

Programme Outcome:

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

Learning Outcome

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 to Company

Company – Definition – characteristics – Types – Lifting of corporate veil – Formation of a company – Procedure – Certificate of Incorporation – Effects of Registration – Promoters – Pre incorporation Contracts – Certificate of commencement.

Unit II : Company Documents

Memorandum of association – Contents – Alteration – Articles of Association – Doctrine of Ultra virus – Legal effect of Memorandum and Articles – constructive Notice of Memorandum and Articles – Doctrine of Indoor Management.

Unit III : Shares and Debentures

Prospectus – Definition – Abridged prospectus – Statement in lieu of prospectus- Information Memorandum – contents – Misstatement in prospectus – issue of shares – types – Application and Allotment of shares, share certificate, Transfer and transmission of shares – Buyback of shares – Debentures – Meaning and type- declaration of dividend.

Unit IV : Company Management

Company Management – Board of Directors – Managing directors qualification, Appointment. Vacation of Office – position – powers Duties and Liabilities of Board of directors Meeting – General Meetings – Kinds of Meetings and resolution, Procedure relating to convening and Proceeding in General Meeting.

Unit V : Company Winding up

Winding up up – Meaning Modes of Winding up – company winding up by court – voluntary winding up – Types of voluntary winding up – members voluntary winding up – creditors voluntary winding up – winding up subject to the supervision of the court – Consequences of winding up (general). Liquidator – powers and duties. Partnership definition – Features – Registration - E filing

DEPARTMENT OF COMMERCE

II B.COM (BPS)

SUBJECT : CORPORATE LAW

SEMESTER:III

SUBJECT CODE : 16BPU302

LECTURE PLAN

UNIT-1

S.No.	Lecture Duration(Hr)	Topics to be Covered	Support Materials
1	1	Company Meaning, definition and characteristics	T. P.P. 2-5
2	1	Types of Companies, incorporated and unincorporated Companies	T.P.P.-29-31
3	1	Classification of Companies on the basis of incorporation, liability, Number of members, control	T.PP-31-47
4	1	Lifting the corporate veil and its exceptions	R1 PP-17-20
5	1	Formation of company procedure- incorporation of a company	T.PP.-60-62
6	1	Certificate of incorporation and effects of Registration	T.PP.-61-63
7	1	Promoter and Functions of Promoters	R1 PP-61-63
8	1	Legal status, Duties and liabilities of promoters	R1 PP-65-68
9	1	Certificate of Commencement	R1 P-63
10	1	Recapitulation and important question discussion	
		Total no. of hours planned for unit-I	10

UNIT II

Lecture Plan

S.No.	Lecture Duration(hr)	Topics to be Covered	Support Materials
1	1	Memorandum of Association and its contents	R3 PP.73-101
2	1	Alteration of Memorandum of Association	R3 PP.73-101
3	1	Articles of Association and its contents	R3 PP.73-101
4	1	Alteration of Articles of Association	R3 PP,73-101
5	1	Doctrine of Ultra Virus the Articles	T.P.85
6	1	Legal effects of Memorandum and Articles	T.P.99
7	1	Constructive notice of Memorandum and Articles	T.P. 101
8	1	Doctrine of Indoor Management	T..102
9	1	Recapitulation and important question discussion	
		Total No. of Hours Planned for Unit II	9

UNIT III

LECTURE PLAN

S.NO	Lecture Duration(Hr)	Topics to be covered	Support Materials
1	1	Shares and Debentures, Prospectus- meaning, definition and abridge prospectis	R1 PP. 82-86
2	1	Statement in lieu of prospectus	R2 PP.88-90
3	1	Information Memorandum and its contents	R3 PP. 88-90
4	1	Misstatement in prospectus	T PP 118-125
5	1	Issue of shares, types	R2 PP173-190
6	1	Application and Allotment of shares	R2PP 173-190

7	1	Share Certificate, Share Warrant	T PP 184-188
8	1	Transfer and Transmission of Shares	T PP 188-197
9	1	Buy back of shares, debentures meaning and types, procedure for declaration of dividends	R2PP 173-190
10	1	Recapitulation and important questions discussion	
		Total No. of Hours Planned for Unit III	10

UNIT IV
LECTURE PLAN

S.No.	Lecture Duration(Hr)	Topics to be Covered	Support Materials
1	1	Company Management, Explanation about company Board of Directors	R1 P. 282
2	1	Directors qualifications and appointment	R1.PP.282-288
3	1	Vocation of office, position, powers	R2 PP.212-218
4	1	Duties and Liabilities of Board of Directors	R2 PP 226-242
5	1	Meetings and its kinds	R1 PP.305-315
6	1	Resolution and procedure relating to convening and proceedings in general meeting	R2 PP.226-242
7	1	Resolution and procedure relating to convening and proceedings in General meeting.	R2 PP 226-242
8	1	Share Certificate, Share Warrant	R1 PP 160-161
9	1	Recapitulation and important questions discussion	
		Total No. of Hours Planned for Unit – IV	9

Unit V

Lecture Plan

S.NO.	Lecture Duration(Hr)	Topics to be Covered	Support Materials
1	1	Company Winding up, meaning and modes of winding up	R1 PP383-394
2	1	Compulsory Winding up by the Court	R1 P.399
3	1	Creditors voluntary Winding up	R1 P.401
4	1	Winding up subject to supervision of court	R1 P.404
5	1	Consequences of Winding up	R1 P. 403
6	1	Liquidators duties and powers	R1 P.394
7	1	Partnership definition and its features	W1
8	1	Registration and e-filing	
9	1	Recapitulation and important questions discussion	
10	1	Previous year end semester Question paper revision	
11	1	Previous year and semester Question paper revision	
12	1	Previous year and semester Question paper revision	
		Total no. of Hours Planned for Unit-V	12

Textbooks : R1 P.P.S. Gogna, 1998, Company Law, Sultan Chand and Sons Publication

References Books :

Website : W1- [https://en, Wikipedia,org/wiki/company foration](https://en.wikipedia.org/wiki/company_formation)

Journas :

Unit I : Introduction to Company

Company – Definition – characteristics – Types – Lifting of corporate veil – Formation of a company – Procedure – Certificate of Incorporation – Effects of Registration – Promoters – Pre incorporation Contracts – Certificate of commencement.

Definition of Company

In the legal sense, a company is an association of both natural and artificial persons (and is incorporated under the existing law of a country). In terms of the Companies Act, 2013 (Act No. 18 of 2013) a “company” means a company incorporated under this Act or under any previous company law [Section 2(20)]. In common law, a company is a “legal person” or “legal entity” separate from, and capable of surviving beyond the lives of its members. However, an association formed not for profit also acquires a corporate character and falls within the meaning of a company by reason of a licence issued under Section 8(1) of the Act.

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

(i) Corporate personality

A company incorporated under the Act is vested with a corporate personality so it redundant bears its own name, acts under name, has a seal of its own and its assets are separate and distinct from those of its members. It is a different ‘person’ from the members who compose it. Therefore it is capable of owning property, incurring debts, borrowing money, having a bank account, employing people, entering into contracts and suing or being sued in the same manner as an individual. Its members are its owners however they can be its creditors simultaneously. A shareholder cannot be held liable for the acts of the company even if he holds virtually the entire share capital. The shareholders are not the agents of the company and so they cannot bind it by their acts. The company does not hold its property as an agent or trustee for its members and they cannot sue to enforce its rights, nor can they be sued in respect of its liabilities. Thus, ‘incorporation’ is the act of forming a legal corporation as a juristic person. A juristic person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law [*Shiromani Gurdwara Prabandhak Committee v.*

Shri Sam Nath Dass AIR 2000 SCW 139].

(ii) Limited Liability

“The privilege of limited liability for business debts is one of the principal advantages of doing business under the corporate form of organisation.” The company, being a separate person, is the owner of its assets and bound by its liabilities. The liability of a member as shareholder, extends to the contribution to the capital of the company up to the nominal value of the shares held and not paid by him. Members, even as a whole, are neither the owners of the company’s undertakings, nor liable for its debts. In other words, a shareholder is liable to pay the balance, if any, due on the shares held by him, when called upon to pay and nothing more, even if the liabilities of the company far exceed its assets. This means that the liability of a member is limited.

For example, if A holds shares of the total nominal value of `1,000 and has already paid `500/- (or 50% of the value) as part payment at the time of allotment, he cannot be called upon to pay more than `500/-, the amount remaining unpaid on his shares. If he holds fully-paid shares, he has no further liability to pay even if the company is declared insolvent. In the case of a company limited by guarantee, the liability of members is limited to a specified amount of the guarantee mentioned in the memorandum. Buckley, J. in *Re. London and Globe Finance Corporation*, (1903) 1 Ch.D. 728 at 731, has observed: ‘The statutes relating to limited liability have probably done more than any legislation of the last fifty years to further the commercial prosperity of the country. They have, to the advantage of the investor as well as of the public, allowed and encouraged aggregation of small sums into large capitals which have been employed in undertakings of “great public utility largely increasing the wealth of the country”.

(iii) Perpetual Succession

An incorporated company never dies, except when it is wound up as per law. A company, being a separate legal person is unaffected by death or departure of any member and it remains the same entity, despite total change in the membership. A company’s life is determined by the terms of its Memorandum of Association. It may be perpetual, or it may continue for a specified time to carry on a task or object as laid down in the Memorandum of Association. Perpetual succession, therefore, means that the membership of a company may keep changing from time to time, but that shall not affect its continuity.

The membership of an incorporated company may change either because one shareholder has sold/transferred his shares to another or his shares devolve on his legal representatives on his death or he ceases to be a member under some other provisions of the Companies Act. Thus, perpetual succession denotes the ability of a company to maintain its existence by the succession of new individuals who step into the shoes of those who cease to be members of the company. Professor L.C.B. Gower rightly mentions, “Members may come and go, but the company can go on forever. During the war all the members of one private company, while in general meeting, were killed by a bomb, but the company survived — not even a hydrogen bomb could have destroyed it”.

(iv) Separate Property

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

(v) Transferability of Shares

The capital of a company is divided into parts, called shares. The shares are said to be movable property and, subject to certain conditions, freely transferable, so that no shareholder is permanently or necessarily wedded to a company. When the joint stock companies were established, the object was that their shares should be capable of being easily transferred. Section 44 of the Companies Act, 2013 enunciates the principle by providing that the shares held by the members are movable property and can be transferred from one person to another in the manner provided by the articles. If the articles do not provide anything for the transfer of shares and the Regulations contained in Table “F” in Schedule I to the Companies Act, 2013, are also expressly excluded, the transfer of shares will be governed by the general law relating to transfer of movable property.

(vi) Common Seal

Upon incorporation, a company becomes a legal entity with perpetual succession and a common seal. Since the company has no physical existence, it must act through its agents and all contracts entered into by its agents must be under the seal of the company. The Common Seal acts as the official signature

of a company. The name of the company must be engraved on its common seal. A rubber stamp does not serve the purpose.

(vii) Capacity to Sue and Be Sued

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

Classification of Companies

(i) Classification on the basis of Incorporation: There are three ways in which companies may be incorporated.

(a) **Statutory Companies:** These are constituted by a special Act of Parliament or State Legislature. The provisions of the Companies Act, 2013 do not apply to them. Examples of these types of companies are Reserve Bank of India, Life Insurance Corporation of India, etc.

(b) **Registered Companies:** The companies which are incorporated under the Companies Act, 2013 or under any previous company law, with ROC fall under this category.

ii) Classification on the basis of Liability: Under this category there are three types of companies:

(a) **Unlimited Liability Companies:** In this type of company, the members are liable for the company's debts in proportion to their respective interests in the company and their liability is unlimited. Such companies may or may not have share capital. They may be either a public company or a private company.

(b) **Companies limited by guarantee:** A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee. The members of a guarantee company are, in effect, placed in the position of guarantors of the company's debts up to the agreed amount.

(c) **Companies limited by shares:** A company that has the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares. For example, a shareholder who has paid ₹75 on a share of face value ₹100 can be called upon to pay the balance of ₹25 only. Companies limited by shares are by far the most common and may be either public or private.

(iii) Other Forms of Companies

- (a) Associations not for profit having license under Section 8 of the Companies Act, 2013 or under any previous company law;
- (b) Government Companies;
- (c) Foreign Companies;
- (d) Holding and Subsidiary Companies;
- (e) Associate Companies/Joint Venture Companies
- (f) Investment Companies
- (g) Producer Companies.
- (h) Dormant Companies

Doctrine of lifting or pricing the corporate veil:

The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will break through the corporate shell and apply the principle/doctrine of what is called as “lifting of or piercing the corporate veil”. The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company. The corporate veil is lifted when in defence proceedings, such as for the evasion of tax, an entity relies on its corporate personality as a shield to cover its wrong doings.

Formation of the company

Section 3(1) states that a company may be formed for any lawful purpose by—

- (a) seven or more persons, where the company to be formed is to be a public company;
- (b) two or more persons, where the company to be formed is to be a private company; or
- (c) one person, where the company to be formed is to be One Person Company that is to say, a private company by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

(a) Application for Availability of Name of company

As per section 4(4) a person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as—

- (a) the name of the proposed company; or
- (b) the name to which the company proposes to change its name.

As per *Rule 9 of Companies (incorporation) Rules 2014*, an application for the reservation of a name shall be made in Form No. INC.1 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

According to section 4(2), the name stated in the memorandum of association shall not—

- (a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or
- (b) be such that its use by the company—

b) Preparation of Memorandum and Articles of Association

The Memorandum of Association is the charter of a company. It is a document, which amongst other things, defines the area within which the company can operate.

Section 4(1) states that the memorandum of a company shall state—

- (a) the name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company
- (b) the State in which the registered office of the company is to be situated;
- (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;

(d) the liability of members of the company, whether limited or unlimited, and also state,— (i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and (ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute— (A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and (B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

(e) in the case of a company having a share capital,— (i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and (ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

(f) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

FILING OF DOCUMENTS WITH REGISTRAR OF COMPANIES

Section 7(1) states that there shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:—

(a) Application for Incorporation of Companies: Rule 12 of Companies (Incorporation) Rules 2014 states that an application for incorporation shall be filed with ROC in form INC-2 (in case of one person company or INC-7 in case of other companies.

Memorandum and Articles of Association of the company duly signed

(b) Section 7(1)(a) the filing of the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

Rule 13 of Companies (Incorporation) Rules 2014 states that

The Memorandum and Articles of Association of the company shall be signed in the following manner, namely:-

(1) The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any and the witness shall state that “I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in”

(2) Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which Promotion and Incorporation of Companies shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.

(3) Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of association.

(4) Where the subscriber to the memorandum is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate and where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership:

Provided that in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

(5) Where subscriber to the memorandum is a foreign national residing outside India-

(a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.

(b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.

(c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same;

(d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

Explanation.- For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.

(c) Declaration from the professional

Section 7(1)(b) requires filing of a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with; Rule 14 of The Companies(Incorporation) Rules 2014 states that for the purposes of clause (b) of subsection (1) of section 7, the declaration by an advocate, a Chartered Accountant, Cost accountant or Company Secretary in practice shall be in Form No. INC.8. Explanation (i) “chartered accountant” means a chartered accountant as defined in clause (b) of sub section of section 2 of the Chartered Accountants Act, 1949 (ii) “Cost Accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and (iii) “company secretary” means a “company secretary” or “secretary” means as defined in clause (c) of subsection(1) of section 2 of the Company Secretaries Act, 1980.

(d) Affidavit from the subscribers to the Memorandum

Section 7(1)(c) requires the filing of an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.

(e) Furnishing verification of Registered Office

Under Section 12, a company shall, on and from the 15th day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it. The company can furnish to the registrar verification of registered office within 30 days of incorporation in the manner prescribed. As per rule 25(1) of Companies (Incorporation) Rules 2014, the verification of registered office shall be filed in Form no INC 22.

(f) Particulars of subscribers

Section 7(1)(e) requires the filing of the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed; *Rule 16 of Companies (Incorporation) Rules states that* Particulars of every subscriber to be filed with the Registrar at the time of incorporation.

(1) The following particulars of every subscriber to the memorandum shall be filed with the Registrar-

(a) Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA:

(b) Father's/Mother's name:

(c) Nationality:

(d) Date of Birth:

(e) Place of Birth (District and State):

(f) Educational qualification:

(g) Occupation:

(h) Income-tax permanent account number: (i) Permanent residential address and also Present address (Time since residing at present address and address of previous residence address (es) if stay of present address is less than one year) similarly the office/business addresses :

(j) Email id of Subscriber;

(k) Phone No. of Subscriber;

(l) Fax no. of Subscriber (optional)

Explanation.- information related to (i) to (l) shall be of the individual subscriber and not of the professional engaged in the incorporation of the company;

(m) Proof of Identity:

For Indian Nationals:

- PAN Card (mandatory) and any one of the following
- Voter's identity card
- Passport copy
- Driving License copy
- Unique Identification Number (UIN)

For Foreign nationals and Non Resident Indians

- Passport

It was clarified by MCA vide Circular No. 16/2014 that, a declaration from foreign national in the prescribed format shall be furnished as an attachment of INC 7 (Application for Incorporation), in case if he does not have a PAN.

(n) Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill:

Provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old;

(o) Proof of nationality in case the subscriber is a foreign national.

(p) If the subscriber is already a director or promoter of a company(s), the particulars relating to-

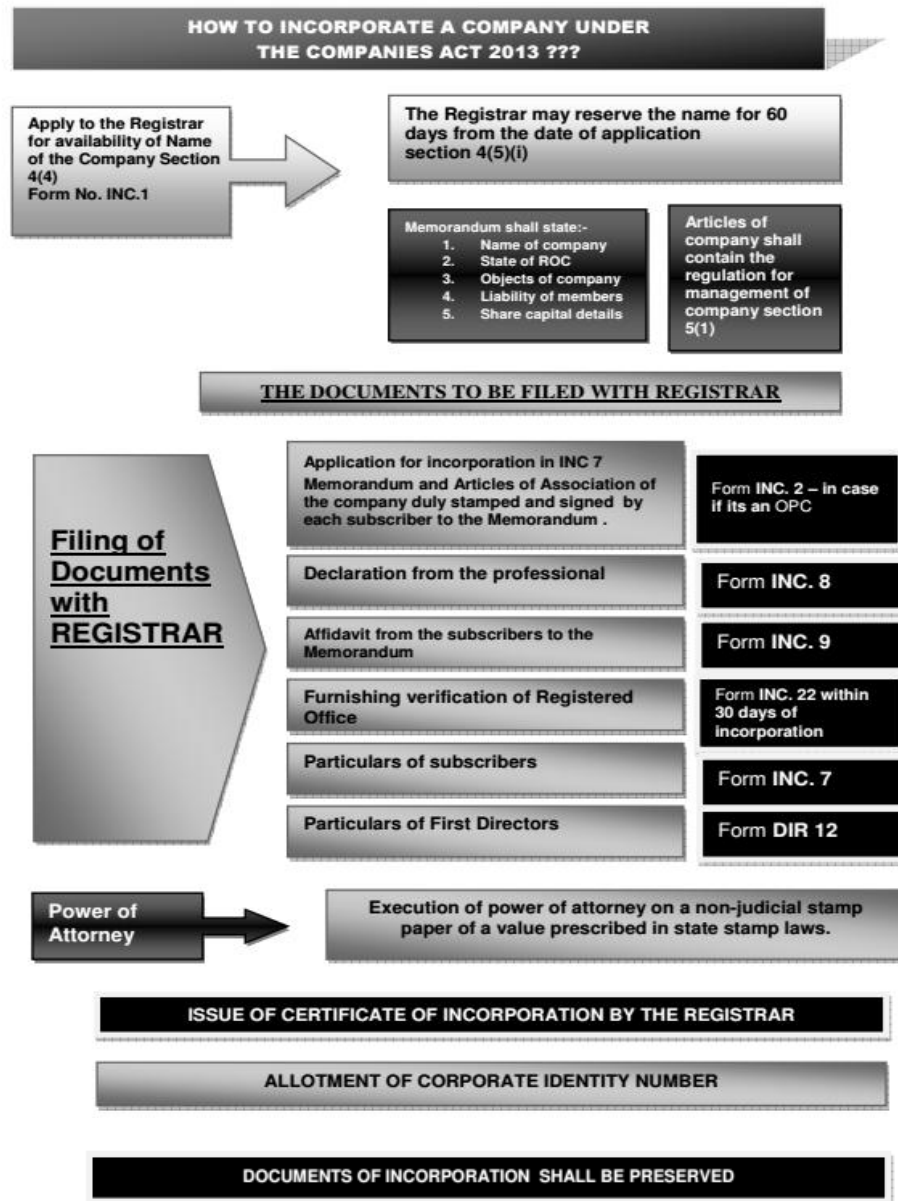
(i) Name of the company;

(ii) Corporate Identity Number;

(iii) Whether interested as a director or promoter;

(q) the specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed Form No.INC.10.

The Procedural aspects involved in incorporation of companies is briefly given below:



Unit II : Company Documents

Memorandum of association – Contents – Alteration – Articles of Association – Doctrine of Ultra virus – Legal effect of Memorandum and Articles – constructive Notice of Memorandum and Articles – Doctrine of Indoor Management

Memorandum of Association

The Memorandum of Association is a document which sets out the constitution of a company and is therefore the foundation on which the structure of the company is built. It defines the scope of the company's activities and its relations with the outside world. The first step in the formation of a company is to prepare a document called the memorandum of association. In fact memorandum is one of the most essential pre-requisites for incorporating any form of company under the Act. This is evidenced in Section 3 of the Act, which provides the mode of incorporation of a company and states that a company may be formed for any lawful purpose by seven or more persons, where the company to be formed is a public company; two or more persons, where the company to be formed is a private company; or one person, where the company to be formed is a One Person Company by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of its registration.

To subscribe means to append one's signature or mark a document as an approval or attestation of its contents. According to Section 2(56) of the Companies Act, 2013 "memorandum" means the memorandum of association of a company as originally framed and altered from time to time in pursuance of any previous company law or this Act. Section 4 of the Act specifies in clear terms the contents of this important document which is the charter of the company. The memorandum of association of a company contains the objects to pursue which the company is formed. It not only shows the objects of formation but also determines the scope of its operations beyond which its actions cannot go. "THE MEMORANDUM OF ASSOCIATION", observed Palmer, "is a document of great importance in relation to the proposed company".

Form of Memorandum of Association

Section 4(6) of the Companies Act, 2013 provides that the memorandum of association should be in any one of the Forms specified in Tables A, B, C, D or E of Schedule I to the Act, as may be applicable in relation to the

type of company proposed to be incorporated or in a Form as near thereto as the circumstances admit.

(i) The Form in Table A is applicable in the case of companies limited by shares;

- (ii) the Form in Table B is applicable to companies limited by guarantee not having a share capital;
- (iii) the Form in Table C is applicable to the companies limited by guarantee having a share capital;
- (iv) the Form in Table D is applicable to unlimited companies not having a share capital;
- (v) the Form in Table E is applicable to unlimited companies having a share capital.

A company shall adopt any of the model Forms of the memorandum of association mentioned above, as may be applicable to it.

Contents of Memorandum of Association

As per Section 4(1), the memorandum of a limited company must state the following:

- (a) the name of the company with “Limited” as its last word in the case of a public company; and “Private Limited” as its last words in the case of a private company; (*Name Clause*)
- (b) the State in which the registered office of the company is to be situated; (*Situation Clause*)
- (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof; (*objects clause*)

Provided that nothing in this clause shall apply to a company registered under section 8;

- (d) the liability of members of the company, whether limited or unlimited, and also state,—(*Liability Clause*)

- (i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and

- (ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—

- (A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

- (B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

- (e) in the case of a company having a share capital,—(*Capital Clause*)

- (i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share per subscriber; and

- (ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

- (f) in the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

According to section 4(7), any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Name Clause

A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is a symbol of its independent corporate existence. The first clause in the memorandum of association of the company states the name by which a company is to be known. The company may adopt any suitable name provided it is not undesirable.

According to section 4(2), the name stated in the memorandum shall not—

(a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

(b) be such that its use by the company—

(i) will constitute an offence under any law for the time being in force; or

(ii) is undesirable in the opinion of the Central Government.

Section 4(3) provides that without prejudice to the provisions of section 4(2), a company shall not be registered with a name which contains—

(a) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or

(b) such word or expression, as may be prescribed, unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

As per section 4(4) a person may make an application, in such form (Form INC1) and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the

application as—

(a) the name of the proposed company; or

(b) the name to which the company proposes to change its name.

Section 4(5)(i) lays down that upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of 60 days from the date of the application

Situation clause

The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein. Within 15

days of its incorporation, and at all times thereafter, the company must have a registered office to which all communications and notices may be sent. The company must also furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed. Section 12(3) states that every company shall—

- (a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;
- (b) have its name engraved in legible characters on its seal;
- (c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
- (d) have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed:

Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years as required under clauses (a) and (c):

OBJECTS CLAUSE

The third compulsory clause in the memorandum sets out the objects for which the company has been formed. Under section 4(1)(c) of the Companies Act, 2013, all companies must state in their memorandum the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. The objects clause is of great importance because it determines the purpose and the capacity of the company. It indicates the purpose for which the company has been set up and its actual capability, besides its sphere of activities. It states affirmatively the ambit and extent of powers of the company and, stated negatively, that nothing should be done beyond that ambit and that no attempt shall be made to use the company for any other purpose than that which is specified. The purpose

of the objects clause is to enable the persons dealing with the company to know its permitted range of activities. The acts beyond this ambit are *ultra vires* and hence void. Even the entire body of shareholders cannot ratify such acts.

Liability clause

Section 4 1(d) of the Companies Act, states that the liability of members of the company, whether limited or unlimited, and also state,—

(i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and

(ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—

(A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

(B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves.

Capital Clause

This is the fifth compulsory clause which must state the amount of the capital with which the company is registered. The shares into which the capital is divided must be of fixed value, which is commonly known as the nominal value of the share. The capital is variously described as “nominal”, “authorised” or “registered”.

The amount of nominal capital is determined having regard to the present as well as future requirements of the company with reference to its objects. The usual way to state the capital in the memorandum is: “The capital of the company is Rs. 10,00,000 divided into 1,00,000 equity shares of ` 10 each”. This amount lays down the maximum limit beyond which the company cannot issue shares without altering the memorandum as provided by Section 61 of the Companies Act, 2013. If there are both equity and preference shares, then the division of the capital is to be shown under these two heads. A company is not authorised to issue capital beyond its authorised/nominal/registered capital. If it receives applications for shares beyond the shares covered by the authorised capital, the amount received on excess number of shares should be returned. Out of the issued capital, the total amount actually subscribed or agreed to be subscribed is known as subscribed capital, and this subscribed capital again may be wholly paid or partly

paid, in which latter case the balance would be payable on future calls when made. The amount actually paid by the shareholders is called the paid-up capital. According to Section 60 of the Act, if the amount of the authorised capital (nominal capital), of the company is stated in any notice, advertisement, official publication, business letter, bill head or letter paper, it shall also contain a statement in an equally prominent position and in equally conspicuous terms the amount of capital which has been subscribed and the amount paid-up.

ARTICLES OF ASSOCIATION

NATURE OF ARTICLES

According to Section 2(5) of the Companies Act, 2013, 'articles' means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. It also includes the regulations contained in Table A in Schedule I of the Act, in so far as they apply to the company. In terms of section 5(1), the articles of a company shall contain the regulations for management of the company. The articles of association of a company are its bye-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles play a very important role in the affairs of a company. It deals with the rights of the members of the company inter se. They are subordinate to and are controlled by the memorandum of association.

Registration of Articles of Association

Section 7(1) provides that at the time of incorporation of a company there shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the memorandum and articles of the company duly signed by all the subscribers to the memorandum in the prescribed manner. Every type of company whether public or private and whether limited by shares or limited by guarantee having a share capital or not having a share capital or an unlimited liability company must register their articles of association. Section 5(2) provides that the articles shall also contain such matters, as may be prescribed. However, nothing prescribed in this sub-section shall be deemed to prevent a company from including such additional matters in its articles as may be considered necessary for its management. The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

Contents of the Articles of Association

The articles set out the rules and regulations framed by the company for its own working. The articles should

contain generally the following matters:

1. Exclusion wholly or in part of Table F.
2. Adoption of preliminary contracts.
3. Number and value of shares.
4. Issue of preference shares.
5. Allotment of shares.
6. Calls on shares.
7. Lien on shares.
8. Transfer and transmission of shares.
9. Nomination.
10. Forfeiture of shares.
11. Alteration of capital.
12. Buy back.
13. Share certificates.
14. Dematerialisation.
15. Conversion of shares into stock.
16. Voting rights and proxies.
17. Meetings and rules regarding committees.
18. Directors, their appointment and delegations of powers.
19. Nominee directors.
20. Issue of Debentures and stocks.
21. Audit committee.
22. Managing director, Whole-time director, Manager, Secretary.
23. Additional directors.
24. Seal.
25. Remuneration of directors.
26. General meetings.
27. Directors meetings.
28. Borrowing powers.
29. Dividends and reserves.
30. Accounts and audit.

31. Winding up.

32. Indemnity.

33. Capitalisation of reserves.

Utmost caution must be exercised in the preparation of the articles of association of a company. At the same time, certain provisions of the Act are applicable to the company "notwithstanding anything to the contrary in the articles". Therefore, the articles must contain provisions in respect of all matters which are required to be contained therein so as not to hamper the working of the company later.

Memorandum Vs. Articles of Association

The main points of distinction between the memorandum and articles are given below:

1. Memorandum of association is the charter of the company and defines the fundamental conditions and objects for which the company is granted incorporation. Articles of association are the rules and regulations framed to govern this internal management of the company.
2. Clauses of the memorandum cannot be easily altered. They can only be altered in accordance with the mode prescribed by the Act. In some of the cases, alteration requires the permission of the Central Government or the Court. In the case of articles of association, members have a right to alter the articles by a special resolution. Generally there is no need to obtain the permission of the Court or the Central Government for alteration of the articles.
3. Memorandum of association cannot include any clause contrary to the provisions of the Companies Act. The articles of association are subsidiary both to the Companies Act and the memorandum of association.
4. The memorandum generally defines the relation between the company and the outsiders, while the articles regulate the relationship between the company and its members and between the members *inter se*.
5. Acts done by a company beyond the scope of the memorandum are absolutely void and *ultra vires* and cannot be ratified even by unanimous vote of all the shareholders. But the acts of the directors beyond the articles can be ratified by the shareholders.

Doctrine of Indoor Management

While the doctrine of 'constructive notice' seeks to protect the company against the outsiders, the principal of indoor management operates to protect the outsiders against the company.

According to this doctrine, as laid down in *Royal British Bank v. Turquand*, (1856) 119 E.R. 886, persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum and articles, are not bound to inquire the regularity of any internal

proceedings. In other words, while persons contracting with a company are presumed to know the provisions of the contents of the memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see that the company carries out its own internal regulations.

Unit III : Shares and Debentures

Prospectus – Definition – Abridged prospectus – Statement in lieu of prospectus- Information Memorandum – contents – Misstatement in prospectus – issue of shares – types – Application and Allotment of shares, share certificate, Transfer and transmission of shares – Buyback of share Debentures – Meaning and type- declaration of dividend

Shares and Debentures

The term “Capital” has variety of meanings. It may mean one thing to an economist, one to an accountant, while another to a businessman or a lawyer. A layman views capital as the money, which a company has raised by issue of its shares. It uses this money to meet its requirements by way of acquiring business premises and stock-in-trade, which are called the fixed capital and the circulating capital respectively. The phrase “loan or borrowed capital” is sometimes used to mean money borrowed by the company and secured by issuing debentures. This, however, is not the proper use of the word “capital”. In relation to a company limited by shares, the word “capital” means the share capital i.e., the capital in terms of rupees divided into specified number of shares of a fixed amount each. For e.g. share capital of a company is ₹1,00,000 which can be divided into 10,000 shares of ₹10 each or 1,000 shares of ₹100 each, whichever is feasible to the company.

In Company Law, the “Capital” is the share capital of a company, which is classified as:

- (a) **Nominal, Authorised or Registered Capital:** As per section 2(8), “authorised capital” or “nominal capital” means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.
- (b) **Issued Capital:** As per section 2(50), “issued capital” means such capital as the company issues from time to time for subscription. It is that part of the authorised or nominal capital which the company issues for the time being for public subscription and allotment. This is computed at the face or nominal value.
- (c) **Subscribed Capital:** According to Section 2(86), “subscribed capital” means such part of the capital which is for the time being subscribed by the members of a company. It is that portion of the issued capital at face value which has been subscribed for or taken up by the subscribers of shares in the company. It is clear that the entire issued capital may or may not be subscribed.
- (d) **Called up Capital:** As per section 2(15), “called-up capital” means such part of the capital, which has been called for payment. It is that portion of the subscribed capital which has been called up or

demand on the shares by the company

(e) ***Paid-up Share Capital:*** As per section 2(64), “paid-up share capital” or “share capital paid-up” means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.

(g) ***Preference and Equity Share Capital:*** As per explanation to Section 43

“equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital. “preference share capital”, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

Concept of Capital and Financing of Companies

(a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company; Equity share capital may be with similar rights or equity shares with different voting rights as described in Rule 4 of Companies (Share Capital and Debentures) Rules, 2014. A preference share has a preference in regard to payment of fixed amount of dividend or fixed rate of dividend and preferential right of the repayment of capital in the event of winding up of company.

Prospectus

Section 2(70) of the Companies Act, 2013 defines a prospectus as “any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.”

On the basis of aforesaid definition, it may be said that a document should have following ingredients to constitute a prospectus:

- (a) There must be an invitation to the public;
- (b) The invitation must be made “by or on behalf of the company or in relation to an intended company”;
- (c) The invitation must be “to subscribe or purchase”;
- (d) The invitation must relate to any securities of the company.

In essence, it means that a prospectus is an invitation issued to the public to offer for purchase/subscribe any securities of the company. A document is deemed to be issued to the public, if the invitation to subscribe for share capital is such as to be open to any one who brings his money and applies in prescribed form, whether the prospectus was addressed to him or not. The test is not who receives the document, but who can apply for the securities in response to the invitation contained in it.

However, an issue will not be “Public” if-

- (i) It is directed to a specified person or a group of persons, and
- (ii) It is not calculated to result in the securities becoming available to other persons

Abridged Prospectus

“Abridged Prospectus” means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Section 33 states that no form of application can be issued for the purchase of any securities of a company unless it is accompanied by an abridged prospectus. There are, however, four exceptions to this rule:

- (a) where the offer is made in connection with the *bona fide* invitation to a person to enter into an underwriting agreement with respect to such securities;
- (b) where the securities are not offered to the public;
- (c) where the offer is made only to the existing members or debenture holders of the company with or without a right to renounce;
- (d) where the shares or debentures offered are in all respects uniform with shares or debentures already issued and quoted on a recognised stock exchange.

A copy of the prospectus shall be furnished to a person on a request being made by him before the closing of the subscription list and the offer. If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

Liability for Untrue Statement in Prospectus

It is now clear that a prospectus must be complete and perfect in all details or in other words nothing should be omitted and nothing must be untrue in a prospectus. Where an untrue statement occurs in a prospectus, there may arise (i) civil liability (ii) criminal liability. Every person who is a director of the company at the time of the issue of the prospectus, every promoter of the company and every person, including an expert, who has authorised the issue of a prospectus, shall be liable. Since the liability of

these persons is to the allottee of securities, we may discuss this matter under the heading remedies for mis-statements in a prospectus.

Untrue Statement

It is essential to know as to what constitutes an untrue statement. To protect the interests of prospective investors in the securities of a company, the law prescribes a wider meaning to this term. Whether a statement is untrue or not is to be judged by the context in which it appears and the totality of impression it would create. A statement included in a prospectus shall be deemed to be untrue, if the statement is Private Placement and Prospectus misleading in the form and context in which it is included. Further, where any inclusion or omission of any matter in a prospectus is likely to mislead, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included. The expression "Included" with reference to a prospectus means included in the prospectus itself or contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith. Even if every word included in the prospectus is true, the suppression of material facts may cause the prospectus to be fraudulent.

Onus for Proof of Mis-statement

The burden of proof in a suit by an allottee that he has been misled by the mis-statement in the prospectus lies on the allottee. He must prove the following:

- (i) The misrepresentation was of a fact;
- (ii) It was in respect of a material fact. What is a material statement of fact will depend upon the circumstances of each case.
- (iii) He acted on the misrepresentation; and
- (iv) He suffered damages in consequence.

Remedies for Misrepresentation in Prospectus

A company is responsible for a statement in prospectus only if it is shown that the prospectus was issued by the company or by some one with the authority of the company, e.g., the Board of directors. The company is also liable for misstatement in prospectus even though the prospectus is issued by the promoters & the Board ratifies and adopts the issue of prospectus.

The first remedy against the company is to rescind the contract.

A person who takes securities on the faith of a prospectus containing false statements, may apply to the Court for setting contract aside, and striking off his name from the register of members. He may also claim his money back. But the allottee must act within a reasonable time, before any proceedings to wind up the company have been commenced, and before he does anything after notice of misrepresentation which is inconsistent with the right to rescind.

The second remedy against the company is to sue for damages for deceit

This suit is founded on the tort of deceit, and is not a case of fraud on the part of directors or promoters. The allottee may recover damages from the company for any loss he may have suffered if the invitation to take securities is emanating from the company and the persons making it on behalf of the company have fraudulently mis-represented material facts. The allottee cannot both retain the securities and get damages against the company. In actual practice, however, suits for damages against the company are rarely filed. Damages are generally claimed from the directors, promoters and other persons who authorised the issue of the prospectus.

Remedies against Directors or Promoters

A person who subscribed for shares on the faith of a false prospectus may claim from directors or promoters:

- (i) damages for fraudulent misrepresentation,
- (ii) Compensation under Section 35 of the Act,
- (iii) Damages for non-compliance with the requirements of Section 26 of the Act.

(i) Damages for fraudulent misrepresentation

An allottee may sue the director for damages for deceit, if there are fraudulent misrepresentations in the prospectus. But the directors will not be liable for damages for mis-statement if they believed them to be true

(ii) Compensation for untrue Statement

An allottee is also entitled to claim compensation from directors, promoters and any other persons who authorised the issue of the false prospectus, for damages sustained by reason of any untrue statement in it. As per section 35(1), where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company, then, the following persons are liable to pay compensation to every person who has sustained loss or damage by reason of untrue statement included in a prospectus:

- (a) every person who is a director of the company at the time of the issue of the prospectus;
- (b) every person who has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;
- (c) every person who is a promoter of the company;
- (d) every person who has authorised the issue of the prospectus; and
- (e) is an expert referred to in sub-section (5) of section 26

The above stated liability shall be without prejudice to any punishment to which any person may be liable

under section 36.

When civil liability can be avoided [Section 35(2)]

No person referred above shall be liable for civil action if he proves:

- (i) that having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or Further an expert may also escape the liability, if he proves that having given his consent under Section 26 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration to the Registrar.

Rule 5. Companies (Prospectus and Allotment of Securities) Rules, 2014

Other matters and reports to be stated in the prospectus.

The prospectus shall include the following other matters and reports, namely:-

- (1) If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly –
 - (a) in the purchase of any business; or
 - (b) in the purchase of an interest in any business and by reason of that purchase, or anything to be done in consequence thereof, or in connection therewith; the company shall become entitled to an interest in either the capital or profits and losses or both, in such business exceeding fifty per cent. thereof, a report made by a chartered accountant (who shall be named in the prospectus) upon-
 - (i) the profits or losses of the business for each of the five financial years immediately preceding the date of the issue of the prospectus ; and
 - (ii) the assets and liabilities of the business as on the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus;
 - (c) in purchase or acquisition of any immoveable property including indirect acquisition of immoveable property for which advances have been paid to even third parties, disclosures regarding -
 - (i) the names, addresses, descriptions and occupations of the vendors;
 - (ii) the amount paid or payable in cash, to the vendor and, where there is more than one vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill;
 - (iii) the nature of the title or interest in such property proposed to be acquired by the company; and
 - (iv) the particulars of every transaction relating to the property, completed within the two preceding

years, in which any vendor of the property or any person who is, or was at the time of the transaction, a promoter, or a director or proposed director of the company had any interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

(2)(a) If -

(i) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or are to be applied directly or indirectly and in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(ii) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate shall become a subsidiary of the company, a report shall be made by a Chartered Accountant (who shall be named in the prospectus) upon -

(A) the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus; and

(B) the assets and liabilities of the other body corporate as on the last date to which its accounts were made up.

(b) The said report shall -

(i) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the issuer company and what allowance would have been required to be made, in relation to assets and liabilities so dealt with for the holders of the balance shares, if the issuer company had at all material times held the shares proposed to be acquired; and

(ii) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner as provided in sub-clause (ii) of clause (a).

(3) The matters relating to terms and conditions of the term loans including re-scheduling, prepayment, penalty, default.

(4) The aggregate number of securities of the issuer company and its subsidiary companies purchased or sold by the promoter group and by the directors of the company which is a promoter of the issuer company and by the directors of the issuer company and their relatives within six months immediately preceding the date of filing the prospectus with the Registrar of Companies shall be disclosed.

(5) The matters relating to Material contracts; Time and place at which the contracts together with documents will be available for inspection from the date of prospectus until the date of closing of subscription list.

(6) The related party transactions entered during the last five financial years immediately preceding the issue of prospectus as under -

- (a) all transactions with related parties with respect to giving of loans or, guarantees, providing securities in connection with loans made, or investments made ;
- (b) all other transactions which are material to the issuer company or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer company or any of its parent companies was a party:

The disclosures for related party transactions for the period prior to notification of these rules shall be to the extent of disclosure requirements as per the Companies Act, 1956 and the relevant accounting standards prevailing at the said time.

(7) The summary of reservations or qualifications or adverse remarks of auditors in the last five financial years immediately preceding the year of issue of prospectus and of their impact on the financial statements and financial position of the company and the corrective steps taken and proposed to be taken by the company for each of the said reservations or qualifications or adverse remarks.

(8) The details of any inquiry, inspections or investigations initiated or conducted under the Companies Act or any previous companies law in the last five years immediately preceding the year of issue of prospectus in the case of company and all of its subsidiaries; and if there were any prosecutions filed (whether pending or not); fines imposed or compounding of offences done in the last five years immediately preceding the year of the prospectus for the company and all of its subsidiaries.

(9) The details of acts of material frauds committed against the company in the last five years, if any, and if so, the action taken by the company.

(10) A fact sheet shall be included at the beginning of the prospectus which shall contain -

- (a) the type of offer document ("Red Herring Prospectus" or "Shelf Prospectus" or "Prospectus").
- (b) the name of the issuer company, date and place of its incorporation, its logo, address of its registered office, its telephone number, fax number, details of contact person, website address, email address;
- (c) the names of the promoters of the issuer company;
- (d) the nature, number, price and amount of securities offered and issue size, as may be applicable;
- (e) the aggregate amount proposed to be raised through all the stages of offers of specified securities made through the shelf prospectus;
- (f) the name, logo and address of the registrar to the issue, along with its telephone number, fax number, website address and e-mail address;
- (g) the issue schedule -
- (i) date of opening of the issue;

- (ii) date of closing of the issue;
- (iii) date of earliest closing of the issue, if any.
- (h) the credit rating, if applicable;
- (i) all the grades obtained for the initial public offer;
- (j) the name(s) of the recognised stock exchanges where the securities are proposed to be listed;
- (k) the details about eligible investors;
- (l) coupon rate, coupon payment frequency, redemption date, redemption amount and details of debenture trustee in case of debt securities.

Company cannot issue irredeemable preference shares or redeemable preference shares with the redemption period beyond 20 years

Section 55. (1) states that no company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable. Section 55(2) further states that a company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed.

Exceptions

Issue and redemption of preference shares by company in infrastructure projects

Rule 10 states that a company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards

or earlier, on proportionate basis, at the option of the preference shareholders.

Other conditions attached

Proviso to Section 55(2) states that

- (a) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption;
- (b) no such shares shall be redeemed unless they are fully paid;
- (c) where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve, to be called the Capital Redemption Reserve Account, and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as

if the Capital Redemption Reserve Account were paid-up share capital of the company; and
(d) (i) in case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed. Premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities

Debentures

According to Section 2(30) of Companies Act 2013 "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not; It is evident from the definition that the term debentures covers both secured and unsecured debentures.

Kinds of Debentures

Debentures are generally classified into different categories on the basis of: (1) convertibility of the instrument (2) Security of the Instrument, (3) Redemption ability (4) Registration of Instrument

1. On the basis of convertibility, Debentures may be classified into following categories:

(A) Non Convertible Debentures (NCD)

These instruments retain the debt character and can not be converted into equity shares.

(B) Partly Convertible Debentures (PCD):

A part of these instruments are converted into Equity shares in the future at notice of the issuer. The issuer decides the ratio for conversion. This is normally decided at the time of subscription.

(C) Fully convertible Debentures (FCD):

These are fully convertible into Equity shares at the issuer's notice. The ratio of conversion is decided by the issuer. Upon conversion the investors enjoy the same status as ordinary shareholders of the company.

(D) Optionally Convertible Debentures (OCD):

The investor has the option to either convert these debentures into shares at price decided by the issuer/agreed upon at the time of issue.

2. On the basis of Security,

(A) Secured Debentures:

These instruments are secured by a charge on the fixed assets of the issuer company. So if the issuer fails on payment of either the principal or interest amount, his assets can be sold to repay the liability to the investors. Section 71(3) of the Companies Act, 2013 provides that secured debentures may be issued by a company subject to such terms and conditions as may be prescribed by the Central Government through rules.

(B) Unsecured Debentures:

These instrument are unsecured in the sense that if the issuer defaults on payment of the interest or principal amount, the investor has to be along with other unsecured creditors of the company, they are also said to be naked debentures.

3. On the basis of Redeemability

(A) Redeemable Debentures:

It refers to the debentures which are issued with a condition that the debentures will be redeemed at a fixed date or upon demand, or after notice, or under a system of periodical drawings. Debentures are generally redeemable and on redemption these can be reissued or cancelled. The person who has been re-issued the debentures shall have the same rights and priorities as if the debentures had never been redeemed.

(B) Perpetual or Irredeemable Debentures:

A Debenture, in which no time is fixed for the company to pay back the money, is an irredeemable debenture. The debenture holder cannot demand payment as long as the company is a going concern and does not make default in making payment of the interest. But all debentures, whether redeemable or irredeemable become payable on the company going into liquidation. *However, after the commencement of the Companies Act, 2013, now a company cannot issue perpetual or irredeemable debentures.*

4. On the basis of Registration,

(A) A Registered Debentures:

Registered debentures are made out in the name of a particular person, whose name appears on the debenture certificate and who is registered by the company as holder on the Register of debenture holders. Such debentures are transferable in the same manner as shares by means of a proper instrument of transfer duly stamped and executed and satisfying the other requirements specified in Section 56 of the Companies Act, 2013.

B) Bearer debentures

Bearer debentures on the other hand, are made out to bearer, and are negotiable instruments, and so transferable by mere delivery like share warrants. The person to whom a bearer debenture is transferred

become a “holder in due course” and unless contrary is shown, is entitled to receive and recover the principal and the interest accrued thereon.

share certificate

A share certificate is a certificate issued to the members by the company under its common seal specifying the number of shares held by him and the amount paid on each share. According to Section 45 of the Companies Act, 2013 each share of the share capital of the company shall be distinguished with a distinct number for its individual identification. However, such distinction shall not be required, as per proviso to Section 45, if the shares are held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository. In terms of Section 46(1) of the Act, a certificate under the common seal of the company is *prima facie* evidence of the title of the person to the shares specified therein. The certificate is the only documentary evidence of title in the possession of the shareholder. But it is not a warranty of title by the company issuing it.

Duplicate Share Certificate

Section 46 (2) states that a duplicate certificate of shares may be issued, if such certificate —

- (a) is proved to have been lost or destroyed; or
- (b) has been defaced, mutilated or torn and is surrendered to the company.

Time of issue of Certificate of Securities

Under Section 56(4) of the Act, every company, (unless prohibited by any provision of law or any order of

any Court, Tribunal or other authority) must deliver the certificates of all securities allotted, transferred or transmitted:-

- (a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;
- (b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;
- (c) within a period of one month from the date of receipt by the company of the instrument of transfer or, as the case may be, of the intimation of transmission, in the case of a transfer or transmission of securities;
- (d) within a period of six months from the date of allotment in the case of any allotment of debenture.

However, where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities. [See proviso to Section 56(4)].

Where any default is made in complying with the above provisions, the company shall be punishable with fine which shall not be less than Rs 25,000 but which may extend to Rs 5 lakh and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs 10,000 but which may extend to `1,00,000. [Section 56(6)]

Significance of Share Certificate

A certificate of shares is evidence to the effect that the allottee is holding a certain number of shares of the company showing their nominal and paid-up value and distinctive numbers. This certificate is a prime facie evidence of title to the shares in the possession of shareholders. [*Society Generale De Paris v. Walker, (1885) 11A AC 20, 29*].

Moreover, when the company issues a certificate, it holds out to the world that the facts contained therein are true. Any person acting on the faith of the share certificate of the company, can compel the company to pay compensation for any damage caused by reason of any misstatement in the share certificate as the company is bound by any statements made in the certificate.

Share certificate is the only documentary evidence of title and that the share certificate is a declaration by the company that the person in whose name the certificate is issued is a shareholder in the company. [*Ghanshyam Chhaturbhuj v. Industrial Ceramics (Pvt.) Ltd. (1995) 4 Com LJ 51*].

Also the company cannot dispute the amount mentioned on the certificate as already paid. .

Transfer of Shares

One of the most important characteristics of a company is that its shares are transferable. Section 44 of the Companies Act, 2013 states that the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

****As per section 58(2), the securities or other interest of any member in a public company shall be freely transferable.**

****proviso to section 58(2) provides that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.**

****In terms of Section 2(68), a private company is required to restrict the right to transfer its shares by its articles.**

****Section 56 of the companies act deals with transfer and transmission of securities.**

Free transferability of securities

As per section 58(2), the securities or other interest of any member in a public company shall be freely transferable. The Board of directors of a Company or the concerned depository has no discretion to refuse

or withhold transfer of any security. The transfer has to be effected by the company/depository automatically and immediately.

However, proviso to section 58(2) provides that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract. It is now possible to contractually agree on terms such as right of first refusal, right of first offer, tag along, call option, put option, etc in the shareholder agreements/ investment agreements, in the case of a public company as well. These terms would now be binding on the investors. Therefore, private arrangements or contracts between two or more persons would be enforceable contracts.

As per Section 56(1) of the Companies Act, 2013, a company, shall not register a transfer of securities of, the company, unless a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and the transferee has been delivered to the company by the transferor or transferee within a period of sixty days from the date of execution along with the certificate relating to the securities, or if no such certificate is in existence, then along with the related letter of allotment of securities. However, nothing in section 56(1) shall prejudice any power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted. (Section 56(2)).

Transmission of Securities

Transmission of securities has not been defined by the Companies Act. 'Transmission by operation of law' is not a transfer. It refers to those cases where a person acquires an interest in property by operation of any provision of law, such as by right of inheritance or succession or by reason of the insolvency or lunacy of the holder of securities or by purchase in a Court-sale. Thus, transmission of securities takes place when the registered holder of securities dies or is adjudicated as an insolvent, or if the holder of securities is a company, it goes into liquidation. Because a deceased person cannot own anything, the ownership of all his property passes, after his death, to those who legally represent him. Similarly, when a person is declared insolvent, his entire property vests in the Official Assignee or Official Receiver. Upon the death of a sole registered holder of securities, so far as the company is concerned, the legal representatives of the deceased holder of securities are the only persons having title to the securities unless securities-holder had appointed a nominee, in which case he would be entitled to the exclusion of all others.

Secretarial Standard SS-6 on transmission of shares and debentures by ICSI provides for the procedure to be followed for transmission. Section 56(1) of the Companies Act, 2013 states that the transfer of securities must be effected by a proper instrument of transfer and that a provision in the articles of an automatic transfer of securities of a deceased securities-holder is illegal and void. Such transfer does not

amount to transmission which takes place by operation of law. Section 56(2) of the Act provides that nothing in the sub-section(1) shall prejudice the Power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted. It follows that, for such transmission, instrument of transfer is not required, and, merely an application addressed to the company by the legal representative is sufficient. Articles of companies generally provide for formalities to be observed for transmission of shares. In the absence of such provision in the articles of the company, Regulations 23 to 27 of Table F of Schedule I to the Act will govern the procedure for transmission. According to these regulations, the legal representatives are entitled to the shares held by deceased member and the company must accept the evidence of succession e.g., a succession certificate or letter of administrations or probate or any other evidence properly required by the Board of directors. He is, however, not a member of the company by reason only of being the legal owner of the shares. But he may apply to be registered as a member. On the contrary, instead of being registered himself as a member, he may make such transfer of the shares as the deceased or insolvent member could have made. The Board of directors also have the same right to decline registration as they would have had in the case of transfer of shares before death. But if the company unduly refuses to accept a transmission, the same remedies are available to the legal representative as in the case of a transfer namely, an appeal to the Tribunal under Section 58.

Unit IV : Company Management

Company Management – Board of Directors – Managing directors qualification, Appointment. Vacation of Office – position – powers Duties and Liabilities of Board of directors Meeting – General Meetings – Kinds of Meetings and resolution, Procedure relating to convening and Proceeding in General Meeting.

COMPANY MANAGEMENT

Definition of Independent Director

Section 149(6) gives the definition of Independent Director, in relation to a company, means a director other than a managing director or a whole time director or a nominee director,-

- (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.

Minimum Number of Directors

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

A period of one year has been provided to enable the companies existing on or before the commencement of Companies Act, 2013 to comply with this requirement.

Appointment of Directors

First Director

The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed.

In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member in accordance with the provisions of Section 152.

General provisions relating to appointment of directors

1. Except as provided in the Act, every director shall be appointed by the company in general meeting.
2. Director Identification Number is compulsory for appointment of director of a company.
3. Every person proposed to be appointed as a director shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act.
4. A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical form DIR-2 i.e. Consent to act as a director of a company. Company shall file Form DIR-12 (particulars of appointment of directors and KMP along with the form DIR-2 as an attachment within 30 days of the appointment of a director, necessary fee. {Rule8}5
5. Articles of the Company may provide the provisions relating to retirement of the all directors. If there is no provision in the article, then not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement by rotation and eligible to be reappointed at annual general meeting. Further independent directors shall not be included for the computation of total number of directors. At the annual general meeting of a public company one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to onethird, shall retire from office. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment.

At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto. If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

- (i) a resolution for the re-appointment of such director has been put to the meeting and lost;
- (ii) the retiring director has expressed his unwillingness to be so re-appointed;
- (iii) he is not qualified or is disqualified for appointment;
- (iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(v) section 162 i.e. appointment of directors to be voted individually is applicable to the case.

Duties of Directors

For the first time, duties of directors have been defined in the Act. A director of a company shall :

- Act in accordance with the articles of the company.
- Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- Not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- Not assign his office and any assignment so made shall be void.

If a director of the company contravenes the provisions of this section such director shall be punishable with

fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000.

Vocation of Office

The office of a director shall become vacant in case—

- (a) He incurs any of the disqualifications specified in section 164;
- (b) He absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
- (c) He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- (d) He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested
- (e) He becomes disqualified by an order of a court or the Tribunal;
- (f) He is 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;

Provided that the office shall be vacated by the director even if he has filed an appeal against the

order of such court;

(g) He is removed in pursuance of the provisions of this Act;

(h) He, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

General Meeting

A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. There must be at least two persons to constitute a meeting. Therefore, one shareholder usually cannot constitute a company meeting even if he holds proxies for other shareholders. However, in certain exceptional circumstances, even one person may constitute a meeting. It is to be noted that every gathering or assembly does not constitute a meeting. Company meetings must be convened and held in perfect compliance with the various provisions of the Companies Act, 2013 and the rules framed there under.

A company is composed of members, though it has its own entity distinct from members. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity. However, a company, being an artificial person, cannot act on its own. It, therefore, expresses its will or takes its decisions through resolutions passed at validly held Meetings. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures.

Annual General Meeting

A company is required to hold meetings of the members to take approval of certain business items, as prescribed in the Act. The meetings to be held for seeking approval to ordinary business and special business are called annual general meeting and extraordinary general meeting.

Holding of annual general meeting

1. Annual general meeting should be held once every year.

2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
3. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
4. The gap between two annual general meetings should not exceed 15 months.

Extension of validity period of AGM

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.

Time and place for holding an annual general meeting

An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. It should 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 situate. The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose.

Notice of the Meeting

A general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Notice through electronic mode shall be given in such manner as may be prescribed.

Short notice

A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

Resolutions

Section 114 provides with regard to Ordinary and Special Resolution

Ordinary Resolution

A resolution shall be an ordinary resolution if the notice has been duly given and it is required to be passed by the votes cast, in favour of the resolution, including the casting vote, if any, of the Chairman, exceed the votes, if any, cast against the resolution.

Special Resolution

A resolution shall be a special resolution when:

- (a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) the notice required under this Act has been duly given; and
- (c) the votes cast in favour of the resolution, are required to be not less than 3 times the number of the votes, if any, cast against the resolution.

Resolution Requiring Special Notice

Section 115 provides that where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding Rs.5,00,000/- as may be prescribed has been paid-up and the company shall give its members notice of the resolution in the following manner as prescribed in Rules.

Maintenance of Minutes of the Meeting

general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of share holders or creditors or Board of Directors or committee of the Section 118 provides that every company shall prepare, sign and keep minutes of proceedings of every Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. In case of meeting of Board of Directors or of a committee of Board, the minutes shall contain name of the directors present and also name of dissenting director or a director who has not concurred the resolution. The chairman shall exercise his absolute discretion in respect of inclusion or non-inclusion of the matters which is regarded as defamatory of any person, irrelevant or detrimental to company's interest in the minutes. Minutes kept shall be evidence of the proceedings recorded in a meeting.

As per section 118(10) every company shall observe Secretarial Standards with respect to General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

Rule 25 contains provisions with regards to minutes of meetings.

A distinct minute book shall be maintained for each type of meeting namely:

- (i) general meetings of the members;
- (ii) meetings of the creditors;
- (iii) meetings of the Board; and
- (iv) meetings of the committees of the Board.

It may be noted that resolutions passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting. In no case the minutes of proceedings of a meeting or a resolution passed by postal ballot shall be pasted to any such book.

In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution. Minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting. Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by:

_ in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;

_ in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose;

_ in case of every resolution passed by postal ballot, by the chairman of the Board within the aforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Minute books of general meetings shall be kept at the registered office of the company. Minutes of the Board and committee meetings shall be kept at the registered Office or at such other place as may be approved by the Board.

Minutes books shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as the members may decide by passing special resolution pursuant to requirement of section 88 read with section 94 of the Act.

Unit V : Company Winding up

Winding up up – Meaning Modes of Winding up – company winding up by court – voluntary winding up – Types of voluntary winding up – members voluntary winding up – creditors voluntary winding up – winding up subject to the supervision of the court – Consequences of winding up (general). Liquidator – powers and duties. Partnership definition – Features – Registration - E filing

COMPANY WINDING UP

Winding-up of a company is a process of putting an end to the life of a company. It is a proceeding by means of which a company is dissolved and in the course of such dissolution its assets are collected, its debts are paid off out of the assets of the company or from contributions by its members, if necessary. If any surplus is left, it is distributed among the members in accordance with their rights. Winding-up is the process by which management of a company's affairs is taken out of its directors' hands, its assets are realized by a liquidator and its debts are realized and liabilities are discharged out of proceeds of realization and any surplus of assets remaining is returned to its members or shareholders. At the end of the winding up the company will have no assets or liabilities and it will, therefore, be simply a formal step for it to be dissolved, that is, for its legal personality as a corporation to be brought to an end.

Modes of Winding up

A company registered under the Companies Act, 1956 may be wound up by any of the following modes:

1. By the Court i.e. compulsory winding up;
2. Voluntary winding up, which may be either:
 - (a) Members' voluntary winding up; or
 - (b) Creditor's voluntary winding up;
3. Winding up subject to the supervision of the Court. (*omitted and the same is yet to be notified*)

Grounds on which a Company may be wound up by the Court

A company under Section 433 may be wound up by the Court if

- (a) the company has passed a special resolution of its being wound up by the Court; or
 - (b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;
- or
- (c) it does not commence business within a year from its incorporation or suspends business for a whole year; or
 - (d) the number of its members in the case of a public company is reduced below seven and in the case

of a private company, below two; or

(e) it is unable to pay its debts; or

(f) the Court is of the opinion that it is just and equitable that it should be wound up.

(g) the company has made a default in filing with the registrar its balance sheet and profit and loss account or annual returns for any five consecutive financial years.

(h) the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or

(i) the court is of the opinion that the company should be wound up under the circumstances specified in Section 424G.

Voluntary winding up

The companies are usually wound up voluntarily as it is an easier process of winding up. It is altogether different from a compulsory winding up. In voluntary winding up the company and its creditors are left to settle their affairs without going to a Court, although they may apply to the Court for directions or orders, as and when necessary. One or more liquidators are to be appointed by the company in general meeting for the purpose of winding up the affairs and distributing the assets of the company. The remuneration of the liquidators is also required to be fixed by the company in general meeting. Unless the remuneration as aforesaid is fixed the liquidators shall not take charge of his/their offices (Section 490). The circumstances in which a company may be wound up voluntarily are:

(a) when the period fixed for the duration of the company as mentioned in its articles has expired; or the event, on the happening of which the articles provide that the company is to be dissolved has occurred; and the company passes a resolution in general meeting requiring the company to be wound up voluntarily;

(b) if the company passes a special resolution that the company be wound up voluntarily [Section 484(1)].

Kinds of Voluntary Winding Up

Section 488(5) divides voluntary winding up into two kinds:

(i) Members' voluntary winding up; and

(ii) Creditors' voluntary winding up.

Members' Voluntary Winding Up

When the company is solvent and is able to pay its liabilities in full, it need not consult the creditors or call their meeting. Its directors, or where they are more than two, the majority of its directors may, at a meeting of the Board, make a declaration of solvency verified by an affidavit stating that they have made full enquiry into the affairs of the company and that having done so they have formed an

opinion that the company has no debts or that it will be able to pay its debts in full within such period not exceeding three years from the commencement of the winding up as may be specified in the declaration.

Creditors' Voluntary Winding Up

As discussed earlier, where a declaration of solvency of the company is not made and delivered to the Registrar in a voluntary winding up it is a case of creditor's voluntary winding up.

Powers of the Court to Intervene in Voluntary Winding Up

In voluntary winding up it is left to the company, the contributories and the creditors to settle their affairs without intervention of the Court as far as possible. However, the Companies Act, 1956, contains certain provisions which provide a means of access to the Court with a view to speed up the liquidation proceedings and to overcome the difficulties that may arise in the course of liquidation. The Court will intervene in the voluntary winding up whenever it is satisfied that such an intervention will be just and beneficial. In appropriate cases the Court can be approached for compulsory winding up (Section 440) or winding up being conducted under the supervision of the Court (Section 522).

The Court is vested with the following powers in voluntary winding up:

- (i) To appoint the Official Liquidator or any other person as liquidator where no liquidator is acting [Section 515(1)].
- (ii) To remove the liquidator and appoint the Official Liquidator or any other person as liquidator on justifiable cause being shown [Section 515(2)].
- (iii) To determine the remunerations of liquidator when the Official Liquidator is appointed as a liquidator [Section 515(3)].
- (iv) To amend, vary, confirm or set aside the arrangement entered into between a company and its creditors on an appeal being made by any creditor or contributory within 3 weeks of the completion of the arrangement (Section 517).
- (v) On an application of the Liquidator or contributory or creditor:
 - (a) to determine any question arising in the winding up of a company [Section 518(1)(a)];
 - (b) to exercise, as respects the enforcing of calls, the staying of suits or other legal proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court [Section 518(1)(b)].
- (vi) To set aside any attachment, distress or execution started against the estate or effects of the company after the commencement of the winding up on such terms as it thinks fit on an application made by the liquidator, creditor or contributory if the Court is satisfied that it is just and beneficial to do so [Section 518(3) and (4)].

(vii) To order public examination of any person connected with promotion or formation of a company or any officer connected with the affairs of the company in regard to matters of promotion or formation

or conduct of the business of the company or as to his conduct or dealing as officer thereof. Such an examination can be ordered on a report of the liquidator where he is of the opinion that a fraud has been committed by the persons aforesaid in the formation or promotion of the company or in the conduct of its affairs [Section 519(1)].

e-Governance

MCA-21 stands for e-governance initiative of Ministry of Corporate Affairs (MCA) of the 21st Century. The project is named MCA-21 as it aims at repositioning MCA as an organization capable of fulfilling the aspirations of its stakeholders in the 21st Century. It is based on the Government's vision of National e-governance in the country. E-governance or Electronic Governance is the application of Information Technology to the Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. This project of MCA aims at moving from paper based to nearly paperless environment.

The Back Office represents the offices of Registrar of Companies, Regional Directors and Headquarters.

Let us understand certain terms

E-form

An e-form is the electronic equivalent of the paper form. The Ministry of Corporate Affairs has recently launched a major e-governance initiative MCA 21. In the new system, it is envisaged that all company related documents would be filed electronically. The new e-forms have been devised and notified by the Ministry for this purpose

Digital Signature Certificates (DSC)

Digital Signature Certificates (DSC) are the digital equivalent (that is electronic format) of physical or paper certificates. Examples of physical certificates are drivers' licenses, passports or membership cards. Certificates serve as proof of identity of an individual for a certain purpose; for example, a driver's license identifies someone who can legally drive in a particular country. Likewise, a digital certificate can be presented electronically to prove your identity, to access information or services on the Internet or to sign certain documents digitally. Physical documents are signed manually, similarly, electronic documents, for example e-forms are required to be signed digitally using a Digital Signature Certificate.

Possible Questions

Unit I

Part A

1. Which is the companies Act
a. 1972 b. 1932 **c. 1956** d. 1948
2. A Company which controls the another company is
a. Subsidiary company b. Holding Company c. Government company d. Private company
3. The charter granted governmental power to the company over the territory of its operation is
a. Private company b. Government company c. Non regulated company **d. Regulated company**
4. The history of Indian Company law began in the year
a. 1908 b. 1913 **c. 1850** d. 1956
5. which of the following dates the companies Act, 1956 come into force
a. 1st April, 1956 b. 31st March 1956 c. 31st March, 1957 d. 1st April, 1957
6. Which of the following is not the characteristics of a company
a. Its shares are not transferable b. it has separate legal entity c. it has a common seal d. it has a perpetual succession.
7. The minimum number of members in formation of a private company
a. 7 b. 2 **c. 50** d. unlimited
8. Ignoring _____ of the company is called lifting of corporate veil
a. separate legal entity b. perpetual succession c. common seal d. artificial person
9. The privilege of limited liability was introduced in the Indian Company Law, in the year
a. 1850 b. 1927 **c. 1857** d. 1956
10. Certificate of incorporation issued by the _____

a. state government b. central government c. secretary of the company **d. registrar of company**

11. The contract which is entered by the promoters on behalf of the company before its incorporation

a. post incorporation contract **b. pre incorporation contract** c. formal contract d. valid contract

12. A company can change its name at any time by _____

a. only special resolution b. approval from company law board c. approval from central government **d. special resolution**

Part B

1. Define the term Company?
2. What is formation of a company?
3. What is private company? provide
4. . What is perpetual succession?

Part C

1. What are the characteristics of a Company?
2. What are the kinds of Company?
3. Explain clearly the term 'lifting the corporate veil' what are its exceptions?
4. Define the term promoters? State the functions and duties of promoters?
5. How a company is incorporated? What documents are required to be filed with the Registrar of companies for this purpose?
6. What are the steps in formation of a company?
7. Briefly explain the differences between the Private Ltd. company and Public Ltd. company?

unit II

1. A transfer is one in which only the name and signature of the transferor are filled in is so called
a. forged transfer b. instrument transfer c. certificate of transfer d. Blank transfer
2. An invitation issued to the public inviting it to deposit money with the bank is
a. circular b. notice c. Advertisement d. prospectus
3. _____ is the evidence of shareholders right which can be enforced by legal action
a. share warrant b. share certificate c. dock warrant d. railway receipt
4. _____ is defined as a certificate of loan issued by the company
a. Debenture b. promissory note c. share d. retained earnings
5. The charter of the company otherwise called as
a. articles of association b. Table A c. Table B d. **memorandum of association**
6. The conclusive evidence of Registration of company is
a. registration with registrar of company b. **certificate of incorporation** c. certificate of commencement of business d. certificate of formation
7. The contract which is entered by the person on behalf of the company before its incorporation
a. valid contract b. void contract c. promotional contract d. pre incorporation contract
8. Certificate of incorporation issued by the _____
a. state government b. central government c. secretary of the company d. registrar of company
9. The contract which is entered by the promoters on behalf of the company before its incorporation
a. post incorporation contract b. pre incorporation contract c. formal contract d. valid contract
10. A company can change its name at any time by _____
a. only special resolution b. approval from company law board c. approval from central government d. special resolution

Part B

1. What is MOA?
2. What is object clause of MOA?
3. What is private company? provis
4. What are the provisions of the company attributed by its AOA?
5. What are the provisions of the company authorized by its AOA?
- 6.

Part C

1. What is Memorandum of Association? What are its important clause/
 2. Explain briefly how can the MOA of a company be altered?
 3. Discuss the legal significance of the registered office clause in the MOA?
 4. Object clause is the critical for the business activities of the company' discuss?
 5. What is AOA? What are its contents?
 - 6 (b) What is doctrine of indoor management? what are its exemption?
 7. (a) Discuss the legal significance of the registered office clause in the MOA?
 8. (a) 'The MOA is an unaltered charter of a company' discuss?
- (OR)**
9. (b) What are the exception to the doctrine of ultra vires?

Unit III

Part A

1. According to sec 55, the prospectus of the company must be _____
a. finalised b. completed c. signed d. dated
 2. Expand SEBI?
a. securities exchange board of india b. stock exchange board of India c. state exchange board of India d. stable exchange board of India
 3. Termination of putting and end to the contract is called
a. discharge of contract b. valid contract c. recession of contract d. void contract
- . Prospectus is issued _____ the formation of a company

4. Prospectus is issued _____ the formation of a company
 - a. before b. after 15 days of formation c. after d. before 15 days of formation

5. The company can allot shares or debentures without issuing prospectus is called
 - a. misstatement in prospectus b. deemed prospectus c. statement in lieu of prospectus d. misleading prospectus

6. capital of the company divided in to _____
 - a. debentures b. stock c. profit d. shares

7. The shares which assured of dividend every year is called
 - a. non cumulative preference shares b. cumulative preference shares c. participating preference shares d. non participating preference shares

8. An invitation issued to the public inviting it to deposit money with the company
 - a. prospectus b. advertisement c. invitation d. circular

9. The term _____ may be defined as a certificate of loan issued by the company
 - a. share b. promissory note c. creditors d. debentures

10. The shares which do not enjoy any preferential rights is called
 - a. preference shares b. equity shares c. cumulative preference shares d. non cumulative preference shares

11. The dividend can be declared only by _____ of the members at the annual general meeting.
 - a. shares b. debentures c. resolution d. annual general meeting

Part B

1. Define the term share?
2. What is statement in lieu of prospectus?
3. What is Table A?
4. What is debentures of a company?
5. What is prospectus?

Part C

1. What is share certificate and share warrant? compare?
2. What is the procedure of transfer of share?

3. Briefly explain about the type of shares?
4. What are the legal rules for the valid allotment?
5. Briefly explain about the type of shares?
6. What are the legal rules for the valid allotment?
7. Who are liable for misstatement in prospectus? Discuss the civil and criminal liability?
8. Write short notes: (a) public issue of prospectus (b) statement in lieu of prospectus
9. What is the prospectus of a company? What are its contents?
10. What are the legal rules relating to issue of prospectus?

Unit IV

Part A

1. All general meeting other than annual general meeting is called
a. general meeting **b. extraordinary general meeting** c. annual general meeting d. ordinary general meeting
2. A preference share has priority in
a. of winding up **b. dividend only** c. voting rights d. dividend and voting rights
3. What is the proportion of total directors that can be given permanent appointment in the company
a. 1/3 b. 2/3 c. 1/4 d. 1/6
3. Who can be acting as a director of a company
a. minor **b. sound mind person** c. unsound mind person d. insolvent
4. The company can remove the director before the expiry of his period of office by passing
a. ordinary resolution b. company law board **c. special resolution** d. members consent
5. The secretary of the company act as a _____ between the management and the staff as well as outsiders
a. co ordinator **b. liaison officer** c. controller d. server
6. Under sec 174 of the Companies Act in case of public company _____ number of members present at the meeting.
a. 5 b. 6 c. 7 d. 2
7. A person can not be a director in more than _____ companies at the same time
a. 15 b. 8 c. 12 **d. 20**

8. A director can not enter into a contract with the company in which he is interested, without the consent of the _____

- a. **board of directors** b. creditors c. central government d. state government

9. What is the overall maximum managerial remuneration that can be paid by a public company in respect of a financial year

- a. 9% of the net profit b. 10% of the net profit c. 13% of the net profit d. **11% of the net profit**

10. General meeting other than annual general meeting is called

- a. ordinary general meeting b. **Extra ordinary general meeting** c. general meeting d. annual general meeting

11. No business shall be transacted at any general meeting unless _____ of members is present at the time when the meeting proceeds to business.

- a. proxy b. **Quorum** c. voter d. director

12. The dividend can be declared only by _____ of the members at the Annual General Meeting

- a. share b. debenture c. **resolution** d. Annual General Meeting

13. Who can be acting as a director of a company

- a. minor b. **sound mind person** c. unsound mind persons d. insolvent

14. The company can remove the director before the expiry of his period of office by passing

- a. ordinary resolution b. company law board c. **special resolution** d. members consent

15. The secretary of the company acts as a _____ between the management and the staff as well as outsiders

- a. coordinator b. **liaison officer** c. controller d. server

16. Under sec 174 of the Companies Act in case of public company _____ number of members present at the meeting.

- a. **5** b. 6 c. 7 d. 2

Part B

1. What is extra ordinary general meeting?
2. What is the minimum number of directors fixed by the companies Act ?
3. What is the minimum number of directors fixed by the companies Act ?
4. What is quorum for meeting?
5. Who are the directors of a company?

Part C

1. What is the minutes of proceedings of meeting?
2. What is resolution? what are its kinds?
3. Discuss different kinds of meetings of the company?
4. What are the requisites of a valid General Meeting?
5. Explain the provisions of companies Act with regard to proxies?
6. What are the provisions relating to appointment of managing director?
7. What are the qualification and disqualification of a directors?
8. How are the directors are appointed?

Unit V

1. In case of compulsory winding up, the official liquidator appointed by the
a. company law board b. court c. central government d. board of directors
2. **sec _____ of the companies Act specify the winding up of the company by the order of court**
a. 433 b. 333 c. 423 d. 403
3. capital reduction of the company is called
a. windingup of the company b. merger c. amalgamation **d. internal reconstruction**
4. _____ is the process putting an end to the life of the company
a. healing b. depletion **c. winding up** d. depreciation
5. The members voluntary winding up _____ must be filed with the registrar of company

a.declaration of solvencyb.expenses statementc.financial statement of the companyd.asset details of the company

6. The court appointed a person in case of winding up of the company

a.intermediateb.agent**c.official liquidator**d.proxy

7. Reslution means_____ at a meeting

a.discussion b.providing information c.giving suggestion **d.decisions taken**

8. The court appointed a person in case of winding up of a company

a. agent **b. official liquidator** c. intermediate d. proxy

9. The official liquidator appointed by the court prepare a statement while in winding up is called

a. statement of affairs b. statement in lieu of prospectus c. misstatement in prospectus
d.profit and loss account.

10. In case of compulsory winding up the official liquidator appointed by the

a. company law bard b. court **c. central government** d. board of directors

11. In members voluntary winding up_____must be fixed with the registrar of company

a. financial statement of the company **b.declaration of solvency** c.expenses statenebt
d.asset deficit of the company

12. The compulsory winding up is deemed to be commence from the passing of the winding up order by _____

a. company b. central government **c. court** d. Registrar of company

13. In the event of winding up one of the important souerces of raising fund is the_____

a. equity shares b. preference shares c. debentures **d. uncalled capital**

14. On the commencement of winding up the shareholders are called_____

a. owners b. directors **c. contributories** d. liquidator

15. overriding preferential payments includes

a. workmens due b. unsecured creditors **c..preferential reditors** d. secured creditors

Part B

1. What is winding up of a company?
2. When the company can wind up by court?
3. Who is liquidator?
4. What are the kinds of winding up?
5. What is e-filing?

Part C

1. Discuss the powers of the liquidators
2. What are the kinds of voluntary winding up?
3. When a company be wound up by court?.
4. What are the duties of the official liquidator appointed by the court?
5. What are the duties of an official liquid
6. What are the kinds of voluntary winding up?
7. Who is an official liquidator? what are his duties?
8. Compare the private company with partnership firm?
9. What are the legal provisions in creditors voluntary winding up?
10. Discuss the statutory provisions relating to the winding up under the supervision of court?

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Ex 20/1/19
16/1/19

KARPAGAM UNIVERSITY
(Established Under Section 3 of UGC Act 1956)
COIMBATORE-21
FIRST INTERNAL EXAMINATION-JULY 2017
(For the candidate admitted 2016 onwards)

II. B.COM (BPS)
Third Semester
CORPORATE LAW

Time: 2 Hours

Part: A [20X1=20]

Maximum: 50 marks

Choose the correct answer

1. Which of the following is not the characteristic of a public company?
(a) It has a separate legal entity (b) It has a perpetual succession (c) It has a common seal and separate property (d) Its shares are non transferable
2. A statutory company or corporation is one which is incorporated
(a) By an Act of parliament (b) By an Act of state Legislature (c) Under the Companies Act, 1956 (d) By either (a) or (b)
3. A Government company is one in which 51 % or more of the paid up share capital is held by
(a) Central Government alone (b) State Government alone (c) Central and State Government jointly (d) any of the above
4. Can a Public Company be converted into a Private company?
(a) Yes (b) No
5. An incorporated company, an association or partnership formed for the purpose of carrying on banking business shall become an illegal association if the maximum number of its members exceeds.
(a) 7 (b) 10 (c) 15 (d) 20
6. In case of a company limited by guarantee, the liability of the members can be enforced
(a) At any time when the company so decides (b) only at the time of winding up of the company (c) only by an order of court (d) only by an order of Registrar of companies.
7. A Private company is deemed to be a public company under section 43A of the companies Act when its annual turn over is
(a) Rs. 5 Crores (b) Rs. 10 Crores (c) Rs. 20 crores (d) Rs. 25 crores
8. A company comes into existence, when
(a) The MOA is signed by the required number of members (b) the MOA is submitted for registration to the Registrar of companies (c) it is registered under the companies Act, 1956 (d) it establishes its registered office and its starts functioning therefrom.

- e. At the time of registration, the filing of articles of association with the Registrar of Companies is compulsory for
- Private companies, unlimited companies and companies limited by guarantee.
 - Unlimited companies only.
 - Companies limited by shares only.
 - All types of companies.
- The company comes into existence from the date of certificate of incorporation.
 - True
 - False
 - A public company having share capital can start its business on obtaining
 - Certificate of incorporation and approval of Company Law Board
 - Certificate to commence business, and approval of Company Law Board
 - Certificate to commence business
 - approval of High court.
 - A company must commence business within one year of its incorporation
 - True, as it is the law on this point
 - False, as there is no provision in the Companies Act
 - Which of the following statement is correct?
 - Only an individual can be the promoter of a company.
 - Besides individual, a firm, an association, or a company may also act as a promoter of a company.
 - The Registered office of the company must be in existence from the day when the
 - Company starts its business or from 30th day of incorporation of the company whichever is earlier.
 - documents are filed with the Registrar for registration or from 30th day of registration thereof whichever is earlier.
 - company gets the notice of its registration.
 - company proposes to hold its first annual general meeting.
 - The capital with which the co is registered is called the
 - Subscribed capital
 - Nominal or authorized capital
 - Working capital
 - none of these
 - Can a subscriber to a MOA withdraw his name therefrom?
 - Yes, before the Memorandum is actually registered
 - No, because if it is allowed, the registration of companies would never be possible.
 - The procedure for changing the name of a company when it is identical with the name of an existing company is by passing
 - Ordinary Resolution and obtaining approval of Central Government
 - Special Resolution and obtaining approval of Company Law Board.
 - The Procedure for change of registered office from one city to another within the same state is by passing
 - Ordinary Resolution and approval of Company Law Board
 - Special Resolution and approval of Company Law Board
 - Ordinary Resolution only
 - Special Resolution only

- The procedure for alteration of the capital clause of Memorandum which has the effect of reduction of share capital is by passing a
 - Special Resolution and confirmation of the court
 - Resolution and confirmation of the court
 - Can an act ultra vires the directors, and ultra vires the articles of association be ratified?
 - No, as all ultra vires acts are void ab initio
 - Yes, if it is intra vires the company
- Part B [3 X 2 = 6]**
Answer All the Questions
Answer All the Questions Limited by Liability?
- What is the characteristics of a company Limited by Liability?
 - What is Government Company?
 - What is Memorandum of Association?
- Part C [3 X 8 = 24]**
Answer the following Questions
- Define the term Company and list out the characteristics of a company?
 - Explain the term 'liability of corporate veil' in what circumstances can veil of the corporate personality be lifted?
 - What are the differences between the MOA and AOA?
- Or
- What are the contents of MOA?
 - Define the term promoters. State the functions, duties and obligations of the promoters.
- Or
- What are the stages in formation of a company? Explain

Reg. No
[KBP/1302]

KARPAGAM UNIVERSITY
(Established Under Section 3 of UGC Act 1956)
SECOND INTERNAL EXAMINATION-21
(For the candidate admitted 2016 onwards)
II. B.COM (BPS)
Third Semester
CORPORATE LAW

Time: 2 Hours
Date: 09/08/17

Maximum: 50 marks

PART -A (20X1=20 Marks)
Answer All the Questions
Choose The Correct Answer

1. The charter granted governmental power to the company over the territory of its opera
a. Private company b. Government company c. Non regulated company
d. Regulated company
2. The charter of the company otherwise called as
a. Articles of Association b. Memorandum of Association c. Table A
d. Table B
3. The capital with which the company is registered is called
a. Subscribed capital b. Working capital c. Nominal Capital
d. Venture capital
4. The procedure for change of registered office from one city to another within the same state is by passing
a. special resolution b. ordinary resolution only
c. ordinary resolution and approval of company law board d. Special resolution and approval of central Government.
5. Which of the company is not an obligatory to have Articles of Association
a. Public company limited by shares b. Public company limited by guarantee
c. Private limited company d. Unlimited companies.
6. Equity shares are also called as _____
a. debentures b. creditor ship shares c. preference shares d. ownership shares
7. Any excess profit paid over the preference shares are distributed to
a. board of directors b. debenture holders c. preference share holders d. equity share holders
8. Equity share capital is considered as _____ capital
a. safe b. secured c. risk free d. risk
9. The duties of directors are classified into _____ categories
a. five b. two c. four d. three
10. The first important document filed with the registrar of company at the time of formation of a company
a. MOA b. incorporation certificate c. AOA d. shareholder certificate
11. A company can change its name at any time by _____
a. only special resolution b. approval from company lawboard
c. approval from central government d. special resolution
12. The term ultra vires means
a. boundaries of MOA b. boundaries of AOA c. beyond the powers
d. with in the powers
13. AOA is not compulsory for the following companies
a. private ltd co b. unlimited company c. public company limited by guarantee
d. public company limited by shares
14. _____ give the model form of AOA of a company limited by shares
a. Table A b. Table C c. Table D d. Table E
15. Prospectus is issued _____ the formation of a company
a. before b. after 15 days of formation c. after d. before 15 days of formation

16. The company can allot shares or debentures without issuing prospectus is called
 a. misstatement in prospectus b. deemed prospectus c. Statement in lieu of prospectus d. misleading prospectus
17. Capital of the company divided in to _____
 a. debentures b. stock c. profit d. shares
18. The shares which assured of dividend every year is called
19. AOA is not compulsory for the following companies
 a. non cumulative preference shares b. cumulative preference shares
 c. participating preference shares d. non participating preference shares.
20. The conclusive evidence of registration of company is _____
 a. registration with registrar of company b. certificate of commencement of business
 c. certificate of incorporation d. certificate of formation

PART B (3 x 2 = 6 Marks)
Answer ALL the Questions

21. What is prospectus?
 22. What are the provisions of the company attributed by its AOA?
 23. What is statement in lieu of prospectus?
- PART B (3 x 8 = 24 Marks)**
Answer ALL the Questions
27. (a) What are the differences between MOA and AOA?
 (Or)
 (b) The power of altering the Articles is wide yet it subject to large number of limitations. Discuss.
27. (a) What is Memorandum of Association? What are its important clause/
 (OR)
 (b) Explain briefly how can the MOA of a company be altered?
28. (a) What is the prospectus of a company? What are its contents?
 (OR)
 (b) What are the legal rules relating to issue of prospectus?

Reg. No. [16BPT302]

KARPAGAM UNIVERSITY

Karpagam Academy of Higher Education

(Established Under Section 3 of UGC Act 1956)

COIMBATORE-641 021

(For the candidate admitted 2016 onwards)

THIRD INTERNAL EXAMINATION- SEPTEMBER 2017

II B.COM (BPS) - Third Semester

CORPORATE LAW

Time: 2 Hours

Date: 13/09/17

PART-A (20X1=20 Marks)

Maximum: 50 Marks

Choose the Correct Answer

1. A person can not be a director in more than the _____ companies at the same time
a. 15 b. 8 c. 12 d. 20
2. A director can not enter into a contract with the company in which he is interested, without the consent of the _____
a. board of directors b. creditors c. central government d. state government
3. What is the overall maximum managerial remuneration that can be paid by a public company in respect of a financial year
a. 9% of the net profit b. 10% of the net profit c. 13% of the net profit
d. 11% of the net profit
4. The _____ of the meeting to be prepared and sent to all the members of the meeting
a. statement b. minutes c. agenda d. report
5. The proxy need not be a _____ of the company
a. creditor b. manager c. employee d. member
6. A public Company must have atleast _____ directors
a. 4 b. 3 c. 2 d. 5
7. From the appointment of directors _____ members have the right to retire by rotation
a. 2/3 b. 1/3 c. 1/4 d. 1/6
8. The appointment of every directors made by _____ at the general meeting
a. Ordinary Resolution b. Special Resolution c. Company Law Board
d. Board of Directors
9. All general meeting other than annual general meeting is called
a. ordinary general meeting b. Extra ordinary general meeting
c. general meeting d. annual general meeting
10. No business shall be transacted at any general meeting unless _____ of members is present at the time when the meeting proceeds to business
a. proxy b. Quorum c. voter d. director
11. The dividend can be declared only by _____ of the members at the Annual General Meeting
a. share b. debenture c. resolution d. Annual General Meeting
12. In case of compulsory winding up, the official liquidator appointed by the
a. company law board b. court c. central government d. board of directors
13. Sec _____ of the companies Act specify the winding up of the company by the order of court
a. 433 b. 333 c. 423 d. 403
14. Capital reduction of the company is called
a. winding up of the company b. merger c. amalgamation d. internal reconstruction
15. _____ is the process putting an end to the life of the company
a. healing b. depletion c. winding up d. depreciation
16. The compulsory winding up is deemed to be commence from the passing of the winding up order by _____
a. company b. central government c. court d. Registrar of company
17. In the event of winding up one of the important sources of raising fund is the _____
a. equity shares b. preference shares c. debentures d. unutilised capital
18. On the commencement of winding up the shareholders are called _____
a. owners b. directors c. contributors d. liquidator
19. Overriding preferential payments includes
a. workmen's due b. unsecured creditors c. preferential creditors d. secured creditors
20. AOB stands for
a. any other business b. an order book c. any other board d. any other book

PART B (2X2=4 Marks)

Answer All the Questions

21. What is meant by ordinary General Meeting?

22. Define winding up of the company.

PART C (2X3=34 Marks)

Answer All the Questions

23. (a) Discuss different kinds of meetings in the company.

(OR)

(b) What are the requisites of a valid General Meeting?

24. (a) When a company be wound up by court?

(OR)

(b) What are the duties of the official liquidator appointed by the court?

25. (a) What are the qualification and disqualification of a directors?

(OR)

(b) How are the directors of the company are appointed?

KARPAGAM ACADEMY OF HIGHER EDUCATION

Corporate Law (16BPU302)

First Internal Answers

Part A

1. (d) Its shares are not freely transferable
2. (c) Under the Companies Act 1956
3. (d) Central and State Government Jointly
4. (a) Yes
5. (b) 10
6. (b) Only at the time of winding up of the company
7. (c) Rs. 20 crores
8. (b) The MOA is submitted for registration to the Registrar of Companies
9. (a) Private Companies, Unlimited Companies and Companies Limited by guarantee
10. (a) True
11. (c) Certificate to commence business
12. (a) True, as it is the law on this point
13. (a) Only an individual can be the promoter of a company.
14. (a) Company starts its business or from 30th day of incorporation of the company whichever is earlier.
15. (b) Nominal or Authorised Capital
16. (a) Yes before the Memorandum is actually registered.
17. (b) special Resolution and obtaining approval of Central Government
18. (a) Ordinary Resolution and approval of Company Law Board
19. (a) Special resolution and conformation of the company
20. (b) Yes, if it is intra vires the company.

Part B

21. (i) Company is an artificial person (ii) Limited Liability (iii) Perpetual Succession (iv) Separate Property (v) Transferability of Shares
22. The company which is having more than 51% of shares with either Central or State Government or both is called Government company.
23. It is the Charter of the company, which bounds the rules and regulations, by laws of the company.

Part C

24. (a) Company Definition

In terms of the Companies Act, 2013 a company means a company incorporated under this Act or under any previous company law. A company is a legal person or legal entity separate from and capable of surviving beyond the lives of its members.

Characteristics:

- # Corporate Personality
- # Limited Liability
- # Perpetual Succession
- # Separate Property
- # Transferability of Shares
- # Common Seal
- # Capacity to Sue and Be Sued

24 (b) Liability of Corporate veil

The term Corporate veil means the important concept of separate legal entity concept is not followed by the companies. If the particular characteristics of separate legal entity is missed. The members of the company they concentrate the business as his own.

Lifting of Corporate veil

When a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The court will break through the corporate shell and apply the principle of what is called as lifting of or piercing the corporate veil.

The court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company.

25 (a) Memorandum of Association Vs. Articles of Association

MOA	AOA
1. It is the charter of the company	Rules and regulations governed to maintain the internal management of the company
2. It cannot easily altered	It can be altered
3. It cannot include any clause contrary to the provisions of the companies Act	The articles of association are subsidiary both to the companies Act and MOA
4. It defines the relation between the company and the outsiders	It defines the relation between company and its members.

25 (b) Contents of MOA

- Name Clause
- Situation clause
- Object clause
- Liability clause
- Capital clause

26 (a) Stages in Formation of a Company

The company formed either public, private and one person company by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

- (a) Application for Availability of Name of Company
- (b) Preparation of Memorandum and Articles of Association
- (c) Filing of Documents with Registrar of companies
- (d) Declaration from the professional
- (e) Affidavit from the subscribers to the Memorandum

- (f) Furnishing verification of Registered Office
- (g) Particulars of subscribers

II Internal Examination

Part A

1. (d). Regulated Company
2. (b) Memorandum of Association
3. (c) Nominal Capital
4. (c) Ordinary Resolution and approval of Company Law Board
5. (a) Public Company Limited By Shares
6. (d) Ownership Shares
7. (d) Equity Share holders
8. (d) Risk
9. (a) five
10. (a) MOA
11. (c) Approval from Central Government
12. (c) beyond the powers
13. (a) Private Limited Company
14. (a) Table A
15. (b) After 15 days of formation
16. (c) Statement in lieu of Prospectus
17. (d) Shares
18. (b) Cumulative Preference Shares

19. (a) Private Limited Company

20. (c) Certificate of Incorporation

Part B

21. Any document described or issued as a prospectus and includes a red herring prospectus referred to in sec 32 or shelf prospectus referred to in sec 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.
22. The Articles play a very important role in the affairs of a company. It deals with the rights of the members of the company. They are subordinate to and are controlled by the memorandum of association
23. The company can allot shares or debentures without issuing prospectus is called statement in lieu of prospectus.

Part C

24. MOA Vs. AOA

MOA	AOA
1. It is the charter of the company	Rules and regulations governed to maintain the internal management of the company
2. It cannot easily altered	It can be altered
3. It cannot include any clause contrary to the provisions of the companies Act	The articles of association are subsidiary both to the companies Act and MOA
4. It defines the relation between the company and the outsiders	It defines the relation between company and its members.

25 (a) Memorandum Of Association

The memorandum of Association of a company contains the objects to pursue which the company is formed it not only shows the objects of formation but also determines the scope of its

operations beyond which its actions cannot go. It is a document of great importance in relation to the proposed company.

Important Clause:

Name clause

A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is symbol of its independent corporate existence. The first clause in the MOA of the company states the name by which a company is to be known.

Situation clause

The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein. Within 15 days of its incorporation, and at all times thereafter, the company must have a registered office to which all communications and notices may be sent.

Object clause

Under Sec 4(1) (c) of the companies Act 2013, all companies must state in their memorandum the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. It determines the purpose and capacity of the company.

Liability clause

(h) In case of a company limited by shares that liability of its members is limited to the amount unpaid, if any, on the shares held by them.

(ii) in case of a company limited by guarantee, the amount up to which each member undertake to contribute from the assets of the company in the event of its being wound up.

Capital clause

This is the fifth compulsory clause which must state the amount of the capital with which the company is registered. The shares into which the capital is divided must be of fixed value, which is commonly known as the nominal value.

25 (b) Alteration of MOA

Alteration made under section 13 shall have any effect until it has been registered. [section 13 (10)].

Special resolution: [section 13 (1) and (6)] For alteration of any of the clauses [as aforesaid, except (e)] of memorandum of association, consent of members by way of special resolution is required. However, in case of alteration of authorised share capital (as stated in (e) above), consent of members by way of ordinary resolution as stated in section 61 is required.

The company is required to file special resolution passed by shareholders for alteration of memorandum of association with the Registrar of Companies [section 13(6)].

Change of name clause of memorandum: [section 13 (2) and (3)] For change of name of the company, which is part of memorandum of association of the company, written approval of the Central Government is required and provisions of section 4 (2) and (3) of the Act shall be complied with.

However, in case of conversion of status of a company from one class to another, procedure prescribed for conversion shall be followed and consequential addition or deletion of word 'Private' in name of the company shall not require approval under section 13. [proviso to section 13(2)].

Change of registered office clause of memorandum: [section 13 (4), (5), (7)] For shifting of registered office from one State to another State of India, prior approval of Central Government is required. For this purpose application in form no. 2.28 shall be made to the Central Government and a copy thereof shall also be filed with the Chief Secretary of the State [Rule 2.27 (1) and (5)].

Change of object clause of memorandum: [section 13 (8), (9)] Where money is raised by a company from public by issue of prospectus and still has got those money unutilized then for change of object clause of memorandum of association, the company would require consent of members by way of special resolution with specific prescribed disclosures.

26 (a) Prospectus

A prospectus is a formal legal document that is required by and filed with the Securities and Exchange Commission that provides details about an investment offering for sale to the public.

Contents:

The following important matters are included in the prospectus:

- The prospectus contains the main objectives of the company, the name and addresses of the signatories of the memorandum of association and the number of shares held by them.
- The name, addresses and occupation of directors and managing directors.
- The number and classes of shares and debentures issued.
- The qualification share of directors and the interest of directors for the promotion of company.
- The number, description and the document of shares or debentures which within the two preceding years have been agreed to be issued other than cash.
- The name and addresses of the vendors of any property acquired by the company and the amount paid or to be paid.
- particulars about the directors, secretaries and the treasures and their remuneration.
- The amount for the minimum subscription.
- If the company carrying on business, the length of time of such businesses.
- The estimated amount of preliminary expenses.
- Name and address of the auditors, bankers and solicitors of the company.
- Time and place where copies of balance sheets, profits and loss account and the auditor's report may be inspected.
- The auditor's report so submitted must deal with the profit and loss of the company for each year of five financial years immediately preceding the issue of prospectus.
- If any profit or reserve has been capitalized, the particulars of such capitalization will be stated in the prospectus.

