Semester – I

CMP106 CORPORATE LAW 4H – 4C

Instruction Hours / week: L:4 T:0 P:0 Marks: Internal: 40 External: 60 Total: 100

End Semester Exam: 3 Hours

COURSE OBJECTIVES:

To make the students

1. To comprehend on the concept Corporate Incorporation and Management, Oppression & Mismanagement and Investigation, Corporate Liquidation, Corporate Governance and CSR and its application.
2. To understand the laws pertaining to incorporation, liquidation corporate governanceof the company

COURSE OUTCOMES:

Learners should be able to

1. Identify the basic legal principles behind Corporate Incorporation and Management, Oppression & Mismanagement and Investigation, Corporate Liquidation, Corporate Governance and CSR and its application.
2. Understand the relevance of corporate law in economic and social context.
3. Acquire problem solving techniques and will be able to present coherent, concise legal argument in corporate.
4. Obtain the capacity to do lifelong learning in modifications and revision done in the legal environment related to corporate.
5. To communicate orally and in written format the corporate law.

UNIT - I: Corporate Incorporation and Management

(i)Certificate of Incorporation (ii) Memorandum and Articles of Association (iii) Doctrine of Ultra Vires (iv) Doctrine of Indoor Management 2. (i) Directors: Appointment, Removal, Position, Powers and Duties of Directors. (ii) Audit Committee: Its Role. (iii) Company Secretary: Qualification, Appointment and Duties (iv) Officer who is in default: Definition of Officer who is in default (v) Liability of independent directors. 3. (i) Types of Meetings (ii) Procedure of calling meeting (iii) Company's resolutions and its kinds

UNIT -II :Oppression & Mismanagement and Investigation

Oppression & Mismanagement and Investigation (Sections 397 to 408; Sections 235 to 251) 1. (i) Rule in Foss v. Harbottle (ii) Prevention of Oppression (iii) Prevention of Mismanagement (iv) Role & Powers of the Company Law Board (v) Role & Powers of Central Government 2. (i) Company Investigation

UNIT – III: Corporate Liquidation

1. (i). Winding up of Companies (ii). Mode of winding up of the companies (iii). Compulsory Winding up under the Order of the Tribunal (iv). Voluntary winding up (v). Contributories (vi). Payment of liabilities

UNIT -IV :Corporate Governance

1. (i) Importance of Corporate Governance (ii) Different system of Corporate Governance (iii) Impact of Legal Traditions and the Rule of Law on Corporate Governance (iv) Legal Reforms of Corporate Governance in India (v) Reports of the various Committees on Corporate Governance

UNIT - V Corporate Social Responsibility

Emerging Trend based on the recommendation of the Committees in the Companies Act 1956 and the Listing Agreement with Special reference to Clause 49. 2. (i) Corporate Social and Environmental Responsibility

SUGGESTED READINGS:

1. Tejpal Sheth (2019). Corporate & Other Laws (CA-Intermediate). 2nd edition. Taxmann
2. Lexis Nexis. (2017). LexisNexis Corporate Laws (The Companies Act. 2013 with allied Acts. Rules and Regulations) Including The Insolvency and Bankruptcy Code. 2016. 6th Edition.
3. Munish Bhandari. (2019). Handbook on Corporate and Allied Laws Latest Edition CA Final. Bestword Publications Ltd.
4. Dr. G.K. Kapoor. Dr. Sanjay Dhamija (2018). Company Law-A Comprehensive Text Book on Companies Act 2013. 21st edition. Taxmann
5. CA Vijay Raja. (2019). Corporate and other Law for CA Intermediate new syllabus with MCQ's . Commercial Law Publishers (India) Pvt. Ltd

KARPAGAM ACADEMY OF HIGHER EDUCATION
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Coimbatore-641021
Department of Commerce

Name : Dr. M.Usha **Department : Management**
Course Code : 19CMP106 **Semester: I** **Year : 2019-21 Batch**
Course : Corporate Law **LESSON PLAN**

UNIT I			
SI.No	**Lecture Hours**	**Contents**	**References**
1	1	Corporate Incorporation and Management Introduction, Meaning and Importance	T: Pg.No.: 1-6
2	1	Classification of registered companies Formation of a Company Certificate of Incorporation	R1: Pg.No.: 12-14
3	1	Memorandum and Articles of Association The Corporate Constitution: Name Clause, Registered office Clause and Objects Clause, Alteration of Article, General law and Public Policy	R1: Pg.No.: 16-17
4	1	Doctrine of Indoor Management	R1: Pg.No.: 18-19
5	1	Directors: Appointment , Removal Position, Powers and Duties of Directors	R2: Pg.No.: 20-23
6	1	Doctrine of Ultra Virus Abolition of the Rule	T: Pg.No.: 10-15
7	1	Audit Committee: Its Role Company Secretary: Qualification, Appointment and Duties: Officers who is in default Definition of officers who is in default Liabilities of independent directors	R2: Pg.No.: 41-45
8	1	Meetings: Types of Meeting Procedure of calling meeting Company's resolutions and its kinds	R2: Pg.No.: 45-47 W1
9	1	Recapitulation and discussion of important questions	
Total number of hours planned for Unit I			**9**

UNIT II			
SI.No	**Lecture Hours**	**Contents**	**References**
1	1	Oppression & Mismanagement and Investigation Under Sections 397 to 408; Sections 235 to 251 Oppression: Meaning and Definition	T : Pg.No.: 32-38
2	1	Instances which can be termed as mismanagement: Preventing directors from functioning Violations of statutory provisions Misuse of funds etc. Provisions of Companies Act 2013	R 2: Pg.No.: 1 – 4
3	1	Rules in Foss v. Harbottle Transactions requiring special majorities; Personal rights; and The “fraud on the minority” exception. Prevention of Oppression: Under Section 397(1)	W 1
4	1	Conditions for granting reliefs Prevention of Mismanagement: U/S 398 (1) Rights to Complain Mismanagement Notice to Central Government	T: Pg.No.: 4-6
5	1	Role and Powers of the govern Company Law Board: Under Section 397/398	T: Pg.No.:7
6	1	Role and Powers of Central Government Executive, Legislature, Judiciary	R 2: Pg.No.: 7 - 10
7	1	Company Inspection : Meaning and Importance	T: Pg.No.:8-15
8	1	Company Inspection and Investigation Inspection under section 209 A: The Registrar, Office of Government, SEBI	T: Pg.No.:16-18 (W2)
9	1	Recapitulation and discussion of important questions	
Total number of hours planned for Unit II			**9**

UNIT III			
SI.No	**Lecture Hours**	**Contents**	**References**
1	1	Corporate Liquidation Meaning and Definition Liquation Process Insolvency Resolution Process Costs and Liquidation Cost	R1: Pg.No.: 104-110
2	1	Creditors Voluntary Liquidation Compulsory Liquidation Members Voluntary Liquidation	R1: Pg.No.: 111-113
3	1	Winding up of Companies Meaning, Definition Types of winding up of companies Compulsory winding up Voluntary winding up	R1: Pg.No.: 114-115 W2
4	1	Winding up versus bankruptcy Winding up procedures Mode of winding up of the companies Winding up by the court Winding up by the members	R1: Pg.No.: 115-116
5	1	Compulsory winding up under the order of the Tribunal Circumstance for winding up by Tribunal Petition for winding up (section 272)	R1: Pg.No.: 216-217
6	1	Powers of Tribunal (Section 273) Voluntary winding up Meaning, Definition Main effects of Voluntary winding up	T: Pg.No.: 146-147
7	1	Contributories List of Contributories Liquidators remuneration	T: Pg.No.: 150-155 W3
8	1	Payment of liabilities Occurrence of substantive insolvency Scope of liability	R1: Pg.No.: 258-260
9	1	Recapitulation and discussion of important questions	
Total number of hours planned for Unit III			**9**

UNIT – IV			
SI.No	**Lecture Hours**	**Contents**	**References**
1	1	Corporate Governance Meaning, Definition Scope and Benefits of Corporate Governance	R2: Pg.No.: 172-180
2	1	Principle of corporate governance Corporate governance committee, Audit Committee, Compensation committee and Board and Management committee Importance of Corporate Governance	R2: Pg.No.: 182-183
3	1	Difference system of Corporate Governance Internal Mechanism External Mechanism Independent Audit Small Business Relevance	R2: Pg.No.: 194-195
4	1	Impact of Legal Traditions and the Rule of Law on Corporate Governance Share Holders Confidence Business Growth and Development	R2: Pg.No.: 195-196
5	1	Economic Effects Public Perception of Business	T: Pg.No.: 183-185
6	1	Legal Reforms of Corporate Governance in India	T: Pg.No.: 185-189 W4
7	1	Regulation framework on corporate governance Listing agreement	R1: Pg.No.: 451-452
8	1	Reports of the various committees on Corporate Governance	R1: Pg.No.: 452-453
9	1	Recapitulation and discussion of important questions	
Total number of hours planned for Unit IV			**9**

UNIT V			
SI.No	Lecture Hours	Contents	References
1	1	Corporate Social Responsibility Meaning, Definition Importance The Business in Society	R4: Pg.No.: 185-196
2	1	Benefits offered by CSR to Business Prevent financial ramifications Increase employee loyalty Maintain a positive reputation	R4: Pg.No.: 200-204
3	1	Environmental consciousness Social concern Local community	R4: Pg.No.: 45-47
4	1	Emerging Trends based on the recommendation of the Committees in the Companies Act 1956	R4: Pg.No.: 47-57
5	1	Engage business customer in CSR Website sustainability Choose a charity Promoting additional social causes	T: Pg.No.: 211-215
6	1	Listing Agreement with Special reference to Clause 49	R4: Pg.No.: 57-59 W5
7	1	Environmental CSR: Energy, Water, Recycling, waste management, emissions and eco-friendly\ Advantages of Environment CSR	R4: Pg.No.: 401-415
8	1	Environmental Impact towards CSR Create Products through recycled Reduce packaging Save fuel costs Environmentally conscious	R4: Pg.No.: 455-468
9	1	Recapitulation and discussion of important questions	
Total No. of Hours Planned for Unit – V			**9**
10	1	Discussion of previous ESE Question papers	
11	1	Discussion of previous ESE Question papers	
12	1	Discussion of previous ESE Question papers	**3**
Total No. of Hours Planned for Unit – V & Previous ESE Question Papers Discussion			**12**

SUGGESTED READINGS:

TEXT BOOKS

T- Tejgul Shejith, (2019), *Corporate and Other Laws*, (2nd ed) Taxmann publishing House Mumbai.

REFERENCES

R1: Lexis Nexis, (2017), *Corporate Laws (Companies Act 2013)*. (6th ed), lexican publishers, New Delhi.

R2: Munish Bhandari, (2019), *Hand book on corporate and Allied Laws*.(5th ed.), Bestword Publishers, New Delhi.

R3: Kapoor. G. K, (2018), *Compamy Law – A Comprehensive Text Book*.(21st ed.), Taxmann publishing House Mumbai

R4: Vijay Raja C.A. (2019), *Corporate and other Law for CA intermediate* .(5th ed.), Commercial Law Publishers (India) Pvt., Ltd.,

WEBSITES

W1 - www.iisd.org.

W2 - www.opmgt.ernetic

W3 - www.cliquidation.com

W4 - www.governance.com

W5 - www.corporateres.org.

UNIT-I

SYLLABUS

CORPORATE INCORPORATION AND MANAGEMENT: i) Certificate of Incorporation ii) Memorandum and Articles of Association iii) Doctrine of Ultra Vires iv) Doctrine of Indoor Management 2. Directors: Appointment, Removal , Position, Powers and Duties of Directors. ii) Audit Committee: Its Role. iii) Company Secretary: Qualification, Appointment and Duties iv) Officer who is in default: Definition of officer who is in default v) Liability of independent directors. 3. i) Types of Meetings ii) Procedure of calling meeting iii) Company's resolutions and its kinds

CORPORATE INCORPORATION AND MANAGEMENT

Definition of a "Company"

A company is a "corporation" - an artificial person created by law. A human being is a "natural" person. A company is a "legal" person. A company thus has legal rights and obligations in the same way that a natural person does.

COMPANIES AND PARTNERSHIPS COMPARED

(a) A company can be created only by certain prescribed methods - most commonly by registration under the Companies Act 1985. A partnership is created by the express or implied agreement of the parties, and requires no formalities, though it is common to have a written agreement.

(b) A company incurs greater expenses at formation, throughout its life and on dissolution, though these need not be excessive.

(c) A company is an artificial legal person distinct from its members. Although in Scotland a partnership has a separate legal personality by virtue of s.4(2) of the Partnership Act 1890, this is much more limited than the personality conferred on companies.

(d) A company can have as little as one member and there is no upper limit on membership. A partnership must have at least two members and has an upper limit of 20 (with some exceptions).

(e) Shares in a company are normally transferable (must be so in a public company). A partner cannot transfer his share of the partnership without the consent of all the other partners.

(f) Members of a company are not entitled to take part in the management of the company unless they are also directors of it. Every partner is entitled to take part in the management of the partnership business unless the partnership agreement provides otherwise.

(g) A member of a company who is not also a director is not regarded as an agent of the company, and cannot bind the company by his actions. A partner in a firm is an agent of the firm, which will be bound by his acts.

(h) The liability of a member of a company for the debts and obligations of the company may be limited. A partner in an ordinary partnership can be made liable without limit for the debts and obligations of the firm.

(i) The powers and duties of a company, and those who run it, are closely regulated by the Companies Acts and by its own constitution as contained in the Memorandum and Articles of Association. Partners have more freedom to alter the nature of their business by agreement and without formality, and to make their own arrangements as to the manner in which the firm will be run.

(j) A company must comply with formalities regarding the keeping of registers and the auditing of accounts which do not apply to partnerships.

(k) The affairs of a company are subject to more publicity than those of a partnership - e.g. companies must file accounts which are available for public inspection.

(l) A company can create a security over its assets called a floating charge, which permits it to raise funds without impeding its ability to deal with its assets. A partnership cannot create a floating charge.

TYPES OF COMPANY

By Registration (Registered Companies)

Formed by registration under the Companies Act 1985 (as amended) or one of the preceding Companies Acts. Registration is the most commonly used means of forming a company and virtually the only method now used to form a trading company.

CA 1985, s.1(1): "Any two or more persons associated for a lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability."

CLASSIFICATION OF REGISTERED COMPANIES

(a) Unlimited Companies

(i) Members have unlimited liability (If company is being wound up, members can be made to contribute to the company's assets without limit to enable it to pay its debts.)

(ii) Cannot be public companies.

(iii) Can be set up with or without a share capital.

(iv) Not subject to the same restrictions on alteration of capital as other types of company.

(b) Companies Limited by Guarantee

(i) Members agree to contribute a specified amount to the company's assets in the event of the company being wound up. (Total amount payable by all members is called the "guarantee fund")

(ii) Members do not have to pay anything as long as company is a going concern - so company has no contributed capital.

(iii) Companies limited by guarantee are not usually formed for business ventures.

(iv) Prior to 1980, a company could be registered as a company limited by guarantee

(c) Companies Limited by Shares

(i) The most common kind of registered company.

(ii) Members of the company take shares issued by the company. Each share is assigned a nominal value - the amount that must be paid to the company for the share. Members may also agree to pay

(iii)When the company is registered, its memorandum must state the total nominal value of all the shares it is going to issue (called the registered capital, or nominal capital or authorised share capital).

The memorandum also states the number of shares to be issued:

e.g. 10,000 shares of £1 each = registered capital of £10,000.

(iv)Liability of a member (shareholder), when the company is wound up is limited to the amount, if any, of the nominal value of his shares which has not been paid. (Shareholder is also contractually bound to pay any premium which has not been paid).

(v) Shares are normally partly or fully paid for when issued, so company will have a contributed capital.

COMPANIES LIMITED BY SHARES MAY BE PUBLIC OR PRIVATE

(i) <u>Public Companies</u>

CA 1985, s.1(3): "a company limited by shares which has a memorandum stating that it is to be a public company and which complies with the requirements of the Act for registration as a public company."

Main requirements:

- A company cannot be registered as a public company unless it has a minimum allotted share capital of £50,000, at least one quarter of which has actually been paid.

- A public company must have at least two shareholders and at least two directors.

(ii) Private Companies

CA 1985 defines a private company as "any company that is not a public company". Private companies have no authorised minimum share capital.

A private company is only required to have one director and, since 1992, it can be formed with only one member.

Only Public Companies can have their shares listed on the Stock Exchange – but Public Companies are regulated much more strictly than Private Companies.

FORMATION OF A COMPANY

1. **Promoters**

Promotion of a company is concerned with taking the steps necessary for incorporation.

(a) Definition

"Promoter" is not defined in the Companies Act.

Whether someone is acting as promoter of a company is a question of fact rather than a question of law.

(b) Duties of Promoters

In the 19th century, it was common for promoters to sell their own property to a newly formed company at an inflated price, or to acquire assets for the company and receive a commission from the seller.

The courts then began to impose a fiduciary duty on promoters similar to that imposed on agents. A promoter must disclose any profit or potential conflict of interest to either:

(i) an independent board of directors, or (ii) existing or intended shareholders.

(c) Remedies for Breach of Promoters Duty

(i) Where promoter has sold his own property to the company, without disclosing this - the company can rescind the contract and recover the purchase price:

(d) Payment of Promoters

A company cannot enter into a contract before incorporation - so a promoter has no legal claim against the company for fees and expenses.

In Scotland, memorandum or articles of the company can be drawn up with a provision that the company will pay fees and expenses incurred in promoting the company.

(e) Suspension of Promoters

Company Directors Disqualification Act 1986, s.2(1)

The court can make a disqualification order against a person who has been convicted of an indictable offence in connection with the promotion, formation or management of a company.

The order can be for a maximum of 15 years - a person who is disqualified is prohibited from directly or indirectly taking part in the promotion or formation of a company.

2. **Pre-Incorporation Contracts**

A company has no contractual capacity prior to incorporation - so contracts cannot be made on its behalf.

(a) Effect of Pre-Incorporation Contract on the Company

Company cannot be bound to the contract because it had no contractual capacity. Company cannot ratify the contract because it was not in existence at the time the contract was made.

Company cannot sue or be sued on the contract.

(b) Effect of Pre-Incorporation Contract on Person Purporting to Contract on Behalf of the Company

At Common Law:

- if third party knew company was not yet in existence, he could make the purported agent liable on the contract. (Kelner v Baxter).

REGISTRATION OF A COMPANY

1. The Registrar of Companies

A company is registered by filing certain documents with the Registrar - he is a public official appointed by the Secretary of State. Duties include registering new companies, maintaining company files and supervising compliance with the administrative and disclosure requirements of the Companies Act. The Companies Act 1985 (Electronic Communications) Order 2000 allows most documentation to be submitted in electronic form.

2. DOCUMENTS REQUIRED FOR REGISTRATION

These are listed in CA 1985, s.10:

(a) Memorandum of Association

(b) Articles of Association

These are the documents which make up the constitution of the company. The Companies (Tables A - F) Regulations 1985 give suggested forms for memoranda and articles for different kinds of company.

Public and Private companies limited by shares can adopt the articles in Table A of the Regulations - Table A will also apply automatically so far as not modified or excluded by the company's own articles.

The Memorandum must be signed (subscribed) unless submitted in electronic form, and must show the number of shares each subscriber is taking.

(c) A statement giving the address of the company's registered office and the details (name, address, nationality, occupation and date of birth) of the company's first directors and secretary. Statement must be signed by the subscribers to the memorandum and include a written consent to act signed by those named as directors/secretary.

(d) Statutory Declaration of Compliance - a statement that all the requirements of the 1985 Act with regard to registration have been complied with. The statutory declaration must be signed by a solicitor involved in the formation of the company or by one of the persons named as director or secretary.

(e) Registration Fee - this is presently £20.

3. CERTIFICATE OF INCORPORATION

If Registrar is satisfied that requirements of the Act have been met, he registers the documents and issues a certificate of incorporation. This is the company's "birth certificate".

The Registrar publishes the issue of the certificate in the London or Edinburgh Gazette.

Certificate is conclusive evidence that registration requirements have been met. It is also conclusive evidence as to the date of incorporation.

Registrar is entitled to refuse to register a company where it has been formed for an unlawful purpose:

CONSEQUENCES OF INCORPORATION

1. Separate Legal Personality

A company is a separate person in law from its members. This has several important consequences:

(a) Company is liable for its own debts

The shareholders are not liable for the debts and liabilities of the company and cannot be sued by the company's creditors. A shareholder can be a debtor or creditor of the company and can sue or be sued by the company.

(b) Limited Liability

The fact that the company is a separate person from its shareholders makes limited liability possible.

(c) Company Property

A company owns its own property - the shareholders have no direct right to this or any share of it. Person who no longer wishes to be a member is only entitled to whatever price he can get for his shares. A shareholder has no legal interest in the company's property and cannot insure it against theft, damage, etc. (This may not apply to someone who is a secured debenture holder.)

(d) Contractual Capacity

A company has full contractual capacity - and only the company can enforce its contracts.

(Companies may also be liable in negligence - shareholder cannot be made liable for the negligence of the company, unless he was also personally negligent).

(e) Crimes: A company can be convicted of a crime, regardless of whether its directors are also convicted.

Some limitations:

- it has been held that a company cannot be convicted of a crime which requires the physical act of driving a vehicle:

THE CORPORATE CONSTITUTION

The constitution of a company consists of its memorandum of association and its articles of association.

1. THE MEMORANDUM OF ASSOCIATION

For a company limited by shares, the memorandum must contain the following:

(a) Name Clause

CA 1985, s.25 - the name of a public limited company must end with the words "public limited company", the name of a private limited company must end with the word "Limited". Abbreviations may be used instead: "plc" or "Ltd".

It is an offence to carry on business under a name which uses these words or abbreviations when not entitled to do so - the penalty is a fine.

Under CA s.26, it is not possible to register a company name which includes the words "public limited company", "limited", "unlimited" or their abbreviations anywhere except at the end of the name.

There are also other restrictions on the use of names:

(i) Under s.26, a company cannot be registered under a name which is identical to a name already registered.

(ii) A company cannot be registered under a name which is regarded as offensive or where the use of the name would constitute a criminal offence.

(iii) A company cannot be registered under a name which suggests that the company is connected with the government or a local authority - or under any name including a word listed in the Company and Business Names Regulations 1981 - unless the Secretary of State gives permission for the name to be used.

(iv)s.26 does not prevent the registration of a name very similar to that of another company - but if the similarity is deceptive and likely to lead to confusion, the established business may bring an action to restrain the new company from using the name. This is called a "passing-off" action.

(v) A company must have its name printed on all business documents and it must be displayed at the registered office and all business premises.

A company which wishes to trade under a name other than its registered name comes within the provisions of the Business Names Act 1985.

(vi) Insolvency Act 1986, s.216 prevents the director of a company which has gone into insolvent liquidation from taking part in the management of any business trading under the same name as the insolvent company.

(vii) A company can change its name by special resolution (requires approval of holders of 75% of the company's shares).

The Secretary of State can order a compulsory name change within 12 months of registration if he discovers the name is the same as or too like one previously registered. The Secretary of State can order a compulsory name change at any time if he discovers that the name gives a misleading impression of the activities of the company.

(b) Registered Office Clause

CA 1985 s.2 - the memorandum states whether registered office is to be in England and Wales or in Scotland.

This establishes company's nationality and its domicile, but not its residence. Registered office is important because:

- it determines the jurisdiction in which the company can be sued.
- it is the address at which notices and documents must be served on the company.
- it is the address at which the company's registers and records must be kept and made available for inspection by the public.

Address of registered office can be changed by ordinary resolution (simple majority vote of shareholders), provided this does not also change the domicile.

(c) Objects Clause

Company's memorandum must contain an objects clause - a clause which states the purpose or purposes for which the company was incorporated.

(i) THE DOCTRINE ULTRA VIRES RULE

If the company does something beyond the scope of its objects clause, this is said to be *ultra vires* (beyond the powers of the company).

Previously this was of great importance - transaction entered into beyond the company's powers was void and could not be enforced by or against the company, and it could not be ratified. This was called the ultra vires rule.

(ii) Abolition of the Rule

The Rule has been abolished by statute as far as third parties are concerned.

s.35(1) CA 1985 - the validity of an act done by a company shall not be called into question on the grounds of lack of capacity by anything in the company's memorandum.

The rule still operates internally of the company - a shareholder can bring an action to restrain the company from carrying out an ultra vires act.

(The court will not restrain the company from doing anything it is already under a legal obligation to do)

A director may be liable to the company for any costs incurred by the company on an ultra vires transaction.

Potential problems can be avoided: CA 1985 s.3A allows a company to state in its memorandum that its object is to carry on business as a general commercial company. It can then carry on any trade or business whatsoever.

(iii) Change of Objects Clause

Under CA 1985, s.4 a company can change its objects clause by special resolution. Members (holding at least 15% of the nominal issued share capital) who did not consent to the change can apply to the court to have the alteration set aside. (s.5)

Application must be made within 21 days of the resolution being passed. The alteration will not then come into effect unless it is confirmed by the court.

d) Limitation of Liability Clause

If members' liability is to be limited, memorandum must have a clause to this effect.

(e) Capital Clause

Limited company with share capital must have a clause stating the total amount of share capital with which it proposes to be registered and the division of that capital into shares of a fixed amount. No minimum capital for private companies; £50,000 minimum for public companies. (f)

f)Association Clause

This is a clause stating that the subscribers are desirous of being formed into a company in pursuance of the memorandum. This is followed by signatures of subscribers (attested by one witness) and the number of shares each has agreed to take.

(g) Other Clauses

Public company must have clause stating it is to be a public company. No other clauses are necessary but it is possible to have others.

2. ARTICLES OF ASSOCIATION

(a) Articles Generally

The articles govern the internal management and organisation of the company.

The articles are secondary to the memorandum - if there is conflict between the articles and the memorandum, the memorandum prevails.

Companies (Tables A - F) Regulations 1985 provides a model set of articles for a company limited by shares.

A company has three options: (i) It may adopt Table A in full.

(ii) It may adopt Table A with modifications.

(iii) It can exclude Table A entirely and write its own articles.

(Table A has existed in various forms since 1862 - a company which adopts Table A will be bound by the Table A existing at the time it was incorporated, not a later version).

Articles must be:

(i) Printed

(ii)Set out in numbered paragraphs

(iii)Signed by the subscribers to the memorandum

(b)Alteration of Articles

CA 1985, s.9 - articles can be altered by special resolution, which must be notified to the Registrar of Companies within 15 days.

Any provision in the articles which would have the effect of making them unalterable is void.

There are certain restrictions on the company's power to alter its articles: (i) Express Statutory Restrictions

s.16 - cannot alter articles to increase a member's liability without his consent.

s.369(1) sets out notice periods for calling meetings and states this cannot be shortened by a provision in the articles.

(ii) General Law and Public Policy

A provision in the articles which is contrary to public policy is void.

The same would apply to any provision which was inconsistent with the companies legislation.

(iii) Court Order

Certain sections of the 1985 Act give the court power to order that no alteration be made to the articles.

(iv) Memorandum

An alteration to the articles which conflicts with the memorandum would be effectively void.

(v) Improper Use of Power to Alter Articles

The Power to alter the articles must be exercised bona fide for the benefit of the company as a whole.

A member cannot challenge an alteration carried out in good faith for the benefit of the company, even if the alteration adversely affects his own rights.

(ii) Where there is no express contract but a provision in the memorandum/articles is incorporated by implication from the conduct of the parties.

(iii) Where there is an express contract which is silent on a particular matter, and relevant provisions in the articles or memorandum are used to fill in any gaps.

The company is not actually liable to the outsider on the basis of the articles, but under the extrinsic contract.

3. Legal Effect of Memorandum and Articles

The legal effect is described in s.14 CA 1985. The memorandum and articles operate as a contract between the company and its members, which both parties are bound to honour.

The effect of this is:

(a) Each member, in his capacity as a member, is bound to the company as if he personally had signed the memorandum and articles.

(b)The company is bound to each member in his capacity as a member.

(c)The memorandum and articles do not constitute a contract binding the company or any member to an outsider - or to a shareholder in any other capacity than as a member.

(d) Provisions of the memorandum or articles can sometimes form part of an extrinsic contract between the company and an outsider. This can happen in one of three ways:

(i) Where provisions of the memorandum or articles are expressly incorporated into an express contract between the company and the outsider.

DIRECTORS

APPOINTMENT OF DIRECTORS

CA 1985 s.282 - public companies must have at least two directors, private companies at least one.

(a) First Directors

Persons named in the statement of first directors and secretary submitted on registration are deemed to be appointed as directors as soon as company is incorporated.

(b) Subsequent Directors

Appointed in manner laid down by Articles - usually ordinary resolution.

(c) Persons Who cannot be Appointed Directors

(i) Share Qualification

If the articles provide for a share qualification, director must obtain this within two months.

(ii) Over-age Persons

No upper age limit for private company unless articles so provide.

Person cannot be appointed as director of a public company if he has reached the age of 70 (CA 1985 s.293)

(iii) Undischarged Bankrupts

CDDA 1986, s.11 - criminal offence unless permission given by the court.

(iv) Persons Disqualified by the Court

CDDA 186 - it is a criminal offence to act as director of a company while under a disqualification order.

Court may make a disqualification order where:

- Where a person is convicted of an indictable offence in relation to the company (Maximum period - 15 years).

- Person has been in persistent default in filing returns or documents with the Registrar (Maximum 5 years).

- Company is being wound up and person has apparently committed fraud in relation to the company (Maximum period - 15 years.)

- DTI requests a disqualification order in the public interest after and investigation. (Maximum 15 years.)

- Person has been found liable for wrongful trading under s.214 Insolvency Act (Maximum 15 years)

The court must make a disqualification order where:

- a person is director of a company which has become insolvent and that person's conduct makes him unfit to be concerned in the management of a company.

(Minimum 2 years, Maximum 15 years)

(v) Auditors and Secretaries

- Auditor of a company cannot also be a director of it.

- Secretary of a company cannot also be the sole director of it.

PROCEEDINGS OF DIRECTORS

(a) Meetings

(i) Notice

No prescribed notice period - directors are entitled to reasonable notice of board meetings.

(ii) Quorum for Board Meetings

Whatever the articles provide. A director with a personal interest in the matter being discussed does not count toward the quorum:

(iii) Minutes

Minutes must be recorded, but shareholders have no right to inspect them.

POWERS OF DIRECTORS

Directors have sole power to manage the business of the company, but power vests in the shareholders if the directors are unable or unwilling to act:

A director who exceeds his powers may be liable for any loss the company suffers, unless the shareholders ratify his actions:

Shareholders can now also ratify ultra vires transactions, unless this amounts to a fraud on the minority.

Third parties are protected by CA ss.35A and 35B - can enforce transactions even if directors exceed their powers.

DUTIES OF DIRECTORS

(a) Fiduciary Duties

Director's fiduciary duties are owed only to the company, not to the individual shareholders.

The Fiduciary Duties are:

(i) A duty to act bona fide for the benefit of the company as a whole:

(ii) A duty to use powers only for the purpose for which they were conferred:

(iii) A duty to avoid a conflict between his own interests and those of the company.

A director cannot vote on any matter in which he has a personal interest, and, by CA s.317 a director with any interest in a proposed contract must disclose this to the board:

(iv) A duty not to make a personal profit out of his connection with the company.

(b) Duty of Care and Skill

Relates to director's competence in managing the company. Traditionally, the duty has been minimal - director is judged according to his own knowledge and experience:

VACATION OF OFFICE BY DIRECTORS

(a) Age

A director of a public company must normally retire when he reaches the age of 70, unless:

- Articles of the company provide otherwise, or
- Shareholders approve his continued appointment.

(b) Retirement under the Articles

Table A, Art 81 - a director must vacate office if:

- he becomes bankrupt or insane
- he becomes disqualified
- he is absent from board meetings for more than six months without permission.

Director can also resign by giving notice.

(c) Dismissal

CA 1985, s.303 - a director can be dismissed at any time by an ordinary resolution of the company - this cannot be overridden by the articles or director's service contract.

Special notice must be given of a resolution to remove a director and the director has the right to make representations at the meeting.

The articles may give a director's shares special voting rights - this may defeat the operation of s.303:

MAJORITY RULE AND MINORITY PROTECTION

The general rule in company law is that the wishes of the majority will prevail.

1. The Rule in Foss v Harbottle

When a wrong is done to a company, it is for the company to decide what action to take.

The courts will not usually hear an action brought by a member or members of the company.

(a) Reasons for the Rule

(i) The Proper Plaintiff Principle

The company is the proper plaintiff (pursuer) in any action to right a wrong against it. (ii) The Internal Management Principle

The courts will not interfere with the internal management of a company. It is for the company to decide whether it is being properly managed.

(iii) Irregularity Principle

A member cannot sue to rectify a mere informality where the act would be within the company's powers if done properly and the wishes of the majority are clear.

(b) Problems with the Rule

The majority of shares often belong to directors.The majority are in the best position to prejudice the company - then decide that the company will not bring an action against them.

There is thus a need for minority protection - enforcement of minority rights falls into three main categories.

2. Exceptions to the Rule in Foss v Harbottle

(a) Preliminary Points

A number of matters must be established first:

(i) The company is entitled to the remedy - shareholder cannot have a wider right to bring an action than the company itself would have had.

(ii) It is not possible to petition under CA s.459 or IA 1986 s.122(1)(g) (these will usually be easier).

(iii)The action falls within one of the recognised exceptions to the Rule in Foss v Harbottle.

(iv) It is not possible to obtain authority to bring an action in the company's name (i.e. must show the company has decided not to sue).

(b) The Recognised Exceptions

Edwards v Halliwell (Case 90) identified four exceptions:

- Fraud on the minority by wrongdoers in control
- Invasion of members personal rights
- Ultra vires acts
- Material procedural irregularities

In reality, only the first of these is a true exception to Foss - the others are cases where the Rule has no application.

i) Fraud on the Minority by Wrongdoers in Control

(ii) Invasion of Personal Rights

Invasion of the shareholder's personal rights is not really an exception to the rule in Foss v Harbottle - because the shareholder would be the proper person to bring the action:

(iii) Illegal or Ultra Vires Acts

Any shareholder is entitle to bring an action to restrain the company from doing something which is outside the company's objects.

(iv) Material Procedural Irregularities

General rule that the courts will not interfere with the internal management of a company when an action is brought by a shareholder does not apply if the act done by the company was one which required a special majority which was not obtained.

If this exception did not exist, the company would be able to act in breach of its own constitution.

3. Just and Equitable Winding Up

Insolvency Act 1986, s.122(1)(g) - a company may be wound up by the court if the court is of the opinion that this would be just and equitable.

(a) Locus standii (Who can petition)

Any shareholder provided he has had his shares for at least 6 months during the eighteen months prior to bringing the petition, or have inherited them, or have obtained them by direct allotment from the company.

(b) "Just and Equitable"

This is not defined by the Act - the courts have described it as a broad and flexible concept. "Clean hands" are essential for a s.122(1)(g) petition.

(c) Grounds for Granting the Petition

(i) Breakdown of Mutual Trust and Confidence

Most s.122(1)(g) petitions are brought by members of quasi-partnerships. Court will probably grant the petition if it is evident that the members have lost confidence in each other and can no longer work together:

COMPANY SECRETARY

Definition of a Company Secretary:

A Company Secretary means "a person who is a member of the Institute of Company Secretaries of India". [Sec. 2(i) (c) of the Company Secretaries Act, 1980],

According to Section 2(45) of the Companies Act, 1956, "Secretary means any individual possessing the prescribed qualifications, appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties".

Legal Status: The Companies Act, 1956, imposed certain statutory obligations on the secretary of a company but law does not define his exact position. From the nature of functions performed by a secretary, we can have some idea about the legal position of a Company Secretary. According to the law of the land, a secretary is merely a servant of the company working under full control of the Board of Directors of the company.

QUALIFICATIONS OF THE SECRETARY:

Since the amendment of the Companies Act in 1994, only a person having prescribed qualifications can be appointed secretary of a company. Apart from the statutory qualifications, he should also have other qualifications as may be necessary to conduct the affairs of the company.

Statutory Qualifications:

According to Section 2(45) of the Companies Act 1956, as amended in 1974, a Company Secretary must possess the qualifications prescribed by the Central Govt. from time to time.

The qualifications as prescribed by the Companies (Secretary's Qualifications) Rules 1975, for the Secretary of a Company are:

(a) In case of a company having a paid-up share capital of Rs. 50 lakhs or more, the Secretary must be a member of the Institute of Company Secretaries of India incorporated under the Companies Act, 1956, and licensed under Sec. 25 of that Act. A person who is a member of the Institute of Chartered Secretaries of London shall also be eligible for appointment as Secretary of such a company.

(b) In the case of any other company, one or more of the following qualifications shall have to be possessed by the Secretary:

(i) Qualifications specified in clause (a) above;

(ii) A degree in law granted by any university.

(iii) Membership of the Institute of Chartered Accountants of India.

(iv) Membership of the Institute of Cost and Works Accountants of India.

(v) A post-graduate degree or diploma in Management granted by any university or the Indian Institute of Management.

(vi) A post-graduate degree is Commerce granted by any university.

(vii) A diploma in Company Law granted by any Indian Law Institute.

OTHER QUALIFICATIONS:

In order to be a Company Secretary, statutory qualifications are not enough.

A Company Secretary should also possess the following special qualifications:

1. Knowledge of Company Law: The Secretary must know the detailed provisions of the Companies Act and its implications. He must have a knowledge of the rules of meetings.

2. Knowledge of Mercantile Law: Most of the companies carry on their business as mercantile firms and have to act according to different provisions of Mercantile Law including the Contract Act, Sale of Goods Act, Negotiable Instruments Act, MRTP Act, Insurance Act etc.

The company also faces problems of labour, trademarks, patents, copyrights and so on. Therefore, the Secretary must have a sound knowledge of Labour Laws, Factories Act, ESI Act, Mercantile Laws and Patent, Copyright and Trade Mark Laws.

3. Knowledge of Economics: In order to handle economic problems of the company, the Secretary should have a sound knowledge of Economics—theoretical and practical—general money market, capital market and financial institutions.

4. General Knowledge: The Secretary must have a sound general knowledge. He must have thorough acquaintance with social, political and economic conditions of the country.

APPOINTMENT:

The First Secretary of a company is generally appointed by promoters and his name may be mentioned in the Articles of Association. If the First Secretary is appointed subsequently, it has to be done by the Board of Directors by passing a resolution in their meeting. The terms and conditions of appointment should be mentioned in the resolution of the Board meeting. A Director may also be appointed as a Secretary.

DISMISSAL:

The Secretary is a servant of the company and his dismissal is governed by the normal law applicable to master and servant. The Secretary can ordinarily be dismissed by the Board of Directors. He may be removed in the following manner:

(i) By giving a written notice;

(ii) On the expiry of the tenure of service;

(iii) In such manner as prescribed by the Articles of Association of the company.

FUNCTIONS AND DUTIES OF THE COMPANY SECRETARY:

Functions of the Company Secretary may be discussed under two headings:

(i) Statutory Functions or Duties and

(ii) Non-statutory Functions or Duties.

(i) Statutory Functions or Duties and

1. Signing of Annual Returns,
2. Registration of Allotment Returns,
3. Issuing Share Certificates,
4. Convening Annual General Meeting,

(ii)Non-statutory Functions:

The non-statutory functions of the Company Secretary vary with the nature and size of the company. He has got certain non-statutory functions in relation to Directors, shareholders and office and staff.

1. Functions in Relation to Directors:
2. Functions in Relation to Shareholders:
3. Functions in Relation to Office and Staff:
4. Functions in Relation to Meetings

RIGHTS OF THE COMPANY SECRETARY

Rights of a Company Secretary are:

1. As the head of the secretarial department, the Secretary has the right to control, direct and supervise the activities of the department.

2. As the principal executive officer of the company the Secretary has the right to sign documents which require authentication of the company.

3. The Secretary has the right to get remuneration from the Company. As an officer of the company he has the right to claim two months' salary as a preferential creditor at the time of winding-up of the company.

4. The Secretary has the right to claim damages and compensation when his service is terminated before the expiry of his terms as per service contract.

5. The Secretary has the right to inspect the books maintained by the secretarial department.

COMPANY MEETING

The word "meeting" is not defined anywhere in the Companies Act. Ordinarily, a company may be defined as gathering, assembling or coming together of two or more persons (by previous notice or by mutual arrangement) for discussion and transaction of some lawful business.

A company meeting may be defined as a concurrence or coming together of at least a quorum of members in order to transact either ordinary or special business of the company.

In the case of Sharp vs. Dawes (1971), the meeting is defined as "An assembly of people for a lawful purpose" or "the coming together of at least two persons for any lawful purpose."

According to P.K. Ghosh "Any gathering, assembly or coming together of two or more persons for the transaction of some lawful business of common concern is called meeting."

CHARACTERISTICS OF A COMPANY MEETING:

The characteristics of a company meeting are as follows:

1. Two or more persons (who are the members of the Company) must be present at the meeting.

2. The assembly of persons must be for discussion and transaction of some lawful business.

3. A previous notice would be given for convening a meeting.

4. The meeting must be held at a particular place, date and time.

5. The meeting must be held as per provisions/rules of Companies Act.

KINDS OF MEETINGS

The meetings of a company may be classified into the following categories:

1. Meetings of shareholders:

a. Statutory meeting;

b. Annual general meeting (AGM)

c. Extra ordinary general meeting;

d. Class meetings.

2. Meetings of directors:

a. Meetings of board of directors;

b. Meetings of directors;

c. Meetings of creditors.

d. Meetings of debenture-holders.

1. Meetings of Shareholders:

The shareholders are the real owners of the company, but due to certain limitations they cannot take part in the management of the company. They leave this to their representatives called the directors. For controlling the board of directors and their activities 'shareholders' 'meetings' are held from time to time. Meeting of shareholders can be classified as under.

a. Statutory Meeting:

Every public company having share capital must convene a general meeting of shareholders within a period of not less than one month and not more than six months after the date on which it is authorised to commence its business. This is the first meeting of the shareholders of the company and it is held once in the whole life of the company.

The following companies need not to hold statutory meeting:

(i) Private company.

(ii) Company limited by Guarantee having no share capital.

(iii) Unlimited liability company.

(iv) A public company which was registered as a private company earlier.

(v) A company which has been deemed as a public company under Sec. 43 A.

Notice of the Meeting:

The directors are required to send a notice of the meeting to all the members of the company at least 21 days before the date of the meeting stating that it is the 'statutory meeting' of the company. If the notice convening this meeting does not name it as the "Statutory Meeting" it will not Amount to compliance with the provisions of this section.

Objects of Statutory Meeting:

The statutory meeting is held to inform the shareholders about matters relating to incorporation, allotment of share, the details of the contracts concluded by the company, etc. According to

Stephenson, "Statutory Meeting is convened in order to aord the shareholders an opportunity for seeing what degree of success has attained the floatation of the company and in order that any special matters requiring their approval may be laid before them."

Statutory Report:

The directors are required to prepare and send a report called the 'Statutory Report' to every member of the company at least 21 days before the date of the meeting. If the report is sent later it shall be deemed to have been duly forwarded if it is so agreed to by a unanimous vote of the members entitled to attend and vote at the meeting [Sec. 165 (2)]. A copy of this report should be sent to the Registrar.

The statutory report must set out the following information:

(i) Shares allotted:

The total number of shares allotted distinguishing those allotted as fully or partly paid-up otherwise than in cash and stating in case of shares partly paid-up the extent to which they are so paid-up and in either case the consideration for which they have been allotted.

(ii) Cash received:

The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid.

(iii) Abstract:

An abstract of the receipts of the company and of the payments made thereto, upto a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company thereto from shares and debentures and other sources the payments thereto and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company, showing separately any commission, or discount paid or to be paid on the issue or sale of shares or debentures.

(iv) Directors, auditors and other managerial personnel:

The names, addresses and occupations of its directors and auditors and also of its manager and' secretary, if any, and the changes which have occurred since the date of the incorporation.

(v) Contracts:

The particulars of any contract and the modification or the proposed modification of any contract which is to be submitted for the approval of the members at the meeting.

(vi) Underwriting contract:

The extent to which the underwriting contract, if any, has not been carried out and the reason therefore.

(vii) Arrears of calls:

The arrears, if any due on calls from any director and the manager.

(viii) Commission and brokerage:

The particulars of any commission or brokerage paid or to be paid to any director or to the manager in connection with the issue or sale of shares or debentures of the company.

Certification of Report:

The statutory report must be certified as correct by not less than two directors; one of whom shall be the managing director, if any The auditors of company then shall certify it as correct regarding the shares allotted, cash received in respect of such shares and the receipts and payment of the company. [Sec. 165(4)]

A certified copy of the statutory report shall be filed with the registrar for registration immediately after the same has been sent to the members of the company.[Sec. 165(5)]

b. Annual General Meeting (AGM):

It is a meeting of shareholders which is held once in a year. The object of holding this meeting is to review the progress and prospects of the company and elect its office-bearers for the coming year.

Holding of the Meeting:

The first annual general meeting of the company is held within 18 months of its incorporation. After holding such meeting it is not necessary to hold any other annual general meeting in the year of its incorporation and in the next year.

Subsequent annual general meeting must be held by the company each year within six months of the closing of the financial year. I the interval between any two annual general meetings must not be more than fifteen months. The registrar is empowered to extend the time upto a period to three months except in the case of first annual general meeting.

Notice:

The Board of Directors has to call Annual General Meeting giving 21 days notice to all the members entitled to attend the meeting. However, such a meeting may be called with shorter notice, if it is agreed to by all the members to vote in the meeting.

Certified copies of Profit and Loss Account and Balance Sheet, Directors' Report and Auditor's Report should also be forwarded to the members at least 21 days before the holding of the meeting of the company. Considering the importance of annual general meeting to shareholders it has been held that the directors must call the meeting even though the accounts are not ready or the company is not functioning.

(i) Routine Business: (a) Adoption of Annual Accounts, Directors' Report and Auditors' Report.

(b) To declare the dividend.

(ii) Special Business: (a) To increase Authorised Capital.

(b) To alter the Articles of Association, etc.

c. Extraordinary General Meeting:

Extraordinary meeting is a general meeting which is held between two Annual General Meetings. Extraordinary General Meeting is called to discuss any particular matter of urgent importance to the company. This meeting is called for the consideration of any specific subject, decision of which cannot be postponed to the next Annual General Meeting.

This meeting may also be called to discuss the following:

(i) Alteration of any clause of Memorandum of Association; or

(ii) Changes in the Articles of Association; or

(iii) Scheme of the reduction of share capital etc.

The Extraordinary General Meeting may be called by the Directors or may be convened by the Shareholders if the Board of Directors does not arrange for it despite their requisition to call it.

Directors may call the Extraordinary General Meeting in accordance with the procedure laid down in the Articles of Association of the company. Shareholders holding at least one-tenth of the paid-up share capital of the company can make a requisition to the Board of Directors to convince such a meeting.

A notice of 21 days has to be given to members indicating the nature and particulars of the resolutions to be discussed. The special resolutions passed at Extraordinary General Meeting have to be filed with the Registrar within 15 days.

d. Class Meetings:

When the meeting of a particular class of shareholders takes place such as preference shareholder meeting, it is known as class meeting. Such a meeting can be attended only by that class of shareholders. The articles define the procedure for calling such meeting. Such a meeting is called for the alteration in the rights and privileges of the shareholders and for the purpose of conversion of one class of shares into another.

2. MEETINGS OF DIRECTORS

a. Meetings of Board of Directors:

At Least One Meeting in Every Three Months:

The directors of a company exercise most of their powers in a joint meeting called the meeting of the Board.

In the case of every company, a meeting of the Board of Directors must be held:

(i) At least once in every three months, and

(ii) At least four such meetings shall be held in every year. [Sec. 285]

In other words, no three months should pass without directors' meeting being held, and no year should expire without at least four directors' meetings having been held in it.

The object of this section is to ensure that the Board meetings are held at reasonably frequent intervals so that the directors may be in touch with the management of the affairs of the company. However, the Central Government is empowered to relax the rule with regard to any class of companies (Section 285).

The object of this provision is to save smaller companies having insufficient business to be transacted at Board meetings from unnecessary hardships and expenditure involved in holding them.

Notice of the Meeting:

Notice Of every meeting of the Board of Directors must be given in writing to every director in India and at his usual address in India to every other director who is outside India for the time being (Sec. 286). A director has no power to waive his right of notice. Notice must be given to a director, even if he has stated that he will be unable to attend the meeting.

b. Meetings of the Committees of Directors:

The Board of Directors may form certain committees and delegate some of its powers to them. These committees should consist of only directors. The delegation of powers to such committees is to be authorised by the Articles of Association and should be subject to the provisions of the Companies Act.

In a large company routine matters like Allotment, Transfer, Finance are handled by sub-committees of the Board of Directors. The meetings of such committees are held in the same way as those of Board Meetings.

c. Meetings of Creditors:

The meetings of creditors are called when the company proposes to make a scheme for arrangement with its creditors.

Section, 391 to 393 of the Companies Act not only give powers to the company to compromise with the creditors but also lay down the procedure of doing so.

d. Meetings of Debenture Holders:

Meetings of the debenture holders are held according to the conditions contained in the debenture trust deed.

These meetings are called from time to time where the interests of debenture holders are involved at the time of reconstruction, reorganisation, amalgamation or winding up of the company.

The rules and regulations entered in trust deed relate to the notice of the meeting, appointment of a Chairman of the meeting, passing the resolutions, quorum of the meeting and the writing and signing of minutes.

RESOLUTIONS

A resolution is a formal way in which a company can note decisions that are made at a meeting of company members. Under the Corporations Act 2001, most of the decisions that affect a company need to be made by a resolution.

TYPES OF RESOLUTIONS

(a) Special Resolutions

Requires vote of 75% of members present in person or by proxy, who are entitled to vote and do vote.

Meeting at which resolution is proposed must have had at least 21 days notice, unless shorter period was agreed by majority in number of members holding at least 95% of the shares.

Certain matters can only be decided by special resolution and the articles cannot provide to the contrary.

Printed copy of special resolution must be sent to Registrar within 15 days of it being passed.

Objects: The following are some of the matters which can be decided by a special resolution:

(1) Alteration of the name of company.

(2) Alteration of the objects of the company.

Specimen of Special Resolution:

1. Alteration of name of the company. RESOLVED that the name of the company be and is hereby altered from…………………. Limited to………………………… Limited and the Central Government be officially informed for the purpose of securing their consent of such alteration.

(b) Extraordinary Resolutions

Same requirements as for special resolution except for notice period required, which depends on type of meeting. (21 days for AGM, 14 days for EGM - shorter notice possible by agreement).

Extraordinary resolution must be used:

- for voluntary winding up when company cannot pay its debts (IA 1986 s.84(1))

- to authorise a liquidator to make an arrangement with creditors in members' voluntary winding up (IA 1986 s.165(2))

(c) Elective Resolutions

Apply only to private companies. s.379A CA 1985 lists circumstances - e.g. election to dispense with AGM.

Requires 21 days notice of meeting - resolution must be supported by all members entitled to attend and vote.

Must be filed with Registrar within 15 days of being passed.

An elective resolution can be revoked by an ordinary resolution - which must also be filed with the Registrar within 15 days.

(d) Ordinary Resolutions

Most matters can be decided by ordinary resolution and some must be (e.g. decision to remove a director).

Ordinary resolution requires simple majority - 50% + 1 vote of members present in person or by proxy.

(e) Written Resolutions

CA 1985 s.381A - allows private company to pass resolutions without holding meetings.

Written resolution is passed by being signed by or on behalf of all members who would be entitled to attend and vote at a meeting.

Companies cannot be restricted from using s.381A procedure by anything in the articles.

Resolutions to remove a director or an auditor before his term of office has expired cannot be taken by written resolution.

UNIT-II

SYLLABUS

OPPRESSION & MISMANAGEMENT AND INVESTIGATION: Oppression & Mismanagement and Investigation (Section 397 to 408; Section 235 to 251).1. Rule in Foss v. Harbottle ii) Prevention of oppression iii) Prevention of mismanagement iv) Role & power of the company law Board v) Role & power of central government 2. Company Investigation

OPPRESSION & MISMANAGEMENT AND INVESTIGATION:

MEANING

The word oppression in common parlance refers to a situation or an act or instance of oppressing or subjecting to cruel or unjust impositions or restraints.

DEFINITION

According to Lord Keith," Oppression means, lack of morality and fair dealings in the affairs of the company which may be prejudicial to some members of the company

In layman's version, "Oppression is the exercise of authority or power in a burdensome, cruel, or unjust manner". It can also be defined as "an act or instance of oppressing, the state of being oppressed, and the feeling of being heavily burdened, mentally or physically, by troubles, adverse conditions, and anxiety".

MISMANAGEMENT

Mismanagement is the situation when there is gross misconduct and deviation from company's original course of action which leads to substantial failures of company / loss to public / to company

DEFINITION: The term Mismanagement has been defined under Section 398 (1) as 'conducting the affairs of the company in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company or there has been a material change in the management and control of the company, and by reason of such change it is likely that affairs of the company will be conducted in a manner prejudicial to public interest or interest of the company'.

However it is to be noted that the terms are not defined under the companies act and is left to the discretion of the court to decide on the facts of the case whether there is oppression or mismanagement of minority or not.

INSTANCES WHICH CAN BE TERMED AS MISMANAGEMENT

1. Preventing directors from functioning
2. Violations of statutory provisions
3. Violations of provisions of MOA & AOA of the company
4. Misuse of funds etc

A company is a distinct entity separate from the owners of the company where management and ownership is separated by a thin line of roles and responsibilities bestowed upon themselves. In a broad sense it is a group of persons who have come together or who have contributed money for some common purpose and have incorporated themselves into distinct legal entity. The whole scheme of the Companies Act, is to ensure proper conduct of the affairs of the company in public interest and preservation of image of country in public interest.

The section which covers oppression and mismanagement is 241 of companies Act 2013 and chapter XVI which corresponds to a clubbed section of 397 and 398 of the erstwhile Companies Act, 1956 .

As India is a democratic country, the companies being a legal citizen also bestows in itself the power of democracy. Corporate democracy is more vulnerable to it because it is reckoned with the number of shares and not with number of individuals involved. The rule of majority has been made applicable to the management of the affairs of the company. The members pass resolution on various subjects either by simple or three-fourth majority. Once resolution is passed by majority it is binding on all members. As a result, court will not ordinarily intervene to protect the minority interest affected by resolution. However there are exceptions to this rule- Prevention of Oppression and mismanagement being one such ground.

Hence, it is to be noted that this section can be invoked whenever there is oppression of the minority or there is mismanagement of the affairs of a company which is prejudicial to the public interest or to the interest of the company and its members. Thus, where a director is oppressed he does not have remedy under this section unless he is also a shareholder of the company. This section also specifies the circumstances in which an application may be made to the Tribunal by an member of a company or by the central Government for relief in cases of oppression and mismanagement.

BRIEFLY EXAMINING A FEW PROVISIONS OF COMPANIES ACT 1956 VIS-À-VIS THE PROVISIONS OF COMPANIES ACT 2013, (OPPRESSION & MISMANAGEMENT:

1. Provision of Section 397 and 398 of 1956 Act are combined in Section 241 of 2013 Act and accordingly applications for relief in cases of oppression, mismanagement will have to be directed to the Tribunal.

2. While the powers of the Tribunal under 1956 Act on application under Section 397 or 398 and Section 404 were limited, 2013 Act granted additional powers to the Tribunal including to:

   (a) restrictions on the transfer or allotment of the shares of the company;
   (b) removal of the managing director, manager or any of the directors of the company;
   (c) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilization of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(d) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company;

(e) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct; and

(f) imposition of costs as may be deemed fit by the Tribunal.

3. The requirement of establishing existence of 'just and equitable' circumstances to waive any and all requirements of the section pertaining to the meeting the minimum minority limits and providing 'security' while allowing such an application are excluded from the Companies Act, 2013.

4. Further, by way of Section 245, 2013 Act has introduced the concept of class action which was non-existent in the previous version of the Act.

Upon careful examination of the provisions of the new Act it can be ascertained that legislative intent in this Act is to safeguard the minority interest in a more comprehensive manner; though these sections of 2013 Act is yet to be notified. Thus, we have to be content with the provisions of the old Act particularly in handling the Oppression and Mismanagement issue.

However, despite the powerful weapon handed over to the shareholders by the Companies Act, in reality, the shareholders have not been able to use them and most of the provisions remain dead provisions and have not been used as potential weapons to correct any wrongful act on the part of the directors or to give them any directions. Consequently, the Board of directors of a large number of companies is elected only by a few shareholders who attend the Annual General Meetings and those who can muster sufficient number of proxies and can demonstrate their voting power. Government Companies is an exception.

In Government Companies all the directors are appointed on the advice of the Government by the President of India or the Governor of a State. Hence, theoretically it can perhaps be said that the shareholders democracy is absolute in such companies.

SHAREHOLDERS' RIGHTS - PART I - COMMON LAW DERIVATIVE ACTION

It is a general principle of company law that an individual shareholder cannot sue for wrongs done to a company or complain of any internal irregularities. This principle is commonly known as the rule in Foss v Harbottle.

RULE IN FOSS V HARBOTTLE

In Foss v Harbottle (1842), two shareholders commenced legal action against the promoters and directors of the company alleging that they had misapplied the company assets and had improperly mortgaged the company property. The Court rejected the two shareholders' claim and held that a breach of duty by the directors of the company was a wrong done to the company for which it alone could sue. In other words, the proper plaintiff in that case was the company and not the two individual shareholders.

This rule is derived from two general legal principles of company law. Firstly, a company is a legal entity separate from its shareholders. Secondly, the Court will not interfere with the internal management of companies acting within their powers. Where an ordinary majority of members can ratify the act, the Court will not interfere. This simply means, if the majority can ratify an act, the minority cannot sue.

However, there are four exceptions to the rule in Foss v Harbottle, namely :-

a. ultra vices or illegal acts;
b. transactions requiring special majorities;
c. personal rights; and
d. the “fraud on the minority” exception.

PREVENTION OF OPPRESSION

Section 397(1) of the Companies Act provides that any member of a company who complains that the affair of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members may apply to the Tribunal for an order thus to protect his /her statutory rights.

Sub-section (2) of Section 397 lays down the circumstances under which the tribunal may grant relief under Section 397, if it is of opinion that :-

(a)the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members ; and

(b) to wind up the company would be unfairly and prejudicial to such member or members , but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound.

The tribunal with the view to end the matters complained of, may make such order as it thinks fit.

WHO CAN APPLY

Section 397 of the Companies Act states the members of a company shall have the right to apply under Section 397 or 398 of the Companies Act. According to Section 399 where the company is with the share capital, the application must be signed by at least 100 members of the company or by one tenth of the total number of its members, whichever is less, or by any member, or members holding one-tenth of the issued share capital of the company. Where the company is without share capital, the application has to be signed by one-fifth of the total number of its members. A single member cannot present a petition under section 397 of the Companies Act. The legal representative of a deceased member whose name is again on the register of members is entitled to petition under Section 397 and 398 of the Companies Act.

Under Section 399(4) of the Companies Act, the Central Government if the circumstances exist authorizes any member or members of the company to apply to the tribunal and the requirement cited above, may be waived. The consent of the requisite no. of members is required at the time of filing the application and if some of the members withdraw their consent, it would in no way make any effect in the application. The other members can very well continue with the proceedings.

CONDITIONS FOR GRANTING RELIEFS

To obtain relief under section 397 the following conditions should be satisfied:-

1. There must be "oppression"- The Punjab and Haryana High Court in Mohan Lal Chandmall v. Punjab Co. Ltd., has held that an attempt to deprive a member of his ordinary membership rights amounts to "oppression". Imposing of more new and risky objects upon unwilling minority shareholders may in some circumstances amount to "oppression". However, minor acts of mismanagement cannot be regarded as "oppression". The Court will not allow that the remedy under Section 397 becomes a vexatious source of litigation. But an unreasonable refusal to accept a transfer of shares held as sufficient ground to pass an order under Section 397 of the Companies Act, 1956. Thus to constitute oppression there must be unfair abuse of the powers and impairments of the confidence on the part of the majority of shareholders.

2. Facts must justify winding up- It is well settled that the remedy of winding up is an extreme remedy. No relief of winding up can be granted on the ground that the directors of the company have misappropriated the company's fund, as such act of the directors does not fall in the category of oppression or mismanagement.[8]To obtain remedy under Section 397 of the Companies Act, the petitioner must show the existence of facts which would justify the winding up order on just and equitable ground.

3. The oppression must be continued in nature – It is settled position that a single act of oppression or mismanagement is sufficient to invoke Section 397 or 398 of the Companies Act. No relief under either of the section can be granted if the act complained of is a solitary action of the majority. Hence, an isolated action of oppression is not sufficient to obtain relief under Section 397 or 398 of the Act. Thus to prove oppression continuation of the past acts relating to the present acts is the relevant factor , otherwise a single act of oppression is not capable to yield relief.

4. The petitioners must show fairness in their conduct-It is settled legal principle that the person who seeks remedy must come with clean hands. The members complaining must show fairness in their conduct. For ex-Mere declaration of low dividend which does not affect the value of the shares of the petitioner ,was neither oppression nor mismanagement in the eyes of law.

5. Oppression and mismanagement should be specifically pleaded- It is settled law that , in case of oppression a member has to specifically plead on five facts:-

a) what is the alleged act of oppression ;

b) who committed the act of oppression;

c) how it is oppressive;

d) whether it is in the affairs of the company;

e) and whether the company is a party to the commission of the act of oppression.

PREVENTION OF MISMANAGEMENT

The present Company Act does provide the definition of the expression 'mismanagement'. When the affairs of the company are being conducted in a manner prejudicial to the interest of the company or its members or against the public interest, it amounts to mismanagement.

Section 398(1) of the Companies act provides that any members of a company who complain:- that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company; or a material change has taken place in the management or control of the company, whether by an alteration in its Board of directors, or manager or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company; may apply to the Company Law Board for an order of relief provided such members have a right so to apply as given below.

If, on any such application, the Company Law Board is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the court may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

RIGHT TO COMPLAIN MISMANAGEMENT-

1. The following members of a company shall have the right to apply as above:-

a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;

b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

2. Where any share or shares are held by two or more persons jointly, they shall be counted only as one number.

3. Where any members of a company, are entitled to make an application, any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

4. The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorize any member or members of the company to apply to the Company Law Board, notwithstanding that the above requirements for application are not fulfilled.

5. The Central Government may, before authorizing any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable, for the payment of any costs which the Court dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.

NOTICE TO BE GIVEN TO CENTRAL GOVERNMENT OF APPLICATION

The Company Law Board must give notice of every application made to it as above to the Central government, and shall take into consideration the representations, if any, made to it by that Government before passing a final order.

Right of Central Government to apply

The Central Government may itself apply to the Company law Board for an order, or because an application to be made to the Company Law Board for such an order by any person authorized be it in this behalf.

POWERS OF TRIBUNAL

Under Section 402 of the Companies Act ,1956 the powers of the Tribunal under Sections 397 and 398 are very wide .These are :-

1. the regulation of the conduct of the company's affairs in future;

2. the purchase of the shares or interests of any members of the company by other members thereof or by the company;

3. in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

4.the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other namely:-

a) the managing director;

b) any other director;

c) the manager;

Upon such terms and conditions as may, in the opinion of the Company Law Board, be just and equitable in all the circumstances of the case ;the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned; the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference. Any other matter for which in the opinion of the Company Law Board it is just and equitable that provision should be made.

EFFECT OF ALTERATION OF MEMORANDUM OR ARTICLES OF COMPANY BY ORDER:

Where an order makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any permitted in the order, to make without the leave of the Company Law Board, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

The alterations made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act.A certified copy of every order altering or giving leave to alter, a company's memorandum or articles, must within thirty days after the making thereof, be filed by the company with the Registrar who shall registrar the same.

CONSEQUENCES OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS:

Where an order terminates, sets aside or modifies an agreement:-

the order shall not give rise to any claim whatever against the company by any person for damages or for compensation for loss of office or in any respect, either in pursuance of the agreement or otherwise; no managing or other director or manager whose agreement is so terminated or set aside, shall for a period of five years from the date of the order terminating the agreement, without the leave of the Company Law Board, be appointed, or act, as the managing or other director or manager of the company. Any person who knowingly acts as a managing or other director or manager of a company in contravention of the above provision, every director of the company, who is knowingly a party to such contravention shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both. The Company Law Board will not grant leave for appointment as managing director or director or manager of the company unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given an opportunity of being heard in the matter.

POWERS OF CENTRAL GOVERNMENT TO PREVENT OPPRESSION OR MISMANAGEMENT:

The Central Government may appoint such number of persons as the Company Law Board may, by order in writing, specify as being necessary to effectively safeguard the interests of the Company or its shareholders or public interests, to act as directors thereof for such period not exceeding 3 years on any one occasion as it deems fit if the Company Law Board:-

On a reference being made to it by the Central Government ; or on an application of not less than one hundred members of the company or of members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest.

However, in lieu of passing order as aforesaid, the Company Law Board may, if the company has not availed itself of the option given to it of proportional representation to minority shareholders on the Board of the company, direct the company to amend its articles in the manner provided section 265 and make fresh appointments of directors in pursuance of the articles as so amended within such time as may be specified in that behalf by the Company Law Board.

In case the Central Government passes such an order it may, if thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, not more than two members of the company specified by the Company law Board shall hold office as additional directors of the company. The Central Government shall appoint such additional directors on such directions.

The person appointed as a director by the Central Government in accordance with the above provisions, need not hold any qualification shares or need to retire by rotation. However, his office as director may be terminated at any time by the Central Government and another person appointed in his place. No change in the constitution of the Board of Directors can take place after an additional director is appointed by the Central Government in accordance with these provisions unless approved by the Company Law Board. The Central Government in such cases may also issue such directions to the company as it may consider necessary or appropriate in regard to its affairs.

POWER OF THE TRIBUNALS TO PREVENT CHANGE IN BOARD OF DIRECTORS :

Where a complaint is made to the Company Law Board by the managing director or any other director or the manager of a company that, as a result of a change which has taken place or is likely to take place in ownership or any shares held in the company, a change in the Board of directors is likely to take place which (if allowed) would affect prejudicially the affairs of the company, the Company Law Board may, if satisfied, after such inquiry as it thinks fit to make that it is just and proper to do so, by order direct that no resolution passed or that may be passed or no action taken or may be taken to effect a change in the Board of directors after the date of the complaint shall have effect unless confirmed by the Company Law Board.

Any such order shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in the memorandum or articles of the company, or in any agreement with, or any resolution passed in general meeting by, or by the Board of directors or, the company. The Company Law Board shall have power when any such complaint is received by it, to make an interim order to the effect set out above, before making or completing the inquiry aforesaid. Nothing contained above shall apply to a private company, unless it is a subsidiary of a public company.

POWERS OF INSPECTORS [S.240]:

Where an inspector investigating the affairs of the company thinks it necessary to investigate the affairs of another company in the same management or group , he is empowered to do so. However as mentioned in section 239(2), he has to obtain prior approval of the Central Government for that purpose.[13] Section 240 has been amended by the Amendment of 2000 .Sub-section (1) was substituted. The new sub-section provides that it shall be the duty of all officers and other employees and agents of the company and those of any other body corporate whose affairs are being investigated under Section 239:

a) to preserve and to produce to an inspector or any other person authorized by him in this behalf with the previous approval of the Central Government, all books and papers of or relating to the other body corporate, which are in their custody or power; and

b) otherwise to give to the inspector, all assistance in connection with the investigation which they are reasonable able to give.

For facilitating the task of the inspector it is the duty of all officers in charge of the management of the company to produce to the inspector all books and papers of the company which are in the custody and power and to give to the inspector all assistance in connection with the investigation which they are reasonably able to give. The inspector may examine on oath any such person and for this purpose require his personal attendance. If a person required to appear or to produce books, makes a default that is a punishable offence. Where an inspector finds a person, whom he has no power to examine on oath, ought to be so examined the inspector may do so with the previous approval of the Central Government. Notes of any such examination are to be taken in writing and signed by the person examined and may be used in evidence against him. A refusal to answer any question is also punishable.

OPPRESSION AND MISMANAGEMENT ARE PART AND PARCEL OF BUSINESS.

During the course of business, oppression of small/minority shareholders takes place by the majority shareholders who are in control of the company. Similarly, mismanagement of business is not uncommon. When we talk of mismanagement we mean mismanagement of resources. Mismanagement could mean siphoning of funds, causing losses due to rash decision, not maintaining proper records, not calling requisite meetings. Finer version of mismanagement could arise where the management does not act/react to a business situation leading to downfall of business.

The concept of oppression and mismanagement is more relevant or common to family owned concerns. The reasons are very obvious. Family owned concerns are owned by family members who over time develop vested interest in business vested interest in their own heirs being the most common - thereby leading to oppression of other family members. Here typically, the controlling member of the family appropriates the family holdings by means of either a fresh issue or fraudulent transfers in his favor or reconstitutes the board in such a manner as to alienate the other family members. The result is the other family members get oppressed.

Secondly, the family owned concerns are not professional managed and their system of functioning is usually personal. They lack probity and fair play. They generally do business in a manner where they begin to benefit personally to the exclusion of other members. This leads to oppression of other family members/mismanagement of companies.

In order to check all these discrepancies the need was felt to have any measure to prevent the Oppression and mismanagement and thus under Chapter 6th of Part 6th of Companies Act , 1956 provides for the judicial as well as administrative remedies to check Oppression and mismanagement. It is a powerful tool which provides such power that even a singer member can approach Company Law Board if any of his right has been infringed or in order to prevent the Oppression and mismanagement in the company.

COMPANIES LAW : The Companies Act, 1956 constitutes the Company Law in India. It came into force with effect from 1st April, 1956. It is a consolidating Act which presents the whole body of the company law in a complete form and repeals earlier Companies Act and subsequent amendments. It contains 658 sections and XV schedules and numerous forms. Company Law is fast developing in order to protect joint stock companies. Company Law is not a field of legislation in which finality is to be expected, as the law falls to be applied to a growing and changing subject matter and growing uses of the company system as an instrument of business and finance and the possibilities of abuse inherent in that system.

The latest amendment in Companies Act came into force in 2006 and the Act was renamed as "The Companies (Amendment) Act, 2006. This Amendment Act received the assent of the President of India on 29th May, 2006 and was notified in the Gazette of India Extraordinary dated 30th May, 2006. The amending Act is being brought into effect by stages. The provisions of newly inserted sections 610B to 610E relating to filling of various returns and statutory documents through electronic mode have been made effective from 16th September, 2006. The provisions of newly inserted sections 266A to 266G relating to Director's identification Number (DIN) have been made effective from 1st November, 2006.

The Company Bill, 2011 has been introduced in Parliament on 14th December, 2011. The Bill seeks to replace the present Companies Act, 1956. It proposes comprehensive revision of the existing Act with a view to make it simpler, clearer, and leaner and user friendly by reducing number of sections. The main emphasis of Bill is on adequate disclosures and accountability to ensure that management and auditors do not take shareholders and other investors for a ride. The bill provides for greater shareholder democracy and less government intervention in the affairs of a company by removing controls and approvals.

MAIN OBJECTIVES OF COMPANY LAW ARE:

1. To protect the interest of shareholders.

2. To safeguard interest of creditors.

3. To help the development of companies in India on healthy lines.

4. To help the attainment of ultimate ends of the social and economic policy of the government.

5. To equip the government with necessary powers to intervene directly into affairs of a company in public interest.

SPECIAL FEATURES OF COMPANIES ACT ARE:

1. It provides more stringent provisions relating to the company promoters and company management.
2. It provides elaborate provisions relating to the form and contents of a prospectus, maintenance of accounts by companies, reduction of share capital, etc.
3. This Act recognizes the institution of 'Government Companies' (in which government holds at least 51% share capital) and makes special provisions for them.
4. The Act also provides measures calculated to disintegrate the concentration of economic power and wealth which affect the public interest adversely.
5. It gives extensive powers to the Central Government and the Company Law Board to intervene directly in affairs of a company in public interest, in recognition of the fact that a public company should be regarded as a national asset and not as something of exclusive concern to the shareholders or the directors.

COMPANY LAW BOARD (CLB)

With a view to ensuring greater efficiency, cohesion and despatch in the day-to-day administration of the Companies Act, an administrative authority, namely, the Board of Company Law Administration (popularly known as the Company Law Board) was set up in February 1964, by Central Government, in accordance with Section 10F. The CLB is to exercise and discharge such 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.

Under the provision of Companies (Amendment) Act, 1988, the powers and functions of CLB have been enlarged. The new Board is quasi-judicial body. It has been vested with considerable powers and functions. Some of these are judicial while others are administrative in nature.

The new CLB, as reconstituted on 31st May, 1991, has framed the CLB Regulations, 1991, for regulating the proceedings before it. The government has also prescribed the fee making an application to the Company Law Board vide CLB (Fees on Application and Petitions) Rules, 1991.

The CLB is to consist of such number of members, not exceeding 9, as the Central Government may appoint by notification in the Official Gazette, and one of such member shall be appointed as its Chairman. The members of the CLB shall possess such qualifications and experience as may be prescribed. They may be appointed for such period, not exceeding 3 years, as may be specified in the notification.

APPEAL AGAINST THE ORDERS OF THE CLB

Section 10F, provides that an aggrieved person may file an appeal against any decision or order of the CLB before the High Court, within 60 days from the date of communication thereof, on any question of law. The said period of 60 days may be extended by the Court to a further period upto 60 days on justifiable grounds. The order or decision of the Board on any question of fact will be final and will not be appealable. The High Court to which an appeal against the decision of CLB would lie.

POWERS OF COMPANY LAW BOARD ON APPLICATION UNDER SECTION 397 OR 398.

Without prejudice to the generality of the powers of the Company Law Board under section 397 or 398, any order under either section may provide for

(a) the regulation of the conduct of the company's affairs in future ;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company ;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital.

(d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely

(i) the managing director.

(ii) any other director,

(v) the manager, upon such terms and conditions as may, in the opinion of the Company Law Board, be just and equitable in all the circumstances of the case ;

(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned ;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference ;

(g) any other matter for which in the opinion of the Company Law Board it is just and equitable that provision should be made.

CENTRAL GOVERNMENT: ROLES AND RESPONSIBILITIES

In India, the government of the country is officially known as the Union Government. It is also known as the Central Government. It was established by the Constitution of India in 1950. The Central Government is the governing authority of the country's 29 states and 7 union territories, which is collectively referred to as the Republic of India. The Central Government of India is located in New Delhi, the capital of the country.

Our Constitution provides a federal structure, wherein the central government and the state governments are independent in their functioning. But, in order to meet certain emergency situations or exigencies, certain unanimous decisions are made, which are controlled or directed by the Central Government for the national interest of the country.

BASIC STRUCTURE OF THE CENTRAL GOVERNMENT OF INDIA

The Central Government of India is divided into three main sections, as outlined in the Constitution. The power of the each department of the government is separated. Various roles and responsibilities are assigned to each department for the proper functioning of the country.

- **Executive:** President, the Vice President and the Cabinet Ministers
- **Legislature:** Parliament, Lok Sabha, Rajya Sabha
- **Judiciary:** Supreme Court of India, High Courts of India at the state level, and District Courts and Sessions Courts at the district level

ROLES AND RESPONSIBILITIES

The executive branch: This section of the Central Government comprises the President, the Vice President and the Cabinet Ministers and the Independent Executive Agencies. The President of the country is the head of the state. The department executes its powers through the President. Its responsibility is to carry out and enforce laws. In other words, the executive department does not pass laws or interpret them. However, it enforces the laws framed by the legislature and interpreted by the judiciary. The executive department of the Central Government can be the source of certain types of laws in the country. This branch of government has sole authority and responsibility for the daily administration and functioning of the state bureaucracy.

The legislature branch: Also referred to as the Parliament. The Indian Parliament, which is the main component of the legislature branch, consists of the two houses called the Lok Sabha (House of People) and the Rajya Sabha (Council of States) and the President of India is the head of the Parliament or the Legislature.

This branch makes laws and policies, which apply to the entire nation. The legislative branch enjoys parliamentary supremacy but not complete sovereignty. However, it does exercise some control over the executive branch. Its responsibilities are:

- Drafting of all principal legislation for the Central Government
- To decide on bills to be introduced in the Parliament
- Ordinances to be announced by the President
- Regulations to be made by the President for Union Territories
- Measures to be taken for States under the President`s rule and
- Framing of election laws
- Also deals with certain matters like personal law, contracts, evidence etc.

The legislature does not enjoy complete sovereignty. The reason being its laws are subject to judicial review by the judiciary or the Supreme Court of India.

The judiciary: It is the Supreme Court of India. The Supreme Court of India is the final judicial authority in India. The judiciary maintains and propagates law and order of the country. Its responsibilities are:

- It interprets the laws and carries out judicial reviews, sentences verdict in complying with laws as per the Constitution, and ensures equality of everyone in front of law.
- It also solves conflicts between Executive and Legislature and other public related matters or conflicts.
- It solves disputes between the Government of India and one or more states.
- It solves disputes between two or more states

POWERS OF THE CENTRAL GOVERNMENT OF INDIA

- States must exercise their executive power in compliance with the laws made by the Central government (Article 356).
- No state government can impede on the executive power of the Central government within the states (Article 357).
- The central government has the power to take over the state in matters related to national security (Articles 352 to 360).
- The Central Government regulates trade and trade affairs between states and foreign trade;
- It has the power to declare war, raise and maintain the armed forces.
- It can also conducts diplomacy and authorize treaties with foreign countries.
- The Central Government of India possesses special powers to reduce oppression and mismanagement in a company (under Sec. 408 of the Companies Act, 1956).

POWER OF CENTRAL GOVERNMENT TO MAKE RULES

1. The Central Government may, by notification, make rules for carrying out the provisions of this Act.
2. Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.
3. Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.
4. Every rule made under this section and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

COMPANY INSPECTION/ INVESTIGATION

The responsibility of efficient running of the company, maintenance of adequate books of accounts and effective internal control is the responsibility of the management.

Inspections under Companies Act provide assurance to the regulators that the management has satisfactorily achieved these ends.

INSPECTION UNDER SECTION 209A

Inspection can be carried out by

1. The Registrar
2. Officer of the Government as may be authorised by the Central Government in its behalf.
3. Officers of SEBI

The information brought out in the inspection reports, is used for considering action under the provisions of the Companies Act. Prosecutions are launched on the basis of findings in the inspection reports. Besides, cases involving non-compliance of the Companies Act, 1956 including inadequate maintenance of statutory records noticed during such inspection are taken up with the companies for necessary remedial action. In addition, information of interest to other Government Departments and agencies as brought out in the inspection reports are communicated to them for suitable action.

INVESTIGATION UNDER SECTION 235:-

Investigation is the act of determining whether criminal matters such as employee theft, securities fraud (including falsification of financial statements), identity theft, and insurance fraud have occurred.

(1) The Central Govt. may, where a report has been made by the registrar under sub-section (6) of section 234 or under sub-section (7) of that section , read with sub-section (6) thereof, appoint one or

more competent persons to investigate the affairs of the company and to report thereon in such a manner as the Central Government may direct.

(2) Where ––

(a) In the case of a company having a share capital an application has been received from not less than two hundred members or from members holding not less than one-tenth of the total voting power therein, and

(b) in the case of the company having no share capital , an application received from not less than one-fifth of the person's on the company's register of members,

STRATEGY OF INSPECTION

Each assignment is unique, but the following approach can be used:

- Understanding the issues and the problems
- Determining the objectives and time scales
- Finding out what other information is there to help with the investigation

TECHNIQUES

I. DATA ANALYSIS TECHNIQUES

II. INSPECTION OF DOCUMENTS AND RECORDS

a) Memorandum and Articles of Association

b) Prospectus

c) Balance Sheet and P/L account

d) Annual returns

e) Returns of charges, modification of charges

f) Returns under section 303

g) Special resolution

h) Returns under section 58-A

If any of these are not filed the same should be seen in the office to check whether they were not deliberately filed in an attempt at withholding information.

2. Record maintained by the company:

Detailed scrutiny of

a) Board minutes

b) General meeting minutes

c) Trial Balance and related ledger accounts.

d) Transaction in Properties.

e) Investments.

f) Current Assets, Loans and Advances

g) Stock-in trade

h) Sundry Debtors

i) Capitalisation of Profits

j) Miscellaneous Expenditure

k) Transactions in which directors are interested

l) High value transactions and whether directors are interested

ESTABLISHMENT OF SFIO (SECTION 211):

The Serious Frauds Investigation Office (SFIO) shall be established by the Central Government with the object of investigating frauds relating to a company. Provided that until the SFIO is established under this section, the SFIO set up earlier vide Government of India resolution No.45011/16/2003-Admn1 dated 2nd July 2003 shall be deemed to be the SFIO for the purpose of this section.

The appointment of Director in the SFIO shall be done by the Central Government by a notification in the Official Gazette. The person to be appointed Director shall not be below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.

The Central Government may appoint such experts and other officers and employees in the Serious Fraud Investigation Office as it considers necessary for the efficient discharge of its functions under this Act.

SECURITY FOR PAYMENT OF COSTS AND EXPENSES OF INVESTIGATION [SECTION 214]: Where an investigation is ordered by the Central Government under section 210(1) or pursuant to Tribunal's order under section 213, then before appointing an Inspector, the Central Government may require the applicants to give a security not exceeding Rs. 25,000/- towards the costs and expenses of investigation as per the following criteria:

1. Turnover up to Rs. 50 crore- Rs. 10,000/-
2. Turnover more than Rs. 50 crore and up to 200 crore- Rs. 15,000/-
3. Turnover more than Rs. 200 crore- Rs. 25,000/-

The security shall be refunded to the applicant if the investigation results in prosecution.

VI. Firm, body corporate or association not to be appointed as inspector. (Section 215)

No firm, body corporate or association shall not to be appointed as inspector for inspection and investigation of the company.

INVESTIGATION PROCEDURE OF SFIO

(SERIOUS FRAUD INVESTIGATION OFFICE)

(I) As per Section 212 (1) of the Companies Act, 2013, the Central Govt. may assign the investigation into the affairs of a company to the Serious Fraud Investigation Office –

(a) on receipt of report of the Registrar or Inspector under section 208;

(b) on intimation of a special resolution passed by a company requesting an investigation into its affairs;

(c) in public interest; (d) on the request of any Department of Central Government or State Government On receipt of such order from the Government, Director, SFIO may designate such number of Inspectors as he may consider necessary for the purpose of such investigation.

(ii) As per sub-section (3) of section 212 of Companies Act, 2013, the investigation into the affairs of a company shall be conducted in the manner and by following the procedure specified in Chapter XIV of Companies Act, 2013. The SFIO shall submit its report to the Central Government within the period specified in the order.

(iii) As per sub-section (4) of section 212 of Companies Act, 2013, the Director SFIO shall cause the affairs of the company to be investigated by an investigating officer, who shall have the powers of the Inspector under section 217 of the Companies Act, 2013.

(iv) As per sub-section (5) of section 212 of Companies Act, 2013, it shall be the responsibility of the company, its officers and employees, who are or have been in the employment of the company to provide all information, explanation, documents and assistance to the investigating officer as he may require for conduct of business.

UNIT-III

SYLLABUS

CORORATE LIQUIDATION: i)Winding up of Companies ii) Mode of winding up of companies iii) Compulsory winding up under the order of the Tribunal iv) Voluntary winding up v) Contributories vi) Payment of liabilities

CORORATE LIQUIDATION:

Liquidation is a process through which a company which is running is shut down and its existence comes to an end. This often happens when the companies are unable to pay its creditors and hence need to sell off its assets to pay of them. Though in another version this could be a voluntary act as well where law ensures that all the debts of a company into existence is paid before it is closed or shut down.

LIQUIDATION PROCESS

Liquidation process can be initiated under following circumstances as of section 33 of the insolvency and bankruptcy code 2016-

- When no resolution plan is submitted by interim resolution professional as received from adjudicating authority on or before the expiry of insolvency resolution period.
- When the resolution plan as received by interim resolution professional is non-compliant to section 31.
- When a request is received from committee of creditors to liquidate the corporate debtor during the corporate insolvency resolution period and same is communicated by the interim resolution professional to the adjudicating authority.

- When the corporate debtor disobeys the resolution plan which is approved by adjudicating authority and the person or creditor who is getting affected by this files an application to adjudicating authority for liquidation of corporate debtor and the adjudicating authority finds the corporate debtor guilty.

Priority List of Creditors:

The company's filing for liquidation falls under two categories, solvent and insolvent. An insolvent company is at a shortfall of cash even after liquidation of company assets to pay off its creditors, in such a scenario, there could be conflict of interest amongst the creditors because of insufficient assets to pay all the creditors in full. Hence the law attempts to maintain the equality amongst the creditors and follow a transparent process to liquidate the assets of the company to be distributed equally amongst the creditors as per the size of their claim. Below is the priority list as per which the assets after liquidation are distributed. (Section 53)

Insolvency Resolution Process Costs and Liquidation Cost:

- Workmen's dues and debts due to secured creditor who has relinquished security interest.
- Wages and dues of employees other than workmen.
- Financial debts owed to unsecured creditors.
- Dues to the Government and dues owed to a secured creditor who has realized security interest but the proceeds are insufficient to meet the debts
- Residuary debts and dues
- Preference shareholders
- Equity Shareholders or partners

Process followed for liquidation:

Once the liquidation process is initiated as per the above-mentioned criteria's, then the moratorium shall commence. Following the moratorium, a public announcement shall be made about the corporate debtor being liquidated.

A liquidator is appointed as per section 34 and the fee to be paid to him for the proceedings is decided. The fee for liquidator is part of proceeds from liquidation estate. The resolution professional also acts as a liquidator unless he is replaced by NCLT.

Liquidation trust is formed as per section 36 of insolvency and bankruptcy Code. This section is core of company liquidation process as it defines what assets of corporate debtor shall form part of the liquidation estate, how the assets will be distributed by liquidator, and who shall hold the estate as fiduciary for the benefit of all the creditors.

Then the claims from the creditors are processed. There are various sections which help in this process. Section 38 defines how to consolidate the claims from financial and operational creditors, section 39 defines how to verify claims, section 40 defines the process of acceptance and rejection of claims and section 42 defines how the applications against the liquidator decision shall be processed.

RULES AND REGULATIONS FOR LIQUIDATION OF A CORPORATION

Liquidation is the final step in the formal process of dissolving a corporation, regardless of how many shareholders it has. It specifically relates to how a corporation distributes assets that remain after clearing outstanding debts. Internal Revenue Service regulations that apply to all corporations, as well as rules in the corporation's home state, determine how liquidation takes place. Although state rules share similarities, it's best to contact the secretary of state for the corporation's home state to get state-specific information on corporate liquidation rules and regulations.

DRAFTING A LIQUIDATION PLAN

State requirements specify the information a liquidation plan must include. In general, a liquidation plan outlines a corporation's promise to return excess assets to shareholders as specified in state regulations and identifies the date shareholders cease to have rights beyond receiving a final distribution. In addition, a liquidation plan outlines procedures for dealing with distributions when the shareholder cannot be located. This most often involves transferring funds to the state for safekeeping until the shareholder comes forward.

SHAREHOLDER DISTRIBUTIONS

State laws require corporations that have any degree of liquidity after paying creditors and satisfying tax obligations to return excess funds to shareholders. Because leftover liquidity includes cash and capital or other assets the corporation has the legal right to sell, most distributions are completed in a series of increments. Regardless, the amount available is totaled and divided proportionately among shareholders according to the number of shares each shareholder owns. In exchange, the shareholder must return her outstanding shares to the corporation.

TAX CLEARANCE RULES

Some states require a corporation to verify that final state taxes have been paid before liquidation can be considered complete. Until and unless the corporation submits a letter or certificate obtained from the state tax agency stating the business has no outstanding tax liability, the secretary of state will typically not allow the corporation to formally dissolve. This can mean the corporation will remain responsible for paying annual fees and complying with annual reporting requirements.

IRS Filing Requirements

IRS Regulation 4.11.7 outlines filing requirements and defines corporate responsibilities for recognizing gains or losses on the liquidation of each business asset. For example, IRS Form 966, Corporate Dissolution or Liquidation, must be filed within 30 days of filing the initial articles of dissolution. Shareholders receiving distributions of $600 or more in a calendar year must receive a 1099-DIV. Once liquidation proceedings are complete, IRS Rule 71-129 requires all corporations to file a final corporate tax return and pay any outstanding tax liability on or before the 15th day of the third full month following the dissolution. For example, if liquidation is complete on Nov. 24, the final tax return is due on Feb. 15 of the following year.

CORPORATE LIQUIDATION VS. CORPORATE DISSOLUTION

Incorporating your small business creates a new legal entity with rights and responsibilities that are separate and distinct from you, and from any other person who owns a share of the business. When the business is no longer viable or you otherwise decide to cease operations, you should take appropriate action to terminate the corporation's existence by dissolving it according to state law. As part of the dissolution process, the affairs of the corporation must be settled, which includes liquidating the corporation's remaining assets.

DISSOLUTION

Each state's corporate law specifies the requirements for dissolving a corporation. The dissolution process is typically initiated by the board of directors submitting a resolution to dissolve the corporation at a meeting of the corporation's shareholders. If the shareholders vote to approve the resolution, the directors are authorized to commence the dissolution process. In general, the requirements for dissolution include filing an appropriate document with the state, such as articles of dissolution in Arizona. The document usually requires a statement that the dissolution was approved by an appropriate vote of the shareholders.

WINDING UP CORPORATE AFFAIRS

A corporation's dissolution is not effective until the necessary steps have been taken to wind up the corporation's affairs. In general, this requires collecting all corporate assets, selling assets that will not be distributed to shareholders, and making suitable arrangements to satisfy the debts and obligations of the corporation. Additionally, the corporation must usually obtain clearance from the state's taxing authority that all state taxes have been paid or that none are owed by the corporation.

WINDING UP OF A COMPANY

Winding up of a company is defined as the condition when the life of the company is brought to an end. The properties of the company are administered for the profit of its members and its creditors.

STEPS OF WINDING UP

The following steps are followed in the case of a company winding up −

- An administrator, usually denoted as a liquidator, is appointed in the context of liquefaction or winding up of a company.
- The liquidator takes control over the company, assembles its assets, pays debts of the company and finally distributes any surplus amongst the members according to their rights and liabilities.
- The company has no assets or liabilities at the end of liquefaction or winding up.
- The dissolution of a company takes place when the assets and liabilities of a company are completely wound up.
- On the context of winding up, the name of the company is stuck off from the list of companies and its identity as a separate legal person is lost.

- If a company is unable to pay its debts or the debts taken by the company is worth more than the assets it owns and no agreements have been made with the creditors, then the company is considered insolvent and is subjected to compulsory liquidation or compulsory winding up.
- If an insolvent owes money to a natural person, he may ask the court of law to make a compulsory winding up order against the company.
- On the issuance of the order, the order is informed by the court to the official receiver, who eventually becomes the liquidator.
- The official receiver informs the creditors and conducts interviews with the directors of the company on the context of the winding up.
- If it is believed by the official receiver that the company has enough assets to pay its creditors, then the official receiver will seek for the appointment of an insolvency practitioner as the liquidator.
- The appointment of the liquidator is done either by calling a creditors' meeting for the creditors to elect a liquidator by vote or by requesting the Secretary of the State to appoint one.
- If there are no assets left, then the official receiver will become the liquidator.
- A person must be owed a minimum amount of INR 750 without dispute before he can ask for a winding up.
- Other business corporations or individuals can request the order of winding up of a company.
- Insolvency Service, an agent of the government, is an investigating agency, which investigates the winding up of a company.
- The Insolvency Service investigates financial failure and misconduct of individuals and companies.
- The official receiver works for the Insolvency Service.

- The official receiver finds out when and why an individual became bankrupt and finds out the primary cause behind the liquidation of a company.
- The procedure of winding up differs according to the registration status of the company, i.e., if the company is registered or if it is an unregistered company.
- If the winding up of a company is processed in the court of law, the liquidator is termed as official liquidator.
- The official liquidator acts through a recognized reporting system under the supervision of the court.

POWERS OF A LIQUIDATOR

An administrator, usually denoted as a liquidator, is appointed in the context of liquefaction or winding up of a company. The liquidator takes control over the company, assembles its assets, pays debts of the company and finally distributes any surplus amongst the members according to their rights and liabilities.

The following are the general powers of a liquidator −

- Illustrating or defending any action, suit, prosecution or any legal proceedings on behalf of the company
- Carrying out the business of the company as far as it is beneficial for the company
- Paying the creditors
- Making any compromise or arrangements with the creditors
- Compromising all the calls, debts and liabilities, which may result in further debts on the company
- Selling all the mobile and immobile assets of the company by conducting public auctions or by private contracts, with power to transfer the assets to a single person or to various persons in parcels

- Performing all the acts and deeds needed for the winding up with receipts and documents using the company's seal and name
- Drawing, accepting, making and endorsing any bill of exchange or promissory note in the name and on behalf of the company
- Raising the security of the properties and money of the company

COMPULSORY WINDING UP

Compulsory winding up takes place when a creditor of an insolvent company asks the court for a wind up. If the company goes into liquidation, the court of law appoints a liquidator for the liquidation.

- The primary objective of the liquidator is to raise as much funds as needed to pay the creditors.
- The company will then be dissolved and its name will be struck off from the list of companies in the registrar's office.
- Any surplus money left will be distributed amongst the shareholders of the company.
- This legal process ends with the company's name struck off from the list of companies in the registrar's office.
- After the name is struck off, the company ceases to exist anymore.

WINDING UP INVOLVES THE FOLLOWING −

- Every contract of the company, including individual contracts are completed, transferred or ended. The company is no more able to do business.
- Any outstanding legal disputes are settled.
- All the assets of the company are sold.
- Money owed to the company, if any, is collected.

THE MOST IMPORTANT CONSEQUENCES OF THE WINDING UP OF A COMPANY ARE AS FOLLOWS

AS REGARDS THE COMPANY ITSELF

- Winding up doesn't take away the existence of the company completely.
- The company continues to exist as a corporate entity till its dissolution.
- All the ongoing business of the company is administered by the liquidator during the phase of liquidation.

AS REGARDS THE SHAREHOLDERS

- Contributors − a new statutory liability comes into existence.
- Every transaction of share during the liquefaction done without the approval of the liquidator is termed void.

As Regards the Creditors

- The creditors cannot file a case against the company except with the consent of the court.
- If the creditors already have decrees, they cannot proceed with the execution.
- They must explain their claims and justify their claims to the liquidator.

AS REGARDS THE MANAGEMENT

- With the appointment of the liquidator, all the powers of the directors, chief executives and other officers tend to cease.
- Only the powers to give notice of resolution and the power of appointment of the liquidator upon winding up of the company are given to the members.

AS REGARDS THE DISPOSITION OF THE COMPANY'S PROPERTY

All the dispositions of the company's properties are void if the dispositions are not approved by the court or the liquidator.

CIRCUMSTANCES IN WHICH A COMPANY MAY BE WOUND UP

A company may be wound up by a tribunal where the petition has been filed under the following circumstances −

- A special resolution is passed by the company that the company shall be wound up by the tribunal.
- Failure of the company in reporting a statutory report at the registrar's office.
- Non-commencement of the company in business within one year of incorporation.
- Number of members has reduced below 7 for a public company or 2 for a private company respectively.
- The debts of the company are unpayable by the company.
- The tribunal is just equitable to wound up the company.
- The company is unable to file its balance sheet or annual return for five financial years consecutively.
- The company has acted against the sovereignty and integrity of the country.

Application of Winding Up

An application of winding up must be filed with the petition of winding up by the following entities −

- The company
- Any creditor or creditors of the company
- Any of the contributory company
- Any person authorized by the central government
- The state government or the central government

According to the procedures mentioned in section 439-481 of the Companies Act, the tribunal will move on upon the receipt of the petition.

MODE OF WINDING UP OF THE COMPANIES (TRIBUNAL, VOLUNTARY AND CONTRIBUTORIES)

1. WINDING UP OF THE COMPANY BY TRIBUNAL:

When a resolution for the winding up of a company is passed inside the company, the court may make an order for the voluntary winding up to continue.

- However, the court remains in supervision of the winding up.
- The freedom and liberty of the creditors, contributors or others to apply to the court at such times is limited by the court.
- A petition for the winding up must be filed at the court for the supervision of the court over the winding up.
- The winding up of a company by the order of the court is also regarded as a compulsory wind up.

Section 305 of the ordinances justifies the following circumstances where the court may wind up the company based upon a petition submitted to a court.

- If the company decides by a special resolution that the company should be wound up by the court.
- If the company is found to be a defaulter in delivering statutory reports at the registrar's office or holding statutory meetings or holding two annual general meetings for two consecutive years.
- If the company does not start its business for one year of incorporation or its business in suspended for one year.
- If the number of members is reduced below 2, 3 and 7 for private, public and listed company respectively.

- If the company is found no more able to pay its debts.
- If the company is −
  - Carrying out or complying unlawful and fraudulent activities
  - Carrying out business activities not authorized by its memorandum of association
  - Carrying out business in an oppressive manner towards its members concerned with the promotion of the company
  - Running and is managed by the hands of persons who are in a default in maintaining proper accounts or are involved in fraudulent and dishonest activities
  - Managed by persons who fail to work in sync with the memorandum of association of the company or fail to comply with the registrar and the court of law.
- If the company, being a listed company, does not stand out to act like one.
- If the court's opinion is to wind up the company or
  - Complete deadlock in the management of the company
  - Failure of company's main objective
  - Recurring losses
  - Oppressive or aggressive policies of the majority of shareholders
  - Incorporation of a company with intent to fraudulent or illegal purpose
  - Public interest
- If the company ceases to have a member.

PROCEDURE FOR WINDING UP OF A COMPANY

- A special resolution must be passed in the company in the context of winding up and the consent of 3/4th of its members is required for the winding up to be carried out by the court.
- A list of the total assets must be prepared in order to confirm that the company is no more able to pay its debts. A list of the creditors must be prepared.

2. VOLUNTARY WINDING UP

A company may be wound up voluntarily under the following circumstances −

- An ordinary resolution is passed in the general meeting of the company on the context of winding up −
    - If the period pre-fixed by the articles of association of the company has been expired.
    - In case of an event according to the articles of association of the company, under which the company needs to be dissolved.
- If a special resolution is passed by the members of the company for the voluntary liquidation of the company.
- A minimum notice of 21 clear days must be given in order to convene a general meeting.
- However, with the consent of the members, a general meeting can be convened with a shorter notice.
- A voluntary winding up is commenced just after the above mentioned resolution has been passed.
- The notice for the beginning of the winding up of a company must be made in an official gazette, i.e., by applying to the registrar of companies within 14 days of commencement of the liquidation.
- Again, the notice of the winding up of the company must be published in a newspaper in the place where the registered office of the company is situated.
- The company becomes unable to conduct any commercial business activities after the commencement of the winding up.
- However, business can be conducted for the benefit of the company's winding up process, i.e., paying debts to the company's creditors, etc.

- The corporate state and its corporate power continue to remain in existence until the company is finally dissolved.
- Further, there two kinds of voluntary winding up −
    - Members voluntary winding up
    - Creditors voluntary winding up
- The rules for both kinds of winding up are the same.
- The Companies Act however provides some specific criteria for these two types of winding up.

MEMBERS' VOLUNTARY WINDING UP

This type of winding up is carried out when the company is solvent and is able to pay its liabilities totally. The important aspects of members' voluntary winding up are as follows −

Declaration of Solvency

- For the winding up of a company, it is needed for the directors to conduct a meeting, where the majority of the directors make a declaration approved by an affidavit that they have made a full assessment of the company and the company is able to pay all its debts within three years of the winding up of the company.
- It is necessary for such a declaration to be made at least 5 weeks before the resolution to become effective.
- It should be necessarily delivered to the registrar's office.

Appointment and Remuneration of Liquidators

The company, in a general meeting, must exercise the following things &minsu;

- Appointment of liquidators for the purpose of winding up of the company as and when the company is about to be wound up and for the distribution of the assets of the company

- Fixing an adequate remuneration to be paid to the liquidators. This fixed remuneration cannot be changed in any circumstances. The liquidator does not take charge of his office unless the remuneration is fixed. Board's Power to Cease
- During the course of liquidation, all the powers of the directors and managers are ceased.
- However, the power to give notices and the power to make appointments to the registrar is not ceased. However, the powers of the directors may continue to exist upon the sanction of their powers by the shareholders or the liquidator.

NOTICE OF APPOINTMENT OF THE LIQUIDATOR IS GIVEN TO THE REGISTRAR

Power of Liquidator to Accept Shares as Consideration as Sale of Property of the Company −

- The liquidator can accept shares, policies or take interests to consider the sale of the company's belongings to another company. He may do so with an aim to distribute the same amount of members of the transferor company, provided −
    - A special resolution is passed in the company for this act to be effective. He buys the interest of any dissenting member at a price to be determined by an agreement or arbitrarily.s

Duty of Liquidator to Call Creditors' Meeting in Case of Insolvency

If the liquidator, for any reason, realizes that the company is on the verge of insolvency, i.e., thinks that the company will be unable to pay its debts and liabilities within the limited time as specified by the declaration of insolvency, he must summon a meeting of the creditors where the statement of all the assets and liabilities is laid before them.

Duty of the Liquidator to Inform the Income Tax Officer

- Upon the appointment of a liquidator, the income tax office must be informed of the appointment of the liquidator.
- This must be done within 30 days of the appointment of the liquidator.

- The tax assessment of the company is to be carried out.

Duty of the Liquidator to Call General Meeting at the End of Each Year

- In case the process of winding up takes more than one year, the liquidator must call for general meetings at the end of each year.
- The meetings should be held within three months from the end of each year or as specified by the central government of India.
- The liquidator must present a brief account of his actions and the matters he is dealing with and the progress of the winding up at the general meeting before all the other members of the company.

FINAL MEETING AND DISSOLUTION

When the affairs of the company are fully finished, the liquidator must do the following things −

- Make a report on how the process of winding up progressed, ensuring all the property of the company has been disposed.
- Conduct a general meeting of the company for laying the report before the company and provide justification of the steps he has taken for the successful winding up of the company.
- Send a copy of the report to the registrar's office and meet the registrar to return the report within one week and make a report to the tribunal about the conduct of the winding up to ensure that that the liquidation went as per the members of the company's interest.

Dissolution of the Company

- Bringing an end to the life of a company is termed as dissolution.
- No property can be held by a dissolved company.
- The company cannot be sued by the court after liquidation.
- If any property of the company still remains after the dissolution of the company, the property will be taken over by the government immediately.

3. CREDITORS' VOLUNTARY WINDING UP

Creditors' voluntary liquidation is a procedure in which the company's directors choose to voluntarily bring the business to an end by appointing a liquidator (who must be a licensed insolvency practitioner) to liquidate all its assets. The important provisions of the creditors' voluntary winding up are as follows –

Meeting of the Creditors

- A creditors' meeting must be called up within two days of the day when the resolution for winding up of the company, as proposed by the creditors, is passed.
- A notice of the creditors' meeting along with the notice of the general meeting of the company must be delivered to all the creditors of the company.
- A full-fledged report on the company's affairs, the list of the creditors of the company and the estimated amount of claims made by the creditors should be presented by the directors before the creditors of the company.

Notice of Resolution to Be Given to the Registrar −

When a resolution of winding up of a company, as proposed by the creditors, is passed, a notice of the resolution must be delivered at the registrar's office within 10 days from the day when the resolution is passed.

Filling up winding up petition: Section 272 provides that a winding up petition is to be filed in the prescribed form no 1, 2 or 3 whichever is applicable and it is to be submitted in 3 sets. The petition for compulsory winding up can be presented by the following persons: **a)** The company **b)** The creditors ; or **c)** Any contributory or contributories **d)** By the central or state govt. **e)** By the registrar of any person authorized by central govt. for that purpose

APPOINTMENT OF THE LIQUIDATOR

- A liquidator for the purpose of the winding up of the company may be nominated by the creditors of a company at the creditors' meeting. However, if there are different persons nominated at the general meetings of the company and the creditors meeting of the company, then the person nominated by the creditors is appointed as the liquidator of the company.

Appointment of the Inspection Committee

If the creditors wish, they may appoint an inspection committee for watching over the entire process of winding up of the company.

Remuneration of the Liquidator

- The creditors fix the remuneration of the liquidator.
- If the creditors fail to fix the remuneration of the liquidator, the remuneration shall be fixed by the tribunal. No liquidator shall join unless a respectable remuneration is fixed.
- Once fixed, the remuneration cannot be changed.

Power of the Liquidator

- The liquidator enjoys all the powers as vested on a director. Further the liquidator enjoys all the powers as vested on a liquidator in case of members' voluntary winding up according to section 494 of the Companies Act, 1956.

Duty of the Liquidator to Call General Meeting at the End of Each Year

- In case the process of winding up takes more than a year, the liquidator must call for general meetings and creditors' meetings at the end of each year. The meetings should be held within three months from the end of each year or as specified by the Central Government of India.
- The liquidator must present a brief account of his actions and the matters he is dealing with and the progress of the winding up at the general meeting before all the other members of the company.

FINAL MEETING AND DISSOLUTION (DISSOLUTION)

When the affairs of the company are fully finished, the liquidator must do the following things −

- Make a report on how the process of winding up went, ensuring all the property of the company has been disposed.
- Conduct a general meeting of the company for laying the report before the company and give certain explanation about the justification of the steps he has taken for the successful winding up of the company.
- Send a copy of the report to the registrar's office and meet the registrar to make a return of the report within one week and make a report to the tribunal about the conduct of the winding up to ensure that the liquidation went as per the members of the company's interest.

  Dissolution of the Company

- Bringing an end to the life of a company is termed as dissolution.
- No property can be held by a dissolved company.
- The company cannot be sued by the court after liquidation.
- If any property of the company still remains after the dissolution of the company, the property will be taken over by the government immediately.

PAYMENT OF LIABILITIES

LIABILITIES:

A liability, in general, is an obligation to, or something that you *owe* somebody else. Liabilities are defined as a company's legal financial debts or obligations that arise during the course of business operations. They can be limited, or unlimited liability. Liabilities are settled over time through the transfer of economic benefits including money, goods, or services. Recorded on the right side of the balance sheet, liabilities include loans, accounts payable, mortgages, deferred revenues, and accrued expenses.

In general, a liability is an obligation between one party and another not yet completed or paid for. In the world of accounting, a financial liability is also an obligation but is more defined by previous business transactions, events, sales, exchange of assets or services, or anything that would provide economic benefit at a later date. Liabilities are usually considered short term (expected to be concluded in 12 months or less) or long term (12 months or greater).

Liabilities are also known as current or non-current depending on the context. They can include a future service owed to others; short- or long-term borrowing from banks, individuals, or other entities; or a previous transaction that has created an unsettled obligation. The most common liabilities are usually the largest like accounts payable and bonds payable. Most companies will have these two line items on their balance sheet, as they are part of ongoing current and long-term operations.

LIABILITIES EXPLAINED

Liabilities are a vital aspect of a company because they are used to finance operations and pay for large expansions. They can also make transactions between businesses more efficient. For example, in most cases, if a wine supplier sells a case of wine to a restaurant, it does not demand payment when it delivers the goods. Rather, it invoices the restaurant for the purchase to streamline the dropoff and make paying easier for the restaurant.

The outstanding money that the restaurant owes to its wine supplier is considered a liability. In contrast, the wine supplier considers the money it is owed to be an asset.

LIMITED LIABILITY

The basis of limited liability is that all debts incurred by a company are the company's liabilities and are not directly the legal liabilities of the shareholders or of the directors of the company. The company is a separate legal person from its shareholders and the directors. The company incurs debts in the course of its business and only the company is liable for those.

In a company limited by shares, the shareholders' obligation is to pay the company for the shares they have taken in it. Once the shares are fully paid for (and this would usually be the case with a private limited company) no further money is payable by the shareholders.

The members of a company limited by guarantee are bound by a guarantee in the company's memorandum of association requiring them to pay the company's debts up to a fixed sum, which is usually £1.

The directors incur no personal liability as all their acts are undertaken as agents for the company. However, there are certain circumstances where liability may be imposed by the court, particularly in respect of wrongful or fraudulent trading. Also some potential creditors of a small limited company may ask the directors to give personal guarantees of the money owed to them. This is routine if a small company requests a bank loan or overdraft or when taking a lease of premises.

Being able to set up a limited liability company quickly, cheaply and easily is an important incentive for those contemplating starting a business venture. It means that personal assets, such as the entrepreneur's home or other wealth, are not put at risk. If the business fails, the owners can walk away from its debts. Only any capital committed to the company as share capital is liable to be lost if the venture fails. The UK is one of the easiest places in the world to set up a company. It is quick (on-line registration allows companies to be registered within hours), cheap (typically between £50 and £150 for a professional registration service) and easy (with the registered details being submitted on a website form).

Sometimes the easy availability of limited liability is abused, exploited by those who want to set up a business, run up debts and never pay them. Such conduct is fraud, if done deliberately, or may be wrongful or fraudulent trading. Apart from civil liability and criminal sanctions, someone behaving in this way may be made subject to a directors disqualification order. Nevertheless, there are sometimes complaints that it can be too easy for people to act in this way and avoid any legal recourse, at least for a while.

LIABILITY OF DIRECTOR FOR DEBTS OF THE COMPANY UNDER INDIAN LAWS:

The Companies Act, 2013 ("CA 13") defines a director to mean 'a director appointed to the Board of a company'. CA 13 contains the concept of an 'officer who is in default' for the purposes of affixing liability on such person in respect of any contravention of the provisions of CA 13 by the company. The ambit of 'officer who is in default' is quite wide and includes, inter alia, every whole-time director. A company is a juristic person but since a company has to act through a living human being, decisions on behalf of the company, are taken by the board of directors ("Board") of a company. An individual director has no power to act on behalf of a company of which he is a director, unless there is a specific resolution of the Board of the company giving specific power to him/her, or, where the articles of company confer such a power.

Ordinarily, a director is not, by way of holding the position of a director, liable for the debts of the company. The law in this regard is well settled and has been reiterated by courts in several judgments. For instance, the Delhi High Court in the matter of Tristar Consultants vs. M/s. VCustomer Services India Pvt. Ltd. & Another[1] made the following observations and upheld deletion of the name of the director from the suit filed, inter alia, for recovery of outstanding amount and damages:

Directors of companies have been described as agents, trustees or representatives of the company because of the fact vis-a-vis the company they act in a fiduciary capacity. They perform acts and duties for the benefit of the company. Thus, directors are agents of the company to the extent they have been authorized to perform certain acts on behalf of the company.

But directors of a company owe no fiduciary or contractual duties or any duty of care to third parties who deal with the company...

To interpret the law as is sought to be projected by the petitioner would mean negation of the concept of a company being limited by its liability as per the memorandum and articles of association of the company."

Thus, as a general rule, director(s) is/are not held personally liable on behalf of the company unless commission of fraud or gross negligence is proved against him/them in conducting business of the company at the relevant time.

That said, there may be exceptional circumstances, wherein the director may be called upon for settlement of the contractual third party debts of the company, such as:

i. Inducement of third party creditor through misrepresentation: Where a director, by making false representations about a company, induces a third party to advance a loan or money to the company, then on proof of fraudulent misrepresentation, such director may be held personally liable to the third party. Therefore, liabilities of directors of a company, under common law, are confined to cases of maleficence and misfeasance i.e. where they have been guilty of tort towards those to whom they owe a duty of care i.e. discharge of fiduciary obligations towards the company. Additionally, qua third parties, where directors have committed tort, to such third party, they may be personally liable.

   Relevant in this context is the case of Mukesh Hans & Anr. Vs. Smt. Uma Bhasin & Ors[2], where the Delhi High Court observed as under:

It is equally well settled that a Director of a Company though he owes a fiduciary duty to the Company, he owes no contractual duty qua third parties. There are, however, two exceptions to this rule. The first is where the Director or Directors make themselves personally liable, i.e., by execution of personal guarantees, indemnities, etc. The second is where a Director induces a third party to act to his detriment by advancing a loan or money to the Company. On the third party proving such fraudulent misrepresentation, a Director may be held personally liable to the said third party. It is, however, well settled that this liability would not flow from a contract, but would flow in an action at tort, the tort being of misrepresentation and of inducing the third party to act to his detriment and to part with money."

ii. Giving of personal guarantee, indemnity or assurance: A director would be personally liable if the director has personally undertaken to clear any liability of the company or extended any indemnity or personally guaranteed the payment obligations of the company towards a third party creditor.

iii. Deriving of personal benefit: A director may also be held liable in cases where if he/she has derived any personal benefit while purporting to act on behalf of the company.

2.4 Liabilities under Statutes: Certain Indian statutes also hold a director liable for certain liabilities of the company, such as liability for unpaid taxes. For instance, under the Income Tax Act, 1961 ("IT Act"), directors may be liable in certain circumstances, to pay the income tax of the company, if such taxes cannot be recovered by the tax authorities from the company. However, for the liability under IT Act to apply, the non-recovery of taxes should be attributable to gross negligence, misfeasance or breach of duty on the part of director(s) in relation to the affairs of the company, and in absence of such factors, the provisions of the IT Act will not be invoked against the director. On similar lines, the directors may also be liable for unpaid sales taxes (which cannot be recovered) in winding up proceedings under the provisions of the Central Sales Tax Act, 1956, unless they prove that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on their part in relation to the affairs of the company.

Similarly, under the Negotiable Instruments Act, 1881, if a company issues, and later dishonors a cheque which was presented for discharge of debt or other liability, every person who at the time of such dishonor was in charge of overall control of the day-to-day business of the company (including its directors), will be deemed to be guilty of the offence and will be liable to be proceeded against. If the offence is committed with the consent or connivance of, or is attributable to the neglect of a director, such director will be deemed to be guilty and liable to be proceeded against.

Reference may also be made to CA 13 where a director may be held personally liable for repayment of share application money which is not repaid within the prescribed period; for losses of the subscriber where the prospectus has been issued with the intent to defraud applicants or for other fraudulent purposes; for losses of the depositor where unpaid deposits have been accepted with the intent to defraud the depositors or any fraudulent purposes; for fraud in a company, where he has taken undue advantage or benefit; and for debts of the company, where in the course of winding up of a company it appears that any business of the company has been carried on with intent to defraud or for any fraudulent purpose.

Liability of Directors for Company's Debts under Czech laws.

A business company, as a legal entity, acts through its "statutory bodies" (hereinafter referred to as "director"). Similar to Indian law, directors are generally not liable for the debts of the company. However, the law recognizes the fact that directors can fundamentally shape the economic health of a company and thus its ability to pay debts. Therefore, in some situations – generally characterized by directors' misconduct – the creditors can hold a director liable for their debts.

Directors' duties: According to the Civil Code (Nr. 89/2012 Coll.) and the Business Corporations Act (Nr. 90/2012 Coll.) the directors of a company are required to conduct their duties with the "due managerial care", that is, with the necessary loyalty, knowledge and care, exercised by a reasonably prudent person in a similar situation.

These concepts, which are also known as "duty of care" and "duty of loyalty" in some jurisdictions, are supported by the US doctrine of "Business Judgement Rule". The purpose of this rule is to ensure that directors are not held responsible for any business decisions which later turn out to be unsuccessful, provided that the decision was made with a reasonable amount of information and in good faith. If such requirements are met, the "correctness" of a business decision cannot be contested. This is based on the experience that all business decisions are based on a certain level of uncertainty and risk. The rule does not apply to decisions which are illegal, grossly negligent, or made under a conflict of interest.

General liability for a breach of duties: Should the company director break his duties, he is obliged to compensate the company for any damages caused. Failing to do so imposes a sanction upon the director – he becomes liable to any creditor of the company for its debt to the extent to which he failed to compensate the damage, if the creditor is unable to collect the debt from the company. The creditor must prove the inability to recover the debt from the company (i.e. its lack of assets).

An example of a decision based on this concept is a ruling of the Supreme Court[3], which states that:

"If, due to lack of property, an investment company becomes unable to compensate its investors for the damages arising due to a breach of duties owed by the members of the board of directors, the board members are obliged to fulfil the claims of the investors for compensation of said damages."

This provision can be convenient in situations where the company fails to sue the respective director for damages.

Wrongful trading: Another form of liability, also regulated in the Business Corporations Act, occurs when a company is found insolvent (bankrupt). The court may decide that a director – or a former director – is liable for all debts of the company, if they have failed to take all necessary and reasonably foreseeable steps to prevent the insolvency.

However, in both of the situations described under points 3.4. and 3.5., the director's liability is based on his misconduct, as confirmed in a verdict of the Supreme Court[4]:

"The liability of a statutory body to the company for damages caused during the discharge of his function is considered by the statutory regulation regarding the liability of statutory bodies for the debts of a company to be a basic condition to render the statutory bodies liable."

As mentioned above, the director's position is strengthened by the Business Judgement Rule. Even though the burden to prove the due conduct of business is shifted on the director, the creditors still bear an information deficit due to their position as outsiders towards the company. This means that creditors will often lack awareness that misconduct by a director has taken place; they may also be unable to present effective counter-evidence against the other party.

Delayed filing of insolvency motions: Furthermore, in case a company becomes insolvent, all directors must file a motion to commence the insolvency proceedings without undue delay. Defaulting on this duty, according to the Insolvency Act (Nr. 182/2006 Coll.) renders the directors personally liable to the creditors for any damages caused by such delay. However, only creditors who have submitted their claims in the insolvency proceedings are allowed to make use of this rule. This is especially expedient if the directors, acting on behalf of the company, accept a new obligation in spite of the company's inability to honour it. According to a decision of the Czech Supreme Court[5]:

"If the obligation came into existence during the period, when the statutory body or its member was in default with the fulfilment of said duty [i.e. to file the insolvency motion], the amount of damages equals to the whole difference between what the company, as a debtor, is obliged to pay to the creditor, and the amount, which the creditor has obtained during the course of the insolvency proceedings."

It is important to note that a director is absolved from this liability if he manages to prove that such a late filing did not influence the amount of funds to be redistributed among the creditors.

The law also regulates several minor statutory liabilities:

i. Liability of an expulsed statutory body: A director, whose misconduct results in the bankruptcy of a company, can be expulsed from holding the same or similar function by a court. Disrespecting such an expulsion automatically leads to the director's liability to third persons for all debts of the company, as stipulated by the Business Corporations Act.

ii. Transformation of a company: According to the Business Corporation Transformation Act (Nr. 125/2008 Coll.), a director may be held liable for damages suffered by a company creditor as a result of the director's failure to comply with the procedures related to the transformation of business corporations.

Entitlement to sign a promissory note: The provision of sec. 8 of the Act on Promissory Notes and Cheques (Nr. 191/1950 Coll.) stipulates that any person who signs a promissory note on behalf of another person without due authorization, is himself bound to pay the promissory sum. The High Court of the Czech Republic has extended its applicability to directors:

CONCLUDING REMARKS

The identity of a director is distinct from that of the company. That is the very genesis of a company having a separate and independent juristic personality. Accordingly, a director is not ordinarily held personally liable for debts of the company. This is common for both the Indian and Czech legal system.

However, as mentioned above, a director can become personally liable under Indian laws, in certain circumstances such as where the liability is stated to be unlimited in the company's organizational documents; or the director is found guilty of fraud or misrepresentation; or has personally assured, indemnified or guaranteed the payment obligations of the company; or where such liability is prescribed under applicable laws.

On similar lines, exceptions to the ordinary rule of limited liability of directors, have been carved out under Czech laws, primarily on the basis of special statutory provisions, which are "activated" by a breach of director's duties towards the company. This also reflects the importance of the director's performance on the solvency of the company.

The common thread that seems to be running through both legal systems, therefore, is that in certain exceptional cases (primarily where the debt arose due to the fraudulent actions/omissions of the director and/or gross breach of their duties), directors can be made personally liable for debts of the company.

UNIT-IV

SYLLABUS

CORPORATE GOVERNANCE: i) Importance of Corporate Governance ii) Different system of Corporate Governance iii) Impact of Legal Traditions and the Rule of Law on Corporate Governance iv) Legal Reforms of Corporate Governance in India v) Reports of the various committees on Corporate Governance

CORPORATE GOVERNANCE:

Corporate governance is the system of rules, practices, and processes by which a firm is directed and controlled. Corporate governance essentially involves balancing the interests of a company's many stakeholders, such as shareholders, senior management executives, customers, suppliers, financiers, the government, and the community. Since corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure.

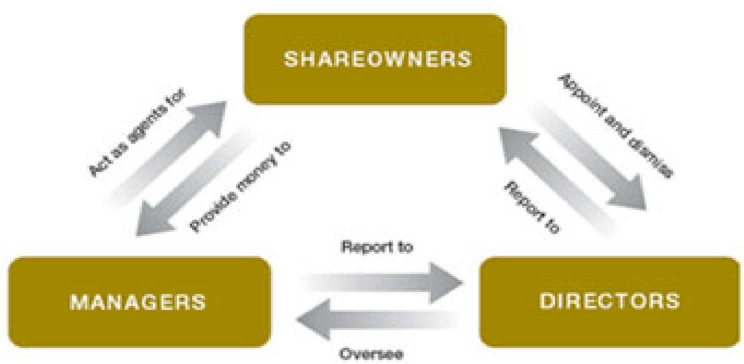
CORPORATE GOVERNANCE HAS A BROAD SCOPE.

Corporate Governance includes both social and institutional aspects. Corporate governance is the system by which companies are directed and managed. It influences how the objectives of the company are set and achieved, how risk is monitored & assessed, & how performance is optimized. Corporate governance is the system of principles, policies, procedures, and clearly defined responsibilities and accountabilities used by stakeholders to overcome the conflicts of interest inherent in the corporate form. Corporate governance is the interaction between various participants (Shareholder, Board of Director and Company Management) in shaping corporation’s performance and the way it is proceeding towards. Corporate governance deals with determining ways to take effective strategic decisions and developed added value to the stakeholder.

Corporate governance ensures transparency which ensures strong and balance economic development. This is also ensures that the interest of all shareholders (Majority as well as minority shareholder) are safeguard. Corporate governance affects the operational risk and, hence, sustainability of a corporation. The quality of a corporation's corporate governance affects the risks and value of the corporation. Effective, strong corporate governance is essential for the efficient functioning of markets.

Corporate Governance Defined

FIGURE 1: The Principal Actors: Shareowners, Directors, Managers



THE BASICS OF CORPORATE GOVERNANCE

Governance refers specifically to the set of rules, controls, policies, and resolutions put in place to dictate corporate behavior. Proxy advisors and shareholders are important stakeholders who indirectly affect governance, but these are not examples of governance itself. The board of directors is pivotal in governance, and it can have major ramifications for equity valuation.

Communicating a firm's corporate governance is a key component of community and investor relations. On Apple Inc.'s investor relations site, for example, the firm outlines its corporate leadership—its executive team, its board of directors—and its corporate governance, including its committee charters and governance documents, such as bylaws, stock ownership guidelines and articles of incorporation. Most companies strive to have a high level of corporate governance. For many shareholders, it is not enough for a company to merely be profitable; it also needs to demonstrate good corporate citizenship through environmental awareness, ethical behavior, and sound corporate governance practices. Good corporate governance creates a transparent set of rules and controls in which shareholders, directors, and officers have aligned incentives.

CORPORATE GOVERNANCE AND THE BOARD OF DIRECTORS

The board of directors is the primary direct stakeholder influencing corporate governance. Directors are elected by shareholders or appointed by other board members, and they represent shareholders of the company. The board is tasked with making important decisions, such as corporate officer appointments, executive compensation, and dividend policy. In some instances, board obligations stretch beyond financial optimization, as when shareholder resolutions call for certain social or environmental concerns to be prioritized. Boards are often made up of inside and independent members. Insiders are major shareholders, founders and executives. Independent directors do not share the ties of the insiders, but they are chosen because of their experience managing or directing other large companies. Independents are considered helpful for governance because they dilute the concentration of power and help align shareholder interest with those of the insiders.

IMPORTANCE OF GOOD CORPORATE GOVENANCE

Corporate Governance is intended to increase the accountability of your company and avoid massive disasters before they occur. Failed energy giant Enron, and its bankrupt employees and shareholders, is a prime argument for the importance of solid Corporate Governance. Well-executed Corporate Governance should be similar to a police department's internal affairs unit, weeding out and eliminating problems with extreme prejudice.

THE NEED, SIGNIFICANCE OR IMPORTANCE OF CORPORATE GOVERNANCE IS LISTED BELOW:

Changing Ownership Structure:-

In recent years, the ownership structure of companies has changed a lot. Public financial institutions, mutual funds, etc. are the single largest shareholder in most of the large companies. So, they have effective control on the management of the companies. They force the management to use corporate governance. That is, they put pressure on the management to become more efficient, transparent, accountable, etc. They also ask the management to make consumer-friendly policies, to protect all social groups and to protect the environment. So, the changing ownership structure has resulted in corporate governance.

Importance of Social Responsibility

Today, social responsibility is given a lot of importance. The Board of Directors has to protect the rights of the customers, employees, shareholders, suppliers, local communities, etc. This is possible only if they use corporate governance

Growing Number of Scams

In recent years, many scams, frauds and corrupt practices have taken place. Misuse and misappropriation of public money are happening everyday in India and worldwide. It is happening in the stock market, banks, financial institutions, companies and government offices. In order to avoid these scams and financial irregularities, many companies have started corporate governance.

Indifference on the part of Shareholders: In general, shareholders are inactive in the management of their companies. They only attend the Annual general meeting. Postal ballot is still absent in India. Proxies are not allowed to speak in the meetings. Shareholders associations are not strong. Therefore, directors misuse their power for their own benefits. So, there is a need for corporate governance to protect all the stakeholders of the company.

Globalization

Today most big companies are selling their goods in the global market. So, they have to attract foreign investor and foreign customers. They also have to follow foreign rules and regulations. All this requires corporate governance. Without Corporate governance, it is impossible to enter, survive and succeed the global market.

Takeovers and Mergers

Today, there are many takeovers and mergers in the business world. Corporate governance is required to protect the interest of all the parties during takeovers and mergers.

SEBI

SEBI has made corporate governance compulsory for certain companies. This is done to protect the interest of the investors and other stakeholders.

NEED OF CORPORATE GOVERNANCE

Corporate Governance is needed to create a corporate culture of transparency, accountability and disclosure.

Corporate Performance: Improved governance structures and processes ensure quality decision-making, encourage effective succession planning for senior management and enhance the long-term prosperity of companies, independent of the type of company and its sources of finance. This can be linked with improved corporate performance- either in terms of share price or profitability.

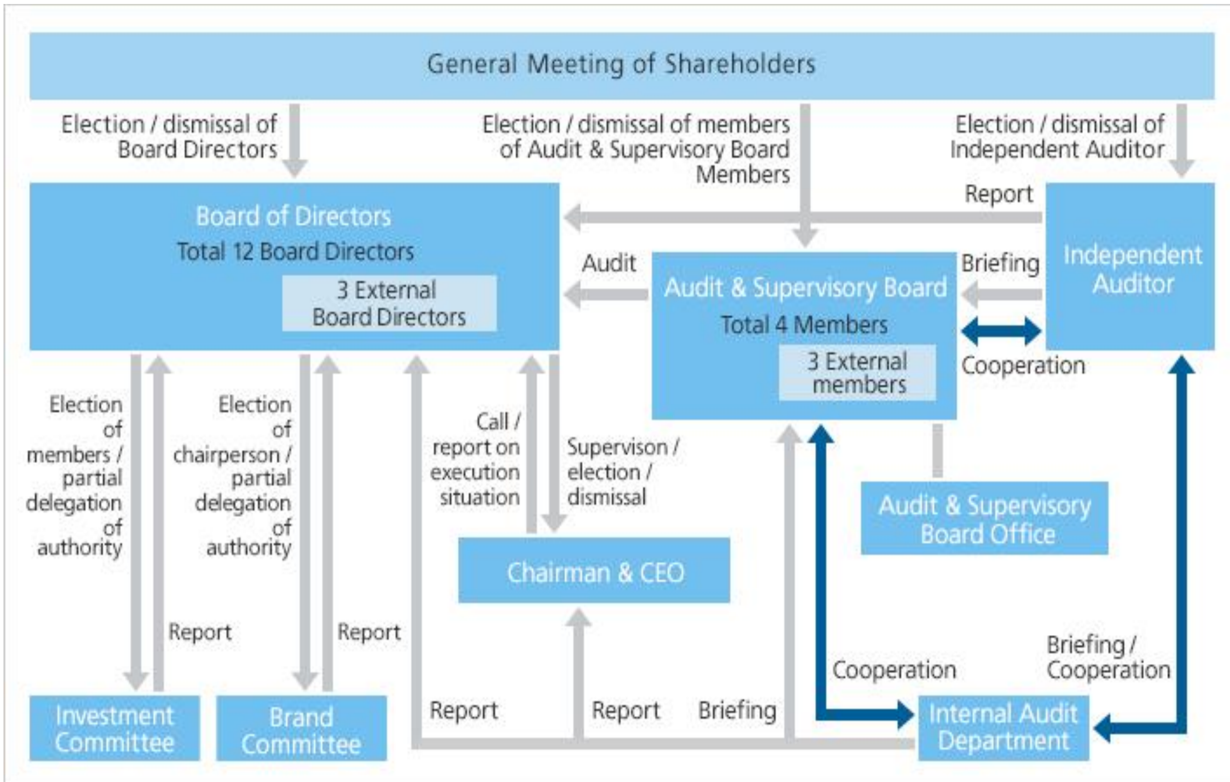
Enhanced Investor Trust: Investors consider corporate governance as important as financial performance when evaluating companies for investment. Investors who are provided with high levels of disclosure and transparency are likely to invest openly in those companies. The consulting firm McKinsey surveyed and determined that global institutional investors are prepared to pay a premium of up to 40 percent for shares in companies with superior corporate governance practices.

Better Access to Global Market: Good corporate governance systems attract investment from global investors, which subsequently leads to greater efficiencies in the financial sector. **Combating Corruption**: Companies that are transparent, and have sound system that provide full disclosure of accounting and auditing procedures, allow transparency in all business transactions, provide environment where corruption would certainly fade out. Corporate Governance enables a corporation to compete more efficiently and prevent fraud and malpractices within the organization. **Easy Finance from Institutions**: Several structural changes like increased role of financial intermediaries and institutional investors, size of the enterprises, investment choices available to investors, increased competition, and increased risk exposure have made monitoring the use of capital more complex thereby increasing the need of Good Corporate Governance. Evidences indicate that well-governed companies receive higher market valuations. The credit worthiness of a company can be trusted on the basis of corporate governance practiced in the company. **Enhancing Enterprise Valuation**: Improved management accountability and operational transparency fulfill investors' expectations and confidence on management and corporations, and in return, increase the value of corporations.

Reduced Risk of Corporate Crisis and Scandals: Effective Corporate Governance ensures efficient risk mitigation system in place. A transparent and accountable system makes the Board of a company aware of the majority of the mask risks involved in a particular strategy, thereby, placing various control systems in place to facilitate the monitoring of the related issues. **Accountability:** Investor relations are essential part of good corporate governance. Investors directly/ indirectly entrust management of the company to create enhanced value for their investment. The company is hence obliged to make timely disclosures on regular basis to all its shareholders in Corporate Governance is integral to the existence of the company.

DIFFERENT SYSTEM OF CORPORATE GOVERNANCE

(Chart of corporate governance system)



Governance system

Board of Directors

SoftBank Group Corp. (“SBG”)'s Board of Directors consists of 12 Board Directors, including three External Board Directors. The Chairman and CEO serves as the chairman of the Board. The Board's purpose is to make important decisions on execution of duties and oversee Board Directors' execution of duties. SBG ensures adequate independence of the three External Board Directors, who bring a wealth of knowledge and experience to the Board related to business management and other matters. Each of the External Board Directors participates actively in the discussions at the Board meetings and SBG makes management judgments and decisions based on these discussions.

Agenda items for discussion at the Board of Directors meetings are set forth in the Board of Directors Regulations. The Board discusses the following:

- (i) Statutory matters
- (ii) Critical matters related to business management, such as (a) fundamental management policy, business plans, and (b) matters such as investments and loans and borrowings, etc. exceeding a certain amount
- (iii) Certain matters related to subsidiaries (excluding listed subsidiaries and their subsidiaries), such as investments and loans and borrowings, etc. exceeding a certain amount
- (iv) Other matters

Authority to decide matters other than these agenda items discussed by the Board of Directors is delegated to committees, Board Directors, and department managers to enable speed and flexibility in corporate activities.

To elect Board Directors, the Board of Directors selects candidates in accordance with SBG's Articles of Incorporation and the Board of Directors Regulations, and these candidates are proposed at the General Meeting of Shareholders.

Investment Committee

The Investment Committee has the purpose of making decisions on matters for which it has been delegated authority by the Board of Directors, in order to carry out corporate activities flexibly. The Committee is comprised of five Board Directors elected by the Board (Masayoshi Son, Ronald D. Fisher, Marcelo Claure, Katsunori Sago and Rajeev Misra).

The agenda items for discussion by the Investment Committee are set forth in the Regulations of the Investment Committee. The committee makes decisions on the following matters:

- (i) Matters such as investments and loans and borrowings under a certain amount

- (ii) Certain matters related to subsidiaries (excluding listed subsidiaries and their subsidiaries), such as (a) investments and loans and borrowings etc. under a certain amount, (b) issue and gratis issue of new stock or stock acquisition rights etc. (except matters such as the issue of new stocks that will not alter the shareholding ratio), (c) issue of corporate bonds, (d) overseas business expansion, and (e) entry into new business fields
- (iii) Other matters

The committee makes decisions through the Electronic Investment Committee System, and such decisions are only approved by unanimous agreement from all members. If one or more members is against a proposal, it is brought to the Board of Directors. All final decisions results of the committee are reported to the Board of Directors.

Brand Committee

The Brand Committee is a committee that has been delegated authority by the Board of Directors to make decisions on and properly manage matters related to the SoftBank brand. The Committee comprises five members including the chairman (Senior Vice President Yoshimitsu Goto), who has been selected by the Board of Directors, and four members (Senior Vice President Kazuko Kimiwada, the head of the Legal Department Natsuko Oga, the head of the Corporate Communications Office Takeaki Nukii, and the head of the General Administration Department Tatsuya Iida), who have been appointed by the chairman.

The agenda items for discussion at the Brand Committee are set forth in the Regulations of the Brand Committee. The Committee discusses the following:

(i) Certain matters related to the licensing of the SoftBank brand

(ii) Matters related to a consideration for use of the SoftBank brand

(iii) Cancellation of licensing of the SoftBank brand

(iv) Basic policy and important matters related to the management of the SoftBank brand

(v) Certain matters other than the above related to the SoftBank brand

The Brand Committee makes decisions through an electromagnetic means in principle, and such decisions are only approved by unanimous agreement from all members. All decisions made by the Committee are reported to the Board of Directors.

Audit & Supervisory Board Members and the Audit & Supervisory Board

The Audit & Supervisory Board Members attend the Board of Directors meetings, allowing them to monitor and verify the decision-making of the Board and fulfillment of the Board's obligation to supervise the execution of duties by each Board Director. Moreover, the Audit & Supervisory Board Members receive regular reports from Board Directors, employees, Audit & Supervisory Board Members, and other personnel of major subsidiaries and conduct hearings, as necessary, to audit the execution of duties by the Board Directors of SBG.

The Audit & Supervisory Board has been established to receive reports on, deliberate and resolve important matters related to audits. The Audit & Supervisory Board consists of four Audit & Supervisory Board Members, three of whom are External Audit & Supervisory Board Members (two full-time members and two part-time members), and is chaired by a full-time, internal Audit & Supervisory Board Member. SBG ensures adequate independence of the three External Audit & Supervisory Board Members, who possess a wealth of knowledge and experience in their professional roles as a lawyer, certified public accountants, or certified tax accountants.

The Audit & Supervisory Board meets once a month, in principle. At the meeting, the Audit & Supervisory Board Members decide on the audit policy, plan, and other matters, receive quarterly briefings and reports related to the earnings results from the Independent Auditor, and exchange information and opinions with the Independent Auditor as necessary. The Audit & Supervisory Board also explains details of the audit plan for each fiscal year, interim audit status, and audit results to the Board of Directors.

The Audit & Supervisory Board Office is established to support the duties of all the Audit & Supervisory Board Members and the office comprises three dedicated personnel who act under the directions of the Audit & Supervisory Board Members to gather information, investigate financial statements, requests for approval, treasury stock and matters related to the General Meeting of Shareholders, among other matters, and give other assistance.

Internal audits

The Internal Audit Department, which comprises nine staff members, conducts internal audits of the Company's internal departments and subsidiaries to check that duties are carried out legally and correctly based on laws and regulations, the Articles of Incorporation, and internal regulations. The results of these internal audits are reported to the CEO, and briefings are also given to the Audit &

Supervisory Board Members.

Support system for External Board Directors and/or External Audit & Supervisory Board Members

SBG seeks to ensure that all officers including the External Board Directors and External Audit & Supervisory Board Members can participate fully in the Board of Directors meetings having fully grasped the specific details of the agenda for discussion. The secretariat to the Board of Directors therefore provides them with materials for the Board of Directors meeting beforehand, including supplemental briefings and other information as required.

The Audit & Supervisory Board Office has been established to support the duties of all the Audit & Supervisory Board Members, including the External Audit & Supervisory Board Members. The office comprises dedicated personnel who act under the directions of the Audit & Supervisory Board Members to gather information, investigate matters, and give other assistance.

IMPACT OF LEGAL TRADITIONS AND THE RULE OF LAW ON CORPORATE GOVERNANCE / CORPORATE GOVERNANCE PRINCIPLES:

Corporate governance refers to all laws, regulations, codes and practices, which defines how institution is administrated and inspected, determines rights and responsibilities of different partners, attracts human and financial capital, makes institution work efficiently, provides economic value to stack holders in the long turn while respecting the values of the community it belong. For corporate governance, the management approach should be in accordance with the following principles.

Principal 1 : Governance structure:

All Organizations should be headed by an effective Board. responsibilities and accountabilities within the organization should be clearly identified.

Principal 2 : The structure of the board and its committees :

The board should comprise independent minded directors. It should include an appropriate combination of executive directors, independent directors and non-independent non-executive directors to prevent one individual or a small group of individuals from dominating the board's decision taking. The board should be of a size and level of diversity commensurate with the sophistication and scale of the organization. Appropriate board committees may be formed to assist the board in the effective performance of its duties.

Principal 3 : Director appointment procedure:

There should be a formal, rigorous and transparent process for the appointment, election, induction and re-election of directors. The search for board candidates should be conducted, and appointments made, on merit, against objective criteria (to include skills, knowledge, experience, and independence and with due regard for the benefits of diversity on the board, including gender). The board should ensure that a formal, rigorous and transparent procedure be in place for planning the succession of all key officeholders.

Principal 4 : Director's duties, remuneration and performance:

Directors should be aware of their legal duties. Directors should observe and foster high ethical standards and a strong ethical culture in their organization. Each director must be able to allocate sufficient time to discharge his or her duties effectively. Conflicts of interest should be disclosed and managed. The board is responsible for the governance of the organization's information, information technology and information security. The board, committees and individual directors should be supplied with information in a timely manner and in an appropriate form and quality in order to perform to required standards. The board, committees and individual directors should have their performance evaluated and be held accountable to appropriate stakeholders. The board should be transparent, fair and consistent in determining the remuneration policy for directors and senior executives.

Principal 5 : Risk governance and internal control:

The board should be responsible for risk governance and should ensure that the organization develops and executes a comprehensive and robust system of risk management. The board should ensure the maintenance of a sound internal control system

Principal 6 : Reporting and integrity:

The board should present a fair, balanced and understandable assessment of the organization's financial, environmental, social and governance position, performance and outlook in its annual report and on its website.

Principal 7 : Audit:

Organizations should consider having an effective and independent internal audit function that has the respect, confidence and cooperation of both the board and the management. The board should establish formal and transparent arrangements to appoint and maintain an appropriate relationship with the organization's auditors.

Principal 8 : Relations with share holders and other key shareholder:

The board should be responsible for ensuring that an appropriate dialogue takes place among the organization, its shareholders and other key stakeholders. The board should respect the interests of its shareholders and other key stakeholders within the context of its fundamental purpose.

BENEFITS OF CORPORATE GOVERNANCE

The Benefits to Shareholders

- Good corporate governance can provide the proper incentives for the board and management to pursue objectives that are in the interest of the company and shareholders, as well as facilitate effective monitoring.
- Better corporate governance can also provide Shareholders with greater security on their investment.
- Better corporate governance also ensures that shareholders are sufficiently informed on decisions concerning fundamental issues like amendments of statutes or articles of incorporation, sale of assets, etc.

The Benefits to the National Economy

- Empirical evidence and research conducted in recent years supports the proposition that it pays to have good corporate governance. It was found out that more than 84% of the global institutional investors are willing to pay a premium for the shares of a well-governed company over one considered poorly governed but with a comparable financial record.
- The adoption of corporate governance principles – as good corporate governance practice has already shown in other markets – can also play a role in increasing the corporate value of companies.

PROPONENTS OF CORPORATE GOVERNANCE SAY THERE'S A DIRECT CORRELATION BETWEEN GOOD CORPORATE GOVERNANCE PRACTICES AND LONG-TERM SHAREHOLDER VALUE. SOME OF THE KEY BENEFITS ARE:

- High performance Boards of Directors;
- Accountable management and strong internal controls;
- Increased shareholder engagement;
- Better managed risk; and
- Effectively monitored and measured performance.

RESPONSIBILITIES OF THE BOARD OF DIRECTORS

- Establish corporate values and governance structures for the company;
- Ensure that all legal and regulatory requirements are met and complied with fully and in a timely fashion;
- Establish long-term strategic objectives for the company;
- Establish clear lines of responsibility and a strong system of accountability and performance measurement;
- Hire the chief executive officer, determine the compensation package, and periodically evaluate the officer's performance;
- Ensure that management has supplied the board with sufficient information for it to be fully informed and prepared to make the decisions that are its responsibility, and to be able to adequately monitor and oversee the company's management;
    - Meet regularly to perform its duties;
    - Acquire adequate training.

FIVE GOLDEN RULES OF CORPORATE GOVERNANCE

As we have iterated, this part of the report explains our view of best corporate governance practice and the holistic approach by which we believe an organisation can ensure that a state of good corporate governance exists, or is brought into being if its existence is uncertain. It takes the view that there is an over-riding moral dimension for running a business and that the standard of governance will depend on the moral complexion of the operation.

The business's morality or ethic must permeate the entire operation from top to bottom and embrace all stakeholders best corporate governance practice is an integral part of good management practice also permeating the entire operation, and not an esoteric specialism addressed by lawyers, auditors and sociologists

The principles of this approach are therefore framed in relation to the conventional way of looking at how a business should be properly run.

OUR FIVE GOLDEN RULES OF BEST CORPORATE GOVERNANCE PRACTICE IS:

1. **Ethics**: clearly ethical practices applied to the business
2. **Align Business Goals**: appropriate goals, arrived at through the creation of a suitable stakeholder participation in decision making model
3. **Strategic management**: an effective strategy process which incorporates stakeholder value
4. **Organisation**: an organisation suitably structured to give effect to the good corporate governance
5. **Reporting**: reporting systems structured to provide transparency and accountability.

BAD CORPORATE GOVERNANCE

Bad corporate governance can cast doubt on a company's reliability, integrity or obligation to shareholders—all of which can have implications on the firm's financial health. Tolerance or support of illegal activities can create scandals like the one that rocked Volkswagen AG starting in

September 2015. The development of the details of "Dieselgate" (as the affair came to be known) revealed that for years, the automaker had deliberately and systematically rigged engine emission equipment in its cars in order to manipulate pollution test results, in America and Europe. Volkswagen saw its stock shed nearly half its value in the days following the start of the scandal, and its global sales in the first full month following the news fell 4.5%.

Public and government concern about corporate governance tends to wax and wane. Often, however, highly publicized revelations of corporate malfeasance revive interest in the subject. For example, corporate governance became a pressing issue in the United States at the turn of the 21st century, after fraudulent practices bankrupted high-profile companies such as Enron and WorldCom. It resulted in the 2002 passage of the Sarbanes-Oxley Act, which imposed more stringent recordkeeping requirements on companies, along with stiff criminal penalties for violating them and other securities laws. The aim was to restore public confidence in public companies and how they operate.

OTHER TYPES OF BAD GOVERNANCE PRACTICES INCLUDE:

- Companies do not cooperate sufficiently with auditors or do not select auditors with the appropriate scale, resulting in the publication of spurious or noncompliant financial documents.
- Bad executive compensation packages fail to create an optimal incentive for corporate officers.
- Poorly structured boards make it too difficult for shareholders to oust ineffective incumbents.

REGULATORY FRAMEWORK ON CORPORATE GOVERNANCE

The Indian statutory framework has, by and large, been in consonance with the international best practices of corporate governance. Broadly speaking, the corporate governance mechanism for companies in India is enumerated in the following enactments/ regulations/ guidelines/ listing agreement:

1. **The Companies Act, 2013** inter alia contains provisions relating to board constitution, board meetings, board processes, independent directors, general meetings, audit committees, related party transactions, disclosure requirements in financial statements, etc.

2. **Securities and Exchange Board of India (SEBI) Guidelines:** SEBI is a regulatory authority having jurisdiction over listed companies and which issues regulations, rules and guidelines to companies to ensure protection of investors.

3. **Standard Listing Agreement of Stock Exchanges:** For companies whose shares are listed on the stock exchanges.

4. **Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI):** ICAI is an autonomous body, which issues accounting standards providing guidelines for disclosures of financial information. Section 129 of the New Companies Act inter alia provides that the financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under s 133 of the New Companies Act. It is further provided that items contained in such financial statements shall be in accordance with the accounting standards.

5. **Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI):** ICSI is an autonomous body, which issues secretarial standards in terms of the provisions of the New Companies Act. So far, the ICSI has issued Secretarial Standard on "Meetings of the Board of Directors" (SS-1) and Secretarial Standards on "General Meetings" (SS-2).

LEGAL REFORMS OF CORPORATE GOVERNANCE OF INDIA

The Companies Act, 2013

The Government of India has recently notified Companies Act, 2013 ("New Companies Act"), which replaces the erstwhile Companies Act, 1956. The New Act has greater emphasis on corporate governance through the board and board processes. The New Act covers corporate governance through its following provisions:

- New Companies Act introduces significant changes to the composition of the boards of directors.
- Every company is required to appoint 1 (one) resident director on its board.
- Nominee directors shall no longer be treated as independent directors.
- Listed companies and specified classes of public companies are required to appoint independent directors and women directors on their boards.
- New Companies Act for the first time codifies the duties of directors.
- Listed companies and certain other public companies shall be required to appoint at least 1 (one) woman director on its board.
- New Companies Act mandates following committees to be constituted by the board for prescribed class of companies:
    - Audit committee
    - Nomination and remuneration committee
    - Stakeholders relationship committee
    - Corporate social responsibility committee

LISTING AGREEMENT – APPLICABLE TO THE LISTED COMPANIES

SEBI has amended the Listing Agreement with effect from October 1, 2014 to align it with New Companies Act.

Clause 49 of the Listing Agreement can be said to be a bold initiative towards strengthening corporate governance amongst the listed companies. This Clause intends to put a check over the activities of companies in order to save the interest of the shareholders. Broadly, cl 49 provides for the following:

1. Board of Directors

The Board of Directors shall comprise of such number of minimum independent directors, as prescribed. In case where the Chairman of the Board is a non-executive director, at least one-third of the Board shall comprise of independent directors and where the Chairman of the Board is an executive director, at least half of the Board shall comprise of independent directors. A relative of a promoter or an executive director shall not be regarded as an independent director.

2. Audit Committee

The Audit Committee to be set up shall comprise of minimum three directors as members, two-thirds of which shall be independent.

3. Disclosure Requirements

Periodical disclosures relating to the financial and commercial transactions, remuneration of directors, etc, to ensure transparency.

4. CEO/ CFO Certification

To certify to the Board that they have reviewed the financial statements and the same are fair and in compliance with the laws/ regulations and accept responsibility for internal control systems.

5. Report and Compliance

A separate section in the annual report on compliance with Corporate Governance, quarterly compliance report to stock exchange signed by the compliance officer or CEO, company to disclose compliance with non-mandatory requirements in annual reports.

MAJOR INCIDENCES IN INDIAN CORPORATE-LEGAL SECTOR

1. Reebok India Case
2. Vodafone wins $2.2 Billion Tax Bill Battle
3. Diageo's $2.1 billion deal for Mallya's United Spirits
4. Emkay Global's bad orders trigger brief halt on NSE
5. Kingfisher Airlines Loses License to fly
6. Axis Bank Partners with Tata General Insurance
7. INR 1,800 crore wiped off Adani Enterprise Ltd stocks after rumour fuelled by blogger
8. Hero Motors finally drops Honda
9. Sahara told to repay small investors
10. Cyrus Mistry remove from the post of chairman- TATA GROUP

VARIOUS COMMITTEES ON CORPORATE GOVERNANCE

- Audit Committee.
- Shareholders Grievance Committee.
- Remuneration Committee.
- Risk Committee.
- Nomination Committee.
- Corporate Governance Committee.
- Corporate Compliance Committee.
- Ethics Committee.

REPORTS OF THE VARIOUS COMMITTEES ON CORPORATE GOVERNANCE

COMMITTEE I: CII Code of Desirable Corporate Governance (1998):

For the first time in the history of corporate governance in India, the Confederation of Indian Industry (CII) framed a voluntary code of corporate governance for the listed companies, which is known as CII Code of desirable corporate governance.

The main recommendations of the Code are summarised below: (a) Any listed company with a turnover of Rs. 1000 million and above should have professionally competent and acclaimed non-executive directors,

who should constitute:

(i) at least 30% of the board, if the chairman of the company is a non-executive director, or

(ii) at least 50% of the board if the chairman and managing director is the same person.

(b) For the non-executive directors to play an important role in corporate decision-making and maximising long-term shareholder value,

They need to:

(i) become active participants in boards, not passive advisors,

(ii) have clearly defined responsibilities within the board, and

(iii) know how to read a balance sheet, profit and loss account, cash flow statements and financial ratios, and have some knowledge of various company laws.

(c) No single person should hold directorships in more than 10 listed companies. This ceiling excludes directorship in subsidiaries (where the group has over 50% equity stake) or associate companies (where the group has over 25% but no more than 50% equity stake).

(d) The full board should meet a minimum of six times a year, preferably at an interval of two months, and each meeting should have agenda items that require at least half-a-days discussion.

(e) As a general rule, one should not re-appoint any non-executive director who has not had the time to attend even one-half of the meetings.

(f) Various key information must be reported to, and placed before the board, viz., annual budgets, quarterly results, internal audit reports, show cause, demand and prosecution notices received, fatal accidents and pollution problem, default in payment of principal and interest to the creditors, inter corporate deposits, joint venture foreign exchange exposures.

(g) Listed companies with either a turnover of over Rs. 1000 million or a paid up capital of Rs. 200 million, whichever is less, should set up audit committees within 2 years. The committee should consist of a least three members, who should have adequate knowledge of finance, accounts, and basic elements of company law. The committees should provide effective supervision of the financial reporting process. The audit committees should periodically interact with statutory auditors and internal auditors to ascertain the quality and veracity of the company's accounts as well as the capability of the auditors themselves.

(h) Consolidation of group accounts should be optional.

(i) Major Indian stock exchanges should generally insist on a compliance certificate, signed by the CEO and the CFO.

COMMITTEE II: KUMAR MANGALAM BIRLA COMMITTEE (2000):

Another Committee named as K.M. Birla Committee was set up by SEBI in the year 2000. In fact, this Committee's recommendation culminated in the introduction of Clause 49 of the Listing Agreement to be complied with by all listed companies. Practically most of the recommendations were accepted and included by SEBI in its new Clause 49 of the Listing Agreement in 2000.

THE MAIN RECOMMENDATIONS OF THE COMMITTEE ARE: (a) The board of a company should have an optimum combination of executive and nonexecutive directors with not less than 50% of the board comprising the non-executive directors. In case, a company has a non-executive chairman, at least one-third of board should be comprised of independent directors and in case, a company has an executive chairman, at least half of the board should be independent.

(b) Independent directors are directors who apart from receiving director's remuneration do not have any other material pecuniary relationship or transaction with the company, its promoters, management or subsidiaries, which in the judgement of the board may affect their independence of judgement.

(c) A director should not be a member in more than ten committees or act as chairman of more than five committees across all companies in which he is a director. It should be a mandatory annual requirement for every director to inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.

(d) The disclosures should be made in the section on corporate governance of the annual report:

(i) All elements of remuneration package of all the directors, i.e., salary, benefits, bonus, stock options, pension etc.

(ii) Details of fixed component and performance linked incentives along with the performance criteria,

(iii) Service contracts, notice and period, severance fees,

(iv) Stock option details, if any, and whether issued at a discount as well as the period over which accrued and exercisable.

(e) In case of appointment of a new director or re-appointment of a director, the shareholders must be provided with the information:

(i) a brief resume of the director,

(ii) nature of his experience in specific functional areas, and

(iii) names of companies in which the person also holds the directorship and the membership of committees of the board.

(f) Board meetings should be held at least four times in a year, with a maximum times gap of 4 months between any two meetings. The minimum information (specified by the committee) should be available to the board.

(g) A qualified and independent audit committee should be set up by the board of the company in order to enhance the credibility of the financial disclosures of a company and promote transparency. The committee should have minimum three members, all being non-executive directors, with majority being independent, and with at least one director having financial and accounting knowledge. The chairman of the committee should be an independent director and he should be present at AGM to answer shareholder queries.

Finance director and head of internal audit and when required, a representative of the external auditor should be present as invitees for the meetings of the audit committee. The committee should meet at least thrice a year. One meeting should be held before finalization of annual accounts and one necessarily every six months. The quorum of the meeting should be either two members or one-third of the members of the committee, whichever is higher and there should be a minimum of two independent directors.

(h) The board should set up a remuneration committee to determine on their behalf and on behalf of the shareholders with agreed terms of reference, the company's policy on specific remuneration package for executive directors including pension rights and any compensation payment. The committee should comprise of at least three directors, all of who should be non-executive directors, the chairman of the committee being an independent director.

(i) A board committee under the chairmanship of a non-executive director should be formed to specifically look into the redressal of shareholder complaints like transfer of shares, non-receipt of balance sheet, declared dividends etc., The committee should focus the attention of the company on shareholders' grievances and sensitize the management of redressal of their grievances,

(j) The companies should be required to give consolidated accounts in respect of all their subsidiaries in which they hold 51% or more of the share capital,

(k) Disclosures must be made by the management to the board relating to all material, financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the company at large. All pecuniary relationships or transactions of the non-executive directors should be disclosed in the annual report.

(l) As part of the Directors' Report or as an additional thereto, a management discussion and analysis report should form part of the annual report to the shareholders,

(m) The half-yearly declaration of financial performance including summary of the significant

events in last six months should be sent to each household of shareholders,

(n) The company should arrange to obtain a certificate from the auditors of a company regarding compliance of mandatory recommendations and annex the certificate with the Directors' Report, which is sent annually to all the shareholders of the company,

(o) There should be a separate section on corporate governance in the annual reports of companies, with a detailed compliance report on corporate governance.

COMMITTEE III. Reserve Bank of India (RBI) Report of the Advisory Group on Corporate Governance (2001):

An advisory group on corporate governance under the chairmanship of Dr. R.H. Patil, then Managing Directors, National Stock Exchange was constituted by a standing committee of RBI in 2000. They submitted their report in March 2001, which contained several recommendations on corporate governance.

COMMITTEE IV:. *Naresh Chandra Committee (2002):*

Consequent to the several corporate debacles in the USA in 2001, followed by the stringent enactments of Sarbanes Oxley Act, Government of India appointed Naresh Chandra Committee in 2002 to examine and recommended drastic amendments to the law pertaining to auditor-client relationships and the role of independent directors.

The main recommendations of the Committee are given below:

(a) The minimum board size of all listed companies as well as unlisted public limited companies with paid-up share capital and free reserves of Rs. 100 million and above, or turnover of Rs. 500 million and above, should be seven, of which at least four should be independent directors.

(b) No less than 50% of the board of directors of any listed company as well as unlisted public limited companies with a paid-up share capital and free reserves of Rs. 100 million and above or turnover of Rs. 500 million and above, should consist of independent directors.

(c) In line with the international best practices, the committee recommended a list of disqualification for audit assignment which included prohibition of:

(i) Any direct financial interest in the audit client,

(ii) Receiving any loans and/or guarantees,

(iii) Any business relationship,

(iv) Personal relationship by the audit firm, its partners, as well as their direct relatives, prohibition of

(v) Service or cooling off period for a period of at least two years, and

(vi) Undue dependence on an audit client.

(d) Certain services should not be provided by an audit firm to any audit client, viz.:

(i) Accounting and book keeping,

(ii) Internal audit,

(iii) Financial information design,

(iv) Actuarial,

(v) Broker, dealer, investment advisor, investment banking,

(vi) Outsourcing,

(vii) Valuation,

(viii) Staff recruitment for the client etc.

(e) The audit partners and at least 50% of the engagement team responsible for the audit of either a listed company, or companies whose paid-up capital and free reserves exceeds Rs. 100 million or companies whose turnover exceeds Rs. 500 million, should be rotated every 5 years.

(f) Before agreeing to be appointed (Section 224 (i)(b)), the audit firm must submit a certificate of independence to the audit committee or to the board of directors of the client company.

(g) There should be a certification on compliance of various aspects regarding corporate governance by the CEO and CFO of a listed company.

COMMITTEE V. *N.R. Narayana Murthy Committee (2003):*

SEBI constituted this Committee under the chairmanship of N.R. Narayana Murthy, chairman and mentor of Infosys, and mandated the Committee to review the performance of corporate governance in India and make appropriate recommendations. The Committee submitted its report in February 2003.

The main items of Committee recommendations are as follows:

(a) Persons should be eligible for the office of non-executive director so long as the term of office did not exceed nine years (in three terms of three years each, running continuously).

(b) The age limit for directors to retire should be decided by companies themselves.

(c) All audit committee members shall be non-executive directors. They should be financially literate and at least one member should have accounting or related financial management expertise.

(d) **Audit committee of listed companies shall review mandatorily the information, viz.:**

(i) Financial statements and draft audit reports,

(ii) Management discussion and analysis of financial condition and operating results,

(iii) Risk management reports,

(iv) Statutory auditors' letter to management regarding internal control weaknesses, and

(v) Related party transactions.

(e) The audit committee of the parent company shall also review the financial statements, in particular, the investments made by the subsidiary company.

(f) A statement of all transactions with related parties including their bases should be placed before the independent audit committee for formal approval/ratification. Of any transaction is not on an arm's length basis, management should provide an explanation to the audit committee, justifying the same.

(g) Procedures should be in place to inform board members about the risk assessment and minimisation procedures.

(h) Companies raising money through an Initial Public Offering (IPO) shall disclose to the audit committee, the uses/application of funds by major category (capital expenditure, sales and marketing, working capital etc.) on a quarterly basis. On an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/prospectus. This statement shall be certified by the independent auditors of the company. The audit committee should make appropriate recommendations to the board to take up steps in this matter.

(i) It should be obligatory for the board of a company to lay down the code of conduct for all board members and senior management of a company. They shall affirm compliance with the code on an annual basis. The annual report of the company shall contain a declaration to this effect signed off by the CEO and COO.

(j) A director to become independent shall satisfy the various conditions laid down by the Committee.

(k) Personnel two observe an unethical or improper practice (not necessarily a violation of law) should be able to approach the audit committee without necessarily informing their supervisors. Companies shall take measures to ensure that this right of access is communicated to all employees through means of internal circulars etc. Companies shall annually affirm that they have not denied any personal access to the audit committee of the company (in respect of matters involving alleged misconduct) and that they have provided protection to whistle blowers from unfair termination and other unfair or prejudicial employment practices. Such affirmation shall form a part of the board report on corporate governance that is required to be prepared and submitted together with the annual report

UNIT-V

SYLLABUS

CORPORATE SOCIAL RESPONSIBILITY: Emerging Trend based on the recommendation of the Committees in the Companies Act 1956 and the Listing Agreement with Special reference to Clause 49, 2 i) Corporate Social and Environmental Responsibility

CORPORATE SOCIAL RESPONSIBILITY:

Corporate Social Responsibility means that a company takes steps to ensure there are positive social and environmental effects associated with the way the business operates. Businesses that engage in active CSR efforts take stock of the way they operate in the world to incorporate addressing cultural and social issues, with the aim of benefiting both in the process. Not only can CSR models increase business and revenue, they promote change and progress throughout the world, which often involves helping people with few or no resources.

CSR is viewed different from philanthropy. When properly implemented, it should become ingrained in the values and culture of a company, and positively affect the way the company does business. CSR should become inherent in the mission and message of an organization, and also hold a strong place in marketing and advertising. Companies should be aware that promoting their CSR model only benefits the company if they are already acting on their plan. Otherwise, falsely claiming to bring social change to those in need could lead to bad publicity.

Businesses that ignore corporate social responsibility run a risk to their bottom line and their brand. Having a bad reputation socially and environmentally can create serious negative effects on the overall profitability and success of a company, as nowadays consumers want to spend their money on products and services that they believe in, and engage with companies that follow ethical practices that meet their own beliefs.

Definition: Corporate Social Responsibility (also known as CSR, corporate conscience, and corporate citizenship) is the integration of socially beneficial programs and practices into a corporation's business model and culture. CSR aims to increase long-term profits for online and offline businesses by enabling them to become more efficient and attract positive attention for their efforts.

BENEFITS : CSR OFFER TO BUSINESSES

Both ecommerce and brick-and-mortar businesses stand to benefit from the implementation of CSR strategies. Some activities that fall under the umbrella of CSR, with their corresponding benefits, include:

- Prevent financial ramifications: Compliance with the spirit and letter of the law — both nationally and internationally — through self-regulatory processes will prevent fines, put your business "low on regulators' radar screens," and lower legal expenses.
- Increase employee loyalty: Treating your employees fairly and generously is a part of corporate social responsibility. By providing good jobs and encouraging high professional and moral standards, you increase employee loyalty, and by procuring only those overseas products produced at factories where workers were treated ethically, you gain support among "Fair Trade" advocates.
- Maintain a positive reputation: Demonstrated consciousness in a variety of areas can garner publicity and give a business tangible proof of their conduct, which can be proudly displayed on a company website. These include:
    - Environmental consciousness: Reducing waste, recycling, minimizing carbon footprint, and other best practices can . Using or producing only sustainable products, lowering energy usage, and supporting environmental causes will boost a business's "green reputation" among environmentally concerned clients.

- Social Concern: Donating to humanitarian causes that fight persistent poverty, help the victims of epidemics like AIDS or Ebola, or assist those displaced by hurricanes or earthquakes shows concern for issues that consumers are more and more aware of in our modern, interconnected world.
- Local Community: Involvement in local community projects, either through financial donations, employee participation, connecting your customers with project leaders, or promotion of the project through advertising and fundraising enhances your CSR credentials with clients in the given location.

COMPANIES WITH CSR MODELS

- The Coca-Cola Company's CSR program known as 5×20 has a goal of employing five million women in developing countries by 2020 in both bottling and distribution roles. This goal will not only benefit the women in the communities surrounding Coca-Cola manufacturing plants, but could also benefit the communities as a whole, as the company aims to provide better access to health care and improved education to their employees.
- The corporate social responsibility model implemented by Visa provides financial opportunities for people in developing areas of the world. By partnering with local governments and nonprofit organizations, people who previously did not have access to the benefits of banking and financial services now do.. The Gates Foundation found that this type of service helps low income and poor people manage their finances in trying times, build assets, and increase connectivity worldwide.
- On a smaller scale, there are entrepreneurial companies known as B Corporations employing CSR into the very fabric of their own businesses. Their missions are threefold: people, planet, and profits. The "B" refers to beneficial, and thirty-one states in the U.S. currently recognize B Corps.

ONLINE BUSINESSES USE THEIR WEBSITE TO ENGAGE CUSTOMERS IN CSR

Online businesses can utilize and incorporate the above methods, but there are additional digital opportunities to give back:

1. Helping the environment through "website sustainability," meaning lowering the carbon footprint of webpages by removing screen clutter, replacing video clips with slide shows and improving ease of navigation.
2. Allowing clients to choose a charity that receives a portion of profits. Many customers appreciate their input being taken into account and are more likely to return when they feel personally connected to the beneficiary of a charitable campaign.

FEATURES OF CORPORATE SOCIAL RESPONSIBILITY

The United Nations Industrial Development Organization notes that the common functions of corporate social responsibility include:

- Responsible sourcing of materials and supplies
- Employee, vendor, customer and community engagement and relations
- Adherence to labor standards
- Environmental protection and management
- Anti-corruption measures
- Upholding social equity, gender equity and other human rights goals
- Conservation of resources, like water and energy, in production

FOUR TYPES OF CORPORATE SOCIAL RESPONSIBILITY

Corporate social responsibility initiatives are standards and measures that businesses put in place to benefit society. Generally speaking, these initiatives are based on sustainability in four different categories.

Environmental Sustainability Initiatives

Environmental sustainability initiatives enacted by businesses generally focus on two main areas: limiting pollution and reducing greenhouse gases. As the awareness of environmental issues grows, businesses that take steps to reduce air, land and water pollution can increase their standing as good corporate citizens while also benefiting society as a whole. For example, Cisco Systems, a multinational technology company, has taken a variety of steps to reduce its carbon footprint, including the installation of photovoltaic systems at production facilities and developing platforms that allow employees to work from remote locations rather than commuting to the office.

Direct Philanthropic Giving

Philanthropic initiatives include the donation of time, money or resources to charities and organizations at local, national or international levels. These donations can be directed to a variety of worthy causes including human rights, national disaster relief, clean water and education programs in underdeveloped countries. For example, Microsoft co-founder Bill Gates has donated billions of dollars to the Bill and Melinda Gates Foundation, which supports numerous causes including education, the eradication of malaria and agricultural development. In 2014, Bill Gates was the single largest giver in the world, donating $1.5 billion in Microsoft stock to the Bill and Melinda Gates Foundation.

Ethical Business Practices

The primary focus on ethics is to provide fair labor practices for businesses' employees as well as the employees of their suppliers. Fair business practices for employees include equal pay for equal work and living wage compensation initiatives. Ethical labor practices for suppliers include the use of products that have been certified as meeting fair trade standards. For example, Ben and Jerry's Ice Cream uses fair trade-certified ingredients like sugar, cocoa, vanilla, coffee and bananas.

Focus on Economic Responsibility

Economic responsibility focuses on practices that facilitate the long-term growth of the business, while also meeting the standards set for ethical, environmental and philanthropic practices. By balancing economic decisions with their overall effects on society, businesses can improve their operations while also engaging in sustainable practices. An example of economic responsibility is when a company modifies its manufacturing processes to include recycled products, which could benefit the company by potentially lowering the cost of materials and also benefit society by consuming fewer resources.

Sustainability and corporate social responsibility initiatives will continue to be prevalent in years to come.

EMERGING TREND BASED ON THE RECOMMENDATION OF THE COMMITTEES IN THE COMPANIES ACT 1956

Delegation of Power is buzz word in this Companies Bill 2012. This delegation is not only from legislature to Executive but also from Board of Directors to its committees. Committees are not new to Indian Corporate Jurisprudence. Audit Committee was introduced in the present Companies Act, 1956 twelve years ago in year 2000. Schedule XII also has Remuneration committee.

In present Companies Bill 2013, there are specific provisions related to Committees. Now, following committees has statutory mandate:

1. Social Responsibility Committee
2. Audit Committee

3. Nomination and Remuneration Committee, and
4. Stakeholders Relationship Committee.

   There is no need to mention that Market regulators may mandate some other committees as per their specific need.

   Here, we will study provisions of the Companies Bill 2013 which still has 3 Parliamentary sessions for present Government.

SOCIAL RESPONSIBILITY COMMITTEE (SECTION 135):

Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

This Section applies to all companies including Private Companies and One Person Companies satisfying given criteria. This section is among very few sections of this Bill where nothing has been left for delegate legislation and form complete code with Schedule VII.

The Committee shall consist of three or more Directors including one independent Director. This Section requires appointment of Independent Director for private and one person companies where this section applies. Composition of this Committee shall be disclosed in Board Report.

FUNCTION OF CSR COMMITTEE (SECTION 135, SUB – SECTION 3):

The committee shall do following functions:

1. Formulate CSR Policy,
2. Recommend expenditure,
3. Monitor CSR Policy.

NOMINATION AND REMUNERATION COMMITTEE (SECTION 178, SUB – SECTION 1)

Every Listed Company and some other companies shall constitute Nomination and Remuneration Committee consisting of three or more non – executive Directors with majority of independent directors. Chairperson of the company may be a member of this committee irrespective of whether he is executive director or non – executive director.

FUNCTION OF NR COMMITTEE (SECTION 178, SUB – SECTION 2, 3 AND 4)

The committee shall do following functions:

1. Identify person for directorship and top management, attract retain and motivate directors;
2. Evaluation of director performance, appropriate performance benchmarks;
3. Determine criteria: Qualification, positive attribute and independence;
4. Policy for remuneration of Directors, Key managerial personnel and employees
5. Balance between fixed and incentive pay, short and long term policy objectives

   This policy shall be disclosed in Board's report.

   The chairperson or any other authorized member of committee shall attend General Meeting.

STAKEHOLDERS RELATIONSHIP COMMITTEE (SECTION 178, SUB – SECTION 5):

If company has more than one thousand stakeholders, which is a small figure, at any time during a financial year shall have a Stakeholders Relationship Committee (SRC). Here, stakeholders mean shareholders, debentures – holders, deposit – holders and any other security holders. The chairperson of the committee shall be a non – executive director. I may have any number of members. Only a chairperson and a member may satisfy the condition.

The committee shall consider and resolve grievances of securities holders.

The chairperson or any other authorized member of committee shall attend General Meeting.

AUDIT COMMITTEE (SECTION 177):

Most empower committee of boar:.

Board of Directors of all listed companies and some other companies shall constitute an Audit Committee. Committee shall consist of least three directors with majority of independent directors. Majority of directors including chairperson of this committee should be able to read and understand financial statement.

Terms of reference (Section 177, Sub – section 4 and 6):

The terms of reference shall be decided by the Board of Directors. This sub – section has an inclusive list of terms of reference:

(i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;

(ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;

(iii) examination of the financial statement and the auditors' report thereon;

(iv) approval or any subsequent modification of transactions of the company with related parties;

(v) scrutiny of inter-corporate loans and investments;

(vi) valuation of undertakings or assets of the company, wherever it is necessary;

(vii) evaluation of internal financial controls and risk management systems; and

(viii) monitoring the end use of funds raised through public offers and related matters.

The Audit Committee may investigate any matter in relation to these items, seek external professional advice and have full access to records of company.

Audit Supervisory (Section 177, Sub – section 5, 7 and 8):

The Audit Committee may 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 and may also discuss any related issues with the internal and statutory auditors and the management of the company.

The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

The Board's report shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed along with the reasons.

Vigil Mechanism (Section 177, Sub – section 9 and 10):

Every listed company or such other companies shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.

The vigil mechanism shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in proper or exceptional cases. The details of establishment of such mechanism shall be disclosed by the company on its website and in the Board's report.

OTHER RELEVANT PROVISIONS (IN BRIEF):

Section 92 (1) (f): Annual Return shall contain details of meetings of Committees of the Board and its attendees.

Section 118: Every company shall cause minutes of the proceedings of every committee of the Board, to be prepared and signed and kept within thirty days of the conclusion of every such meeting concerned in books kept for that purpose with their pages consecutively numbered. Name of

Directors Present in meeting and name of directors dissenting or not concurring with resolution passed in meeting shall also be recorded.

Section 175: a Committee may pass resolution by circulation also.

Section 179: Board may, by a resolution passed at a meeting, delegate some powers to any committee of directors.

THE LISTING AGREEMENT OF CLAUSE 49

The basic criterion on which the whole Listing Agreement based is Corporate Governance. Currently there are 54 Clauses in the Listing Agreement and all of them based on this very concept. Further, there is a clause which specifically deals with Corporate Governance i.e. Clause 49....

Listing means admission of securities to dealings on a recognized stock exchange. The securities may be of any public limited company, Central or State Government, quasi governmental and other financial institutions/corporations, municipalities, etc.

THE OBJECTIVES OF LISTING ARE MAINLY TO:

• provide liquidity to securities;

• mobilize savings for economic development;

• protect interest of investors by ensuring full disclosures.

A company, desirous of listing its securities on the Exchange, shall be required to file an application, in the prescribed form, with the Exchange before issue of Prospectus by the company, where the securities are issued by way of a prospectus or before issue of 'Offer for Sale', where the securities are issued by way of an offer for sale.

The basic criterion on which the whole Listing Agreement based is Corporate Governance. Currently there are 54 Clauses in the Listing Agreement and all of them based on this very concept. Further, there is a clause which specifically deals with Corporate Governance i.e. Clause 49. By way of

Listing Agreement inter alia, Stock Exchange ensures on behalf of SEBI that the Companies are following good Corporate Governance Practice.

As such, the Listing Agreement is of great importance and is executed under the common seal of a company. Under the Listing Agreement, the Company is required to make certain disclosures and perform certain acts, failing which the company may face disciplinary action, including suspension / delisting of securities. A Company undertakes, amongst other things, to provide facilities for prompt transfer, registration, sub-division and consolidation of securities; to give proper notice of closure of transfer books and record dates, to forward copies of Annual Reports, Balance Sheets and Profit and Loss Accounts to Stock Exchange, to file shareholding patterns and financial results on a quarterly basis; to intimate promptly to the Exchange the happenings which are likely to materially affect the financial performance of the Company and its stock prices, to comply with the conditions of Corporate Governance, etc. The Listing Department of Stock Exchange monitors the compliance by the companies with the provisions of the Listing Agreement, especially with regard to timely payment of annual listing fees, submission of results, shareholding patterns and corporate governance reports on a quarterly basis.

A company intending to have its securities listed on BSE has to comply with the listing requirements prescribed by it. Some of the requirements are as under:

Ø Minimum Listing Requirements for New Companies

Ø Minimum Requirements for Companies Delisted by BSE seeking relisting on BSE

Ø Permission to Use the Name of BSE in an Issuer Company's Prospectus

Submission of Letter of Application

Ø Allotment of Securities

Ø Trading Permission

Ø Requirement of 1% Security

Ø Payment of Listing Fees

Ø Compliance with the Listing Agreement

Ø Cash Management Services (CMS) - Collection of Listing Fees

Minimum Listing Requirements for New Companies-

The following eligibility criteria have been prescribed effective August 1, 2006 for listing of companies on BSE, through Initial Public Offerings (IPOs) & Follow-on Public Offerings (FPOs): Companies have been classified as large cap companies and small cap companies. A large cap company is a company with a minimum issue size of Rs. 10 crore and market capitalization of not less than Rs. 25 crore. A small cap company is a company other than a large cap company. In respect of Large Cap Companies,

The minimum post-issue paid-up capital of the applicant company (hereinafter referred to as "the Company") shall be Rs. 3 crore; and The minimum issue size shall be Rs. 10 crore; and The minimum market capitalization of the Company shall be Rs. 25 crore (market capitalization shall be calculated by multiplying the post-issue paid-up number of equity shares with the issue price). In respect of Small Cap Companies, The minimum post-issue paid-up capital of the Company shall be Rs. 3 crore; and The minimum issue size shall be Rs. 3 crore;

The minimum market capitalization of the Company shall be Rs. 5 crore (market capitalization shall be calculated by multiplying the post-issue paid-up number of equity shares with the issue price); and The minimum income/turnover of the Company shall be Rs. 3 crore in each of the preceding three 12-months period; and

The minimum number of public shareholders after the issue shall be 1000. A due diligence study may be conducted by an independent team of Chartered Accountants or Merchant Bankers appointed by BSE, the cost of which will be borne by the company.

FOR ALL COMPANIES:

In respect of the requirement of paid-up capital and market capitalization, the issuers shall be required to include in the disclaimer clause forming a part of the offer document that in the event of the market capitalization (product of issue price and the post issue number of shares) requirement of BSE not being met, the securities of the issuer would not be listed on BSE.

The applicant, promoters and/or group companies, shall not be in default in compliance of the listing agreement. The above eligibility criteria would be in addition to the conditions prescribed under SEBI (Disclosure and Investor Protection) Guidelines, 2000.

Minimum Requirements for Companies Delisted by BSE seeking Relisting on BSE- Companies delisted by BSE and seeking relisting at BSE are required to make a fresh public offer and comply with the extant guidelines of SEBI and BSE regarding initial public offerings. Permission to Use the Name of BSE in an Issuer Company's Prospectus- Companies desiring to list their securities offered through a public issue are required to obtain prior permission of BSE to use the name of BSE in their prospectus or offer for sale documents before filing the same with the concerned office of the Registrar of Companies. BSE has a Listing Committee, comprising of market experts, which decides upon the matter of granting permission to companies to use the name of BSE in their prospectus/offer documents. This Committee evaluates the promoters, company, project, financials, risk factors and several other aspects before taking a decision in this regard. Decision with regard to some types/sizes of companies has been delegated to the Internal Committee of BSE.

Submission of Letter of Application- As per Section 73 of the Companies Act, 1956, a company seeking listing of its securities on BSE is required to submit a Letter of Application to all the stock exchanges where it proposes to have its securities listed before filing the prospectus with the Registrar of Companies.

5. Allotment of Securities-

As per the Listing Agreement, a company is required to complete the allotment of securities offered to the public within 30 days of the date of closure of the subscription list and approach the Designated Stock Exchange for approval of the basis of allotment. In case of Book Building issues, allotment shall be made not later than 15 days from the closure of the issue, failing which interest at the rate of 15% shall be paid to the investors.

6. Trading Permission-

As per SEBI Guidelines, an issuer company should complete the formalities for trading at all the stock exchanges where the securities are to be listed within 7 working days of finalization of the basis of allotment.

A company should scrupulously adhere to the time limit specified in SEBI (Disclosure and Investor Protection) Guidelines 2000 for allotment of all securities and dispatch of allotment letters/share certificates/credit in depository accounts and refund orders and for obtaining the listing permissions of all the exchanges whose names are stated in its prospectus or offer document. In the event of listing permission to a company being denied by any stock exchange where it had applied for listing of its securities, the company cannot proceed with the allotment of shares. However, the company may file an appeal before SEBI under Section 22 of the Securities Contracts (Regulation) Act, 1956.

Requirement of 1% Security-

Companies making public/rights issues are required to deposit 1% of the issue amount with the Designated Stock Exchange before the issue opens. This amount is liable to be forfeited in the event of the company not resolving the complaints of investors regarding delay in sending refund orders/share certificates, non-payment of commission to underwriters, brokers, etc.

8. Payment of Listing Fees-

All companies listed on BSE are required to pay to BSE the Annual Listing Fees by 30th April of every financial year as per the Schedule of Listing Fees prescribed from time to time.

Compliance with the Listing Agreement-

Companies desirous of getting their securities listed at BSE are required to enter into an agreement with BSE called the Listing Agreement, under which they are required to make certain disclosures and perform certain acts, failing which the company may face some disciplinary action, including suspension/delisting of securities. As such, the Listing Agreement is of great importance and is executed under the common seal of a company. Under the Listing Agreement, a company undertakes, amongst other things, to provide facilities for prompt transfer, registration, sub-division and consolidation of securities; to give proper notice of closure of transfer books and record dates, to forward 6 copies of unabridged Annual Reports, Balance Sheets and Profit and Loss Accounts to BSE, to file shareholding patterns and financial results on a quarterly basis; to intimate promptly to the Exchange the happenings which are likely to materially affect the financial performance of the Company and its stock prices, to comply with the conditions of Corporate Governance, etc. The Listing Department of BSE monitors the compliance by the companies with the provisions of the Listing Agreement, especially with regard to timely payment of annual listing fees, submission of results, shareholding patterns and corporate governance reports on a quarterly basis. Penal action is taken against the defaulting companies.

Cash Management Services (CMS) - Collection of Listing Fees-

In order to simplify the system of payment of listing fees, BSE has entered into an arrangement with HDFC Bank for collection of listing fees from 141 locations all over the country. Details of the HDFC Bank branches are available on the website site www.bseindia.com as well as on the HDFC Bank website www.hdfcbank.com.

IMPORTANCE OF LISTING AGREEMENT-

1. Through this agreement company undertakes to provide prompt facilities like transfer, consolidation, sub-division, consolidation of securities.

2. Provide proper notice for record dates and book closure.

3. Furnish accounts on quarterly basis.

4. Intimate Stock Exchanges the happenings which are likely to affect the financial performance of the company & its stock prices.

5. Comply with the corporate governance conditions.

6. Forward copies of its annual report and accounts to its shareholders.

Clause 49 Of The Listing Agreement-

"Business history suggests that it often takes a scandal or two of unhealthy proportion to really bring into sharp relief the role of ethics and governance in business."

True to that, the Satyam debacle, India's Enron, has had a profound influence on the Indian business environment and there was a redoubled effort on the part of both the government and other corporations to ensure governance codes were tightened.

Clause 49 of the Listing Agreement, which deals with Corporate Governance norms that a listed entity should follow, was first introduced in the financial year 2000-01 based on recommendations of Kumar Mangalam Birla Committee. The report of the Committee was considered and adopted by SEBI Board in its meeting held on January25, 2000. The recommendations are to be implemented through the amendment to the listing agreement of the stock exchanges. Internationally, listing agreement has been used in most markets to implement corporate governance in the listed companies. The initiatives taken by Government in 1991, aimed at economic liberalization and globalization of the domestic economy, led India to initiate reform process in order to suitably respond to the developments taking place world over. On accounts of interest generated by Cadbury Committee

Report, Confederation of Indian Industries (CII), the Associated chambers of Commerce and Industry (ASSOCHAM) and, the Securities and Exchange Board of India (SEBI) constituted committees to recommend initiatives in Corporate Governance. The recommendations of Kumar Mangalam Birla Committee, constituted by SEBI, led to the addition of Clause 49 in the Listing Agreement in February 2000. These recommendations, aimed at improving the standards of corporate governance are divided into mandatory and non mandatory recommendations. The recommendations have been made applicable to all listed companies, their Directors, Management, Employees and Professionals associated with such companies. The ultimate responsibility of putting the recommendations into practice lies directly with the Board of Directors and the Management of the Company. After these recommendations were in place for about two years, SEBI, in order to evaluate the adequacy of the existing practices and to further improve the existing practices set up a committee under the Chairmanship of Mr. Narayana Murthy during 2002-03. The Murthy committee, after holding three meetings, had submitted the draft recommendations on corporate governance norms. After deliberations, SEBI accepted the recommendations in August 2003 and asked the Stock Exchanges to revise Clause 49 of the Listing Agreement based on Murthy committee recommendations. This led to widespread protests and representations from the Industry thereby forcing the Murthy committee to meet again to consider the objections. The committee, thereafter, considerably revised the earlier recommendations and the same was put up on SEBI website on 15th December 2003 for public comments. It was only on 29th October 2004 that SEBI finally announced revised Clause 49, which will have to be implemented by the end of financial year 2004-05. These revised recommendations have also considerably diluted the original Murthy Committee recommendations. Areas where major changes were made include:

● Independence of Directors,

● Whistle Blower policy,

● Performance evaluation of non-executive directors,

● Mandatory training of non-executive directors, etc.

The changes in corporate governance norm as prescribed in the revised Clause 49 are as follows:

Composition of Board-

The revised clause prescribes six tests, which a non-executive director needs to pass to qualify as an Independent Director. The existing requirement is that to qualify as an Independent Director, the director should not have, apart from receiving director's remuneration, any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in the judgment of the Board may affect independence of judgment of the director. This requirement finds place in the revised clause also except that the relationship will now extend to its management, its holding company and its associates in addition to the existing list. Further the Board is no longer required to judge the independence status of a director as at present. Five new clauses have been added to determine independence of a director. These are:

(i) He is not related to promoters or persons occupying management positions at the board level or at one level below the board;

(ii) He has not been an executive of the company in the preceding three financial years;

(iii) He is not a partner or an executive or was not partner or an executive during the preceding three years of (a) the statutory audit firm or the internal audit firm that is associated with the company; and (b) the legal and consulting firms that have a material association with the company;

(iv) He is not a material supplier, service provider or customer or a lessor or lessee of the company, and

(v) He is not a substantial shareholder of the company owning two percent or more of the block of voting shares.

Non-Executive Directors' compensation & disclosures-

A new requirement has been provided for obtaining prior approval of shareholders for payment of fees/compensation to non-executive directors. If there is stock option, the limit for the maximum number that can be granted to non-executive directors in any financial year and in aggregate should be disclosed.

According to the Companies Act, 1956 fees paid to directors do not form part of Managerial remuneration and hence no approval of shareholders for payment of fees to directors is required. Listed companies will now need to obtain prior approval of shareholders for payment of sitting fees to directors.

Unless the Government is contemplating to change the law and bring sitting fees within the ambit of Managerial remuneration this contradiction should have been avoided.

Audit Committee-

FOLLOWING ARE THE CHANGES WITH REGARD TO AUDIT COMMITTEE:

(i) Two-third of the members of Audit committee shall be independent directors as against the present requirement of majority being independent;

(ii) Earlier, only non-executive directors could be members of Audit committee. The revised clause has omitted this requirement.

(iii) All members of the Audit committee shall be financially literate (as defined in the revised clause) as against the existing requirement of at least one member having financial and accounting knowledge.

(iv) Minimum number of Audit committee meetings in a year increased to 4 from 3.

(v) Role of the Audit committee has been enlarged to include (a) matters required to be included in Directors' Responsibility statement; (b) to review the functioning of Whistle Blower mechanism if the same exists and (c) review of performance of statutory and internal auditors.

(vi) The Audit committee will also mandatorily review (a) Management Discussion and Analysis of Financial condition and results of operations; (b) statement of significant related party transactions;

(c) Management letters/letters of internal control weaknesses issued by the statutory auditors; (d) Internal audit reports relating to internal control weaknesses, and

(vii) To review the appointment, removal and terms of remuneration of the Chief Internal Auditor. The Audit committee will no longer be required to review the company's financial and risk management policies. Risk assessment and minimization procedures will now be reviewed by the Board.

Listed companies should now ascertain from their respective Audit committees the frequency of reporting related party transactions, frequency of discussing Management letters issued by the statutory auditors etc.

Other Provisions Related To Board-

(i) Gap between two meetings has been reduced to three months from four months ruling at present.

(ii) A code of Conduct for Board members and senior management has to be laid down by the Board which should be posted on the website of the company. All Board members and senior management should affirm compliance with the code on annual basis and the annual report shall contain a declaration to this effect signed by the CEO.

Subsidiary Companies-

These are new requirements, which provide for the following:

(i) At least one independent director on the Board of the holding company shall be a director on the board of a material non-listed Indian subsidiary company;

(ii) The audit committee of the holding company shall review the financial statements, in particular, the investments made by the unlisted subsidiary company;

(iii) The minutes of board meetings of the unlisted subsidiary company shall be placed at the board meeting of the holding company. The management should periodically bring to the attention of the holding company a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.

6. Disclosures-

Following new disclosure requirements have been specified in the revised clause 49:
(i) Statement on transactions with related parties in the ordinary course of business shall be placed before the Audit committee periodically;
(ii) Details of material individual transactions with related parties which are not in the normal course of business shall be placed before the Audit committee; and
(iii) Details of material individual transactions with related parties or others, which are not on arm's length basis, should be placed before Audit committee together with management's justification for the same. Here also, the word 'material' has not been defined. Listed companies should ascertain from their respective audit committees the frequency of reporting such transactions.
(iv) Financial statements should disclose together with management's explanation any accounting treatment different from that prescribed in Accounting Standard.
(v)The company will lay down procedures to inform board members about the risk assessment and minimization procedures which shall be periodically reviewed by the Board.
(vi) The company shall disclose to the Audit committee on a quarterly basis the use of funds raised through public/ rights/preferential issues. Annually a statement showing use of funds for purposes other than those stated in

Offer document/prospectus should be placed before the Audit committee. Such statement should be certified by the statutory auditors.

(vii) Under 'Remuneration of Directors' new disclosure requirements have been prescribed, which include criteria of making payments to nonexecutive directors, shares and convertible instruments held by non-executive directors and shareholding (both own and held on beneficial basis) of nonexecutive directors to be disclosed in the notice of general meeting called for approving appointment of such director.

7. CEO/CFO Certification-

This is a new requirement and is based on the Sarbanes Oxley Act of USA. This had also been recommended by the Naresh Chandra Committee set up by the Centre in 2002-03. The revised Clause only requires CEO and CFO to certify to the Board the annual financial statements in the prescribed format.

While this certification will certainly provide comfort to the non-executive directors and will indeed act as the basis for the Board to make Directors' Responsibility Statement in terms of section 217(2AA) of the Companies Act, 1956, it is not clear why SEBI did not require the listed companies to include such certification in the Annual Report.

8. Compliance Reports-

The format of quarterly report to be submitted to the Stock Exchanges has been revised and the new format follows the revised requirements of Clause 49. The CEO or the Compliance officer can now sign the compliance report. The annual corporate governance report should disclose adoption or non-adoption of non-mandatory requirements.

9. Non- Mandatory requirements-

Five new items have been added under non-mandatory requirements and the existing item on Postal ballot has been deleted.

The first new item states that Independent directors may not have tenure not exceeding in the aggregate a period of nine years on the Board of the company.

The next item relates to companies moving towards a regime of unqualified audit report. The third item deals with training of board members in the business model of the company as well as risk profile of the business parameters of the company and responsibilities of directors and how best to discharge it.

The fourth item deals with performance evaluation of non-executive directors by a peer group comprising the entire Board.

The fifth item relates to setting up of a whistle blower policy in the company.

CORPORATE SOCIAL RESPONSIBILITY: ENVIRONMENTAL IMPACT

Corporate social responsibility (CSR) can refer to a wide range of actions that businesses may make - from donating to charity to ethical trading. One primary focus of CSR is the environment.

ENVIRONMENTAL CSR

Environmental CSR aims to reduce any damaging effects on the environment from your business' processes. Activities may focus on:

- energy use
- water use
- waste management
- recycling
- emissions
- eco-friendly office and business travel policies

Some of these are significant from both environmental and financial point of view.

ADVANTAGES OF ENVIRONMENTAL CSR

Green CSR can reduce business risk, improve reputation and provide opportunities for **cost savings**. Even the simplest energy efficiency measures can generate savings and make a difference to your business. For example:

- switching off lights and equipment when not in use
- reducing the use of water
- reducing the amount of paper you waste

  Caring about the environment can **increase revenue** too. Many customers prefer to buy from responsible companies.

CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY

The emerging concept of corporate social responsibility goes beyond charity and requires the company to act ethically in the company's business affairs. The triple bottom line approach to corporate social responsibility emphasizes the company's commitment to operating in economically, socially and environmentally sustainable manner. CSR is based on the idea that successful profitable corporations should take the responsibility for social issues and manage their business in such a way that maximizes profit and stockholder wealth while also contributing to the resolution of the social problems. The concept involves notions of human welfare and emphasizes a concern with the social dimensions of the business activity that have direct connection with the quality of life in the society. The word responsibility implies that business organisations were believed to have some kind of obligation towards the society in which they functioned to deal with the social problem s and contribute more than just economic goods and services. It is a concept whereby the companies integrate social and environmental concern in their business operations and in their interactions with the stakeholders on a voluntary basis. The main function of an enterprise is to create value through producing goods and services that society demands, thereby generating profit for its owners and shareholders as well as the welfare of the society, particularly through the on going process of job creation. Social responsibility implies the acceptance of a moral imperative to recognise the duties and obligations arising from a company's relationship with customers, suppliers, employers, shareholders and society at large beyond consideration of profit. It refers to business decision making linked to the ethical values, compliance with the legal requirements and respect for people and communities and environment.

REDUCE YOUR ENVIRONMENTAL IMPACT

Can reduce your business' environmental impact in many ways. For example, you can:

- create products that can be recycled
- optimize your product life cycle
- source responsibly (eg using recycled materials and sustainable timber)
- reduce packaging
- buy locally to save fuel costs
- create an efficient (and fuel-efficient) distribution network
- work with environmentally-conscious suppliers and distributors

RELATIONS TO CORPORATE SOCIAL RESPONSIBILITY

There are different perceptions of CSR between government, the private sector, non-governmental organizations (NGOs) and society in general, and thus, the concept has no single definition.

CSR MAY COVER:

- a company running its business responsibly in relation to internal stakeholders (shareholders, employees, customers and suppliers);
- the role of business in relation to the state (locally and nationally) as well as to inter-state institutions or standards; and
- business performance as a responsible member of the society in which it operates and the global community."

The European Union defines CSR as "...the concept that an enterprise is accountable for its impact on all relevant stakeholders. It is the continuing commitment by a business to behave fairly and responsibly and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large."[4] According to this definition, a CSR strategy is more focused on social aspects, particularly the interests of stakeholders.

CER is, in many ways, connected to CSR, as both of them influence environmental protection. CER, however, is strictly about the consideration of environmental implications and protection within corporate strategy. The understanding of CER cannot be separated from CSR—both are interconnected and based on environmental protection. There are three major areas related to these two concepts—economic, environmental and social. CER is focused more on economic and environmental while CSR relates to social and environmental aspects. Economy, society, and environment all play significant roles in the development of an efficient and effective company strategy.

These cover the environmental implications of a company's operations:

- Eliminate waste and emissions
- Maximize the efficient use of resources and productivity
- Minimize activities that might impair the enjoyment of resources by future generations.

DRIVERS AND CHALLENGES

Among the main drivers for CER are government policies and regulations. Many states provide their own legislation, regulations and policies, which are important in creating a positive environmental attitude within companies. Subsidies, tariffs and taxes play a vital role in the implementation of these policies. Another significant factor is the competitive environment among companies generated by media, public, shareholder and NGO awareness, which are also major drivers of CER.

Challenges include the cost of regulation and difficulties in predicting economic gains, which could become problematic for a company's management. Additionally, new technologies are frequently too expensive for a lot of companies. Another challenge is the lack of harmonization of regulations among different states—often there is a mosaic of propositions, leading to unclear strategies for environmental behavior, especially in multinational corporations.

WORLDWIDE PERSPECTIVES ON CORPORATE ENVIRONMENTAL RESPONSIBILITY

The majority of international CSR studies focus on business practices and its aspects, such as business economics and the legality of environmental law. Most companies are noticing the importance of taking into account one of its most important stakeholders: employees and customers and their commitment to sustainability. Studies have demonstrated that once companies place sustainability practices they can be directly linked to financial success and customer satisfaction, which in turn can be used as a marketing tool. Although every country has a different culture, and each country determines their own scale of environmental responsibility, research has shown that there is a standard global human values that drive customer needs and wants. Companies have taken initiatives to take sustainability and align it with each company's economic goals.

CORPORATE ENVIRONMENTAL RESPONSIBILITY (CER) HAS BECOME AN IMPORTANT ASPECT OF A COMPANY'S OVERALL RESPONSIBILITY IN TODAY'S CONTEXT.

To protect the environment and promote CER, several regulations have been strengthened by the Indian government. One major policy decision the Indian Government took up was the mandatory spending of 2% of profits in CSR activ-ities as stated in the Companies Act, 20134. Schedule VII of Section 135 of the

COMPANIES ACT, 2013 PRESCRIBES THE FOLLOWING ACTIVITIES AS PART OF CSR SPEND-ING:

• Eradicating extreme hunger and poverty

• Promoting education

• Promoting gender equality and empowering women

• Reducing child mortality and improving maternal health

• Combating human immunodeficiency virus, acquired immune deficiency

syndrome, malaria and other diseases

• Ensuring environmental sustainability

• Providing employment enhancing vocational skills

• Promoting social business projects

• Contributing to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments.

Due to this directive, there has been an upward movement in CSR spending in India to the extent of 47% in 20175.