KARPAGAM ACADEMY OF HIGHER EDUCATION
(Deemed To Be University)
(Established Under Sec 3 of Ugc Act, 1956)
Pollachi Main Road, Eachanari Post, Coimbatore - 641021
(For the candidates admitted from 2016 onwards)
DEPARTMENT OF COMMERCE

Semester III

		L	T	P	C
17CCU303 A	**COMPANY LAW**	**6**	**-**	**-**	**4**

SCOPE

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

OBJECTIVE:

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

UNIT I

Introduction – Administration of Company Law [including National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), Special Courts]; Characteristics of a company; lifting of corporate veil; types of companies-; formation of company-

UNIT II

Documents – Memorandum of association, Articles of association, Doctrine of constructive notice and indoor management prospectus-shelf and red herring prospectus, Misstatement in prospectus, GDR; Book building; Issue, allotment and forfeiture of share, Transmission of shares, Buyback and provisions regarding buyback; Issue of bonus shares.

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UNIT III

Management: Classification of directors, women directors, independent director, small shareholder's director; Disqualifications, director identity number (DIN); Appointment; Legal positions, powers and duties; removal of directors; Key managerial personnel, managing director, manager; Meetings of shareholders and board; Types of meeting, conduct of meetings, Committees of Board of Directors - Audit Committee, Nomination and Remuneration Committee, Corporate Social Responsibility Committee.

UNIT IV

Dividends, Accounts, Audit– Provisions relating to payment of Dividend, Provisions relating to Books of Account, Provisions relating to Audit, Auditors' Appointment, Rotation of Auditors, Auditors' Report, Secretarial Audit.

UNIT V

Winding Up - Concept and modes of Winding Up. **Insider-Trading, Whistle-Blowing** – Insider-Trading; meaning and legal provisions; Whistleblowing: Concept and Mechanism.

SUGGESTED READINGS :

TEXT BOOK

1. Kapoor N.D. (2009) *Elements of Mercantile Law.* [4th Edition] New Delhi, S.Chand & Co.

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REFERENCE BOOKS

1. M.C. Kuchhal, and Vivek Kuchhal,(2014) *Business Law*[4th Edition] New Delhi, Vikas Publishing House.
2. S.N. Maheshwari and SK Maheshwari (2011). *Business Law*, New Delhi, National Publishing House.
3. Aggarwal S K, (2005). *Business Law*. New Delhi, Galgotia Publishers Company.
4. P C Tulsian and Bharat Tulsian,(2000) *Business Law*. New Delhi, McGraw Hill Education
5. Sharma, J.P. and Sunaina Kanojia (2011) *Business Laws*. New Delhi, Ane Books Pvt. Ltd.

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Coimbatore – 641 021.

LECTURE PLAN
DEPARTMENT OF COMMERCE

STAFF NAME: Dr.R.Velmurugan, Dr.S.Venkatachalam
SUBJECT NAME: Company Law SUB.CODE:17CCU303A
SEMESTER: III CLASS: II B.Com (CA)

S.No	Lecture Duration Period	Topics to be Covered	Support Material/Page Nos
		UNIT-I	
1	1	Company, Difference between Company and Partnership	T1: 12-14
2	1	Administration of Company Law	R1: 15-19
3	1	NCLT and NCLAT, Special Court	W1
4	1	Impact of NCLT & NCLAT, Special Court	W2
5	1	Company, Definition, Characteristics	T1: 4-7
6	1	Kinds of Companies	R1: 35-37
7	1	Difference between Public and Private Company	R1:37-39
8	1	Foreign Company and One man Company	R1: 46-48
9	1	Holding, Subsidiary, Illegal Association	R1: 52-55
10	1	Lifting of Corporate Veil	T1: 7-10
11	1	Formation of Company, Promotion	R1:60-68
12	1	Certificate of Registration	R1:68-71
13	1	Capital Subscription and Certificate of Commencement of Business	R1:71-74
14	1	Recapitulation and Discussion of Important Questions	

	Total No of Hours Planned For Unit I=14		
		UNIT-II	
1	1	Memorandum of Association – Meaning and Purpose	T1:73-76
2	1	Contents of Memorandum of Association	T1:76-81
3	1	Alteration of Memorandum	T1: 81-86
4	1	Articles of Association, Meaning and Importance	T1:93
5	1	Forms of Articles of Association	R1:97
6	1	Contents of Articles of Association, Alteration of Articles of Association	T1:93-99
7	1	Distinction between Memorandum and Articles of Association	T1:99-100
8	1	Doctrine of Constructive Notice	R1: 106-107
9	1	Prospectus – Meaning, Prospectus shelf	R1: 113 W3
10	1	Allotment of Shares	R1: 131-135
11	1	Issue and Forfeiture of Shares	R1: 150-152
12	1	Transmission of Shares	R1:207-208
13	1	Issue of Bonus Shares	W4
14	1	Buyback and Provisions regarding buyback	W5
15	1	Recapitulation and Discussion of Important Questions	
	Total No of Hours Planned For Unit II =15		
		UNIT-III	
1	1	Directors, Women Directors	R1:211
2	1	Classification of Directors	W6
3	1	Classification of Directors	W6
4	1	Disqualification of Directors	T1: 296
5	1	Appointment of Directors	T1:286-291

6	1	Legal Position of Directors	T1"291-294
7	1	Powers and Duties of Directors	T1: 312-319
8	1	Removal of Directors	T1: 297-301
9	1	Manager, Managing Director	T1: 341-347
10	1	Meeting, Types of Meeting	T1: 355-361
11	1	Committees, Committees of Board of Directors	W7
12	1	Audit Committees	W8
13	1	Corporate Social Responsibility Committee	W9
14	1	Corporate Social Responsibility	W9
15	1	Recapitulation and Discussion of Important Questions	
	Total No of Hours Planned For Unit III=15		
		UNIT-IV	
1	1	Dividends, Meaning	W10
2	1	Types of Dividend	W10
3	1	Interim Dividend	W10
4	1	Declaration of Dividend	W11
5	1	Eligibility and Payment of Dividend	W11
6	1	Dividend Warrant	W12
7	1	Procedure regarding Payment of Dividend	W13
8	1	Book of Accounts	R1: 327
9	1	Auditor, Appointment of Auditors	R1:333-335
10	1	Reappointment of Auditors	R1:335-336
11	1	Rights, Powers and Duties of Auditors	R1: 337-342
12	1	Audit Report	W14
13	1	Secretarial Audit	W15

14	1	Recapitulation and Discussion of Important Questions	
	Total No of Hours Planned For Unit IV=14		
		UNIT-V	
1	1	Winding up – Meaning, Dissolution and Insolvency	T1: 469
2	1	Modes of Winding Up	T:470
3	1	Compulsory Winding UP	R1: 398-401
4	1	Voluntary Winding UP	R1:413-417
5	1	Members and Creditors Voluntary Winding Up	R1:417-419
6	1	Difference between Compulsory and Voluntary Winding Up	R1:419-420
7	1	Insider Trading – Meaning, Legal Provisions of Insider Trading	W16
8	1	Mechanism of Insider Trading	W16
9	1	Whistle Blowing, Concept and Features	W17
10	1	Mechanism of Whistle Blowing	W17
11	1	Recapitulation and Discussion of Important Questions	
12	1	Discussion of Previous ESE Question Papers.	
13	1	Discussion of Previous ESE Question Papers.	
14	1	Discussion of Previous ESE Question Papers.	
	Total No of Hours Planned for unit V=14		
Total Planned Hours	**72**		

TEXT BOOK

1. Kapoor, N.D.2015. *Elements of Company Law*, S. Chand and Sons, New Delhi

REFERENCE

1. Ashok K. Bagrial. 2007. *Company Law,* Vikas Publishing House Pvt. Ltd., New Delhi

WEBSITES

W1: http://www.nclat.nic.in/
W2: https://taxguru.in/company-law/nclt-nclat-constitution-impact-functioning-companies-act-2013.html
W3: https://www.corporate-cases.com/2012/07/shelf-prospectus-meaning.html
W4: https://www.indiafilings.com/companies-act-2013/issue-bonus-shares.php?pageno=1
W5: https://taxguru.in/company-law/provisions-governing-buy-shares-companies-act-2013.html
W6: https://www.legalraasta.com/types-of-directors/
W7: https://taxguru.in/company-law/board-committees-companies-act-2013-secretarial-standard-1-listing-agreement.html
W8: https://taxguru.in/company-law/audit-committee-section-177-companies-act2013.html
W9: http://www.mca.gov.in/SearchableActs/Section135.htm
W10: https://www.accountingtools.com/articles/2017/5/16/types-of-dividends
W11: https://taxguru.in/company-law/declaration-payment-dividend-companies-act-2013.html
W12: https://www.quora.com/What-is-a-dividend-warrant
W13: https://taxguru.in/company-law/procedure-payment-dividend-companies-act-2013.html
W114: https://taxguru.in/income-tax/independent-auditors-report-companies-act-2013.html
W15: https://taxguru.in/company-law/secretarial-audit-companies-act-2013.html
W16: http://www.legalserviceindia.com/article/l147-Insider-Trading-And-its-Legal-Mechanism.html
W17: https://taxguru.in/company-law/whistleblowing-vigil-mechanism-companies-act-2013.html

UNIT-I

SYLLABUS

Introduction – Administration of Company Law (including National Company Law Tribunal (NCTL), National Company Law Appellate Tribunal (NCLAT), Special Courts) – Characteristics of a Company – Lifting of Corporate Veil – Types of Companies – Formation of Company.

INTRODUCTION

Industrial has revolution led to the emergence of large scale business organizations. These organization require big investments and the risk involved is very high. Limited resources and unlimited liability of partners are two important limitations of partnerships of partnerships in undertaking big business. Joint Stock Company form of business organization has become extremely popular as it provides a solution to overcome the limitations of partnership business. The Multinational companies like Coca-Cola and, General Motors have their investors and customers spread throughout the world. The giant Indian Companies may include the names like Reliance, Talco Bajaj Auto, Infosys Technologies, Hindustan Lever Ltd., Ranbaxy Laboratories Ltd., and Larsen and Turbo etc.

The origin of the term, 'Company' was derived from the two Latin words. 'Com' i.e. together and 'Panies' i.e. bread. It means an association of merchants discussing matters and taking food together. The good company ordinarily means an association of a number of persons for some common purpose. In this sense only the names of many partnership firms may end with words & Co' However this does not make the firm a company in the legal sense of the word. In its legal form a company is an artificial person created by law. We can understand the meaning of company by referring to some of the important definitions.

DEFINITION OF A COMPANY

Section 3 (1) (i) of the Companies Act, 1956 defines a company as "a company formed and registered under this Act or an existing company". Section 3(1) (ii) Of the act states that "an existing company means a company formed and registered under any of the previous companies laws". This definition does not reveal the distinctive characteristics of a company. According to Chief Justice Marshall of USA, "A company is a person, artificial, invisible, intangible, and existing only in the contemplation of the law. Being a mere creature of law, it possesses only those properties which the character of its creation of its creation confers upon it either expressly or as incidental to its very existence".

Another comprehensive and clear definition of a company is given by Lord Justice Lindley, "A company is meant an association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business, and who share the profit and loss (as the case may be) arising there from. The common stock contributed is denoted in money and is the capital of the company. The persons who contribute it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his share. Shares are always transferable although the right to transfer them is often more or less restricted".

According to Haney, "Joint Stock Company is a voluntary association of individuals for profit, having a capital divided into transferable shares. The ownership of which is the condition of membership".

From the above definitions, it can be concluded that a company is registered association which is an artificial legal person, having an independent legal, entity with a perpetual succession, a common seal for its signatures, a common capital comprised of transferable shares and carrying limited liability.

ADMINISTRATION OF COMPANY LAW

The Central Government is charged with the overall responsibility for administration of the Companies Act, 1956. The administration, at present, is done through the Department of

Company Affairs under the Ministry of Industry and Company Affairs. Till 1985, the Department of Company Affairs formed part of the Ministry of Law. The Companies Act confers various powers on the Central Government and most of the powers and functions vested in the Central Government have been delegated to one or other of the agencies created under the Act..

CHARACTERISTICS OF A COMPANY

1. Incorporated Association

A company is created when it is registered under the Companies Act. It comes into being from the date mentioned in the certificate of incorporation. It may be noted in this connection that Section 11 provides that an association of more than ten persons carrying on business in banking or an association or more than twenty persons carrying on any other type of business must be registered under the Companies Act and is deemed to be an illegal association, if it is not so registered.

For forming a public company at least seven persons and for a private company at least two persons are persons are required. These persons will subscribe their names to the Memorandum of association and also comply with other legal requirements of the Act in respect of registration to form and incorporate a company, with or without limited liability [Sec 12 (1)]

2. Artificial Legal Person

A company is an artificial person. Negatively speaking, it is not a natural person. It exists in the eyes of the law and cannot act on its own. It has to act through a board of directors elected by shareholders. It was rightly pointed out in Bates V Standard Land Co. that : "The board of directors are the brains and the only brains of the company, which is the body and the company can and does act only through them".

But for many purposes, a company is a legal person like a natural person. It has the right to acquire and dispose of the property, to enter into contract with third parties in its own name, and can sue and be sued in its own name.

3. Separate Legal Entity

A company has a legal distinct entity and is independent of its members. The creditors of the company can recover their money only from the company and the property of the company. They cannot sue individual members. Similarly, the company is not in any way liable for the individual debts of its members. The property of the company is to be used for the benefit of the company and nor for the personal benefit of the shareholders. On the same grounds, a member cannot claim any ownership rights in the assets of the company either individually or jointly during the existence of the company or in its winding up. At the same time the members of the company can enter into contracts with the company in the same manner as any other individual can. Separate legal entity of the company is also recognized by the Income Tax Act. Where a company is required to pay Income-tax on its profits and when these profits are distributed to shareholders in the form of dividend, the shareholders have to pay income-tax on their dividend of income. This proves that a company that a company and its shareholders are two separate entities.

The principal of separate of legal entity was explained and emphasized in the famous case of Salomon v Salomon & Co. Ltd.

The facts of the case are as follows:

Mr. Saloman, the owner of a very prosperous shoe business, sold his business for the sum of $ 39,000 to Saloman and Co. Ltd. which consisted of Saloman himself, his wife, his daughter and his four sons. The purchase consideration was paid by the company by allotment of & 20,000 shares and $ 10,000 debentures and the balance in cash to Mr. Saloman. The debentures carried a floating charge on the assets of the company. One share of $ 1 each was subscribed by the remaining six members of his family. Saloman and his two sons became the directors of this company. Saloman was the managing Director.

After a short duration, the company went into liquidation. At that time the statement of affairs' was like this: Assets: $ 6000, liabilities; Saloman as debenture holder $ 10,000 and unsecured creditors $ 7,000. Thus its assets were running short of its liabilities b $11,000. The unsecured creditors claimed a priority over the debenture holder on the ground that company and

Saloman were one and the same person. But the House of Lords held that the existence of a company is quite independent and distinct from its members and that the assets of the company must be utilized in payment of the debentures first in priority to unsecured creditors.

Saloman's case established beyond doubt that in law a registered company is an entity distinct from its members, even if the person hold all the shares in the company. There is no difference in principle between a company consisting of only two shareholders and a company consisting of two hundred members. In each case the company is a separate legal entity.

The principle established in Saloman's case also been applied in the following:

Lee V. Lee's Airforming Ltd. (1961) A.C. 12 Of the 3000 shares in Lee's Air Forming Ltd., Lee held 2999 shares. He voted himself the managing Director and also became Chief Pilot of the company on a salary. He died in an aircrash while working for the company. His wife was granted compensation for the husband in the course of employment. Court held that Lee was a separate person from the company he formed, and compensation was due to the widow. Thus, the rule of corporate personality enabled Lee to be the master and servant at the same time.

The principle of separate legal entity of a company has been, in fact recognized much earlier than in Saloman's case. In Re Kondoi Tea Co Ltd. (1886 ILR 13 Cal 43), it was held by Calcutta High Court that a company was a separate person, a separate body altogether from its Shareholders. In Re. Sheffield etc. Society - 22 OBD 470), it has been held that a corporation is a legal person, just as much in individual but with no physical existence.

The characteristic of separate corporate personality of a company was also emphasized by Chief Justice Marshall of USA when he defined a company "as a person, artificial, invisible, intangible and existing only in the eyes of the law. Being a mere creation of law, it possesses only those properties which the charter of its creation confers upon it either expressly or as accident to its very existence". [Trustees of Darmouth College v woodward (1819) 17 US 518)

4. Perpetual Succession

A company is a stable form of business organization. Its life does not depend upon the death, insolvency or retirement of any or all shareholder (s) or director (s). Law creates it and

law alone can dissolve it. Members may come and go but the company can go on for ever. "During the war all the member of one private company , while in general meeting, were killed by a bomb. But the company survived; not even a hydrogen bomb could have destroyed i". The company may be compared with a flowing river where the water keeps on changing continuously, still the identity of the river remains the same. Thus, a company has a perpetual existence, irrespective of changes in its membership.

5. Limited Liability

A company may be company limited by shares or a company limited by guarantee. In company limited by shares, the liability of members is limited to the unpaid value of the shares. For example, if the face value of a share in a company is Rs. 10 and a member has already paid Rs. 7 per share, he can be called upon to pay not more than Rs. 3 per share during the lifetime of the company. In a company limited by guarantee the liability of members is limited to such amount as the member may undertake to contribute to the assets of the company in the event of its being wound up.

6. Transferable Shares

In a public company, the shares are freely transferable. The right to transfer shares is a statutory right and it cannot be taken away by a provision in the articles. However, the articles shall prescribe the manner in which such transfer of shares will be made and it may also contain bona fide and reasonable restrictions on the right of members to transfer their shares. But absolute restrictions on the rights of members to transfer their shares shall be ultra vires. However, in the case of a private company, the articles shall restrict the right of member to transfer their shares in companies with its statutory definition. In order to make the right to transfer shares more effective, the shareholder can apply to the Central Government in case of refusal by the company to register a transfer of shares.

7. Common Seal

As was pointed out earlier, a company being an artificial person has no body similar to natural person and as such it cannot sign documents for itself. It acts through natural person who

are called its directors. But having a legal personality, it can be bound by only those documents which bear its signature. Therefore, the law has provided for the use of common seal, with the name of the company engraved on it, as a substitute for its signature. Any document bearing the common seal of the company will be legally binding on the company. A company may have its own regulations in its Articles of Association for the manner of affixing the common seal to a document. If the Articles are silent, the provisions of Table-A (the model set of articles appended to the Companies Act) will apply. As per regulation 84 of Table-A the seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or a Committee of the Board authorized by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose, and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

8. Separate Property

As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of its property. The company is the real person in which all its property is vested and by which it is controlled, managed and disposed of.

9. Delegated Management

A joint stock company is an autonomous, self-governing and self-controlling organization. Since it has a large number of members, all of them cannot take part in the management of the affairs of the company. Actual control and management is, therefore, delegated by the shareholders to their elected representatives, know as directors. They look after the day-to-day working of the company. Moreover, since shareholders, by majority of votes, decide the general policy of the company, the management of the company is carried on democratic lines. Majority decision and centralized management compulsorily bring about unity of action.

10. Capacity to sue and being sued

The company is a legal person and it can enforce its legal rights. Similarly it can be sued for breach of its legal duties.

LIFTING OF CORPORATE VEIL

Real persons the behind a company are disregarded once they have formed a company and given to their association the status of a legal entity. The principle is known as, 'the veil of incorporation' 'Corporate Veil' refers to the 'Partition' or 'Curtain' between the company and its members.

The courts in general consider bound by this principle in deciding the matter and, therefore, they refuse to go behind the persons responsible for acts of commissions and omission. However this "Veil" was abused over a period of time, which compelled the courts to pierce or lift the 'Veil' to unveil the cases of fraud or improper conduct. This doctrine of lifting the corporate veil is understood as identification of a company with its members, when individual members may be held liable for its acts.

The corporate entity is disregarded and the corporate veil is lifted or pierced in exceptional cases which are classified into.

I. Exceptions under judicial interpretations.
II. Exceptions under statutory provisions.

I. Exceptions under Judicial Interpretations

1. Protection of Revenue

If a company is used as a means to evade tax the courts may disregard the corporate veil. In Re Sir Dinshow Maneckjee Petit A.L.R. (1927) Bom. 371 Dan assessee, who was receiving huge dividend and interest income transferred his investments to four private companies formed for the purpose of reducing his tax liability. These companies transferred the income to D as a pretended loan. The court disregarded the corporate veil and found the company was formed a means to avoid super tax and it was nothing more than the assessee himself.

2. Avoidance of Welfare Legislation

Avoidance of welfare legislation is similar to avoidance of taxation in workmen of Associated Rubber Industry Ltd. Vs. Associated Rubber Industry Ltd., (1936) S.C. 1134 it was held that it was the duty of the court in every case where the corporate personality was used to avoid welfare legislation to disregard it and discove4r the true state of affairs.

3. Prevention of Fraud or Improper Conduct

The Court will also lift the "Veil" where a company is formed to defraud creditors or to defeat the provisions of law or to avoid any legal obligations. In Jones V Lipman (1962) All E.R. 342 L agreed to sell a certain land to J for $ 5250. He subsequently changed his mind and to avoid the specific performance of the contract, he sold it to a company with a capital of $100 formed specifically for the purpose. The company had L and clerk of his solicitors as the only members. J brought an action for the specific performance against L and company. The court looked to the reality of the situation, ignored the transfer and ordered that the company should convey the land to J.

4. Where the Company is a Sham

The court also lifts the veil where a company is a mere cloak or sham formed only to conceal the identify of the proprietor of the fraud to escape from liability. Thus in Gilford Motor Co. Ltd. V. Horne, (1933) Ch, 935 C.A. Horne a former employee of a company was subject to a covenant not to solicit its customer. He formed a company to carry on a business which he had done so personally would have been a breach of the convenient. An injunction was granted both against him and the company to restrain them from carrying on the business.

5. Company acting as Agent or Trustee of the Shareholders

Where Company is acting as agent for its shareholders, the shareholders will be liable for the acts of the company. There may be an express agreement or it may be implied from the circumstance of each particular case. In Re. F.G. Films Ltd. (1935) Ail E.R. 645 An American Company financed the production of the film in Indian in the name of British Company. The President of the American Company held 90% of the Capital of the British Company. The Board

of Trade of Great Britain, refused to register the film as a British film. Held the decision was valid in view of the fact that British Company acted nearly as the nominee of the American Company.

6. Determination of the Character of the Company

A company may assume an enemy character when persons in 'defects' control of its affairs are residents in an enemy country. In such a case the court may disregard the corporate fiction and declare the company to be an enemy company. This was decided in the famous case of Daimler Co. Ltd. V Continental Tyre & Rubber Co. Ltd. (1916) (2) A.C. 307. A company was incorporated in England for the purpose of selling in England types made in Germany by a German company which held all the shares except one all the directors were Germans resident in Germany. During the First World War, the English Company commenced an action for recovery of a trade debt. Held the company was an alien company and the payment of debt to it would amount to trading with the enemy, and therefore the company was not allowed to proceed with the action.

7. Where the Doctrine conflicts with Public Policy

Where the doctrine of corporate well conflicts with public policy, the court will lift the corporate veil for protecting the public policy as held in Cannors; (1940) 4 All E. R. 174.

II. Exceptions under Statutory Provisions

1. Reduction of number of members below a Legal Minimum

Section 45 of the Act provides that if the number of members fails below the statutory minimum i.e. seven in the case of a public company and two in the case of a private company and the company carried on business for more than six months while the number is to reduced every person who is a member of the company during the time that it so carried on business after six months and is aware of that, shall directly and severally be liable to the creditors for the payment of the company's debts contracted during that time.

2. Mis-description of Company

Section 147 provides that is an officer of a company signs on behalf of a company and bill of exchange, hundi, promissory note, cheque or order for money or goods such person shall be personally liable to the holder, if the name of the company is not mentioned.

3. Failure to refund Application Money

As per section 69(5) the directors of a company are severally liable to repay the application money of these applicants who have not been allotted shares within 130 days of the date of issue of the prospectus.

4. Fraudulent Conduct of Business

Section 542 provides that is 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 creditors or the company or any other person, or for nay fraudulent purpose, those who knowingly parties to such conduct of business may be personally liable for all or any of the debts or other liabilities of the Company.

5. Holding and Subsidiary Company

In general a subsidiary company is treated as altogether separate unit and its holding company is not liable for its acts. But under sections 21-214 companies under a group the required to present a joint picture and all companies under a group are treated as part of the entity.

6. Investigation of the affairs and ownership of a Company

An inspector appointed under section 239 by the Central Government may hit the veil of incorporation if he thinks it necessary for the purpose of investigation into the affairs of its subsidiary or holding company. Inspector appointed under Section 247 by the Central Government will investigate and report on the membership of any company on any matters related to the company for the purpose of deciding the true persons who are financially interested in the company and who actually control the company.

TYPES OF COMPANIES

Joint Stock Company can be of various types. The following are the important types of company:

1. Classification of Companies by Mode of Incorporation

i. Chartered Companies

These are incorporated under a special charter by a monarch. The East India Company and The Bank of England are examples of chartered incorporated in England. The powers and nature of business of a chartered company are defined by the charter which incorporates it. A chartered company has wide powers. It can deal with its property and bind itself to any contracts that any ordinary person can. In case the company deviates from its business as prescribed by the charted, the Sovereign can annul the latter and close the company. Such companies do not exist in India.

ii. Statutory Companies

These companies are incorporated by a Special Act passed by the Central or State legislature. Reserve Bank of India, State Bank of India, Industrial Finance Corporation, Unit Trust of India, State Trading corporation and Life Insurance Corporation are some of the examples of statutory companies. Such companies do not have any memorandum or articles of association. They derive their powers from the Acts constituting them and enjoy certain powers that companies incorporated under the Companies Act have. Alternations in the powers of such companies can be brought about by legislative amendments.

The provisions of the Companies Act shall apply to these companies also except in so far as provisions of the Act are inconsistent with those of such Special Acts [Sec 616 (d)]

These companies are generally formed to meet social needs and not for the purpose of earning profits.

iii. Registered or Incorporated Companies

These are formed under the Companies Act, 1956 or under the Companies Act passed earlier to this. Such companies come into existence only when they are registered under the Act and a certificate of incorporation has been issued by the Registrar of Companies. This is the most popular mode of incorporating a company.

2. Classification of Companies by Liability of Members

i. Companies Limited by Shares

These types of companies have a share capital and the liability of each member or the company is limited by the Memorandum to the extent of face value of share subscribed by him. In other words, during the existence of the company or in the event of winding up, a member can be called upon to pay the amount remaining unpaid on the shares subscribed by him. Such a company is called company limited by shares. A company limited by shares may be a public company or a private company. These are the most popular types of companies.

ii. Companies Limited by Guarantee

These types of companies may or may not have a share capital. Each member promises to pay a fixed sum of money specified in the Memorandum in the event of liquidation of the company for payment of the debts and liabilities of the company [Sec 13(3)] This amount promised by him is called 'Guarantee'. The Articles of Association of the company state the number of member with which the company is to be registered [Sec 27 (2)]. Such a company is called a company limited by guarantee. Such companies depend for their existence on entrance and subscription fees. They may or may not have a share capital. The liability of the member is limited to the extent of the guarantee and the face value of the shares subscribed by them, if the company has a share capital. If it has a share capital, it may be a public company or a private company.

The amount of guarantee of each member is in the nature of reserve capital. This amount cannot be called upon except in the event of winding up of a company. Non-trading or non-profit

companies formed to promote culture, art, science, religion, commerce, charity, sports etc. are generally formed as companies limited by guarantee.

iii. Unlimited Companies

Section 12 gives choice to the promoters to form a company with or without limited liability. A company not having any limit on the liability of its members is called an 'unlimited company' [Sec 12(c)]. An unlimited company may or may not have a share capital. If it has a share capital it may be a public company or a private company. If the company has a share capital, the article shall state the amount of share capital with which the company is to be registered [Sec 27 (1)]

The articles of an unlimited company shall state the number of member with which the company is to be registered.

3. On the Basis of Members

On the basis of number of members, a company may be: (1) Private Company, and (2) Public Company.

a. Private Company

According to Sec. 3(1) (iii) of the Indian Companies Act, 1956, a private company is that company which by its articles of association:

1. Limits the number of its members to Two hundred, excluding employees who are members or ex-employees who were and continue to be members;
2. Restricts the right of transfer of shares, if any;
3. Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Where two or more persons hold share jointly, they are treated as a single member.

According to Sec 12 of the Companies Act, the minimum number of members to form a private company is two. A private company must use the word "Pvt." after its name.

CHARACTERISTICS OR FEATURES OF A PRIVATE COMPANY

The main features of a private company are as follows:

1. A private company restricts the right of transfer of its shares. The shares of a private company are not as freely transferable as those of public companies. The articles generally state that whenever a shareholder of a Private Company wants to transfer his shares, he must first offer them to the existing members of the existing members of the company. The price of the shares is determined by the directors. It is done so as to preserve the family nature of the company's shareholders.
2. It limits the number of its members to fifty excluding members who are employees or ex-employees who were and continue to be the member. Where two or more persons hold share jointly they are treated as a single member. The minimum number of members to form a private company is two.
3. A private company cannot invite the public to subscribe for its capital or shares of debentures. It has to make its own private arrangement.

b. Public Company

According to Section 3 (1) (iv) of Indian Companies Act. 1956 "A public company which is not a Private Company",

1. The articles do not restrict the transfer of shares of the company
2. It imposes no restriction no restriction on the maximum number of the members on the company.
3. It invites the general public to purchase the shares and debentures of the companies

Difference between Public and Private Company

1. Minimum Member

The minimum number of persons required to form a public company is 7. It is 2 in case of a private company.

2. Maximum Member

There is no restriction on maximum number of members in a public company, whereas the maximum number cannot exceed 200 in a private company.

3. Number of Directors

A public company must have at least 3 directors whereas a private company must have at least 2 directors (Sec. 252)

4. Restriction on Appointment of Directors

In the case of a public company, the directors must file with the Register a consent to act as directors or sign an undertaking for their qualification shares. The directors or a private company need not do so (Sec 266)

5. Restriction on Invitation to Subscribe for Shares

A public company invites the general public to subscribe for shares. A public company invites the general public to subscribe for the shares or the debentures of the company. A private company by its Articles prohibits invitation to public to subscribe for its shares.

6. Name of the Company

In a private company, the words "Private Limited" shall be added at the end of its name.

7. Public Subscription

A private company cannot invite the public to purchase its shares or debentures. A public company may do so.

8. Issue of Prospectus

Unlike a public company a private company is not expected to issue a prospectus or file a statement in lieu of prospectus with the Registrar before allotting shares.

9. Transferability of Shares

In a public company, the shares are freely transferable (Sec. 82). In a private company the right to transfer shares is restricted by Articles.

10. Special Privileges

A private company enjoys some special privileges. A public company enjoys no such privileges.

11. Quorum

If the Articles of a company do not provide for a larger quorum. 5 members personally present in the case of a public company are quorum for a meeting of the company. It is 2 in the case of a private company (Sec. 174)

12. Managerial Remuneration

Total managerial remuneration in a public company cannot exceed 11 per cent of the net profits (Sec. 198). No such restriction applies to a private company.

13. Commencement of Business

A private company may commence its business immediately after obtaining a certificate of incorporation. A public company cannot commence its business until it is granted a "Certificate of Commencement of business".

SPECIAL PRIVILEGES OF A PRIVATE COMPANY

Unlike a private a public company is subject to a number of regulations and restrictions as per the requirements of Companies Act, 1956. It is done to safeguard the interests of investors/shareholders of the public company. These privileges can be studied as follows:

a) Special privileges of all companies. The following privileges are available to every private company, including a private company which is subsidiary of a public company or deemed to be a public company:

1. A private company may be formed with only two persons as member. [Sec.12(1)]
2. It may commence allotment of shares even before the minimum subscription is subscribed for or paid (Sec. 69).
3. It is not required to either issue a prospectus to the public of file statement in lieu of a prospectus. (Sec 70 (3)]
4. Restrictions imposed on public companies regarding further issue of capital do not apply on private companies. [Sec 81 (3)]
5. Provisions of Sections 114 and 115 relating to share warrants shall not apply to it. (Sec. 14)
6. It need not keep an index of members. (Sec. 115)
7. It can commence its business after obtaining a certificate of incorporation. A certificate of commencement of business is not required. [Sec. 149 (7)]
8. It need not hold statutory meeting or file a statutory report [Sec. 165 (10)]
9. Unless the articles provide for a larger number, only two persons personally present shall form the quorum in case of a private company, while at least five member personally present form the quorum in case of a public company (Sec. 174).
10. A director is not required to file consent to act as such with the Registrar. Similarly, the provisions of the Act regarding undertaking to take up qualification shares and pay for them are not applicable to directors of a private companies [Sec. 266 (5) (b)]
11. Provisions in Section 284 regarding removal of directors by the company in general meeting shall not apply to a life director appointed by a private company on or before 1st April 1952 [Sec. 284 (1)]
12. In case of a private company, poll can be demanded by one member if not more than seven members are present, and by two member if not more than seven member are present. In case of a public company, poll can be demanded by persons having not less than one-tenth of the total voting power in respect of the resolution or holding shares on which an aggregate sum of not less than fifty thousand rupees has been paid-up (Sec. 179).
13. It need not have more than two directors, while a public company must have at least three directors (Sec. 252)

b) Privileges available to an Independent Private Company

An independent private company is one which is not a subsidiary of a public company. The following special privileges and exemptions are available to an independent private company.

1. It may give financial assistance for purchase of or subscription for shares in the company itself.
2. It need not, like a public company, offer rights shares to the equity shareholders of the company.
3. The provisions of Sec. 85 to 90 as to kinds of share capital, new issues of share capital, voting, issue of shares with disproportionate rights, and termination of disproportionately excessive rights, do not apply to an independent private company.
4. A transfer or transferee of shares in an independent private company has no right of appeal to the Central Government against refusal by the company to register a transfer of its shares.
5. Sections 171 to 186 relating to general meeting are not applicable to an independent private company if it makes its own provisions by the Articles. Some provisions of these Sections are, however made expressly applicable.
6. Many provisions relating to directors of a public company are not applicable to an independent private company, e.g.

(a) It need not have more than 2 directors.
(b) The provisions relating to the appointment, retirement, reappointment, etc. of directors who are to retire by rotation and the procedure relating, there to are not applicable to it.
(c) The provisions requiring the giving of 14 days' notice by new candidates seeking election as directors, as also provisions requiring the Central Government's sanction for increasing the number of directors by amending the Articles or otherwise beyond the maximum fixed in the Articles, are not applicable to it.
(d) The provisions relating to the manner of filing up casual vacancies among directors and the duration of the period of office of directors and the requirements that the appointment of directors should be voted on individually and that the consent of each candidate for directorship should be filed with the Registrar, do not apply to it.

(e) The provisions requiring the holding of a share qualification by directors and fixing the time within which such qualification is to be acquired and filing with the Registrar of a declaration of share qualification by each director are also not applicable to it.

(f) It may, by its Articles, Provide special disqualifications for appointment of directors.

(g) It may provide special grounds for vacation of office of a director.

(h) Sec. 295 prohibiting loans to directors does not apply to it.

(i) An interested director may participate or vote in Board's proceedings relating to his concern of interest in any contract of arrangement.

7. The restrictions as to the number of companies of which a person may be appointed managing director and the prohibition of such appointment for more than 5 years at a time, do not apply to it.
8. The provisions prohibiting the subscribing for, or purchasing of, shares or debentures of other companies in the same group do not apply to it.
9. The provisions of Section 409 conferring power on the Central Government to present change in the Board of directors of a company where in the opinion of the Central Government such change will be prejudicial to the interest of the company, do not apply to it.

When a Private Company becomes a Public Company

A private company shall become a public company in following cases:

1. By default: When it fails to comply with the essential requirements of a private company provided under Section 3 (1) (iii) Default in complying with the said three provisions shall disentitle a private company to enjoy certain privileges (Sec. 43).
2. A private company which is a subsidiary of another public company shall be deemed to be a public company.
3. By provisions of law - Section 43-A.

Section 43-A

(a) Where not less than 25% of the paid-up share capital of a private company is held by one or more bodies" corporate such a private company shall become a public company from the data in which such 25% is held by body corporate [Sec. 43-A (1)]

(b) Where the average annual turnover of a private company is not less than Rs. 10 crores during the relevant period, such a private company shall become a public company after the expiry of the period of three months from the last day of the relevant period when the accounts show the said average annual turnover [Sec. 43 A (1 A)].

(c) When a private company holds not less than 25% of the paid up share capital of a public company the private company shall become a public company from the date on which the private company holds such 25% [Sec. 43A (IB)].

(d) Where a private company accepts, after an invitation is made by an advertisement of receiving deposits from the public other than its members, directors or their relatives, such private company shall become a public company [Sec. 43A (IC)].

4. By Conversion : When the private company converts itself into a public company by altering its Articles in such a manner that they no longer include essential requirements of a private company under Section 3 (1) (iii). On the data of such alternations, it shall cease to be private company. It shall comply with the procedure of converting itself into a public company [Sec. 44].

The Articles of Association of such a public company may continue to have the three restrictions and may continue to have two directors and less than seven members. Within 3 months of such a conversion. Registrar of Companies shall be intimated. The Registrar shall delete the word 'Private' before the words 'Limited' in the name of the company and shall also make necessary alternations in the certificate of incorporation.

4. On the Basis of Control

On the basis of control, a company may be classified into: (i) Holding Companies and (ii) Subsidiary Company.

i. Holding Companies

Holding Company [Sec. 4(4)]. A company is known as the holding company of another company if it has control over the other company. According to Sec 4(4) a company is deemed to be the holding company of another if, but only if that other is its subsidiary.

A company may become a holding company of another company in either of the following three ways:-

(a) By holding more than fifty per cent of the normal value of issued equity capital of the company; or
(b) By holding more than fifty per cent of its voting rights; or
(c) By securing to itself the right to appoint, the majority of the directors of the other company, directly or indirectly.

The other company in such a case is known as a "Subsidiary company". Though the two companies remain separate legal entities, yet the affairs of both the companies are managed and controlled by the holding company. A holding company may have any number of subsidiaries. The annual accounts of the holding company are required to disclose full information about the subsidiaries.

ii. Subsidiary Company

Subsidiary Company [Sec. 4 (I)] A company is known as a subsidiary of another company when its control is exercised by the latter (called holding company) over the former called a subsidiary company. Where a company (company S) is subsidiary of another company (say Company H), the former (Company S) becomes the subsidiary of the controlling company (company H).

5. On the Basis of Ownership of Companies

i. Government Companies

A Company of which not less than 51% of the paid up capital is held by the Central Government of by State Government or Government singly or jointly is known as a Government Company. It includes a company subsidiary to a government company. The share capital of a government company may be wholly or partly owned by the government, but it would not make it the agent of the government. The auditors of the government company are appointed by the government on the advice of the Comptroller and Auditor General of India. The Annual Report along with the auditor's report are placed before both the House of the parliament. Some of the

examples of government companies are - Mahanagar Telephone Corporation Ltd., National Thermal Power Corporation Ltd., State Trading Corporation Ltd. Hydroelectric Power Corporation Ltd. Bharat Heavy Electricals Ltd. Hindustan Machine Tools Ltd. etc.

ii. Non-Government Companies

All other companies, except the Government Companies, are called non-government companies. They do not satisfy the characteristics of a government company as given above.

6. On the Basis of Nationality of the Company

i. Indian Company

These companies are registered in India under the Companies Act. 1956 and have their registered office in India. Nationality of the members in their case is immaterial.

ii. Foreign Company

It means any company incorporated outside India which has an established place of business in India [Sec. 591 (I)]. A company has an established place of business in India if it has a specified place at which it carries on business such as an office, store house or other premises with some visible indication premises. Section 592 to 602 of Companies Act, 1956 contain provisions applicable to foreign companies functioning in India.

FORMATION OF COMPANY

A company is a separate legal entity which is formed and registered under the Companies Act. It may be noted that before a company is actually formed (i.e., formed and registered under the Companies Act), certain persons, who wish to form a company, come together with a view to carry on some business for the purpose of earning profits. Such persons have to decide various questions such as (a) which business they should start, (b) whether they should form a new company or take over he business of some existing company, (c) if new company is to be started, whether they should start a private company or pubic company, (d) what should be the capital of the company etc. After deciding about the formation of the company, the desirous persons take necessary steps, and the company is actually formed. Thereafter, they start their business. Thus,

there are various stage in the formation of a company from thinking of starting a business to the actual starting of the business.

Incorporation of Companies

Company is an artificial person created by following a legal procedure. Before a company is formed, a lot of preliminary work is to be performed. The lengthy process of formation of a company can be divided into four distinct stages: (I) Promotion; (ii) Incorporation or Registration; (iii) Capital subscription; and (iv) Commencement of business. However, a private company can start business as soon as it obtains the certificate of incorporation. It needs to go through first two stages only. The reason is that a private company cannot invite public to subscribe to its share capital. But a public company having a share capital, has to pass through all the four stages mentioned above before it can commence business or exercise any borrowing powers (Section 149). These four stages are discussed as follows:

1. Promotion

The term 'promotion' is a term of business and not of law. It is frequently used in business. Haney defines promotion as " the process of organizing and planning the finances of a business enterprise under the corporate form". Gerstenberg has defined promotion as "the discovery of business opportunities and the subsequent organization of funds, property and managerial ability into a business concern for the purpose of making profits there from." First of all the idea of carrying on a business is conceived by promoters. Promoters are persons engaged in, one or the other way; in the formation of a company. Next, the promoters make detailed study to assess the feasibility of the business idea and the amount of financial and other resources required. When the promoters are satisfied about practicability of the business idea, they take necessary steps for assembling the business elements and making provision of the funds required to launch the business enterprise. Law does not require any qualification for the promoters. The promoters stand in a fiduciary position towards the company about to be formed. From the fiduciary position of promoters, the following important results follow:

1. A promoter cannot be allowed to make any secret profits. If any secret profit is made in violation of this rule, the company may, on discovering it, compel the promoter to account for and surrender such profit.
2. The promoter is not allowed to derive a profit from the sale of his own property to the company unless all material facts are disclosed. If he contracts to sell his own property to the company without making a full disclosure, the company may either rescind the sale or affirm the contract and recover the profit made out of it by the promoter.
3. The promoter must not make an unfair or unreasonable use of his position and must take care to avoid anything which has the appearance of undue influence or fraud.

Promoter's Remuneration

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

Promoter's Liability

If a promoter does not disclose any profit made out of a transaction to which the company is a party, and then the company may sue the promoter and recover the undisclosed profit with interest Otherwise, the company may set aside the transaction i.e., it may restore the property to promoter and recover its money.

Besides, Section 62 (1) holds the promoter liable to pay compensation to every person who subscribes for any share or debentures on the faith of the prospectus for any loss or damage sustained by reason of any untrue statement included in it. Section 62 also provides certain grounds on which a promoter can avoid his liability. Similarly Section 63 provides for criminal liability for misstatement in the prospectus and a promoter may also become liable under this section.

Promoter's Contract

Preliminary contracts are contracts made on behalf of a company yet to be incorporated. Following are some of the effects of such contracts;

1. The company, when it comes into existence, is not bound by any contract made on its behalf before its incorporation. A company has no status prior to its incorporation.
2. The company cannot ratify a pre-incorporation contract and hold the other party liable. Like the company, the other party to the contract is also not bound by such a contract.
3. The agents of a proposed company may sometimes incur personal liability under a contract made on behalf of the company yet to be formed.

Kelner v Bexter (1886) L.R. 2 C.P.174. A hotel company was about to be formed and promoters signed an agreement for the purchase of stock on behalf of the proposed company. The company came into existence but, before paying the price, went into liquidation. The promoters were held personally liable to the plaintiff.

Further, an agent himself may not be able to enforce the contract against the other party. So far as ratification of a pre-incorporation contract is concerned, a company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. The reason is simple, ratification can be done only if an agent contracts for a principal who is in existence and who is competent to contract at the time of the contract by the agent.

2. Registration

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

1. To find out form the Registrar of companies whether the name by which the new company is to be started is available or not. To take approval of the name, an application has to be made in the prescribed form along with requisite fee;

2. To get a letter of Intent under Industries (Development and Regulation) Act, 1951, if the company's business comes within the purview of the Act.
3. To get necessary documents i.e. Memorandum and Articles of Association prepared and printed.
4. To prepare preliminary contracts and prospectus or statement in lieu of a prospectus.

Registration of a company is obtained by filing an application with the Registrar of Companies of the State in which the registered office of the company is to be situated. The application should be accompanied by the following documents:

(a) Memorandum of association properly stamped, duly signed by the signatories of the memorandum and witnessed.
(b) Articles of Association, if necessary.
(c) A copy of the agreement, if any, which the company proposes to enter into with any individual for his appointment as managing or whole-time director or manager.
(d) A written consent of the directors to act in that capacity, if necessary.
(e) A statutory declaration stating that all the legal requirements of the Act prior to incorporation have been complied with.

The Registrar will scrutinize these documents. If the Registrar finds the document to be satisfactory, he registers them and enters the name of the company in the Register of Companies and issues a certificate called the certificate of incorporation (Section 34).

The certificate of incorporation is the birth certificate of a company. The company comes into existence from the date mentioned in the certificate of incorporation and the date appearing in it is conclusive, even if wrong. Further, the certificate is 'conclusive evidence that all the requirements of this Act in respect of registration and matters precedent and related thereto have been fulfilled and that the association is a company authorized to be registered and duly registered under this Act.

Once the company is created it cannot be got rid off except by resorting to provisions of the Act which provide for the winding up of company. The certificate of incorporation, even if it contains irregularities, cannot be cancelled.

3. Capital Subscription

A private company can start business immediately after the grant of certificate of incorporation but public limited company has to further go through 'capital subscription stage' and 'commencement of business stage'. In the capital subscription stage, the company makes necessary arrangements for raising the capital of the company. With a view to ensure protection on investors, Securities and Exchange Boar of India (SEBI) has issued 'guidelines for the disclosure and investor protection'. The company making a public issue of share capital must comply with these guidelines before making a public offer for sale of shares and debentures.

If the capital has to be said through a public offer of shares, the directors of the public company will first file a copy of the prospectus with the Registrar of Companies. On the scheduled date the prospectus will be issued to the public. Investors are required to forward their applications for shares along with application money to the company's bankers mentioned in the prospectus. The bankers will then forward all applications to the company and the directors will consider the allotment of shares. If the subscribed capital is at least equal to 90 percent of the capital issue, and other requirements of a valid allotment are fulfilled the directors pass a formal resolution of allotment. However, if the company does not receive applications which can cover the minimum subscription within 120 days of the issue of prospectus, no allotment can be made and all money received will be refunded.

If a public company having share capital decides to make private placement of shares, then, instead of a 'prospectus' it has to file with the Registrar of Companies a 'statement in lieu of prospectus' at least three days before the directors proceed to pass the first share allotment resolution.

The contents of a prospectus and a statement in lieu of a prospectus are almost alike.

4. Commencement of Business

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

can start business. The certificate for commencement of business is issued by Registrar of Companies, subject to the following conditions.

1. Shares payable in cash must have been allotted up to the amount of minimum subscription
2. Every director of the company had paid the company in cash application and allotment money on his shares in the same proportion as others.
3. No money should have become refundable for failure to obtain permission for shares or debentures to be dealt in any recognized stock exchange.
4. A declaration duly verified by one of directors or the secretary that the above requirements have been complied with which is filed with the Registrar.

The certificate to commence business granted by the Registrar is a conclusive evidence of the fact that the company has complied with all legal formalities and it is legally entitled to commence business. It may also be noted that the court has the power to wind up a company, if it fails to commence business within a year of its incorporation [Sec. 433 (3)].

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POSSIBLE QUESTIONS

PART – A (1 MARK)

ONLINE EXAMINATION

PART B (2 MARKS)

1. Define Company
2. Briefly Narrate about National Company Law Tribunal
3. What is Chartered Company?
4. Explain on Statutory Company.
5. Briefly narrate on Holding and Subsidiary company.
6. Who is a Promoter?
7. What do you mean by Company Limited by Shares?
8. Explain on Foreign Company.
9. Describe about Government Company.

PART C (6 MARKS)

1. Explain in detail about Powers of National Company Law Tribunal.
2. Differentiate between Company and Partnership.
3. Elucidate in detail on Characteristics of a Company.
4. Explicate in detail on various types of Companies.
5. Differentiate between Private and Public Company.
6. Discuss in detail on characteristics of a Private company.
7. Explain in detail the procedures involved in formation of a company.
8. Explicate in detail the procedures involved in registration of a company.
9. Describe in detail about special privileges available for Private Limited Company.

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Karpagam Academy of Higher Education
(Deemed to be University)
(Established Under Section 3 of UGC Act, 1956) Coimbatore - 641 021.
Company Law (17CCU303A)

Unit I

S.No.	Question	Option 1	Option 2	Option 3	Option 4	Answer
1	Property of the company belongs to	Company	Share holders	Members	Promoters	**Company**
2	Minimum number of members in case of public company	1	2	5	7	**7**
3	Minimum number of members in case of private compan	1	2	3	2	**2**
4	Maximum no. of members in case of private company is	50	100	150	200	**200**
5	Maximum no .of members in case of public company is	10	unlimited	50	100	**unlimited**
6	Maximum no .of members in case of public company is	10	unlimited	50	100	**unlimited**
7	Minimum subscription should be received with in _____	120	125	130	135	**120**
8	If minimum subscription is not received application money should be refunded with in _____days	20	25	30	10	**10**
9	Liability of a member in case of a private company is	Limited	Unlimited	Both (a) &	limited gurantee	**Unlimited**

10	Maximum no. of persons in case of partnership banking	10	20	30	5	**10**
11	Minimum paid up share capital in case of a private comp	1 Lakh	2 Lakhs	3 Lakhs	4 Lakhs	**1 Lakh**
12	Minimum paid up share capital in case of a public compa	1 Lakh	3 Lakhs	5 Lakhs	7 Lakhs	**5 Lakhs**
13	Minimum no. of Directors in case of private company is	1	2	3	4	**2**
14	Age limit of Directors in case of public company is ____	65	70	75	80	**65**
15	Age limit of Directors in case of private company is ___	65	70	75	No limit	**No limit**
16	The company's nationality is decided by its	Shareholders	Registered office	books of accounts	investor	**Registered office**
17	The liability of members if company is limited by guarant	Unpaid value of shares	Guarantee amount	Unlimited liability	limited liability	**Guarantee amount**
18	The liability of members if company is limited by shares	Unpaid value of shares	Guarantee amount	Unlimited liability	limited liability	**Unpaid value of shares**
19	If the company failed to refund application money with i	Company	Directors	Shareholders	secretary	**Directors**
20	Transfer of shares in the company is	Restricted	transferable	Prohibited	not transfred	**Freely transferable**
21	Transfer of shares in the partnership firm is	Restricted	transferable	Prohibited	not transfred	**Restricted**
22	Generally Company liability is	Limited	Unlimited	does not arise	restricted	**Limited**
23	Generally partnership firm liability is	Limited	Unlimited	does not arise	restricted	**Unlimited**

24	Partners are -------- of the firm	Owners	Employers	Agents	manager	**Agents**
25	member and continued business more than 6 months. The company's liability will be.	Limited	Unlimited	Guarantee amount	Situation	**Unlimited**
26	In the case of partnership firm. Audit is	Compulsory	Optional	restricted	not restric	**Optional**
27	In the case of Company. Audit is	Compulsory	Optional	restricted	not restric	**Compulsory**
28	Transfer of shares in the case of public company is	Prohibited	Restricted	transferable	Illegal	**Freely transferable**
29	Invitation to public offering shares or debentures in case	Prohibited	Restricted	Acceptable	mandatory	**Prohibited**
30	Accepting of deposits from public in case of private com	Prohibited	Restricted	Acceptable	mandatory	**Prohibited**
31	The companies which are formed under special charter granted by the king or queen of England are called	Statutory companies	d companie	d companie	holding company	**Chartered companies**
32	The companies which are formed under special Act. Tho	Chartered companies	companies	d companie	holding company	**Statutory companies**
33	The companies which are formed under companies Act.	Chartered companies	companies	d companie	holding company	**Registered companies**
34	Under which sec. a private company can voluntarily con	34	44	54	64	**44**
35	Under which sec. a private company can automatically c	34	43	53	35	**43**
36	___ is an artificial person created by law	Company	Partnership	Hindu Undivide	Co-operative	Company
37	Companies promoted by King or Queens is known as ___	Chartered Companies	Statutory Compani	Registered	Private Company	Chartered Companies

38	__companies are incorporated by a Special Act passed by the Central or State legislature	Chartered	Statutory	Registered	Private	Statutory
39	__ companies are formed under the Companies Act, 1956	Chartered	Statutory	Registered	Private	Registered
40	A Company that has the liability of its members limited by the memorandum to the amount, if any, unpaid on th	Companies limited by Shares	Companies limited	Unlimited	Government	Companies limited by
41	A Company that has the liability of its members limited by the memorandum to such amount, as the members	Companies limited by Shares	Companies limited	Unlimited	Government	Companies limited by
42	A Company that has no limit on the liability of its members is termed as ____	Companies limited by Shares	Companies limited	Unlimited	Government	Unlimited Companies
43	Minimum number of members for promoting a private company is ____	Two	Three	Four	Five	Two
44	Minimum number of members for promoting a public company is ____	Two	Three	Four	Seven	Seven
45	__ company can issued deferred shares	Public	Private	Government	Foreign	Private
46	Minimum number of directors required for promoting a private company is ___	Two	Three	Four	Five	Two
47	Minimum number of directors required for promoting a public company is ___	Two	Three	Four	Five	Three
48	Maximum number of members for promoting a private company is ____	50	100	150	200	200
49	Overall limit of managerial remuneration is ____ of net profits	5%	6%	8%	11%	11%
50	__company can issue share warrants	Public	Private	Government	Foreign	Public
51	___ company is not required to hold a statutory meeting	Public	Private	Government	Foreign	Private

52	__company can commence its business immediately after obtaining a certificate of incorporation	Public	Private	Governm ent	Foreign	Private
53	__ company can proceed to allot shares even before the minimum subscription is subscribed	Public	Private	Governm ent	Foreign	Private
54	While making further issue of capital, a ___ company is required to first offer shares to its existing shareholders	Public	Private	Governm ent	Foreign	Public
55	__ company holds practically the entire share capital of the company	One man	Foreign	Holding	Subsidiar y	One man
56	__ company is understood as a company incorporated outside India	One man	Foreign	Holding	Subsidiar y	Foreign
57	__ company is one in which not less than fifty-one per cent of the paid-up share capital is held by the Central /	Public	Private	Governm ent	Foreign	Government
58	When a company has control over another company, it is known as ____	Government	Holding	Subsidiar y	One Man	Holding
59	Company which is controlled by another company is known as___	Government	Holding	Subsidiar y	One Man	Subsidiary
60	A company which carry on business without registration is known as ___	Illegal Association	Associati on not	Governm ent	Statutory	Illegal Association

UNIT-II

SYLLABUS

Documents – Memorandum of association, Articles of association, Doctrine of constructive notice and indoor management prospectus-shelf and red herring prospectus, Misstatement in prospectus, GDR; Book building; Issue, allotment and forfeiture of share, Transmission of shares, Buyback and provisions regarding buyback; Issue of bonus shares.

INTRODUCTION

The Memorandum of Association is compulsory for every company. But the Articles of Association are not compulsory for a Public Limited Company. Having share capital. A public limited company having share capital can have its own Article of Association or can adopt Table 'A' (i.e. model articles given in the companies Act) as its Articles of Association by ,merely making an endorsement on Memorandum ofAssociation to that effect. If a public limited company wishes to raise capital or subscribe shares/debentures public, in such cases, the public limited company must issue a prospectus. Therefore, Memorandum of Association, Article of Association & prospectus are important documents of companies.

MEMORANDUM OF ASSOCIATION

The Memorandum of Association is the basic or most important document for the incorporation or registration of every Joint Stock company. The Memorandum of Association is the life-giving document of the company. In other words, it is the document which brings the company into existence. It is the charter or constitution of the company containing the fundamental conditions upon which the company is incorporated. It is the foundation on which the structure of the company is built. It contains the objects or purposes of the incorporation of the company and defines or determines the external operations of the company (i.e. company's relationship or dealing with the creditors & other outsides).

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

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

PURPOSE OF MEMORANDUM

The main purpose of the Memorandum is

(a) To enable the shareholders, creditors as well as those who deal with the company to know the company's permitted range of enterprises.
(b) It enables the prospective shareholders the purpose for which their money is going to be utilized by the company and the risks the shareholders are exposed to in such investments.
(c) It enables the outsiders dealing with the company to know what exactly are the objects of the company and the legality of contractual relationship that they intend to enter with or without any conflict with the corporate objects of the company.
(d) It defines the scope of the company's activities beyond which it cannot expose4 the shareholders money to the unknown risks of investment.

FORM OF MEMORANDUM

Companies Act has given four forms of Memorandum of Association in Schedule I. These are as follows:

Table B: Memorandum of a company limited by shares

Table C: Memorandum of a company limited by guarantee and not having a share capital

Table D: Memorandum of company limited by guarantee and having share capital.

Table E: Memorandum of an unlimited company

Every company is required to adopt one of these forms or any other form as near there to as circumstances admit.

PRINTING AND SIGNING OF MEMORANDUM

The memorandum of Association of a company shall be (a) printed, (b) divided into paragraphs numbered consecutively, and (c) signed by prescribed number of subscribers (7 or more in the case of public company, two or more in the case of private company respectively). Each subscriber must sign for his/her name, address, description and occupation in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any.

CONTENTS OF MEMORANDUM

1. Name Clause

This clause states the name of the company.

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

1) A name is considered undesirable, when it includes words like 'Government', 'State', 'Municipality', etc., implying patronage or support of the Government, State or Municipality, without the express permission of such authority.
2) A name is considered undesirable when it is identical with or too closely resembles the name of an existing company.
3) The name of the company must end with the word "Limited" in the case of a public company or the words "Private Limited" in the case of a private limited company.
4) The purpose of adding the word "Limited" or the words "Private limited" is to enable all those dealing with the company to know that the liability of the members of the company is limited.
5) Once a company is registered with a name, the name of the company must be painted on signboards and displayed outside every office or place of business of the company. The name must also be engraved in legible characters on the seal-of the company, on its letter heads, notices, invoices, receipts, bills of exchange, advertisements, etc.

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

2. Registered Office Clause

Memorandum of Association must state the name of the State in which the registered office of the company is to be situated. It will fix up the domicile of the company. Further, every company must have a registered office either from the day it begins to carry on business or within 30 days of its incorporation, whichever is earlier, to which all communications and notices may be addressed. Registered Office of a company is the place of its residence for the purpose of delivering or addressing any communication, service of any notice or process of court of law and for determining question of jurisdiction of courts in any action against the company. It is also the place for keeping statutory books of the company.

Notice of the situation of the registered office and every change shall be given to the Registrar within 30 days after the date of incorporation of the company or after the date of change. If default is made in complying with these requirements, the company and every officer of the company who is default shall be punishable with fine which may extend to Rs. 50 per during which the default continues.

3. Object Clause

This is the most important clause in the memorandum because it not only shows the object or objects for which the company is formed but also determines the extent of the powers which the company can exercise in order to achieve the object or objects. Stating the objects of the company in the Memorandum of Association is not a mere legal technicality but it is a necessity of great practical importance. It is essential that the public who purchase its shares should know clearly what are the objects for which they are paying.

In the case of companies which were in existence immediately before the commencement of the Companies (Amendment) Act. 1965, the object clause has simply to state the objects of

the company. But in the case of a company to be registered after be amendment, the objects clause must state separately.

i) Main Objects

This sub-clause has to state the main objects to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of main objects.

ii) Other Objects

This sub-clause shall state other objects which are not included in the above clause.

Further, in case of a non-trading company, whose objects are not confined to one state, the objects clause must mention specifically the States to whose territories the objects extend. (Sec.13).

A company, which has a main object together with a number of subsidiary objects, cannot continue to pursue the subsidiary objects after the main object has come to an end.

Crown Bank. Re (1890) 44 Ch D. 634. A company's objects clause enabled it to act as a bank and further to invest in securities land to underwrite issue of securities. The company abandoned its banking business and confined it self to investment and financial speculation. Held, the company was not entitled to do so.

Incidental acts. The powers specified in the Memorandum must not be construed strictly. The company may do anything which is fairly incidental to these powers. Anything reasonable incidental to the attainment or pursuit of any of the express objects of the company will, unless expressly prohibited, be within the implied powers of the Company.

While drafting the objects clause of a company the following points should be kept in mind.

1. The objects of the company must not be illegal, e.g. to carry on lottery business.
2. The objects of the company must not be against the provisions of the Companies Act such as buying its own shares (Sec. 77), declaring dividend out of capital etc.
3. The objects must not be against public, e.g. to carry on trade with an enemy country.
4. The objects must be stated clearly and definitely. An ambiguous statement like "Company may take up any work which it deems profitable" is meaningless.
5. The objects must be quite elaborate also. Note only the main objects but the subsidiary or incidental objects too should be stated.

The narrower the objects expressed in the memorandum, the less is the subscriber's risk, but the wider such objects the greater is the security of those who transact business with the company.

4. Liability Clause

In the case of company limited by shares or by guarantee, Memorandum of Association must have a clause to the effect that the liability of the members is limited. It implies that a shareholder cannot be called upon to pay any time amount more then the unpaid portion on the shares held by him. He will no more be liable if once he has paid the full nominal value of the share.

The Memorandum of Association of a company limited by guarantee must further state that each member undertakes to contribute to the assets of the company if wound up, while he is a member or within one year after he ceased to be so, towards the debts and liabilities of the company as well as the costs and expenses of winding up and for the adjustment of the rights of the contributories among themselves not exceeding a specified amount.

Any alteration in the memorandum of association compelling a member to take up more shares, or which increases his liability, would be null and void. (Sec 38).

If a company carries on business for more than 6 months while the number of members is less than seven in the case of public company, and less than two in case of a private company, each member aware of this fact, is liable for all the debts contracted by the company after the period of 6 months has elapsed. (Sec. 45).

5. Capital Clause

In case of a company having a share capital unless the company is an unlimited company, Memorandum shall also state the amount of share capital with which the company is to be registered and division there of into shares of a fixed amount [Sec. 13 (4)]. The capital with which the company is registered is called the authorized or nominal share capital. The nominal capital is divided into classes of shares and their values are mentioned in the clause. The amount of nominal or authorized capital of the company would be normally, that which shall be required for the attainment of the main objects of the company. IN case of companies limited by guarantee, the amount promised by each member to be contributed by them in case of the winding up of the company is to be mentioned. No subscriber to the memorandum shall take less than one share. Each subscriber of the Memorandum shall write against his name the number of shares he takes.

6. Association or Subscription Clause

In this clause, the subscribers declare that they desire to be formed into a company and agree to take shares stated against their names. No subscriber will take less than one share. The memorandum has to be subscribed to by at least seven persons in the case of a public company and by at least two persons in the case of a private company. The signature of each subscriber must be attested by at least one witness who cannot be any of the subscribers. Each subscriber and his witness shall add his address, description and occupation, if any. This clause generally runs in this form : "we, the several person whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of the number of shares in the capital of the company, set opposite of our respective name".

After registration, no subscriber to the memorandum can withdraw his subscription on any ground.

ALTERATION OF THE MEMORANDUM

Alteration of Memorandum of association involves compliance with detailed formalities and prescribed procedure. Alternations to the extent necessary for simple and fair working of the company would be permitted. Alterations should not be prejudicial to the members or creditors of the company and should not have the effect of increasing the liability of the members and the creditors.

Contents of the Memorandum of association can be altered as under :

1. Change of Name

A company may change its name by special resolution and with the approval of the Central Government signified in writing . However, no such approval shall be required where the only change in the name of the company is the addition there to or the deletion there from, of the word "Private", consequent on the conversion of a public company into a private company or of a private company into a public company. (Sec.21).

By ordinary resolution. If through inadvertence or otherwise, a company is registered by a name which, in the opinion of the Central Government, is identical with or too nearly resembles the name of an existing comapany, it may change its name by an ordinary resolution and with the previous approval of the Central Government signified in writing. [Sec. 22(1) (a)].

Registration of change of name. Within 30 days passing of the resolution, a copy of the order of the Central Government's approval shall also be field with the Registrar within 3 months of the order. The Registrar shall enter the new name in the Register of Companies in place of the former name and shall issue a fresh certificate of incorporation with the necessary alterations. The change of name shall be complete and effective only on the issue of such certificate. The Registrar shall also make the necessary alteration in the company's memorandum of association (Sec. 23).

The change of name shall not affect any right or obligations of the company or render defective any legal proceeding by or against it. (Sec. 23).

2. Change of Registered Office

This may involve:

(a) Change of registered office from one place to another place in the same city, town or village. In this case, a notices is to be give within 30 days after the date of change to the Registrar who shall record the same.

(b) Change of registered office from one town to another town in the same State. In this case, a special resolution is required to be passed at a general meeting of the shareholders and a copy of it is to be filed with the Registrar within 30 days. The within 30 days of the removal of the office. A notice has to be given to the Registrar of the new location of the office.

(c) Change of Registered Office from one State to another State to another State.

Section 17 of the Act deals with the change of place of registered office form one State to another State. According to it, a company may alter the provision of its memorandum so as to change the place of its registered office from one State to another State for certain purposes referred to in Sec 17(1) of the Act. In addition the following steps will be taken.

Special Resolution

For effecting this change a special resolution must be passed and a copy there of must be filed with the Registrar within thirty days. Special resolution must be passed in a duly convened meeting.

Confirmation by Central Government

The alteration shall not take effect unless the resolution is confirmed by the Central Government.

The Central Government before confirming or refusing to confirm the change will consider primarily the interests of the company and its shareholders and also whether the change

is bonafide and not against the public interest. The Central Government may then issue the confirmation order on such terms and conditions as it may think fit.

3. Alteration of the Object Clause

The Company may alter its objects on any of the grounds (I) to (vii) mentioned in Section 17 of the Act.

The alteration shall be effective only after it is approved by special resolution of the members in general meeting with the Companies Amendment Act, 1996, for alteration of the objects clause in Memorandum of Associations sanction of Central Government is dispensed with.

Limits of alteration of the Object Clause

The limits imposed upon the power of alteration are substantive and procedural. Substantive limits are provided by Section 17 which provides that a company may change its objects only in so far as the alteration is necessary for any of the following purposes:

i. To enable the company to carry on its business more economically or more effectively;
ii. To enable the company to attain its main purpose by new or improved means;
iii. To enlarge or change the local area of the company's operation;
iv. To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;
v. To restrict or abandon any of the objects specified in the memorandum
vi. To sell or dispose of the whole, or any part of the undertaking of the company;
vii. To amalgamate with any other company or body of persons.

Alterations in the objects is to be confined within the above limits for otherwise alteration in excess of the above limitations shall be void.

A company shall file with the registrar a special resolution within one month from the date of such resolution together with a printed copy of the memorandum as altered. Registrar shall register the same and certify the registration. [Sec.18].

Effect of Non Registration with Registrar

Any alteration, if not registered shall have no effect. If the documents required to be filed with the Registrar are not filed within one month, such alteration and the order of the Central Government and all proceedings connected therewith shall at the expiry of such period become void and inoperative. The Central Government may, on sufficient cause show, revive the order on application made within a further period of one month [Sec. 19].

4. Alteration of Capital Clause

The procedure for the alteration of share capital and the power to make such alteration are generally provided in the Articles of Association If the procedure and power are not given in the Articles of Associational, the company must change the articles of association by passing a special resolution. If the alteration is authorized by the Articles, the following changes in share capital may take place:

1. Alteration of share capital [Section 94-95]
2. Reduction of capital [Section 100-105]
3. Reserve share capital or reserve liability [Section 99]
4. Variation of the rights of shareholders [Section 106-107]
5. Reorganization of capital [Section 390-391]

5. Alteration of Liability Clause

Ordinarily the liability clause cannot be altered so as to make the liability of members unlimited. Section 38 states that the liability of the members cannot be increased without their consent. It lays down that a member cannot by changing the memorandum or articles, be made to take more shares or to pay more the shares already taken unless he agrees to do so in writing either before or after the change.

A company, if authorized by its Articles, may alter its memorandum to make the liability of its directors or manager unlimited by passing a special resolution. This rule applies to future appointees only. Such alteration will not effect the existing directors and manager unless they have accorded their consent in writing. [Section 323].

Section 32 provides that a company registered as unlimited may register under this Act as a limited company. The registration of an unlimited company as a limited company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into by the company before such registration.

ARTICLES OF ASSOCIATION

Every company is required to file Articles of Association along with the Memorandum of Association with the Registrar at the time of its registration. Companies Act defines 'Articles as Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies Acts. They also include, so far as they apply to the company, those in the Table A in Schedule I annexed to the Act or corresponding provisions in earlier Acts.

Articles of Association are the rules, regulations and bye-laws for governing the internal affairs of the company. They may be described as the internal regulation of the company governing its management and embodying the powers of the directors and officers of the company as well as the powers of the shareholders. They lay down the mode and the manner in which the business of the company is to be conducted.

In framing Articles of Association care must be taken to see that regulations framed do not go beyond the powers of the company it self as contemplated by the Memorandum of Association nor should they be such as would violate any of the requirements of the companies Act, itself. All clauses in the Articles ultra vires the Memorandum or the Act shall be null and void.

Article of Association are to be printed, divided into paragraphs, serially numbered and signed by each subscriber to Memorandum with the address, description and occupation. Each subscriber shall sign in the presence of at least one witness who shall attest the signatures and also mention his own address and occupation.

CONTENTS OF ARTICLES OF ASSOCIATION

Articles generally contain provision relating to the following matters; (1) the exclusion, whole or in part of Table A; (ii) share capital different classes of shares of shareholders and variations of these rights (iii) execution or adoption of preliminary agreements, if any; (iv) allotment of shares; (v) lien on shares (vi) calls on shares; (vii) forfeiture of shares; (viii) issue of share certificates; (ix) issue of share warrants; (x) transfer of shares; (xi) transmission of shares; (xii) alteration of share capital; (xiii) borrowing power of the company; (xiv) rules regarding meetings; (xv) voting rights of members; (xvi) notice to members; (xvii) dividends and reserves; (xviii) accounts and audit; (xix) arbitration provision, if any; (xx) directors, their appointment and remuneration; (xxi) the appointment and reappointment of the managing director, manager and secretary; (xxii) fixing limits of the number of directors (xxiii) payment of interest out of capital; (xxiv) common seal; and (xxv) winding up.

ALTERATION OF ARTICLES

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

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

1. It should not violate any provision of the Companies Act and general or common law of the country.
2. It must be within the scope of Memorandum of Association of the company.
3. It should not break any existing contact.
4. It must be just and equitable. It must be in the best interests of the company as a whole and should not constitute a fraud on a small minority.
5. It must not impose on any member the obligation to subscribe for more shares or to increase his liability on his existing shares.

6. The alteration must not be inconsistent with the alteration ordered by the court. The court has the power to alter a company's memorandum of association and articles of association in any way it thinks fit. As such, if the court has altered the articles of association of a company, the company cannot make any alteration, which is inconsistent with the court's order without the leave of the court.
7. No alteration should be made so as to enable the company to commit any breach of contract with outsiders.
8. Any alteration requiring the approval of the Central Government can be made only with the approval of the Central Government. The approval of the Central Government is, usually, necessary to alter the following:
   a. Conversion of public company into a private company.
   b. Appointment or re-appointment of managing director, whole-time director, director not liable to retire by rotation and manager.
   c. Increase in the remuneration of a managing director, whole-time director or manager.

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

1. Passing of a special resolution at the extraordinary general meeting.
2. Filing of a copy of special resolution with the registrar.
3. Obtaining the approval of the Central Government
4. Filing of the copy of the altered articles with the registrar.
5. Incorporating the alteration in the articles.
6. Making the copies of the altered articles of association available to the members.

Duties of Secretary:

The Secretary has to take .the following steps in order to alter articles:

- To arrange a board meeting to decide on the alterations in the articles and to fix up the day for an extraordinary general meeting for passing a special resolution to effect a change in the Articles.
- To see that the alterations do not violate any provision of Companies Act, the general law or the company' memorandum of association. Further, it should not be a fraud on a small minority and it should be in the general interest of the members and the company.

- To issue notices of the general meeting along with the proposed special resolution and an explanatory statement at least 21 days before the meeting.
- To get the special resolution passed at an Extraordinary Meeting.
- To file a copy of the special resolution along with the explanatory statement with the Registrar within 30 days of passing the resolution.
- He should get the approval of the Central Government wherever the approval of the Central Government is required for the alteration of the Articles.
- To file with the Registrar an altered or revised printed copy of the Articles of Association within three months of the passing the resolution.

Distinction between Memorandum and Articles of Association

Both the Memorandum of Association and articles of association are important documents of the company. The distinctions between the two are as follows:

1. The Memorandum is the charter of the company setting out its constitution. It lays down the conditions of incorporation and defines the limits and powers of the company. Articles on the other hand, contain the bye-laws of the company for the conduct of its internal administration. They define the rights and duties of the directors, members, etc,
2. The Memorandum states the objects for which the company is established, whereas the Articles state the rules or manner of carrying out the business as stated in the Memorandum. They cannot provide anything contrary to the powers and objects set forth in the Memorandum.
3. A company cannot be incorporated without preparation and filing of the Memorandum with the Registrar, whereas the preparation of article is not compulsory. If the articles are not prepared by any company, Table 'A' of the Companies Act is applied.
4. The Memorandum governs the external relations of the company i.e., relations between the company and the public including creditors, buyers, sellers, debtors, etc,: outsiders dealing with the company know what its permitted range of business is. The articles, on the other hand, define the relationship between the members and the management of the company. Their main concern is to provide rules and regulations for the internal working of the company.

5. The Memorandum is a primary and fundamental document. It is the foundation of the company's structure and is responsible for the company's birth. It is .unchallenged on statutory matters. Articles of association are a secondary, subordinate and subsidiary document. They should be read and understood in the light of the memorandum. They complement and supplement the memorandum.
6. The Memorandum lays down the scope or area of the company beyond which the company cannot go. All acts of the company which are beyond its scope are ultra vires or illegal and they cannot be ratified by the company.

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

7. The Memorandum can be altered only by a special resolution and subject to sanction of the court or the Central Government as the case may be. The articles can be altered by a special resolution and sanction either from the court or the government is not necessary.
8. The Memorandum of association is subordinate only to the companies act. But the articles of association are subordinate not only to the companies act, but also to the memorandum of association.
9. A memorandum of association is deemed to be an unalterable document, as far as the conditions are concerned. So, the conditions in the memorandum of association cannot be altered except in the mode and in the cases and to the extent for which express provision is made in the Companies Act. On the other hand, the articles of association can be altered at any time and any number of times.
10. The procedure required by law to alter the memorandum of association is complicated. But the procedure required bylaw to alter the articles is simple. The articles can be altered by passing a simple resolution.

DOCTRINE OF CONSTRUCTIVE NOTICE

Both the memorandum of association and the articles of association become public documents once they are registered with the Registrar's office on payment of one rupee for each inspection. Sec. 610). It is taken for granted that individuals dealing with the company have nto only read these documents but they have also understood their proper meaning. This presumption that persons contracting with the company know the contents of these two Documents is known as 'Doctrine of Constructive Notice' or 'Constructive Notice of Memorandum and Articles.'

If a person enters into a contact, which is beyond the powers of the company as set out in its memorandum he does not acquire any rights under the contract. For example, if the articles provide that a bill of exchange is to be signed by two directors, a person who has the bill signed by only one director cannot claim payment upon such a bill.

In Kotla Venkataswamy Vs Ram Murthi all the deeds were required to be signed by the managing director, the secretary and the working director according to the articles. But R accepted a deed which was signed only by the secretary and the working director. It was held that R could not enforce his claim under the deed against the company.

It may be noted that there is constructive notice not merely of the memorandum ad articles but also of all the documents such as special resolutions which are required by the Act to be Registered with the Registrar. But there is no notice of documents which are filed only for the sake of record such as returns and accounts.

The doctrine of constructive notice is not a positive doctrine but a negative one. It does not operate against the company. It operates only against outsiders and prevents him pleading ignorance of the contents of these documents and seek exception for being liable.

DOCTRINE IN INDOOR MANAGEMENT

There is one limitation to the doctrine of constructive notice of the Memorandum and the Articles of a company. The outsiders dealing with the company are entitled to assumed that as far as the internal proceedings of the company are concerned, everything has been regularly done. They are bound to read the registered documents and to see that the proposed dealing is not

inconsistent therewith, but they are not bound to do more; they need not require into the regularity of the internal proceedings as required by the Memorandum and the Articles. This limitation of the doctrine of constructive notice is known as the 'doctrine of indoor management' or the rule in Royal British Bank V. Turquand or just Turquand Rule. Thus, whereas the doctrine of constructive notice protects the company against outsiders, the doctrine of indoor management seeks to protect outsiders against the company.

The gist of the rule is that persons dealing with limited liability companies are not bound to inquire into their indoor management and will not be affected by irregularities of which they had no notice.

The rule is based one public convenience and justice:

First, the Memorandum and the articles are public documents. They are open to inspection by everybody. But the details of internal proceedings are not open to public inspection. An outsider is presumed to know the constitution of a company but not what may or may not have taken place within the doors that are closed to him.

Secondly, the lot of creditors of a limited liability company is not a particularly happy one it would be unhappier still if the company could escape liability by denying the authority of the officer to act on its behalf.

Exceptions to the Doctrine of Indoor Management

1. Knowledge of Irregularity

Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management. He may in some cases be himself a part of the internal procedure.

T.R. Pratt (Bombay) Ltd. V.E.D. Sassoon & Co. Ltd. A.I.R. (1936) Bom 62. Company a lent money to company B on a mortgage of its assets. The procedure laid down in the Articles for such transactions was not complied with. The directors of the two companies were the same. Held, the lender had notice of the irregularity and hence the mortgage was not binding.

In Howard V. Patent Invory Co., (1988) 38 Ch. 156. The directors of a company could borrow any amount up to $ 1,000 without the resolution of the company in a general meeting. But for any amount beyond $ 1,000 they had to obtain the consent of the shareholders in general meeting. The directors themselves lent to the company an amount in excess of the borrowing powers of the company without the consent of the shareholders in a general meeting. Held, the directors had the notice of the internal irregularity and hence the company was liable to them only for $ 1,000.

2. Negligence

Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he cannot claim the benefit of the rule of indoor management. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry and the outsider dealing with the company does not make proper inquiry.

Anand Bihari Lal V. Dinshaw and Co. AIR (1942) oudh 417. The plaintiff, in this case accepted a transfer of a company's property from its accountant. Held, the transfer was void as such a transaction was apparently beyond the scope of the accountant's authority. The paintiff should have seen the power of attorney executed in favour of the accountant by the company.

A1 Underwood V. Bank of Liverpool, (1924) 1 K.B. 775, The sole director of a company in this case paid into his own account cheques drawn in favour of the company. Held, the bank was liable as it ought to have made proper inquired before crediting the account of the director.

3. Acts Void abInitio and Forgery

Where the acts done in the name of a company are void abinitio, the doctrine of indoor management does not apply. The doctrine applied only to irregularities that otherwise might affect a genuine transaction. It does not apply to a forgery A company can never be held bound for forgeries committed by its officer.

Ruben V. Great Fingall Consolidated Co. (1906) A.C. 439, Share certificate was forged by the secretary of a company. The Secretary then issued it to R under the seal of the company.

R, the holder of he certificate claimed to be entitled to be registered as the holder of the shares. Held, the certificate did not confer any right on the shareholder.

4. Act outside the Scope of Apparent Authority

If an officer of a company enters into a contract with a third party and if the act of the officer is beyond the scope of his authority the company is not bound.

Kreditbank Cassel V. Schenkers Ltd. (1927) 1. K.B. 82 A branch manager of a company drew and endorsed bill of exchange on behalf of the company. He had no authority from the company to do so. Held, the company was not bound.

PROSPECTUS

The promoters of a public company will have to take steps to raise the necessary capital for the company, after having obtained the Certificate of Incorporation. A public company may invite the public to subscribe to its shares or debentures. Prospectuses are to be issued for this purpose. To issue a prospectus is very essential for a public company. If the promoters of the company are confident of raising the required capital privately from their friend or relatives, they need not issue a prospectus. In such a case, a statement in lieu of prospectus must be filed with the Registrar. A private company is not allowed to issue a prospectus since it cannot invite the general public to subscribe to its shares and debentures. It is not required to file a statement in lieu of prospectus.

DEFINITION OF PROSPECTUS

Section 2(36) defines a prospectus an "any document described as issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting orders from the public for the subscription or purchase of any share in, or debentures of, a body corporate". In simple words, a prospectus may be defined as an invitation to the public to subscribe to a company's shares or debentures. By virtue of the Amendment Act of 1974, any document inviting deposits from the public shall also come within the definition of prospectus. The word "Prospectus" means a document which invites deposits from the public or invites offers from the public to buy shares or debentures of the company.

A document will be treated as a prospectus only when it invites offers from a public. According to Section 67 the term "public" is defined as, "It includes any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner". It further provides that no offer of invitation shall be treated as mode to the public if, (i) the same is not calculated to result in the shares or debentures becoming available other than those receiving the offer or invitation; (ii) it appears to be a domestic concern of the person making and receiving the offer or invitation. The 'public' is a general word. No particular numbers are prescribed. The point is that the offer makes the shares and debentures available for subscription to any one who brings his money and applies in due form, whether the prospectus was addressed to him on behalf of the company or not. A private communication does not satisfy the above point.

Where directors make an offer to a few of their friends, relatives or customers by sending them a copy of the prospectus marked "not for publication" it is not considered an offer to the public.

The provisions of the Act relating to prospectus are not attracted unless the prospectus is issued to the public. Issued means issued to the public. Whether the prospectus has been issued to the public or not is a matter of fact. The leading case of this point is Nash v Lynde (1929) A.C. 158. In this case the managing director of a company prepared a document that was marked "strictly private and confidential" and did not contain the particulars required to be disclosed in a prospectus. A copy of the document along with application forms was sent to a solicitor who in turn sent it to the plaintiff. The document was held not be prospectus and as such the claim of the plaintiff for compensation was dismissed.

In the case Re South of England Natural Gas and Petroleum Co. Ltd. (1911) 1 Ch. 573, the distribution of 3,000 copies of a prospectus among the members of certain gas companies was held to be an offer to the public because person other than those receiving the offer could also accept it. One may note that under Section 67 an offer or invitation to any section of the public, whether selected as members or debenture holders of the company or as clients of the person making the invitation, will be deemed to be an invitation to the public.

The term "subscription of purchase of shares" means taking or agreeing to take shares for cash. Any document to be called a prospectus must have the following ingredients:

1. There must be an invitation offering to the public;
2. The invitation must be or on behalf of the company or in relation to an intended company;
3. The invitation must be to subscribe or purchase.
4. The invitation must relate to shares or debentures.

OBJECTS OF PROSPECTUS

1. To bring to the notice of public that a new company has been formed.
2. To preserve an authentic record of the terms of allotment on which the public have been invited to but its shares or debentures.
3. The secure that the directors of the company accept responsibility of the statement in the prospectus.

RULES REGARDING ISSUE OF PROSPECTUS

1. Issue after Incorporation

Section 55 of the Act permits the issue of prospectus in relation to an intended company. A prospectus may be issued by or on behalf of the company.

(a) By a person interested or engaged in the formation company or
(b) Through an offer for sale by a person to whom the company has allotted shares.

2. Dating of Prospectus

A prospectus issued by a company shall be dated and that date shall be taken as the date of publication of the prospectus (Section 55). Date of issue of the prospectus may be different from the date of publication.

3. Registration of Prospectus

A copy of every prospectus must be delivered to the Registrar for registration before it is issued to the public. Registration must be made on or before the date of its publication. The copy sent for registration must be signed by every person who is named in the prospectus as a director or proposed director of the company or by his agent authorized in writing. Where the prospectus

is issued in more than one language, a copy of its as issued in each language should be delivered to the registrar. This copy must be accompanied with the following documents:

(a) If the report of an expert is to be published, his written consent to such publication;
(b) A copy of every contract relating to the appointment and remuneration of managerial personnel;
(c) A copy of every material contract unless it is entered in the ordinary course of business or two years before the date of the issue of prospectus;
(d) A written statement relating to adjustments; if any, made by the auditors or accountants in their reports relating to profits and losses, assets and liabilities or the rates of dividends, etc.; and
(e) Written consent of auditors, legal advisers, attorney, solicitor, banker or broker of the company to act in that capacity.

A copy of the prospectus along with specific documents must been field with the Registrar. The prospectus must be issued within ninety days of its registration. A prospectus issued after the said period shall be deemed to be a prospectus, a copy of which has not been delivered to the Registrar for registration. The company and every person who is knowingly a party to the issue of prospectus without registration shall be punishable with fine which may extend to five thousand rupees (Section 60).

4. Expert's Consent

A prospectus must not include a statement purporting to be made by an expert such as an engineer, valuer, accountant etc. unless the expert is a person who has never been engaged or interested in the formation or promotion as in the management of the company (Section 57).

A statement of an expert cannot be include in the prospectus without his written consent and this fact should be mentioned in the prospectus. Further, this consent should not be withdrawn before delivery of the prospectus for registration Section (58).

5. Terms of the Contract not to be varied

The terms of any contract stated in the prospectus or statement in lieu of prospectus cannot be varied after registration of the prospectus except with the approval of the members in the general meeting (Section 61).

6. Application forms for shares to be accompanied by an abridged form of Prospectus

Every from of application for subscribing the shares or debentures of a company shall not be issued unless it is accompanied by a copy of prospectus except when it is issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to shares or debentures or in relation to shares or debentures which were not offered to the public [(Section 56(3)].

Section 56(5) provides that the prospectus need not contain all the details required by the Act where the offer is made to exiting members or debenture holders of the company or if such shares or debentures are in all respect uniform with shares or debentures already issued and quoted on a recognize stock exchange.

7.Personation for Acquisition of Shares

The provision, consequences of applying for shares in fictitious names to be prominently displayed must be reproduced in every prospectus and every application form issued by the company to any person.

A person who makes in a fictitious name to a company for acquiring shares or subscribing any shares or subscribing any shares shall be liable to imprisonment which may extend to five years similarly, a person who induces a company to allot any shares or to register any transfer of shares in a fictitious name is also liable to the same punishment. [Section 68(a)].

8. Contents as Per Schedule II

Every prospectus must disclose the matters as required in Schedule II of the Act. It is to be noted that if any condition binding on the applicant for shares or debentures in a company to waive compliance with any requirements of the Act as to disclosure in the prospectus or

purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void [Section 56(2)].

If a prospectus is issued without a copy thereof, the necessary documents or the consent of the experts the company and every person, who is knowingly a part to the issue of the prospectus, shall be punishable with fine which may extend to Rs. 5,000/-.

CONTENTS OF PROSPECTUS

A prospectus is issued to the public to purchase the shares or debentures of the company. Every person wants to invest his money in some sound undertaking. The soundness of a company can be known from the prospectus of a company. Thus, the prospectus must disclose the true nature of company's activities which enable the public to decide whether or not to invest money in the company. In fact, the public invest money in the company on the faith of the representation contained in the prospectus. Therefore, everything should be stated with strict accuracy, and the complete and true position of the company should be disclosed to the public.

Section 56 lays down that every prospectus issued (a) by or on behalf of a company, or (b) by on behalf of any person engaged or interested in the formation of a company, shall:

1. State the matters specified in Part I of Schedule II, and.
2. Set out the reports specified in Part II or Schedule II both Part I and II shall have effect subject to the provisions contained in Part III of that Schedule II.

Part I of Schedule II

1. The main objects of the company with names, descriptions, occupations and addresses of the signatories to the Memorandum of association, and number of shares subscriber by them.
2. The number and classes of shares, and the nature and extent of the interests of the shareholders in the property and profits of the company.
3. The number of redeemable preference shares intended to be issued with particulars as regards their redemption.
4. The number of shares fixed by the articles of company as the qualification of a director.

5. The names, addresses, description and occupation of directors, managing director or manager or any of those proposed person.
6. Any provisions in the articles or any contract relating to appointment, remuneration and compensation for loss of office of directors, managing director or manager.
7. The amount of minimum subscription.
8. The time of the opening of the subscription list cannot be earlier than the beginning of the fifth day after the publication of prospectus.
9. Amount payable on application and allotment on each share shall be stated. If any allotment was previously made within two preceding years, the details of the shares allotted and the amount; if any, paid thereon.
10. Particulars about any option or preferential right to be given to any person to subscribe for shares or debentures of the company.
11. The number, description and amount of shares and debentures which, within the last two years, have been issued or agreed to be issued as fully or partly paid up than in cash.
12. The amount paid or payable as a premium, if any, on such share issued within two years preceding the date of the prospectus or is to be issued stating the necessary particulars.
13. The names of the underwriters of shares or debentures, if any, and the opinion of the directors that the resources of the underwriters are sufficient to discharge their obligations.
14. The names or addresses description and occupations of the vendors from whom the property has been purchased or is to be purchased, and the amount paid or payable in cash, shares or debentures respectively.
15. The amount of underwriting commission paid within two preceding years or payable to any person for subscribing or procuring subscription for any shares or debentures of the company.
16. Any benefit given to any promoter or officer in preceding two years and the consideration for giving of the benefit.
17. Particulars as to the date, parties and general nature of every contract appointing or fixing the remuneration of managing director or manager, whenever entered into.

18. Particulars of every material contract not entered into in the ordinary course of business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of the prospectus.
19. Names and addresses of the auditors of the company.
20. Full particulars of the nature and extent of interested of the directors or promoter in the promotion of the company or in the property acquired by the company within two years of the issue of the prospectus
21. If the share capital of the company is divided into different classes of shares, the rights of voting at meeting of the company and the rights in respect of capital and the dividends attached to several classes of shares respectively.
22. Where the articles of the company impose any restriction upon the members of the company in respect of the rights to attend, speak or vote at meetings of the company or the rights to transfer shares or on the directors of the company in respect of their powers of management, the nature and extent of these restrictions.
23. Where the company carries on business, the length of time during which it has been carried on. If the company proposes to acquire a business which has been carried on for less than three years, the length of time during which the business had been conducted.
24. If any reserves or profits of the company or any of its subsidiaries have been capitalized, particulars of the capitalization and particulars of the surplus arising from any revaluation on the assets of the company.
25. A reasonable time and place at which copies of all balance sheets and profits and loss accounts, if any, on which the report of the auditors under part II below is based, may be inspected.

Part II of Schedule II

I. General Information

1. Names and address of the Company Secretary, Legal Adviser, Lead Managers, Co-managers, Auditors, Bankers to the company. Bankers to the issue and Brokers to the issue.
2. Consent of Directors, Auditors, Solicitors/Advocates, Managers to issue, Registrar of Issue, Bankers to the company, Bankers to the issue and Experts.

3. Expert's opinion obtained, if any.
4. Change, if any, in directors and auditors during the last 3 years, and reasons thereof.
5. Authority for the issue and details of resolution passed for the issue.
6. Procedure and time schedule for allotment and issue of certificates.

II. Financial Information

1. Report by the Auditors

A report by the auditors of the company as regards (a) its profits and losses and assets and liabilities of the company and (b) the rates of dividend, if paid by the company during the preceding 5 financial years.

If no accounts have been made up in respect of any part of the period of 5 years ending on a date 3 months before the issue of the prospectus, the report shall, in addition, deal with either the combined profits and losses and assets and liabilities of its subsidiaries or each of the subsidiary, so far as they concern the members of the company.

2. Reports by the Accountants

(a) A report by the accountants on the profits or losses of the business for the preceding 5 financial years, and on the assets and liabilities of the business on a date which shall not be more than 120 days before the date of the issue of the prospectus. This report is required to be given, if the proceeds of the issue of the shares or debentures are to be applied directly on the purchase of any business.

(b) A similar report on the account of a body corporate by an accountant if the proceeds of the issue are to be applied in the purchase of shares of a body corporate so that body corporate becomes a subsidiary of the acquiring company.

(c) Principal terms of loans and assets charged as security.

3. Statutory and Other Information

Statutory and other information minimum subscription, underwriting commission and brokerage; date of allotment, closing date, date of refund, option to subscribe, material contracts and inspection of documents, etc. are required to set out in the prospectus.

Part III of Schedule III

Part III of the schedule consists of provisions applying to Part I and II of the said schedule.

(a) Every person shall, for the purpose of this schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase of any property to be acquired by the company, in any case where (a) the purchase money is not fully paid at the date of the issue of the prospectus (b) the purchase money is to be paid or satisfied, wholly or in part, out of the proceeds of the issue offered for subscription by the prospectus; (c) the contract depends for its validity or fulfillment on the result of that issue.

(b) In the case of a company which has been carrying on business for less than 5 financial years, reference to 5 financial years means reference to that number of financial years for which business has been carried on.

(c) Reasonable time and place at which copies of all balance sheets and profit and loss accounts on which the report of the auditors is based, and material contracts and other documents may be respected.

"Term year" wherever used herein earlier means financial year.

Declaration

That all the relevant provision of the Companies Act, 1956 and the guide lines issued by the Government have been complied with and no statement made in the prospectus is contrary to the provisions of the Companies Act, 1956 and rules there under. The prospectus shall be dated and signed by the directors.

Statement by Experts

1. Experts to be unconnected with formation or management of company (Section 57). Where a prospectus includes a statement made by an expert, he shall not be engaged or interested in the formation, promotion or management of the company. The expression 'expert' includes an engineer, accountant, a valor and, any other person whose profession gives authority to a statement made by him.

2. Expert's consent to issue of prospectus containing statement by him (Section 58). A prospectus including a statement made by an expert shall not be issued, unless (a) he has given his written consent to be issued of the prospectus with the statement included in the form and context in which it is included and; (b) statement that he has given and has not withdrawn his consent as aforesaid appears in a prospectus.
3. A wholesome rule intended to protect intending investors by making the expert a party to the issue of the prospectus and making him liable for untrue statements (Section 58). Penalty [Section 59 (1)], if any, prospectus is issued in contravention of Section 57 or 58, the company, and every person who is knowingly a party to the issue thereof, shall be punishable with fine which may extent to Rs. 5,000/-

RED-HERRING PROSPECTUS

Red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered. The information memorandum and red-herring prospectus carry same obligations as are applicable in the case of prospectus. Every variation between the information memorandum and the red-herring prospectus shall be highlighted by the issuer company and shall be individually intimated to the persons invited to subscribe to the securities. Section 60B(7) provides that the applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters.

The company or underwriters or bankers shall not encash subscription moneys or post-dated cheques or stock-invest received in advance, before the date of opening of the issue, without having individually intimated the prospective subscribers of the variation and without having offered an opportunity to such prospective subscribers to withdraw their application and cancel their post-dated cheques or stock-invest or return of the subscription paid.

If a company or underwriter or banker to the issue acts contrary to this stipulation i.e. without giving enough information of any variations or the particulars of withdrawing the offer or opportunity for cancelling the post-dated cheques or stock invest, such action shall be void and the applicant shall be entitled to receive a refund or return of his post-dated cheques or stock

invests or subscription money or cancellation of application. The applicants are entitled to receive back their original applications and interest at the rate of 15% from date of encashment till payment or realisation.

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

MIS-STATEMENT OF PROSPECTUS

A prospectus is an invitation to the public to subscribe to the shares or debentures of a company. Every person authorizing the issue of prospectus has a primary responsibility to seed that the prospectus contains the true state of affairs of the company and does not give any fraudulent picture to the public. People invest in the company on the basis of the information published in the prospectus. They have to be safeguarded against all wrongs or false statements in prospectus. Prospectus must give a full, accurate and a fair picture of material facts without concealing or omitting any relevant fact. This is known as the 'Golden Rule' for framing prospectus as laid down in New Brunswick etc. Co. V. Muggeridge [(1860) 3 LT 651]. The true nature of company's venture should be disclosed. The statements which do not qualify to the particulars mentioned in the prospectus or any information is intentionally and willfully concealed by the directors of the company, would be considered as mis-statement.

Thus, the term 'venture statement' as 'mis-statement' is used in a broader sense. It includes not only false statements which produce a impression of actual facts. Concealment of a material fact also comes within the category of misstatement.

A statement included in a prospectus shall be deemed to be untrue, if:

- The statement is misleading in the form and context in which it is included; and
- The omission from a prospectus of any matter is calculated to mislead (Section 65).

If there is any misstatement of a material fact in a prospectus as if the prospectus is wanting in any material fact, this may arise-

1. Civil Liability

A person who has induced to subscribe for shares (or debentures) on the faith of a misleading prospects has remedies against the company, directors, promoters, and experts. Every person who is a director and promoter of the company, and who has authorized the issue of the prospectus [Section (2)].

a) Compensation

The above persons shall be liable to pay compensation to every person who subscribes for any shares or debentures for any loss or damage sustained by him by reason of any untrue statement included therein [Section 62(1)].

In McConnel V. Wright (1903 1 Ch 5460 it has been held that the measure of the damages is the loss suffered by reason of the untrue statement, omissions, etc. the difference between the value which the shares would have had and the true value of the shares at the time of the allotment.

b) Recession of the Contract for Misrepresentation

Avoiding the contract is recession. Any person can apply to the court for recession of the contract if the statements on which he has taken the shares are false or caused by misrepresentation whether innocent or fraudulent.

1. The statement must b a material misrepresentation of fact
2. It must have induced the shareholder to take the shares.
3. The deceived shareholder is an allottee and he must have relied on the statement in the prospectus.
4. The omission of material fact must be misleading before recession is granted.
5. The proceedings for recession must be started as soon as the allottee comes to know of a misleading statement.

c) Damages for Deceit as Fraud

Any person induced to invest in the company by fraudulent statement in a prospectus can sue the company and person responsible for damages. The share should be first surrendered to company before the company is used for damages.

Fraud occurs when any statement is made without belief in the truth or carelessly. A statement made with knowledge that it is false, will constitute fraud or deceit. In the leading case on the point - Derry V. Peek (1889 14 AG 337). It has been held that if the person making the statement honesty believes it to be true, he is not guilty of fraud even if the statement is not true. The facts of this case were:

The Tramway company had power by special Act to make tramways and to use steam power with the consent of the Board of Trade. The plants of the company are approved honesty. The directors of the company believed that since the plans were approved, permission to use steam power from Board of Trade was only a formality and would be granted. Prospectus was issued wherein the directors stated that the consent to use steam power was obtained by the company. Subsequently, the consent was refused and company had to be wound up. On the action by plaintiffs for deceit it was held that the directors were not liable for fraud as they honesty believed that the consent would be obtained, though the statement was untrue.

d) Liability for Non-Compliance

A director or other person responsible shall be liable for damage for noncompliance with or contravention of any of the matters to be stated and reports to be set out in the prospectus as provided [by Section 56(41)].

e) Damages for Fraud under General Law

Any person responsible for the issue of prospectus may be held liable under the general law or under the Act for misstatements or fraud.

f) Penalty for Contravening Sec. 57 & 58

If any prospectus is issued is contravention of Section 57, (experts to be unconnected with formation or management of company), or Section 58 (expert's consent to issue of prospectus containing statement by him) the company and every person who is knowingly party to the issue thereof, shall be punishable with fine which may extend to Rs. 5,000/-.

g) Penalty for Issuing the Prospectus without Registration

If a prospectus is issued without a copy of thereof being delivered to the Registrar, the company and every person who is knowingly a party to the issue of the prospectus shall be punishable with fine which may extent to Rs 5,000 [Section 60(5)].

Defense against Civil Liability

Every person made liable to pay compensation for any loss or damages may escape such liability by proving that:

1. Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent
2. The prospectus was issued without his knowledge or consent and that on becoming aware of its issue he forth with gave reasonable public notice that it was issued without his knowledge or consent.
3. After the issue of prospectus, and before allotment thereunder he, on becoming aware of any untrue statement therein withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal.
4. If a director, etc., has reasonable ground to believe that the statement was true and he, in fact, believed it to be true up to the time of allotment, he is not liable. But it is not enough for a director to say that he was honest, he has to show that his honest belief was based on reasonable grounds.
5. If statement is a correct and fair representation or extract or copy of the statement made by an expert who is competent to make it and had given his consent and had not withdrawn it, the director, etc., is not liable. Likewise, if the statement is a correct and fair representation or

extract or copy of an official document or is based on the authority of an official person, no liability attaches to the director etc.

2. Criminal Liability

Every person who authorized the issue of prospectus shall be punishable for untrue statement with imprisonment for a term which may extend to 2 years or with fine which may extend to Rs. 5,000/- or with both [Section 63(1)].

Penalty for Fraudulently including Persons to invest Money

Any person who either knowingly or recklessly makes any statement, promises or forecast which is false, deceptive or misleading or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into;

- Any agreement with a view to acquiring, disposing of, subscribing for, or underwriting shares or debentures;
- An agreement to secure to any of the parties from the yield of shares or debentures; or by reference to fluctuation in the value of shares or debentures; shall be punishable for a term which may extend to 5 years of with fine which may extend to Rs. 10,000/- or with both.

Defence against Criminal Liability

Any person made criminally liable can escape the same as proving that

- The statement was true [Section 63(i)]. statement was immaterial; or
- He had a reasonable ground to believe and did upto the time of the issue of prospectus that the statement was true [Section 63(i)].

GLOBAL DEPOSITORY RECEIPT

A global depositary receipt (GDR) is a bank certificate issued in more than one country for shares in a foreign company. The shares are held by a foreign branch of an international bank. The shares trade as domestic shares but are offered for sale globally through the various bank branches.

BOOK BUILDING

Book building is a process of price discovery. Book building is a process by which the issuer company before filing of the prospectus, builds-up and ascertains the demand for the securities being issued and assesses the price at which such securities may be issued and ultimately determines the quantum of securities to be issued.

Under book building process, the issuing company is required to tie up the issue amount by way of private placement. The issue price is not priced in advance. It is determined by offer of potential investors about price which they may be willing to pay for the issue. To tie-up the issue amount, the company organizes road shows and various advertisement campaigns.

ALLOTMENT OF SHARES

When a company issue a prospectus inviting the public to subscribe for the shares of a company, it is merely an invitation rather than an offer. An application for shares is an offer by the prospective shareholders to take the shares of the company. Such offers are made on application forms supplied by the company. When an application is accepted, it is called allotment. Allotment is the acceptance by the company of the offer made by the applicant. Allotment results in a binding contract between the parties. The term allotment has not been defined in the Companies Act.

GENERAL PRINCIPLES REGARDING ALLOTMENT

The provisions of the law of contract regarding the acceptance of an offer apply to the allotment of shares by a company. The general principles relating to the allotment of shares are as follows :

1. Proper Authority

Allotment must be made by a resolution of the Board of Directors or by a committee authorized to allot shares on behalf of the Board if permitted by the articles.

2. Absolute and Unconditional

The allotment must be absolute and unconditional. If an application for shares in made subject to a condition, then that condition has to be fulfilled in order to make the allotment effective. In case that condition is not fulfilled, the applicant is not bound to take the shares.

3. Within a Reasonable Time

The allotment must be made within a reasonable time after the receipt of the application. Otherwise the applicant shall not be bound to accept it.

4. Must be Communicated

The allotment must be communicated to the person making the application so that it is legally complete. Communication need not be in a particular form unless the articles of the company provide otherwise. Whatever is the mode of communication, it must be made to the applicant or his agent who is duly authorized to receive it. In case of postal communication, allotment is complete as soon as the letter of allotment is posted even though it is never received (Household Fire Insurance Co. v. Grant).

5. Revocation of the Offer

An offer to take shares can be revoked at any time before the allotment is communicated.

H applied for shares in a company which were allotted to him. The letter of allotment was sent by the company's agent to be delivered by hand to H. Before the delivery of the letter of allotment, H withdrew his application. It was held that H was not a shareholder of the company. [Re National Savings Bank Association (1867) L.R. 4E9.9]

In the same way, the allotment can be withdrawn by the company before it is communicated completely to the applicant.

RULES OF ALLOTMENT

The Companies Act, 1956 does not prescribe any restriction as to the allotment of shares and debentures when issued by private companies. However, the Companies Act prescribes

certain restrictions regarding the allotment of shares and debentures by public companies. Such restriction may be discussed under the following two heads:

a) When No Public Offer is made

b) When Public Offer is made

a) When No Public Offer is made

A public company having share capital, which does not issue a prospectus or has issued a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless a statement in lieu of prospectus has been delivered to the Registrar at least three days before the first allotment of shares or debentures. The statement must be signed by every person who is a director or proposed director of the company or by his agent authorised in writing. (Section 70 (1)]

If the company contravenes the above provision, the allotment shall be irregular and voidable at the option of the allottee. Further, the company, and every director of the company who willfully authorizes or permits the contravention, shall be punishable with fine which may extend to Rs. 1000. [Section 70(4)]

b) When Public Offer is made

In the case of public company offering shares or debentures to the public for subscription, the provisions relating to allotment may be discussed under the following three heads:

i. First Allotment of Shares
ii. Subsequent Allotment of Shares
iii. Allotment of Debentures

i. First Allotment of Shares

The Companies Act, 1956 imposes the following restrictions which must be complied with by a public company which offers shares to the public for the first time:

1. Registration of Prospectus

The company must deliver a copy of the prospectus to the Registrar for registration on or before the date of its publication. It must be signed by every director or proposed director of the company or by his agent authorised in writing. [Sec. 60(1)]

2. Minimum Subscription

No allotment shall be made of any share capital of the company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount has been subscribed and the sum payable on application for such amount has been paid to or received by the company. [Sec.69(1)]

The amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash. [Sec.69(2)]

A company making any rights or public issue of shares, debentures etc. must receive a minimum of 90 per cent subscription against the entire issue before making an allotment of shares or debentures to the public. If the amount of minimum subscription is not received within 120 days of the issue of the prospectus, all amounts received from the applicants shall be refunded to them immediately without interest. However, if the refund is not made within 130 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay the money with interest @ 6% p.a. for the delayed period.

3. Application Money

The amount payable on application for each share shall not be less than 5% of the nominal amount of the share [Sec.69(3)]. SEBI guidelines prescribe that in the case of mega issues (exceeding Rs. 500 crore), the amount payable with the application on allotment or any one call should not exceed 25% of the value of shares.

All moneys received from the applicants for shares shall be deposited and kept deposited in a scheduled bank:

(a) Until the certificate of commencement of business is obtained, or

(b) Where such certificate has already been obtained, until the entire amount payable on application for shares in respect of the minimum subscription has been received by the company. [Sec. 69 (4)]

If the conditions aforesaid have not been complied with, all moneys received from the applicants for shares shall be forthwith repaid to them without interest. If any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 6% p.a. from the expiry of 130 days. A director shall not be liable if he proves that default in the repayment of the money was not due to any misconduct or negligence on his part. [Sec. 69 (4)]

Any condition which requires or binds any applicant for shares not to comply with any requirement of Section 69 shall be void. [Sec. 69(6]

4. Subscription List

No allotment shall be made until the beginning of the 5th day after a date on which the prospectus is issued or such later time as may be specified in the prospectus. This day is known as the 'opening of the subscription list'.

Where after the issue of the prospectus, a public notice is given by some responsible person, disclaiming his responsibility for the issue of the prospectus, no allotment shall be made until the beginning of the fifth day after that on which such public notice is first given [Sec. 72(1)]

A company may proceed to allot shares soon after the opening of the subscription list. In case of listed shares, however, the subscription list must be kept open for at least 3 days under the rules of recognized stock exchanges. The prospectus generally states the time when the subscription lists will be closed. The allotment of shares in contravention of these provisions is valid. But the company and every officer who is in default shall be liable to a fine up to Rs. 5,000 [Section 72(3)].

An application for shares shall not be revocable until after the expiry of the fifth day after the opening of the subscription list. [Section 72 (5)]. The object of these provisions is to discourage the activities of stags.

5. Shares and Debentures to be dealt on a Stock Exchange

Where prospectus states that an application has been, or will be, made for permission for the shares or debentures offered thereby to be dealt in one or more recognized stock exchanges, the allotment made under such prospectus be void :

i. If the permission has not been applied for before the 10th day after the issue of the prospectus, or
ii. If permission has not been granted by the stock exchange, as the case may be, before the expiry of 10 weeks from the date of the closing of the subscription list.

If the allotment becomes void, the company must forthwith repay without interest all moneys received from applicants in pursuance of the prospectus and if any such money is not repaid within 8 days after the company becomes liable to repay it, the directors shall be jointly and severally liable to repay that money with interest between 4 to 15% per annum from the expiry of the eighth day [Sec. 73(2)].

Return on Excess Money where Permission is granted

Where permission has been granted by the recognised stock exchange or stock exchanges for dealing in any shares or debentures and moneys received from the applicants for shares or debentures are in excess of the aggregate of the application moneys relating to the shares or debentures in respect of which allotments have been made, the company shall repay the moneys to the extent of such excess forthwith without interest. If such money is not repaid within eight days from the day the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than 4% and not more than 15%, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money. [Sec. 73(2A)]

If default is made in complying with the provisions of Section 73(2A), the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 5000 and where the repayment is not made within 6 months from the expiry of the eight day, also with imprisonment for a term which may extend to one year. [73(2B)]

All Moneys to be kept in a Separate bank account in a Scheduled Bank

Where a prospectus states that an application has been made to stock exchange for permission for the shares to be dealt in on the stock exchange, all moneys received shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted and where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal. Where the permission has not been applied for or has not been granted, the moneys shall be repaid within the time and in the manner specified in Section 73(2). If default is made in complying with this Section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to Rs. 5000. [Sec. 73(3)].

2. Subsequent Allotment of Shares

In case of subsequent allotment of shares all the 'statutory provisions' regarding 'first allotment of shares' apply equally, except:

- Minimum subscription [Sec. 69 (1)]; and
- Application money must be deposited in a scheduled bank. [Sec 69(4)]

3. Allotment of Shares

In case of issue of debentures all the statutory provisions regarding 'first allotment of shares' apply equally, except:

- Minimum subscription [Sec. 69(1)];
- The amount payable on application; [Sec.69(3)] and
- Application money must be deposited in a scheduled bank. [Sec.69(4)]

FORFEITURE OF SHARES

Forfeiture may be termed as penalty for violation of terms of contract. Forfeiture of shares means taking back of shares by the company from the shareholders. If the shareholder makes default in payment of calls on shares, then the company can use the option of forfeiting the shares. For a valid forfeiture, satisfaction of following conditions is necessary:

1. Articles of Association must authorise the forfeiture of shares. Where power is given in the articles, it must be exercised in accordance with the regulation regarding notice, procedure and manner stated therein; otherwise the forfeiture will be void. The power of forfeiture must be exercised bona fide and in the interest of the company. It should not be collusive or fraudulent If Articles authorise, the forfeiture shall include forfeiture of all dividends declared in respect of the forfeited shares and such dividend is not actually paid before the forfeiture of the shares
2. Resolution for Forfeiture - Article 31 of the Table A provides that if the defaulting shareholder does not pay the amount within the specified time as required by the notice, the directors may pass a resolution forfeiting the shares.
3. Proper Notice - Before the shares of a member are forfeited, a proper notice to that effect must have been served. Regulation 30 of Table A provides that a notice shall name a further day (not less than 14 days from the date of service of the notice) on or before which the payment is to be made. The notice must also mention that in the event of non payment, the shares will be liable to be forfeited.
4. Power of forfeiture must be exercised bona fide and for the benefit of the company - The power to forfeit be exercised bona fide and for the benefit of the company. The power must be used in order to coerce reluctant shareholders into paying their calls. The power of forfeiture cannot be exercised to relieve unwilling shareholders from the liability of making the payment. Such a shareholder continues to be responsible for the unpaid part of the shares When forfeiture of shares takes place, shareholder ceases to be a member and the forfeited shares become the property of the company. Regulation 33(2) of table A further provides that the liability of a person whose shares have been forfeited ceases if and when the company receives payment in full of all such money in respect of the shares forfeited. If liquidation

takes place, the original holder shall remain liable as a past member to pay calls within one year of forfeiture. However, a company cannot recover from him more than the difference between the amount payable and the amount received on forfeited shares.

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

Re-issue of Forfeited Shares

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

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

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

Where shares are sold for non payment of calls, the purchaser is liable to a fresh call in respect of the total amount of the prior calls. But, if any amount is recovered from the ex-holder in respect of the calls, the purchaser will be entitled to the benefit of any amount so recovered. Likewise, any payments by the purchaser will reduce the liability of the ex-holder.

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

TRANSFER OF SHARES

The shares in a company are movable property and they can be transferred in the manner provided by the articles of the company. A private company with a share capital, by its very nature as provided by Section 3(1)(iii) of the Act restricts the right of transfer in shares by its articles. Transfer of shares is less strict in a public company.

In a public company, every shareholder has right to transfer his shares to any person without the consent of other shareholders subject to such express restrictions as are found in the articles of the company. A restriction on transfer of shares which is not specified in the articles is not binding on the company or the shareholders. A transfer of share is valid if it is not forbidden under the articles of the company, even if it has been made with the object of escaping liability on the shares.

Procedure for Transfer of Shares

Ordinarily, shares can be transferred by a person whose name appears in the register of members and who is the holder thereof. As per Section 109, a legal representative of a deceased member, although not a member at the time of transfer, can also transfer shares.

Shares may be transferred by executing an instrument of transfer (called the 'transfer deed'). The instrument of transfer must be in the prescribed form. Before it is signed by or on behalf of the transferor and before any entry is made therein, it shall be presented to the prescribed authority which shall stamp or otherwise endorse on it the date of presentation.

The instrument of transfer shall then be executed by the transferor and the transferee and completed in all respects. Thereafter, it shall be presented to the company for registration within the following time limits:

1. Where the shares of the company are listed/dealt in/quoted on a recognized stock exchange, the instrument of transfer must be presented for registration at any time before the register of members is closed for the first time after the date of presentation of the instrument to the prescribed authority or within 12 months thereof, whichever is later.
2. In any other case, the instrument of transfer shall be presented to the company within 2 months of the date of presentation to the prescribed authority. [Section 108 (1A)]

The Central Government may, however, on application extend the period by such further time as it may think fit to avoid any hardship [Section 108 (1-D)]

When a duly executed and stamped transfer deed is delivered to the company within the prescribed time, the transfer is complete irrespective of whether the company registers it or not. But the transferee becomes a member only when the transfer is registered. Pending registration, the transferor is a trustee of the shares for the transferee. The transferor continues to be the holder of the shares until his name is struck off the register and that of the transferee substituted in its place. The transferor must pay over to the transferee any dividends or other rights which he may receive from the company after the date of the transfer deed.

The application for transfer of shares may be made either by the transferor or the transferee. In case any application is made by the transferor and relates to partly paid shares, the transfer shall not be registered unless the company gives notice of application to the transferee and the later raises no objection to the transfer within two weeks from the receipt of such notice. No such notice needs to be given where fully paid shares are transferred or where the application for the registration of transfer is made by the transferee.

In case a company refuses to register the transfer of shares, it must give notice to the transferor and the transferee within 2 months from the date of which the instrument of transfer was delivered, giving reasons for such refusal.

The transferor or the transferee may prefer an appeal to the Central Government within 2 months of the receipt of such notice of refusal. In case the notice of refusal has not been given by the company, the appeal must be filed within 4 months from the date on which the instrument of transfer was delivered to the company. On its appeal, the Central Government must give an opportunity to the company, the transferor and the transferee to make their representation before issuing any order. If the refusal of the company seems to be unjustified, the Central Government may issue an order to the company to register the transfer.

Issue of New Share Certificate (Sec.113)

On the approval of the transfer, the company shall cancel the old share certificate and issue a new one made out in the name of the transferee. Normally, it is done by making an endorsement on the back of the share certificate.

The transfer when registered has retrospective effect from the time when the transfer was first made. It should be noted that the seller of the shares is not bound to procure registration. He will simply hand over to the transferee a duly executed transfer form and the share certificate or the letter of allotment.

Power of Director to Refuse Transfer

Where the articles do not contain any clause, allowing the directors to reject the transfer, the shareholder may freely transfer his share and can compel the directors for registering of shares. On the other hand, if the articles contain a clause empowering the directors to reject the transfer, the directors can reject such transfer but subject to the following conditions:

(a) Power must be exercised by the directors in the interest of the company as a whole and not in the interest of a section of shareholders.
(b) For rejection, the conditions given in the articles must be followed.
(c) Refusal must be exercised within a reasonable time.
(d) Refusal must be exercised by the board and not by one of the directors.
(e) The court cannot compel the directors to supply the reasons of rejection but if supplied can examine and if inadequate can reject the order of the directors.

The following are the grounds on which the board may refuse registration of transfer:

(a) If partly paid up shares are being transferred and transferee is known to be financially incapable of paying balance calls.
(b) Where partly paid up shares are being transferred to a minor incapable of entering into a contract.
(c) When the transferor is a debtor of the company and the company has lien on such shares.
(d) When the transferor has not paid the due call money.
(e) Where the instrument of transfer is incomplete, irregular and defective and not properly stamped.
(f) On any other reasons which are just and equitable and are in the general interest of the company.

Grounds on which the company may refuse to register transfer in the case of the listed companies

The Companies Act does not specify the grounds on which the board of directors may refuse to register a transfer of shares. But after the insertion of Section 22-A in the Securities Contract (Regulation) Act, 1956, the Board of Directors of a company, the shares of which are listed on a stock exchange, can refuse to register a transfer on only one or more of the four grounds provided for in Section 22-A (3).

Thus in the case of listed securities, the absolute powers with the directors to refuse registration of transfer are no longer available. There are now only four grounds (and no other) on which transfer can be refused in the case of listed shares. The four grounds under Sec. 22-A (3) are:

(a) Where there are defects or deficiencies in the transfer deed, i.e., instrument of transfer is not proper or the certificate relating to the securities has not been delivered to the company or that any other requirement under the law relating to registration of such transfer has not been complied with. This is a technical ground on which transfer of shares can be refused.
(b) The transfer of shares is likely to result in such a change in the composition of the Board of Directors as would be prejudicial to the interests of the company or to the public interest.

(c) The transfer of shares is in contravention of any law.

(d) The transfer of shares is prohibited by any court, tribunal or other authority under any law for the time being in force.

Certification of Transfer

Where a person purchases a number of shares, only one certificate of shares is issued in respect of the whole lot of shares so that when he desires to transfer a part of his shares, he is required to produce before the company his certificate of shares along with the instrument of transfer for the purpose of certification. The company then endorses on the instrument of the transfer the fact of the certificate having been lodged with the company. The company will cancel the old certificate and prepare two new share certificates to be delivered to the transferor and the transferee. This is known as the certification of transfer and is provided for in Section 112 of the Companies Act.

The certification of shares amounts to a representation by the company that the document which evidences the title to the transferor has been produced to the company. It gives neither warranty of the transferor's title nor any guarantee on the part of the company.

Forged Transfer

A forged document never has any legal effect. If a forged transfer is lodged with the company for registration, the position of the parties affected is as follows:

1. If the true owner has been removed from the register, he can compel the company to replace him.
2. If the company has issued a new certificate to the so called transferee, it can not deny his title to the shares, the certificate stops it (the company) from doing so.
3. The person lodging the transfer must indemnify the company against loss by forgery.

Companies normally notify the transferor of the transfer so that he can object if he wishes. The transferor is, however, under no legal obligation to reply and therefore no estoppel can be raised against the owner on his failure to reply.

Blank Transfer

A blank transfer is an instrument of transfer signed by the transferor in which the name of the transferee is not filled.

Since the name of the transferee is not filled, the shares in such cases may further be transferred merely by delivering the blank instrument of transfer. Thus, stamp duty and registration fee is saved. Only the last transferee has to bear these expenses. The results are:

1. This helps in avoiding or reducing liability of tax thereon; and
2. These may act as clear security for creditors.

But blank transfer does not confer the ownership of shares on the transferee. If he wants to retain the shares, he can fill in his name and date in the transfer deed and get himself registered as shareholder. Until such registration, the original transferor continues to be the owner and remains liable for any amount remaining unpaid on the shares. Morally, he is a trustee for the dividends declared and received. But it does not confer any right on the transferee to prefer any claim against the company in the event of the transferor's failure to pay him the dividends etc.

A blank transfer, however, can remain in circulation only for 12 months after its signing by the prescribed authority or up to the time of closure of the register of members by the company, whichever is later. This provision has been made to curb the abuse of this system.

TRANSMISSION OF SHARES

When a registered shareholder dies or becomes bankrupt his share are transmitted to his legal representative or the Official Assignee or Receiver, This is called transmission of shares. It takes place when a registered shareholder (a) dies or (b) becomes bankrupt.

When a registered shareholder dies, his shares vest in his legal representative. If they wish, they may ask the company to register them as the holder of these shares and for this purpose no instrument of transfer is required and the company is bound to accept the probate of will or letters of administration as sufficient evidence of the title to those shares. When they are registered as the holder of these shares and their names are put on the company's register of

members, they become personally liable on the shares. Thus if the shares are not fully paid, they will be liable to pay the unpaid value of the shares.

However, if the legal representatives do not wish to be registered as the holder of the shares, they may transfer them without being so registered. Section 109 enables the legal representative to transfer the shares even if he is not himself a member of the company. Thus the transfer of shares of a deceased member made by his legal representative, although the legal representative does not get himself registered as the holder of these shares, (i.e., the member of the company) is perfectly valid and the transferee acquires a good title to the shares.

Transmission of Bankruptcy

If a registered shareholder is adjudged an insolvent, his shares vest in the Official Assignee or Receiver who may either get himself registered as the holder of the these shares or transfer them to another person. The Official Assignee or Receiver can also disclaim the shares if they contain liability. Usually the articles of the company contain provisions relating to the transmission of shares. Clauses 25 to 28 of Table A in Schedule I contain regulation governing the transmission of shares. If the transmission is not accepted by the company, the same remedies are available against the company as in the case of the refusal of a transfer of shares.

DISTINCTION BETWEEN TRANSFER AND TRANSMISSION OF SHARES

The following are the points of difference between transfer and transmission of shares:

(a) A transfer is a deliberate act of the holder, while transmission results by operation of law.
(b) A transfer requires an execution of an instrument of transfer, while transmission requires evidence showing the entitlement of the transferee.
(c) For the execution of transfer, stamp duty is payable, while no stamp duty is payable in case of transmission.
(d) The company charges for registering a transfer, while no charges are levied for registering a transmission.
(e) In case of transfer, the liability of the transferor ceases as soon as the transfer is complete, while in transmission, the shares continue to be subject to original liabilities.

BUYBACK of SHARES

Buy Back of Shares means the purchase by the Company of its own shares. Buy Back of equity shares is an imperative mode of capital restructuring. It is a corporate financial strategy which involves capital restructuring and is prevalent globally with the underlying objectives of increasing Earnings per Share, averting hostile takeovers, improving returns to the stakeholders and realigning the capital structure. Buy Back is an alternative way of Reduction of Capital.

REASON FOR BUYBACK OF SHARES

Reason of Buy- Back of Share

1. To Increase in the value of share by reducing the supply of share.
2. Eliminate any threats by shareholders who may be looking for a controlling stake.
3. Company always aware that their product , and if they know they are undervalued and they are certain that company will perform better in next quarter then buy their own shares at low price and will sell when it is in peak .
4. Company sometimes Buy back their shares for Compensation purpose , company reward their employees with stock option after buy back .

PROVISIONS REGARDING BUYBACK

1. Purchase can be made out of:

- its free reserves;
- the securities premium account; or
- the proceeds of the issue of any shares or other specified securities:

No buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

2. Preliminary Conditions

- must be authorized by its articles;
- a special resolution has been passed at a general meeting of the company authorizing the buy-back, but the same is not required when:
- The buy-back is 10% or less of the total paid-up equity capital and free reserves of the company; and
- Such buy-back has been authorized by the Board by means of a resolution passed at its meeting;
- The buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company. But in case of Equity Shares, the same shall be taken as 25% of paid up equity capital only. 3

3. Explanatory Statement

The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating various details as required.

4. Time Limit

Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board.

5. Options for Buy back

The buy-back can be from:

- From the existing shareholders or security holders on a proportionate basis;
- From the open market;
- By purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

6. Solvency Declaration

Before making such buy-back, file with the Registrar, a declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, if any, Form No. SH.9 may be prescribed and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board.

7. Extinguishment of Certificate

Company shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.

8.No Further Issues till 6 Months

Where a company completes a buy-back of its shares or other specified securities, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares or other specified securities within a period of six months except by way of:

A bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

9. Register to be Maintained

Company shall maintain a register in Form No. SH.10 of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities. The register of shares or securities bought-back shall be maintained at the registered office of the company and shall be kept in the custody of the secretary of the company or any other person authorized by the board in this behalf. The entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

10. Return of Buy Back and a Declaration

A company shall, after the completion of the buy-back under this section, file with the Registrar a return in Form No. SH.11 containing such particulars relating to the buy-back within thirty days of such completion. There shall be annexed to the return, a certificate in Form No. SH.15 signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made there under.

11. Punishment for any Default

If a company makes any default in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be

punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

ISSUE OF BONUS SHARES

Bonus issue refers to a further issue of shares made by a company having share capital to its existing shareholders in proportion to their holdings without any consideration. It is also called as capitalization of the reserves of the Company.

Rules and Regulations on Bonus Shares

1. STEP –I –Call the Board Meeting by issuing notice of at least 7 days for calling meeting of Board of Directors.
2. STEP –II –Inform the Stock Exchange at least 2 working days prior to the date of Board meeting of the proposal to consider the bonus issue.
3. STEP –III –Hold the Board Meeting and pass Board Resolution for issue of shares and increase in authorised Share Capital (if any). Also, decide the Ratio of Shares offering to shareholders. Subsequently, Fixing the date, time, and venue of the general meeting for the approval of the said issue by the members of the Company and authorizing a director or any other person to send the notice for the same to the members.
4. STEP –IV –Inform the stock exchange with 30 minutes of the conclusion of the meeting the decision to declare bonus.
5. STEP –V –Issue notice of general meeting pursuant to the provisions of the Section 101 of the Companies Act 2013 which provides for issue of notice of EGM in writing to below mentions at least 21 days before the actual date of the EGM:

- All the Directors.
- Members
- Auditors of Company
- The notice shall specify the place, date, day and time of the meeting and contain a statement on the business to be transacted at the EGM. The notice to EGM shall also contain the amended copy of the MOA.

6. STEP –VI- Filling of e-form MGT-14:

❖ File e-form- MGT-14 within 30 days of Passing of Board Resolution for issue of shares (securities) with the approved board resolution for issue of shares.

7. STEP –VII –Convene a general meeting and pass ordinary/special resolution for issue of bonus shares. Please note that company is not required to mandatorily conduct general meeting, passing of resolution for issue of bonus shares can be done through postal ballot.

   STEP –VIIA- Filing of E-form SH-7 and MGT-14 after passing of ordinary resolution in the general meeting. The stamp duty is required to be paid for increase in such authorized share capital at the time of filling e-form SH-7.

8. STEP –VIII – Publish a notice of record date for the purpose of determining the eligibility of members for bonus shares.

9. STEP –IX –Give notice to the stock exchange in advance of at least 7 working days informing it about the closure of share transfer books and the recording date.

10. STEP–X –Call and hold the Board Meeting for allotment of shares:

11. STEP–XI –Filling of e-Form PAS-3;

❖ File e-form PAS-3 within 30 days of passing of Board Resolution for allotment of shares along with following attachments:

❖ Ordinary Resolution for issue of bonus shares.
❖ Board Resolution for allotment of shares.
❖ List of allottees mentioning name, address, occupation if any and number of securities allotted to each of the allottees and the list shall be certified by the signatory of the form pas-3.

12. STEP–XII –If shares are issued in physical form, the Company will issue share certificate to the shareholders with in 2 month from the date of allotment of shares.

13. STEP -XIII-Apply to the Stock Exchange for obtaining in principle approval for listing bonus shares together with provisional documents relating thereto.

POSSIBLE QUESTIONS

PART – A (1 MARK)

ONLINE EXAMINATION

PART B (2 MARKS)

1. What is Memorandum of Association?
2. What do you mean by Articles of Association?
3. Briefly narrate about Doctrine of Constructive Notice
4. What do you mean by Prospectus?
5. What do you mean by Red-herring Prospectus?
6. What is Global Depository Receipt?
7. What is Book Building?
8. What do you mean by Forfeiture of shares?
9. What do you mean by forged transfer?
10. What is Blank transfer?
11. Explain on Buyback of Shares.
12. Briefly narrate on Bonus Shares.

PART C (6 MARKS)

1. Explain in detail the contents of Memorandum of Association.
2. Elucidate in detail the procedures involved in alteration of Memorandum of Association.
3. Explicate in detail the contents of Articles of Association.
4. Differentiate between Memorandum of Association and Articles of Association.
5. Explain in detail about Doctrine of Indoor Management.
6. Explicate in detail about rules regarding issue of Prospectus.
7. Narrate in detail the contents of Prospectus.
8. Describe in detail the consequences for misstatement in prospectus.
9. Explain in detail on rules regarding allotment of shares.
10. Differentiate between Transfer and Transmission of Shares.
11. Explain in detail about provisions relating to buyback of shares.

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Karpagam Academy of Higher Education
(Deemed to be University)
(Established Under Section 3 of UGC Act, 1956) Coimbatore - 641 021.
Company Law (17CCU303A)

Unit II

S.No.	Question	Option 1	Option 2	Option 3	Option 4	Answer
1	The _____defines the scope of a companys activities	prospectus	statutory	memoran	articles of	**memorandu**
2	The doctrine of _____ does not apply to acts void a	Ultra virus	Intra virus	construct ive notice	managem ent	**Indoor management**
3	The doctrine of indoor management is an _____to the	Exception	Extensio n	Alternati ve	alteration	**Extension**
4	Address of the registered office is situated in	MOA	AOA	Prospectu	company	**AOA**
5	Ultra vires means	Beyond the power	the power	Both (a) &	act	**Beyond the power**
6	Ultra vires loans granted by the company are	Void	Voidable	Valid	contenge nt	**Void**
7	Generally rights and obligations of the company are regu	AOA	M.O.A	Partnersh ip deed.	limited	**M.O.A**
8	Generally rights and obligations of the Partnership firm a	AOA	M.O.A	Partnersh ip deed.	unlimited	**Partnership deed.**
9	With in how many days prospectus or statement in lieu o	30	40	20	50	**30**
10	A company can change its name at its own discretion by	Ordinary resolution	resolutio n	resolutio n	board meeting	**Special resolution**

11	Any change in the address of the registered office must b	15 days	30 days	1 Month	12 months	**1 Month**
12	An act ultra virus the directors can be rectified if it is not	the articles	memoran dum	Company Act	resolutio n	**Company Act**
13	The lending of funds ultra vires, the company has no righ	under the company's Act	contract Act	under equity	memoran dum	**under the company's**
14	If a new company get registered with a name which rese	NCLT	SEBI	ROC	AOA	**NCLT**
15	In how many days did the company have its registered o	10	20	30	40	**30**
16	In case of forgeries acts done in the name of the compan	Valid	Void	Void ab initio	contenge nt	**Void ab initio**
17	Signature of memorandum and articles should be done b	7	5	4	8	**7**
18	Signature of memorandum and articles should be done b	3	4	2	10	**2**
19	MOA should be in form _____ in case of compa	Table A	Table B	Table C	Table D	Table B
20	MOA should be in form _____ in case of compa	Table A	Table B	Table C	Table D	Table C
21	MOA should be in form _____ in case of a unli	Table A	Table B	Table E	Table F	Table E
22	the MOA there are 6 classes. We can alter all clauses exp	Objects clause	Name clau	capital cla	Liability c	Association clause
23	Which of the following need not have MOA	Public company	Private co	Governme	Statutory	**Statutory Corporation.**
24	Address of the registered office is situated in	MOA	AOA	Prospectu	certificate	**AOA**

25	A company can change its name by passing	Ordinary resolution	Special re:	Either by :	Court	**Either by special**
26	For changing name of a company Central Govt. permissi	Yes	No	no inquiri	compulso	**Yes**
27	Which of the following need not have MOA	Public company	Private co	Governme	Statutory	Statutory Corporation.
28	Address of the registered office is situated in	MOA	AOA	Prospectu	certificate	AOA
29	A company can change its name by passing	Ordinary resolution	Special re:	Either by :	Court	Either by special
30	For changing name of a company Central Govt. permissi	Yes	No	no inquiri	compulso	Yes
31	to an existing company then which resolution should be passed to change name	Ordinary resolution	Resolutio n	Court	board meeting	**Ordinary resolution**
32	Alteration of articles must be done only by passing	Special resolution	resolutio n	Court	board meeting	**Special resolution**
33	The granting of the certificate of incorporation renders t	Legal	Void	Voidable	enforcebl e	**Void**
34	Change in objects clauses can be effected	For any reason	special reason	comply with C.G	General Meeting	**For special reason only**
35	The capital clause of a company can be changed with the	Company law board	Registrar	Court	board meeting	**Court**
36	Separate legal entity means_____.	limited liability	. not sepa	Separate f	common s	**Separate from its**
37	What is known as a charter of a Company?	Memorandum of As:	Bye laws	Articles o:	Prospectu	**Memorandu m of**
38	. The name of a company can be changed by_____	an ordinary resoluti	. a special	. the appr	a special r	**a special resolution**

39	Mark out the type of alteration that is permitted in the ar	that may not be in th	that is cor	that increa	that is cor	**that is consistent**
40	_____ companies must have their own Articles.	Government compar	Unlimited	Companie	Registered	**Unlimited companies.**
41	Which of the following companies must file a statement	A private limited cor	A coopera	A compar	A public c	**A public company that**
42	Any person dealing with a company is deemed to have k	memorandum of ass	articles of	both men	prospectu	**both memorandu**
43	The rules and regulations for the internal management of	prospectus	annual rep	memoranc	articles of	**articles of association .**
44	The articles of association establish the relationship betw	the company and its	the compa	the compa	. the comp	**the company and its**
45	. Mark out the document that need not be prepared and	statutory declaratio	memoran	articles o	directors u	**articles of association .**
46	Which of the following documents may be changed with	Memorandum of as	prospectu	Articles c	Statement	**Articles of association .**
47	The objects clause of the memorandum of association ca	ordinary resolution	special res	special re	special res	**special resolution**
48	. If the articles of association do not authorize a change	table A may be adop	the article	the article	permissio	**table A may be adopted .**
49	The articles of association can be altered by_____	a resolution of the b	an ordina	a special	obtaining	**a special resolution in**
50	. With regard to the internal proceedings of a company,	everything has been	nothing h	he must e	he need n	**everything has been**
51	. The principle that so far as the companys internal work	doctrine of indoor n	principle c	principle	manageme	**doctrine of indoor**
52	The directors of a company had issued a bond to kiran. T	principle of construc	doctrine o	principle	certificate	**doctrine of indoor**

53	. The _____constitute the top administrative organ of	general manager	shareholde	board of	advisory p	**board of directors .**
54	The doctrine of constructive notice implies that _____	every person dealing	with the re	regularity	indoor ma	**every person dealing with**
55	If the articles of association do not authorize a change in	table A may be adop	the article	the article	permissior	**he articles should be**
56	An exception to the doctrine of constructive notice is___	the doctrine of ultra	the doctri	lifting the	the doctri	**the doctrine of indoor**
57	. Protection can be claimed under the doctrine of constru	the act is voidable	no inquirie	no inquirie	resolution	**no inquiries are made**
58	___is a process of price discovery	Book Building	Portfolio (	Portfolio I	Portfolio I	Book Building
59	___is the acceptance by the company of the offer made b	Allotment of Shares	Transfer o	Transmiss	Forfeiture	Allotment of Shares
60	____ means taking back of shares by the company from	Transfer	Transmiss	Forfeiture	None of th	**Forfeitre**

UNIT-III

SYLLABUS

Management – Classification of directors, women directors, independent director, small shareholder's director; Disqualifications, director identity number (DIN); Appointment; Legal positions, powers and duties; removal of directors; Key managerial personnel, managing director, manager; Meetings of shareholders and board; Types of meeting, conduct of meetings, Committees of Board of Directors - Audit Committee, Nomination and Remuneration Committee, Corporate Social Responsibility Committee.

INTRODUCTION

The company is a device that unites the efforts of a large number of people namely the Shareholders, Directors, Managing Director, Departmental Managers and Operatives.

The shareholders, who provide the funds for the company, are generally regarded as the owner of the company and its business and property.

But in practice, shareholders do not and cannot exercise control and carry out management of the business because they are diffused and scattered and live in different parts of the country, sometimes different parts of the globe.

They delegate their powers and authority to their elected representatives—the Board of Directors. So the management of a limited company is actually vested in the Board of Directors. Generally the Board appoints one of their members to be the Chairman and one to the position of the Managing Director.

With the election of directors, the function of the shareholder is over. The directors are selected by shareholders but in reality the shareholders elect the directors. The shareholders have nothing to do with day-to-day management of the company. The divorce between ownership and management is the most important feature of company management.

DEFINITION

As per Section 2(34) of Companies Act 2013 Director means a director appointed to the Board of a Company.

Responsibility

The board of directors of a company is primarily responsible for:

- Determining the company's strategic objectives and policies;
- Monitoring progress towards achieving the objectives and policies;
- Appointing senior management;
- Accounting for the company's activities to relevant parties, e.g. shareholders

CLASSIFICATION OF DIRECTORS

1. Residential Director

As per Section 149(3) of Companies Act,2013 every company shall at one director who has stayed in India for a total Period of not less than 182 days in the Previous calendar year.

2. Independent Director

As per section 149(6) an independent director in relation to a company, means a director other than a Managing Director, Whole Time Director Or Nominee Director. Companies which have to appoint Independent Director:- As per Rule 4 of Companies (Appointment and Qualification of Directors) Rules,2013 the following class of companies have to appoint atleast two independent directors:-

- Public Companies having Paidup Share Capital-Rs.10 Crores or More;
- Public Companies having Turnover- Rs.100 Crores or More;
- Public Companies have total outstanding loans, debenture and deposits of Rs. 50 Crores or More.

Person Qualified for Independent Directorship:-

A) Who, in the opinion of the Board , is a person of integrity and possesses relevant experties & experience;

B) i) Who is or was not a promoter of the Company or its Holding, Subsidiary or Associate Company(HSA Companies);

ii) Who is not related to Promoters or directors in the company, its HSA companies;

C) Who has or had no Pecuniary (relating to Money) relationship with Company and its HSA company or their promoters, directors during the 2 immediately preceding financial years or during the current financial year;

D) none of whose relatives has or had pecuniary relationship with company, its HSA company or their Promoters, directors -amounting to 2% or more of its gross turnover or total income; -or

fifty lakhs or such higher amount as may be prescibed, whichever is lower. During the 2 immediately preceding financial years or during current financial year.

E) Who neither himself nor any of his relative-

1. holds or has held the position of KMP or has been employee of the Company or its HSA companies in any of the 3 financial years;

2.he or his relative has an employee or proprietor or a partner in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed- as a auditor firm, Company Secretary in practice, Cost Auditor, Legal Consultant of the company or its HSA companies;

3. Holds with relatives 2% or more of the total voting power of the Company

4. He or his has not be Chief Executive or Director of any Non Profit Organization that receive 25% of its receipt from the Company or HSA Companies or its Promoters or directors or that NGO holds 2% or more of the total voting power of the Company.

F) Who possesses such other qualification as may be prescribed. Tenure of Director:- an independent director hold office for a term up to 5 consecutive years, -Also eligible for reappointment by passing Special Resolution and also require its reappointment in Boards Report. -He shall not hold office for more than 2 Consecutive terms, but shall not be eligible to appoint after expiration of 3 Years of ceasing to become an independent director. Remuneration to Independent Director:- An independent director shall not be eligible for any stock option as per section 149(9) of Act. But they may receive remuneration by way of fee provided under section 197(5) of the Act. Sitting fees for Board meeting and other committee meeting shall not be exceed Rs. 1,00,000 per meeting.

3. Small Shareholders Director

A listed Company may have one director elected by small shareholders. May appoint upon notice of not less than 1000 Shareholders or 1/10th of the total shareholders, whichever is lower have a small shareholder director which elected form small shareholder.

4. Women Director

As per Section 149 (1) (a) second provision requires certain categories of companies to have At Least One Woman director on the board. Such companies are any listed company, and any public company having-

1. Paid Up Capital of Rs. 100 crore or more, or
2. Turnover of Rs. 300 crore or more.

5. Additional Director

Any Individual can be appointed as Additional Directors by a company under section 161(1) of the New Act.

6. Alternate Director

As per Section 161(2) A company May appoint, if the articles confer such power on company or a resolution is passed (if an Director is absent from India for atleast three months).

- An alternate Director cannot hold the office longer than the term of the Director in whose place he has been appointed.
- Additionally, he will have to vacate the office, if and when the original Director returns to India.
- Any alteration in the term of office made during the absence of the original Director will apply to the original Director and not to the Alternate Director.

7. Shadow Director

A person, who is not appointed to the Board, but on whose directions the Board is accustomed to act, is liable as a Director of the company, unless he or she is giving advice in his or her professional capacity.

8. Nominee Director

They can be appointed by certain shareholders, third parties through contracts, lending public financial institutions or banks, or by the Central Government in case of oppression or mismanagement.

DISQUALIFICATION OF DIRECTOR

A person shall be disqualified for appointment as a director of a company, if

- He is of unsound mind and stands so declared by a competent court;
- He is an undischarged insolvent;
- He has applied to be adjudicated as an insolvent and his application is pending
- He has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence: Provided that if a

person has been convicted of any offense and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

- An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and 6 months have elapsed from the last day fixed for the payment of the call;
- He has been convicted of the offense dealing with related party transactions under section 188 at any time during the last preceding 5 years.

DIRECTOR IDENTITY NUMBER

DIN is a unique Director identification number allotted by the Central Government to any person intending to be a Director or an existing director of a company.

It is an 8-digit unique identification number which has a lifetime validity. Through DIN, details of the directors are maintained in a database.

DIN is specific to a person, which means even if he is a director in 2 or more companies, he has to obtain only 1 DIN. And if he leaves a company and joins some other, the same DIN would work in the other company as well.

Where is DIN used?

Whenever a return, an application or any information related to a company will be submitted under any law, the director signing such return, application or information will mention his DIN underneath his signature.

APPOINTMENT OF DIRECTORS

1. First Director

The first directors are usually named in the articles. If not the number of directors and the names of the directors are determined in writing by the subscribers of the memorandum or a majority of them. If that is not done all the subscribers of the memorandum who are individuals shall be deemed to be the Company's first directors. They hold office until directors are duly appointed in the first annual general meeting (Sec. 254).

2. Appointment of Director by Company

In the case of private companies, all the directors can be permanent ones if the articles so provide. They are appointed at the first annual general meeting.

In the case of a public company the articles may provide for the retirement of all its directors at every annual general meeting. Otherwise, at least two thirds of the total number of directors shall be liable to retire by rotation. It is thus clear that only one third of its total number of directors can be permanent. Of the two thirds liable to retire by rotation one third shall retire yea r. those longest in office since their last appointment should, retire first. If all of them have been appointed on the same day, then the issue is to be settled by mutual agreement. If it is not possible lot should be drawn and decided.

A person other than a retiring director should file with the company his consent to act as its director if appointed. Further he is required to file with the Registrar within 30 days of his appointment, his written consent to act as a director otherwise his appointment will become invalid.

The articles of the company may provide for the appointment of not less than two thirds of directors on the basis of proportional representation to protect mino9rity interest, either by single transferable vote or according to the principle of cumulative voting or otherwise. If the company decides to appoint directors under this method, the directors must be appointed for a period of three years at a time.

3. Appointment of Directors by Board of Directors

The board of directors may appoint directors in the following ways:

a) As additional directors: (Sec. 260) The board of directors may appoint additional directors within the maximum strength fixed for the board by the articles. The board can make such an appointment only if the articles provide for that. Such additional directors hold office only up to the date of the next annual general meeting of the company.

b) In a casual vacancy: (Sec. 262) Casual vacancy can be filled up by the board if the articles permit it. A casual vacancy arise due to reasons such as death, resignation, disqualification or failure of an elected director to accept the office or due to any other reason. A vacancy which arises due to retirement of a director by rotation is not a causal vacancy. The director

appointment in a casual vacancy shall hold office only upto the date on which the director whose place has been filled up was to retire.

c) As an alternate director: (Sec. 313) The board of directors if authorized by the articles or by the company's resolution at the general meetings may appoint an alternate director. Such an alternate director is to act for the original director during his absence for a period of more than three months from the state in which the meetings of a company are held. The alternate director can continue as director only for the period for which the original director was eligible. Further on the return of the original director, the alternate director must vacate the office of directorship.

4. Appointment of Director by Third Parties

Sometimes the articles may give a right to financial institutions, debenture holders and banking companies which have lent money to the company to nominate directors on the board of the company with a view to ensuring that the funds advanced by them are used by the company for the purpose for which they are borrowed. The number of directors so nominated should not exceed one-third of the total strength of the board and they are not to retire by rotation.

5. Appointment of Directors by the Central Government

The Central Government may appoint such number of directors of the board of a company as the company Law Board may by an order in writing specify as being necessary to effectively safe the interest of the company, its shareholders or the public interest for a period not exceeding three years on any one occasion. They are appointed to prevent oppression of the minority shareholders or to prevent mismanagement of the company or in the public interest. They are appointed for a maximum period of three years.

RESTRICTION ON APPOINTMENT OF DIRECTORS

Sec. 266 lays down that a person cannot be appointed as a director by the articles or named as director in the prospectus or statement in lieu of prospectus unless before registration of the articles, publication of the prospectus or filing of the statement in lieu of prospectus, he has

1.Signed the memorandum for his qualification shares, or

2.Taken his qualification shares and aid or agreed to pay for them or

3.Signed and filed with the Register an under-taking to take and pay for the qualification share or

4.Made and filed with the Register an affidavit stating that his qualification shares are registered in his name.

Number of Directorship

A person cannot hold office at the same time in more than twenty companies. When a person already holding the office of a director in 20 companies is appointed as a director of a any other company the appointment shall not be effective unless such person has within 15 days thereof effectively vacated his office as director in any of the office in which he was already a director. His new appointment shall become void if he fails to make a choice within 15 days as aforesaid (Section 275-279).

Share Qualification of a Director

The act does not prescribe any share qualification, Regulation 66 of table "A" provides that the qualification of a director shall be the holding of one share of the company. The articles usually require its directors to hold a certain number of shares, such shares are called qualification shares. The nominal value of the qualification shares shall not exceed Rs. 5,000 or the nominal value of one share where it exceeds Rs. 5,000.

LEGAL POSITION OF DIRECTORS

It is very difficult to define exactly the legal position of the directors of a company. The directors have at various times been described by Judges as 'agents' 'trustees' or 'managing partners' let us discuss their position in detail in each case.

1. Director as Agents

As a company is an artificial person, it enters into contract with third parties through its agents, viz., the directors of the company. Therefore, the relationship between the company and the directors is that of principal and the agent. The directors as agents of the company have certain powers and duties to carry on the business of the company subject to restrictions imposed by the articles and the companies act. They can make contracts on behalf of the company and are not personally liable provided they do not exceed the powers conferred on them.

2. Directors as Employees

Though directors are agents of a company they are not employees of the company. But there is nothing to prevent a director from being a servant of a company, under a special contract of service which may be entered into with the company.

3. Directors as Officers

Under Sec. 2 (30) of the companies act directors are officers of the company. As officers they are liable for any default in complying with the provisions of the act.

4. Directors as Managing Partners

Unlike agents, directors are elected by the shareholders and not appointed. They resemble the position of managing partners, like managing partners directors are entrusted with the powers of management and control of the affairs of the company. But directors have to retire unlike the managing partners. Hence they are not manging partners in the full snese of this term also.

5. Directors as Trustees

Directors resemble trustee in certain respects. They are not trustees in the legal sense of the term, because a trustee deals with the property as principal and owner. But a director enters into a contract for his principal that is for the company. Yet the directors are treated as trustees of the company's property and money and of the powers entrusted to them. They must account for all the company's money and property over which they exercise control. They have to refund to the company any of its money or property which they have improperly paid away. They are trustees of the powers vested with them and they must exercise those powers honestly and in the interest of the company and the shareholders and not in their own interest.

POWERS OF DIRECTORS

General Powers

As per Sec. 291 of the companies Act., subject to the provisions of the Act., and the articles of association, the land of directors of a company are entitled to exercise all such powers and to do all such acts and thing as the company is entitled to do.

However, there are two limitations up to the powers of the board.

1. The board cannot exercise these powers which the Act or memorandum or articles require to be exercised by the shareholders in the general meeting.
2. In the exercise of their powers the directors are subject to the provisions of the Act. Memorandum and articles and other regulations not inconsistent made by the company in the general meeting.

Powers to be exercised at board meetings: According to Sec. 292 the following powers can be exercised only by means of resolution panel at the board meetings.

1. The power to make calls
2. The power to issue debentures
3. The power to borrow money otherwise than debentures
4. The power to invest the company's fund
5. The power to make loans.

The last three powers can be delegated to a committee of directors or the manager or any other principal officer of the company subject to the limits specified by the board.

Other powers of the board exercisable only at the board meeting:-

1. The power of filling casual vacancies in the board (Sec. 262)
2. Sanction of a contract in which a director is interested.
3. Receiving of notice of disclosure of interest of a director in a contract or an arrangement.
4. Unanimous consent of all the directors present at a board meeting is also necessary for appointing a peson as managing director or manager who is already managing director or manager of another company (Sec. 316 and 386).
5. Unanimous consent of all the directors present at a boar meeting is also necessary for sanctioning the making of investments in shares of other body corporate (Sec. 372).
6. Receiving notice of disclosure of shareholding by directors and persons deemed to be directors (Sec. 308).

Restrictions on powers (Sec. 293).

The board of directors cannot exercise the following powers except with the conquest of the company in the general meeting.

(a) To sell, least or otherwise dispose off the whole or substantially the whole of the undertaking of the company.
(b) To extend time for the repayment of any debt due by the director.
(c) To invest otherwise than in trust securities the compensation received on compulsory acquisition of its fixed assets.
(d) To borrow money where the money to be borrowed together with that already borrowed is in excess of the aggregate of the paid up capital of the company and its free reserves.
(e) To contribute to charitable and other funds not directly relating to the business of the company or the welfare of its employees amounts exceeding in any financial year Rs.

50000 or five per cent of the average net profits of the three preceding financial years which ever is greater.

DUTIES OF DIRECTORS

General

1. Duty of Good Faith

They must act bonafide in the interests of the company. They should not make use of the property of the company for promoting their personal ends. They should not make any secret profits.

2. Duty of Reasonable Care

They must discharge their duties worth such care in diligence as is reasonable for persons of their knowledge and experience.

3. Duty to Attend Meetings

They must attend Board meetings as for as possible. In case they do not attend three consecutive meetings for absent themselves from all meetings of the Board for a consecutive period of three months whichever is longer without the leave of the Board they are liable to vacate office.

4. Personal Attendance

They must perform their duties personally. They can delegate only certain functions as permitted by the articles.

Statutory Duties

Some of the important duties as laid down in the companies Act are enumerated below:

1. To sign a prospectus and deliver it to the Register before its issue to the public.
2. To see that all moneys received from applications for shares are kept in a scheduled bank:
3. Not to allot shares before receiving minimum subscription.
4. To forward a statutory report to all its members and file a copy of it with the Register.
5. To call an extraordinary general meeting of the company on the requisition of the requisite number of members.
6. To lay before the company at the annual general meeting balance sheet, profit and loss account, auditor's report, and their own report
7. To hold their meeting at least once in every three months (Sec. 285)

8. If a director is interested in a contract to be entered into with the company, it is his duty to disclose the nature of his interest at a meeting of board of directors (Sec. 299)
9. The interested director not to take part in the decision or vote on any contract in which is interested (Sec. 300)
10. To make a declaration of solvency of the company in the case of members voluntary winding up (Sec. 488)

REMOVAL OF DIRECTORS

A director can be removed from his office before the expiry of his term of office as described below:

1. Removal by Shareholders

The shareholders may by passing an ordinary resolution at the general meeting removed a director. Special notice is required of any resolution to remove a director. It means that a shareholder should send a notice to company at least 14 days before the date of meeting specifying his intention to move the resolution.

Upon receipt of such a notice, the company should send a copy of it to the concerned director and other member. The director sought to be removed is entitled to be heard at the general meeting.

2. Removal by the Central Government

If the Central Government is convinced that a director has been guilty of grand, misfeasance gross negligence etc. it will refer to the company law Board for an opinion whether or not such person is fit and proper to hold the office of director. The application made to the company Law Board must contain a concise statement of the circumstances and materials as the central government may consider necessary of the purpose of the inquiry.

At the end of the hearing of the case the company Law Board must record its finding. If finding of the company Law Board is against the director, the Central Government by order removers him from office. No compensation is payable to him for the termination of office. He is debarred from holding any office for five years from the date of the order of removal.

3. Removal by Company Law Board

Where an application to the company Law Board for prevention of oppression or mismanagement, the company law board funds that the relief might to be granted, it may by an order provide for the termination, setting aside or modification of any agreement between the company and the managing director, any other director or the manager. In such case he cannot claim compensation for loss of office. He is debarred from holding any managerial pert in any company for a period of five years.

KEY MANAGERIAL PERSONNEL

MANAGING DIRECTOR

Managing director is a director, who by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its board of directors or by virtue of its memorandum or articles of association, is entrusted with substantial power of management which would not otherwise be exercisable by him and includes and director occupying the position of a managing director, by whatever name called. He shall exercise his powers subject to superintendence, control and direction of its board of directors (2(26)). He is a whole-time director and is the chief executive of the company.

Appointment

On and from the commencement of the companies (amendment) Act, 1988 (a) every public company or a private company which is a subsidiary of a public company, having a paid-up share capital of such sum as may be prescribed shall have a managing or whole time director or a manager with effect from 18th September 1990 the prescribed amount is Rs. 5 Crores (Sec. 269(1)) and (b) no such appointment shall be made except with the prior approval of the Central Government unless such appointment is made in accordance with the conditions specified in Schedule XIII and a return in the prescribed form is filed within ninety days from the date of such appointment (Refer to appendix I for Schedule XIII).

Every application seeking the approval to the appointment of a managing on whole time director or a manger shall be made to the Central Government within a period of ninety days from the date such an application if it is satisfied that;

a. The managing or whole-time director or the manager appointed is in its opinion, not a fit and proper person to be appointed as such or appointment is not in the public interest or

b. The terms and conditions of the appointment of managing or whole-time director or the manager are not fair and reasonable.

Disqualification (Sec. 267)

No person can be appointed or employed as the managing or whole-time director who

a. Is an undischarged insolvent.
b. Has at any time been adjusted an insolvent.
c. Suspends or has at any time suspended payment to his creditors or has made a compromise with them
d. Has at any time been convicted of an offence involving moral turpitude.

Number of Managing directorship (Sec. 316)

A person cannot act as a managing director or more than two companies at a time even if one such company is a public company. For appointing a person who is already a managing director of some other company, the resolution is to be passed unanimously by the board. The Central Government may however permit any person to be appointment as a managing director of more than two companies if it is satisfied that it is necessary that the companies should for their proper working, functions as a single unit and have a common managing director.

Term of Office (Sec. 317)

No company can appoint a managing director for a period exceeding five year at a time. Re-appointment for a similar period on each occasion is possible. But any such term cannot be sanctioned earlier than two years from the date on which it is to come into force.

MANAGER

Manager is an "individual who, subject to the superintendence, control and director, of the board of directors, has the management of the whole, or substantially the whole of the affairs of a company and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not" Only individuals can be appointed as a manager. He need not be a director [Sec. 2(24)].

Disqualification: (Sec. 389)

No company can appoint any person as its manager who

a. is an un-discharged insolvent or
b. has at any time within the preceding five years been adjudged an insolvent or
c. makes or has made at any time within the preceding five years a composition with his creditors.
d. Has at any time within the preceding five years been convicted by the court in India of an offence involving moral turpitude.

Number of companies of when a person may be appointed manager (Sec. 386)

No company can employ or appoint any person a manger if he is either the manager or the managing director of any other company. However, a company may appoint or employ a person as its manger.

Remuneration of Manager: (Sec. 387)

The manager of the company may subject to the overall limit of managerial remuneration receive remuneration either by way of a monthly payment or by way of a specific percentage of the propriety of the company. Except with the approval of the Central Government such remuneration must not exceed in the aggregate 5 per cent of the net profits – Any change in the regulation of the company or any agreement by which the remuneration of manager is increased requires the previous approval of the Central Government (Sec. 310-311 and 388).

A manager like a managing director cannot be appointed for a term exceeding five years as a time (Sec. 312 and 388).

The aforesaid provision except as to disqualification do no apply to a private company unless it is a subsidiary of a public company (Sec. 388A)

MEETING

The company is an artificial person created by law having a separate entity distinct from its members. Being an artificial person, it cannot take decisions on its own. It has to take decisions on matters relating to its well being by way of resolutions passed at properly constituted and convened meetings of its shareholders or directors. The decisions about a company's management are taken by the directors in their meetings and they are to be ratified in the general meetings of the company by the shareholders.

There in an old proverb that "Two heads are always better than one". When two or more than two persons come together to discuss matters of common interest, there is said to be a meeting. It follows that to constitute a meeting there must be two or more persons. Generally, the purpose of a meeting is to consider issues of common interests to its attendants.

STATUTORY MEETING

Every public company limited by shares and every company limited by guarantee and having a share capital, shall, within a period of not less than one month nor more than six months

from the date on which the company is entitled to commence business hold a general meeting of the members of the company. This meeting is called 'the statutory meeting'. [Sec. 165 (1)]

A meeting held prior to the statutory period of one month from the date of entitlement of a company to commence business can not be called the statutory meeting. The notice for such a meeting should state it to be statutory. The statutory meeting is held only once in the life time of a company.

Private companies, public companies limited by guarantee and not having a share capital and unlimited companies are not required to hold the statutory meeting. However, a private company which becomes a public company by the application of Sec. 43 will have to comply with the provisions of the Act which are applicable to public limited companies from the date of its becoming a public limited company. A private company can commence business on the date of its incorporation. If the date of its becoming a public company is within 6 months of its incorporation, it must hold a statutory meeting in accordance with the provision of Section 165 (1). If it becomes a public company after 6 months of its incorporation, it is not required to hold the statutory meeting.

Notice

The company must give notice to its members 21 days before the holding of the statutory meeting. The notice convening the statutory meeting must specifically state that the meeting is the statutory meeting. The time, date and place of the meeting must be mentioned in the notice. However, a shorter notice may be sufficient if consent is accorded by the members of the company:

a) If the company has a share capital, holding not less than 95% of such part of the paid up share capital of the company as gives a right to vote at the meeting.
b) If the company has no share capital, holding not less than 95% of the total voting power exercisable at the meeting.

Statutory Report

The Board of Directors is required to prepare a report which is known as the 'statutory report" and must send this report to the members at least 21 days before the day on which the meeting is to be held [Section 165(2)]. If the report is sent later than is required, it will be deemed to have been duly forwarded if it is so agreed to by all the members entitled to attend

and vote at the meeting. Thus the delay in sending the report can be condoned by unanimous consent of all the members present at the meeting. The statutory report is required to be certified as correct by at least two directors of the company, one of whom must be a Managing Director, if there is any. Thereafter the auditor must certify the report to be correct in so far as it relates to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company [Section 165(4)]. A copy of the report must be sent to the Registrar also [Section 165(5)].

Contents of Statutory Report

The statutory report shall set out :

a) The total number of shares allotted, distinguishing those allotted as fully or partly paid-up otherwise than in cash, the extent to which they are partly paid up and the consideration for which they have been allotted.
b) The total amount of cash received by the company in respect of all the shares allotted.
c) An abstract of the receipts and payments made thereout up to a date within 7 days of the date of the report.
d) The name, address and occupations of the directors of the company and of its auditors and also if there be any, of its manager and secretary.
e) The particulars of any contract which , or the modification or the proposed modification of which is to be submitted to the meeting for its approval.
f) The extent to which each underwriting contract (if any) has not been carried out and the reason there for.
g) The arrears due on cash from every director and from the manager
h) Particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director.

Procedure at the Meeting

A list showing the names, addresses and occupation of the members of the company and the number of shares held by them must be produced by the Board of Directors at the commencement of the statutory meeting. The list is to remain open and accessible to any member of the company during the continuance of the meeting [Section 165 (6)].

It is to be noted that the members of the company present at the meeting are at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not but one resolution may be passed of which notice has not been given in accordance with the provisions of Companies Act. [Sec. 165 (7)]

Adjournment of Statutory Meeting

The meeting may adjourn from time to time and at any adjourned meeting any resolution of which notice has been given in accordance with the provisions of the Companies Act may be passed and the adjourned meeting will have the same power as an original meeting. [Sec. 165(8)].

Penalty

If any default is made in complying with the above provisions, every director or other officer of the company who is in default shall be liable to a fine which may extend to Rs. 500. Besides, if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting, the Court may order the compulsory winding up of the company. [Sec. 433 (b)]

Objects

The obvious purpose of the statutory meeting with its preliminary report is to put the shareholders of the company as early as possible in possession of all the important facts relating to the new company what shares have been taken up, what moneys received, what contracts entered into, what sums spent on preliminary expenses, etc. Furnished with these particulars the shareholders are to have an opportunity of meeting and discussing the whole situation in the management methods and prospects of the company. If the shareholders fails to do so, they have only themselves to blame.

ANNUAL GENERAL MEETING

Every company must in each year hold in addition to any other meeting a general meeting, as its annual general meeting and must specify the meeting as such in the notices calling it [Section 166 (1)]. The annual general meeting is to be held in addition to any other general meeting that might have been held in a year. It appears that holding of an annual general meeting in every calender year is a statutory necessity. Calender year is to be

calculated from 1st January to 31st December and not twelve months from the date of incorporation of the company.

First Annual General Meeting

A company must hold its first annual general meeting within a period of not more than 18 months from the date of its incorporation and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year [Section 166(1)]. For example a company is incorporated in October 1994. Its first annual general meeting is required to be held within 18 months from the incorporation, i.e. up to March 1996 and if such a meeting is held within this period, no other meeting will be necessary either for 1995 or 1996.

Subsequent Annual General Meeting

As already discussed a company is required to hold an annual general meeting in each year. Where a meeting called and held on a day in one year is adjourned to a date in the next year and held on that date, the meeting held on the latter date is not a different meeting and does not comply with the requirements of Section 166. However, the gap between one annual general meting and the next should not be more than fifteen months.

In the case of Shree Meenakshi Mills Company Limited v. Astt. Registrar of Joint Stock Companies Madurai AIR 1938 Mad. 640, the annual general meeting of a company called in December 1934 was adjourned and held in March 1935. The next annual general meeting was held in January, 1936, no other meting being held in 1935. The company was prosecuted for failure to call the annual general meeting in 1935. It was held that there should be one meeting per year and as many meetings as there are years.

The Registrar can, for any special reason, extend the time within which any annual general meeting is required to be held by a period not exceeding 3 months but the time for holding the first annual general meeting cannot be so extended. [Sec. 166(1)].

Power to convene Annual General Meeting

The proper authority to convene an annual general meeting is the Board of Directors, and if the managing director, manager, secretary or other officer calls a meting without such authority, it will not be effectual unless the Board ratifies the act before the meeting is held.

Notice

A public company must give at least 21 days notice for convening any general meeting including annual general meeting. Annual general meeting may be called after giving a shorter notice than 21 days if it is so agreed by all the members entitled to vote in the meeting (Section 171). In calculating 21 days, the date on which the notice is served and the day of the meeting are excluded.

Date, time and place of holding the annual general meeting

Every annual general meeting shall be called at any time during the business hours, on a day that is not a public holiday. It shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated [Section 166(2)]. The Central Government may exempt any class of companies from the provisions of Sec. 166 subject to such conditions as it may impose.

a) A public company or a private company which is a subsidiary of a public company, may by its Articles fix the time for its annual general meetings and may also by a resolution passed in preceding annual general meeting fix the time for its subsequent annual general meetings and
b) A private company which is not a subsidiary of a public company may in like manner and also by a resolution agreed to by all the members thereof, fix the time as well as the place for its annual general meetings [Sec. 166(2)]

Adjournment

Where an annual general meeting is held but adjourned, the adjourned meeting is nothing but continuance of the earlier meeting and therefore if in the adjourned meeting the Balance Sheet and the Profit and Loss Account of the company are laid and adopted and thereafter sent to the Registrar, Section 220(I) is not violated.

Holding of Annual General Meeting where the annual accounts are not ready

According to Central Government instructions, in case the annual accounts are not ready for laying at the appropriate annual general meeting, the company must hold the annual general meeting within the time limit, transact all business other than the consideration of the accounts, announce when the accounts are expected to be ready for laying and pass a suitable

resolution adjourning the said annual general meeting to a specific date or to a date to be specified later on. Thus the company cannot take the plea that the annual general meeting was not held because the accounts were not ready.

Power of Central Government to call Annual General Meeting

The Central Government may, on the application of any member of the company, call or direct the calling of a general meeting of the company. However, it is to be noted that the Court has no power to call such meeting. A general meeting held in pursuance of this order will be deemed to be an annual general meeting of the company.

The Central Government may direct that only one member of the company present in person or by proxy shall be deemed to constitute a meeting. [Section 167]

Penalty

If a default is made in holding an annual general meeting in accordance with the above provisions or in complying with the directions given by the Central Government, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 5000 and in the case of a continuing default, with a further fine which may extend to Rs. 250 for every day after the first during which the default continues. (Section 168)

Importance

It is the annual general meeting at which the shareholders can exercise control over the affairs of the company. At this meeting some directors retire and come up for re-election and thereby the shareholders find an opportunity to refuse to re-elect a director of whose action and policy they disapprove. Appointment of auditors is also made at this meeting.

Annual accounts are presented at this meeting for the consideration of the shareholders and the shareholders can ask any question relating to the account. It is at this meeting that dividends are declared. At this meeting the shareholders can discuss any other matters relating to the company's business.

EXTRA-ORDINARY GENERAL MEETING

Regulation 47 of the Table A provides that all general meetings other than annual general meetings shall be called extraordinary general meetings. An extraordinary general meeting is called to consider those transactions or business which cannot be postponed till the

next annual general meeting. Hence, it is a meeting of a company which is held between two consecutive annual general meetings for transacting some urgent or special business. An extraordinary general meeting may be convened:

1. By the Board of Directors on its own or on the resolution of members; or
2. By the requisitionists themselves on the failure of the Board to call the meeting ; or
3. By the Central Government

1. Extraordinary meeting convened by the Board of Directors

a. On its Own

Regulation 48(1) of Table A provides that the board may, whenever it thinks fit, call an extraordinary general meeting. An extraordinary general meeting may be convened by the Board of Directors if some business of special importance requires the approval of the members and which in the opinion of the Board of Directors can not be postponed till the next annual general meeting. The directors can call an extraordinary general meeting by passing a resolution in a properly convened board meeting or by a circular resolution. Regulation 48(2) of Table A provides that "If at any time, they are not present within India, the number of directors capable of acting and forming a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board".

b. On the Requisition of Members

The directors are bound to call an extraordinary general meeting of the company if the requisition is made :

a) In the case of a company having a share capital, by the holders of at least one-tenth paid up capital having the right to vote on the matter of requisition ; or
b) In the case of a company not having a share capital, by members representing not less than one-tenth of the total voting power in regard to the matter of requisition.

The Board of Directors is under a legal obligation to proceed within 21 days of the deposit of the requisition to call a meeting. The meeting shall be held within 45 days of such deposit of the requisition with the company [Sec. 169(6)]. On receipt of the requisition, the Board shall send out notices for the meeting giving not less that 21 days' time.

Extraordinary General Meeting convened by Central Government

If due to any reason it is impracticable to call or conduct an extraordinary general meeting, the Central Government may, either on its own or on the application of any director or any member who would be entitled to vote, order a meeting to be called, held and conducted in such manner as the Central Government thinks fit and may give such directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting.

Any meeting called, held and conducted in accordance with any such order of the Central Government will, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

The word 'impracticable' may be taken to mean impossible to hold a peaceful or useful meeting. It has been held that the word 'impracticable' should be taken to mean impractical from a reasonable point of view.

In Opera Photographic Ltd. Re; 1989 BCL [763 (1989)] case, there were only two directors and one of them who was holding 51% of the shares wanted to remove his fellow director. The Articles required the quorum of two. The fellow director did not attend the meeting to frustrate him. The Central Government ordered a meeting to be called with the presence of one as a sufficient quorum.

CLASS MEETINGS

Class meetings are the meetings of the shareholders and the creditors. Class meetings are held to pass resolutions which will bind only the members of the particular class concerned. According to regulation 3(1), if the rights attached to any class of shares are to be varied, it can be done with the consent of the holders of 3/4 of the issued shares of that class in a separate meeting of that class of holders. Similarly, under Sec. 394, where a scheme of arrangement or compromise is proposed, the meetings of several classes of shareholders and creditors are required to be held. Class meetings can only be attended by the members of that class. Whenever it is necessary to alter or change the rights or privileges of a class as provided by the Articles, a class meeting must be called.

CONDUCT OF MEETING

1. Proper Authority

The Board of Directors is the proper authority to convene a general meeting of a company and for this purpose the board should pass a resolution at a duly convened meeting of the board. However, if the board fails to call a general meeting of the company, the members or the Central Government or the Central Government may call such a meeting. Some defects in appointment or qualification of the directors present at the meeting of the board will not necessarily be fatal to the validity of the resolution passed at the meeting provided the board has acted bonafide.

2. Notice of Meetings (Sec. 171)

A proper notice of the meetings must be given to the members of the company. The notice must be given 21 days before the date of the meeting. The period of 21 days excludes the day of service of the notice and also the day on which the meeting is to be held.

The length of the notice may be waived :

a) in the case of an annual general meeting by the consent of all members;
b) in the case of any other meeting by the consent of the holders of not less than 95% of the paid-up share capital or the total voting power where the company has no share capital.

Notice to whom (Sec. 172)

The notice is required to be given to

a) all the members of the company who are entitled to vote on the matters which are proposed to be dealt with at the meeting ;
b) all the persons who are entitled to a share in consequences of the death and insolvency of a member ;
c) the auditor or auditors of the company. Deliberate omission to give notice of the meeting to members or to a single member will make the meeting invalid, but an accidental omission to give notice to or the non-receipt of notice by any member will not invalidate the proceedings at the meeting [Sec. 172 (3)].

Contents of Notice

Every notice of a meeting is required to specify the place and the day and hours of the meeting and must contain a statement of the business to be transacted at the meeting. If the

time of holding meeting and other essential particulars are not specified in the notice, the meeting will be invalid and all resolutions passed at the meeting will be of no effect.

The notice of general meeting must contain a statement of the business to be transacted at the general meeting of the company. The business to be transacted at a meeting may be general business or special business.

Section 173 provides (a) in the case of an annual general meeting, all business to be transacted at the meeting will be deemed special except the business relating to the consideration of accounts, Balance Sheet and reports of the Board of Directors and auditors, the declaration of dividends, the appointment of directors in the place of those retiring and the appointment of and the fixing of the remuneration of the auditors and (b) in the case of any other meeting, all business will be deemed special.

If any special business is to be transacted at an annual general meeting a statement to that effect must be annexed to the notice of the meeting. The statement must set out all material facts concerning each item of business including in particular the nature of the concern or interest therein of every director or other managerial personnel. Thus every notice calling a meeting is required to specify the business to be transacted at the meeting.

A notice of meeting must give a sufficiently full and frank disclosure to the members of the fact upon which they are asked to vote otherwise the resolution passed at the meeting will be invalid.

In Kaye v. Croydon Tramways Co., there was a provisional agreement between two companies for the sale of the undertaking of the one company to the other. Under the agreement the buying company agreed to pay, in addition to the sum payable to the selling company, certain amount to the directors of the selling company as compensation for the loss of office. The notice calling the meeting of the shareholders to consider the agreement for sale of the undertaking did not disclose that there was a provision in the agreement for the payment of compensation to the directors. The Court held that the notice could not make the full and fair disclosure of all the material facts to the considered and voted upon at the meeting and therefore the resolutions passed at the meting were invalid and ineffective.

3. Quorum

Quorum means the minimum number of members that must be present at the meeting. The quorum is generally fixed by the company's article. Unless the articles provide for a large number, five members personally present in the case of a public company (other than a public company which has become such by virtue of Section 43-A) and two members personally present in the case of any other company will be the quorum for a meeting of the company. If within half an hour from the time appointed for holding a meeting of the company, a quorum is not present, the meeting will stand dissolved if it was called upon the requisition of members but in any other case it stands adjourned to the same day in the next week, at the same time and place or to such other day as the Board may determine. If at a adjourn meeting also the quorum is not present within half an hour from time appointed for holding the meeting the members present sufficient will be quorum [Section 174(5)].

Section 174 clearly indicate that the meeting must be attended by more than one member so as to constitute it as a meeting. But a few exceptions to this general rule may also be noted

a) Under Section 167, the Central Government may, on the application of any member of the company, call a general meeting of the company and may direct that even one member of the company present in person or by proxy shall be deemed to constitute a meeting.
b) Under Section 186, the Central Government may call a meeting of the company other than an annual general meeting and may give direction that even one member of the company present in person or by proxy shall be deemed to constitute a meeting.
c) In East v. Bennet Bros. Ltd., one shareholder held all these preference shares in the company. A meeting of preference shareholders attended by him only was held to be a valid meeting.

4. Chairman of the Meeting

Before a meeting of a company can start its business, it is required to have a Chairman. It is the Chairman who is to preside at the meeting of the company. He is to conduct the meeting and to maintain the order. It is the Chairman who is to put up the resolution, count the votes and declare the result. Usually the articles provide for the appointment of a Chairman but if there is no provision in the articles to this effect, the

members present in the meeting shall elect one of themselves to be the Chairman of such meeting on a show of hands [Section 175(1)]. If a poll is demanded on the election of the Chairman, it shall be taken forthwith [Section 175(2)] and in such a case the Chairman elected on the show of hands will exercise all the powers of the Chairman. If some other person is elected Chairman as a result of the poll, he will be the Chairman for the rest of the meeting [Section 175(3)]. He can adjourn the meeting in the event of disorder but he should do so only as a last resort, if his attempts to restore order have failed.

A Chairman is not entitled to close the meeting prematurely and if he does so, a new Chairman may be elected and the meeting of the company may be continued. However, it is to be noted that where a meeting is called but it is not held due to pandemonium and confusion and a note to this effect is made in the minute book by the Chairman, the shareholders cannot elect a new Chairman because in such a case no meeting has actually been commenced and consequently no question of dissolving the meeting permanently by the Chairman arises.

Duties of the Chairman

a) He must take care that the minority is not oppressed in any way.
b) He must give the members who are present a reasonable opportunity to discuss any proposed resolution and it must be ensured that all the views are adequately aired. But at the expiry of a reasonable time, if he thinks fit, he should stop the discussion on any resolution.
c) He must see that the meting is properly convened and constituted i.e. proper notice was given to every person entitled to attend the meeting and his own appointment is in order. It is the Chairman who is to see whether a quorum is present before proceeding with the business.
d) The Chairman must conduct the proceedings in accordance with the provisions of the Act, the companies Articles of Association or Table A or in the absence thereof, the common law relating to the meetings.
e) He should adjourn the meeting when it is impossible, by reason of disorder or other like cause, to conduct the meeting and complete its business. He must not use this power in a malafide manner.

f) He must take care that the opinion of the meeting is properly ascertained with regard to the questions before it. He must do so by putting the resolution in a proper form before the members and then declaring the result.

g) He must keep order in the meeting. He must decide all questions which arise at the meeting and which require decision at the time.

h) He should exercise his casting vote, if any, provided by the articles for the benefit of the company.

i) The minutes of the meeting should be properly recorded and signed by the chairman.

Minutes of the Meeting

Every company must keep a record of all proceedings of every general meeting and of all proceedings of every meeting of its Board of Directors and of every committee of the board.

These records are known as minutes and the books in which these records are written are called 'minute books'.

Rules of Keeping Minutes

a) Within 30 days of every such meeting, entries of the proceedings must be made in the books kept for that purpose. [Sec. 193 (1-A)]

b) Each page of minutes book which records proceedings of a board meeting must be initialled or signed by the Chairman of the same meeting or the next succeeding meeting. In the case of minutes of proceedings of a general meeting, each page of the minute book must be initialled or signed by the Chairman of the same meeting.

c) The minutes of each meeting must contain a fair and correct summary of the proceedings at the meeting.

d) All the appointments of officers made at any of the meetings aforesaid must be included in the minutes. In the case of a meeting of the Board of Directors or of a committee of the board, the minutes must contain the names of the directors present at the meeting and the names of the directors dissenting from or not concurring in the resolution passed at the meeting [Sec. 193 (4)].

e) The Chairman may exclude from the minutes, matters which are defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the

interests of the company. Minutes of meetings kept in accordance with the above provisions are evidence of the proceedings recorded therein.

f) The minutes books must be kept (i) at the registered office of the company; and (ii) be open during business hours to the inspection of any member without charge subject to reasonable restrictions but at least two hours each day must be allowed for inspection.

Penalty

If default is made in complying with the provision of Section 193 in respect of any meeting, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 50.

Voting and Poll

A vote is the formal expression of the will of the members of the house either for or against a proposal. The matters proposed and duly recommended in a general meeting of the company are decided by the voting of the members of the company.

The procedure of voting is regulated by the Articles subject to the provisions of the Act. Members holding any share capital of the company have the right to vote on every motion placed before the company. However, the members holding preference shares can vote only on those motions which affect the rights attached to their capital. Share warrant holders, executors of a deceased member, receiver of an insolvent member can not exercise any voting right unless registered as members. The voting rights of an equity shareholder at a poll are in proportion to his share of the paid up equity capital.

Voting may take place in either of the following two ways :

1. Voting by Show of Hands

At any general meeting, unless the Articles otherwise provide, a resolution put to the vote is in the first instance decided by a show of hands except when a poll is demanded [Sec. 177]. While voting by a show of hands, one member has one vote irrespective of the shares held by him. Proxies can not be counted unless the Articles otherwise provide. The Chairman will count the hands raised and will declare the result accordingly. Chairman's declaration of the result of voting by the show of hands to be conclusive evidence [Sec. 178].

2. Voting by Poll

If there is dissatisfaction among the members about the result of voting by the show of hands, they can demand a poll. 'Poll' means counting the number of votes cast for and against a motion. The voting rights of a member on a poll shall be in proportion to his share of the paid-up equity capital of the company. Before or on the declaration of the result of voting on any resolution by a show of hands, a poll may be ordered to be taken by the Chairman of the meeting of his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the person or persons specified below:

a) In the case of a public company having a share capital, by any member or members present in person or by proxy and holding shares in the company:
   1. which confer a power to vote on the resolution not being less than one tenth of the total voting power in respect of the resolution, or
   2. on which an aggregate sum of not less than fifty thousand rupees has been paid-up,
b) In the case of a private company having a share capital, by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by proxy, if more than seven such members are personally present,
c) In the case of any other company, by any member or members present in person or by proxy and having not less than one tenth of the total voting power in respect of the resolution [Sec. 179(1)].

The demand for a poll may be withdrawn at any time by the person or persons who made the demand. [Sec. 179(2)]. The provisions of Section 179 apply to a private company, which is not a subsidiary of a public company unless the articles provide otherwise.

A poll demanded on the question of adjournment or the election of the Chairman shall be taken forth with. A poll demanded on any other question shall be taken at such time not being later than forty eight hours from the time when the demand was made, as the Chairman may direct. Where a poll is taken, the meeting will be deemed to continue until the ascertainment of the result of the poll. Even a voter who was not present at the meeting when the poll was demanded to be taken, may vote personally in a poll held on the next day.

The Chairman of the meeting shall have the power to regulate the manner in which a poll shall be taken [Sec. 185(1)]. Where a poll is to be taken, the Chairman of the meeting

shall appoint two scrutiniser to scrutinise the votes given on the poll and to report thereon to him [Sec. 184 (1)]. Of the two scrutiniser, one shall always be a member present at the meeting, provided such a member is available and willing to the appointed [Sec.184 (3)].

The Articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which calls or other sums presently payable by him have not been paid (Sec. 181).

Proxies

A meeting has right to vote either in person or by proxy. Any member of a company who is entitled to attend and vote at a meeting of the company can appoint another person (whether a member or not) as his proxy to attend and vote instead of himself but a proxy so appointed will have no right to speak at the meeting. Unless the articles otherwise provide, a proxy will not be allowed to vote except on a poll. A member of a private company, unless the articles provide otherwise is not entitled to appoint more than one proxy to attend on the same occasion. Besides unless the articles provide otherwise a member of a company not having a share capital is not entitled to appoint a proxy. The instrument appointing a proxy is required to be in writing and signed by the appointor or his attorney duly authorised in writing. A proxy is revocable but it should be revoked before the proxy has voted. If the member who has appointed a proxy personally attends and votes at the meeting, the proxy is revoked by such conduct of the member [Section 189]. Death of the member who has appointed a proxy revokes the authority of his proxy but if the company has no notice of such death, then the vote given by the proxy will be valid.

Resolutions

The decisions of a meeting take the form of resolutions carried by a majority of votes. A question on which a vote is proposed to be taken is called a 'motion'. Once a 'motion' has been put to the members and they have opted in favour of it, it becomes a resolution. A resolution may, thus, be defined as the formal decision of a meeting on a particular proposal before it.

Types of Resolutions

Ordinary Resolution

At a general meeting of which notice has been given, if votes cast in favour of the resolution by members exceed the votes, if any, cast against the resolution by members, the resolution so passed is an ordinary resolution [Sec. 189(1)]

Unless the Companies Act or the memorandum or the articles expressly require a special resolution or resolution requiring special notice, an ordinary resolution is sufficient to carry out any matter.

AUDIT COMMITTEE

Audit Committee is one of the main pillars of the corporate governance mechanism in any company. Charged with the principal oversight of financial reporting and disclosure, the Audit Committee aims to enhance the confidence in the integrity of the company's financial reporting, the internal control processes and procedures and the risk management systems. Under the Companies Act, 1956, every public company in India having paid-up capital of not less than rupees five crores was required to constitute an Audit Committee under Section 292A The Clause 49 of the Listing Agreement , applicable only to the listed companies, requires all listed companies to duly constitute an Audit Committee with a prescribed set of responsibilities.

Under the Companies Act, 2013(hereinafter called the Act), the Audit Committee's mandate is significantly different from what was laid down under Section 292A of the Companies Act 1956, and its scope and constitution have also been broadened. The Act mandates every listed company and retain other class or classes of companies to constitute an Audit Committee.

Applicability Section 177 of the Act read with rule 6 of the Companies (Meetings of the Board and is Powers) Rules, 2014 the Board of directors of every listed company and the following classes of companies is required to constitute a Audit Committee of the Board-

(i) all public companies with a paid up capital of ten crore rupees or more;

(ii) all public companies having turnover of one hundred crore rupees or more;

(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more. The paid up share capital or turnover or outstanding loans or borrowing s or debentures or deposits, as the case may be , as existing

on the date of last audited financial statements shall be taken into account for the purposes of this rule.

Composition of Audit Committee

The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. The majority of 9 members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement. The Revised Clause 49 of the listing agreement effective from 1st October, 2014, provides that audit committee of listed company shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

Defining the term "financially literate" the clause provides that the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows shall be treated as financial literacy. Further it is provided that a member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

The Chairman of the Audit Committee shall be an independent director. The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries. The Company Secretary shall act as the secretary to the committee.

Meeting the Committee

As per the revised clause 49 the Audit Committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present. Perhaps, the most powerful committee, the Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of

the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee.

Functions of the Committee

Section 177(4) of the Act provides that every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board. Terms of reference as prescribed by the board shall inter alia, include,

(a) the recommendation for appointment, remuneratio n and terms of appointment of auditors of the company;

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

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

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

(e) scrutiny of inter-corporate loans and investments;

(f) valuation of undertakings or assets of the company, wherever it is necessary;

(g) evaluation of internal financial controls and risk management systems;

(h) monitoring the end use of funds raised through public offers and related matters.

Role of Audit Committee is also given in the revised clause 49, which includes:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
2. Recommendation for appointment, remuneration and terms of appointment of auditors of the company;
3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors;
4. Reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:

a) Matters required to be included in the Director's Responsibility Statement to be included in the Board's report in terms of clause (c) of sub-section 3 of section 134 of the Companies Act, 2013

b) Changes, if any, in accounting policies and practices and reasons for the same
c) Major accounting entries involving estimates based on the exercise of judgment by management
d) Significant adjustments made in the financial statements arising out of audit findings
e) Compliance with listing and other legal requirements relating to financial statements
f) Disclosure of any related party transactions (g) qualifications in the draft audit report

5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval;
6. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / pro spectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter;
7. Review and monitor the auditor's independence and performance, and effectiveness of audit process;
8. Approval or any subsequent modification of transactions of the company with related parties;
9. Scrutiny of inter-corporate loans and investments;
10. Valuation of undertakings or assets of the company, wherever it is necessary;
11. Evaluation of internal financial controls and risk management systems;
12. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;
13. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;
14. Discussion with internal auditors of any significant findings and follow up there on;
15. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;

16. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;
17. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;
18. To review the functioning of the Whistle Blower mechanism;
19. Approval of appointment of CFO (i.e., the whole-time Finance Director or any other person heading the finance function or discharging that function) after assessing the qualifications, experience and background, etc. of the candidate;
20. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

Powers of the Audit Committee

The Audit committee has the following powers under the section 177:

1. The Audit Committee has the power to call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
2. The Audit Committee has authority to investigate into any matter in relation to the items specified in terms of reference or referred to it by the Board and for this purpose the Committee has power to obtain professional advice from external sources. The Committee for this purpose shall have full access to information contained in the records of the company.
3. The auditors of a company and the key managerial personnel 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.

As per revised clause 49 the Audit Committee shall have the powers to:

1. Investigate any activity within its terms of reference;
2. Seek information from any employee;
3. Obtain outside legal or other professional advice;
4. Secure attendance of outsiders with relevant expertise, if it considers necessary.

Revised Clause 49 further provides that the Audit Committee shall mandatorily review the following information:

(a) Management discussion and analysis of financial condition and results of operations;

(b) Statement of significant related party transactions (as defined by the Audit Committee), submitted by management;

(c) Management letters / letters of internal control weaknesses issued by the statutory auditors;

(d) Internal audit reports relating to internal control weaknesses; and

(e) The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

Nomination and Remuneration Committee

As per section 178 of the Act read with rule 6 of the Companies (Meetings of the Board and its Powers) Rules, 2014, the Board of directors of every listed company and the following classes of companies are required to constitute a Nomination and Remuneration Committee of the Board.

1. All public companies with a paid up capital of ten crore rupees or more;
2. All public companies having turnover of one hundred crore rupees or more;
3. All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the last audited financial statement shall be taken into account for the above purpose.

Composition

The Committee so constituted by the Board shall consist of three or more non-executive directors out of which not less than one- half shall be independent directors. The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but he shall not chair such Committee. In case of a listed company as per revised clause 49, Chairman of the committee shall be an independent director.

The Chairperson of the Committee or, in his absence, any other member of the committee authorized\ by him in this behalf is required to attend the general meetings of the company. In

contrast to this, the revised clause 49 provides that the Chairman of the Nomination and Remuneration Committee could be present at the Annual General Meeting, to answer the shareholders' queries. However, it would be up to the Chairman to decide who should answer the queries.

Functions

1. Identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board appointment and removal. Further it has been attached with a wider responsibility of carrying evaluation of every director's performance.
2. Formulate the criteria for determining qualifications, positive attributes and independence of director and recommend to the Board a policy, relating to the remuneration for the directors, managerial personnel and other employees. While formulating the policy, the Committee consider the following:

   a) The level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
   b) Relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
   c) Remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

The remuneration policy formulated by the Committee is required under the Act to be disclosed in the Board's report. ''Senior management'' for the purpose of the section means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.

Functions of committee as per revised clause 49 of the Listing Agreement

1. Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration of the directors, key managerial personnel and other employees;

2. Formulation of criteria for evaluation of Independent Directors and the Board;
3. Devising a policy on Board diversity;
4. Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal. The company shall disclose the remuneration policy and the evaluation criteria in its Annual Report.

CORPORATE SOCIAL RESPONSIBILITY

Sec 135 (1) read with rule 3 of Companies (Corporate Social Responsibility Policy) Rules, 2014, mandates every company (which may include a holding company or a subsidiary company) having:

a) Net worth of rupees five hundred crore or more, or;
b) Turnover of rupees one thousand crore or more or;
c) A net profit of rupees five crore or more during any financial year to constitute a Corporate Social Responsibility (CSR) Committee of the Board.

Any financial year has been clarified as to imply any of the three preceding financial years. Further a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India which fulfills the criteria specified above is required to comply with the provisions of section 135 of the Act and the rules made there under. The net worth, turnover or net profit of a foreign Company for the purpose of this section, shall be computed in accordance with balance sheet and profit and loss account of such company in respect of its Indian business operations.

Clarification

'Net Profit' means the net profit of a company as per its financial statement, but shall not include the following:

a) Any profit arising from any overseas branch or branches of the company whether operated as a separate company or otherwise; and
b) Any dividend received from other in companies in India, which are covered under and complying with the provisions of section 135 of the Act.

It has also been clarified in the Rules that every company which ceases to satisfy the criteria mentioned above for three consecutive financial years shall not be required to

(a) constitute a CSR Committee; and (b) comply with the provisions contained in section 135, till such time it meets the criteria specified in sub section (1) of section 135

Composition

Section 135 provides that the CSR committee shall be constituted with three or more directors, out of which at least one director shall be an independent director. Companies (Meetings of Board and Powers) Rules, 2014, however, relax this requirement as below:

1. An unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an independent director, shall have its CSR Committee without such director.
2. A private company having only two directors on its Board shall constitute its CSR Committee with two such directors:
3. With respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of subsection (1) of section 380 of the Act ,i.e. the person resident in India authorized to accept on behalf of the company, service of process and any notices or other documents and another person shall be nominated by the foreign company. The composition of the Corporate Social Responsibility Committee is required to be disclosed in the Board's report prepared under the Act.

Functions

In accordance with section 135 the functions of the CSR committee include:

a) Formulating and recommending to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
b) Recommending the amount of expenditure to be incurred on the CSR activities.
c) Monitoring the Corporate Social Responsibility Policy of the company from time to time.
d) Further the rules provide that the CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

Important Aspects in Relation to CSR Policy and CSR Committee

The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose

contents of such policy in its report and the same shall be displayed on the company's website, if any.

As per the rules, the CSR Policy of the company shall, inter-alia, include the following, namely.

a) A list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and
b) Monitoring process of such projects or programs. It is to be noted that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company. The Board of Directors shall ensure that activities included by a company in its CSR Policy are related to the activities included in Schedule VII of the Act.
c) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

The Board of every company shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.CSR expenditure shall include all expenditure including contribution to corpus, the projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on any item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act. Subsection (5) of the section 135, provides that if the company fails to spend such amount of 2%, the Board shall, in its report, specify the reasons for not spending the amount.

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POSSIBLE QUESTIONS

PART – A (1 MARK)

ONLINE EXAMINATION

PART B (2 MARKS)

1. Define Director
2. Who are independent director?
3. Who are called as Residential Director?
4. Briefly discuss about Small Shareholder director.
5. Write short notes on Women director.
6. Briefly narrate about Additional Director.
7. Write short notes on Corporate Social Responsibility.
8. What is Audit Committee?
9. What is a Quorum?
10. What do you mean by Casting Vote?
11. Explain on Extra-ordinary General Meeting?
12. What do you mean by Resolution?
13. Who is called ad Proxy?
14. What do you mean by 'Minutes'?

PART C (6 MARKS)

1. State the various ways in which the directors of a company may be appointed.
2. Narrate in detail the duties of Audit Committee.
3. Explain in detail on different modes of appointing directors of a public company.
4. State the legal provisions for holding the Board Meeting.
5. Discuss in detail on the legal position of directors
6. State the legal provisions for holding the Annual General Meeting.
7. Elucidate in detail about the powers of the directors
8. Explicate in detail on procedures to be followed for conveying Statutory Meeting.
9. Explicate in detail on duties of the directors
10. Explain in detail about rules regarding disqualification of directors.
11. Explicate in detail on the role of Audit Committee.

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Company Law (17CCU303A)

Unit III

S.No.	Question	Option 1	Option 2	Option 3	Option 4	Answer
1	Public limited company can carry out its transaction with the help of ____	Promoters	Shareholders	Directors	Consultants	Directors
2	Minimum number of directors required for a public company is ___	Two	Three	Five	Seven	Three
3	Minimum number of directors required for a private company is ___	Two	Three	Five	Seven	Two
4	The company may increase or reduce the number of its directors by an ____	Ordinary Resolution	Special Resolution	Obtaining	Obtaining permission	Ordinary Resolution
5	___ directors are usually named in the articles	First	Second	Subsequent	Alternate	First
6	___ directors shall be appointed by the company in general meeting	First	Second	Subsequent	Alternate	Subsequent
7	In case of public company, at least ___ of the total number of directors shall retire by rotation	One-third	Two-third	Half	Three-fourth	Two-third
8	In case of ___ company all directors can be permanent, if the articles so provide	Public	Private	Government	Holding	Private
9	__ directors shall hold office only up to the date of the company's annual general meeting	First	Subsequent	Additional	Alternate	Additional

10	____directors are appointed by Board of Directors, if the original director is likely to be absent for a period of	First	Subsequent	Additional	Alternate	Alternate
11	In case of oppression or mismanagement, ___ has the power to appoint directors	Central Government	State Government	Court	NCLT	Central Government
12	A person appointed by the Central Government to hold office as a director shall not required to ____	Posses Qualification Shares	Retire by Rotation	Both A and B	Share Money	Both A and B
13	___ who has stayed in India for a total Period of not less than 182 days in the Previous calendar year	Residential Director	Independent Director	Small Sharehol	Women Director	Residential Director
14	____ means a director other than a Managing Director, Whole Time Director Or Nominee Director	Residential Director	Independent Director	Small Sharehol	Women Director	Independent Director
15	Public Companies having Paid up Share Capital ____may appoint independent directors	5 Crores	10 Crores	15 Crores	20 Crores	10 Crores
16	Public Companies having Turnover of above ___ may appoint independent directors	50 Crores	100 Crores	250 Crores	500 Crores	100 Crores
17	___ director which elected form small shareholder	Residential Director	Independent Director	Small Sharehol	Women Director	Small Shareholder
18	Public Companies having Paid up Share Capital ____may appoint women directors	50 Crores	100 Crores	250 Crores	500 Crores	100 Crores
19	Public Companies having Turnover of above ___ may appoint independent directors	50 Crores	100 Crores	300 Crores	500 Crores	300 Crores
20	Overall all limit for total remuneration to all directors is ___	5%	10%	11%	12%	11%
21	Remuneration of all directors when the company has managing directors or manager is ___	1%	2%	3%	4%	1%
22	Maximum remuneration payable to all directors when company does not have managing director or manager	1%	2%	3%	4%	3%
23	Maximum remuneration payable to managing director when there is one managing director is ___	1%	2%	3%	5%	5%

24	Maximum remuneration payable to manager when there is one manager is ___	1%	2%	3%	5%	5%
25	Maximum remuneration payable to whole-time director is____	1%	2%	3%	5%	5%
26	__ is a director who is entrusted with substantial powers of management	Managing Director	Manager	Secretary	Joint-Secretary	Managing Director
27	___ is an individual who subject to the superintendence, control and direction of the board of directors	Managing Director	Manager	Secretary	Joint-Secretary	Manager
28	Tenure of managing directors may not exceed ____	2 Years	3 Years	5 Years	7 Years	5 Years
29	__ directors means a director employed to devote the whole of his time an attention for managing a company	Managing Director	Manager	Whole-time	Joint-Secretary	Whole-time
30	__ is the one of the principal officers of the company	Manager	Managing Director	Whole-time	Secretary	Secretary
31	First meeting of shareholders is known as ___	Statutory Meeting	Annual General Meting	Extra-ordinary	Board Meeting	Statutory Meeting
32	Maximum time period allotted for conducting statutory meeting is ___	3 Months	5 Months	6 Months	10 Months	6 Months
33	Statutory meeting may be conducted after ____ from the promotion of company	15 Days	One Month	Two Months	Three Months	One Month
34	___ is held once in the life-time of a company	Statutory Meeting	Annual General Meting	Extra-ordinary	Board Meeting	Statutory Meeting
35	__ company need not to conduct statutory meeting	Public	Private	Government	Holding	Private
36	The directors are required to send notice of statutory meeting to every member of the company before ___	15	21	30	45	21
37	Statutory report shall be certified as correct at least by ___ directors	Two	Three	Four	Five	Two

38	The object of ___ meeting is to put the share holders of the company, at as early a date as possible, in	Statutory Meeting	Annual General Meting	Extra-ordinary	Board Meeting	Statutory Meeting
39	__ is regarded as the most important of all company meeting	Statutory Meeting	Annual General Meting	Extra-ordinary	Board Meeting	Annual General Meting
40	__is the meeting is to give full information to members of progress made by the company during the year	Statutory Meeting	Annual General Meting	Extra-ordinary	Board Meeting	Annual General Meting
41	First annual general meeting shall be held within the _____months of its incorporation	12	15	18	35	18
42	Subsequent annual general meetings must be held by the company each year with ___ months of the closing	3	5	6	7	6
43	At least ___ days written notice must be given to members for calling an annual general meeting	15	21	30	45	21
44	__ meeting of a company other than annual general meeting	Statutory	Board	Annual General	Extra-ordinary	Extra-ordinary general
45	___ meetings are called in emergencies	Statutory	Board	Annual General	Extra-ordinary	Extra-ordinary general
46	__ meetings are convened when it is found necessary to transact certain business which cannot conveniently be	Statutory	Board	Annual General	Extra-ordinary	Extra-ordinary general
47	An ___ meeting is usually called for such purposes as alteration of share capital or reorganization of capital	Statutory	Board	Annual General	Extra-ordinary	Extra-ordinary general
48	At least ___ days written notice must be given to members for calling an extra-ordinary` general meeting	15	21	30	45	21
49	Where the share capital of a company is divided into different classes of shares, meeting of different classes	Statutory Meeting	Class Meetings	Annual General	Extra-ordinary	Class Meeting
50	__ meetings are the most important as well as the most frequently held meetings of the company	Statutory	Board	Annual General	Extra-ordinary	Board
51	__ meeting must be held at least once in every three calendar months	Statutory	Board	Annual General	Extra-ordinary	Board

52	__ is the minimum number of members must be present	Quorum	Notice	Minutes	Agenda	Quorum
53	__ is an advance intimation of the meeting	Quorum	Notice	Minutes	Agenda	Notice
54	__ is the chief authority in the meeting	Chairman	Board of Directors	Shareholders	Secretary	Chairman
55	____can extend casting vote	Chairman	Board of Directors	Shareholders	Secretary	Chairman
56	___ is a person authorized to act and vote for another at a meeting	Proxy	Substitute	Enumerator	Assistant	Proxy
57	__ resolution is one which requires a simple majority	Ordinary	Special	Resolution	None of the Above	Ordinary
58	__ resolution which is one which is passed at a general meeting of a company by a majority of three-fourths	Ordinary	Special	Resolution	None of the Above	Special
59	__may be defined as the official record of the proceedings of the meetings	Notice	Resolution	Minutes	Agenda	Minutes
60	The successful conduct of any meeting largely depend upon the personality of the ____	Director	Shareholder	Promoter	Chairman	Chairman

UNIT-IV

SYLLABUS

Dividends, Accounts, Audit - Provisions relating to payment of Dividend, Provisions relating to Books of Account, Provisions relating to Audit, Auditors' Appointment, Rotation of Auditors, Auditors' Report, Secretarial Audit

INTRODUCTION

A dividend is a distribution of a portion of a company's earnings, decided by the board of directors, paid to a class of its shareholders. Dividends can be issued as cash payments, as shares of stock, or other property.

A share of the after-tax profit of a company, distributed to its shareholders according to the number and class of shares held by them. Smaller companies typically distribute dividends at the end of an accounting year, whereas larger, publicly held companies usually distribute it every quarter. The amount and timing of the dividend is decided by the board of directors, who also determine whether it is paid out of current earnings or the past earnings kept as reserve. Holders of preferred stock receive dividend at a fixed rate and are paid first. Holders of ordinary shares are entitled to receive any amount of dividend, based on the level of profit and the company's need for cash for expansion or other purposes.

DEFINITION OF DIVIDEND

Dividend refers to a reward, cash or otherwise, that a company gives to its shareholders. Dividends can be issued in various forms, such as cash payment, stocks or any other form. A company’s dividend is decided by its board of directors and it requires the shareholders’ approval. However, it is not obligatory for a company to pay dividend. Dividend is usually a part of the profit that the company shares with its shareholders.

TYPES OF DIVIDEND

A dividend is generally considered to be a cash payment issued to the holders of company stock. However, there are several types of dividends, some of which do not involve the payment of cash to shareholders. These dividend types are:

Cash Dividend

The cash dividend is by far the most common of the dividend types used. On the date of declaration, the board of directors resolves to pay a certain dividend amount in cash to those investors holding the company's stock on a specific date. The date of record is the date on which dividends are assigned to the holders of the company's stock. On the date of payment, the company issues dividend payments.

Stock Dividend

A stock dividend is the issuance by a company of its common stock to its common shareholders without any consideration. If the company issues less than 25 percent of the total number of previously outstanding shares, then treat the transaction as a stock dividend. If the transaction is for a greater proportion of the previously outstanding shares, then treat the transaction as a stock split. To record a stock dividend, transfer from retained earnings to the capital stock and additional paid-in capital accounts an amount equal to the fair value of the additional shares issued. The fair value of the additional shares issued is based on their fair market value when the dividend is declared.

Property Dividend

A company may issue a non-monetary dividend to investors, rather than making a cash or stock payment. Record this distribution at the fair market value of the assets distributed. Since the fair market value is likely to vary somewhat from the book value of the assets, the company will likely record the variance as a gain or loss. This accounting rule can sometimes lead a business to deliberately issue property dividends in order to alter their taxable and/or reported income.

Scrip Dividend

A company may not have sufficient funds to issue dividends in the near future, so instead it issues a scrip dividend, which is essentially a promissory note (which may or may not include interest) to pay shareholders at a later date. This dividend creates a note payable.

Liquidating Dividend

When the board of directors wishes to return the capital originally contributed by shareholders as a dividend, it is called a liquidating dividend, and may be a precursor to shutting down the business. The accounting for a liquidating dividend is similar to the entries for a cash dividend, except that the funds are considered to come from the additional paid-in capital account.

PROVISIONS RELATING TO PAYMENT OF DIVIDEND

Source of dividend: The dividend should be declared or paid out of:

- Current year's profits of the company after providing for depreciation as per Schedule II of the Companies Act, 2013 or
- Profits of the previous financial year is after providing for depreciation as per Schedule II of the Companies Act, 2013 or
- Out of both or
- Money provided by the Central or State Governments for the payment of dividends in pursuance of the guarantee given by that Government.

Transfer to Reserves

A company may, before the declaration of any dividend in any financial year, transfer such percentage of it profits for that financial year as it may consider appropriate to the reserves of the company.

Declaration of Dividend out of Reserves

No dividend shall be declared or paid by a company from its reserves other than free reserves. In the event of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves subject to the fulfillment of the following conditions, namely:

- The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year. This would not apply to a company, which has not declared any dividend in each of the three preceding financial years.
- The total amount to be drawn from such accumulated profits shall not exceed one tenth of the sum of its paid up share capital and free reserves as appearing in the latest audited financial statement. The amount so drawn shall first be utilized to set off the losses
- Incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
- The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.
- No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.

Recommendation of the Board

The director's have the power to recommend the dividend. It is at the sole discretion of the directors to recommend or not to recommend the dividend. The members in the annual general meeting cannot increase the rate of dividend recommended by the Board of Directors. They can either approve the same rate or lower it.

Declaration of final dividend at the Annual General Meeting

The dividend is usually declared at the annual general meeting, A company which could not declare dividend at an annual general meeting may declare the same at a subsequent general meeting. Where a company has declared a dividend at the annual general meeting, it cannot

declare the final dividend again at an extraordinary general meeting. Thus, final dividend cannot be paid twice in the same year.

Depositing the amount of dividend declared into a Separate Bank Account

The dividend declared must be deposited in a separate bank account within five days of its declaration and the same shall be used for payment of dividend.

Dividend to be paid in Cash

Dividend shall be paid only in cash except when adjusted towards paying up unpaid amount on shares held by the members of the company. The dividend payable in cash may be paid either by cheque or warrant or in any electronic mode to the shareholders entitled to the payment of dividend.

Dividend to be paid only to the registered shareholders and beneficial owners

Dividend is to be paid only to the registered holder of shares or to his order or to his banker. Dividend shall be paid in proportion to the amounts paid up on each share. Time framework for the payment of dividend. A dividend, once declared at the general meeting of the shareholders, becomes a debt against the company and must be paid within 30 days from the date of its declaration.

Penalty for failure to pay dividend within 30 days

Where a dividend has been declared by a company but not paid or the warrant in respect thereof has not been posted, within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, every director of the company who is

knowingly a party to the default, shall be punishable with imprisonment for a term which may extend to two years and with a minimum fine of one thousand rupees for every day during which such default continues.

In the following cases, there would not be any punishment for default:

- Where the. dividend could not be paid by reason of the operation of any law
- Where a shareholder has given directions to the company regarding the payment of the dividend and it is not possible to comply with those directions;
- Where there is a dispute regarding the right to receive the dividend;
- Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- Where, for any other reason, the failure to pay the dividend or post the warrant within the period aforesaid was not due to any default

Transfer of unpaid or Unclaimed Dividend

According to Section 124 (1), where after the declaration of the dividend, it has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account called the Unpaid Dividend Account. For this purpose, the company has to open Unpaid Dividend Account in any scheduled bank. In case of delay, the company would have to pay interest @ 12% p.a.

Transfer of unpaid/unclaimed dividend to Investor Education and Protection Fund

Any money transferred to the Unpaid Dividend Account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund.

If a company fails to comply with any of the requirements of Section 124, the company shall be punishable with a minimum fine of Rs 5 lakhs but which may extend to Rs 25 lakhs and every officer of the company who is in default shall be punishable with a minimum fine of Rs 1 lakh but which may extend to Rs 25 lakhs.

PROVISIONS RELATING TO BOOKS OF ACCOUNT

Section 128 of the Companies Act, 2013 provides for Maintenance of books of accounts under the new Companies Act.

The erstwhile corresponding section 209 on "Books of accounts to be kept by company" of Companies Act, 1956 dealt with the books of accounts required to be maintained to give a true and fair view of the state of affairs of the company or branch office and to explain its transactions and also specify the place of keeping and period for which such books to be kept by the company. The responsibility for maintenance books of accounts was also fixed by this provision.

The significant changes introduces in this section are as follows:

a. Books of accounts may also be kept in electronic form
b. A director of the Company can inspect the books of accounts of the subsidiary, only with the authority of the Board of Directors.

Maintenance of Books of Accounts

Maintenance of books of accounts would mean records maintained by the company to record the specified financial transaction. It has been specifically provided that –

1. Every company shall keep proper books of accounts. This clause specifies the main features of proper books of accounts as under:
   I. The company must keep the books of accounts with respect to items specified in clauses (i) to (iv) of sub-section 2(13) which defines "books of accounts".
   II. The books of accounts must show that all money received and expended , sales and purchases of goods and the assets and liabilities of the company.
   III. The books of accounts must be kept on accrual basis and according to the double entry system of accounting.
   IV. The books of accounts must give a true and fair view of the state of the affairs of the company or its branches.

2. What is required to be prepared and kept are books of accounts, other relevant books and papers and financial statements. Books of accounts are defined in clause 2(13) , 'books and papers' in clause 2(12) and ' financial statement' in Clause 2(40). Both are required to be prepared and kept.
3. Books of accounts, books and papers and financial statements should explain the transactions effected at company's registered office and any branch(es).
4. Records, books, papers and financial statements must relate to any specific financial year only.
5. A company engaged in production, processing, manufacturing or mining activity, is also required to maintain particulars relating to utilization of material, labour or other items of cost as the Central Government may prescribe for such class of companies.(Section 148)
6. The branches of the company, if any, in India or outside India shall also keep the books of accounts in the same manner as specified in sub-section (1), for the transaction effected at the branch office. Further the branch offices are required to send the proper summarized return made up-to-date to the company at its registered office or the other places as decided by the board.
7. Books of accounts of the company shall be kept at the registered office of the company.
8. In case of Books of accounts being maintained at any other place other than registered office in India, as may be decided by resolution of Board of Directors, company shall be required to intimate full address of such place to Registrar of Companies within 7 days.
9. The maintenance of books of accounts and other books and papers in electronic mode is permitted and is optional. (Second Proviso to Clause 128(1)).

The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be: (sub-section 6)

i. Managing Director,
ii. Whole-Time Director, in charge of finance
iii. Chief Financial Officer
iv. Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Penal Provision

In case the aforementioned persons referred to in sub-section (6) (i.e. Managing Director, Whole Time Director, Chief Financial Officer etc.) fail to take reasonable steps to secure compliance of this section and thus, contravene such provisions, they shall in respect of each offence, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or both.

PROVISIONS RELATING TO AUDIT

The Ministry has taken a big step by notifying 183 major sections of Companies Act, 2013 w.e.f. 01.04.2014 out of which the provisions relating to Audit & Auditors is of utmost importance for all the Chartered professionals out there. This article contains the key amendments bought into effect in relation to audit and auditors and the way forward.

Chapter X –Audit & auditors ranging from Sections 139 to 148 of the Companies Act, 2013 (the 'Act') alongwith Companies (Audit and Auditors) Rules, 2014(the 'Rules') have been notified & they shall come into force on the 1st day of April, 2014.

Below is the summary of all the sections within the ambit of this Chapter alongwith the corresponding section form Companies Act, 1956

Companies Act, 2013(New Act)	**Companies Act, 1956(Old Act)**	**Section Title**
139	224, 224A, 619	Appointment of Auditors
140	225	Removal, Resignation of auditor and giving of special notice.
141	226	Eligibility, qualifications and disqualifications of auditors.

142	224(8)	Remuneration of auditors.
143	227, 228, 263A	Powers and duties of auditors and auditing standards.
144	Nil	Auditor not to render certain services.
145	229, 230	Auditors to sign audit reports, etc. (similar)
146	231	Auditors to attend general meeting.(similar)
147	232, 233, 233A	Punishment for contravention.
148	233B	Central Government to specify audit of items of cost in respect of certain companies. (Cost Audit)

Note: Sub-section 5 & proviso to sub-section 4 of Section 140 of Companies Act, 2013 has not been yet notified & Proviso to sub-section (3) of Section 225 of Companies Act, 1956 still remains in effect.

KEY CHANGES :

1. The term of auditor holding the office in a company is increased to 5 years subject to ratification at every AGM as compared to one year in the previous act.
2. Mandatory rotation of auditors in case of listed companies, certain unlisted companies & certain private companies after 5 years.
3. No. of audits per individual/partner reduced to twenty including private limited companies.
4. LLP is eligible to be appointed as an auditor
5. A firm/LLP can partner with non-CA's and still be appointed as auditor.
6. Automatic re-appointment of retiring auditor in case of other companies where no resolution is passed in AGM

7. Certain services named in Section 144 which an auditor cannot provide to its auditee
8. Compliances in relation to appointment, resignation of auditor have increased and changed significantly.
9. Acts of Relative is included within the ambit of disqualification of an auditor
10. Limits for disqualification in case of holding of security, indebtness to a company or providing guarantee to a company have increased.
11. Business relationship with a company is bought within the ambit of disqualification of an auditor
12. As per Section 143 (2), an auditor is required to make a report to the members on the accounts examined by him and on every financial statement which are required by or under this Act to be laid in GM report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report
    a. Balance Sheet
    b. Profit & Loss Account
    c. Cash Flow Statement
    d. A statement of changes in equity if applicable
    e. Other Statements as prescribed

    Note : CFS is not mandatory in case of One Person Company, Small Company& Dormant Company.

Small Company means a company other than public company of which Paid up share capital does not exceed Rs. 50 lakh or such prescribed amount & T/o of which as per its last P & L A/c does not exceed 2 crores or such amount as prescribed. These do not include holding or subsidiary company.

13. As per 143(9) of the company's act 2013, every auditor shall comply with the auditing standards.
14. Fraud Reporting to CG has been introduced and provisions regarding this are required to be followed by auditor immediately within the specified time.

APPOINTMENT OF AUDITORS

SECTION 139 – Appointment of auditors:

1) Appointment of Auditors other than First

A company shall, at the 1st AGM, appoint an individual or an audit firm (always includes LLP) as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its 6th AGM and thereafter till the conclusion of every 6th AGM.

Appointment of First Auditors

However, the first Auditors of a company are to be appointed always by the BOD within 30 days of registration of company and in case of failure to do so, the members shall be informed who shall within 90 days at an EGM appoint such auditor and such auditor shall hold office till conclusion of 1st AGM.

2. Ratification at every AGM

Company shall place the matter relating to such appointment for ratification by members at every AGM.

Note : If the appointment is not ratified, the rules prescribe that the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act.

3) Compliance before appointment by Company/Auditor

a. Written consent of the auditor to such appointment

b. Certificate that

a. auditor is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made there under;
b. the proposed appointment is as per the term provided under the Act;

c. the proposed appointment is within the limits laid down by or under the authority of the Act;
d. the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

4) Compliance after Appointment by Company

A Company shall inform the auditor of his appointment & is to file a notice of appointment with ROC within 15 days of the meeting in which auditor is appointed. (Form No. ADT – 1)

Note : Earlier auditor used to file Form 23B and inform ROC, now the company is to inform ROC, so in a way they shifted the burden to inform on Company.

5) Mandatory Rotation of Auditors in case of Listed Companies & Certain classes of Companies

All Listed companies and Companies prescribed by CG shall not appoint or re-appoint–

- an individual – for more than one term of 5 consecutive years
- an audit firm – for more than two terms of 5 consecutive years

Classes of Company prescribed by CG under the Rules

a. all unlisted public companies having paid up share capital of rupees ten crore or more;
b. all private limited companies having paid up share capital of rupees twenty crore or more;
c. all companies having paid up share capital of below threshold limit mentioned in (a) & (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

Cooling Period

An individual or audit firm as the case may be who/which has completed the abovementioned terms shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of such term.

Common Partner Restriction

As on the date of appointment, no audit firm having a common partner/s to the other audit firm, whose tenure has expired in a company immediately preceding the F.Y., shall be appointed as auditor of the same company for a period of 5 years.

Transition Period

Every company required to comply as above, existing on or before the commencement of this Act, shall comply with the above requirements within 3 years from 01.04.2014.

Right of Shareholder / Auditor Unharmed

Nothing contained above with respect to rotation shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

Provisions in Rules regarding Rotation

- The period for which the individual/firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 or 10 years, as the case may be.
- The incoming auditor/audit firm shall not be eligible if such auditor/audit firm is associated with the outgoing auditor/audit firm under the same network of audit firms.

Here, "same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

For the purpose of rotation of auditors,-

(a) a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation;

(b) if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

6) Reappointment in case of other than listed companies possible

A retiring auditor is eligible for reappointment at an AGM, if

a. He is not disqualified for re-appointment
b. He has not given notice in writing of unwillingness to be re-appointed
c. SR passed at a meeting that some other auditor is to be appointed or expressly providing that he shall not be re-appointed (Read special notice requirement in Section 140)

Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

7) Additional rights provided to Shareholders

Subject to the provisions of this Act, members of a company may resolve to provide that:

- In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
- The audit shall be conducted by more than one auditor.

8. Casual Vacancy

- CV caused because of resignation : By BOD within 30 days but the same should be approved by the company within 3 months of recommendation and shall hold office till conclusion of next AGM
- CV caused because of other reasons (disqualifications as per 141) : By BOD within 30 days, No approval

9. Where a company is required to constitute an Audit Committee u/s 177, all appointments, including the filling of a CV of an auditor shall be made after taking into account the recommendations of such committee.

Section 140 : Removal, Resignation of auditor and giving of Special Notice

- The auditor appointed u/s 139 may be removed from his office before the expiry of his term only by way previous approval of CG and a special resolution of the company to be passed in a general meeting within 60 days of receipt of approval of CG. However, before

such step, the auditor shall be given a reasonable opportunity of being heard. The application to CG has to be made within 30 days of passing the board resolution. (Form No. ADT- 2 along with fees).

- Here, a long-term relationship is built for 5 years, since removal before 5 years would be considered as removal before the expiry of his term. And for removal before the expiry of an auditor's term requires strict formalities to be followed.
- Compliance by auditor after resignation : The auditor who has resignedfrom the company shall file within a period of 30 days from the date of resignation, a statement in the prescribed form with the company and the ROC, indicating the reasons and other facts as may be relevant. (Form No. ADT-3)

Punishment if auditor doesn't comply : Fine of Rs. 50,000 to Rs. 5,00,000

- **Special Notice** : Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except in case of mandatory rotation in case of listed companies. Other provisions w.r.t special notice are similar to the old Act.

Section 141 : Eligibility, Qualifications & Disqualifications

Individual

a. Individual : Only if is a CA holding certificate of Practice as per Section 2(17) of the Companies Act,2013.
b. Audit Firm/LLP : Majority of partners who are CA are practicing in India, apptd in Firm name. Only the partner's who are CA's are authorised to act as auditors and sign.

- **Note**: Thus, it seems Firm/LLP can contain partner's who are Non-CA's. The introduction of LLP as an auditor and ability of a firm/LLP to operate with partners who are not Chartered Accountants is a welcome change and in line with international practices. This will also result in multi-disciplinary firms providing vide range of services.

Disqualifications

The following persons shall not be eligible for appointment as auditors of a company or shall vacate the office after appointment:

Disqualifications similar to Old Act:

a) a body corporate other than a LLP
b) an officer or employee of the company;
c) a person who is a partner, or who is in the employment, of an officer or employee of the company;

Disqualifications amended and its limits

d) a person who, or his relative or partner—
   i. is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

❖ Provided that the relative may hold security or interest in the company of face value not exceeding 1000 rupees or such sum as may be prescribed; (Prescribed sum is Rs. 1 lakh)

   ii. is indebted to the company, or its subsidiary, or its holding or associatecompany or a subsidiary of such holding company, in excess of such amount as may be prescribed; (Prescribed sum is Rs. 5 lakh)
   iii. has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;(Prescribed sum is Rs. 1 lakh)

NEWLY ADDED disqualifications provided in the ACT:

e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

The rules define the "business relationship" as any transaction entered into for a commercial purpose, except –

   i. Commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;

ii. Commercial transactions which are in the ordinary course of business of the company at arm's length price – like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

g) a person who is in full time employment elsewhere (OR)

a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies;

h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised servicesas provided in section 144.

NOTE

BUSINESS RELATIONSHIP IS AN INCLUSIVE TERM WHICH IS OPEN TO VIDE INTERPRETRATIONS THOUGH THE EXCEPTIONS ARE PROVIDED BUT THE EXCEPTIONS ARE LIMTED TO CERTAIN COMMERICAL TRANSACTION OF CERTAIN INDUSTRIES

Limits for an Individual / Partner Reduced to Twenty

The 1956 Act and the Institute of Chartered Accountants of India ('ICAI') restrict the number of companies in which a person/ firm can be appointed as auditor. An individual cannot be appointed as auditor for more than 30 companies. Further, an individual cannot be appointed as auditor for more than 20 public companies and of which not more than 10 companies should have a paid up share capital of more than Rs 25 lakh. In case of a firm, such ceiling is determined for every partner of the firm. This limits specifically excluded private companies. However, the ICAI had notified that an auditor could accept 30 audits including private companies.

But the Companies Act, 2013 simply restricts the number of audits to 20 companies for an individual/ partner. It does not provide any restrictions based on nature/ size of the companies. Thus, this limit is further reduced.

Note: For the audits taken up by auditor for F.Y. 2013-14, the limits won't be applicable since the appointment for the same was made before 01.04.2014.

Section 144 – New Insertion: AUDITOR NOT TO RENDER CERTAIN SERVICES:

In Old Act, there was no provision as to rendering of non-audit services to an audit client. It was determined by applying the Code of Ethics and the Guidance Note on Independence of Auditors issued by the ICAI. But the New Act contains specific provisions that prohibit auditors of a company to render non-audit services to an audit client directly or indirectly or its holding company or subsidiary company.

Prohibited services includes:

- Accounting and book keeping services;
- Internal audit;
- Design and implementation of any financial information system;
- Actuarial services;
- Investment advisory services;
- Investment banking services;
- rendering of outsourced financial services; and
- Management services.

Here, the Act has provided a transition period 1 year meaning an auditor who has already been performing any non-audit services shall comply with this section till 31.03.2015.

Directly or Indirectly Defined:

Auditor – Individual

His Relative, Any other person connected/associated with such individual, entity in which such individual has significant influence or control or whose name/trademark/brand is used by such individual.

Auditor – Audit Firm

All partners, parent/subsidiary/Associate Entity or entity in which firm/partner has significant influence or whose name/trademark/brand is used by such firm/partners.

Comments

This section will significantly damage the ability of an audit-firm/individual to provide most non-audit services. The requirements appear to be quite onerous and indeed would appear to prohibit an audit firm from providing a wide range of services, even when those are non-material.

Section 142 : Remuneration of auditors

First Auditor: Board

Other: GM

As per the old Act, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration". But as per the new act, the remuneration in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

This means, the board is free to decide the remuneration for other services provided by auditor provided they don't come within Section 144.

Section 147 : Penalty

Penalty w.r.t to contravention of Section 139 to 146 :

Company : Rs. 25,000 to Rs. 5,00,000

Officer in Default : Rs. 10,000 to Rs. 1,00,000 or imprisonment up to 1 year or both

Auditor (Sec 139, 143, 144, 145) : Rs.25000 to Rs. 5,00,000

AUDITORS REPORT

The following paragraphs discuss about "Independent Auditors Report" under the provisions of Section 143 and 145 of Companies Act, 2013 and Companies (Audit and Auditors) Rules, 2014 excluding the provisions related to audit report in case of Government Companies and other companies, where the auditor is appointed by the Comptroller and Auditor General of India.

1. Applicability of Section 143

Apart from applying to the auditor of a company, the provisions of this section (i.e all the matters discussed below in this article) shall *mutatis mutandis* apply to

a. The Cost Accountant in practice conducting cost audit under Section 148 or
b. The Company Secretary in practice conducting secretarial audit under Section 204.

2. Inquiry on certain matters (Similar to Section 227 (1A) of Companies Act, 1956)

Apart from exercising the right of access at all times and requiring information from officers of the company, the auditor has to inquire into the following matters, namely.

- Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members.
- Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company.
- Where the company not being an investment company or a banking company, whether so much of assets of the company as consist of shares, debentures and other securities have been sold at a price less than at which they were purchased by the company.
- Whether loans and advances made by the company have been shown as deposits
- Whether personal expenses have been charged to revenue account.
- Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment and

if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

Again, as was the case in the Companies Act, 1956, under this Companies Act, 2013 also, the auditor is required to inquire on the matters said above and the reporting requirement on this clause arises only when the auditor is not satisfied with the inquiry on the above mentioned matters.

3. Matters connected with Audit Report

a) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under the Companies Act, 2013, to be laid before the company in the general meeting.
b) The auditor's report shall be issued after taking into account the

- Provisions of Companies Act, 2013
- Accounting and Auditing Standards
- Matters which are required to be included in the audit report under the provisions of Companies Act, 2013 or any rules made (For e.g Companies (Audit and Auditors) Rules, 2014) or
- Matters to be included based on any order made by Central Government in consultation with the National Financial Reporting Authority.

c) Finally, the auditor shall make a report to the members of the company, that the accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

4. What the Report Should State

The auditor's report shall also state (apart from discussed above)

a) Whether he has *sought and obtained* all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, *the details thereof and the effect of such information on the financial statements*

b) Whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him.

c) Whether the report on the accounts of any branch office of the company audited under sub-section (8) of Section 143, by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report.

d) Whether the company's balance sheet, profit and loss account and cash flow statement[1] dealt with in the report are in agreement with the books of account and returns.

e) Whether, in his opinion, the financial statements comply with the accounting standards.

f) The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company.

g) Whether any director is disqualified from being appointed as a director under sub-section (2) of Section 164.

h) *Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.*

i) *Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.*

j) *Such other matters as may be prescribed*

These matters are prescribed by the Companies (Audit and Auditors) Rules, 2014. The auditor's report shall also include their views and comments on the following matters, namely

a. Whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statements

b. Whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts.

c. Whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company

5. Manner of Stating any "Qualifications"

i. Where any of the matters required to be included in the audit report is answered in the negative or with a qualification, the report shall state the reasons there for.

ii. Even though the Companies Act, 2013 is silent in prescribing about the manner of presenting a qualified opinion (including disclaimer of opinion or adverse opinion), we can take reference from Section 227 (3) (e) of Companies Act, 1956. Accordingly, under the Companies Act, 2013, the auditor can express a qualified opinion / disclaimer of opinion/adverse opinion as the case may be in thick type or in italics.

6. Special Focus on Reporting of Fraud

1. Section 143 (12) casts an additional responsibility on auditors with respect to reporting of fraud.
2. The section begins with a non-obstante clause.
3. If the auditor of a company, in the course of the performance of his duties as auditor , has reason to believe that an offence involving fraud, is being or has been committed against the company by officers or employees of the company, the auditor shall report the matter to the Central Government immediately but not later than sixty days of the auditors knowledge , after following the procedure below , the procedure being given by Companies (Audit and Auditors) Rules, 2014

A. The auditor shall forward his report to the Board of Directors or the Audit Committee, as the case may be, immediately after the auditor comes to know of the fraud , seeking their reply or observations within forty five days.

B. On receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board of Directors or Audit Committee along with the auditors comment on such reply or observations of the Board of Directors or the Audit Committee, to the Central Government within fifteen days of receipt of such reply from the Board of Directors or Audit Committee.

C. In case the auditor fails to get any reply or observations from the Board of Directors or Audit Committee within forty five days, then the auditor shall forward his report to the Central Government along with a note containing the details of the report earlier

forwarded to the Board of Directors or Audit Committee, for which he failed to receive any reply or observations within the stipulated time.

D. The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same.

E. The report shall be on the letter- head of the auditor containing postal address, e-mail address and contact number and shall be signed by the auditor with his seal and shall indicate his membership number.

F. The report shall be in the form of a statement as specified in Form ADT-4.

G. The provisions of this rule shall also apply, *mutatis mutandis,* to a cost auditor and a secretarial auditor during the performance of his duties under section 148 and section 204 respectively.

Restricted Scope of reporting on fraud

The auditor's responsibility with respect to reporting on fraud discussed above is restricted to fraud either presently being committed or committed in the past, against the company by officers or employees of the company. This does not include:

a. Fraud by the company, either discovered by the auditor or that comes to the knowledge of the auditor (either past or present).

b. Fraud on the company by external parties other than officers or employees of the company that comes to the knowledge of auditor or discovered by the auditor.

Even though the exclusions above gets fitted in Companies Auditors Report Order, 2003 (CARO, 2003) (presently for the purpose of passive reference, a connection is resorted to CARO,2003 understanding fully that there is a necessity for revised CARO) and would also be factored in the order that the Central Government in consultation with National Financial Reporting Authority would give (i.e in the New Version of CARO), the auditor's responsibility in case of the fraud stated as exclusion in point a & b above would not extend to communication of the same to the Board of Directors or the Audit Committee and eventually to Central Government.

7. Signing of Audit Reports – Section 145

a. The auditor shall sign the audit report or sign or certify any other document of the company in accordance with the provisions of Section 141(2) of the Companies Act, 2013 (Sec. 141 (2) reads as follows " *Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are Chartered Accountants shall be authorised to act and sign on behalf of the firm").*
b. The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Conclusion

The Companies Act, 2013 has certainly added to the responsibilities of an independent auditor. This additional responsibility coupled with a necessity/ possible arrival of revised addendum (i.e revised CARO) will usher in a new era of challenges and greater transparency in reporting front.

SECRETARIAL REPORT

Section 204(1) of Companies Act, 2013 introduces concept of Secretarial Audit Report by Company Secretary in practice is a welcome step. It is a step towards good corporate governance and in line with the provisions of Clause 49-C(iii) of the Listing Agreement of Stock Exchanges i.e. part of Corporate Governance which states. The Board shall periodically review legal compliance reports prepared by the company as well as steps taken by the company to cure instances of non-compliances.

The objectivity of secretarial audit is good and appreciated. However, the format of Secretarial audit report to some extent is vague in nature. The format of Secretarial Audit Report i.e. form no.MR-3 [pursuant to Section 204(1) of the Companies Act, 2013 and rule 9 of the Companies (Appointment and Remuneration personnel) Rules 2014] specifies examination of books, papers, minute books, forms and returns filed and other records maintained by the Company for the financial year ended on according to the provisions of Acts specified in the

form in sub-clauses ((i) to (v) are good but last (vi) is blank which says mention the other laws as may be applicable specifically to the company and to report specific non compliances, observations, qualifications separately.

The author is very much concerned in respect of sub-clause (vi) which states …. (Mention the other laws as may be applicable specifically to the Company). It is, however, not specified what other laws are applicable to the Company.

There are numerous other laws that may be applicable to the Company. Some of the taxation, environmental and labour laws which may be applicable to majority of companies are enumerated herein below. It is surprising that the Act or rules do not specify what provisions or what laws are to be audited. It is up to the whims and prerogative of the Secretarial Auditor to choose what matters are to be audited and what not. It will definitely differ from one person to another as everybody has own view of audit. It is also not understandable that in cases where some other agency has conducted audit or special audit under some specific law, whether he has to rely on that or to conduct audit as per his knowledge and expertise. So, the author is of the view that this provision is totally vague in nature and do not serve any purpose. More so, it exceeds its jurisdiction.

For example, under Companies Act, financial audit in respect of financial statements is being done by Chartered Accountant and cost audit is being conducted by Cost Accountant under Companies (Cost Audit) Rules and in some cases special audit is being conducted under section 14 and 14AA of the Central Excise Act, 1944 or special audit of Service Tax under section 72A of the Finance Act or special audit in any other law is conducted by any other Agency, whether it would be appropriate that the Company Secretary should also re-audit and report his observations or qualifications in its report, as it is also covered under the definition of other laws. In the Secretarial audit report, there is no exception given to exclude the reporting on such matters which are under audit by other agencies. It is not clear whether Secretarial audit report should also cover the matters over and above other audits. It is, however, understandable that it is duty of Company Secretary who is in whole time employment to report legal compliance on other laws as may be applicable as defined under the provisions of Section 205 of the Companies Act, 2013 but audit of other laws is altogether different. It is also understandable that the

Secretarial audit should review the compliance of other laws as may be discussed in the Board of Directors meeting. It is, however, not practical for the Secretarial auditor to audit numerous laws as may be applicable to the Company. It may be noted that any audit should be specific to the extent of compliance of specific provisions of law and no audit can be made in general. I do not understand the logic and objectivity of such a general audit.

Check list and audit points of Secretarial Audit Report

Applicability

Every public company having a paid-up share capital of fifty crore rupees or more; or (b) Every public company having a turnover of two hundred fifty crore rupees or more are required to conduct secretarial audit from practicing Company Secretary.

All Private Companies, are however, exempt from purview of Secretarial Audit. The author is of the view that Private Companies fulfilling the above criteria should also be covered.

Appointment of Company Secretary in Practice

There is no specific provision in the Act regarding appointment of Secretarial Auditor. Therefore, the appointment can be made either in Board or General Meeting. The resolution regarding appointment of Secretarial Auditor is required to be filed with the office of Registrar of Companies under the provisions of Section 117 read with Section 179(3) and rule 8(4) of The Companies (Meetings of Board and its Powers) Rules, 2014 in Form no.MGT-14 within 30 days from the date of appointment.

Powers and Duties of Auditors and Auditing Standards

Pursuant to provisions of Section 143(14) (b) of the Companies Act, 2013 the provisions of this Section shall mutatis mutandis apply to *..(b) the Company Secretary in practice conducting secretarial audit under section 204.*

The Secretarial auditor shall have all the power and access to the books of accounts, financial statements and secretarial records whether kept at the registered office of the Company or at any other place and shall be entitled to require from the officers of the Company such

information and explanation as he may consider necessary for the performance of his duties as auditor as specified in the provisions of Section 143 of the Act.

As per provisions of Section 143(12) of the Companies Act, 2013 notwithstanding anything contained in this section, if the auditor of a Company, in the course of performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committee against the Company by officers and employees of the Company, he shall immediately report to the Central Government within such time and in such manner as may be prescribed.

It is surprising that the format of Secretarial auditor report i.e. MR-3 missing any statement about involvement of any fraud or economic offence committed against the Company by its officers and employees of the Company.

Contents of Report

It should be in form no.MR-3 [pursuant to Section 204(1) of the Companies Act, 2013 and rule 9 of the Companies (Appointment and Remuneration personnel) Rules 2014]

The Secretarial auditor has to report on compliances of

1. The Companies Act, 2013 (the Act) and Rules made there under;
2. The Securities Contracts (Regulation) Act, 1956 and rules made thereunder;
3. Foreign Exchange Management Act, 1999 and the rules to the extent Foreign Direct Investment, Overseas Direct Investment and External Commercial borrowings;
4. The Depositories Act, 1996 and regulations and bye-laws framed thereunder;
5. Various regulations and guidelines under Securities and Exchange Board of India
6. (Mention the other laws as may be applicable specifically to the Company.

Further, examination and compliances of Secretarial standards issued y the Institute of Company Secretaries of India and on provisions of Listing Agreement.

Comments of Report in Board of Directors Report

As per provisions of Section 134(3)(f) of the Act, the Board of Directors are required to give explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by .. (ii) by the Company Secretary in practice in his secretarial audit report.

Jurisdiction of Companies Act and MCA to take action

In case of non compliance reported by CS in its report regarding other acts like labour laws, taxation laws and environmental laws, whether Registrar of Companies or MCA is empowered to take appropriate action against the Company or its officers in defaults under these laws. Obviously the ROC or MCA cannot take any action against any irregularity or non compliance of other laws except Companies Act, hence in such an eventuality whether MCA shall report the matter to other operating Agencies to take appropriate action and/or the matter ends here and if so what would be the use of audit of other laws.

It is also a question "*Whether MCA is over stepping its jurisdiction to cover or report the compliance or non compliance of other laws*'. Whether reporting of other laws is justifiable under provisions of Companies Act, 2013 when there are specific laws and enactment and there are separate agencies to report thereon.

Good Governance

The Secretarial audit is a step towards good governance and like the provisions of clause 49-c(iii) of Listing Agreement. As per the listing Agreement, the Board of Directors have to report compliance of other applicable laws and the deficiency or non compliance, need to be reported. The Board of Directors accordingly can take remedial measures and cure the same in near future. This is good corporate governance. As a matter of good corporate governance, if audit of other laws is to be done, that should be conducted based upon specific line of action and some standards should be fixed so that there is specific reporting of non compliance etc. The author is of the view that every audit report or a certificate should be specific in nature and should report specific compliance or non compliance. The general audit and general reporting of compliances of various laws may defeat the

purpose of good governance. The author is of the further view that there should be audit of internal legal system and compliance of others laws by the Company. The auditor should review all the legal compliance report, if any, produced or discussed in the Board and also the mechanism of the Board how it cures or improves the legal compliance system and report thereon to give effect to good corporate practice and governance. The effort should be in line of development of legal system and emphasis should be on legal matters which basically effect the corporate restructuring and/or future contingencies on liability of the corporate in case of non-compliance.

In the present scenario the Secretarial audit report of each Company may differ. The management may take note of some laws as may be applicable to them and in the view of Company Secretary there might be many laws which may be applicable. There might be confusion and difference of opinion on applicability and reporting of certain laws in the Secretarial Audit Report. As per present format of Audit report, the scope of audit is much wider and even includes the financial audit which is part of other laws. Certainly, the objectivity of the Secretarial Audit Report is good corporate governance but somewhere the reporting of other compliance of other laws and its applicability in the Companies Act is not defined specifically. No secretarial auditor is in a position to conduct audit of all taxation, environment, labour and administrative laws and report his observations of each law in its report. No secretarial auditor is competent to conduct audit of environmental laws, energy audit and administrative laws audit. Such type of special audits can be done by Engineers and technical experts. It is out of the purview of scope of company Secretary. The attention of MCA is drawn on reporting on other laws.

Conclusion

In the perspective, introduction of Secretarial Audit Report by Company Secretary in practice is a welcome step. The secretarial audit will also boost the corporate compliance level and step towards good corporate governance. However, audit of other applicable laws needs to be amended to the extent specific compliance of specific provisions of laws. The format of Secretarial audit report needs amendment to include compliance of specific provisions of law instead general applicability of other laws.

* * * * *

POSSIBLE QUESTIONS

PART – A (1 MARK)

ONLINE EXAMINATION

PART B (2 MARKS)

1. Define Dividend
2. What is Cash Dividend?
3. What is Stock Dividend?
4. What do you mean by Property Dividend?
5. What is Scrip Dividend?
6. What is Liquidating Dividend?
7. What is Audit?
8. What do you mean by Cooling Period?
9. What do you mean by Audit Report?
10. What do you mean by Secretarial Report?

PART C (6 MARKS)

1. Explain in detail on various forms of dividend.
2. Explain in detail about Books of Accounts.
3. Elucidate in detail about persons eligible to receive dividend.
4. Describe in detail about the procedures involved on appointment of first auditor.
5. Elucidate in detail about the procedures involved on removal of directors.
6. Discuss in detail about right of an auditor.
7. Explain in detail the procedures involved on reappointment of an auditor.
8. Describe in detail about duties of an auditor.
9. Explain in detail on various forms of dividend.

* * * * *

Karpagam Academy of Higher Education
(Deemed to be University)
(Established Under Section 3 of UGC Act, 1956) Coimbatore - 641 021.
Company Law (17CCU303A)

Unit IV

S.No.	Question	Option 1	Option 2	Option 3	Option 4	Answer
1	___ is a distribution of a portion of a company's earnings	Reserves	Interest	Dividend	Bonds	Dividend
2	___ can be issued as cash payments, as shares of stock, or other property	Reserves	Interest	Dividend	Bonds	Dividend
3	A share of the after-tax profit of a company, distributed to its shareholders according to the number and class of	Reserves	Interest	Dividend	Bonds	Dividend
4	The amount and timing of the dividend is decided by___	Directors	Secretary	Shareholder	Liquidator	Directors
5	Holders of ___receive dividend at a fixed rate and are paid first	Debenture	Preference Stock	Equity Stock	Sweat Equity	Preference Stock
6	Holders of ___are entitled to receive any amount of dividend, based on the level of profit and the company's	Debenture	Preference Stock	Equity Stock	Sweat Equity	Equity Stock
7	___ refers to a reward, cash or otherwise, that a company gives to its shareholders	Reserves	Interest	Dividend	Bonds	Dividend
8	___ dividend is by far the most common of the dividend types used	Cash	Stock	Property	Scrip	Cash
9	___ dividend is the issuance by a company of its common stock to its common shareholders without any consideration	Cash	Stock	Property	Scrip	Stock

10	A company may issue a non-monetary dividend to investors, rather than making a cash or stock payment is	Cash	Stock	Property	Scrip	Property
11	A company may not have sufficient funds to issue dividends in the near future, so instead it issues a ____	Cash	Stock	Property	Scrip	Scrip
12	When the board of directors wishes to return the capital originally contributed by shareholders as a dividend, it	Cash Dividend	Stock Dividend	Property Dividend	Liquidating Dividend	Liquidating Dividend
13	__ is paid as a precursor to shutting down the business	Cash Dividend	Stock Dividend	Property Dividend	Liquidating Dividend	Liquidating Dividend
14	____dividend creates a note payable	Cash Dividend	Stock Dividend	Property Dividend	Scrip Dividend	Scrip Dividend
15	The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by	Two	Three	Four	Five	Three
16	___ have the power to recommend the dividend	Reserves	Interest	Dividend	Bonds	Dividend
17	Dividend is usually declared at the___	Annual General Meeting	Statutory Meeting	Board Meeting	Extra-ordinary General	Annual General Meeting
18	A company which could not declare dividend at an annual general meeting may declare the same at a	Annual General Meeting	Statutory Meeting	Board Meeting	Extra-ordinary General	Annual General Meeting
19	Where a company has declared a dividend at the annual general meeting, it cannot declare the final dividend	Annual General Meeting	Statutory Meeting	Board Meeting	Extra-ordinary General	Extra-ordinary General
20	The dividend declared must be deposited in a separate bank account within ____days of its declaration and the	Five	Ten	Fifteen	Thirty	Five
21	A dividend, once declared at the general meeting of the shareholders, becomes a debt against the company and	15 Days	20 Days	30 Days	45 Days	30 Days
22	Unclaimed dividend should be transferred to Unpaid dividend account within ___ days from the date of	7	14	21	28	**7**
23	Shareholder should claim their dividend within ____ days from the date of declaration	15	30	45	60	30

24	Any money transferred to the Unpaid Dividend Account of a company which remains unpaid or	Five	Seven	Ten	Twelve	Seven
25	___ must show that all money received and expended	Statutory Books	Registrar of	Book of Accounts	Cost Records	Book of Accounts
26	___ must be kept on accrual basis and according to the double entry system of accounting	Statutory Books	Registrar of	Book of Accounts	Cost Records	Book of Accounts
27	In case of Books of accounts being maintained at any other place other than registered office in India, as may	Three	Seven	Ten	Fifteen	Seven
28	Section ____ of Companies Act, 2013 describes about Appointment of Directors	125	139	145	162	139
29	Section ____ of Companies Act, 2013 describes about Removal of Directors	130	140	150	160	140
30	Section ____ of Companies Act, 2013 describes about Qualification and Disqualification of Directors	130	139	141	145	141
31	Section ____ of Companies Act, 2013 describes about Remuneration to Directors	130	142	145	151	142
32	Section ____ of Companies Act, 2013 describes about Powers and Duties of Directors	133	140	143	152	143
33	Section ____ of Companies Act, 2013 describes about directors duty to attend general meeting	140	142	146	151	146
34	Mandatory rotation of auditors in case of listed companies, certain unlisted companies & certain private	Two	Three	Five	Seven	Five
35	The term of auditor holding the office in a company is increased to ___years subject to ratification at every	Two	Three	Five	Seven	Five
36	____ means a company other than public company of which Paid up share capital does not exceed Rs. 50	Private Company	Co-operative	Small Company	Joint Stock Company	Small Company
37	A company shall, at the first ____, appoint an individual or an audit firm (always includes LLP) as an auditor	Statutory Meeting	Annual General	Board Meeting	Extra Ordinary General	Annual General Meeting

38	First Auditors of a company are to be appointed always by the ____within 30 days of registration of company	Promoters	Shareholders	Directors	Creditors	Directors
39	First Auditors of a company are to be appointed always by the directors within ____days of registration of	30	45	60	90	30
40	A Company shall inform the auditor of his appointment & is to file a notice of appointment with ROC within	Ten	Fifteen	Thirty	Forty-five	Fifteen
41	All Listed companies and Companies prescribed by CG shall not appoint or re-appoint an individual for	Three	Five	Seven	Ten	Five
42	All Listed companies and Companies prescribed by CG shall not appoint or re-appoint an audit firms for	Three	Five	Seven	Ten	Five
43	A retiring auditor is eligible for reappointment at _____	Statutory Meeting	Annual General	Board Meeting	Extra Ordinary General	Annual General Meeting
44	An auditor appointed on casual vacancy shall hold office till conclusion of next ____	Statutory Meeting	Annual General	Board Meeting	Extra Ordinary General	Annual General Meeting
45	The auditor appointed u/s 139 may be removed from his office before the expiry of his term only by	State Government	Court	Central Government	National Company Law	Central Government
46	The auditor who has resigned from the company shall file within a period of ___ days from the date of	15	30	45	60	30
47	___ persons shall not be eligible for appointment as auditors of a company or shall vacate the office after	Employee of the Company	Shareholder	Promoter	Liquidator	Employee of the Company
48	___ persons shall not be eligible for appointment as auditors of a company or shall vacate the office after	Shareholder	A person who is a	Promoter	Liquidator	A person who is a partner
49	An individual cannot be appointed as auditor for more than ___ companies	10	15	20	30	30
50	An individual cannot be appointed as auditor for more than ____ public companies	10	15	20	30	20
51	__ is a step towards good corporate governance	Audit Report	Secretarial Audit	Audit Compliance	Issue of Prospectus	Secretarial Audit

52	The ____ shall periodically review legal compliance reports prepared by the company as well as steps taken	Board of Directors	Secretary	Auditor	Corporate Consultants	Board of Directors
53	___ should review the compliance of other laws as may be discussed in the Board of Directors meeting	Audit Report	Secretarial Audit	Audit Compliance	Issue of Prospectus	Secretarial Audit
54	Every public company having a paid-up share capital of fifty crore rupees or more are required to conduct ____	Continuous Audit	Interim Audit	Secretarial Audit	Internal Audit	Secretarial Audit
55	Every public company having a turnover of two hundred fifty crore rupees or more are required to	Continuous Audit	Interim Audit	Secretarial Audit	Internal Audit	Secretarial Audit
56	Every public company having a paid-up share capital of ___ crore rupees or more are required to conduct	25	50	75	100	50
57	Every public company having a turnover of ___ crore rupees or more are required to conduct secretarial audit	100	150	200	250	250
58	The resolution regarding appointment of Secretarial Auditor is required to be filed with the office of	15	30	45	60	30
59	If the company issues less than 25 percent of the total number of previously outstanding shares, then treat the	Cash Dividend	Stock Dividend	Property Dividend	Scrip Dividend	Stock Dividend
60	When company may not have sufficient funds to issue dividends, they may issue __	Cash Dividend	Stock Dividend	Property Dividend	Scrip Dividend	Scrip Dividend

UNIT-V

SYLLABUS

Winding Up– Concept and modes of Winding Up. **Inside r-Trading, Whistle-Blowing** – Insider-Trading; meaning and legal provisions; Whistle blowing: Concept and Mechanism.

INTRODUCTION

Winding up (which is more commonly called liquidation in Scotland) is proceeding for the realization of the assets, the payment of creditors, and the distribution of the surplus, if any, among the shareholders, so that the company may be finally dissolved. Professor Gover in his book Principles of Modern Company Law has described the winding up of a company in the following words:

‘‘Winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. An administrator called a liquidator is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.’’

Thus winding up is the last stage in the life of a company. It means a proceeding by which a company is dissolved.

Winding up should not be taken as if it is dissolution of a company. The winding up of a company precedes its dissolution. Prior to dissolution and after winding up, the legal entity of the company remains and it can be sued in a Court of law. On dissolution the company ceases to exist, its name is actually struck off from the Register of Companies by the Registrar and the fact is published in the official Gazette.

MODES OF WINDING UP

1. Compulsory Winding up by the Court
2. Voluntary Winding up: (i) Member’s Voluntary Winding Up; (ii) Creditors’ Voluntary Winding
3. Voluntary Winding Up subject to the supervision of the Court

1. Compulsory Winding Up

A company may be wound up by an order of the Court. This is called compulsory winding up or winding up by the Court. Section 433 lays down the following grounds where a company may be wound up by the Court.

A petition for winding up may be presented to the Court on any of the grounds stated below:

1. Special Resolution

A company may be wound up by the Court if it has, by a special resolution, resolved that it be wound up by the Court. But it is to be noted that the Court is not bound to order for winding up merely because the company by a special resolution has so resolved. Even in such a case it is the discretion of the Court to order for winding up or not.

2. Default in Filing Statutory Report or Holding Statutory Meeting

If a company has made a default in delivering the statutory report to the Registrar or in holding the statutory meeting, a petition for winding up of the company may be presented to the Court. A petition on this ground may be presented to the Court by a member or Registrar (with the previous sanction of the Central Government) or a creditor. The power of the Court is discretionary and generally it does not order for winding up in first instance. The Court may, instead of making an order for winding up, direct the company to file the statutory report or to hold the statutory meeting but if the company fails to comply with the order, the Court will wind up the company.

3. Failure to commence business within one year or suspension of business for a whole year

Where a company does not commence its business within one year from its incorporation or suspends its business for a whole year, a winding up petition may be presented to the Court. Even if the business is suspended for a whole year, this by itself does not entitle the petitioner to get the company wound up as a matter of right but the question whether the company should be wound up or not in such a circumstances entirely in the discretion of the Court depending upon the facts and circumstances of each case. Even if the work of all the units of the company has been suspended then too it will still be open to the Court to examine as to whether it will be possible for the company to continue its business. Before the order of winding up on this ground the Court is required to see what are the possibilities of resumption of the business of the

company. The suspension of the business, for this purpose, must be the entire business of the company and not a part of it.

The Court will not order for winding up on the grounds, if :

(a) Suspension of business is due to temporary causes ; and

(b) There are reasonable prospects for starting of business within a reasonable time.

4. Reduction of Membership below the Minimum

When the number of members is reduced, in the case of a public company, below 7 and in the case of a private company, below 2, a petition for winding up of the company may be presented to the Court.

5. Company's inability to pay its debts

A winding up petition may be presented if the company is unable to pay its debt. 'Debt' means definite sum of money payable immediately or at future date. A company will be deemed to be unable to pay its loan in the following conditions (Section 434):

(a) A creditor of more than Rs. 500 has served, on the company at its registered office, a demand under his hand requiring payment and the company has for three weeks thereafter neglected to pay or secure or compound the sum to the reasonable satisfaction of the creditor ; or

(b) Execution or other process issued on a judgement or order in favour of a creditor of the company is returned unsatisfied in whole or in part ; or

(c) It is proved to the satisfaction of the Court that the company is unable to pay its debts, taking into account its contingent and prospective liabilities, i.e. whether its assets are sufficient to meet its liabilities.

6. Just and Equitable (Sec. 433(f))

The Court may also order to wind up of a company if it is of opinion that it has just and equitable that the company should be wound up. What is 'just and equitable' depends on the facts of each case. The words 'just and equitable' are of wide connotation and it is entirely discretionary on the part of the Court to order winding up or not on this ground.

Thus the Court itself works out the principles on which the order for winding up under the section is to be made.

Winding up by the Court on 'just and equitable' grounds may be ordered in the cases given below:

(a) When the substratum of the company has gone : In the words of Shah, J. in Seth Moham Lal v. Grain Chambers Ltd. the "substratum of the incorporated has substantially failed, or when it is impossible to carry on the business of the company except at a loss, or the existing and possible assets are insufficient to meet the existing liabilities.

The substratum of a company will be deemed to have gone when

i. The object for which it was incorporated has substantially failed or has become impossible or
ii. It is impossible to carry on business except at a loss or
iii. The existing and possible assets are insufficient to meet the existing liabilities of the company.

(b) When there is oppression by the majority shareholders on the minority, or there is mismanagement.

(c) When the company is formed for fraudulent or illegal objects or when the business of the company becomes illegal.

(d) When there is a deadlock in the management of the company. When there is a complete deadlock in the management of the company, it will be wound up even if it is making good profits. In Re Yenidjee Tobacco Co. Ltd. A and B the only share holders and directors of a private limited company became so hostile to each other that neither of them would speak to the other except through the secretary. Held, there was a complete deadlock and consequently the company be wound up.

(e) When the company is a 'bubble', i.e. it never had any real business.

Persons Entitled to apply for Winding Up

The Court does not choose to wind up a company at its own motion. It has to be petitioned. Section 439 of the Companies Act enumerates the persons those can file a petition to the Court for the winding up of a company. The petition for winding up may be brought by any one of the following:

1. Petition by Company

A company can make a petition only when it has passed a special resolution to that effect. However, it has been held that where the company is found by the directors to be insolvent due to circumstances which ought to be investigated by the Court, the directors may apply to the

Court for an order of winding up of the company even without obtaining the sanction of the general meeting of the company.

2. Petition by Creditors

The word 'creditor' includes secured creditor, debenture holder and a trustee for debenture holder. A contingent or prospective creditor (such as the holder of a bill of exchange not yet matured or of debentures not yet payable) is also entitled to petition for a winding up of the company.

Before a petition for winding up of a company presented by a contingent or prospective creditors is admitted, the leave of the Court must be obtained for the admission of the petition. Such leave is not granted (a) unless, in the opinion of the Court, there is a prima facie case for winding up the company; and (b) until reasonable security for costs has been given.

Notice that a creditor has a right to winding up order if he can prove that he claims an undisputed debt and that the company has failed to discharge it. When a creditors' petition is opposed by other creditors, the Court may ascertain the wishes of the majority of creditors.

3.Contributory Petition

The term 'contributory' means every person who is liable to contribute to the assets of the company in the event of its being wound up. Section 428 makes it clear that it includes the holder of fully-paid shares. A fully-paid shareholder will not, however, be placed on the list of contributors, as he is not liable to pay any contribution to the assets, except in cases where surplus assets are likely to be available for distribution.

A contributory is entitled to present a petition for winding up a company if :

(a) The number is reduced, in the case of a public company below seven and in the case of private company below two; and

(b) The shares in respects of which he is a contributory either were originally allotted to him or have been held by him; and

(c) The shares have been registered in his name, for at least six months during the period of 18 months immediately before the commencement of the winding up; and

(d) The shares have been devolved on him during the death of a former holder [Sec. 439(4)].

4. Registrar's Petition

The Registrar can present a petition for winding up a company only on the following grounds, viz.

(a) If a default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(b) If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;

(c) If the number of members is reduced, in the case of a public company below seven and in the case of a private company below two ;

(d) If the company is unable to pay its debts; and

(e) If the Court is of opinion that it is just and equitable that the company should be wound up.

Note that the Registrar can file a petition for winding up only with prior approval of the Central Government. The Central Government before sanctioning approval must give an opportunity to the company for making its represent actions, if any.

Again a petition on the ground of default in delivering the statutory report or holding the statutory meeting cannot be presented before the expiration of 14 days after the last day on which the statutory meeting ought to have been held.

5. Petition by any Person Authorized by the Central Government

If it appears to the Central Government from any report of the inspectors appointed to investigate the affairs of the company, that it is expedient to wind up the company because its business is being conducted with intent to defraud creditors, members or any other person, or its business is being conducted for a fraudulent or unlawful purpose, or the management is guilty of fraud, misfeasance or other misconduct, the Central Government may authorize any person to present to the Court a petition for winding up of the company that is just and equitable that the company should be wound up.

COMMENCEMENT OF WINDING UP

Where before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company will be deemed to have commenced from the date of the resolution. In all other cases (i.e. where the company has not previously passed a resolution for voluntary winding up),

the winding up will be deemed to commence from the time of the presentation of the petition for the winding up.

The Court may dismiss or allow the petition for winding up and also can adjourn its hearing or pass conditional order of winding up. In the case of Misrilal Dharamchand Ltd. v. B. Patnaik Mines Ltd. (1978) the Court ordered for winding up but stayed the operation of the order for six months so as to enable the company to pay the petitioner, if it could do so within this period and in case of failure the order was to come in force.

Powers of the Court

On hearing a winding up petition, the Court may dismiss it or adjourn the hearing or make interim orders or make an order for winding up the company, with or without costs or any other order that it thinks fit (Section 443).

Consequences of Winding Up

i. Where the Court makes an order for winding up of company, the Court must forthwith cause intimation thereof to be sent to the Official Liquidators and the Registrar (Section 444).
ii. On the making of a winding up order it is the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a copy of the order of the Court within 30 days from the date of the making of the order [Section 445(1)].
iii. The winding up order is deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued [Section 445(3)].
iv. When a winding up order has been made, no suit or other legal proceedings can be commenced against the company except with the leave of the Court. Suits pending at the date of the winding up order cannot be further proceeded without the leave of the Court. According to sub-section (2) of Section 446 the Court which is winding up the company has jurisdiction to entertain or dispose of (a) any suit or proceeding by or against the company; (b) any claim made by or against the company; (c) any application made under Section 391 by or in respect of the company ; (d) any question of priorities or any other question whatsoever which may relate to or arise in course of the winding up of the company.
v. An order for winding up operates in favour of all the creditors and of all the contributories of the company as if it had been made on the joint petition of a creditor and of a contributory (Section 447).

vi. According to Section 536 any disposition of the property (including actionable claims) of the company, any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up shall be void, unless the Court otherwise orders. Thus the Court can direct that any such disposition of property or actionable claims or transfer of shares or alteration of status of the members will be valid. But unless the Court so directs, such disposition, transfer or alteration will be void.

vii. Section 537 declares that any attachment and sale of the estate or effects of the company, after the commencement of the winding up, will be void. In the case of winding up by the Court any attachment, distress or execution put in force, without leave of the Court, against the estate or effects of the company after the commencement of the winding up will be void. Similarly any sale held , without leave of the Court, of any of the properties or effects of the company after the commencement of the winding up will be void. With leave of the Court, attachment and sale of the properties of the company will be valid even if such attachment and sale are made after the commencement of the winding up of the company. Besides this section does not apply to any proceedings for the recovery of any tax imposed or any dues payable to the Government. Thus I.T.O. can commence assessment proceedings without leave of the Court.

viii. It is to be noted that winding up order does not bring the business of the company to an end. The corporate existence of the company continues through winding up till the company is dissolved. Thus the company continues to have corporate personality during winding up. Its corporate existence come to an end only when it is dissolved.

ix. An order for winding up operates in favour of all the creditors and of all the contributories of the company as if it had been made on the joint petition of a creditor and of contributory.

x. On a winding up order being made in respect of a company, the Official Liquidator, by virtue of the office, becomes the liquidator of the company (Section 449).

OFFICIAL LIQUIDATOR

Under the present Act, the only person who is competent to act as the liquidator in a winding up is the official liquidator. For the purpose of winding up, there shall be attached to each high Court an official liquidator appointed by the Central Government, who may be either a

whole time or part time officer depending upon the volume of work. In district courts the official receiver will be the official liquidator. The Central Government may appoint one or more deputy or assistant official liquidators to assist the official liquidator in the discharge of his functions. There is no provision in the Act, for the removal of the official liquidator [Sec. 448(1) & (1-A)].

Liquidator

On a winding up order being made, the official liquidator, by virtue of his office, becomes the liquidator of the company (Sec. 449). Where the official liquidator becomes or acts as liquidator, there shall be paid to the Central Government out of the assets of the company such fees as may be prescribed.

A liquidator shall be described by the style of "The official liquidator" of the particular company in respect of which he acts and not by individual name [Sec. 452].

Provisional Liquidator

The Court may appoint the official liquidator to be the liquidator provisionally at any time after the presentation of the petition for winding up and before making winding up order [Sec. 450 (1)]. Before making such an appointment notice must be given to the company and a reasonable opportunity must be given to it to make representation. The Court may dispense with such notice where there are special reasons. Such reasons must be recorded in writing. A provisional liquidator is as much liquidator as a liquidator in the winding up of a company. But where a provisional liquidator is appointed by the Court, the Court may limit and restrict his powers. On a winding up order being made, the official liquidator shall cease to be provisional liquidator and shall become liquidator of the company.

General Provisions for Liquidator

The liquidator shall conduct the proceedings in winding up the company and perform such duties as the Court may impose. The official liquidator gets his remuneration from the Central Government and as such he is not entitled to any further remuneration. For the services rendered by the official liquidator to the company, the Central Government shall pay such fees out of the assets of the company as may be prescribed.

The acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification. But his acts shall not be valid if they are done after it has been shown that his appointment was invalid [Sec. 451].

Statement of Affairs

The company must make out and submit to the official liquidator a statement as to the affairs of the company in the prescribed form verified by an affidavit and containing the following particulars:

(a) The assets of the company, stating separately the cash balance in hand and at the bank and the negotiable securities held by the company;

(b) Its debts and liabilities;

(c) Names, residences and occupation of its creditors, stating separately the amount of secured and unsecured debts;

(d) In the case of secured debts, particulars of securities given, their value and the dates on which they were given ;

(e) The debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realized on account thereof; and

(f) Such further or other information as may be prescribed or as the official liquidator may require.

Note that the statement must be submitted and verified by one or more of the directors and by the manager, secretary or other chief officer of the company and it must be submitted within 21 days from the relevant date or within such extended time not exceeding three months [Sec. 454 (3)].

Duties of Liquidator

1. He must conduct equitably and impartially all proceedings in the winding up according to the provisions of the law.
2. He must submit a preliminary report to the Court as to :

(a) The amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities, giving separately, under the heading of assets such as (i) cash and negotiable securities; (ii) debts due from contributories; (iii) debts due to the company and securities, if any available in respect thereof ; (iv) immovable and movable properties belonging to the company; and (v) unpaid calls.

(b) If the company has failed, as to the causes of the failure; and

(c) Whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

Note that the Court may extend the period of six months for the submission of the above report by the official liquidator. The Court may also order that no such statement need be submitted.

3. The official liquidator may, if he thinks fit, make further reports, stating the manner in which the company was promoted or formed. He may state in the reports whether in his opinion any fraud has been committed by any person in its promotion or formation, or since the formation thereof. He may also state any other matters which, in his opinion, it is desirable to bring to the notice of the Court [Sec. 455(2)].
4. He must take into his custody and control the property of the company. Notice that so long as there is no liquidator, all the property and effects of the company are deemed to be in the custody of the Court [Sec. 456(2)].
5. Control of powers: The liquidator must in the administration of the assets of the company and the distribution thereof among its creditors have regard to any directions which may be given by a resolution of the creditors or contributories at any general meeting or by the committee of inspection [Sec. 460(1)]. Any directions given by the creditors or contributories at any general meeting override any directions given by the committee of inspection.
6. To Summon Meetings of Creditors and Contributories : He may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes. But he shall be bound to summon such meetings, at such times, as the creditors or contributories may, by resolution, direct, or whenever requested in writing to do so by not less than one tenth in value of the creditors or contributories, as the case may be [Sec. 460 (3)].
7. Proper Books: The liquidator must keep proper books for making entries or recording minutes of proceedings at meetings and of such other matters as may be prescribed. Any creditor or contributory may, subject to the control of the Court, inspect any such books, personally or through his agent [Sec. 461].
8. He must, at least twice in each year, present to the Court an account of his receipts and payments as liquidator. The account must be in the prescribed form and must be made in duplicate. The Court gets the account audited, keeps one copy thereof in its records and

delivers the other copy to the Registrar for filling. Each copy shall, however, be open to the inspection of any creditor, contributory or person interested. The liquidator must also send a printed copy of the accounts so audited by post to every creditor and to every contributory.

9. Within two months from the date of the direction of the Court, the liquidator must call a meeting of the creditors for determining the persons who are to be members of the committee of inspection, if such committee is to be appointed. Within 14 days of the meeting of the creditors, the liquidator must call a meeting of the contributories to consider the decision of the creditors.
10. Within two months of the expiry of each year from the commencement of winding up, the liquidator must file a statement duly audited, by a qualified auditor with respect to the proceedings in, and position of, the liquidation.

The statement must be filed:

(a) In the case of a winding up by or subject to the supervision of the Court, in the Court ; and
(b) In the case of voluntary winding up, with the Registrar.

Note that when the statement is filed in the Court, a copy must simultaneously be filed with the Registrar and must be kept by him along with the other records of the company [Sec. 551].

Powers of the Liquidator

A liquidator has two types of powers under the Act :

(a) Powers exercisable with the sanction of the Court ; and
(b) Powers exercisable without the sanction of the Court.

Powers with the Sanction of Court

(a) To institute or defend any suit, prosecution or other legal proceedings, civil or criminal, on behalf of the company ;
(b) To carry on the business of the company for the beneficial winding up of the company ;
(c) To sell the immovable and movable property and actionable claims of the company by public auction or private contract ;
(d) To raise any money required on the security of the assets of the company ;
(e) To appoint an advocate, attorney or pleader to assist him in the performance of his duties ;

(f) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Note that the Court may by order provide that the liquidator may exercise any of the above powers without the sanction of the Court [Sec. 458).

Powers without the Sanction of Court

The liquidator may exercise the following powers without the sanction of the Court, namely, powers:

(a) To execute documents and deeds on behalf of the company and use, when necessary, the company's seal ;

(b) To inspect the records and returns of the company or the files of the Registrar without payment of any fee ;

(c) To draw, accept, make and endorse any bills of exchange, hundis or promissory notes with the same effect as if drawn, accepted, made, or endorsed by the company in the course of its business ;

(d) To prove, rank and claim in the insolvency of any contributory for any balance against his estate and to receive dividends in respect thereof;

(e) To take out, in his official name, letters of administration to any deceased contributory ;

(f) To appoint an agent to do any business which he is unable to do himself [Sec. 457(2)]. For example, he can appoint any advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties [Sec. 459], but with the sanction of the Court.

Supervision and Control over Liquidators

1. Control by Contributors and Creditors

The contributories and creditors exercise control over the liquidator in the performance of his duties through the medium of the meetings which it is his duty to call from time to time. Any creditor or contributory may, subject to the control of the Court inspect the books which are maintained by the liquidator. The liquidator is also required to print and send a copy of the audited accounts to each creditor and contributory.

2. Control by Court

The liquidator shall apply to the Court for directions in relation to any matter arising in the winding up. The Court has the power to confirm, reserve or modify any act or decision of the

liquidator if complained by any aggrieved person. The Court has the power to cause the accounts of the liquidator to be audited in such manner as it thinks fit.

3. Supervision by Committee by Inspection

The committee of inspection can inspect the accounts of the liquidator at all reasonable times. The liquidator is under an obligation to have directions from the committee of inspection.

4. Control by Central Government

Section 463 seeks to bring the conduct of the liquidators of companies under the control and scrutiny of the Central Government. Where a liquidator does not faithfully perform his duties and duly observe all the requirements imposed upon him by the Act or the rules there under with respect to the performance of his duties, or if any complaint is made to the Central Government by any creditor or contributory in regard thereto, the Central Government shall enquire into the matter, and take such action thereon as it may think fit . The power includes the power to remove the liquidator from office.

The Central Government may at any time require any liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged. It may also, if it thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up. The Central Government may also direct a local investigation to be made of the books and vouchers of the liquidator.

The provisions of this section do not apply where the winding up has been completed after dissolution.

Committee of Inspection (Sec.464, 465)

The Court may, at the time of making an order for the winding up or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator. Where such a direction is given by the Court, the liquidator is required to convene, within 2 months from the date of the direction, a meeting of the creditors to determine who are to be the members of the committee, within 14 days from the date of the creditors' meeting, the liquidator must call a meeting of the contributories to consider the creditors' decision with respect to the membership of the committee. Contributories may accept the decision of the creditors with or without modification or reject it. If the contributories at their meeting do not accept the creditors' decision in its entirely, the liquidator shall apply to the Court for directions

as to what the composition of the committee should be and who shall be its members. The committee shall consist of not more than 12 members, being creditors or contributories of the company in such proportion as may be agreed on by the meetings of the creditors and contributories and in case of difference of opinion, as may be determined by the Court. The Committee may inspect the accounts of the liquidator at all reasonable time.

The committee will meet at such times as it may from time to time appoint and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary. The quorum for a meeting of the committee will be one-third of the total number of the members or two, whichever is higher. The committee may act by a majority of its members present at a meeting but shall not act unless a quorum is present. A member may resign by notice in writing signed by him and deliver to the liquidator. If a member of the committee is adjudged as insolvent or compounds or arranges with his creditor or is absent from five consecutive meetings of the committee without leave of those members, who together with himself, represent the creditors or contributories, his office shall become vacant. A member of the committee may be removed at a meeting of the creditors, if he represents creditors, or at a meeting of contributories if he, represents contributories, by an ordinary resolution of which seven days' notice has been given stating the objects of the meeting. When any vacancy has occurred in the committee, the liquidator will call a meeting of the creditors or contributories, as the case may be, and the meeting may reappoint the same person or appoint some other person in the vacancy. However, the liquidator may apply to the Court that the vacancy need not be filled in and if the Court is satisfied that in the circumstances of the case the vacancy need not be filled, it may make an order accordingly.

Dissolution of Company in Winding up by the Court

The Court may make an order for the dissolution of a company in the following conditions: (a) When the affairs of the company have been completely wound up ; or (b) when the Court is of opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason and it is just and equitable in the circumstances of the case that an order of dissolution of the company should be made. Where such an order is made by the Court, the company will be dissolved from the date of the order of the Court. Within

30 days from the date of the order, the liquidator must send a copy of the order to the Registrar. On the dissolution, the corporate existence of the company comes to an end.

Company in liquidation exists as juristic personality until order of dissolution is based by the Court. After the order of dissolution, the legal personality of the company come to an end. The Court may declare the dissolution void within 2 years from the date of the dissolution.

VOLUNTARY WINDING UP

Winding up by the creditors or members without any intervention of the Court is called 'voluntary winding up'. In voluntary winding up, the company and its creditors are left free to settle their affairs without going to the Court, although they may apply to the Court for directions or orders if and when necessary.

A company may be wound up voluntarily under the circumstances given hereunder:

1. When the period fixed for the duration of the company by the articles has expired or the event has occurred on the occurrence of which the articles provide that the company is to be dissolved and the company in a general meeting has passed a special resolution to wind up voluntarily; or
2. The company has passed a special resolution to wind up voluntarily. Thus a company may be wound up voluntarily at any time and for any reason if a special resolution to this effect is passed in its general meeting.

When a company has passed a resolution for voluntary winding up, it must within 14 days of the passing of the resolution gives notice of the resolution by advertisement in the official Gazette and also in some newspaper circulating in the district where the registered office of the company is situated.

Commencement of Voluntary Winding up

A voluntary winding up is deemed to commence at the time when the resolution for winding up is passed [Sec. 486]. The date of the commencement of the winding up is important for several matters such as liability of past members and fraudulent preferences, etc..

Consequences of Voluntary Winding Up

The consequences of voluntary winding up are :

1. From the commencement of voluntary winding up, the company ceases to carry on its business, except so far as may be required for the beneficial winding up thereof [Sec. 487].

2. The possession of the assets of the company vests in the liquidator for realization and distribution among the creditors. The corporate state and powers of the company shall, however, continue until it is dissolved (Sec 456 and 487).
3. On the appointment of a liquidator, all the powers of the board of directors cease and the liquidator may exercise the powers mentioned in Sec. 512 including the power to do such things as may be necessary for winding up the affairs of the company and distributing its assets. The liquidator appointed in a members' voluntary winding up is merely an agent of the company to administer the property of the company for purposes prescribed by the statue.

Kinds of Voluntary Winding Up

a. Members' Voluntary Winding Up
b. Creditors' Voluntary Winding Up

Members Voluntary Winding Up

A members' voluntary winding up takes place only when the company is solvent. It is initiated by the members and is entirely managed by them. The liquidator is appointed by the members. No meeting of creditors is held and no committee of inspection is appointed. To obtain the benefit of this form of winding up, a declaration of solvency must be filed.

Declaration of Solvency

Section 488 provides that where it is proposed to wind up the company voluntarily the directors or a majority of them, may, at a meeting of the board, make a declaration verified by an affidavit that the company has no debts or that it will be able to pay its debts in full within a period not exceeding 3 years from the commencement of winding up as may be specified in the declaration. Such declaration shall be made within five weeks immediately preceding the date of the passing of the resolution for winding up and shall be delivered to the Registrar before that date. It shall also be accompanied by a copy of the auditors on the Profit and Loss Account and the Balance Sheet of the company prepared upto the date of the declaration and must embody a statement of the company's assets and liabilities as on that date.

Where such a declaration is duly made and delivered, the winding up following shall be called members' voluntary winding up. Where the same is not duly made, it shall be called creditors' voluntary winding up.

Sections 490-98 of the Act deal with provisions applicable to members' voluntary winding up. They are as follows:

1. Appointment and Remuneration of Liquidator

On the passing of the resolution for winding up, the company must in a general meeting appoint one or more liquidators and fix his or their remuneration. Any such remuneration cannot be increased at all, not even with the sanction of the Court and the liquidator cannot take charge of his office unless the remuneration is so fixed [Sec. 490].

2. Powers of the Board on Appointment of Liquidator

On the appointment of a liquidator, all the powers of the board and of a managing or whole-time director, and manager, if there be any of these, shall cease, except for the purpose of giving notice of such appointment to the Registrar or in so far as the company in a general meeting or the liquidator may sanction the continuance thereof [Sec. 491].

3. Office of the Liquidator Falling Vacant

If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the company, the company in a general meeting may fill the vacancy [Sec. 492].

4. Notice of Appointment to Registrar

The company must, within 10 days of the appointment of the liquidator, or the filling up of the vacancy, as the case may be, give notice to the Registrar of the event. Default renders the company and every officer (or liquidator) who is in default liable to fine up to Rs. 100 for every day of default [Sec. 493].

5. Calling Meeting of Creditors

If the liquidator at any time is of opinion that the company is insolvent, he must summon a meeting of the creditors, and lay before the meeting a statement of the assets and liabilities of the company [Sec. 495] Thereafter the winding up proceeds as if it were a creditors' voluntary winding up and not a members' voluntary winding up [Sec. 498].

6. Calling General Meeting at the end of the Year

In the event of the winding up continuing for more than one year, the liquidator must call a general meeting of the company at the end of the first year from the commencement of the winding up at the end of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Central Government may allow, and must

lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year [Sec. 496].

7. Final Meeting and Dissolution

As soon as the affairs of the company are fully wound up, the liquidator makes up an account of winding up, showing how the winding up has been conducted and how the property of the company has been disposed of. He then calls a general meeting, of the company and lays before it accounts showing how the winding up has been conducted. This is called the final meeting of the company.

The meeting must be called by advertisement :

(a) Specifying the time, place and object of the meeting ; and

(b) Published not less than one month before the meeting in the official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situated.

Within one week after the meeting, the liquidator is required to send to the Registrar and the official liquidator a copy of the accounts. He must also make a report to each of them of the holding of the meeting and of the date thereof. If at the final meeting no quorum was present, the liquidator is required to make a report that the meeting was duly called but no quorum was present at the meeting. On receipt of the accounts and the report, the Registrar will register them. On receipt of the accounts and report, the official liquidator will make a scrutiny of the books and papers of the company and make a report to the Court stating the result of the scrutiny. If the report shows that the affairs of the company have been conducted bonafide i. e. not in a manner prejudicial to the interests of its members or to the public interest, then from the date of the submission of the report to the Court, the company shall be deemed to have been dissolved. If the official liquidator in the report has stated that the affairs of the company have been conducted in a manner prejudicial to the interest of its members or to the public interest, the Court shall direct the official liquidator to make a further investigation of the affairs of the company and on the report of the official liquidator on such further investigation, the Court may either make an order that the company shall stand dissolved with effect from the date to be specified in the order of the Court or to make such other order as the circumstances of the case brought out in the report permit [Sec. 497].

CREDITORS VOLUNTARY WINDING UP

In creditors' voluntary winding up, it is the creditors who move the resolution for voluntary winding up of a company, and there is no solvency declaration made by the directors of the company. In other words, when a company is insolvent, that is, it is not able to pay its debts, it is the creditors' voluntary winding up.

Special Provisions Relating to Creditors' Voluntary Winding Up

There are certain special provisions to be completed with creditors' voluntary winding up. They are:

1. Meeting of Creditors (Sec.500)

The company must call a meeting of the creditors of the company on the same day or on the next following day on which the general meeting of the company is held for passing a resolution for voluntary winding up. The company must send the notice of the meeting to the creditors by post simultaneously with the sending of the notices of the meeting of the company. The company must also cause the notice of the meeting of the creditors to be advertised once at least in the official Gazettee and once at least in two newspapers circulating in the district where the registered office or principal place of business of the company is situated. At the creditors' meeting, one of the directors shall preside. The board of directors is required to lay before the meeting of the creditors(a) a full statement of the position of the company's affairs and (b) a list of creditors of the company with the estimated amount of their claims.

2. Notice of Registrar (Sec.501)

Notice of any resolution passed at a creditors' meeting shall be given by the company to the Registrar within 10 days of the passing thereof.

3. Appointment of Liquidator (Sec. 502)

The creditors and the company at their respective meetings may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company. If the creditors and the company nominate different persons, the persons nominated by the creditors shall be the liquidator. If no person is nominated by the creditors, the person, if any, nominated by the company shall be the liquidator.

4. Committee of Inspection

The creditors at their first or any subsequent meeting may, if they think fit, appoint a committee of inspection of not more than five members. If such committee is appointed, the company may, either at the meeting at which the winding up resolution is passed or at a later meeting, appoint not more than five persons to serve on the committee. If the creditors object to persons appointed by the company, then the matter will be referred to the Court for the final decision. The powers of such committee are the same as those of a committee of inspection appointed in a compulsory winding up.

5. Remuneration (Sec. 504)

The committee of inspection or if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator or liquidators. Where the remuneration is not fixed, it will be determined by the Court. Any remuneration fixed by the committee of inspection or creditors or the Court shall not be increased.

6. Board's Power to Cease (Sec. 505)

On the appointment of a liquidator, all the powers of the board of directors shall cease, except in so far as the committee of inspection, or if there is no such committee, the creditors in a general meeting, may sanction the continuance thereof.

7. Vacancy in the Office of Liquidator (Sec. 506)

If a vacancy occurs by death, resignation, or otherwise in the office of the liquidator (other than a liquidator appointed by or by the direction of the Court), the creditors in a general meeting may fill the vacancy.

8. Final Meeting and Dissolution

The liquidator must call a general meeting of the company and a meeting of the creditors every year within three months from the close of the liquidation year, if the winding up continues for more than one year. He must lay before the meeting an account of his acts and dealings and of the conduct of winding up during the preceding year and position of winding up. He must call, in the same manner, a final meeting when the affairs of the company are fully wound up and place the same statements before it, as he does in the case of a members' meeting in a members' voluntary winding up under Sections 496 and 497.

LIQUIDATORS VOLUNTARY WINDING UP

Appointment of Liquidator

In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of collecting the company's assets and distributing the proceeds among creditors and contributories. If a vacancy occurs by death or resignation or otherwise in the office of the liquidator the company in general meeting may fill the vacancy. [Section 490 and 492].

In the case of a creditors' voluntary winding up, the creditors and the members at their respective meetings, may nominate a person to be the liquidator of the company. However, the creditors are given a preferential right in the matter of the appointment of the liquidator with a power to the Court to vary the appointment on application made within seven days by a director, member or creditor. (Section 502).

Power of the Court to Appoint Liquidator

In a members' or creditors' voluntary winding up, if for any cause whatever there is no liquidator acting, the Court may appoint the official liquidator or any other person as a liquidator of the company. The Court may also appoint a liquidator on the application of the Registrar. (Section 515).

Body Corporate not to be appointed as Liquidator

A body corporate shall not be qualified for appointment as a liquidator of a company in a voluntary winding up. Any appointment of a body corporate as liquidator shall be void. (Section 513).

Corrupt Inducement affecting appointment as Liquidator

Any person who gives or agrees or offers to give, any member or creditor of the company any gratification with a view to securing his own appointment or nomination or to securing or preventing the appointment of someone else, as the liquidator is liable to a fine which may extend upto Rs. 1,000. (Section 514).

Notice by Liquidator of his Appointment

When a person is appointed as the liquidator and accepts the appointment, he shall publish in the official gazette a notice of his appointment, in the prescribed form. He shall also deliver a copy of such notice to the Registrar. The liquidator shall do this within 30 days of his

appointment. When the liquidator fails to comply with the above provision, he is liable to a fine which may extend to Rs. 50 for each day of default. (Section 516).

Effect of the Appointment of Liquidator

On the appointment of a liquidator, in a members' voluntary winding up, all the powers of the directors, including managing director, whole time directors as also the manager shall cease except so far as the company in general meeting or the liquidator may sanction their continuance. (Section 491).

On the appointment of a liquidator in creditors' voluntary winding up, all the powers of the board of directors shall cease. The committee of inspection or if there is no such committee, the creditors' meeting by resolution may sanction continuance of the powers of the board. (Section 505).

Remuneration of Liquidator

In a members' voluntary winding up, the general meeting shall fix the remuneration to be paid to the liquidators. Unless the question of remuneration is resolved the liquidators shall not take charge of the company. Once remuneration is fixed it cannot be increased. (Section 490).

In a creditors' voluntary winding up, the remuneration of the liquidator is fixed by the committee of inspection and if there is no committee of inspection then by the creditors. In the absence of any such fixation, the Court shall determine his remuneration. Any remuneration so fixed shall not be increased (Section 504).

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall subject to the rights of secured creditors, be payable out of the assets of the company in priority to all other claims (Section 520).

Removal of Liquidator

In either kind of voluntary winding up, the Court may, on cause shown, remove a liquidator and appoint the official liquidator or any other person as a liquidator in place of removed liquidator. The Court may also remove a liquidator on the application of the Registrar.

Power and Duties of Liquidator in Voluntary Winding Up

The powers of the liquidator in voluntary winding up are just the same as those of the official liquidator in case of winding up by the Court. In the case of members' voluntary winding up with the sanction of a special resolution of the company and in the case of creditors' voluntary

winding up with the sanction of the Court or committee of inspection or the meeting of the creditors if there is no committee of inspection, the liquidator may (a) institute or defend any suit, prosecution or other legal proceedings in the name and on behalf of the company ; (b) carry on the business of the company so far as may be necessary for the beneficial winding up of the company ; (c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract; and (d) raise any money required on the security of the assets of the company (Section 512). Besides, a liquidator in voluntary winding up may, without any sanction whatever, exercise any of the other powers given by this Act to the liquidator in a winding up by the Court. In addition to these powers, a liquidator in voluntary winding up exercise (i) the power of the Court of settling a list of contributories; (ii) the power of the Court of making calls; (iii) the power of calling general meetings of the company.

Duties

As Section 512 provides a liquidator in voluntary winding up is required to pay the debts of the company and to adjust the rights of the contributories among themselves.

WINDING UP SUBJECT TO SUPERVISION OF COURT

Voluntary winding up may be under the supervision of the Court. At any time after a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court. The Court may give such liberty to creditors, contributories or others to apply to the Court and generally on such terms and conditions as the Court thinks just (Sec. 522).

A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall be deemed to be a petition for winding up by the Court (Sec. 523).

The Court will not in general make a supervision order on the petition of a contributory, unless it is satisfied that the resolution for winding up was so obtained that the minority of members were overborne by fraud or improper or corrupt influence. Where the company is insolvent, the wishes of the creditors only are regarded or the investigation is required.

If a company is being wound up voluntarily or subject to supervision of the Court, a petition for its winding up by the Court may be presented by :

(a) Any person authorized to do so under Sec. 439 (which deals with provisions as to applications for winding up), or

(b) The official liquidator [Sec. 440(1)].

Where a supervision is made, the Court may appoint an additional liquidator or liquidators, or remove any liquidator at any time and fill any vacancy. The Court may also appoint the official liquidator as an additional liquidator or to fill any vacancy. The Registrar is also given power to apply to the Court for the removal of a liquidator and the Court may do so (Sec. 524). The liquidator appointed by the Court will act as a voluntary liquidator (Sec. 525). In a voluntary liquidation brought under the Court's supervision, the liquidator's remuneration cannot be increased.

A liquidator appointed by the Court has the same powers, is subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of the Companies Act with respect to the appointment of liquidators in voluntary winding up (Sec. 525).

CONSEQUENCES OF WINDING UP

1. Consequences as to Shareholders

A shareholder is liable to pay the full amount upto the face value of the shares held by him. Not only the present, but also the past members are liable on the winding up of the company. The liability of a present member is the amount remaining unpaid on the shares held by him, while a past member can be called upon to pay if the present contributory is unable to pay.

2. Consequences as to Creditors

A company, whether solvent or insolvent, can be wound up under the Act. In case of a solvent company, all claims of its creditors when proved are fully met. But in case of an insolvent company, the rules under the law of insolvency apply.

A secured creditor need not prove his claim against the company. He may realise his security and satisfy the debts. For deficiency, if any, he may put his claim before the liquidator. The secured creditor has also the option to relinquish his security and to prove the amount as if he were an unsecured creditor.

Where an insolvent company is being wound up, the insolvency rules will apply and only such claims shall be provable against the company as are provable against an insolvent person. (Section 529).

When the list of claims is settled the liquidator has to commence making payments. The assets available to the liquidator are applied in the following order:

(a) Secured Creditors

(b) Cost of the liquidation

(c) Preferential payments

(d) Debenture holders secured by a floating charge

(e) Unsecured creditors

(f) Balance returned to the contributories

Preferential Payment

Section 530 enumerates certain debts which are to be paid in priority to all other debts. Such payments are called preferential payments. It may however by noted that such payments are made after paying the secured creditors, and costs, charges and expenses of the winding up.

These preferential payments are : (a) All revenues, taxes, cesses and rates due from the company to the Central or State Government or to a local authority. The amount should have become due and payable within 12 months before the winding up. (b) All wages or salary of any employee in respect of services rendered to the company and due for a period not exceeding 4 months within 12 months, before the winding up and any compensation payable to any workman under any of the provision of Chapter V-A of the Industrial Disputes Act, 1947. The amount must not exceed Rs. 20,000 in the case of any one claimant. (c) All accrued holiday remuneration becoming payable to any employee or in the case of his death to any other person in his right, on the termination of his employment before or by the effect of the winding up. (d) All amounts due in respect of contributions payable by the company as employer but this is not payable if the company is being wound up voluntarily for the purpose of reconstruction and amalgamation (e) All amounts due in respect of any compensation or liability for compensation in respect of death or disablement of any employee under the Workmen's Compensation Act, 1923 but this is not payable if the company is being wound up voluntarily for reconstruction or amalgamation. (f) All sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employee maintained by the company. (g) The expenses of any investigation held in pursuance of Sections 235 and 237, in so far as they are payable by the company.

3. Consequences as to Servant and Officers

A winding up order by a Court operates as a notice of discharge to the employees and officers of the company except when the business of the company is continued. The same principle will apply as regards discharge of employees in a voluntary winding up. Where there is a contract of service for a particular period, an order for winding up will amount to wrongful discharge and damages will be allowed as for breach of contract of service.

4. Consequences of Proceedings against the Company

When a winding up order is made, or an official liquidator has been appointed as provisional liquidator no suit or legal proceedings can be commenced and no pending suit or legal proceeding continued against the company except with the leave of the Court and on such terms as it may impose. In the case of a voluntary winding up, the Court may restrain proceedings against the company if it thinks fit.

It may be noted that law does not prohibit proceedings being taken by the company against others including directors, or officers or other servants of the company.

5. Consequences as to Costs

Where the assets of the company are insufficient to satisfy the liabilities, the Court may make an order for payment out of the assets of the costs, charges and expenses incurred in the winding up. The Court may determine the order of priority in which such payments are to be made (Section 476).

6. Consequences as to Documents

When a company is being wound up whether by or under the supervision of the Court or voluntarily, the fact must be made known to all those having any dealing with the company; every document in the nature of an invoice, order for goods or business letter issued in the name of the company, after the commencement of winding up must contain a statement that the company is being wound up (Sec. 547).

Where a company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters recorded therein (Sec. 548).

Where an order for winding up of the company by or subject to the supervision of the Court is made, any creditor or contributory of the company may inspect the books and the papers

of the company, subject to the provisions made in the rules by the Central Government in this behalf.

INSIDER TRADING

Insider Trading as a term is subject to many definitions and it includes both legal and prohibited activities. Insider Trading happens on a daily basis, legally, when corporate management and Board of Directors buy or sell or deal with stocks of their own companies within confines of the company policies and regulations governing the trading. In other words, Insider Trading is buying, selling or dealing with a security while breaching the company policies or regulations, thus breaching the trust and confidence of a company while possessing material or non-public information about the securities.

Definitions

The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 1992, does not directly define the term Insider Trading. But it defines the term "Insider", "Connected Person" and "Price Sensitive Information".

Insider Trading is the trading of securities of a company by an Insider using company's non-public, price-sensitive information while causing losses to the company or profit to oneself.

Insider: According to the Regulations, "Insider" means any person who is or was connected to the company or is deemed to have been connected with the company and who reasonably is expected to have access, connection to unpublished price sensitive information in relation to that company.

Connected Person:

The Regulation defines that a "connected person" means any person who-

1. is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 of a company, or is deemed to be the director of the company by virtue of sub-clause (10) of section 307 of the Act.
2. Occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company, whether temporary or permanent and who may reasonably be expected to have an access to unpublished, price sensitive information in relation to that company.

Price Sensitive Information means any information, which relates directly or indirectly to a company and which if published, is likely to materially affect the price of securities of the company.

Following are some examples of Price Sensitive Information:

1. Financial results of the company.
2. Intended declaration of Dividends.
3. Issue of shares by way of public rights, bonus, etc.
4. Any major expansion plans or execution of new projects
5. Amalgamation, mergers and takeovers.
6. Disposal of the whole/substantial of the undertaking.

In the United States vs Carpenter, 1986, the Supreme Court cited that the usage of Inside Information received by virtue of confidential relationship must not be used or disclosed and by doing so, the individual gets charged for Insider Trading.

In 1997, O'Hagans Case, the court recognised that a company's information is it's property: " A Company's confidential information qualifies as property to which the company has a right of exclusive use. The undisclosed misappropriation of such information in violation of fiduciary duty constitutes fraud akin to embezzlement- the fraudulent appropriation to one's own use of money or goods entrusted to one's care by another."

In 2007, representatives Brian Baird and Louise Slaughter introduced a bill "Stop Trading on Congressional Knowledge Act or STOCK Act".

Insider Trading in India:

1. In 1948, First concrete attempt to regulate Insider Trading was the constitution of Thomas Committee. It helped restricting Insider trading by Securities Exchange Act, 1934.
2. In 1956, Sec 307 & 308 were introduced in the Companies Act, 1956. This change made it mandatory to have disclosures by directors and officers.
3. 1979, the Sachar Committee recognized the need for amendment of the Companies Act, 1956 as employees having company's information can misuse them and manipulate stock prices.
4. 1986, Patel committee recommended that the Securities contracts (Regulations) Act, 1956 be amended to make exchanges reduce Insider Trading.

5. 1989, Abid Hussain Committee recommended that the Insider Trading Activities be Penalized by civil and criminal proceedings and also suggested that SEBI formulate the regulations and governing codes to prevent unfair dealings.
6. 1992, India has prohibited the fraudulent practice of Insider Trading through "Security and Exchange Board of India (Insider Trading) Regulations Act, 1992. Here, a person convicted of Insider Trading is punishable under Section 24 and Section 15G of the SEBI Act, 1992.
7. 2002, the Regulations were drastically amended and renamed as "SEBI (Prohibition of Insider Trading) Regulations, 1992.

Why to Control Insider Trading?

- To protect general investors. The manipulation of market by using Insider trading generally causes great losses to a company, thus leading to loss for investors or great profit only for the Insiders and no investor. It steals away the possibility of earning profit from an investor.
- To protect the interest and reputation of the company. Once a company faces a problem of Insider Trading, investors tend to lose confidence in the company and stop investing in the company and also selling all the stocks of the company.
- To maintain confidence in the stock exchange operations. With SEBI also regulating all the tradings, if any Insider gets a chance to get past the laws, it decreases the investors' confidence in the stock exchange operations itself.
- Indian Financial Market is still very low in the domestic investment rate. To have a healthy economy, a proper financial system is a must and for that, confidence in the market is of utmost importance.

Rationale behind Prohibiting Insider Trading:

Securities market deals with the allocation of capital in an economy. This function enables market efficiency, where market's price reflects the risk and future returns accurately. Insider trading appears biased to investors as insiders have additional price sensitive information before them and can use it to make profits while the late reception of information makes investors suffer loss or not gain the deserved profits. If a market is integrated and free of illegal trading, it may lead to healthy growth of the market and such markets can inspire the confidence of the Investors.

Insider trading leads to loss of confidence of Investors on the market which can lead to a halt in market dealings thus causing a situation similar to the Great Economic Depression of the United States. Besides, a company's information is its property and no one but the company must profit from it.

Significant Penalties:

- SEBI may impose a penalty of not more than Rs. 25 Crores or three times the amount of profit made out of Insider Trading; whichever is higher.
- SEBI may initiate criminal prosecution; or
- SEBI may issue order declaring transactions in Securities based on unpublished price sensitive information; or
- SEBI may issue orders prohibiting an insider or refraining an insider from dealing in the securities of the company.

WHISTLE BLOWING

US Academicians Miceli and Near (1984)5 defines Whistle blowing as "the disclosure by organizational members (former or current) of illegal, immoral, or illegitimate practices under the control of their employees, to persons or organizations that may be able to effect action".

Australian academic Jubb (1999) defines, "whistle blowing is a deliberate nonobligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about nontrivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organization, to an external entity having potential to rectify the wrongdoing".

Characteristics/ Features of Whistle Blowing

a) Whistle-blowing is not the same as complaint

Complaining is not same as blowing the whistle. In most instance complaints involve personal subject matter of the complainant than with others or public interest. Whereas the whistle blowing is concerned with subject matter affecting public interest. Complaints from service users, relatives or representatives would not be classed as whistle blowing. These would need to be raised using the service's complaints procedure. Employees those who have

complaints regarding pay, hours and general grievances would need to raise their complaints using their organizations grievance procedure**.**

b) It is not a witness of a crime

Witness of crime is not considered as whistle blowing. The general criminal and civil proceedings and lawsuits include witness of a crime for investigation purpose. But, whistle blower is not mere witness, but much more than witneser. Whistle blower may be witness or may not be witness of crime, but having enough information about that crime.

c) It is non-public information

Information about a company that is not known by the public is known as non-public information. Therefore the matter involved in whistle blowing is considered as nonpublic information.

d) Substantial importance:

The matter of whistle blowing must have substantial importance. The substantial importance is concerned with having or involved worth material facts and figures, the costs of damage/ loss to the public. There cannot be simple matter involved in whistle blowing which causes no harm to public and less or no loss to anyone**.**

e) Desired changes

The whistle blower is expecting to stop some activity which causes harm and loss to public and society. Therefore there are some desired changes involved by doing so.

f) Voluntary way

Whistle blowing is purely a voluntary act of a person and also a group. There is no external force to make an act of whistle blowing, rather its internal force to do so.

g) Moral protest

Moral issues are concerned with the principles or rules of right conduct or the distinction between right and wrong; ethical. The moral protest is fighting against the immoral/ unethical issues. Therefore whistle blowing is considered as moral protest.

h) Public interest disclosure

A public interest disclosure is made when a person discloses to proper authority information that tends to show past, present or proposed future improper conduct by a public

body in the exercise of its functions. Definitions of improper conduct: An offence against State law; whistle blowing is public interest disclosure.

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POSSIBLE QUESTIONS

PART – A (1 MARK)

ONLINE EXAMINATION

PART B (2 MARKS)

1. What do you mean by Winding Up?
2. What do you mean by Whistle Blowing?
3. What do you mean by Insider Trading?
4. Briefly narrate about Committee of Inspection.
5. Who is called as Provisional Liquidator?
6. Narrate in detail about Official Liquidator.
7. What do you mean by Contributory?

PART C (6 MARKS)

1. Explain in detail about procedures involved in Compulsory winding up.
2. Explain in detail about characteristics of Whistle Blowing.
3. Elucidate in detail on Duties of Liquidator.
4. What is the need for controlling Insider Trading in India?
5. Explicate in detail on various powers of liquidator.
6. What consequences follow from the winding up of the company?
7. Describe the circumstances when the court considers winding up of a company.
8. Discuss in detail on procedures involved in Creditors voluntary winding up of the company.
9. Discuss in detail on procedures involved in Members voluntary winding up of the company.
10. What consequences follow from the winding up of the company?

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Company Law (17CCU303A)

Unit V

S.No.	Question	Option 1	Option 2	Option 3	Option 4	Answer
1	___is the process by which the management of a company's affairs is taken out of its director's hands	Amalgamation	Absorption	Winding Up	Internal Reconstruction	Winding Up
2	During winding up assets of the company are realized by _____	Liquidator	Promoter	Shareholder	Director	Liquidator
3	___ is the process whereby life of a company came to an end	Amalgamation	Absorption	Winding Up	Internal Reconstruction	Winding Up
4	___ precedes dissolution	Amalgamation	Absorption	Winding Up	Internal Reconstruction	Winding Up
5	When company ceases to exist as a corporate entity it is known as _____	Winding Up	Dissolution	Insolvency	Bankruptcy	Dissolution
6	At the end of ____, the company will have no assets or liabilities	Winding Up	Dissolution	Insolvency	Bankruptcy	Winding Up
7	On winding up of the company, its administration is carried out by __-	Liquidator	Promoter	Shareholder	Director	Liquidator
8	A company may be wound up by the court if the company itself has passed a _____	Ordinary Resolution	Special Resolution	General Resolution	$3/4^{th}$ Resolution	Special Resolution
9	If default is made in holding the ___ meeting the court may order the company to be wound up	Statutory	Annual General	Board	Extra Ordinary General	Statutory
10	If the company does not commence its business within _____ of its incorporation, it may be wound up by	Six Months	One Year	Two years	Three Years	One Year

11	___ is known as compulsory winding up	Winding up by the court	Winding up by the	Winding up by the	Winding up by the Shareholders	Winding up by the court
12	____as "the disclosure by organizational members (former or current) of illegal, immoral, or illegitimate	Whistle Blowing	Disclosur e	Winding Up	Liquidation	Whistle Blowing
13	___ as a term is subject to many definitions and it includes both legal and prohibited activities	Whistle Blowing	Insider Trading	Winding Up	Liquidation	Insider Trading
14	___ is the trading of securities of a company by an Insider using company's non-public, price-sensitive	Whistle Blowing	Insider Trading	Winding Up	Liquidation	Insider Trading
15	__is more commonly called liquidation	Amalgamation	Absorpti on	Winding Up	Internal Reconstruction	Winding Up
16	A company may be wound up by the Court is known as _____	Compulsory Winding Up	Creditors Voluntar	Members Voluntar	Winding up supervision of	Compulsory Winding Up
17	___is the process whereby its life is ended and its property administered for the benefit of its creditors and	Amalgamation	Absorpti on	Winding Up	Internal Reconstruction	Winding Up
18	__ is the last stage in the life of a company	Amalgamation	Absorpti on	Winding Up	Internal Reconstruction	Winding Up
19	___ means any information, which relates directly or indirectly to a company and which if published, is likely	Price Sensitive Information	Vital Informati	Significa nt	Fault Information	Price Sensitive
20	___ is buying, selling or dealing with a security while breaching the company policies or regulations	Whistle Blowing	Insider Trading	Winding Up	Liquidation	Insider Trading
21	Certain debts which are to be paid in priority to all other debts are called as___	Priority Payment	Preferent ial	Balanced Payments	None of the Above	Preferential Payments
22	___ means every person who is liable to contribute to the assets of the company in the event of its being	Creditor	Debtor	Contribut ory	Shareholder	Contributory
23	On the making of a winding up order it is the duty of the petitioner in the winding up proceedings and of the	15	25	30	45	30
24	Section 537 declares that any attachment and sale of the estate or effects of the company, after the	Valid	Void	Voidable	None of the Above	Void

25	In the case of winding up by the Court any attachment, distress or execution put in force, without leave of the	Valid	Void	Voidable	None of the Above	Void
26	For the purpose of winding up, there shall be attached to each high Court an official liquidator appointed by	State Government	Central Governm	High Court	Supreme Court	Central Government
27	___ shall conduct the proceedings in winding up the company and perform such duties as the Court may	Liquidator	Promoter	Sharehol der	Director	Liquidator
28	The official liquidator gets his remuneration from the___	State Government	Central Governm	High Court	Supreme Court	Central Government
29	For the services rendered by the official liquidator to the company, the Central Government shall pay such	Bank Balance	Cash Balance	Assets	Borrowing	Assets
30	The company must make out and submit to the official liquidator a statement as to the affairs of the company	Balance Sheet	Profit and Loss	Statemen t of	Cash Flow Statement	Statement of Affairs
31	___ must take into his custody and control the property of the company	Liquidator	Promoter	Sharehol der	Director	Liquidator
32	Liquidator must, at least ____in each year, present to the Court an account of his receipts and payments	Two	Three	Four	Five	Two
33	Liquidator must also send a printed copy of the accounts so audited by post to every creditor and to	Debtor	Banker	Contribut ory	Shareholder	Contributory
34	Within ___months from the date of the direction of the Court, the liquidator must call a meeting of the	Two	Three	Four	Five	Two
35	Within ___days of the meeting of the creditors, the liquidator must call a meeting of the contributories to	7	14	21	28	14
36	Within ___months of the expiry of each year from the commencement of winding up, the liquidator must file a	Two	Three	Four	Five	Two
37	___ can inspect the accounts of the liquidator at all reasonable times	Auditor	Secretary	Committ ee of	Director	Committee of
38	Conduct of the liquidators of companies under the control and scrutiny of the ____	State Government	Central Governm	High Court	Supreme Court	Central Government

39	___ may at any time require any liquidator of a company which is being wound up by the Court to	State Government	Central Governm	High Court	Supreme Court	Central Government
40	Winding up by the creditors or members without any intervention of the Court is called___	Voluntary Winding Up	Compuls ory	Winding Up under	None of the Above	Voluntary Winding Up
41	In ___, the company and its creditors are left free to settle their affairs without going to the Court	Voluntary Winding Up	Compuls ory	Winding Up under	None of the Above	Voluntary Winding Up
42	When a company has passed a resolution for voluntary winding up, it must within ____days of the passing of	7	14	21	28	14
43	On the appointment of a liquidator, all the powers of the ___cease and the liquidator may exercise the	Secretary	Board of Directors	Sharehol ders	Chairman	Board of Directors
44	The liquidator appointed in a members' voluntary winding up is merely ___ of the company to administer	An Employee	An Agent	An Enumerat	A Servant	An Agent
45	A ___takes place only when the company is solvent	Members Voluntary Winding up	Creditors Voluntar	Winding up	Compulsory Winding up	Members Voluntary
46	Resolution for winding up should be passed in ___	Statutory Meeting	General Meeting	Board Meeting	Extra-ordinary General Meeting	General Meeting
47	If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the	Statutory Meeting	General Meeting	Board Meeting	Extra-ordinary General Meeting	General Meeting
48	When a company is insolvent, that is, it is not able to pay its debts, it is the__	Members Voluntary Winding up	Creditors Voluntar	Winding up	Compulsory Winding up	Creditors Voluntary
49	Notice of any resolution passed at a creditors' meeting shall be given by the company to the Registrar within	7	10	15	20	10
50	Compulsory winding up is possible with the order of ___	Central Government	State Governm	Court	Special Resolution	Court
51	If the company has not conducted ____ meting, a petition for winding up of the company may be	Statutory	Annual General	Board	Extra-ordinary	Statutory
52	Where a company does not commence its business within ____year from its incorporation or suspends its	One	Two	Three	Five	One

53	When the number of members is reduced, in the case of a public company, below ___and in the case of a private	2,4	3,5	7,2	5,7	7,2
54	___ means every person who is liable to contribute to the assets of the company in the event of its being	Shareholder	Debtor	Creditor	Contributory	Contributory
55	For the services rendered by the official liquidator to the company, the _____ shall pay such fees out of the	State Government	Central Governm	Quasi Governm	Company	Central Government
56	In ___, the company and its creditors are left free to settle their affairs without going to the Court	Compulsory Winding Up	Voluntar y	Winding Up under	None of the Above	Voluntary Winding Up
57	____ up takes place only when the company is solvent	Compulsory Winding Up	Members Voluntar	Creditors Voluntar	Winding Up under Supervision of	Members Voluntary
58	On the passing of the resolution for winding up, the company must in a ____meeting appoint one or more	Statutory	Annual General	Board	Extra-ordinary General	Annual General
59	If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the	Statutory	Annual General	Board	Extra-ordinary General	Annual General
60	The company must, within ___days of the appointment of the liquidator, or the filling up of the vacancy, as the	5	10	15	20	10