to discuss the matter is distributed in writing to the members of the committees well in advance of the meeting. Recommendations of the committees are submitted to the Board to take decision on the matter referred.

The members of the committee, who are not able to participate in the meeting physically, generally participate through tele-conferencing or video conferencing.

The committees are:

a) Audit committee

b) Risk management committee

c) Stakeholders relationship committee

d) Compensation and remuneration committee

e) Executive committee

f) Nomination and governance committee

g) Corporate social responsibility committee

Audit Committee under Section 177 of Companies Act,2013:

Section 177 of the Companies Act,2013 and Rule 6 and 7 of Companies (Meetings of Board and its Powers) Rules,2014 deals with the Audit Committee.

Applicability of Audit Committee:

The Board of directors of every listed companies and the following classes of companies, as prescribed under Rule 6 of Companies (Meetings of Board and its powers) Rules,2014 shall constitute an Audit Committee.

(i) all public companies with a paid up capital of Rs.10 Crores or more;

(ii) all public companies having turnover of Rs.100 Crores or more;

(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores or more.

The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

Powers of Audit Committee:

The Audit committee shall have the authority –

1. To call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board
2. To discuss any related issues with the internal and statutory auditors and the management of the company.
3. To investigate into any matter in relation to the items or referred to it by the Board
4. To obtain professional advice from external sources
5. To have full access to information contained in the records of the company.

Nomination & Remuneration Committee and Stakeholders Relationship Committee u/s. 178 of Companies Act,2013

Nomination and Remuneration Committee (NRC) and Stakeholders Relationship Committee (SRC) under Sec.178 of the Companies Act,2013

Introduction: The Companies Act, 2013 and corresponding rule, Companies (Meetings of Board and its Powers) Rules, 2014 has mandated the constitution of Nomination and Remuneration Committee and Stakeholders Relationship committee for certain classes of Companies, which was already recommendatory under clause49 of the Listing agreement. Applicability of NRC:

The Nomination and Remuneration Committee is applicable to the following classes of Companies

i. Every listed Company
ii. Every other Public company-
iii. Having Paid up capital of Rs.100 crores or more; or
iv. Which have, in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores.

The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

Responsibilities of NRC:

The Nomination and Remuneration Committee shall-

- Identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down,
- Recommend to the Board their appointment and removal,
- Carry out evaluation of every director's performance.
- Formulate the criteria for determining qualifications, positive attributes and independence of a director and
- Recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

Stakeholders Relationship Committee(SRC):

The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

The SRC shall consider and resolve the grievances of security holders of the company.

The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

Charter for Corporate Social Responsibility (CSR) Committee:

The objective of the Corporate Social Responsibility Committee (the "Committee") of the Board of Directors (the "Board") the Company shall be to assist the Board and the Company in fulfilling its corporate social responsibility ("CSR"). The Committee has overall responsibility for:

- Formulate and recommend to the board corporate social responsibility policy ("the CSR Policy"), which shall indicate the activities to be undertaken by the Company as CSR activities that must be aligned with schedule VII of the Companies Act, 2013;
- Recommending the amount of expenditure to be incurred on the identified CSR activities; and
- Implementing and monitoring the CSR policy from time to time.
- The purpose and responsibilities of the Committee shall include such other items/matters prescribed under applicable law or prescribed by the Board in compliance with applicable law from time to time.

ROLE OF THE COMMITTEE

1 The Committee should formulate a policy which shall indicate a list of CSR projects or programs which a company plans to undertake falling within the purview of Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same

2 The Committee shall annually review the CSR Policy and associated frameworks, processes and practices of the Company, and shall monitor the CSR Policy from time to time and to make appropriate recommendations to the Board

POSSIBLE QUESTIONS.

PART A (One Marks – Online Examination)

PART B (2Marks)

1. Write a short note on Women Directors
2. Explain DIN
3. What are the types of Meeting?
4. Explain Audit Committee
5. Write a short note on Corporate Social Responsibility
6. What are the duties of directors?
7. Explain Proxy
8. Explain Quorum

PART C (6 Marks)

1. Explain about committee of board of directors?
2. Write about classification of directors?
3. Explain about meetings and types of meetings?
4. Discuss the powers of directors and restriction placed on them?
5. Write a explanatory notes on
   I. Annual general meeting,
   II. Board meeting,
   III. Extraordinary general meeting
6. Explain about meetings and types of meetings?
7. Briefly explain the function and duties of directors?
8. Define stock exchange. Explain its characteristics and its function?
9. Explain different types of appointment of Directors.
10. What are the reasons for disqualification of Directors?

s.no	Unit - III	Option A	Option B	Option C	Option D	**Answer**
1	Get together of individuals or persons with some plan is known as _____	meeting	business meeting	company meeting	board meeting	**meeting**
2	When two or more persons gathered as per given notice to discuss some business matters is known as	company meeting	board meeting	general meeting	business meeting	**business meeting**
3	When the members of a company gather at a certain time and place to discuss business affairs it is called	general meeting	business meeting	company meeting	board meeting	**company meeting**
4	_____act as a representative of a company to take decisions through resolutions	Directors	shareholders	secretary	chairman	**Directors**
5	PLC Stands for	Public Limited Company	Public Life insurance Company	Public Limited Corporation	Public Life insurance Corporation	**Public Limited Company**
6	A general meeting which is called to deal with urgent matters which require resolution in between Annual General Meeting's is called as _____	Extraordinary General Meeting	General Meeting	Annual General Meeting	Statutory Meeting	**Extraordinary General Meeting**
7	AGM indicates	Annual General Meeting	Additional General Meeting	All General Meeting	Actual General Meeting	**Annual General Meeting**
8	_____ should record the decisions taken and provide sufficient background to those decisions	The Agenda	The Notice	The Resolution	The minutes	**the minutes**
9	The minutes of board meetings will be _____ than the minutes of general meetings	less	higher	lengthier	shorter	**lengthier**
10	_____ meetings involve managerial decision making at various levels	committee	Management	board	team	**Management**
11	_____ is an periodic or one-off meeting	One-off informal meetings	Informal Meeting	Departmental Meeting	management meeting	**Departmental Meeting**
12	A _____ may be formed to take a high-level overview of a project	steering group	Departmental Meeting	management meeting	Annual General Meeting	**steering group**
13	_____ can take place anywhere at any time	Departmental Meeting	management meeting	One-off informal meetings	team meeting	**One-off informal meetings**
14	A _____ is free to make its own regulations by its articles with respect to general	Public Limited Company	private company	sole proprietorship	firm	**private company**

	meetings					
15	The meeting must be _____	legally constituted.	illegally constituted	not again	not legal	**legally constituted.**
16	The proper authority to convene a general meeting of shareholders is _____	the secretary	the members	the creditors	the directors	**the directors**
17	The resolution to call a general meeting must be passed at a valid _____	Committee Meeting	Board's meeting	Annual Meeting	management meeting	**Board's meeting**
18	A meeting cannot be held unless a proper _____ has been given to all persons entitled to attend the meeting	notice	agenda	minutes	intimation	**notice**
19	A notice convening a general meeting must be given at least _____ prior to the date of meeting	14 days	7 days	21 days	30 days	**21 days**
20	If general meeting is held with a shorter notice, then notice must be sent to at least _____ of the members	75%	95%	85%	99%	**95%**
21	_____ refers to the minimum number of members who must be present at a meeting in order to constitute a valid meeting	Proxy	Member	Quorum	Motion	**Quorum**
22	Unless the articles of a company provide for larger quorum, _____ should personally present in the case of a public company	2 members	7 members	5 members	3 members	**5 members**
23	Unless the articles of a company provide for larger quorum, _____ should personally present in the case of a private company	7 members	5 members	3 members	2 members	**2 members**
24	A proper meeting must have a _____ to chair the proceedings	chairperson	secretary	proxy	directors	**chairperson**
25	The chairman is the _____ of the meeting	head	chief	principal	executive	**head**
26	Generally, the chairman of the _____ is the Chairman of the general meeting	Management meeting	Committee Meeting	steering group	Board of Directors	**Board of Directors**
27	_____ is the presiding officer of the meeting	The secretary	the board of directors	Chairman	Manager	**Chairman**
28	_____ may terminate the chairman's appointment at any time	The directors	The Secretary	the central government	The Shareholders	**The directors**

29	Chairman must ensure that business is taken in the order set out in _____	agenda	notice	minutes	list	**agenda**
30	_____ will decide, that who shall first address the meeting	Secretary	Directors	Chairman	Shareholders	**Chairman**
31	The purpose of the _____ is to convey the information to a group of people	meeting	resolution	Motion	notice	**notice**
32	The minimum full period of notice for all meetings is _____	21 days	14 days	30 days	60 days	**14 days**
33	The term _____ means things to be done	Notice	minutes	Agenda	Motion	**Agenda**
34	_____ are the Official record of the proceedings of a meeting	Agenda	resolution	Special Notice	Minutes	**Minutes**
35	The minutes are taken by the _____	Manager	Managing Director	Secretary	Board	**Secretary**
36	The Secretaries original rough notes are called as _____	temporary minutes	rough draft	transcribed minutes	tentative minutes	**temporary minutes**
37	Temporary minutes are replaced by the _____	tentative minutes	transcribed minutes	temporary minutes	minutes	**transcribed minutes**
38	The both temporary minutes and transcribed minutes shall be marked as	transcribed minutes	minutes	tentative minutes	temporary minutes	**tentative minutes**
39	Minutes of the meeting _____ the memory of the members who were present at the meeting	refresh	creates	discuss	intimate	**refresh**
40	Minutes should be as_____ as possible	complex	simple	brief	long	**brief**
41	The minutes should be presented for approval at the _____ of a similar kind	current meeting	previous meeting	boards meeting	next meeting	**next meeting**
42	_____ is the minimum number of persons required to be present at a meeting	Quorum	proxy	agenda	Motion	**Quorum**
43	The quorum is usually set as a _____ of the membership	ratio	proportion	percentage	fraction	**percentage**
44	In the case of a company limited by shares or guarantee and having only one member,_____ person present at a meeting is a quorum	no qualifying	three qualifying	five qualifying	one qualifying	**one qualifying**
45	The quorum for a meeting of the Board of directors of a company is _____ of its total strength	two-third	one-third	three - fourth	two - fourth	**one-third**

46	Any person appointed on behalf of the member to attend the meeting is called as _____	proxy	quorum	Motion	resolution	**proxy**
47	Proxy form must be in _____	oral	typed	writing	both oral and typed	**writing**
48	A proxy is not entitled to vote except on a _____	show by hands	secret ballots	poll	gestures	**poll**
49	_____ means a proposal to be discussed at a meeting by the members	Conflict	Issue	Motion	resolution	**Motion**
50	A motion, on being passed as a _____ becomes a decision	resolution	motion	report	Minutes	**resolution**
51	A motion must be in writing and signed by the mover and put to the vote of the meeting by the _____	Members	employee	directors	chairman	**chairman**
52	If the motion is passed, it becomes a _____	resolution	order	instruction	rule	**resolution**
53	Generally, the chairperson does not put forward motions, because he or she is primarily the _____ of the meeting	convener	facilitator	principal person	bridging agent	**facilitator**
54	Resolutions mean _____ at a meeting	discussions	providing information	decisions taken	giving suggestion	**decisions taken**
55	An ordinary resolution is one which can be passed by a _____ majority	maximum	simple	minimum	cent percent	**simple**
56	A special resolution is one which is passed by a _____ majority	75%	50%	49%	51%	**75%**
57	The intention to propose a resolution as a special resolution must be specifically mentioned in the _____ of the general meeting	resolution	report	statement	notice	**notice**
58	A poll may be ordered by the _____ of his own motion	directors	shareholders	secretary	Chairman	**Chairman**
59	The word _____ means an expression of a wish or opinion in an authorized formal way for or against any proposal	Quorum	motion	vote	discussion	**vote**
60	The _____ of the meeting to be prepared and sent to all members of the meeting	agenda	minutes	statement	report	**agenda**

UNIT-IV- Dividends, Accounts and Audits

SYLLABUS

Introduction: Dividends, Accounts and Audits – Provision relating to payment of Dividend, Provision relating to book of accounts, provision relating to audit, Auditors Appointment, ion of Auditors, Auditors Report, Secretarial Audit.

DEFINITION AND MEANING OF DIVIDEND

Dividend is the return on the share capital subscribed for and paid to a company by its shareholders. The term dividend has been defined under Section 2(14A) of the Companies Act, 1956 (the Act) as "dividend includes any interim dividend." The dictionary meaning of the term

„dividend" is sum payable as interest on loan or as profit of a company to the creditors of an insolvent"s estate or an individual"s share of it. In commercial term, however, dividend is the share of the company"s profit distributed among the members.

Types of Dividend:

Final Dividend:

Final dividend is recommended by the Board of directors in its report to the shareholders, as per the requirements of Section 217 of the Companies Act, which is attached to the balance sheet for the relevant financial year. It is declared by the shareholders at the annual general meeting. Usually articles of association of companies provide that the shareholders cannot increase the rate or amount of dividend than the one recommended by the Board. The shareholders may, however, declare the payment of dividend on equity shares at a rate lower than the one recommended by the directors in their report.

It is the discretion of the Board of directors to recommend or not to recommend the declaration

of final dividend, which has to be exercised in good faith in the interest of the company. The shareholders have no power to declare final dividend in the absence of a recommendation of the Board of directors in this regard.

Interim Dividend

Section 2(14A) defines 'Dividend' to include interim dividend. The Companies (Amendment) Act, 2000 has amended Section 205 to make provisions for interim dividend. The Board of directors may declare interim dividend. The interim dividend is paid between two annual general meetings of the company.

A company can normally estimate its profits for the current financial year on a fairly reasonable basis and in that event it can allocate to the reserves the prescribed percentage of profits on the basis of its estimated profits. As a measure of precaution, the company may allocate to the reserves a higher amount than the actual amount based on the prescribed percentage of its estimated profits.

Further, it should also provide for depreciation in full. It should transfer to the reserves a n amount based on estimated profits after the end of the financial years and before the finalisation of the amounts for the financial year and thereafter decide to pay an interim dividend to its shareholders.

Prior to the coming into force of the Companies (Amendment) Act, 2000, the Act did not contain specific provisions for payment of interim dividend. However, if the articles of association of company authorised payment of interim dividend as per regulation 86 of the Table A of Schedule I, then the Board of directors of such company could declare an interim dividend where its profits warranted such payment. A mere resolution for declaration of an interim dividend did not create any liability and could be rescinded at any time before actual payment. This was so even if the cash to cover the proposed dividend had been placed into a separate account. The distinction between interim and final dividend was that, unlike interim dividend, a final dividend once declared

by the company in general meeting was a debt and created an enforceable obligation. [Punjab National Bank v. Union of India (1986) 59

Comp Cases 35 (Del.)] With the enactment of the Companies (Amendment) Act, 2000, this position has changed. Interim dividend stands on the same footing as that of the final dividend. Both interim and final dividend when declared become debt and are payable within 30 days of declaration.

Dividend on Preference Share:

A Preference share carries a preferential right as to dividend in accordance with the term of issue and the articles of association, subject to the availability of distributable profits. The preferential right to a dividend could either be a fixed amount or an amount calculated at a fixed rate. It may be cumulative or noncumulative. Preference shares can carry dividend of a fixed amount, before anydividend is paid on the equity shares. If there are two or more classes of preference shares, the shareholders of the class which has priority are similarly entitled to their preferential dividend before any dividend is paid in respect of the other class. But these rights in respect of dividends are subject to three conditions. Firstly, preference shares are part of the company‟s share capital, consequently, preference dividends can be paid only if the company has earned sufficient profits. Secondly, a dividend becomes payable to the shareholders only when it is declared in the manner laid down in the Act and by the company‟s articles. Thirdly, there should have been a formal declaration. Preference shareholders are not entitled to treat the preference dividend as a debt and sue for its payment in the first instance. However, if the articles specify that the company‟s profit shall be applied, by way of payment of the preference dividend, the preference shareholder can sue for it even though it has not been declared [Evling v. Israel & Oppenheimer Ltd. (1918) 1 Ch. 101].

Dividend on Equity Shares

Dividend on equity shares are to be paid in accordance with the rights of the respective classes of shares. Equity shareholders are entitled to be paid dividend on their shares only after all dividends on preference shares have been paid to date. Although the equity shareholder stands second in preference to preference shareholders, he enjoys a privilege of a higher dividend as the preference dividend is fixed and cannot be increased, however, large the company"s profits may be, unless the preference shares carry the right to participate in surplus profits. Therefore, except in the above mentioned situation, the whole of the residual profits of the company after paying the preference dividend may be paid out as dividend to the equity shareholders either immediately or in later years.

Dividend cannot be paid out of the assets of the company, and generally, can be declared only out of the profit available for the purpose.

DECLARATION OF DIVIDEND:

A dividend when declared becomes a debt and a shareholder is entitled to sue for recovery of the same after expiry of the period of 30 days prescribed under Section 207, in Re Severn and Wye & Severn Bridge Rly. Co. (1896) 1, Ch 559. A dividend when proposed does not become a debt but only becomes debt when declared (Kastur Chand Jain v. Gift Tax Officer AIR 1961 Cal. 649).

The Act does not specifically provide who shall declare final dividend. But under Section

173(1), the declaration of a dividend has been shown as ordinary business at an annual general meeting of a company. Similarly there is a reference to dividend in Section 217 whereunder directors are required to mention in their report to the shareholders the amount, if any, which they recommend by way of dividend.Therefore, it could be assumed that the intention of the legislature is to empower the annual general meeting to declare final dividend. In Raghunandan Neotia v. Swadeshi Cloth Dealers Ltd. (1964) 34 Comp. Cas. 570 (Cal.) the Calcutta High Court

held that the cumulative effect of all the provisions of the Act is that the declaration of dividends should be made at the annual general meetings. In Kantilal v. CIT, (1956) 26 Comp. Cas. 357 (Bom.), the Bombay High Court has held that it is well established and the law is quite clear that a dividend can only be declared by the shareholders of the company. Articles of companies usually contain provisions with regard to declaration of dividends. These will be on the pattern of Regulations 85-94 of Table „A" of Schedule I to the Act. It would be seen that under Regulation 85 the power to declare a dividend vests with the general meeting, but it has no power to declare a dividend exceeding the amount recommended by the Board.

But if a dividend is so declared at the general meeting, the company cannot declare a

further dividend for the same year (Circular No. 2 issued by the Department of Company Affairs dated 25.10.75) There can be no declaration of dividend for past years in respect of which the amounts have already been closed at previously held annual general meeting. [Raghunandan Neotia v. Swadeshi Cloth Dealers Ltd. (Supra)]. Under Section 205(1A) of the Act, the Board of directors is authorised to declare interim dividend. Hence, if articles does not provide otherwise, Board may declare interim dividend.

Revocation of Declared Dividend

As already stated earlier, a dividend including interim dividend once declared becomes a debt and cannot be revoked, except with the consent of the shareholders. If a dividend is declared and paid to shareholders, the character of the payment cannot be altered by a subsequent resolution.

But where a dividend has been illegally declared, the directors will be justified in revoking the declared dividend. If an illegally declared dividend is paid then the directors shall be responsible, liable and accountable to the company personally.

Payment of Dividend in Cash or in Kind

According to Section 205(3), dividend can be paid only in cash, not in kind. The articles may provide that any meeting of the company declaring a dividend may resolve that the dividend be paid wholly or partly by distribution or issue of paid-up shares. In the absence of such express authority dividends may not be paid otherwise than in cash. In one case, where the dividend was paid by allotting shares,

it was held that the market value of the shares on the date of the declaration of dividend was to be taken into consideration for computing the income of shareholders for the purposes of tax. According to Section 205(3), dividend can be paid only in cash, not in kind.

Liability of Directors, Shareholders and Auditors for Improper Dividend

The directors are personally liable to account for improper payment of dividend to the extent to which it has caused loss to the company. If for instance they have paid dividend out of capital they have to compensate the company for the loss. On the other hand, if a member received dividend knowing that it is paid out of capital he is liable to make good the loss to the company and the directors can recover the amount so paid. At the instance of any individual shareholder, the directors can be restrained from going ahead with the payment of an improper and illegal dividend [Hoole v. Great Western Rly Co. (1867) 3 Ch. App. 262]. An auditor who is party to the payment of dividend which is improper is liable to be proceeded against and the amount which is improperly paid may be recovered from him.

Shareholders Right to Dividend

Once a dividend is declared a shareholder has the right to claim dividend against the company. (Bacha F. Guzadar (Mrs.) v. CIT (1955) 25 Com. Cases 1: AIR 1955 SC 74). A

shareholder cannot compel the company by any process of law to declare a dividend. The usual practice is for the Board to recommend and the annual general meeting to declare the dividend. The

annual general meeting will have the power, subject to the provisions of the Act to determine the amount of dividend to be distributed.

WHO IS ELIGIB LE TO R ECEIVE DIVIDEND

Under Section 206 of the Act a dividend in respect of a share has to be paid to the registered shareholder of the share or to his order or to his bankers. For this purpose, usually companies close the register of members under Section 154 of the Act or fix a record date, of which 7 days notice should be given by publication of advertisement in two newspapers—one in English and the other in the language of the region in which the registered office of the company is situated. The purpose of such notice is to give an opportunity to those who hold blank transfer deeds to lodge them with the company duly completed. Dividend is paid to those whose names appear on the record date or the last day of the closure of register of members, as the case may be. The dividend is payable to the shareholder whose name appears in the register of members on the appropriate date even though prior to that date he has sold the shares and the transfer deed in respect thereof has not been lodged with the company [Chunilal Khushaldas Patel v. H K Adhyaru (1956) 26 Comp. Cas 168 (S.C)].

Recently, it was held in the case of Commissioner of Income-Tax v. Aatur

Holdings P. Ltd. [(2008) 146 Comp Cas 152 (Bom)], that merely because a person may have purchased or been in receipt of shares, in the absence of the shares being registered in his name in the books of account of the company, such a person is not entitled to receive the dividend. The dividend has to be paid by the company in the name of the registered shareholders and it is the registered shareholders alone who claim dividend under section 27 of the Securities Contracts (Regulation) Act, 1956.

Section 206A was inserted by the Companies (Amendment) Act, 1988 w.e.f. 15.6.1988

providing for right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares. It provides that in case instrument of transfer of shares is pending registration with the company, the dividends in relation to such shares should be transferred to the special bank account opened by the company under Section 205A unless the company is authorised by the registered shareholders in writing to pay such dividend to the transferee specified in the instrument of transfer. In S V Nagarajan v. Lakshmi Vilas Bank Lt

WHEN DID DIVIDEND PAYABLE:

Under Section 207 of the Companies Act, 1956, dividend has to be distributed within 30 days of the declaration. Posting of dividend warrants within 30 days will be deemed to be payment irrespective of the fact whether the warrant has been encashed or not under regulation 91 of Table A of Schedule I to the Act. In the case of joint holders the warrant has to be sent to

the registered address of the first named joint holder or to such person and to such address as the joint holders may in writing direct.

However, as per proviso to the Section 207 in the following circumstances dividend need

not be paid within 30 days viz.:

(i) Where dividend could not be paid by reason of the operation of any law e.g. in the case of non-residents, dividend need not be paid within 30 days if permission for remittance where required has not been received therefor from the Reserve Bank of India within 30 days;

(ii) Where a shareholder has given directions to the company regarding the payment of dividend

and these directions cannot be complied with;

(iii) Where there is a dispute regarding the right to receive dividend;

(iv) Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(v) Where, for any other reason, the failure to pay the dividend or to post the warrant was not due to any default on the part of the company.

The foregoing provisions shall equally apply to payment of interim dividend.

Under Section 205(3) dividend has to be paid in cash. Dividend can be distributed in cash or by issue of a cheque or warrant. In Krebs Biochemicals Ltd. & Ors. v. ROC [(2003) 57 CLA 75 (AP)], the company transferred dividend to a special dividend account and also Post dividend warrants to the shareholders within the stipulated 42 days (now 30 days) from the date of the declaration of dividend. The Registrar of companies carried out an inspection of the company on 29.09.1997 and concluded that the company had failed to transfer the unpaid dividend to the special account within the time stipulated under Section 205A(1) of the Act. The ROC initiated prosecution proceedings against the company and its directors and filed a complaint on 15.4.1998. The company and its directors challenged the prosecution before the High Court contending that it had deposited the entire dividend amount in a separate dividend account and dispatched the dividend warrants within stipulated time and that the complaint of ROC was barred by limitation also (which is 6 months as per Section 468(2) of Cr.P.C.). Allowing the appeal of the company, the Court stated that once the limitation period begins, it cannot be stopped.

The averments made in the complaint do not constitute an offence under Section 205A (8) of the Act and is barred by limitation.

Appointment of Auditors

Sections 138 to 148 of the Companies Act deal with accounts, audit and auditors. These provisions will have far reaching implications for the audit profession. In this article some important provisions contained in the companies act, 2013 are discussed.

Definition of auditor

An auditor is an independent professional person qualified to perform an audit. In accounting, an auditor is someone who is responsible for evaluating the validity and reliability of a company or organization's financial statements. The term is sometimes synonymous with "comptroller".

Appointment of auditor

As per section 139, it is a prime requirement that every company shall at the first annual general meeting appoint an auditor who can either be an individual or a firm. Appointment includes reappointment.

The manner and procedure of selection of auditors by the members of the company will be such

as may be prescribed. It is a mandatory condition that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him stating that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor.

Tenure

As per the provisions of Companies Act, 2013, a company can appoint an ind ividual as an auditor for more than one term of five consecutive years and an audit firm as an auditor for more than two terms of five consecutive years.

Government Company

In a Government company, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

Eligibility, Qualifications and Disqualifications of auditors

A person will be qualified to be appointed as an auditor of a company only if he is a chartered accountant. Where a firm is appointed as an auditor of a company, o nly the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm. A person will be disqualified if he is falling under the following:

an officer or employee of the company; a person whose relative is a director or is in the employment of the company's a directoror key managerial personnel;

a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

Removal and Change of Auditor

i. Special resolution: The auditor appointed may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

ii. Resignation: The auditor who has resigned from the company shall file within a

period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of Government company with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation. In case of non compliance he shall be punishable with fine ranging between INR 50,000 to 5 lakh.

iii. Tribunal: The Tribunal either suo motu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner in relation to the company or its directors or officers, it may, by order, direct the company to change its auditors. In the case of such an application by the Central Government for change of Auditors, the Tribunal can, within

15 days, pass an order that the auditor shall not function as such and the Central Government will be able to appoint another auditor.

Consequences

The auditor who is removed by the Tribunal cannot be appointed as an auditor of that company for 5 years.

Punishment with imprisonment for a minimum term of six months which may extent to

10 years and shall also be liable to pay a minimum fine of an amount involved in the fraud which may extend to 3 times the said amount.

If the fraud involves public interest the minimum period of imprisonment will be 3 years.

Powers and duties of auditors and auditing standards:

Powers:

1. Right to access: Every auditor of a company shall have right to access at all time to book of accounts and vouchers of the company. The Auditor shall be entitled to require from officers of the company such information and explanation as he may consider necessary for performance of his duties. There is an inclusive list of matter for which auditor shall seek information and explanation. This list helps auditor to take special care on serious issues. The list includes issues related to:

(a) Proper security for Loan and advances,

(b) Transaction by book entries

(c) Sale of assets in securities in loss

(d) Loan and advances made shown as deposits, (e) Personal expenses charged to revenue account

(f) Case received for share allotted for cash

The auditor of holding company also has same rights.

2. Auditor to sign audit reports: The auditor of the company shall sign the auditor's report or sign or certify any other document of the company and financial transactions or matters, which

have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

3. Auditor in general meeting: It is a prime requirement under section 146, that the company must send all notices and communication to the auditor, relating to any general meeting, and he shall attend the meeting either through himself or through his representative, who shall also be an auditor. Such auditor must be given reasonable opportunity to speak at the meeting on any part of the business which concerns him as the auditor. As per section 101, notice of general meeting must be given before 21 days either in writing or through electronic mode to the auditor in such manner as may be prescribed. Every notice of a meeting 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.

4. Right to remuneration: The remuneration of the auditor of a company shall be fixed in

its general meeting or in such manner as may be determined therein. It must include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

5. Consent of auditor: As per section 26, the company must mention in their prospectus

the name, address and consent of the auditors of the company.

Duties

1 Make report: The auditor shall make a report to the members of the company on accounts examined by him on every financial statements.

The auditor report shall also state:

Whether he has sought and obtained all the necessary information and explanations,

Whether proper books of account have been kept,

Whether company's balance sheet and profit and loss account are in agreement with books of accounts and returns,

2. Audit report of Government Company: The auditor of the government company will be appointed by the Comptroller and Auditor-General of India and such auditor shall act according to the directions given by them. He must submit a report to them which should include the action taken by him and impact on accounts and financial statement of the company.

The Comptroller and Audit – General of India shall within sixty days of receipt of the report have right to (a) conduct a supplementary audit and (b) comment upon or supplement such audit report.

The Comptroller and Audit – General of India may cause test audit to be conducted of the accounts of such company.

3. Liable to pay damages: As per section 245, the depository and members of the company have right to file an application before the tribunal if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company. They also have right to claim damages or compensation from the auditor including

audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct.

4. Branch Audit : Where a company has a branch office, the accounts of that office

shall be audited either by the auditor appointed for the company, or by any other person qualified for appointment as an auditor of the company. The branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manne r as he considers necessary.

5. Auditing Standards : Every auditor shall comply with the auditing standards. The Central Government shall notify these standards in consultation with National Financial reporting Authority. The government may also notify that auditors' report shall include a statement on such matters as notified.

6. Fraud Reporting : If an auditor of a company, in the course of the performance of his

duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

7.Winding up: As per section 305, at the time of voluntary winding up of a company it is a

mandatory requirement that auditor should attach the copy of the audits of the company prepared by him

Appointment of First Auditors: The introduction of new Companies Act, 2013, has made many changes relating to the provisions of the Appointment of Statutory Auditors.

As per the Section 139 of the Companies Act, 2013, every company shall, at the first annual general meeting appoints an individual or firm as an auditor who shall old the office from the conclusion of that meeting till the conclusion of next Annual General Meeting.

Before the appointment shall be made, a written consent of the auditor to such appointment, and a certificate from him or that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor.

The Company on the other hand has to inform the Auditor of his appointment and also file necessary forms with the Registrar of Companies (Form ADT-1) within 15 days of the meeting in which the auditor is appointed.

The Act also speaks out that all listed company or a unlisted public company having its paid up capital of Rupees Ten Crores or more or all private limited company having its paid up capital or Rupees twenty crore or more shall appoint, an individual as auditor for more than one term of five consecutive years and an audit firm as an auditor for more than two terms of five consecutive years.

As per section 139(6) the first auditor of the company shall be appointed by the Board within 30 days of Incorporation. In case of Board's failure, an EGM shall be called within 90 days to appoint the first auditor. The law is silent regarding from when this time limit of 90 days be reckoned, it is better to take a stricter view and interpret that the
90 days limit starts from Incorporation rather than expiry of 30 days.

The appointment of first auditor is governed through section 139(6) which starts with a non-obstinate clause [not withstanding anything contained in sub-section (1)] and it is sub-section (1) which requires obtaining consent & certificate from auditor and filing of formADT-1withROC.

Since section 139(6) does not speak anything contrary to section 139(1) as far as obtaining of consent, certificate and filing of form is concerned therefore in can be interpreted that ADT-1 should be filed with ROC for first auditor also.

REAPPOINTM ENT OF AUDITOR: After completion of tenure of 5 consecutive years the auditor may be re-appointed by complying with the provisions of section 139(9) which states that subject to the provisions of sub-section (1) & the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if- He is not disqualified for re-appointment.

He has not given the company a notice in writing of his unwillingness to be re-appointed.

A special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

As per 2nd, 3rd & 4th proviso to section 139(1) consent, certificate and filing of form is required for appointment. Since as per explanation to section 139(1) appointment includes re-appointment therefore the documentation & filing of form is also required at the time of re-appointment but Ratification does not require filing of ADT-1 but it will be a better practice if certificate of disqualification is obtained even in case of ratification.

As per section 139(2) no listed company or companies as prescribed shall appoint or re-appoint :-

An individual as auditor for more than one term of 5 consecutive years; and An audit firm as auditor for more than two terms of 5 consecutive years.

The period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be.

Firm having a common partner to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

The incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.

If a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

As per section 139(8) any casual vacancy, shall be filled by the Board within 30 days. If the vacancy has arisen due to resignation of auditor then such appointment shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board.

I

nstances of casual vacancy:

1. Death

2. Resignation

3. Disqualification – If an existing auditor gets disqualified under Section 141 then he shall inform the company and the situation will be treated as casual vacancy.

Failure of ratification at AGM – If the ratification resolution fails at the AGM of company then this also tantamount to casual vacancy.

REMOVAL AND RESIGNATION OF AUDITOR: The auditor appointed under section 139 may be removed from his office before the expiry of his term only by special resolution of the company, after obtaining previous approval of the Central Government.

Removal by Special Resolution and previous approval of the Central Government: [Sec 140(1)]:

Sub-Section (1) provides that the removal of an Auditor before the expiry of his term requires-

1. The previous approval of Central Government (CG). Form of Application will be made in form-ADT-2. Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration offices and Fees) Rules, 2014. [Rule 7(1) of the Companies (Audit and Auditor) Rules, 2014 (Attached in form GNL-2).

2. The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a SPECIAL RESOLUTION of the company, before taking any action, the auditor concerned shall be given a Reasonable Opportunity Of Being Heard.

3. The application to Government shall be filed within 30 days from the date of resolution of the Board along with fees;

4. The company need to hold General Meeting (EGM) within 60 (Sixty) days of the approval of Central government.

Resignation of Auditors: Compliance by Auditor After Resignation: The auditor who has RESIGNED FROM the company shall file within a period of 30 days from the date of resignation. Auditor resigning from the company shall file within 30 days from the date of resignation, a statement in Form ADT-3 with the registrar.

In case of other than Government Company, the auditor shall within 30 days from the date of resignation, file such statement to the company and the registrar.

In case of Government Company or government controlled company, the auditor appointment under sub-section (5) of section 139, shall within 30 days from the resignation, file such statement to the company and the Registrar and also file the statement with the Comptroller and Auditor General of India (CAG).

The form and content of the statement to be filed by the retiring auditor shall be prescribed by way of rules. The onus to file such statement containing relevant facts and reasons for resignation

is on the resigning auditor and any contravention of sub section (2) is punishable with monetary fine which could be minimum Rs. 50,000 and Maximum Rs. 5 lakh.

Oppression and mismanagement

Foss v Harbottle

Foss v Harbottle (1843) 67 ER 189 is a leading English precedent in corporate law. In any action in which a wrong is alleged to have been done to a company, the proper claimant is the company itself. This is known as "the rule in Foss v Harbottle", and the several important exceptions that have been developed are often described as "exceptions to the rule in Foss v Harbottle". Amongst these is the 'derivative action', which allows a minority shareholder to bring a claim on behalf of the company. This applies in situations of 'wrongdoer control' and is, in reality, the only true exception to the rule. The rule in Foss v Harbottle is best seen as the starting point for minority shareholder remedies.

Facts:Richard Foss and Edward Starkie Turton were two minority shareholders in the "Victoria Park Company". The company had been set up in September 1835 to buy 180 acres (0.73 km2) of land near Manchester and, according to the report,"enclosing and planting the same in an ornamental and park-like manner, and erecting houses thereon with attached gardens and pleasure-grounds, and selling, letting or otherwise disposing thereof".

The claimants alleged that property of the company had been misapplied and wasted and various mortgages were given improperly over the company's property. They asked that the guilty parties be held accountable to the company and that a receiver be appointed.

The defendants were the five company directors and the solicitors and architect and also H Rotton, E Lloyd, T Peet, J Biggs and S Brooks, the several assignees of Byrom, Adshead and Westhead, who had become bankrupts.

Judgment:The court dismissed the claim and held that when a company is wronged by its directors it is only the company that has standing to sue. In effect the court established two rules. Firstly, the "proper plaintiff rule" is that a wrong done to the company may be vindicated by the company alone. Secondly, the "majority rule principle" states that if the alleged wrong can be confirmed or ratified by a simp le majo rity of members in a ge nera l meeting, then the court will not interfere,legal term.

Developments:The rule was later extended to cover cases where what is complained of is some internal irregularity in the operation of the company. However, the internal irregularity must be capable of being confirmed/sanctioned by the majority.

The rule in Foss v Harbottle has another important implication. A shareholder cannot generally bring a claim to recover any reflective loss - a diminution in the value of his or her shares in circumstances where the diminution arises because the company has suffered an actionable loss. The proper course is for the company to bring the action and recoup the loss with the consequence that the value of the shares will be restored.

Because Foss v Harbottle leaves the minority in an unprotected position, exceptions have arisen and statutory provisions have come into being which provide some protection for the minority.

Exceptions to the rule:

There are certain exceptions to the rule in Foss v. Harbottle, where litigation will be allowed. The following exceptions protect basic minority rights, which are necessary to protect regardless of the majority's vote.

1. Ultra vires and illegality

The directors of a company, or a shareholding majority may not use their control of the company to paper over actions which would be ultra vires the company, or illegal.

2. Actions requiring a special majority

If some special voting procedure would be necessary under the company's constitution or under the Companies Act, it would defeat both if that could be sidestepped by ordinary resolutions of a simple majority, and no redress for aggrieved minorities to be allowed.

3. Invasion of individual rights

4. "Frauds on the minority"

BOOKS OF ACCOUNTS

The shareholders provide capital to the company for running the business. They are in a way, the owners of the company. But, all of them cannot take part in managing the affairs of the company as their number is usually much more. But they have every right to know as to how their money has been dealt with by the directors in a particular period. This is why perhaps compulsory disclosure through annual information to the shareholders by the directors about the working and financial position of the company enables them to exercise a more intelligent and purposeful control over the affairs of the company. For preparation of annual accounts the maintenance of proper books of account is a must. Section 128 of the Companies Act, 2013 contains the provisions for books of account etc. to be kept by company. Maintenance of books

of account would mean records maintained by the company to record the specified financial transaction. It has been specifically provided that every company shall keep proper books of account. This section specifies the main features of proper books of account as under –

(i) The company must keep the books of account with respect to items specified in clauses (i) to (iv) of sub-section 2(13) of the Companies Act, 2013 hereinafter referred as Act, which defines "books of account".

(ii) The books of account must show all money received and expended, sales and purchases of goods and the assets and liabilities of the company.

(iii) The books of account must be kept on accrual basis and according to the double entry system of accounting.

(iv) The books of account must give a true and fair view of the state of the affairs of the company or its branches."books of account" as defined in Section 2(13) includes records maintained in respect of—

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company; (iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which

belongs to any class of companies specified under that section.

BOOKS OF ACCOUNTS: The Companies Act, 2013 lays down that every company incorporated under this Act must maintain and keep at its registered office certain books, registers and copies of certain returns, documents etc. and to give certain notices, file certain returns, forms, reports, documents etc. with the Registrar of Companies within certain specified time limits and with the prescribed filing fees. These books are known as Statutory Books. Some of the statutory registers are required to be kept open by the company for inspection by directors, members, creditors of the company and by other persons. The company is also required to allow extracts to be taken from certain documents, registers, returns etc. and furnish copies of certain documents on

demand by a member or by any other person on payment of specified fees. Every company incorporated under the Act is required to keep at its registered office, inter alia, the following statutory books and registers –

• Register of securities bought back. (Section 68 and Rule 17(12) of companies (Share Capital and Debenture)

• Register of deposits.

• Register of charges.

• Register of members

• Index of members.

• Register of debenture holders

• Index of debenture holders.

• Register and index of beneficial owners.

• "Foreign register" containing the names and particulars of the members, debenture holders, other security holders or beneficial owners residing outside India.

• Register of Renewed and Duplicate Share Certificates.

• Register of sweat equity shares

• Annual Return

• Register of Postal Ballot

- Books containing minutes of general meeting and of Board and of committees of Directors.

• Books of accounts.

• Register of Directors/ Key Managerial Personnel.

• Register of investments in securities not held in company's name.

• Register of loans, guarantees given and security provided or making acquisition of securities

• Register of contracts with companies/firms in which directors are interested.

Books of Account in Respect of Branch Office

The branches of the company, if any, in India or outside India shall also keep the books of account in the same manner as specified in subsection (1), for the transaction effected at the branch office. Further the branch offices are required to send the proper summarized return at quarterly intervals to the company at its registered office and kept open to directors for inspection.

Accrual basis and Double-entry system of accounting

According to Section 128(1), books of account are required to be kept on accrual basis and in accordance with the double entry system of accounting. Accrual basis of accounting is an accounting assumption or an accounting concept followed in preparation of the financial

statements. Accrual concept is one of the four principles or accounting concepts, which involves recording income and expenses as they accrue, as distinct from when they are received or paid. The main feature of the accrual concept is that the accounting period covers only the revenue and expense transactions of that period and ignores the timing of actual cash receipts and payments. In this method, revenues and expenses are identified with specific period of time, such as a month or a year, and are recorded as 'incurred' along with acquired assets, without regard to the date of actual receipt or payment of cash in any form. Double entry book-keeping is a method of recording any transactions of a business in a set of accounts, in which every transaction has a dual aspect of debt a nd credit and therefore, needs to be recorded in at least two accounts. For example, when a person (debtor) pays cash to a business for goods he has purchased, the cash held by the business is increased and the amount due from the debtor is decreased by the same amount; similarly, when a purchase is made on credit, the purchase account is debited and the amount owed to creditor is increased by the same amount. This double aspect enables effective control of business because all the books of accounts must balance. Thus, double entry book- keeping is a method in which every transaction is recorded in a business in such a manner that it involves one or more debit entries and one or more credit entries. The debit entries / amount must equal the credit entries/amount for each transaction recorded.

Inspection by directors

As provided in Section 128(3), any director can inspect the books of accounts and other books and papers of the company during business hours. The expression "Books and Papers" has been defined

in section 2(12) which includes accounts, deeds, vouchers, writings and documents. The company is, therefore, required to make available the aforesaid books and papers for inspection by any directors. Such inspection may be done by any type of director- nominee, independent, promoter or whole time. The proviso to sub-section 3 provides that a director of the Company can inspect the books of accounts of the subsidiary, only on authorisation by way of the resolution of Board of Directors. Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought and the period for which such information is sought (Rule 4(2)). The said information shall be provided to director within 15 days of receipt of request (Rule 4(3)). The right to inspect books of accounts and other books and papers under this section has been provided to the directors only.

Period for which books to be preserved

The books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year. In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved. The provisions of Income Tax Act shall also be complied with in this regard. As per proviso to sub-section 5, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

Persons responsible to maintain books

The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be: (sub-section 6)

(i) Managing Director,

(ii) Whole-Time Director, in charge of finance

(iii) Chief Financial Officer

(iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Penalty

In case the aforementioned persons referred to in sub-section (6) (i.e. MD, WTD, CFO etc.) fail to take reasonable steps to secure compliance of this section and thus, contravene such provisions, they shall in respect of each offence, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or both. Book

Investigation:

Grounds for Investigation: Generally, investigation will be ordered by the central government under the following circumstances:

1.When the business of the company is carried out with the intention to defraud the creditors, members or any other persons.

2.When it is found that the persons involved in the formation or management of the company are

guilty of fraud, misfeasance (irreugular act) and other misconduct towards the company or towards any of its members.

3.When the members of the company have not been given all the information relating to the state

of affairs of the company because o lack of prudence in the management of capital.

Parties to apply for investigation to the central government:

i)By the Company Law Board: It can make an application to the central government to carry out investigation when it receives representation from 200 members or members holding 1/10th of the total voting roghts in case of company having share capital and atleast by 1/5th of the total members in case of company having no share capital.

In this case, the application must be supported by the fact that thereis good reasons for requiring investigation.

ii)By the registrar of companies: He could apply for investigation when a)When information required is not furnished to him

b)In case the document forwarded to him does not contain the full information relating to the company.

c)It is found that the business of the company is being carried out to defraud its creditors or persons dealing with it.

iii)By the company: it can pass special resolution to file a petition to central government to

order for investigation.

iv)By the court: It may in the course of legal proceedings may order for investigation into the affairs of the company.

Types of company investigation:

The following are the different types of investigation:

1) Investigation into the affairs of the company:

In case of company with share capital, When an application is made by 200 members or members holding 1/10th of the total voting rights and in case of company without share capital, an application is made by 1/5th of the members to the company law board representing the fact that the affairs of the company i.e., the day to day administration of the company is carried out in fraudulent manner, investigation may be ordered by the company law board t investigate into the affairs of the company. It may order the applicant to deposit an amount not less than Rs.1000 to meet the cost of investigation. The company law board amy give the parties to the management, reasonable opportunity to explain their position.

2) Investigation of Ownership: This type of investigation is carried out when the real owners of the company are not revealed or the shares are in the name of the trustees. Same case may also be found in case of debenture holders also. This is the way that the company's shares are cornered by the unscrupulous persons. It si only for finding out the real owners of the company, an investigation is ordered to find out the real owners of the company and to find out the relation between the shareholders and the managerial personnel of the company.

According to section 247, investigation is undertaken by the orders of the central

government to determine the true persons who are controlling the company or having financial interest in the success or failure of the company and to identify the persons responsible for controlling or materially influencing the policy of company.

A person is said to have interest in the company when he has right to acquire or dispose the share or debenture or any interest in the company and those person whose permission is necessary to exercise control or materially influence the policy of the company.

3) Investigation of ownership of shares and debentures: It may happen that shares may

be held by a person as beamy for the sake of the directors. In such cases it may be necessary to find out the true owners of these shares and debentures. The Company Law Board, on a complaint made to it or on reference by the central government, may order to find out the relevant facts or any shares issued or to be issued. In such cases, order can be issued to impose te following restrictions for a period not exceeding three years in the manner mentioned below:

a) that no shares could be transferred. If there is a transfer, the said transfer shall be void.

void.

b) that the shares proposed to be issued should not be issued. If issued the issue is void. c) that no voting right shall be exercised in respect of the said shares.

d) that no further issue of right shares should be done. If so it would be considered as

e) that no payment shall be made on these shares. Even if money is due on them except

on liquidation of the company.

Appointment of inspectors for investigation and tier powers:

Inspectors are appointed by the central government for investigation into the affairs of the company or to probe into the ownership of the company or to examine the real persons who are said to be the owners of the shares of the company. The inspectors so appointed have the following powers:

1) To examine the subsidiary and branches of the holding company and the personnel of the subsidiary units including the managing director of the subsidiary.

2) He can call upon the officers of the company to produce books of accounts, other documents and registers in their custody. He can also get the help of the clerk or steno for te investigation.

3) With previous permission of the central government, he can require any body corporate to furnish such information as he may consider necessary.

4) He examine on oath any of the officers and other employees and agents of the company.

5) In the course of investigation, he can retain any books or documents for the purpose of detailed investigation. He may even with the permission of the magistrate seize such books documents etc.

6) He shall make a final report or interim report as the case may be to the central government.

POWERS OF THE CENTRALGOVERNMENT:

1) The central government shall forward a copy of such report to the company concerned to get an explanation in the form of reply statement at its discretion.

2) if the central government found that any person or persons is or are guilty of offence, it can take steps to prosecute them. All others are obliged to help the government to bring the culprit to the court.

3) Under section 243, the central government may order for winding up of the company.

4) If the central government is satisfied that there is fraud or misappropriation and misconduct has taken place in connection with the promotion or formation or management of the company, it may take legal proceedings not only for the wrong acts but also for the recovery of properties.

5) The expenses for investigation is met by central government. But if fraud is proved, then the person liable for such fraud must bare the expenses.

6) The report of the inspector may be forwarded for further action to the company law board.

POSSIBLE QUESTIONS.

PART A (One Marks – Online Examination)

PART B (2 Marks)

1. Define Dividend
2. Write a short note on Secretarial Audit
3. Explain Minutes
4. Define Interim dividend
5. Explain auditor's report
6. Write a short note on rotation of auditor's
7. Define Stock exchange
8. Explain SEBI
9. Explain Books of Accounts

PART C (6 Marks)

1. Bring out the significant role of a company secretary?
2. Write a explanatory note on
   i. Proxy,
   ii.Quorum,
   iii.Minutes.
3. Who are the operators at stock exchange?
4. Write about provision relating to payment of dividend?
5. Define interim dividend, under what circumstances is it declared?
6. Write about rights and duties of auditors?
7. What is mean by rotation of auditor and auditor's report?
8. Define stock exchange. Explain its characteristics and its function?
9. Explain the objectives, features, functions and powers of SEBI?
10. Explain the provisions relating to books of accounts.

s.no	Unit - IV	Option A	Option B	Option C	Option D	**Answer**
1	A Company may hold its first annual general meeting within a period of _____ months from the date of incorporation.	6 months	3 months	9 months	18 months	**18 months**
2	First annual general meeting should not to be more than _____ months from the close of financial years	9 months	6 months	12 months	10 months	**9 months**
3	The gap between two annual general meetings must not be more than _____ months.	15 months	18 months	17 months	20 months	**15 months**
4	The registrar has the power to extend the time of meeting by _____ months in special cases	4 months	6 months	3 months	5 months	**3 months**
5	The annual general meeting is sometimes called as _____	Management meeting	Ordinary general meeting	steering group	Statutory Meeting	**Ordinary general meeting**
6	The matters that are discussed in every annual general meeting is known as _____	special businesses	specific businesses	common businesses	Ordinary business	**Ordinary business**
7	In case of special business an _____ statement should accompany the notice of the meeting	financial	statutory	Explanatory	legal	**Explanatory**
8	If any company fails to hold the annual general meeting then, the company and its officers are punishable up to _____ fine	Rs. 50,000	Rs. 500	Rs. 5,000	Rs. 25,000	**Rs. 50,000**
9	The traditional form of business does not consists of , Hindu undivided Family (HUF) and Partnership Firms	Company	Sole Proprietorship	Hindu undivided Family	Partnership Firms	**Sole Proprietorship**
10	Registration of a joint stock company is _____	compulsory	optional	compulsory for public limited companies and optional for private limited companies	optional for public limited companies and compulsory for private limited companies	**compulsory**
11	An assembly of relevant persons validly convened through proper notice for transacting business mentioned in an agenda is known as a _____	group	meeting	association	conference	**meeting**

12	The first meeting of the shareholders of a public limited company which is mandatory as per the Companies Act is known as _____	Annual General Meeting	board meeting	Statutory Meeting	extraordinary general meeting	**Statutory Meeting**
13	This type of business is conducted only_____ in the life time of the company	once	thrice	twice	four times	**once**
14	Every public limited company either limited by guarantee or shares must compulsorily convene the statutory meeting within _____ months from the date the company was entitled to commence the business	six	three	nine	five	**six**
15	Along with the notice of the statutory meeting a report called _____ is to be prepared and circulated to members	annual report	Auditors Report	Statutory report	directors report	**Statutory report**
16	The notice of the meeting should be circulated to members at least _____ before the date of the meeting.	7 days	14 days	30 days	21 days	**21 days**
17	The statutory report shall be certified as correct by, not less than _____ of the company.	three directors	two directors	one director	one - third	**two directors**
18	At the commencement of the meeting, the chairman will ask _____ to read the notice of the meeting	the secretary	the assistant	the director	the board	**the secretary**
19	After the notice has been read, the chairman takes up the items of business according to the _____	boards decision	shareholders wish	Agenda	notice	**Agenda**
20	_____ has no power to adjourn the Statutory meeting	Shareholder	Manager	managing director	The chairman	**The chairman**
21	The AGM for a public limited company must be held _____	at every six months	annually	at every ten months	every fifteen months	**annually**
22	Statutory meeting is compulsory in case of a _____	Public Limited Company	Sole Proprietorship	Private Limited Company	Partnership Firms	**Public Limited Company**
23	A proxy need not be a _____ of that company	manager	employee	member	number	**member**
24	A proxy form should be	Minutes	notice	agenda	resolution	**notice**

	enclosed with the _____					
25	The proxy forms are required to be submitted to the company at least _____ before the meeting.	12 hours	24 hours	48 hours	60 hours	**48 hours**
26	Any meeting other than the Statutory meeting and the annual general meeting of the company is called _____	Management meeting	Committee Meeting	steering group	extraordinary general meeting	**extraordinary general meeting**
27	The notice convening an Extraordinary general meeting must be accompanied by an _____	Explanatory Statement	profit and loss account	annual report	Financial Statements	**Explanatory Statement**
28	Explanatory Statement is necessary for each item of _____	special businesses	ordinary business	meeting	every meeting	**special businesses**
29	The Board should meet at least once in every _____ months	two	one	three	four	**three**
30	The Board should meet at least with a maximum interval of _____ between any two Meetings	60 days	120 days	30 days	80 days	**120 days**
31	Board meeting should be held at least _____ times in each year	three	two	one	four	**four**
32	When the proceedings start the Chairman requests the secretary to read the _____ of the last meeting.	minutes	notice	agenda	resolution	**minutes**
33	As soon as the 'minutes' are read and approved as correct, _____ will sign the 'minutes'	The secretary	the board of directors	the Chairman	the members	**the Chairman**
34	The Minutes of proceedings of a Meeting should be entered in the _____	form	notice	Minutes Book	register	**Minutes Book**
35	The proceedings of a Meeting should be recorded in the Minutes Book within _____ from the conclusion of the Meeting	fifteen days	forty-five days	thirty days	ninety days	**thirty days**
36	The date of entering the Minutes should be specified in the _____ by a Director or the Secretary	Minutes Book	register	notice	resolution	**Minutes Book**
37	The Minutes of Meetings of the Board can be inspected only by	Auditor	Directors	Chairman	Secretary	**Directors**

	the _____					
38	Extracts of the Minutes should be given only after the Minutes have been duly _____	signed	approved	typed	verified	**signed**
39	The names of_____ who dissented or abstained from the decision should be recorded	the member	auditors	the Directors	the additional directors	**the Directors**
40	An _____ Director should not participate in the discussion or vote.	interested	additional	retired	disinterested	**interested**
41	The Minutes of all Meetings should be preserved _____	permanently	temporarily	for five years	for three years	**permanently**
42	If a company wants to make any change in the terms of security or if they wish to modify the rate of interest of debentures, the company will call for _____ meeting	debenture holders	shareholders	creditors	extraordinary	**debenture holders**
43	Debenture holders meeting is held in order to protect the interest of the _____	shareholders	creditors	bankers	debenture holders	**debenture holders**
44	If the authorities want to make a scheme of arrangements with its creditors then meeting will be conducted by the authority exclusively with the _____ of the company	creditors	shareholders	debenture holders	secretary	**creditors**
45	_____ has to prepare the agenda (in consultation with the Chairman) and the notice of the Board meeting.	The secretary	the board of directors	The Manager	The Managing director	**The secretary**
46	The agenda and the notice of the Board meeting should be prepared by the secretary in consultation with the _____	Chairman	board	auditor	manger	**Chairman**
47	It is the duty of the secretary to keep in mind the time limit prescribed by the Act for holding _____	the debenture holder meeting	the shares	the Statutory Meeting	the extraordinary meeting	**the Statutory Meeting**
48	A certified copy of the report must also be filed with _____	the Registrar	the local government	the central government	the auditor	**the Registrar**

49	The secretary has to prepare a _____ showing names, addresses and the number of shares held by each one of them for placing before the meeting	list of directors	list of members	list of chairman	list of registers	**list of members**
50	If directed by the chairman, the secretary has to read the _____	statutory report	agenda	notice	minutes	**statutory report**
51	The secretary has to see that the duly authorized Balance Sheet and Profit and Loss Account are audited and certificate by the _____	board	auditors	chairman	creditors	**auditors**
52	The secretary is the one to authorize the bank to open a separate _____ account	dividend	current	joint	savings	**dividend**
53	The secretary has to close the 'share transfer register' and notify the same in _____	notice	television media	radio	newspapers	**newspapers**
54	The secretary has to look after the preliminary work of _____ distribution	profit	capital	dividend	loss	**dividend**
55	The changes made in the Register of Directors should be notified with the Registrar within _____ of the meeting	30 days	90 days	60 days	15 days	**30 days**
56	The annual return prepared should be filed with Registrar along with necessary fee within _____ of the meeting	60 days	15 days	45 days	90 days	**60 days**
57	The secretary has to execute the _____ passed at the meeting	motion	decision	resolution	conclusion	**resolution**
58	The Secretary has to arrange for collecting the _____at the gate of the Meeting Hall	Admission Cards	Voting card	membership card	proxy form	**Admission Cards**
59	The Secretary has to prepare a _____ and make necessary arrangements for taking poll	list of directors	list of members	list of shareholders	list of proxies	**list of proxies**
60	The Secretary has to prepare the minutes of the meeting and get them approved and signed by	directors	chairman	manager	managing director	**Directors**

UNIT-V- Winding up

SYLLABUS

Introduction: Winding up - Concept and modes of winding up. Insider-Trading , Whistle – Blowing –insider trading; meaning and legal provision, whistle blowing; concept and mechanism.

WINDING UP OF COMPANIES

Winding up of company is the process whereby its life is ended and its property administered for the benefit oft its creditors. An administrator, called liquidator, is pays its debts and finally distributes any surplus among the members in accordance with their rights.

In other words, winding up or liquidation of a company is a legal process by which the business of a company is closed, i.e., the assets of the company are realized, its creditors are paid off, an the surplus, if any, is distributed among the members in accordance with their rights as provided in the articles of a company.

Reasons for the winding: up of a company

When a company is wound up, it does not necessary mean that it has become insolvent. Even a solvent company may be wound up, if the members of the company decide to do so. For instance, a solvent company may be wound up for the purpose of reco nstruction and amalgamation. Therefore, winding up of a company are:

1. If the main objects of the company for which it was formed have been accomplished.
2. If the company is unable to carry out its main objects
3. If the company has to dispose of its business or undertaking to another company or concern.
4. If the company has become insolvent (i.e., if the company is unable to pay its creditors in full)

M ODES OF TYPES OF WINDING UP:

The companies Act provides for three types of winding up. They are:

1. Compulsory winding up or winding up by an order of the court.
2. Voluntary winding up.

Voluntary Winding up may be sub -divided into:

1. Member's Voluntary winding up (i.e., winding up on the initiative and under the supervision of members)
2. Creditor's Voluntary winding up (i.e., winding up on the initiative and under the supervision of the creditors of the company).
3. Winding up under the supervision of the court.

COM PULSOR Y WINDING UP OR WINDING UP B Y THE COURT

Compulsory winding up of a company is brought about by an order of the court.

1. If the company, of its own accord, passes a special resolution that it should be wound up by the court, and presents a petition to the court for the winding up.
2. If the company makes a default in filling the statutory report with the registrar of companies or in holding the statutory meeting within the pre-scribe time
3. If the company does not commence business within one year from the date of its incorporation or suspends its business for a whole year
4. If the number of members falls below seven in the case of a public company, and below two in the case of a private company.
5. If the company is unable to pay its debts
6. If the court is of the opinion that it is just and equitable that the company be wound up.

PROCEDURE FOR COM PULS OR Y WINDING UP

First Step: Making an application or petition to the court for compulsory winding up.

Second Step: Hearing and disposing of the petition

Third Step: Appointment of the official liquidator and communication of the winding u order to the liquidator and the registrar of companies

Fourth Step: Liquidation proceeding by the official liquidator

Fifth Step: Dissolution of the company

Contributes

Contributes refer to person who are liable to contribute to the assets of the company in the event of winding up Contributories include not only the holders pertly-paid shares, who are liable to contribute the unpaid amount on their shares, but also the holders of fully paid shares who are entitled to a share in the surplus, if any.

Duties of the Official Liquidator:

The principal duties of the official liquidation are

1. He should conduct the liquidation proceedings.

2. He should take into his custody the books, documents and the assets of the company.

3. He must also submit further report to the court stating matters relating to the formation of the company, fraud or any other matter which should be brought to the notice of the court.

4. He must maintain proper books of accounts relating to the company. He must also maintain the minutes of proceedings of the meetings held.

5. He should keep all the funds of the company in the 'Public Accounts of India' in the reserve bank of India. (He must not keep the funds of the company in his private account).

6. He should see that a printed copy of the audited accounts or a summary there of is sent to every creditor and contributory.
7. He is required summon meeting soft creditors and contributories as directed by the order of the court of the court of the purpose of constituting a "committee of inspection"
8. He should realize the assets and distribute the proceeds among the creditors of the creditors or contributories, according to their rights.
9. In the administration of the assets of the company, he must carry out the directions of the creditors or contributories or the committee of inspection by resolution.

10. He should submit accounts to the committee of inspection for the purpose of inspection.
11. He must obey the court's order for disposing of the company's books.

Secretary's Duties in Connection with Compulsory Winding up:

The important duties of the secretary in regard to the compulsory winding up of a company are;

1. He must assist the directors in preparing the petition for the compulsory winding up to

be submitted to the court, when the company itself is the petitioner for compulsory winding up.

2. He should file with the registrar of companies a certified copy of the winding up order passed by the court within 30 days of the passing of the court order.
3. He must submit to the official liquidator a statement of affairs of the company,

containing the particulars regarding the assets and liabilities of the company, the names and addresses of the creditors, etc. with in 21 days of the date of the winding up order.

4. He should furnish any other information regarding the company which the official liquidator requires fro time to time.

5. He should ensure that the words "the company is under liquidation" are mentioned on every letter, document, etc. Issued by the company after the winding up order has been passed.

VOLUNTAR Y WINDING UP Meaning of voluntary winding up

Voluntary winding up refers to the winding up of a company either by its members or

by its creditors without the interference of the court. In voluntary winding, the share holders and the creditors of a company settle their affairs themselves without going to the court, though they may apply to the court for directors or orders, if and when necessary.

Difference between compulsory winding up and voluntary winding up:

The main differences between compulsory winding up and voluntary winding up are:

1. Compulsory winding up of a company is brought about by an order of the court, whereas voluntary winding up is brought about either by the members or by the creditors of the company without the intervention of the court.
2. Compulsory winding up is of only one type. But voluntary winding up is of two types, viz., (a) members voluntary winding up and (b) creditors voluntary winding up.
3. In the case of compulsory winding up, the liquidator is appointed by the court. On the

other hand, In the case of voluntary winding up, the liquidator is appointed wither by the members or by both the members and the creditors.

4. Voluntary winding up is more convenient than compulsory winding up.

Circumstances under which a company is wound up voluntarily:

A company is wound up voluntarily in the following circumstances:

1. When the period, fixed of the duration of the company by its articles expires and the company passes an ordinary resolution for winding up voluntarily.
2. When the event, on the occurrence or happening of which the company is to be dissolved as per its articles occurs and the company passes an ordinary resolution for winding up voluntarily
3. When the company passes a special resolution for voluntary winding up at any time

Modes or Types of Voluntary Winding up:

There are two types of voluntary winding up. They are:

1. Members voluntary winding up

2. Creditors voluntary winding up

M EM BERS VOLUNTARYWINDINGUP

Meaning of members voluntary winding up

A members voluntary winding up refers to a voluntary winding up which takes place at the instance an under the control and supervision of the members of the company, and in which a declaration of the solvency of the company has been made by the board and the same has been filed with the registrar of companies.

Secretarial Duties / Procedure for members voluntary winding up

The following procedure is, generally voluntary followed in the case of member winding up.

First Step: Making and filing of a declaration of solvency of the company

Second Step: Passing of the resolution at an extraordinary general meeting, publication of the same in the official gazette and local newspapers and filing a copy of the same with the registrar of companies.

Third Step: Appointment of liquidator or liquidators

Fourth Step: Commencement of liquidation proceedings by the liquidator

Fifth Step: Calling of the general meeting of the member's by the liquidator at the end of each year and presentation of his report and statement on winding up

Sixth Step: Calling of the final meeting of the members and presentation of detailed final accounts of the winding up proceedings by the liquidator

Seventh Step: Filling of the certified copies of final accounts of the winding up of the

company with the registrar of companies and also with the official liquidator

Eighth Step: Making of a thorough scrutiny of the books of account of the company by the official liquidator

Ninth Step: Dissolution of the company

Tenth Step: Calling of the creditors meeting in case of insolvency

Creditors Voluntary Winding up:

The Voluntary Winding up in which the declaration of the solvency of the company is not made by the directions and so is controlled and supervised by the creditors of the company is known

as creditors Voluntary Winding up. In short, the winding up which takes place at the instance and under the control and supervision of the creditors is called Creditors Winding up.

Circumstances under which the Creditors Voluntary Winding up takes place:

A Creditors Voluntary Winding u takes place when a company is unable to pay its liabilities in full [i.e., when a company is insolvent] and still wants to undergo voluntary winding up. In this case, creditors voluntary winding up is reslated. So as to protect theintoof the creditors.

Procedure for Creditor's Voluntary Winding up:

The following procedure is generally, followed in the case of creditors voluntary winding up.

First Step: Convening the meeting of the members and the meeting of the creditors

Second Step: Presentation of statement of affairs before the creditors meeting

Third Step: Passing of resolution for the voluntary winding up and appointment of liquidators

Fourth Step: Filing of the copy of the resolution for voluntary registrar of winding up with. The companies

Fifth Step: Appointment of the committee of inspection by the creditors

Sixth Step: Fixation of the remuneration of the liquidator

Seventh Step: Cessation of the powers of the board of directors and the commencement of the liquidation proceedings by the liquidator

Eighth Step: Calling of the meeting of the members and the creditors the liquidator at the

end of each year and presentation of his report and statement on winding up.

Ninth Step: Calling of the final meeting of the members and the creditors and the presentation of the final accounts of the winding up proceedings by the liquidator

Tenth Step: Filing of the certified final account of the winding up with the registrar of companies by the liquidator

Eleventh Step: Dissolution of the company

Secretarial Duties in connection with Creditors Voluntary Winding up:

1. He should convince a meeting of the BOD to fix the date of the general meeting of the members and a meeting of the creditors where a resolution is required to be passed for the voluntary winding up of the company.
2. He should prepare and get the approval of the board for the draft resolution for

winding up to be placed at the general meeting of the members.

3. He should see that the notice of thebe meeting of the members and the meeting of the creditors are published in the official Gazette and also in local newspapers.
4. He should help the director in preparing the Statement of Affairs of the company and the list of the creditors to be placed before the creditors meeting.
5. He should see that the director is nominated to preside over the creditors meeting

6. He should ensure that the statement of affairs and the list of creditors are placed before the creditors meeting
7. He should see that the resolution necessary for the voluntary winding up is passed at

the members meeting as well as at the creditors meeting.

8. He should see that a copy of the resolution passed for winding up in the creditors meeting is filled with the registrar of company.

9. In case a special resolution has been passed for the winding up at the members meeting, the secretary should see that the special resolution is filled with the registrar of company within 30 days of the passing of special resolution.

10. He should ensure that the liquidator is appointed and has remuneration is fixed by the

creditors at their meeting.

11. He should see that every letter, invoice, order, etc., issued by the company during the period of winding up contains a statement that the company is under liquidation.

12. He should see that all books, papers and documents as well as movable and immovable property.

INSIDER TRADING

Insider Trading as a term is subject to many definitions and it includes both legal and prohibited activities. Insider Trading happens on a daily basis, legally, when corporate management and Board of Directors buy or sell or deal with stocks of their own companies within confines of the company policies and regulations governing the trading. In other words, Insider Trading is buying, selling or dealing with a security while breaching the company policies or regulations, thus breaching the trust and confidence of a company while possessing material or non-public information about the securities.

Definitions:

The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 1992, does not directly define the term Insider Trading. But it defines the term "Insider", "Connected Person" and "Price Sensitive Information".

Insider Trading is the trading of securities of a company by an Insider using company's non- public, price-sensitive information while causing losses to the company or profit to oneself.

Insider: According to the Regulations, "Insider" means any person who is or was connected to the company or is deemed to have been connected with the company and who reasonably is expected to have access, connection to unpublished price sensitive information in relation to that company.
Connected Person:

The Regulation defines that a "connected person" means any person who-

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 of a company, or is deemed to be the director of the company by virtue of sub-clause (10) of section 307 of the Act.
(ii) occupies the position as an officer or an employee of the company or holds a position

involving a professional or business relationship between himself and the company, whether temporary or permanent and who may reasonably be expected to have an access to unpublished, price sensitive information in relation to that company.

Price Sensitive Information means any information, which relates directly or indirectly to a company and which if published, is likely to materially affect the price of securities of the company.
Following are some examples of Price Sensitive Information:

1. Financial results of the company.

2. Intended declaration of Dividends.

3. Issue of shares by way of public rights, bonus, etc.

4. Any major expansion plans or execution of new projects

5. Amalgamation, mergers and takeovers.

6. Disposal of the whole/substantial of the undertaking.

In the United States vs Carpenter, 1986, the Supreme Court cited that the usage of Inside Information received by virtue of confidential relationship must not be used or disclosed and by doing so, the individual gets charged for Insider Trading.

In 1997, O'Hagans Case, the court recognised that a company's information is it's property: " A Company's confidential information qualifies as property to which the company has a right of exclusive use. The undisclosed misappropriation of such information in violation of fiduciary duty constitutes fraud akin to embezzlement- the fraudulent appropriation to one's own use of money or goods entrusted to one's care by another."

In 2007, representatives Brian Baird and Louise Slaughter introduced a bill "Stop Trading on

Congressional Knowledge Act or STOCK Act".

Insider Trading in India:

1. In 1948, First concrete attempt to regulate Insider Trading was the constitution of Thomas

Committee. It helped restricting Insider trading by Securities Exchange Act, 1934.

2. In 1956, Sec 307 & 308 were introduced in the Companies Act, 1956. This change made it mandatory to have disclosures by directors and officers.

3. 1979, the Sachar Committee recognized the need for amendment of the Companies Act,

1956 as employees having company's information can misuse them and manipulate stock prices.

4. 1986, Patel committee recommended that the Securities contracts (Regulations) Act, 1956

be amended to make exchanges reduce Insider Trading.

5. 1989, Abid Hussain Committee recommended that the Insider Trading Activities be Penalized by civil and criminal proceedings and also suggested that SEBI formulate the regulations and governing codes to prevent unfair dealings.

6. 1992, India has prohibited the fraudulent practice of Insider

Trading through "Security and Exchange Board of India (Insider Trading) Regulations Act,

1992. Here, a person convicted of Insider Trading is punishable under Section 24 and Section

15G of the SEBI Act, 1992.

7. 2002, the Regulations were drastically amended and renamed as "SEBI (Prohibition of

Insider Trading) Regulations, 1992.

Why to Control Insider Trading?

To protect general investors. The manipulation of market by using Insider trading generally causes great losses to a company, thus leading to loss for investors or great profit only for the Insiders and no investor. It steals away the possibility of earning profit from an investor.

To protect the interest and reputation of the company. Once a company faces a problem of Insider Trading, investors tend to lose confidence in the company and stop investing in the company and also selling all the stocks of the company.

To maintain confidence in the stock exchange operations. With SEBI also regulating all the tradings, if any Insider gets a chance to get past the laws, it decreases the investors' confidence in the stock exchange operations itself.

Indian Financial Market is still very low in the domestic investment rate. To have a healthy economy, a proper financial system is a must and for that, confidence in the market is of utmost importance.

Rationale behind Prohibiting Insider Trading:

Securities market deals with the allocation of capital in an economy. This function enables market efficiency, where market's price reflects the risk and future returns accurately. Insider trading appears biased to investors as insiders have additional price sensitive information before them and can use it to make profits while the late reception of information makes investors suffer loss or not gain the deserved profits. If a market is integrated and free of illegal trading, it may lead to healthy growth of the market and such markets can inspire the confidence of the Investors.
Insider trading leads to loss of confidence of Investors on the market which can lead to

a halt in market dealings thus causing a situation similar to the Great Economic Depression of the United States. Besides, a company's information is its property and no one but the company must profit from it.

Significant Penalties:

SEBI may impose a penalty of not more than Rs. 25 Crores or three times the amount of profit made out of Insider Trading; whichever is higher.

SEBI may initiate criminal prosecution; or

SEBI may issue order declaring transactions in Securities based on unpublished price sensitive information; or

SEBI may issue orders prohibiting an insider or refraining an insider from dealing in the securities of the company.

M EANING AND DEFINITION OF WHISTLE BLOWING

US Academicians Miceli and Near (1984)5 defines Whistle blowing as "the

disclosure by organizational members (former or current) of illegal, immoral, or illegitimate practices under the control of their employees, to persons or organizations that may be able to effect action".

Australian academic Jubb (1999)6 defines, "whistle blowing is a deliberate nonobligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about nontrivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organization, to an external entity having potential to rectify the wrongdoing".

CHARACTERISTICS/ FEATUR ES OF WHIS TLE B LOWING

a) Whistle-blowing is not the same as complaint:

Complaining is not same as blowing the whistle. In most instance complaints involve personal subject matter of the complainant than with others or public interest. Whereas the whistle blowing is concerned with subject matter affecting public interest. Complaints from service users, relatives or representatives would not be classed as whistle blowing. These would need to be raised using the service's complaints procedure. Employees those who have complaints regarding pay, hours and general grievances would need to raise their complaints using their organizations grievance procedure.

b) It is not a witness of a crime:

Witness of crime is not considered as whistle blowing. The general criminal and civil proceedings and lawsuits include witness of a crime for investigation purpose. But, whistle blower is not mere witness, but much more than witneser. Whistle blower may be witness or may not be witness of crime, but having enough information about that crime.

c) It is non-public information:

Information about a company that is not known by the public is known as non-public information. Therefore the matter involved in whistle blowing is considered as nonpublic information.

d) Substantial importance:

The matter of whistle blowing must have substantial importance. The substantial importance is concerned with having or involved worth material facts and figures, the costs of damage/ loss to the

public. There cannot be simple matter involved in whistle blowing which causes no harm to public and less or no loss to anyone.

e) Desired changes:

The whistle blower is expecting to stop some activity which causes harm and loss to public and society. Therefore there are some desired changes involved by doing so.

f) Voluntary way:

Whistle blowing is purely a voluntary act of a person and also a group. There is no external force to make an act of whistle blowing, rather its internal force to do so.

g) Moral protest:

Moral19 issues are concerned with the principles or rules of right conduct or the distinction between right and wrong; ethical. The moral protest is fighting against the immoral/ unethical issues. Therefore whistle blowing is considered as moral protest.

h) Public interest disclosure:

A public interest disclosure20 is made when a person discloses to proper authority information that tends to show past, present or proposed future improper conduct by a public body in the exercise of its functions. Definitions of improper conduct: An offence against State law; histle blowing is public interest disclosure.

POSSIBLE QUESTIONS.

PART A (One Marks – Online Examination)

PART B (2 Marks)

1. What is meant by solvency?
2. What are the different modes of winding up?
3. Explain Winding Up
4. Write a short note on whistle- blowing
5. Explain insider trading
6. Explain Voluntary winding up
7. Write a note on voluntary winding up of creditors.

PART C (6 Marks)

1. What are the concepts and mode of winding up?
2. Explain about whistle-blowing & insider trading?

3. What is meant by declaration of solvency?

4. When can a court order for the company winding up of a company?

5. Write about whistle blowing concept and mechanism?

6. What are the different modes of winding up a joint stock company?

7. Converse the difference between member voluntary winding up of creditors and voluntary winding up

8. Explain about whistle-blowing?

9. Explain about insider trading?

10. Explain the legal provisions of insider- Trading?

s.no	Unit - V	Option A	Option B	Option C	Option D	**Answer**
1	The first step in writing involves, _____	thinking	drafting	planning	developing	**thinking**
2	Usually in writing doing is called as _____	drafting	developing	thinking	planning	**drafting**
3	Writing is a _____ activity	simple	easy	complex	effortless	**complex**
4	The ability to communicate clearly is _____	crucial	minor	slight	petty	**crucial**
5	Writing clearly, whether essays, letters, memos or reports, is a _____	key skill	report	correspondence	certificate	**key skill**
6	Certain people write and certain things get _____	read	started	end	written	**written**
7	_____ writing plays an increasingly important role in today's world	Effective	weak	useless	inadequate	**Effective**
8	It is equally important that a notice should be drafted in a manner that it must communicate the _____ to shareholders, director's and auditor's	problem	message	issue	trouble	**message**
9	Drafting should convey the information _____ without complicated words and sentences	directly	indirectly	circuitously	some way	**directly**
10	At the end of the annexure an authority should _____ along with place and date	enter	register	sign	enclose	**sign**
11	Doing again is also called as _____	doing once	revising	not again	incorrect	**revising**
12	The written word is still a _____ channel of communication	minor	negligible	major	small	**major**
13	At the _____ of the notice, kind of meeting should be mentioned	top	bottom	corner	middle	**top**
14	Next to the title in the notice name and registered address of _____ should be entered	the company	the secretary	board	the branch	**the company**
15	The day, date, time and place of meeting with clear _____ where the meeting is to held is to be declared in the notice.	notice	message	address	report	**address**
16	If special business to be transacted at the meeting, then he notice should also contain the	explanatory statement	minutes	report	agenda	**explanatory statement**

	_____					
17	Proxy Form should be enclosed with _____	the minutes	the notice	the document	the report	**the notice**
18	Creating an effective agenda is one of the most important elements for a _____ meeting	productive	normal	ordinary	unhelpful	**productive**
19	_____ an outline for the meeting	Agenda	Minutes	Motion	report	**Agenda**
20	Agenda can be used as a _____ to ensure that all information is covered	database	checklist	proof	security	**checklist**
21	AOB stands for _____	An Order book	Any other business	Any order Book	Any other Board	**Any other business**
22	The _____ are usually written from the notes taken by the chairman and secretary during the course of the meeting	Minutes	motion	agenda	resolution	**Minutes**
23	The minutes must be recorded in _____ serially numbered	lines	paper	paragraphs	note	**paragraphs**
24	Each paragraph in minutes should preferably given by a _____	Para	title	space	heading	**heading**
25	All the resolutions passed at the meeting should be in the same order at the _____	notice	agenda	declaration	resolution	**agenda**
26	If certain matters could not be discussed in the meeting, because of lack of time, that fact must also be stated in the _____	agenda	notice	Minutes	report	**Minutes**
27	An agenda is a list of meeting activities in the order in which they are to be taken up, by _____ with the call to order	end	middle	last	beginning	**beginning**
28	Minutes are the _____ record of an organization	formal	usual	official	normal	**official**
29	Written minutes are distributed to board members _____ each meeting for member's review	after	before	end of	in-between	**before**
30	Minutes for the previous meeting should be reviewed right away in the _____ meeting	next	same	current	board	**next**
31	At every business meeting the secretary of the board or any other appointed person usually takes _____ during	minutes	notes	records	drafts	**minutes**

	meetings					
32	The body of the minutes should include, with each motion being a separate _____	note	book	paragraph	line	**paragraph**
33	If the vote was counted, the count should be _____	stored	registered	verified	recorded	**recorded**
34	The _____ officer states “Are there any corrections to the minutes as printed?”	residing	presiding	visiting	assistant	**presiding**
35	After the minutes have been corrected and approved by the membership, they should be signed by the _____ and can be signed by the president	chairman	board	secretary	director	**secretary**
36	Formal and corporate meetings include approval of previous minutes, and all _____	minutes	resolutions	agenda	notice	**resolutions**
37	Before proceeding to regular business at the annual general meeting the chairman usually makes a brief _____ speech	clear	short	concise	prefactory	**prefactory**
38	The chairman also comments on the _____	Auditors' Report	Directors’ Report	Minutes	resolution	**Directors’ Report**
39	_____ explain the future development schemes of the company	The Chairman	The Secretary	The Manager	The Managing Director	**The Chairman**
40	The directors are required to prepare and send to every member a document known as the _____	Statutory Report	Directors’ Report	Notice	minutes	**Statutory Report**
41	The report should be certified as correct by at least two directors, one of whom shall be the _____	Additional Director	manager	secretary	managing director	**managing director**
42	The notice become legally valid only if it is signed by proper authority along with the _____	shareholders sign	company’s seal	agenda	minutes	**company’s seal**
43	Ordinary business to be discussed _____ in the meeting	second	last	first	middle	**first**
44	Every resolution should get started with a word _____	Resolution	Decided That	Resolved that	Resolved	**Resolved that**

45	If the minutes have been distributed to the members before the next meeting then the approval process can be _____	short	very short	long	very long	**very short**
46	Statutory meeting notice should be forwarded to members of the company before _____ days of the meeting	7	14	21	30	**21**
47	Annual General meeting notice should be forwarded to members of the company before _____ days of the meeting	7	14	21	30	**21**
48	Extra-ordinary Annual General meeting notice should be forwarded to members of the company before _____ days of the meeting	7	14	21	30	**21**
49	___can act as a chairperson for a meeting	Shareholder	Chairman	directors	Secretary	**Chairman**
50	Annual General meeting may be convened by ____	Directors	Creditors	Bankers	Shareholders	**Directors**
51	Preparation of Agenda is work of ____	Director	Secretary	Managing Director	Part-time Director	**secretary**
52	Statutory report shall be certified as correct by at least by _____	Directors	Secretary	Auditors	Chairman	**Directors**
53	In ___ meeting progress made by the company during the year is discussed among shareholders	Board	Annual General	Extra-ordinary General	Statutory	**Annual General**
54	First annual general meeting shall be held within_____ months of its incorporation of the company	6	9	12	18	**18**
55	Duration between first annual general meeting and next annual general meeting should not exceed____ montsh	12	15	18	24	**15**
56	___meeting are called in emergencies or on special occassions	Extraordinary General	Annual General	Borad	Statutory	**Extra-ordinary General**
57	Board Meeting should be conducted once in ____ calendar months	Two	Three	Four	Six	**Three**
58	Minimum quorum required for convening a Board Meeting is____	One-third	One-fourth	Two-third	Three-fourth	**One-Third**
59	____ is eligible to avail casting vote	Shareholder	Director	Secretary	Chairman	**Chairman**
60	Minimum ____members forms a quorum for public limited	Two	Three	Four	Five	**Five**

	company annual general meeting					

Register No:_____

[17CMU301]

KARPAGAM ACADEMY OF HIGHER EDUCATION

(Deemed to be University)

(Established under section 3 of UGC Act .1956)

COIMBATORE -641 021

FIRST INTERNAL EXAMINATION –JULY 2018

(For the candidates admitted 2017 onwards)

B.COM

Third Semester

COMPANY LAW

Time :2 Hours **Maximum : 50 Marks**

Date & Session:

PART – A (20X1 =20 marks)

Choose the correct answer

1. What is known as charter of a company _____
   (a)Memorandum of Association (b) by laws (c)articles of Association (d)prospectus
2. The new companies act was established in the year_____
   (a) 1918 (b) 1926 (c) 2013 (d) 1956
3. Minimum paid up capital for a public company _____
   (a) 5,00,00 (b) 4,00,000 (c) 3,00,000 (d) 2,00,000
4. The minimum number of person required to form a private company is_____
   (a) 7 (b) 2 (c) 3 (d) 4
5. The most important document of a company is _____
   (a) Prospectus (b) Memorandum of Association (c) Articles of Association (d) statement of prospectus lieu
6. The principles that so far as the company internal working is concerned stranger dealing with the company are entitled to assume that everything has been regularly done has been laid in
   (a) doctrine of indoor management (b) principle of constructive notice (c) principle of management exception (d) management of object
7. who appoints the first directors of the company_____
   (a) shareholder in general meeting (b) The Registrar of companies (c) The Articles of Association (d) The Promoters
8. A prospectus is to be issued within how much days of registration _____
   (a) 30 (b) 60 (c) 90 (d) 180
9. An association of 30 persons not registered under the companies act but carrying on a business is an_____
   (a) illegal association (b) partnership (c) private company (d) public company

10. A statutory company or corporation is one which is incorporated _____
(a) By an Act of parliament (b) By an Act of state Legislature (c) Under the companies Act 1956 (d) By either (a) or (b)

11. The first stage of formation of company is_____
(a) promotion stage (b) incorporated stage (c) raising fund stage (d) selection stage

12. At the time of registration, the filing of articles of association with the registrar of companies Is compulsory for _____
(a) private company ,unlimited companies and companies limited by guarantee (b) unlimited (c) companies limited by shares only (d) All types of companies

13. In AOA table A deals with _____
(a) limited by shares (b) company regulation (c) limited by guarantee (d) unlimited company

14 . The name of the company can be changed by_____
(a) An ordinary resolution (b) A special resolution (c)The approval of the union government (d) A Special resolution and with the approval of the central government

15 . A company comes into existence, when _____
(a) The MOA is signed by the required number of members (b) the MOA is submitted for to registrar of companies (c) it is regulated under the companies act 1956 (d) it established its registered office and its starts functioning there from

16. Which of the following is not the characteristic of a public company ?_____
(a) it has a separate legal entity (b) it has a perpetual succession (c) it has a common seal and separate property (d) its shares are not transferable

17. NCLAT refers to_____
(a) National Company Local Association Tribunal (b) National Corporation Local Association Tribunal (c) National Company Law Appellate Tribunal

18. A public corporation denotes a _____
(a) private limited company (b) public company (c) government company (d) statutory corporation

19. A promoter is a person who _____
(a) is a director (b) is a relative of the company (c) is a well wisher of the company (d) takes part on the companies incorporation

20. The amount of minimum subscription may be learnt from the _____
(a) prospectus (b) MOA (c)AOA (d) records of general meetings

Part - B[3 x 2 =6 marks]

Answer All the Questions

21. What is Association not for profit?
22. Who is promoters?
23. Define prospectus?

Part - C [3 x 8 =24 marks]

Answer the following Questions

24. (a). Explain the term company and list out the characteristics of a company

(**OR**)

(b). Briefly explain the concept of `lifting of corporate veil'

25 . (a). Define MOA and explain contents of MOA

(**OR**)

(b). What are the difference between the MOA and AOA ?

26 . (a). Define the term promoters ,state the function , duties and obligations of the promoters?

(**OR**)

(b). What are the stages in formation of a company? Explain

Register No:_____

[17CMU301]

KARPAGAM ACADEMY OF HIGHER EDUCATION
(Deemed to be University)
(Established under section 3 of UGC act a Act .1956)
COIMBATORE -641 021
SECOND INTERNAL EXAMINATION –AUGEST 2018
(For the candidates admitted 2017 onwards)
B.COM
Third Semester
COMPANY LAW

Time :2 Hours Maximum : 50 Marks
Date:

PART – A[20X1 =20 Marks]
Choose the correct answer

1. The meeting must be _____
   a. legally constituted. b. illegally constituted c. not again d. not legal
2. Unless the articles of a company provide for larger quorum, _____ should personally present in the case of a public company
   a. 2 members b. 7 members c. 5 members d. 3 members
3. What is the time limit for conducting statutory meeting? - _____
   a. 1 Month b. 2 Months c. 3 Months d. 6 Months
4. A company having paid-up capital of Rs. 2 crores must have a _____secretary
   a. whole time b. part time c. routine d. executive
5. The shares of a member in a company are movable property transferable in the Mananer prescribed in the Act and the _____of the company
   a. Memorandum b. Articles c. Warrant d. meetings
6. The directors are the _____ of the company, the secretary is its eyes, ears and hands of the company.
   a. head b. nose c. heart d.brain
7. The Secretary acts as the agent of the board of directors and carries out the instructions of the _____
   a. manager b. Managing Director c. board of directors d. chairman
8. In _____ co – ordination the secretary has to link Management level such as Chairman, Board of Directors, Managing Director, employees of the business, auditors
   a.external b. exterior c. internal d. outdoor

9. Share warrant can be issued only by _____company
   a. Private b. public c. government d. partnership
10. Any person occupying the position of a director is _____
   a. manger b. director c. managing director d. additional director
11. The personnel administration of the secretary is a _____ role
   a. easy b. difficult c. simple d. primary
12. _____act as a representative of a company to take decisions through resolutions
   a. Directors b. shareholders c. secretary d. chairman
13. The minimum full period of notice for all meetings is _____
   a. 21 days b. 14 days c. 30 days d. 60 days
14. Resolutions mean _____ at a meeting
   a. discussions b. providing information c. decisions taken d. giving suggestion
15. GDR means _____
   a. Global Depositary Receipt b. Global Dispute Receipt c. Global Depositary Receipt
   d. Global Directed Resources
16. AGM indicates
   a. Annual General Meeting b. Additional General Meeting c. All General Meeting
   d. Actual General Meeting
17. Get together of individuals or persons with some plan is known as _____
   a. meeting b. business meeting c. company meeting d. board meeting
18. When the members of a company gather at a certain time and place to discuss business affairs it is called
   a. general meeting b. business meeting c. company meeting d. board meeting
19. PLC Stands for
   a. Public Limited Company b. Public Life insurance Company c. Public Limited Corporation d. Public Life insurance Corporation
20. A notice convening a general meeting must be given at least _____ prior to the date of meeting
   a. 14 days b. 7 days c. 21 days d. 30 days

Part B [3 x 2 =6 Marks]

Answer All The Questions

21. what are the types of meeting?
22. What is buyback shares?
23. Expand DIN

Part C [3 x 8 =24 Marks]

AnswerAll The Questions

24.. a. what is transmission of shares?

(OR)

b.Briefly explain about Book Building.

25. a. Who is Director? And Explain the classification of directors.

(OR)

b.. Discuss about the buyback shares and its procedures

26. a. Explain difference types of appointment of directors?

(OR)

b. What are the reasons for disqualification of directors?