



**KARPAGAM ACADEMY OF HIGHER EDUCATION**  
(Deemed to be University Established Under Section 3 of UGC Act 1956)  
**Coimbatore – 641 021.**

**LECTURE PLAN**  
**DEPARTMENT OF COMMERCE**

**STAFF NAME : K. ARAVINDARAJ**

**SUBJECT NAME : COMPANY LAW AND SECRETARIAL PRACTICE**

**SUB.CODE : 16PAU403A**

**SEMESTER : IV**

**CLASS: II B.COM (PA)**

S.No	Lecture Duration Period	Topics to be Covered	Support Material/Page No.
<b>UNIT – I</b>			
1	1	Company Act – 1956 Introduction and Overview	R 1 : 1 – 5 R 1 : 16 – 20
2	1	Company - Definition and characteristics	R 1 : 1 - 5
3	1	Kinds of companies	R 1 : 27 - 46
4	1	Formation of Companies Promotion, Meaning	R 1 : 59 - 63
5	1	Functions of Promoter	R 1 : 62
6	1	Duties and liabilities of Promoter	R 1 : 61
7	1	Incorporation ➤ Meaning, ➤ Certificate of incorporation	R 1 : 56 - 59
8	1	Procedure Memorandum of Association - Meaning and purpose	R 1 : 67 - 68
9	1	Alteration of Memorandum	R 1 : 77 - 78

		<ul style="list-style-type: none"> <li>➤ Change of Name</li> <li>➤ Change of Registered Office</li> </ul>	
10	1	Alteration of Memorandum <ul style="list-style-type: none"> <li>➤ Change in Liability Clause and</li> <li>➤ Capital Clause</li> </ul>	R 1 : 77 – 78
11	1	Doctrine of Ultravires <ul style="list-style-type: none"> <li>➤ An act of Ultravires the Company</li> <li>➤ An act Ultravires the Directors but Intra vires of the Company</li> </ul>	R 1 : 78 - 82
12	1	Articles of association <ul style="list-style-type: none"> <li>➤ Meaning</li> <li>➤ Forms of Articles of Association</li> </ul>	R 1 : 84
13	1	Contents of articles of association	R 1 : 84
14.	1	Recapitulation and discussion of important Questions	
<b>Total no. of hours planned for Unit – I</b>			<b>14 Hours</b>
<b>UNIT – II</b>			
1	1	Director – Meaning and definition Qualification of Directors	R 1 : 260 – 261
2	1	Disqualification of Directors	R 1 : 270 - 271
3	1	Appointment of Directors	R 1 : 261 - 265
4	1	Removal of Directors	R 1 : 273 - 275
5	1	Remuneration of Directors	R 1 : 277 - 281
6	1	Powers of Directors	R 1 : 287 - 292
7	1	Duties of Directors	R 1 : 292
8	1	Duties of Directors	R 1 : 293 - 294

9	1	Liabilities of Directors	R 1 : 298 - 301
10	1	Managing Director and Manager - Meaning and definition	R 1 : 301
11	1	Statutory Restrictions on Managing or Whole – time Directors Appointment	R 2 : 331 - 338 R 1 : 320 – 321
12	1	Other Managerial Personnel	R 1 : 316
13	1	Recapitulation and discussion of important questions	
<b>Total no. of hours planned for Unit - II</b>			<b>13 Hours</b>
<b>UNIT - III</b>			
1	1	Company Meeting – Meaning and Classification	R 2 : 372 - 380
2	1	Board of Directors Meeting – Meaning Frequency and Notice of Board Meeting	R 2 : 350 - 352
3	1	Agenda and Quorum of Board Meeting Validity of Act of Directors Committee of the Board	R 2 : 352 – 356
4	1	Proceedings of Board – Chairman of the Meeting Procedure and Minutes of Meeting	R 2 : 356 – 359
5	1	Share Holders Meeting, Statutory Meeting, Annual General Meeting and Extra ordinary General Meeting	R 2 : 359 – 36
6	1	Statutory Meeting – Notice of the Meeting Statutory Report and Procedure at Meeting	R 2 : 373 - 375
7	1	Annual General Meeting – Statutory Requirements Board Report (Or) the Directors Report	R 2 : 376 - 380

8	1	Extra ordinary General Meeting	R 2: 383 - 385
9	1	Secretarial Work – Board Meeting	R 2 : 361 – 362
10	1	Statutory Meeting and Annual General Meeting	R 2 : 285 - 286
11	1	Drafting of Correspondence relating to the Meeting	R 1 : 285 – 286
12	1	Drafting of Notices of the Meeting	R 2 : 363
13	1	Drafting of Agenda of the Meeting	R 2 : 364 – 368
14	1	Drafting of Chairman's Speech	R 2 : 376 – 380
15	1	Drafting of Minutes of the Meeting	R 2 : 373 – 375
16	1	Statutory Work – Extra ordinary General Meeting	R 2: 383 - 385
17	1	Recapitulation and discussion of important questions	
<b>Total no. of hours planned for Unit - III</b>			<b>17 Hours</b>
<b>UNIT – IV</b>			
1	1	Company Secretary ➤ Meaning ➤ Definition	R 2 : 1 - 2
2	1	Types of Company Secretary	R 1 : 47
3	1	Appointment of Company Secretary	R 2 : 3 – 5
4	1	Legal position of Company Secretary	R 2 : 8 – 7
5	1	Qualities of Secretary	R 1 : 55
6	1	Qualifications of secretary Statutory provisions	R 2 : 12 – 13
7	1	Other Qualifications	R 1 : 54

8	1	Appointment of Secretary	R 1 : 57
9	1	Removal / Dismissal of Secretary	R 1 : 65
10	1	Powers and Rights of a Secretary	R 2 : 10
11	1	Duties of a Secretary	R 2 : 7 – 10
12	1	Liabilities of a Secretary	R 1 : 59
13	1	Role of a company secretary	R 1 : 341 – 342
14	1	Recapitulation and discussion of important questions	
<b>Total no. of hours planned for Unit - IV</b>			<b>13 Hours</b>
<b>UNIT – V</b>			
1	1	Accounts of Companies ➤ Statutory Books, Books of Accounts	R 1 : 363 – 366
2	1	Annual Accounts and Balance Sheet	R 1 : 367 – 368
3	1	Statistical or Non – Statutory Books	R 1 : 366 – 367
4	1	Audit and Auditors ➤ Qualification and Disqualification	R 1 : 375 - 377
5	1	Auditors Appointment	R 1 : 377 - 379
6	1	Prevention of Oppression and Mismanagement	W2
7	1	Removal and Remuneration of Directors	R 1 : 379 - 380
8	1	Rights and Duties of Auditor	R 1 : 384 – 388
9	1	Powers of Auditor	R 1 :
10	1	Winding up meaning, Official Liquidators	R 1 : 442 R 2 : 565 - 568
11	1	Dissolution and insolvency	T 1 : 394
12	1	Modes of winding up ➤ By National Company Law Tribunal	R 1 : 443

		(NCLT)	
13	1	Voluntary winding up	R 2 : 572 - 579
14	1	Recapitulation and discussion of important questions	
15	1	Discussion of Previous Year End Semester Examination Question papers	
16	1	Discussion of Previous Year End Semester Examination Question papers	
17	1	Discussion of Previous Year End Semester Examination Question papers	
<b>Total no. of hours planned for Unit – V &amp; Question Paper Discussion</b>			<b>17 hours</b>

**TEXT BOOK**

1. Shukla. M.C. and Gulshan. S.S.2010. *Principles of Company Law*. New Delhi S.Chand & Co

**REFERENCE BOOKS**

1. Kapoor. N.D. 2010. *Elements of Company Law*. New Delhi. Sultan Chand & Sons.
2. Kuchhal, M.C. 2008 “*Secretarial Practice*”. New Delhi. Vikas Publishing House Pvt. Ltd.

### **PROGRAME OUTCOME**

Company Law and Secretarial Practice represent the fundamental knowledge and exposure of Creation of company, Company meeting and rights and duties of company secretary. This paper presents the formation of companies, writing of Minutes and Agenda, Appointment and Removal of Directors.

### **PROGRAME LEARNING OUTCOME**

- To enhance student's knowledge on formation of company, Documents required and company meetings.
- To impart students knowledge in the area of Secretarial Practice

### **UNIT I**

Companies Act 1956 Vs Companies Act 2013 - Formation of Companies - Promotion - Meaning - Promoters - Functions - Duties of Promoters - Incorporation - Meaning - Certificate of Incorporation - Memorandum of Association - Meaning - Purpose - Alteration of Memorandum - Doctrine of Ultra vires - Articles of Association - Meaning - Forms - Contents - Alteration of Articles.

### **UNIT II**

Directors - Qualification and Disqualification of Directors - Appointment of Directors - Removal of Directors - Director's remuneration - Powers of Directors - Duties of Directors - Liabilities of Directors.

### **UNIT III**

Company Meetings - Kinds - Board of Directors Meeting - Annual General Meeting - Extra Ordinary General Meeting - Duties of a Company Secretary to all the Company Meetings - Drafting of Correspondence - Relating to the Meetings - Notices - Agenda - Chairman's Speech - Writing of Minutes.

### **UNIT IV**

Key Managerial Personnel (KMP) - Company Secretary - Meaning - Definition - Types - Positions - Qualities - Qualifications - Appointment and Dismissal - Power - Rights - Duties - Liabilities of a Company Secretary - Role of a Company Secretary

### **UNIT V**

Accounts of Companies - Audit and Auditors' - Prevention of Oppression and Mismanagement - Winding up - Official Liquidators - National Company Law Tribunal - E - Governance - Ministry of Corporate Governance.

**SUGGESTED READINGS:**

**TEXT BOOKS**

1. Kapoor, N.D. (2010). *Elements of Company Law*. New Delhi: Sultan Chand & Sons.

**REFERENCES**

1. Shukla, M.C., & Gulshan, S.S. (2010). *Principles of Company Law*. New Delhi: S.Chand and Company Ltd.
2. Kuchhal, M.C. (2008). *Secretarial Practice*. New Delhi: Vikas Publications.
3. Avtar Singh. (2014). *Introduction to Company Law*. New Delhi: Eastern book Company.
4. Akhileshwar Pathak. (2013). *Legal Aspects of Business* (6<sup>th</sup> ed.). New Delhi: McGraw Hill Education.

**UNIT I**  
**SYLLABUS**

Companies Act 1956 Vs Companies Act 2013 -Formation of Companies -Promotion -Meaning - Promoters -Functions -Duties ofPromoters -Incorporation -Meaning –Certificate of Incorporation -Memorandum ofAssociation -Meaning -Purpose -Alteration of Memorandum -Doctrine of Ultra vires -Articles of Association -Meaning -Forms -Contents -Alteration of Articles.

**Company Law**

**Corporate law** (also known as **business law** or **enterprise law** or **company law**) is the body of law that applies to the rights, relations, and conduct of persons, companies, organizations and businesses.

It regulates how corporations, investors, shareholders, directors, employees, creditors, and other stakeholders such as consumers, the community, and the environment interact with one another.

Corporate law is a part of a broader company's law (or law of business associations). It is often considered to be a branch of civil lawand deals with issues of both private law and public law.

The most prominent kind of company, usually referred to as a "corporation", is a "juristic person", i.e. it has separate legal personality, and those who invest money into the business have limited liability for any losses the company makes, governed by **corporate law**.

The largest companies are usually publicly listed on stock exchanges around the world. Even single individuals, also known as sole traders may incorporate themselves and limit their liability in order to carry on a business. All different forms of companies depend on the particular law of the particular country in which they reside.

Other types of business associations can include partnerships (in the UK governed by the Partnership Act 1890), or trusts (like a pension fund), or companies limited by guarantee (like some community organizations or charities). Under corporate law, corporations of all sizes have separate legal personality, with limited or unlimited liability for its shareholders. Shareholders control the company through a board of directors which, in turn, typically delegates control of the corporation's day-to-day operations to a full-time executive. Corporate law deals with firms that are incorporated or registered under the corporate or company law of a sovereign state or their sub-national states. The four defining characteristics of the modern corporation are:

- Separate legal personality of the corporation (access to tort and contract law in a manner similar to a person)
- Limited liability of the shareholders (a shareholder's personal liability is limited to the value of their shares in the corporation)

- Shares (if the corporation is a public company, the shares are traded on a stock exchange)
- Delegated management; the board of directors delegates day-to-day management of the company to executives

In many developed countries outside the English speaking world, company boards are appointed as representatives of both shareholders and employees to "codetermine" company strategy.<sup>[2]</sup> Corporate law is often divided into corporate governance (which concerns the various power relations within a corporation) and corporate finance (which concerns the rules on how capital is used).

The law of business organizations originally derived from the common law of England, but has evolved significantly in the 20th century. In common law countries today, the most commonly addressed forms are:

- Corporation
- Limited company
- Unlimited company
- Limited liability partnership
- Limited partnership
- Not-for-profit corporation
- Company limited by guarantee
- Partnership
- Sole Proprietorship

**Difference between Companies Act 2013 vs Companies Act 1956**

SI No	Point	Companies Act 2013	Companies Act 1956
1	Financial Year	Companies must have their financial year ending on 31 Mar every year	Companies were permitted to have financial year ending on a date decide by Company
2	Formats of Financial Statement	Schedule III	Schedule VI
3	Maximum No of Partners	As per rules, subject to Max 100.currently is 50 .	10 in banking business and 20 in any other business.
4	Max Shareholders in Pvt Ltd Company	200 excluding past and present employees	50 excluding past and present employees
5	One Person Company (OPC)	Company which has only one person (natural person) as its member	Did not exist
6	Issue of Share at discount	Section 53 prohibits issue of shares at a discount However, Section 54 permits issue of ESOPs to its employees at a discount.	Section 79 permitted issue of shares at a discount.
8	Security Premium Reserve	Utilisation of Securities Premium Reserve is provided in Section 52(2)	Utilisation of Securities Premium Reserve was provided in Sec 77A and 78

9	Article of Association	Table F applies where Companies Limited by shares does not adopt their own Articles of Association.	Table A applied where Companies did not adopt their own Articles of Association.
10	Interest in Calls in Arrears	In the absence of a clause in the Articles of Association, the maximum interest chargeable on Calls-in-arrears is 10% p.a.	In the absence of a clause in the Articles of Association, maximum interest chargeable on Calls-in-arrears was 5% p.a.

11	Interest in Calls in Advance	In the absence of a clause in the Articles of Association, the maximum interest payable on Calls-in-advance is 12% p.a.	In the absence of a clause in the Articles of Association, the maximum interest payable on Calls-in-advance was 6% p.a.
12	Minimum Subscription	Sec39 a company shall not allot <b>Securities</b> unless the amount stated in the prospectus as minimum subscription has been subscribed & the sum paid	Sec 69 the requirement of minimum subscription was with respect to <b>Shares</b> only

### Company Formation:

It also deals with their conversion/re-conversion. Further, it covers procedure for commencement of business/new business. It also deals with filing of agreements with managerial personnel. At the end of this lesson, you will be able to understand:

- Choice of form of business entity
- Procedure for Incorporation of companies
- Conversion of Companies
- Commencement of business

#### 1. CHOICE OF FORM OF BUSINESS ENTITY:

Selecting the form of business entity is one of the most significant decisions when starting a business. This is a decision which is required to be revisited periodically as the business develops. There are options for conversions and reconversions, as and when it seems appropriate. The choice amongst the various forms of business entities depends upon many aspects like objects of the proposed business, likely number of members, amount to be invested, advantages of one form of business on another etc. Nature, Form and Types of Business Enterprises Business enterprises can be broadly divided into two broad categories, namely, one which is non-corporate in form and the other which has a corporate character. Enterprises which fall in the former category are sole proprietorship, partnerships and Hindu Undivided Family. Business organization which comprises the latter category is companies and co-operative undertakings. The basic difference between the corporate and the non-corporate form of organization is that while a non-corporate form of business can be started without registration, corporate bodies cannot be set up without registration under the laws which govern their functioning. Non-Corporate Form of Business Enterprises (1) Sole

proprietorship: In this form of business organization, an individual normally uses his own capital, skill and intelligence to carry out some business activity. He is entitled to receive all the profits and gains of his business and also assumes all the risk of ownership. The sole proprietor exercises full control over the affairs of his business. As there is no legal obligation to supply any information regarding his business to anyone, he can maintain maximum secrecy in conducting his business affairs. This type of organization is particularly suitable for businesses which are small in size and where risk and capital involved are not very large.

2. Joint Hindu Family/Hindu Undivided Family: In this form of business ownership, all members of HUF conduct business jointly under the control of the head of the family who is known as 'Karta'. 'Karta' is basically the senior most male member of the family. The joint Hindu family firm comes into existence by the operation of Hindu Law and not by any contract.
3. Partnership: In this form of organization, few like-minded persons pool up their resources to form a partnership firm. Section 4 of the Partnership Act, 1932, defines partnership as "The relation between persons who have agreed to share profits of a business carried on by all or any of them acting for all".

This definition chiefly brings out the following features of partnership: (i) Contractual Relationship:- Since partnership arises out of agreement between persons, only those persons who are competent to contract can be partners. (ii) Existence of business:- There can be no partnership without business. The persons who have agreed to become partners must carry out some business activity. (iii) Sharing of profits:- The agreement to carry on business must be entered into, with the object of making a profit and sharing it among all the partners. (iv) Mutual agency:- The business must be carried on by all the partners or by any one or more of them acting for all the partners. Thus each partner is both an agent and a principal for all other partners. Partnership is an ideal form of organization for medium scale business operations which require greater amount of capital and risks than sole proprietorship or Hindu Undivided Family.

#### Corporate Form of Business Enterprises

1. The Co-operative Organization Co-operative organization is a voluntary association with unrestricted membership and collectively owned funds, organized on democratic principle of equality by persons of moderate means and incomes, who join together to supply their needs and wants through mutual action, in which the motive of production and distribution is service rather than profit. Besides being a form of ownership cooperative organizations are a means of protecting the interests of the relatively weaker sections of society against exploitation by big businesses operating for the maximization

of profits. The basic feature which differentiates the co-operative organization from other form of business enterprises is that its primary motive is service to the members rather than making profits. A co-operative society is required to be registered under the Co-operative Societies Act, 1912. The co-operative societies receive a number of special concessions from the law and the Government, in order to encourage healthy development of Co-operatives. By virtue of Companies (Amendment) Act, 2002 effective from 6th February, 2003, a new Part IXA has been added to the Companies Act, 1956 in connection with 'Producer Companies', the incorporation of which has now become possible under the provisions of the Act. This part of the Act deals with the corporatization of cooperative societies.

2. Company: This type of organization is characterized by the fact that ownership and management are separate. The capital of the company is provided by a group of people called shareholders who entrust the management of the company in the hands of persons known as the Board of directors. A company is an artificial legal person created by process of law which makes it an entity separate and distinct from its members who constitute it. As a natural consequence of incorporation and transferability of shares, the company has perpetual succession. Thus, it can be said that this form of organization is suitable when the capital requirements of a business are very large and the risks need to be spread among a larger number of persons. Forming a choice though there are a number of similarities between a limited company and other forms of associations, there are a great number of dissimilarities as well. In both the cases individuals are the subjects, and trading is generally the object. Distinction between a limited company from a partnership firm, a Hindu Joint family business and a registered society has been discussed in detail in the study of Company Law of Module II of Executive Program. It has also covered advantages and disadvantages of corporate form of business at length. Taking into account the requirement of the individual case and all the aspects of the various forms of Business entities, the decision of the right type of business entity should be taken.

#### Promoters:

Promoter is the person who comes first in the chronological order of company incorporation process. Promotion of company is tiring and tardy work as it comprises variety of activities. Promoters of the company are like parents of the company who give birth to the company as a child. Promotion includes conception of idea, incorporation, floatation and commencement of business. Promoters are deeply involved in the incorporation process and almost do everything for making a company. Formation of company is work related with compliance of laws, regulators and authorities which involves an integrated team work by various people led by promoters. Company is a mode of doing business which is run of the motive of profit maximization. Entrepreneurship depends on modus operandi chosen by businessmen from sole

proprietorship, Hindu Undivided Family, firm, Limited Liability Partnership and Company. We know that a company is the best suited legal device for running business and commerce because of separate legal existence, limited liability, wealth management and corporate financing. As we are aware that we have a fundamental right to do business 1 which results in a fundamental right to form a company as well but if promotion is done for fraudulent activities or in promotion scams are committed or position is misuses the law has to come in action. In this module we shall discuss about all dimensions related with promoters and promotion of company.

**Definition:**

The term promoter was not defined in Companies Act, 1956 but was frequently used in various section e.g. sec's. 56, 62, 69, 76, 478 & 519. In Whaley Bridge Co.v. Green2 Bowell LJ while defining the term promotion held that 'promotion' is not a term of law but of business operations familiar to the commercial world, by which a company is generally brought in to existence. Promotion includes wide range of commercial activities which include many technical and non-technical operations. Amongst the technical include project planning, feasibility study, looking for technical cooperation and collaboration and locational studies. Non-technical activities include assembling required number of signatories, obtaining advice on different legal requirements, appointing key people like company lawyer who make documentation and enter into all types of pre-incorporation contracts."

SEBI (Substantial Acquisition of shares &Takeover) Regulation 1997 also mentions for promoters. Securities Exchange Commission Rule of US405 (a) defines promoter as a "person who acting alone or in conjunction with other persons directly or indirectly takes the initiative in founding or organizing the business enterprise."

**Definition of Promoter in Companies Act, 2013:**

Recently in the Companies Act 2013 the term was defined in section 2(69) in following way: "Promoter" means a person—

- (a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

#### Promoters' Activities:

A promoter does a range of activities comprising the following:

- i. Conceiving the scheme of forming co./suitable company for the business
- ii. Assembling the required number of subscribers;
- iii. Applying for Corporate Identity Number (CIN), Global Location Number (GLN) & PAN/TAN to relevant authorities;
- iv. Getting documents of company i.e., Articles and Memorandum prepared, executed and registered;
- v. Finding bankers, brokers and legal advisors;
- vi. Preparation and circulation of prospectus;
- vii. Raising capital via Initial Public Offering (IPO), private placement, debenture or public deposits or external commercial borrowing;
- viii. Vetting and due compliance of laws and regulations relating to corporate financing and disclosures via annual and periodic returns to Registrar of Companies, Regional Directors, SEBI, Ministry of Corporate Affairs, Foreign Investment Promotion Board, Serious Fraud Investigation Office and Reserve Bank of India.
- ix. Settling the terms and conditions of pre-incorporation agreements.

#### Duties of Promoters:

A promoter stands in fiduciary capacity to company so because of that he owes certain duties to the company. Promoters' duties are same as a person who acts on behalf of a person without a contract of employment namely not to deceive and to exercise reasonable care & skill. He may be made liable for misrepresentation and fraud in prospectus.

**INCORPORATION OF COMPANIES:** A company is an association of both natural and artificial persons incorporated under the existing law of a country. In terms of the Companies Act, a "company means a company formed and registered under the Companies Act, 1956 or under the previous laws relating to companies" [Section 3(1)(ii)]. In common law, a company is a "legal person" or "legal entity" separate from, and capable of surviving beyond the lives of its members. Any seven or more persons, or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of the Companies Act, 1956 (the Act), in respect of registration, form an incorporated company, with or without limited liability [Section 12 of the Act].

Thus, Section 12 stipulates existence of the following ingredients for the incorporation of a company: (i) Promoters of the company—at least seven in the case of a public company and at least two in the case of a private company; (ii) Lawful purpose for which they should associate themselves; (iii) Promoters must subscribe their names to the memorandum of association of the company; (iv) Promoters must comply with the requirements of the Companies Act, 1956 in respect of registration of the company. Minimum paid-up capital must be rupees one lakh in case of a private company and rupees five lakh in case of a public company or such higher paid-up capital as may be prescribed. Promoters to take steps for formation of the Company Promoters are the persons, who conceive the idea or visualize a project and then take steps to execute the idea into a reality. They broach their idea to friends, relatives or business associates, make arrangements for collecting equity and loan capital for the company, prepare a team of persons who would act as its directors and take all other steps for compliance with the requirements of the Companies Act, 1956 in respect of registration of the company. The Companies Act does not define the expression “promoter”. It is referred to in sub-section (6) of Section 62 of the Act. However, it is restricted to and is meant only for the purposes of a prospectus. It states that the expression “promoter means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.”

**PROCEDURE FOR INCORPORATION OF PUBLIC LIMITED COMPANY HAVING SHARE CAPITAL** The following procedural steps are required to be taken by the promoters for the incorporation of a public limited company: (1) Selecting Name of the Company and Ascertaining its availability from ROC Promoters are required to select at least six names for the proposed company and secure the name availability by making an application to the Registrar of Companies of the State in which they want to have the proposed company incorporated. The application is required to be made in e-form 1A as prescribed in the Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006, for the purpose, along with the prescribed application fee of Rs. 500/-. (For specimen of e-form No. 1A, application form for availability or change of names, please see Part B of this Study). While applying for a name in the prescribed e-form-1A, using Digital Signature Certificate (DSC), the applicant shall be required to furnish a declaration to the effect that:

(i) He has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., [www.mca.gov.in/MCA21](http://www.mca.gov.in/MCA21) for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) respectively already registered or the names already approved. (ii) The proposed name(s) is/are not infringing the registered trademarks or a trademark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999;

(iii) The proposed name(s) is/are not in violation of the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time;

(iv) The proposed name(s) is not such that its use by the company will constitute an offence under any law for the time being in force.

(v) The proposed name is not offensive to any section of people, e.g., proposed name does not contain profanity or words or phrases that are generally considered a slur against an ethnic group, religion, gender or heredity;

(vi) He has gone through all the prescribed guidelines, understood the meaning thereof and the proposed name(s) is/are in conformity thereof;

(vii) He undertakes to be fully responsible for the consequences, in case the name is subsequently found to be in contravention of the prescribed guidelines.

There is an option in the e-form 1A for certification by the practicing Chartered Accountants, Company Secretaries and Cost Accountants, who will certify that he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., [www.mca.gov.in/MCA21](http://www.mca.gov.in/MCA21) for checking the resemblance of the proposed name(s) approved and the search report is attached with the application form. The professional will also certify that the proposed name is not an undesirable name under the provisions of section 20 of the Companies Act, 1956 and also is in conformity with Name Availability Guidelines, 2011.

Where e-form 1A has been certified by the professional, the name will be made available by the system online to the applicant without backend processing by the Registrar of Companies (ROC). This facility is not available for applications for change of name of existing companies.

The professional shall be liable for penal action under provisions of the Companies Act, 1956 in addition to the penal action under Regulations of respective professional Institutes in case of non-compliance with these guidelines.

Where e-form 1A has not been certified by the professional, the proposed name will be processed at the back end office of ROC and availability or non availability of name will be communicated to the applicant.

The name, if made available to the applicant, shall be reserved for sixty days from the date of approval. If, the proposed company has not been incorporated within such period, the name shall be lapsed and will be available for other applicants.

Even after incorporation of the company, the Central Government has the power to direct the company to change the name under section 22 of the Companies Act, 1956, if it comes to his

notice or is brought to his notice through an application that the name too nearly resembles that of another existing company or a registered trademark.

#### Memorandum and Articles of Association:

After ascertaining name availability from the Registrar of Companies steps should be taken to get the memorandum and articles of association for the proposed company drafted and printed. A public company limited by shares need not necessarily prepare and get its articles of association registered along with its memorandum of association. In such a case, Table “A” of Schedule I to the Companies Act, 1956 shall apply. However, as a matter of practice, every company gets the articles prepared to suit its individual requirements, and registered along with the memorandum of association. Before getting the memorandum and articles printed, it is advisable to have their drafts vetted by the concerned Registrar of Companies to avoid unnecessary expenditure of time and money in getting them printed and reprinted after incorporating modifications etc. that may be suggested by the Registrar. This would be especially desirable where promoters have no prior experience of company formation. After the vetting by Registrar, the memorandum and articles may be printed as required by Section 15 of the Act. If the promoters plan to get the securities of the proposed company listed with one or more designated stock exchanges, it is advisable to send the draft of the memorandum and articles of association to those stock exchanges for their scrutiny and suggestion to the effect whether they would like to have certain articles incorporated therein in compliance with the provisions of the Listing Agreements of the stock exchanges.

#### Dating of Memorandum and Articles of Association:

The memorandum and articles are then dated, but the date must be a date of stamping or later than the date of their stamping and not, in any event, a date prior to the date of their stamping.

#### Pre-Certification:

Form 18 and 32 are required to be pre-certified by a company secretary or chartered accountant or cost accountant in whole-time practice.

#### Registration and Filing Fee:

Promoters must make sure to remit to the Registrar, along with the above forms/ documents, the prescribed registration fee and fee for filing of forms as per the rates contained in Schedule X to the Companies Act, 1956. (Schedule X is given at Annexure II at the end of this study). The fee payable for the purpose can be remitted either electronically (by using a Credit

Card or by electronic Bank transfer) or by cash/draft through challan generated electronically on submission of the e-form.

Minimum Paid-up Capital:

Ensure that the minimum paid-up capital is 5 lakh rupees or such higher paid-up capital as may be prescribed.

Scrutiny of Documents and Forms by Registrar:

On receipt of the aforementioned documents, office of the Registrar of Companies will scrutinize them and if they are found complete in all respects, the Registrar will register the company and generate a CIN No. If the Registrar finds any defect or deficiency in any of the documents or forms, the attorney will be called by a communication to visit his office to remove the defect or make up the deficiency, where after the Registrar will register the company.

Issue of Certificate of Incorporation by Registrar:

After the registration of the company, the Registrar will issue under his hand and seal of his office, the Certificate of Incorporation in the name of the company and send it through post. One may also take printout of the Certificate of Incorporation generated online. The date given by the Registrar in the Certificate of Incorporation will be the date of incorporation of the company, on which date the company will be considered to have come into existence as a legal entity separate from its subscribers. (For specimen of Certificate of Incorporation, please see Annexure III at the end of this study).

Certificate of Commencement of Business:

On registration, a public company can't commence business so long it does not obtain Certificate of Commencement of Business.

#### PROCEDURE FOR INCORPORATION OF PRIVATE LIMITED COMPANY HAVING SHARE CAPITAL:

The procedure for the incorporation of a private limited company is same as that of a public limited company (as discussed above) with the following exception:

- (i) The company must have a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed.
- (ii) There must be at least two subscribers in place of seven.
- (iii) Registration of the articles of association is compulsory.

- (iv) The provisions of Section 3(1)(iii) of the Companies Act, 1956 should, be included while drawing up the memorandum and articles of association of a private limited company

**Memorandum of Association:**

Memorandum of association is the charter of the company and defines the scope of its activities. An article of association of the company is a document which regulates the internal management of the company.

Memorandum of association defines the relation of the company with the rights of the members of the company interest and also establishes the relationship of the company with the members.

**Definition- Memorandum:**

**As per Section 2(56) of the Companies Act,2013** “memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

**Memorandum Of Association:**

**Section 4** of the Companies Act,2013 deals with MOA. The Memorandum of a company shall contain the following;

**1. Name Clause:**

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.

**2. Situation Clause:**

The State in which the registered office of the company is to be situated.

**3. Object Clause:**

The objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

**4.Liability Clause:**

The liability of members of the company, whether limited or unlimited, and also state,—

*(i) in the case of a company limited by shares*— 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;

### **5.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**; and

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

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.

### **Identical/undesirable names;**

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

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 prescribed in the **Companies (Incorporation) Rules, 2014**.

unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

### **Reservation of name:**

A person may make an application in **Form No. INC.1** along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** 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

The Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of **sixty days from the date of the application**.

**Penalty:**

*If the company has not been incorporated*, the reserved name shall be cancelled and the person making application shall be liable to a penalty which may extend to **Rs.1,00,000/-**

**Action:**

*If the company has been incorporated*, the Registrar may, after giving the company an opportunity of being heard—

- either direct the company to *change its name within a period of three months, after passing an ordinary resolution*;
- take action for *striking off the name of the company from the register of companies*; or
- make a *petition for winding up of the company*.

**Form of Memorandum:**

The memorandum of a company shall be in respective forms as outlined below

S.No	Table	Form
1	Table A	MOA of a company limited by shares
2	Table B	MOA of a company limited by guarantee and not having share capital
3	Table C	MOA of a company limited by guarantee and having share capital
4	Table D	MOA of an unlimited company and not having share capital
5	Table E	MOA of an unlimited company and having share capital

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

**MOA- CA2013 Vs CA1956:**

S.No	CA,2013	CA,1956
1	It requires classification of objects as(i) Objects for which the company is proposed to be incorporated and(ii) Any other matter considered necessary in furtherance thereof.	The objects of the company should be classified in the memorandum as(i) main objects(ii) Incidental or ancillary objects (iii) Other objects

2	It requires that the memorandum shall state liability of members of the company whether unlimited or limited	The unlimited companies were not required to state in the memorandum that liability of the members of the company is unlimited.
3	A company shall not be registered with a name which contains 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	There is no such provision
4	It incorporates the procedural aspects of application for availability of name of proposed company or proposed new name for existing company	There is no such provision
5	It provides that the MOA of a company shall be in respective forms specified in Tables A,B,C,D,E of Schedule I of the 2013 Act as may be applicable to the company. It does not allow the memorandum to be in a form as near to the applicable Forms in Schedule I as the circumstances admit	It provides that the MOA of a company shall be in a such one of the forms in Table B,C,D,E of Schedule I of the 1956 Act as may be applicable to the case or in a Form as near thereto as the circumstances admit.

### Articles of Association:

#### Definition –Articles:

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

**Section 5** of the Companies Act,2013 deals with AOA.

The articles of a company shall contain the regulations for management of the company.

The articles shall also contain such matters, as may be prescribed.

It shall be not prevent a company from including such additional matters in its articles as may be considered necessary for its management.

#### Provisions for Retrenchment:

The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

The provisions for entrenchment shall only be made by

Private Company	on formation of a company, or by an amendment in the articles agreed to by all the members of the company
Public company	By a special resolution

#### Notice to Registrar:

Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in **Form No.INC.2 or Form No.INC.7**, as the case may be, along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** at the time of incorporation of the company or in case of existing companies, the same shall be filed in **Form No.MGT.14 within thirty days from the date of entrenchment** of the articles, as the case may be, along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014**

#### Form of Article :

The articles of a company shall be in respective forms as outlined below;

S.No	Table	Form
1	Table F	AOA of a company limited by shares
2	Table G	AOA of a company limited by guarantee and having share capital
3	Table H	AOA of a company limited by guarantee and not having share capital
4	Table I	AOA of an unlimited company and having share capital
5	Table J	AOA of an unlimited company and not having share capital

A company may adopt all or any of the regulations contained in the model articles applicable to such company.

In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

*Nothing in this section shall apply to the articles of a company registered under any previous company law unless amended under this Act*

**AOA- CA,2013 Vs CA,1956:**

S.No	CA,2013	CA,1956								
1`	It is compulsory for every company to have its own articles and file the same with ROC for registration.	Optional for a Public company limited by shares.Compulsory for other Companies								
2	<table><tr><td colspan="2">The articles may contain provisions for entrenchment.The provisions for entrenchment shall only be made by;</td></tr><tr><td>Private Company</td><td>on formation of a company, or by an amendment in the articles agreed to by all the members of the company</td></tr><tr><td>Public company</td><td>By a special resolution</td></tr><tr><td colspan="2">The company shall give notice to the Registrar for entrenchment provisions.</td></tr></table>	The articles may contain provisions for entrenchment.The provisions for entrenchment shall only be made by;		Private Company	on formation of a company, or by an amendment in the articles agreed to by all the members of the company	Public company	By a special resolution	The company shall give notice to the Registrar for entrenchment provisions.		There is no such provision
The articles may contain provisions for entrenchment.The provisions for entrenchment shall only be made by;										
Private Company	on formation of a company, or by an amendment in the articles agreed to by all the members of the company									
Public company	By a special resolution									
The company shall give notice to the Registrar for entrenchment provisions.										
3	The articles of a company shall be in the respective forms specified in Tables G,H,I,J in Schedule I as may be applicable to such company. <i>The liberty to have articles or in a form as near thereto as circumstances admit, which was available in the 1956 Act is no longer available in the 2013 Act.</i>	The articles of any company, not being a company limited by shares shall be in such Tables C,D,E in Schedule I as may be applicable <i>or in a form as near thereto as circumstances admit.</i>								

**POSSIBLE QUESTIONS**

**PART B**

ANSWER ALL THE QUESTIONS

1. Difference between Companies Act 1956 and Companies Act 2013.
2. Define Formation of a Company.
3. Define Promoters.
4. What are the functions of Promoters?
5. What are the duties of Promoters?
6. Define Doctrine of Ultravires.
7. What is Memorandum of Association?
8. What is Articles of Association?
9. Define Certification of Incorporation.
10. Define Forms.

PART C

ANSWER ALL THE QUESTIONS

1. Compare and contrast, "The Companies Act, 1956" and "The Companies Act, 2013".
2. Explain the characteristics of the company in detail.
3. Discuss the following briefly:
  - (i) Separate entity of a company
  - (ii) Perpetual succession
  - (iii) Corporate veil
4. Describe the Doctrine of Ultravires with reference to the affairs of the company.
5. Give a brief account on the nature and advantages of company law.
6. What is a Memorandum of Association? What are its contents and clauses? When and how may it be altered?
7. Explain the characteristics of the company in detail?
8. What are Articles of Association? How can they be altered? Discuss the limits upon the powers of the company to alter or add to the Articles of Association.
9. Explain the classification of companies according to "The Companies Act, 1956".
10. How is a company formed under the companies act, 1956? Enumerate the various documents to be filed with the Registrar.

CLASS: II B.COM      COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A      UNIT: I (COMPANIES ACT)

UNIT: I (COMPANIES ACT)

---

Prepared by Aravindaraj K, Assistant Professor, Department of Commerce, KAHE

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A UNIT: I (COMPANIES ACT)

BATCH: 2016-2019

16	Minimum no. of Directors in case of private company is _____	1	2	3	4	2
17	Age limit of Directors in case of public company is _____	65	70	75	80	65
18	Age limit of Directors in case of private company is _____	65	70	75	No limit	No limit
19	The company's nationality is decided by its _____	Shareholders	Registered office	Place at books of accounts are kept	investor	Registered office
20	The liability of members if company is limited by guarantee	Unpaid value of shares	Guarantee amount	Unlimited liability	limited liability	Guarantee amount
21	The liability of members if company is limited by shares	Unpaid value of shares	Guarantee amount	Unlimited liability	limited liability	Unpaid value of shares
22	If the company failed to refund application money with in 130 days from the date of issue of prospectus on non-receipt of minimum subscription who will be personally liable.	Company	Directors	Shareholders	secretary	Directors
23	Transfer of shares in the company is _____	Restricted	Freely transferable	Prohibited	not transfred	Freely transferable
24	Transfer of shares in the partnership firm is _____	Restricted	Freely transferable	Prohibited	not transfred	Restricted
25	Generally Company liability is _____	Limited	Unlimited	Situation does not arise	restricted	Limited
26	Generally partnership firm liability is _____	Limited	Unlimited	Situation does not arise	restricted	Unlimited
27	Partners are of the firm _____	Owners	Employers	Agents	manager	Agents

CLASS: II B.COM      COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A      UNIT: I (COMPANIES ACT)

BATCH: 2016-2019

28	XYZ private company had reduced to a single member and continued business more than 6 months. The company's liability will be.	Limited	Unlimited	Guarantee amount	Situation does not arise.	<b>Unlimited</b>
29	In the case of partnership firm. Audit is	Compulsory	Optional	restricted	not restricted	<b>Optional</b>
30	In the case of Company. Audit is	Compulsory	Optional	restricted	not restricted	<b>Compulsory</b>
31	Generally rights and obligations of the company are regulated in	AOA	M.O.A	Partnership deed.	limited	<b>M.O.A</b>
32	Generally rights and obligations of the Partnership firm are regulated in	AOA	M.O.A	Partnership deed.	unlimited	<b>Partnership deed.</b>
33	X is a director who has experience of 20 years on this basis X co. and taken him as a director. Can the X Co. say that the director X experience is company's experience	Yes	No	Situation does not arise.	restricted	<b>Yes</b>
34	A company is named as govt. company if it is holds _____% of paid up share capital	more than 30	more than 40	more than 50	more than 100	<b>more than 50</b>
35	Which companies are exempted to add "Ltd" or "Pvt Ltd" at the end of their name	Private	Govt	Defunct	Association not for profits	<b>Association not for profits</b>
36	If the companies does not increase their paid up capital by 1/5 lakhs with in 2 years such companies are known as _____	Private	Public	Defunct	Govt Company	<b>Defunct</b>
37	Under which sec. a private company can voluntarily converted into public company _____	34	44	54	64	<b>44</b>
38	Under which sec. a private company can automatically converted into a public company _____	34	43	53	35	<b>43</b>
39	Central Government permission is required in case of _____ conversion _____	Private to public	Public to private	Both (a) & (b)	holding company	<b>Public to private</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A UNIT: I (COMPANIES ACT)

BATCH: 2016-2019

40	With in how many days prospectus or statement in lieu of prospectus should file with ROC	30	40	20	50	<b>30</b>
41	_____ % of shares should be held by a company in another company so as to become subsidiary	more than 50	more than 40	more than 30	more than 20	<b>more than 50</b>
42	Liability under _____ sec. may be imposed only if it is proved that the companies business has been carried on with a view to defraud the creditors	540	541	542	543	<b>542</b>
43	In case of Non –Profit making Companies notice of general meeting should be given with in _____ days	14	15	21	22	<b>14</b>
44	In case of companies other than Non –Profit making Companies notice of G.M. should be given with in _____ days	14	15	21	22	<b>21</b>
45	According to which sec. name of the company should end with “Ltd” or “Pvt Ltd”	10	11	12	13	<b>13</b>
46	The companies which are formed under special charter granted by the king or queen of England are called	Statutory companies	Registered companies	Chartered companies	holding company	<b>Chartered companies</b>
47	The companies which are formed under special Act. Those companies are called as	Chartered companies	Statutory companies	Registered companies	holding company	<b>Statutory companies</b>
48	The companies which are formed under companies Act. 1956. They will be called as	Chartered companies	Statutory companies	Registered companies	holding company	<b>Registered companies</b>
49	Invitation to public offering shares or debentures in case of private company	Prohibited	Restricted	Acceptable	not mandatory	<b>Prohibited</b>
50	Accepting of deposits from public in case of private company is	Prohibited	Restricted	Acceptable	not mandatory	<b>Prohibited</b>
51	Maximum paid up capital in case of public company.	50 Lakhs	100 Lakhs	125 Lakhs	5lakhs	<b>5lakhs</b>
52	Y Pvt.Co. is subsidiary of X Co. which is a public Company? Mention Y is a	Private Co	Public Co.	Government Co.	holding company	<b>Public Co.</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A UNIT: I (COMPANIES ACT)

BATCH: 2016-2019

53	Transfer of shares in the case of public company is	Prohibited	Restricted	Freely transferable	Illegal	<b>Freely transferable</b>
54	XYZ Co, is having 15% share capital held by X Company and 50% held by Central Government and 10% held by State Government and 25% held by other people then that company will be	Government Company	Private Company	Public Company	holding company	<b>Government Company</b>
55	XYZ Co, is having 10% share capital held by another Public Company and 35% held by Central Government and 55% held by people then that Company is	Government Company	Private Company	Public Company	charter company	<b>Government Company</b>
56	Which of the following companies must file a statement in lieu of prospectus?	A private limited company	A cooperative society .	C. A company that has issued a prospectus .	A public company that has not issued a prospectus .	<b>A public company that has not issued a prospectus .</b>
57	A foreign company means a company incorporated _____ India and having a place of business _____ India .	A outside, outside	in, in .	. in , outside .	outside, in	<b>outside, in</b>
58	A/an _____ may become a director of a company	partnership firm	. person of unsound mind	individual .	body corporate .	<b>individual .</b>
59	How many directors of a public company, unless the articles provide otherwise, must be appointed by the company in general meeting	All the directors	One half of the directors .	Two-thirds of the directors	Three-fourths of the directors .	<b>Two-thirds of the directors</b>
60	. The _____ constitute the top administrative organ of the company. .	A general manager	shareholder s.	board of directors .	advisory panel .	<b>board of directors .</b>

## UNIT II

### DIRECTORS

Directors -Qualification and Disqualification of Directors -Appointment of Directors -Removal of Directors -Director's remuneration -Powers of Directors-Duties of Directors -Liabilities of Directors.

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

II. Responsibility:- The board of directors of a company is primarily responsible for:

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

III. Minimum Directors Required in Company:-

- i. One Person Company:-                      One Director.
- ii. Private Limited Company:-                      Two Directors.
- iii. Public Limited Company:-                      Three Directors.

Maximum 15 directors can be appointed in any format of Company (OPC, Public, Private). Bypassing Special Resolution Company can increase the number of Directors beyond 15. Out of appointed directors one director should be resident in India for more than 182 days in previous calendar year.

Types of Directors:-

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

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

A} Public Companies having Paid up Share Capital-Rs.10 Crores or More;

B} Public Compnies having Turnover- Rs.100 Crores or More;

C) Public Companies have total outstanding loans, debenture and deposits of Rs. 50 Crores or More.

Person Qualified for Independent Directorship:-

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

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

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

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

D) none of whose relatives has or had pecuniary relationship with company, its HSA company or their Promoters, directors -amounting to 2% or more of its gross turnover or total income; -or fifty lakhs or such higher amount as may be prescribed, whichever is lower. During the 2 immediately preceding financial years or during current financial year.

E) Who neither himself nor any of his relative-

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

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

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

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

F) Who possesses such other qualification as may be prescribed.

Tenure of Director:-

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

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

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

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

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

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

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

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

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

9. Difference Between Executive and Non-Executive Director:- An Executive Director can be either a Whole-time Director of the company (i.e., one who devotes his whole time of working hours to the company and has a significant personal interest in the company as his source of income), or a Managing Director (i.e., one who is employed by the company as such and has substantial powers of management over the affairs of the company subject to the superintendence, direction and control of the Board). In contrast, a non-executive Director is a Director who is neither a Whole-time Director nor a Managing Director.

Independent Directors:

Section 2(47) of the Act prescribed that “Independent director” means an independent director referred to in sub section (5) of section 149 of the Act. In fact reference should have

been made to sub section (6) of 149 as it specified the qualifications of independent director with clarity.

Every listed public company shall have at least one-third of the total number of directors as independent directors (fraction is to be rounded off to one). Central Government has prescribed under Rule 4, public companies with specified limits as on the last date of latest audited financial statements mentioned below shall also have at least 2 directors as independent directors:- paid up share capital of Rs. 10 crore or more; or turnover of Rs. 100 crore or more; or in aggregate, outstanding loans/borrowings/ debentures/ deposits/ exceeding Rs. 50 crore or more.

In case a company covered under this rule is required appoint higher number of independents directors due to composition of its audit committee and then they shall appoint such higher number of independent directors. Further if there is any intermittent vacancy of an independent director then it shall be filled up by the board of directors within 3 months from the date of such vacancy or not later than immediate next board meeting, whichever is later. Once the company covered under above sub-rule (i) to (iii) of Rule 4, ceases to fulfil any of three conditions for three consecutive years then it shall not be required to comply these provisions until such time as it meets any of such conditions.

#### Definition of an Independent Director – Section 149 (6)

An independent director means a director other than a managing director or a whole-time director or a nominee director who does not have any material or pecuniary relationship with the company/ directors. Section 149(6) of the Act prescribes the criteria for independent directors which are as follows:

- (a) Who in the opinion of the Board, is a person of integrity and possesses relevant industrial expertise and experience;
- (b) Such individual shall not be a promoter or related to promoter of the company or its holding, subsidiary or associate company;
- (c) Such individuals must not have any material or pecuniary relationship during the two immediately preceding financial years or during the current financial year with the company or its promoters/directors/holding/subsidiary/ associate company.
- (d) The relatives of such person should not have had any pecuniary relationship with the company or its subsidiaries, amounting to 2% or more of its gross turnover or total income or Rs. 50 lacs or such higher amount as may be prescribed, whichever is less, during the two immediately preceding financial years or in the current financial year;

(e) He must not either directly or any of his relatives

(i) hold or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed.

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company, then also he is not eligible for office of independent director; or

(f) who possesses such other qualifications as prescribed in Rule 5 as an independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

#### Declaration by an Independent Director

Section 149 (7) Section 149 (7) of the Act, prescribed that every independent director shall give a declaration that he meets the criteria of independence when:

(a) He attends the first meeting of the Board as a director;

(b) Thereafter at the first meeting of the Board in every financial year and

(c) Whenever there is any change in the circumstances which may affect his status as an independent director.

Further “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government or any other person to represent its interests. Code of Conduct for an Independent Director and Company-Section 149 (8) Section 149 (8) of the Act prescribed that the company and independent directors shall abide by the provisions specified in Schedule IV regarding code for independent directors. It is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfillment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors. Code of Conduct includes guidelines of professional conduct, role and functions, duties, manner of appointment, re-appointment, resignation or removal, separate meetings, evaluation mechanism.

#### Remuneration of an Independent Director:-

Section 149(9) As per section 149 (9) of the Act an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee, reimbursement of expenses incurred for participation in the Board and other committee meetings and profit related commission as may be approved by the members as provided under section 197 (5) of the Act.

#### Appointment of an Independent Director:-

Section 149(10) Subject to the provisions of Section 152, an independent director can be appointed for a term of up to five consecutive years on the Board. However, in case of his reappointment for further five year then special resolution passed in general meeting and disclosure of such appointment is made in the Board’s report shall be required.

Further independent director can be considered for re-appointment after expiration of three years of ceasing to become an independent director but he must not be appointed / associated with the company directly or indirectly in any other capacity during the staid period of three years. Any tenure of an independent director on the date of commencement of this Act is not considered for the above term. {Section 149 (11)} The provisions of retirement of directors by rotation are not applicable on Independent director. {Section 149 (13)} Further, in case of independent directors, the explanatory statement relating to their appointment should contain a declaration from the Board that in their opinion, the independent directors satisfy the conditions provided in the Act for such appointment. {proviso to Section 152 (5)}

#### Liability of an Independent Director-Section 149 (12):

An independent director and a non-executive director except the promoter or key managerial personnel, shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes and with his consent or connivance or where he had not acted diligently. Manner of selection of an Independent Director-Section 150 According to section 150 (1) of the Act, independent directors may be selected from a data bank of eligible and willing persons maintained by the agency (Any body, institute or association as may be authorized by Central Government). Such agency shall put data bank of independent directors on the website of Ministry of Corporate Affairs or any other notified website. Company must exercise due diligence before selecting a person from the data bank referred to above, as an independent director. This section further stipulates that the appointment of independent directors has to be approved by members in a General meeting and the explanatory statement annexed to the notice must indicate justification for such appointment. Rule 6 (2) prescribed that such data bank shall contain, the following details who is eligible and willing to be appointed as independent director:

- (a) DIN (Director Identification Number);
- (b) Name and surname in full;
- (c) Income-tax PAN ;
- (d) Father's/Mother;s/ Spouse's name( if married) ;
- (e) Date of Birth;
- (f) Gender;
- (g) Nationality;
- (h) Occupation;
- (i) Full Address with PIN Code (present and permanent)
- (j) Phone number;
- (k) E-mail id;
- (l) Educational and professional qualifications;
- (m) Experience / expertise, if any;
- (n) Any legal proceedings initiated or pending against such person;

(o) List of limited liability partnerships in which he is or was a designated partner along with Name of the LLP, Nature of Industry; and Duration- with dates;

(p) List of companies in which he is or was director along with Name of the company; Nature of industry; Nature of directorship – Executive / Non-executive / Independent / Nominee Director; and Duration – with dates.

A disclaimer shall conspicuously be displayed on the website along with the databank that a company must carry out its own due diligence before appointment of any person as an independent director and the agency maintaining the databank or the Central Government shall not be responsible for accuracy of information or lack of suitability of the person whose particulars from part of the databank. {Rule 6(3)}

Any person who desires to get his name included in the data bank of independent directors shall make an application to the agency in Form DIR-1 Application for inclusion of name in the databank of Independent Directors which includes the personal, educational, professional, work experience, other Board details of the applicant {Rule 6(4)}. The agency may charge a reasonable fee from the applicant for inclusion of his name in the data bank of independent directors {Rule 6 (5)}.

An existing or applicant of such data bank of independent directors shall intimate any changes in his particulars within fifteen days of such change to the agency {Rule 6 (6)}. Rule 6 (7) prescribed that the databank posted on the website shall:

- a. be accessible at the specified website;
  - b. be substantially identical to the physical version of the data bank;
  - c. be searchable on the parameters specified in rule 6 (2);
  - d. be presented in a format or formats convenient for both printing and viewing online;
- and
- e. contain a link to obtain the software required to view / print the particulars free of charge.

#### APPOINTMENT OF DIRECTORS –

Section 152 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. 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 one-third, 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.

#### Punishment - Section 159:

If any individual or director of a company, contravenes any of the provisions of section 152/155/156 such individual or director of the company shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 50,000 and where the contravention is a continuing one, with a further fine which may extend to Rs. 500 for every day after the first day during which the contravention continues.

#### Appointment of Additional Director:-

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

#### Appointment of Alternate Director-

Section 161 (2) Section 161(2) of the Act allowed the followings:

- (i) The Board of Directors of a company must be authorized by its articles or by a resolution passed by the company in general meeting for appointment of alternate director.
- (ii) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.
- (iii) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the Company.
- (iv) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria for Independent Directors.

- (v) An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.
- (vi) If the term of office of the original director is determined before he so returns to India, any provision for the automatic reappointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

#### Appointment of Directors by Nomination Section 161(3)

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

#### Appointment of Directors in causal vacancy- Section 161 (4)

If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

#### Appointment of directors to be voted individually Section 162(1):

A single resolution shall not be moved for the appointment of two or more persons as directors of the company unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it. A resolution moved in contravention of aforesaid provision shall be void, whether or not any objection was taken when it was moved. A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

#### Proportional representation for appointment of directors- Section 163:

The articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

Right of persons other than retiring directors to stand for directorship- Section 160

A person who is not a retiring director shall be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution.

Notice of candidature of a person for directorship- Section 160(2) and Rule 13 The company shall inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office, at least seven days before the general meeting by serving individual notices to members through e-mail and where no e-mail address is available then in writing and by placing notice of such candidature or intention on the website of the company, if any.

If the company advertises such candidature/intention, not less than 7 days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the registered office's district and at least once in English language in an English newspaper circulating in that district in which the registered office of the company is situated, then it shall not be required to serve individual notices upon the members as aforesaid.

## MANAGERIAL REMUNERATION

Just as profits drive business, incentives drive the managers of business. Not surprisingly then, in a fiercely competitive corporate environment, managerial remuneration is an important piece in the management puzzle. While it is important to incentivize the workforce performing the challenging role of managing companies, it is equally important not to go overboard with the perks and the pay. In India, to keep a check on unnecessary profit squandering by companies and, at the same time, to ensure adequate and reasonable compensation to managerial personnel, the law intervenes to do the balancing act.

### Remuneration to Managerial Personnel Section 197 of the Companies Act, 2013

Prescribed the maximum ceiling for payment of managerial remuneration by a public company to its managing director whole-time director and manager which shall not exceed 11% of the net profit of the company in that financial year computed in accordance with section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

Further, the company in general meeting may, with the approval of the Central Government, authorize the payment of remuneration exceeding 11% of the net profits of the company, subject to the provisions of Schedule V. The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

The remuneration payable to any one managing director or whole time director or manager shall not exceed 5% of the net profits of the company and if there are more than one such director remuneration shall not exceed 10% of the net profits to all such directors and manager taken together. Except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

— 1% of the net profits of the company, if there is a managing or whole-time director or manager;

— 3% of the net profits in any other case. The percentages aforesaid shall be exclusive of any fees payable to directors for attending the meeting of the board/committees or for such other purposes as decided by the board.

Remuneration by a Company having no Profit or Inadequate Profit:

If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V and if it is not able to comply with Schedule V, with the previous approval of the Central Government.

In cases, where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.

Remuneration to Directors in other Capacity [Section 197(4)]

The remuneration payable to the directors including managing or whole-time director or manager shall be inclusive of the remuneration payable for the services rendered by him in any other capacity except the following:

- (a) The services rendered are of a professional nature; and

(b) In the opinion of the Nomination and Remuneration Committee (if applicable) or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Powers of the Board – Companies Act, 2013 Vs Companies Act, 1956

S. No	Particulars	Companies Act, 2013	Companies Act, 1956	Changes
1	Applicability	Section – 179 read with Rule 8 of the Companies (Meetings of the Board and its Powers) Rules, 2014	Section – 291 & 292	--
2	Powers of Board	<p>The Board of Directors shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely :-</p> <p>(a) to make calls on shareholders in respect of money unpaid on their shares;</p> <p>(b) to authorise buy-back of securities under section 68;</p> <p>(c) to issue securities, including debentures, whether in or outside India;</p> <p>(d) to borrow monies;</p> <p>(e) to invest the funds of the company;</p> <p>(f) to grant loans or give guarantee or provide security in respect of loans;</p> <p>(g) to approve financial statement and the Board's report;</p>	<p>The Board of directors shall exercise the following powers on behalf of the company, and it shall do so only by means of resolutions passed at meetings of the Board :-</p> <p>(a) the power to make calls on shareholders in respect of money unpaid on their shares ;</p> <p>(aa) the power to authorise the buy-back referred to in the first proviso to clause (b) of sub-section (2) of section 77A;</p> <p>(b) the power to issue debentures;</p> <p>(c) the power to borrow moneys otherwise than on debentures;</p> <p>(d) the power to invest the funds of the company; and</p> <p>(e) the power to make loans</p>	<p>Following powers have been introduced as per Companies Act, 2013 to be exercised by the Board only at their meeting: -</p> <p>- To issue securities, including debentures, whether in India or outside;</p> <p>- To grant loans or give guarantee or provide security in respect of loans;</p> <p>- To approve financial statement and</p>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A UNIT: II (DIRECTORS)  
BATCH: 2016-2019

		<p>(h) to diversify the business of the company;</p> <p>(i) to approve amalgamation, merger or reconstruction;</p> <p>(j) to take over a company or acquire a controlling or substantial stake in another company;</p> <p>(k) any other matter which may be prescribed **.</p> <p><i>** Rule 8 of the Companies (Meetings of the Board and its Power) Rules, 2014.</i></p> <p>1.To make political contributions;</p> <p>2.To appoint or remove key managerial personnel (KMP);</p> <p>3.To appoint internal auditors and secretarial auditor;</p>		<p>the Board's report;</p> <ul style="list-style-type: none"> <li>- To diversify the business of the Company;</li> <li>- To approve amalgamation, merger or reconstruction;</li> <li>- To take over a Company or acquire a controlling or substantial stake in another Company; and</li> <li>- Such other matters relating to political contributions, appoint or remove key managerial personnel and appointment of internal &amp; secretarial Auditors.</li> </ul>
3	Delegation of Powers	The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company,	The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the	Now, while delegating the power to any committee or any specified person, it is not necessary to specify the amount up to

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A UNIT: II (DIRECTORS)  
BATCH: 2016-2019

		the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.	company, a principal officer of the branch office, the powers specified in clauses (c), (d) and (e) to the extent specified in sub-sections (2), (3) and (4) respectively, on such conditions as the Board may prescribe. Every resolution delegating the power referred in clauses (c), (d) & (e) mentioned above shall specify the total amount upto which the borrowing/investment and its nature /loans including the maximum amount of loans which may be made for each such purpose in individual cases.	which that power can be exercised.
4	Filing of Resolution passed	<p>As per Section 117(3) (g) read with Rule 24 of the Companies (Management and Administration) Rules, 2014 Rules, 2014-</p> <ul style="list-style-type: none"> <li>Resolutions passed in pursuance of subsection (3) of section 179 is to be filed together with explanatory statement u/s 102, if any with the Registrar in Form-MGT-14 within 30 days of its passing along with the Fee.**</li> </ul> <p><i>** In case of private companies section 117(3)(g) shall not apply – Notification dated 5-6-2015.</i></p>	Filing of resolution passed as per prescribed section was not required.	Resolution passed in pursuance of subsection (3) of section 179 read with rules is to be filed in Form-MGT-14 within 30 days with ROC for Public Companies.

DIRECTORS' DUTIES UNDER SECTION 166:

The 2013 Act has now codified directors' duties (similar to the UK Companies Act) under Section 166. The provisions of this Section apply to all categories of directors, including independent directors.

Section 166 of the 2013 Act stipulates the following:

- (a) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of a company.
- (b) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- (c) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- (d) A director of a company shall 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.
- (e) A director of a company shall 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 of the company.
- (f) A director of a company shall not assign his office and any assignment so made shall be void.

The duties set out in this Section are not exhaustive. Apart from the duties set directors are also responsible for various obligations provided under other Sections of the 2013 Act. For example:

The board needs to lay the financial statements for approval and adoption at the annual general meeting of the shareholders (Section 129);

- The directors are responsible for devising proper systems to ensure compliance with the provisions of all applicable laws and to ensure that such systems are adequate and are operating effectively (Section 134);

- Director needs to ensure that the company complies with obligations relating to corporate social responsibility provided under Section 135;
- The board is responsible for appointing first auditors (Section 139);
- A director needs to disclose his interest in a contract with the company (Section 184);
- A director is prohibited from engaging in forward dealing of securities (Section 194);
- The board is responsible for appointment of whole time key managerial personnel (Section 203);
- The directors are responsible for issuance of notice and holding of board meetings and general meetings etc.

#### LIABILITY OF DIRECTORS

Contravention of provisions of Section 166 (relating to codified duties) is punishable with a fine which shall not be less than Rs 1 Lakh but which may extend to Rs 5 lakhs. Further, penal provisions throughout the 2013 Act have been made more stringent and provide for increased penalties as compared to the 1956 Act. On an average, the minimum amount of fine that is imposed under certain Sections is Rs 25,000 which in certain cases extends to Rs 25 crores or even more. Set out below is the list of few contraventions, where the penalties are Rs 1 crore or more:

- (a) Violation of provisions relating to not-for-profit companies (Section 8);
- (b) Violation of provisions relating to subscription of securities on private placement (Section 42);
- (c) Issue of duplicate share certificates with an intent to defraud (Section 46 (5));
- (d) Failure to repay deposits within specified time (Section 74 (3));
- (e) Contravention of provisions relating to insider trading (Section 195 (2)).

Apart from monetary penalties, certain offences even attract imprisonment. Most of the offences leading to imprisonment under the 2013 Act are non-cognizable (that is would need warrant to arrest) but there are certain serious offences which are cognizable in nature and would

not require a warrant to arrest. These offences are mainly connected to fraud or intent to defraud. Some of such offences are listed below:

(a) Furnishing of any false or incorrect particulars of any information or suppressing any material information in any of the documents filed with the Registrar of Companies in relation to the registration of a company (Section 7 (6);

(b) Including in the prospectus any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead (Section 34);

(c) Fraudulently inducing persons to invest any money (Section 36);

(d) Default under Section 56 relating to transfer and transmission of shares with an intent to defraud;

(e) Offences relating to reduction of share capital (Section 66). The company has the right to initiate legal action against directors, in case of breach of their duties.

Apart from this, the 2013 Act has also introduced the novel concept of 'class action suits' under Section 245. Under this concept, a group of shareholders (constituting a minimum of 100 shareholders or such minimum percentage of total shareholders as may be prescribed) can bring an action on behalf of all affected parties, against the company and/or its directors, for any fraudulent or wrongful act or omission of conduct on its/their part.

Further, the 2013 Act proposes to set up a National Company Law Tribunal which is expected to provide speedier and more efficient remedy. Apart from the 2013 Act, there are several other statutes, such as Negotiable Instruments Act, Consumer Protection Act, which lay down increased liabilities on directors. In case of default on the part of the Company, there are several instances where the complainant as a strategy, would make all the directors party to the suit, to put pressure on the company. Once a director is made a party, he will have to go through the time consuming and cumbersome court procedures to prove his innocence. This will no doubt cause lots of hardship and inconvenience to an innocent director.

POSSIBLE QUESTIONS

PART B

ANSWER ALL THE QUESTIONS

1. Define Directors.
2. What are the qualifications of a Director?
3. What are the disqualifications of a Director?
4. Define Appointment of a Director.
5. Define Removal of a Director.
6. What are the powers of a Director?
7. What are the duties of a Director?
8. What are the liabilities of a Director?

PART C

ANSWER ALL THE QUESTIONS

1. . What are the qualifications of a Director? On what basis a Director is disqualified from a company?
2. (i) How are directors appointed by a company in general meeting?  
(ii) How may some of the directors of a public company be appointed otherwise than by the company in general meeting?
3. Discuss the provisions of the Companies Act, 1956 regarding the mode of appointment of the directors of a company.
4. Discuss the powers and duties of a director of a company under the companies act, 1956.
5. What are the provisions of the Companies Act, 1956 which apply both to a manager and a managing director?
6. What are the statutory provisions regarding:  
(i) Disclosure in the company's accounts of loans made to its directors?  
(ii) Remuneration payable to its director?  
(iii) Disclosure by directors of their interest in contracts?
7. What are the disqualifications of directors? What are the effects of invalid appointment of a director?

8. What restrictions have been imposed by the Companies Act, 1956 on the exercise of the director's power?
9. Must a limited company under the Companies Act, 1956 have Directors? What are the qualifications of a Director? When is a person disqualified for appointment as a director of a company?
10. b. Discuss briefly the provisions of the companies Act, 1956 as to the appointment of a manager.

KAHE

**KARPAGAM ACADEMY OF HIGHER DEUCATION**

CLASS: II B.COM    COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A    UNIT: II (DIRECTORS)

BATCH: 2016-2019

		OPTION1	OPTION2	OPTION3	OPTION4	ANSWER
1	The _____ defines the scope of a companys activities	prospectus	statutory declaration	memorandum of association	articles of association	<b>memorandum of association</b>
2	Private company can start its business immediately after the issue of	Certificate of commencement of Business	Certificate of Incorporation	Both (a) & (b)	business licence	<b>Certificate of Incorporation</b>
3	Public company Should start business only after getting certificate of	Incorporation	Commencement of business	Both (a) & (b)	business licence	<b>Commenceme nt of business</b>
4	The doctrine of indoor management is an _____ to the doctrine of constructive notice	Exception	Extension	Alternative	alteration	<b>Extension</b>
5	The doctrine of _____ does not apply to acts void ab initio.	Ultra virus	Intra virus	constructive notice	Indoor managemen t	<b>Indoor management</b>
6	In how many days did the company have its registered office after incorporation	10	20	30	40	<b>30</b>
7	Address of the registered office is situated in	MOA	AOA	Prospectus	company profile	<b>AOA</b>
8	Ultra vires means	Beyond the power	with in the power	Both (a) & (b)	act	<b>Beyond the power</b>
9	Ultra vires loans granted by the company are	Void	Voidable	Valid	contengent	<b>Void</b>
10	_____ conceives the idea of the business	Promoters	Directors	Auditors	secretary	<b>Promoters</b>

**KARPAGAM ACADEMY OF HIGHER DEUCATION**

CLASS: II B.COM    COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A    UNIT: II (DIRECTORS)

BATCH: 2016-2019

11	_____stands in the fiduciary position of the company	Directors	Promoters	Auditors	secretary	<b>Promoters</b>
12	Contracts made after incorporation but before the grant of Certificate of commencement of	Provisional contracts	Preincorporation contracts	Preliminary contracts	Both (b) & (c)	<b>Preliminary contracts</b>
13	A company can change its name at its own discretion by passing _____	Ordinary resolution	Special resolution	Boards resolution	board meeting	<b>Special resolution</b>
14	Any change in the address of the registered office must be communicated to the registrar with in	15 days	30 days	1 Month	12 months	<b>1 Month</b>
15	An act ultra virus the directors can be rectified if it is not ultra vires	the articles	the memorandum	Company Act	special resolution	<b>Company Act</b>
16	The lending of funds ultra vires, the company has no rights	under the company's Act	contract Act	under equity	the memorandum	<b>under the company's Act</b>
17	If a new company get registered with a name which resembles the name of existing company then it should apply to whom?	NCLT	SEBI	ROC	AOA	<b>NCLT</b>
18	Companies are now allotted a _____ in addition to their name	PAN	SIN	PIN	CIN	<b>CIN</b>
19	In how many days did the company have its registered office after incorporation	10	20	30	40	<b>30</b>
20	Under which sec. if company fails to commence its main object the court may order winding up	403 (f)	413 (f)	423 (f)	433 (f)	<b>433 (f)</b>
21	In case of forgeries acts done in the name of the company are	Valid	Void	Void ab initio	contengent	<b>Void ab initio</b>

**KARPAGAM ACADEMY OF HIGHER DEUCATION**

CLASS: II B.COM    COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A    UNIT: II (DIRECTORS)

BATCH: 2016-2019

22	Signature of memorandum and articles should be done by _____ number of persons in case of public company	7	5	4	8	7
23	Signature of memorandum and articles should be done by _____ number of persons in case of private company	3	4	2	10	2
24	MOA should be in form _____ in case of company limited by shares	Table A	Table B	Table C	Table D	<b>Table B</b>
25	MOA should be in form _____ in case of company limited by guarantee not having share capital	Table A	Table B	Table C	Table D	<b>Table C</b>
26	MOA should be in form _____ in case of a unlimited liability	Table A	Table B	Table E	Table F	<b>Table E</b>
27	the MOA there are 6 classes. We can alter all clauses expect one clause. What is that clause?	Objects clause	Name clause	capital clause	Liability clause	<b>Association clause</b>
28	If any body wants to file a case against the company they should file at what place _____	Company	Registered Office	Books of accounts	BOD	<b>Registered Office</b>
29	A company must have a registered office from the day on which it <u>commences business</u> or <u>____ day after its incorporatio</u> which ever is earlier	20	10	15	30	<b>30</b>
30	Which of the following need not have MOA	Public company	Private company	Government company	Statutory Corporation.	<b>Statutory Corporation.</b>
31	Address of the registered office is situated in	MOA	AOA	Prospectus	certificate of	<b>AOA</b>

**KARPAGAM ACADEMY OF HIGHER DEUCATION**

CLASS: II B.COM    COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A    UNIT: II (DIRECTORS)

BATCH: 2016-2019

					incorporati on	
32	A company can change its name by passing	Ordinary resolution	Special resolution	Either by special resolution or by ordinary resolution	Court	<b>Either by special resolution or by ordinary resolution</b>
33	For changing name of a company Central Govt. permission must be taken	Yes	No	no inquiries are made	compulsor y	<b>Yes</b>
34	If the name of the company is identical with or similar to an existing company then which resolution should be passed to change name	Ordinary resolution	Special Resolution	Court	board meeting	<b>Ordinary resolution</b>
35	Alteration of articles must be done only by passing	Special resolution	Ordinary resolution	Court	board meeting	<b>Special resolution</b>
36	The granting of the certificate of incorporation renders the illegal objects include in the memorandum	Legal	Void	Voidable	enforceble	<b>Void</b>
37	Change in objects clauses can be effected	For any reason	For special reason only	to comply with C.G order	Annual General Meeting	<b>For special reason only</b>
38	The capital clause of a company can be changed with the permission of _____	Company law board	Registrar	Court	board meeting	<b>Court</b>
39	Separate legal entity means_____.	limited liability	. not separate from its members.	Separate from its members.	common seal.	<b>Separate from its members.</b>
40	What is known as a charter of a	Memorandum of	Bye laws	Articles of	Prospectus.	<b>Memorandum</b>

**KARPAGAM ACADEMY OF HIGHER DEUCATION**

CLASS: II B.COM    COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A    UNIT: II (DIRECTORS)

BATCH: 2016-2019

	Company?	Association		Association		of Association
41	. The name of a company can be changed by_____.	an ordinary resolution	. a special resolution	. the approval of the union government	a special resolution and with the approval of the central government	<b>a special resolution and with the approval of the central government</b>
42	Mark out the type of alteration that is permitted in the articles of association	that may not be in the companys interest	that is contrary to the provisions of the companies act.	that increases a members liability without his written consent .	that is consistent with the memorandum of association	<b>that is consistent with the memorandum of association</b>
43	_____ companies must have their own Articles.	Government companies	Unlimited companies.	Companies limited by shares.	Registered companies.	<b>Unlimited companies.</b>
44	Which of the following companies must file a statement in lieu of prospectus?	A private limited company	A cooperative society	A company that has issued a prospectus	A public company that has not issued a prospectus .	<b>A public company that has not issued a prospectus .</b>
45	Any person dealing with a company is deemed to have knowledge of its_____.	memorandum of association	articles of association .	both memorandum of association & articles of association	prospectus.	<b>both memorandum of association &amp; articles of association</b>

**KARPAGAM ACADEMY OF HIGHER DEUCATION**

CLASS: II B.COM    COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A    UNIT: II (DIRECTORS)

BATCH: 2016-2019

46	The rules and regulations for the internal management of a company are contained in its_____.	prospectus	annual report	memorandum of association	articles of association .	<b>articles of association .</b>
47	The articles of association establish the relationship between_____.	the company and its members	the company and outsiders.	the company and its members and members inter	. the company and other companies .	<b>the company and its members and members inter .</b>
48	. Mark out the document that need not be prepared and registered with the registrar of companies in public limited companies.	statutory declaration	memorandum of association .	articles of association	directors undertakings to take up and pay for qualification shares.	<b>articles of association .</b>
49	Which of the following documents may be changed with retrospective effect?	Memorandum of association	prospectus .	Articles of association	Statement in lieu of prospectus	<b>Articles of association .</b>
50	The objects clause of the memorandum of association can be altered by a/an_____.	ordinary resolution	special resolution	special resolution and confirmation by Registrar of companies	special resolution and confirmation by the company Law Board	<b>special resolution and confirmation by the company Law Board</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM    COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A    UNIT: II (DIRECTORS)

BATCH: 2016-2019

51	. If the articles of association do not authorize a change in capital then to alter the companys capital _____.	table A may be adopted	the articles may be ignored as they are not legally binding	the articles should be altered	permission is to be got from the registrar of companies.	<b>table A may be adopted .</b>
52	The articles of association can be altered by_____.	a resolution of the board of directors	an ordinary resolution in general meeting .	a special resolution in general meeting	obtaining permission from the company law board .	<b>a special resolution in general meeting</b>
53	. With regard to the internal proceedings of a company, any outsider dealing with the company is entitled to assume that_____.	everything has been done regularly	nothing has been done regularly .	he must enquire into the regularity	he need not to enquire regularly.	<b>everything has been done regularly</b>
54	. The principle that so far as the companys internal working is concerned , strangers dealing with the company are entitled to assume that everything has been regularly done has been laid down in the _____.	doctrine of indoor management	principle of constructive notice.	principle of management by exception	managemen t by objectives.	<b>doctrine of indoor management .</b>
55	The directors of a company had issued a bond to kiran. The directors were authorized to issue such a bond, provided a resolution was passed to that effect. No such resolution had, however, been passed in this case. Kiran could still recover the amount of the bond owing to the operation of the _____.	principle of constructive notice	doctrine of indoor management	principle of management by exception	certificate of notice.	<b>doctrine of indoor management</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM    COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A    UNIT: II (DIRECTORS)

BATCH: 2016-2019

	_____.					
56	. The _____ constitute the top administrative organ of the company. .	general manager	shareholders.	board of directors	advisory panel .	<b>board of directors .</b>
57	The doctrine of constructive notice implies that _____.	every person dealing with the company is deemed to have notice of the documents field	with the registrar of companies	regularity of proceedings need be enquired into a notice of a weeks period is to be given for every exchange of correspondence	indoor management	<b>every person dealing with the company is deemed to have notice of the documents field</b>
58	If the articles of association do not authorize a change in capital then to alter the companys capital _____.	table A may be adopted	the articles may be ignored as they are not legally binding	the articles should be altered	permission is to be got from the registrar of companies.	<b>he articles should be altered .</b>
59	An exception to the doctrine of constructive notice is _____.	the doctrine of ultra vires	the doctrine of indoor management .	lifting the corporate veil	the doctrine of ultra vires in Articles of Associatio n.	<b>the doctrine of indoor management .</b>
60	. Protection can be claimed under the doctrine of constructive notice if _____.	the act is voidable	no inquiries are made	no inquiries are made	resolution	<b>no inquiries are made</b>

CLASS : II B. Com. (CS)

COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE

COURSE CODE : 16COU402

BATCH : 2016 - 2019

UNIT: III (Company Meetings)

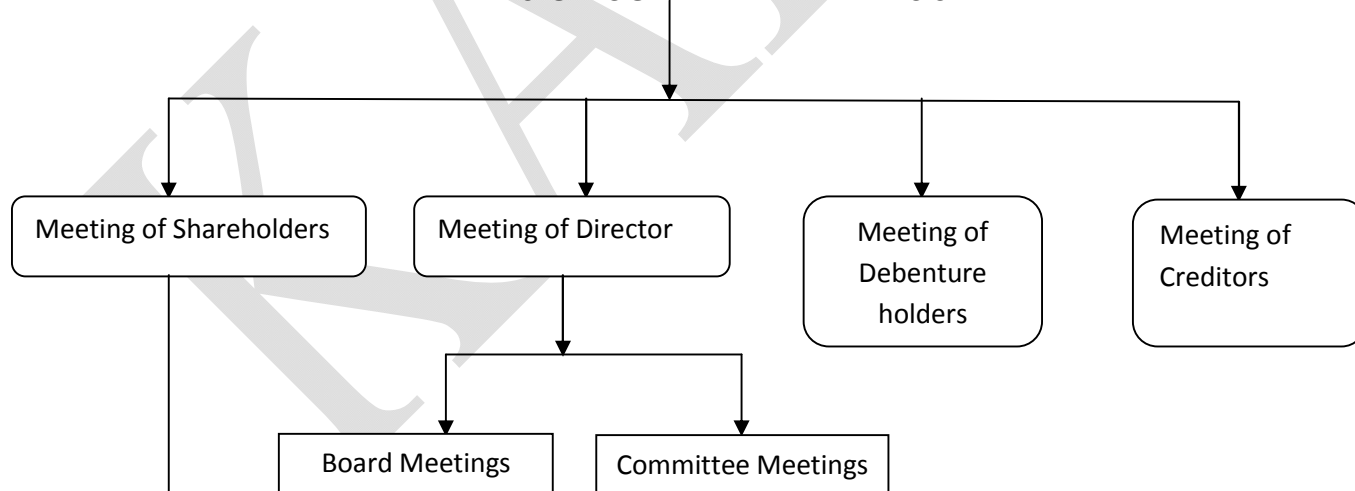
### UNIT – III SYLLABUS

**Company Meetings** : Kinds – Board of Directors Meeting – Statutory Meeting – Share holder Meeting – Annual General Meeting – Extra ordinary General Meeting – Duties of a Company Secretary – Drafting of Correspondence – Notice – Agenda – Chairman’s Speech – Writing of Minutes

#### MEETINGS

A company as a legal entity is capable of acting on its own name. Though it is an artificial person it has to act or perform only with the help of its members or directors of a company. They act as a representative of a company to take decisions through resolutions. Hence, the meeting is considered as an important aspect in the business point of view in order to transact business and implementation of business policies.

#### KINDS OF COMPANY MEETINGS



**CLASS : II B. Com. (CS)**

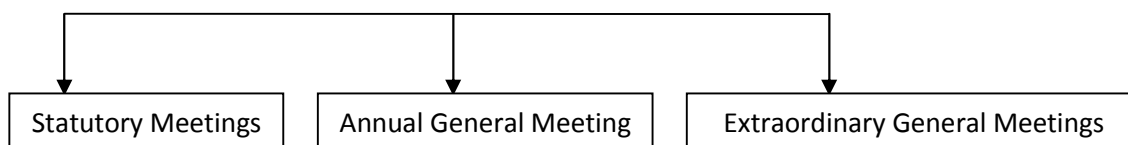
**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---



**KINDS OF COMPANY MEETINGS**

**I. Meeting of Shareholders**

- Statutory Meeting
- Annual General Meeting
- Extraordinary General Meeting

**II. Board of Directors Meeting**

- Board Meetings
- Committee Meetings

**III. Meeting of Debenture holders**

**IV. Meeting of Creditors**

**I. SHARE HOLDER MEETING**

**STATUTORY MEETING**

The first meeting of the shareholders of a public limited company which is mandatory as per the Companies Act is known as Statutory Meeting. This type of business is conducted only once in the life time of the company. Every public limited company either limited by guarantee or shares must compulsorily convene the statutory meeting within six months from the date the company was entitled to commence the business. The Meeting was informed by the chairman that the Statutory meeting of the company under Section 165 of the Companies

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

Act, 1956 has to be convened. The Draft of the statutory report as placed before the meeting was passed. In this connection the following resolutions were passed. "RESOLVED FURTHER that the Statutory meeting of the shareholders of the company be convened on .....th day of ..... 2010 at ..... at the registered office of the company at 4:30 hours." "RESOLVED FURTHER that Mr. ...., director be and is hereby authorized to issue notice calling the statutory meeting of the shareholders of the company and circulate the statutory report along with the notice of the meeting to all the shareholders of the company and deliver a certified copy of the statutory report to the Registrar forthwith after sending copies thereof to the shareholders of the company for registration." Wait for other members reply.

**ANNUAL GENERAL MEETING**

A formal meeting, held annually, where, in the case of a company, those responsible for running it (the directors) meet with those who own it (the shareholders). The AGM for a public limited company (Plc) must be held annually and can be quite a high-profile affair. These meetings may be open to media scrutiny and require a lot of careful thought and planning. For private limited companies, the articles may stipulate that an AGM should be held, but there is no longer a statutory requirement to do so (Companies Act 2006). Similarly, with regard to charities, the AGM provides an opportunity for the members to meet with those running the charity (trustees and/or officers) to ask questions about the management of the charity prior to voting. The governing document will state whether an AGM is required. The articles will stipulate whether an AGM is required for charitable companies.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

### **EXTRAORDINARY GENERAL MEETING**

The members of a company have the right to require the calling of an extraordinary general meeting by the directors. The board of directors of a company must call an extraordinary general meeting if required to do so by the following number of members :-

- ✓ members of the company holding at the date of making the demand for an EGM not less than one-tenth of such of the voting rights in regard to the matter to be discussed at the meeting ; or
- ✓ if the company has no share capital, the members representing not less than one-tenth of the total voting rights at that date in regard to the said matter.

### **STATUTORY MEETING**

The first meeting of the shareholders of a public limited company which is mandatory as per the Companies Act is known as Statutory Meeting. This type of business is conducted only once in the life time of the company. Every public limited company either limited by guarantee or shares must compulsorily convene the statutory meeting within six months from the date the company was entitled to commence the business. The Meeting was informed by the chairman that the Statutory meeting of the company under Section 165 of the Companies Act, 1956 has to be convened.

The main purpose behind conducting this meeting is to provide an opportunity to the shareholders to know important details of its formation, regarding the issue of capital, details regarding the disbursement of capital for the business. Along with the notice of the meeting a report called Statutory report is to

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

be prepared and circulated to members atleast 21days before the date of the meeting.

**procedure for conducting statutory meeting and preparing statutory report of company**

- (1) Every company limited by shares, and every company limited by guarantee and having a share capital, shall, within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called " the statutory meeting ".
- (2) The Board of directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as " the statutory report ") to every member of the company :  
Provided that if the statutory report is forwarded later than is required above, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed to by all the members entitled to attend and vote at the meeting.
- (3) The statutory report shall be certified as correct by, not less than two directors of the company one of whom shall be a managing director, where there is one. After the statutory report has been certified as aforesaid, the auditors of the company shall, in so far as the report relates to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company certify it as correct.
- (4) The Board shall cause a copy of the statutory report certified as is required by section 165 to be delivered to the Registrar for registration forthwith, after copies thereof have been sent to the members of the company.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

- (5) The Board shall cause a list showing the names, addresses and occupations of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the statutory meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.
- (6) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not; but no resolution may be passed of which notice has not been given in accordance with the provisions of this Act.
- (7) The meeting may adjourn from time to time, and at any adjourned meeting, any resolution of which notice has been given in accordance with the provisions of this Act, whether before or after the former meeting, may be passed ; and the adjourned meeting shall have the same powers as an original meeting.
- (8) If default is made in complying with the provisions of the act, every director or other officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

### **NOTICE OF THE MEETING**

The directors are required to send notice of the meeting to all members of the company at least 21 days before the date of the meeting stating that it is the statutory meeting of the company. The fact that it is the statutory meeting must expressly be stated in the notice convening the meeting.

### **STATUTORY REPORT**

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

In order to enable the members to make the best use of this opportunity the directors are required to prepare and send to every member a document known as the “Statutory Report” at least 21 days before the day on which the meeting is to be held. If the report is sent later it will still be valid if it is so agreed to by a unanimous vote of the members entitled to attend and vote at the meeting [Sec. 165 (2)]. The report should be certified as correct by at least two directors, one of whom shall be the managing director where there is one and must also be certified by the auditors [Sec. 165 (4)] A copy of this report must be filed with the Registrar forthwith at the time of sending it to the members[Sec. 165 (5)]. .

**CONTENTS OF STATUTORY REPORT**

- (a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid-up otherwise than in cash, and stating in the case of shares partly paid-up, the extent to which they are so paid-up, and in either case, the consideration for which they have been allotted
- (b) The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid
- (c) An abstract of the receipts of the company and of the payments made there out, upto a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made there out, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company, showing separately any commission or discount paid or to be paid on the issue or sale of shares or debentures
- (d) The names, addresses and occupations of the directors of the company and of its auditors ; and also, if there be any, of its manager, and secretary ; and the

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

changes, if any, which have occurred in such names, addresses and occupations since the date of the incorporation of the company

- (e) The particulars of any contract which, or the modification or the proposed modification of which, is to be submitted to the meeting for its approval, together in the latter case with the particulars of the modification or proposed modification
- (f) The extent, if any, to which each underwriting contract, if any, has not been carried out, and the reasons thereof
- (g) The arrears, if any, due on calls from every director and from the manager
- (h) The particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director or to the manager.

**PROCEDURE AT THE STATUTORY MEETING**

At the commencement of the meeting, the chairman will ask the secretary to read the notice of the meeting. The Board should then place before the meeting a list showing the names, addresses and occupation of the members of the company and the number of shares held by them respectively. The list must remain open and accessible to any member during the continuance of the meeting [Sec. 165 (6)]. After the notice has been read, the chairman takes up the items of business according to the Agenda. He will request the members to take the Statutory Report, already circulated, as read. Thereafter he will address the meeting explaining the progress made by the company since its incorporation, the present position and the future prospects. After this he will invite discussions and questions pertaining to the Statutory Report and other related matters. After discussion of members he chairman proposes that the Statutory Report be

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

approved. If there are any modifications in respect of any contracts, he will also propose that the modifications of contracts proposed in the Report be approved. Decisions about matters, of which previous notice has been given, are then taken by passing requisite resolutions. It may be noted that a matter for which no previous notice has been given can be discussed by the members but a resolution in respect of that cannot be passed.

If the members so consent, the statutory meeting may be adjourned. The chairman has no power to adjourn the Statutory meeting except with the consent of the meeting makes specific provisions regarding adjournment of statutory meeting. The sub – section provides that the meeting may e adjourned from time to time and at any adjourned meeting, any resolution of which notice has been given in accordance with the provisions of this Act, before and after the former meeting, may be passed; and the adjourned meeting shall have the same powers as an original meeting.

After all the items on the agenda are over, the meeting will be dispersed with a vote of thanks to the chair.

## **ANNUAL GENERAL MEETING**

### **MEANING**

A formal meeting, held annually, where, in the case of a company, those responsible for running it (the directors) meet with those who own it (the shareholders). The AGM for a public limited company must be held annually and can be quite a high-profile affair. These meetings may be open to media scrutiny and require a lot of careful thought and planning. For private limited companies, the articles may stipulate that an AGM should be held, but there is no longer a statutory requirement to do so (Companies Act 2006). Similarly, with regard to

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

charities, the AGM provides an opportunity for the members to meet with those running the charity (trustees and/or officers) to ask questions about the management of the charity prior to voting. The governing document will state whether an AGM is required. The articles will stipulate whether an AGM is required for charitable companies.

**STATUTORY REQUIREMENTS :**

- Must be held by every type of company, public or private, limited by shares or by guarantee, with or without share capital or unlimited company, once a year. Every company must in each year hold an annual general meeting. Not more than 15 months must elapse between two annual general meetings. However, a company may hold its first annual general meeting within 18 months from the date of its incorporation. In such a case, it need not hold any annual general meeting in the year of its incorporation as well as in the following year only.
- In the case there is any difficulty in holding any annual general meeting (except the first annual meeting), the Registrar may, for any special reasons shown, grant an extension of time for holding the meeting by a period not exceeding 3 months provided the application for the purpose is made before the due date of the annual general meeting. However, generally delay in the completion of the audit of the annual accounts of the company is not treated as "special reason" for granting extension of time for holding its annual general meeting. Generally, in such circumstances, an AGM is convened and held at the proper time . all matters other than the accounts are discussed. All other resolutions are passed and the meeting is adjourned to a later date for discussing the final accounts of the company. However, the adjourned meeting must be held before the last day of holding the AGM.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

- A notice of at least 21 days before the meeting must be given to members unless consent is accorded to a shorter notice by members, holding not less than 95% of voting rights in the company. The notice must state that the meeting is an annual general meeting. The time, date and place of the meeting must be mentioned in the notice. The notice of the meeting must be accompanied by a copy of the annual accounts of the company, director's report on the position of the company for the year and auditor's report on the accounts. Companies having share capital should also state in the notice that a member is entitled to attend and vote at the meeting and is also entitled to appoint proxies in his absence. A proxy need not be a member of that company. A proxy form should be enclosed with the notice. The proxy forms are required to be submitted to the company at least 48 hours before the meeting.
- The AGM must be held on a working day during business hours at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. The Central Government may, however, exempt any class of companies from the above provisions. If any day is declared by the Central government to be a public holiday after the issue of the notice convening such meeting, such a day will be treated as a working day.
- A company may, by appropriate provisions in its articles, fix the time for its annual general meeting and may also by a resolution passed in one annual general meeting fix the time for its subsequent annual general meetings.
- Companies licensed under Section 25 are exempt from the above provisions provided that the time, date and place of each annual general meeting are

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

decided upon beforehand by the Board of Directors having regard to the directions, if any, given in this regard by the company in general meeting.

**In case of default in holding an annual general meeting, the following are the consequences**

1. Any member of the company may apply to the Company Law Board. The Company Law Board may call, or direct the calling of the meeting, and give such ancillary or consequential directions as it may consider expedient in relation to the calling, holding and conducting of the meeting. The Company Law Board may direct that one member present in person or by proxy shall be deemed to constitute the meeting. A meeting held in pursuance of this order will be deemed to be an annual general meeting of the company. An application by a member of the company for this purpose must be made to the concerned Regional Bench of the Company Law Board by way of petition in Form No. 1 in Annexure II to the CLB Regulations with a fee of rupees fifty accompanied by (i) affidavit verifying the petition, (ii) bank draft for payment of application fee.
2. Fine which may extend to Rs. 5,000 on the company and every officer of the company who is in default may be levied and for continuing default, a further fine of Rs. 250 per day during which the default continues may be levied.

**BUSINESS TO BE TRANSACTED AT ANNUAL GENERAL MEETING:**

At every AGM, the following matters must be discussed and decided. Since such matters are discussed at every AGM, they are known as ordinary business. All other matters and business to be discussed at the AGM are special business.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

The following matters constitute ordinary business at an AGM :-

- a. Consideration of annual accounts, director's report and the auditor's report
- b. Declaration of dividend
- c. Appointment of directors in the place of those retiring
- d. Appointment of and the fixing of the remuneration of the statutory auditors.

In case any other business (special business) has to be discussed and decided upon, an explanatory statement of the special business must also accompany the notice calling the meeting. The notice should also give the nature and extent of the interest of the directors or manager in the special business, as also the extent of the shareholding interest in the company of every such person. In case approval of any document has to be done by the members at the meeting, the notice must also state that the document would be available for inspection at the Registered Office of the company during the specified dates and timings.

### **BOARDS REPORT OR THE DIRECTOR'S REPORT**

The main objective of the Directors' Report is to provide authentic meaningful information to the shareholders and others, viz., employees, creditors, society, state etc., regarding the state of company's affairs and the result of a year's working along with the future prospects. It must be attached with the Balance Sheet and sent to the shareholders along with the notice calling for the annual general meeting. As per sec. 217, as amended by the Companies (Amendment) Acts of 1988, 1999 and 2000, the Director's Report must deal with the following matters :

- (a) The state of company's affairs
- (b) The amount, if any, which the Board proposes to carry to any reserves in the Balance Sheet

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

- (c) The amount, if any, which the Board recommends should be paid by way of dividend
- (d) Material changes and commitments, if any, affecting the financial position of the company which have been occurred between the end of the financial year of the company to which the Balance Sheet relates and the date of the report
- (e) The conservation of energy, technology, absorption, foreign exchange earnings and outgo, in such manner as may be prescribed.

**EXTRAORDINARY GENERAL MEETING**

Any meeting other than the Statutory meeting and the annual general meeting of the company is called extraordinary general meeting. It is convened for transacting any urgent or special business which cannot be postponed till the next annual general meeting. The members of a company have the right to require the calling of an extraordinary general meeting by the directors. The board of directors of a company must call an extraordinary general meeting if required to do so by the following number of members :-

- ✓ members of the company holding at the date of making the demand for an EGM not less than one-tenth of such of the voting rights in regard to the matter to be discussed at the meeting ; or
- ✓ If the company has no share capital, the members representing not less than one-tenth of the total voting rights at that date in regard to the said matter.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

The requisition must state the objects of the meetings and must be signed by the requisitioning members. The requisition must be deposited at the company's registered office. When the requisition is deposited at the registered office of the company, the directors should within 21 days, move to call a meeting and the meeting should be actually be held within 45 days from the date of the lodgement of the requisition. If the directors fail to call and hold the meeting as aforesaid, the requisitionists or any of them meeting the requirements at (a) or (b) above, as the case may be, may themselves proceed to call meeting within 3 months from the date of the requisition, and claim the necessary expenses from the company. The company can make good this sum from the directors in default. At such an EGM, any business which is not covered by the agenda mentioned in the notice of the meeting cannot be voted upon.

### **Power of Company Law Board to Order Calling of Extraordinary General Meeting :**

If for any reason, it is impracticable to call a meeting of a company, other than an annual general meeting, or to hold or conduct the meeting of the company, the Company Law Board may, either on its own motion or on the application of any director of the company or of any member of the company, who would be entitled to vote at the meeting, order a meeting to be called and conducted as the Company Law Board thinks fit, and may also give such other ancillary and consequential directions as it thinks fit expedient. A meeting so called and conducted shall be deemed to be a meeting of the company duly called and conducted.

### **AUTHORITY TO CALL EXTRAORDINARY GENERAL MEETING**

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

**1. By the Directors**

The directors may, whenever they think fit, convene an extraordinary general meeting by passing a resolution to that effect in the Board's meeting.

**2. By the Directors on requisition**

The directors must convene an extraordinary general meeting on the requisition of members holding not less than one-tenth of the total voting rights on the matter of requisition. The requisition must state the matters for the consideration of which the meeting is to be called. It must be signed by the requisitionists and deposited at the registered office of the company. The directors should within 21 days from the date of the deposit of a valid requisition, move to call a meeting and should give 21 days notice to members for calling such a meeting and the meeting should actually be held within 45 days from the date of the requisition.

**3. By the requisitionist themselves**

If the directors fail to call the meeting within aforementioned time limits, the requisitionist or such of the requisitionist as represent not less than one-tenth of the total voting rights of all the members, may themselves convene a meeting within three months of depositing the requisition. Such a meeting should be called in the same manner, as nearly as possible, as that in which meetings are called by the Board. Any reasonable expenses incurred by the requisitionist must be repaid to them by the company, and any sum so paid shall be retained by the company out of any sums due or likely to become due to the directors in default.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

#### **4. By the Company Law Board**

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

#### **EXPLANATORY STATEMENT**

The notice convening an Extraordinary general meeting must be accompanied by an 'Explanatory Statement'. The object of such a statement is to explain to the members the reasons of passing a resolution so as to ensure its smooth adoption. Explanatory Statement is necessary for each item of 'special businesses'. In the case of annual general meetings, all business other than the ordinary business shall be considered as 'special business' and in the case of extraordinary general meeting thereat shall be treated as 'special business' [Sec. 173(1)]. Where any items of business to be transacted at the meeting are deemed to be special, there must be annexed to the notice of the meeting a statement mentioning all material facts concerning the items of business, including in particular, the nature and extent of the interest of every director, and the manager, if any [Sec. 173(2)] if any such special business consists of according approval to any document by the meeting, the statement must specify the time and place where the document can be inspected [Sec. 173(3)]. The statement is to be approved by the chairman before it is actually issued.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

## **BOARD OF DIRECTORS MEETING**

### **MEANING**

The term “Board” is a collective name for the ‘directors’ under the Companies Act [Sec. 252 (3)]. The ‘Board Meetings’, therefore, means ‘Meetings of Directors’. The Board Meetings are the most important meetings of the company. In practice, all the major decisions relating to company matters, even in regard to those for which approval of the shareholders in general meeting is required under the Act, are taken thereat. Therefore, the decisions taken at the Board’s meeting are finally carried through in almost all cases.

### **DEFINITION**

Formal meeting of the board of directors of an organization, held usually at definite intervals to consider policy issues and major problems. Presided over by a chairperson (chairman or chairwoman) of the organization or his or her appointee, it must meet the quorum requirements and its deliberations must be recorded in the minutes. Under the doctrine of collective responsibility, all directors (even if absent) are bound by its resolutions.

## **FREQUENCY OF BOARD MEETINGS**

### **MEETINGS OF THE BOARD**

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

The Board should meet at least once in every three months, with a maximum interval of 120 days between any two Meetings such that at least four Meetings are held in each year.

Each Meeting should be of such duration as would enable proper deliberations to take place on items placed before the Board.

**MEETINGS OF COMMITTEES**

Committees should meet at least as often as stipulated by the Board or as prescribed by any other authority

**NOTICE OF THE MEETING**

1. Notice in writing of every Meeting should be given to every Director by hand or by post or by facsimile or by e-mail or by any other electronic mode. Where a Director specifies a particular mode, the Notice should be given to him by such mode.
2. The Notice should specify the day, date, time and full address of the venue of the Meeting. A Meeting may be held at any time, on any day, including a public holiday, and at any place.
3. The Notice of a Meeting should be given even when Meetings are held on pre-determined dates or at pre-determined intervals.
4. Unless the Articles prescribe a longer notice period, Notice should be given at least fifteen days before the date of the Meeting. Notice need not be given of an adjourned Meeting other than a Meeting that has been adjourned "sine die".

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

However, Notice of the reconvened adjourned Meeting should be given to those Directors who did not attend the Meeting which had been adjourned.

5. No business should be transacted at a Meeting if Notice in accordance with this Standard has not been given.
6. The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda should be given at least seven days before the date of the Meeting.
7. Each item of business should be supported by a note setting out the details of the proposal and, where approval by means of a Resolution is required, the draft of such Resolution should be set out in the note.
8. The Notice, Agenda and Notes on Agenda may be given at shorter periods of time than those respectively stated above, if the majority of members of the Board or of the Committee, as the case may be, agree. The proposal to hold the Meeting at a shorter notice should be stated in the Notice and the fact that consent thereto was obtained should be recorded in the Minutes. Notice, Agenda and Notes on Agenda should be given to all Directors or to all members of the Committee, as the case may be, at the address provided by them, whether in India or abroad, and should also be given to the Original Director, even when the Notice, Agenda and Notes on Agenda have been given to the Alternate Director.
9. Any supplementary item not originally included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of the majority of the Directors present in the Meeting. However, no supplementary item which is of significance or is in the nature of Unpublished price sensitive information should be taken up by the Board without prior written Notice.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

The items of business to be transacted should be arranged in order of those items that are of a routine or general nature or which merely require to be noted by the Directors, and those items which require discussions and specific approval. Besides the items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board and all material items having a significant bearing on the operations of the company, there are certain items which, if applicable, should also be placed before the Board. An illustrative list of such items is given at **Annexure 'A'**.

There are certain specific items which should be placed before the Board at its first Meeting and there are certain items which should be placed before the Board at the Meeting held for consideration of the year-end accounts. Illustrative lists of such items are given at **Annexures 'B' and 'C'** respectively

### **AGENDA OF BOARD MEETINGS**

The term Agenda means **things to be done**. In the present context it is a statement of the business to be transacted at a meeting. It also sets out the order in which the business is to be dealt with. Though the Companies Act does not make it obligatory on the Secretary to send an agenda or to incorporate the same in the notice of Board meeting, yet by convention it necessarily accompanies the notice calling the meeting. For, otherwise, the members cannot come prepared for discussion on the points on which resolutions have to be passed. A separate agenda may be enclosed with the notice of the meeting or the notice itself may contain the agenda.

#### **Illustrative list of items of business for the Agenda for the First Meeting of the Board of Directors of the Company**

1. To appoint the Chairman of the Meeting.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company.
5. To confirm/note the appointment of the first Directors of the company.
6. To read and record the notices of disclosure of interest given by the Directors.
7. To consider the appointment of Additional Directors.
8. To consider the appointment of the Chairman of the Board.
9. To fix the financial year of the company.
10. To consider the appointment of the first Auditors.
11. To adopt the Common Seal of the company.
12. To appoint Bankers and to open bank accounts of the company.
13. To authorise printing of share certificates.
14. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
15. To approve preliminary expenses and preliminary contracts.
16. To consider the appointment of the Managing Director/Whole time Director/Manager and Company Secretary, if applicable and other senior officers.

**Illustrative list of items of business for Agenda of Meeting of the Board of Directors at which annual accounts, etc., are to be considered.**

(Besides regular Agenda items, such as confirmation of Minutes, granting leave of absence to Directors, reading Notices of disclosure of interest of Directors)

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

1. To consider and approve matters arising out of the accounts such as commission to Directors, write-offs, provisions, legal cases, etc.
2. To consider and approve transfers to Reserves and other appropriations.
3. To consider recommendation of dividend.
4. To consider and approve the Balance Sheet and the Profit & Loss Account as well as the abridged Accounts or statement of financial results.
5. To approve the cash flow statement.
6. To consider and take note of the Directors to retire by rotation at the Annual General Meeting.
7. To consider the draft Notice of the Annual General Meeting and to authorise issuance thereof.
8. To consider the appointment of Auditors and the payment of remuneration to them, to be proposed for members' consideration.
9. To take note of the draft Auditor's report.
10. To consider the draft Directors' Report and to authorise issuance thereof.
11. To open a Bank Account for payment of dividend.
12. To approve/note the closure of the Register of Members and the Share Transfer Books for the purposes of the Annual General Meeting.
13. To approve the text of the advertisement inviting fixed deposits.
14. To discuss the Compliance Certificate issued by a secretary in whole-time practice.

**QUORUM OF BOARD MEETINGS**

1. Quorum should be present throughout the Meeting. No business should be transacted when the Quorum is not so present. The Quorum for a Meeting of

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

the Board should be one-third of the total strength of the Board (any fraction contained in that one-third being rounded off as one), or two Directors, whichever is higher. Where the requirements for the Quorum, as provided in the Articles, are stricter, the Quorum should conform to such requirements.

If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, should be the quorum during such time.

2. Where the number of Directors is reduced below the minimum fixed by the Articles, no business should be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.

If a Meeting of the Board could not be held for want of quorum, then, unless the Articles otherwise provide, the Meeting should automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is a public holiday, to the next succeeding day which is not a public holiday, at the same time and place.

**ATTENDANCE AT MEETINGS**

- An Attendance Register, containing the names and signatures of the Directors present at the Meeting, should be maintained.

If an attendance register is maintained in loose-leaf form, it should be bound at reasonable intervals and may be destroyed after eight years, with the approval of the Board.

- Leave of absence should be granted to a Director only when a request for such leave has been communicated to the Secretary or to the Board or to the Chairman.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

### **VALIDITY OF ACT OF DIRECTORS**

It must have been noted from the foregoing provisions that if a proper notice has not been given to all the directors or / and the quorum is not present throughout the meeting, the Board's meeting is invalid. This invalidity, however, does not affect the interests of third parties, who have no notice of the irregularity, on the principle of Indoor Management.

Thus, where the quorum of the Board was three and at a meeting of two, the secretary was asked to affix the seal to a mortgage, it was held that as between the company and the mortgage that had no notice of irregularity, the execution of deed was valid

A subsequent properly convened and legally constituted Board meeting can always ratify and confirm what was done at the prior irregular meeting, and it will then be valid.

Sec. 290 contains a very important provision regarding the validity of acts of directors.

The Section provides that acts of a director shall be valid notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision in the Act or in the articles of the company, but the acts done by such a director after his appointment has been shown to the company to be invalid or to have terminated shall not have any validity.

The acts of a director appointed at a meeting of which insufficient notice was given would be validated by the Section. Similarly, a call made by the directors one of whom had ceased to hold his qualification shares for a very short period was held to be valid.

Committee of the Board

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

The directors, if permitted by articles, may delegate some of their powers to a committee of one or more of their number. Such delegation shall, however, be Subject to Section 292 of the Act. Usually committees are appointed for specific purposes e.g. a finance committee. While appointing a committee the Board must carefully define its powers and authority.

A committee may either be of a permanent nature, when it is called a 'standing committee', e.g., a committee to approve transfers, or be formed for some special matter of non-recurring nature, when it is known as a 'special committee', e.g. a committee to enquire into the economics of amalgamating the company with some other company.

Unless the articles otherwise provide, all acts of a committee must be done by the whole committee and a majority cannot act in the absence of any member. The Board is not bound, in any way, by the committee report, usual adopted.

**PROCEEDINGS OF BOARD**

It is the articles of a company which provide provision regarding proceedings of Board Meetings. Usually, the articles will be found to contain provisions on the lines of 'Table A' – Regulations 73 to 81. These regulations are reproduced below :

Regn. 73 (1) The Board of directors may meet for the despatch of business, adjourn and otherwise regulate its meeting, as it thinks fit.

(2) A director may and the managing director, manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

Regn. 74 (1) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

- (2) In case of an equality of votes, the Chairman of the Board, if any, shall have a second or casting vote.

Regn. 75

The continuing directors may act notwithstanding any vacancy in the Board; but if and so long as their number is reduced below quorum fixed by the Act for a meeting of the board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum or for summoning a general meeting of a company, but for no other purpose.

Regn. 76 (1) The Board may elect a Chairman of its meeting and determine the period for which he is to hold office.

- (2) If no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the meeting.

Regn. 77(1) The Board may, subject to provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

- (2) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

Regn. 78 (1) A committee may elect a chairman for its meetings.

- (2) If no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairman for the meeting.

Regn. 79 (1) A committee may meet and adjourn as it thinks proper.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

- (2) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the Chairman shall have a second or casting vote.

### **CHAIRMAN OF THE MEETING**

➤ ***Meetings of the Board***

Every company should have a Chairman who would be the Chairman for Meetings of the Board. It would be the duty of the Chairman to see that the Meeting is duly convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before it proceeds to transact business. The Chairman should then conduct the proceedings of the Meeting and ensure that only those items of business as have been set out in the Agenda are transacted and generally in the order in which the items appear on the Agenda. The Chairman should encourage deliberations and debate and assess the sense of the Meeting. The Chairman should ensure that the proceedings of the Meeting are correctly recorded and, in doing so, he may include or exclude any matter as he deems fit.

In the case of a public company, if the Chairman himself is interested in any item of business, he should entrust the conduct of the proceedings in respect of such item to any other dis-interested Director and resume the Chair after that item of business has been transacted.

➤ ***Meetings of Committees***

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

The Board, while constituting any Committee, should also appoint the Chairman of that Committee, unless such appointment is to be made in pursuance of any other applicable guidelines, Rules or Regulations.

### **PROCEDURE OF BOARD MEETINGS**

Before opening the proceedings of the meeting, chairman satisfies himself that the meeting is properly convened and that the quorum is present. When the proceedings start the Chairman requests the secretary to read the 'minutes' of the last meeting. As soon as the 'minutes' are read and approved as correct, the Chairman will sign the 'minutes'. He will, thereafter, take up the items for discussion according to the order set forth on the Agenda, but with the consent of the meeting he may alter the order. During discussion the Chairman gives full opportunity to all the directors to express their option on the subject matter. After this if there is any difference of opinion, the motion is put to vote. If the majority votes are cast in favour of the motion, resolution to this effect will be passed. A director interested in any resolution is not allowed to cast his vote on that particular resolution and this fact is recorded in the minutes -----"that Mr.\_\_\_\_ being interested did not participate nor did he vote on the Resolution". After all the items on the Agenda are over the Chairman declares the meeting closed. Throughout the meeting the secretary keeps on taking notes of the proceedings on the basis of which he will out the 'minutes' of the meeting.

### **MINUTES OF BOARD MEETINGS**

- Within fifteen days from the date of the Meeting of the Board or Committee or of an adjourned Meeting, the draft Minutes thereof

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

should be circulated to all the members of the Board or the Committee, as the case may be, for their comments.

The Directors should forward their comments on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.

- The Minutes of proceedings of a Meeting should be entered in the Minutes Book within thirty days from the conclusion of the Meeting. In case a Meeting is adjourned, the Minutes should be entered in respect of the original Meeting as well as the adjourned Meeting within thirty days from the date of the respective Meetings. In respect of a Meeting adjourned for want of Quorum, a statement to that effect should be recorded in the Minutes Book by the Chairman or any Director present at the Meeting.
- The date of entering the Minutes should be specified in the Minutes Book by a Director or the Secretary.
- The Chairman should initial each page of the Minutes, sign the last page of the Minutes and append to such signature the date on which he has signed the Minutes.

While the law requires that Minutes of the proceedings should be entered in the Minutes Book within thirty days of the Meeting, there is no prescribed time limit within which such Minutes have to be signed. They could be signed beyond a period of thirty days if the succeeding Meeting is held after a period of thirty days from the date of the earlier Meeting. However, it is also not obligatory to wait for the next Meeting in order to have the Minutes of the previous Meeting

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

signed. Such Minutes may be signed by the Chairman of the Meeting at any time before the next Meeting is held.

The Minutes of Meetings of the Board can be inspected only by the Directors. While the Auditor or Cost Auditor of the company or Secretary in whole-time practice appointed by the company can also inspect the Minute Books in the course of audit or certification, a member of the company has no right to inspect the Minutes of Meetings of the Board or any Committee thereof. Officers of the Registrar of Companies, or other Government or regulatory bodies duly authorised in this behalf under law, during the course of an inspection, can also inspect the Minutes.

- Minutes should not be pasted or attached to the Minutes Book.
- Minutes, if maintained in loose-leaf form, should be bound at intervals coinciding with the financial year of the company.

The pages of the Minutes Book should be serially numbered and there should be proper locking device to ensure security and proper control to prevent irregular removal of the loose leaves.

- Extracts of the Minutes should be given only after the Minutes have been duly signed. However, certified copies of any Resolution passed at a Meeting may be issued even pending signing of the Minutes by the Chairman, if the draft of that Resolution had been placed at the Meeting and was duly approved.
- Minutes of an earlier Meeting should be noted at the next Meeting.
- Any alteration, other than grammatical or minor corrections, in the Minutes as entered, should be made only by way of express approval

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

taken in the subsequent Meeting in which such Minutes are sought to be altered.

- The Minutes of Meetings of any Committee should be circulated to the Board along with the Agenda for the Meeting of the Board next following such Meeting of the Committee and should be noted at the Board Meeting.

If the Minutes of Meetings of any Committee are pending noting by the Committee at the time of circulating the Agenda for the Meeting of the Board, such Minutes should be circulated to the Board in draft form.

**RECORDING IN THE MINUTES**

- In addition to the names of Directors present at the Meeting, the names of persons in attendance and the names of invitees, if any, should be recorded in the Minutes. Apart from the Resolution or the decision, the Minutes should mention the brief background of the proposal and the rationale for passing the Resolution or taking the decision.
- The names of the Directors who dissented or abstained from the decision should be recorded. Similarly, the fact that an interested Director did not participate in the discussion or vote should be recorded in the Minutes. Wherever any approval of the Board or of the Committee is taken on the basis of certain papers laid before the Board or the Committee, proper identification by initialling of such papers by the Chairman or any Director should be made and a reference thereto should be made in the Minutes.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

### **PRESERVATION OF MINUTES AND OTHER RECORDS**

- The Minutes of all Meetings should be preserved permanently.
- Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, the Minutes of all Meetings of the Board and Committees of the transferor company should be preserved permanently by the transferee company, notwithstanding the fact that the identity of the transferor company may not survive such arrangement.
- Office copies of Notices, Agenda and Notes on Agenda and other related papers should be preserved in good order for as long as they remain current or for ten years, whichever is later, and may be destroyed thereafter under the authority of the Board.

### **III MEETINGS OF DEBENTURE HOLDERS**

If a company wants to make any change in the terms of security or if they wish to modify the rate of interest of debentures or if they decide to change the rights the authority of the company will call for debenture holders meeting. This is done to protect the interest of the debenture holders because they were the ultimate persons who would be affected by the changes.

### **IV. MEETING OF THE CREDITORS**

Likewise if they want to make a scheme of arrangements with its creditors then meeting will be conducted by the authority exclusively with the creditors of the company. These type of meeting would not be frequently held.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

### **SECRETARIAL WORK RELATING TO BOARD MEETING**

The duties of the company secretary relating to Board's meetings, may be as follows :

In calling the Board meeting :

1. The Secretary in consultation with the Chairman or on the requisition of a director, fixes the date and time of the meeting, if it has not already been fixed at the previous meeting
2. He has to prepare the agenda (in consultation with the Chairman) and the notice of the Board meeting.
3. He has to issue the notice along with the agenda to each director. He should comply with the requirement of the articles as to length of notice while dispatching notices.
4. He has to issue invitation letters to Chief Accountants, Branch manager, Solicitor, Auditors, etc., who are to attend the whole or any part of the meeting by invitation
5. The secretary has to keep in readiness periodical financial and trading returns showing up – to – date position.
6. He should collect necessary documents, contracts, pending transfers and the related certificates for sealing and signing by directors
7. He has to keep in readiness detailed information and relevant documents, etc., regarding special business, if any, for producing before the meeting.
8. He has to prepare the directors' attendance book.
9. He has to prepare the Minute Book of Board meetings, and keep ready the company's seal, copies of memorandum and articles of association, the last annual report and accounts, trust deeds and other documents likely to be required at the meeting

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

10. He should make suitable arrangements for the boarding and lodging for directors as also for the necessary seating arrangements, stationery, etc., for the Board Meeting.

### **DUTIES OF A COMPANY SECRETARY RELATING TO THE MEETINGS**

#### **SECRETARIAL WORK RELATING TO STATUTORY MEETING**

The duties of the Company Secretary relating to the Statutory Meeting are as follows :

#### **BEFORE THE MEETING :**

1. It is the duty of the secretary to keep in mind the time limit prescribed by the Act for holding the Statutory Meeting.
2. He should prepare the ' statutory report' in the prescribed form and the notice of the meeting
3. He should convene a meeting of the Board of Directors to consider and approve the statutory report and the notice
4. The secretary should then arrange for printing of the statutory report and the notice and dispatching them to the members at least 21 days before the date of the meeting. A certified copy of the report must also be filed with the Registrar.
5. He should prepare an agenda of the meeting in consultation with the chairman
6. He has also to prepare a list of members showing names, addresses and the number of shares held by each one of them for placing before the meeting

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

7. He has to make necessary seating arrangements, etc., for holding the meeting

**AT THE MEETING :**

8. He has to help the chairman is ascertaining the quorum and to read the notice of the meeting
9. If directed by the chairman, he has to read the statutory report
10. He has to produce the list of members at the meeting
11. He has to assist the chairman on any points of procedure and to supply necessary Explanation when required
12. He is to take full notes of the proceedings of the meeting

**AFTER THE MEETING :**

13. He has to draft the minutes of the meeting on the basis of notice taken by him and to get the same approved and signed by the chairman of the same meeting within 30 days of the conclusion of the meeting.

**SECRETARIAL WORK RELATING TO ANNUAL GENERAL MEETING**

The duties of a secretary relating to the holding of annual general meeting may be enumerated as follows :

**BEFORE THE MEETING :**

1. Arrange for the presentation of a Profit and Loss Account and the Annual Balance Sheet of the company and also for its subsidiaries and branches, if any, as per the provisions of the Act, when the financial year of the company is over.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

2. See that the Board approves the Balance Sheet and Profit and Loss Account and name of directors who will sign the Balance Sheet
3. See that the duly authorized Balance Sheet and Profit and Loss Account are audited and certificate by the auditors.
4. See that the Balance Sheet approved by the Board is signed by the directors authorized to sign the same.
5. Prepare a draft of the Director's Report in consultation with the Chairman
6. Arrange a Board meeting to consider the following business :
  - (a) To consider and recommend the rate of dividend on equity or / and preference shares to be declared and passed by the members at the annual general meeting;
  - (b) To sign the Director's Report already prepared by the secretary;
  - (c) To obtain sanction of the Board to the proposals to be considered and passed at the annual general meeting on matters like names of directors who are liable to retire by rotation, names of directors who are to seek re-election and change in the auditors of the company
  - (d) To fix date, time and place of the annual general meeting and to authorize the secretary for arranging the printing of the notice, annual accounts, directors' report, auditors' report, proxy forms, admission cards etc.,
  - (f) To authorize the secretary to close the register of members and share transfer register, issue the notice of closure of transfers and to see the preparation of dividend list and dividend warrants
  - (f) To authorize the bank to open a separate dividend account;
  - (g) To decide whether a report of the proceedings at the general meeting is to be published and if so, in which particular newspapers

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

7. If the company's securities are quoted, notify the Stock Exchange(s) concerned of the date of Board of Directors meeting at which the recommendation of a dividend is to be considered, and after the Board meeting has been held advise the Stock Exchange(s) of the decisions taken by the Board in that regard
8. Arrange for the printing of notices of the meeting, Balance Sheet, the Profit and Loss Account, Directors' Report, form of proxy, admission cards, dividend notices and dividend warrants
9. Send out the notices along with all relevant documents to the members, directors and auditors under certificate of posting at least 25 days before the date of annual general meeting so that 21 clear days' notice is given to the members pursuant to Sections 53 and 171 and also publish the notice in newspapers. Copies of the notice and Directors' Report are also sent to the Stock Exchanges for their information
10. Close the 'share transfer register' and notify the same in newspapers and look after the preliminary work of dividend distribution (i.e., preparing the dividend lists and dividend warrants).
11. Prepare the agenda of the meeting and the Chairman's speech in consultation with the Board.
12. Check up proxies received and all valid proxies to be entered in the proxy register. Close and sign the proxy register in due time.
13. Keep ready for making available at the meeting the following documents and records:
  - (i) Attendance book to be signed by the shareholders before the commencement of the meeting
  - (ii) Minutes book of the Annual General Meeting

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

- (iii) Proxy Register along with all the proxy forms lodged with the company serially numbered
  - (iv) Register of Directors' shareholdings
  - (v) Register of contracts, companies and firms in which directors are directly or indirectly interested
  - (vi) Register of Members and Index of Members
  - (vii) Memorandum and Articles of Association of the company as amended up – to – date.
  - (viii) Spare copies of the Directors' Report, Annual Accounts, Agenda and Chairman's speech
  - (ix) Voting cards, if a poll is expected
  - (x) A copy of the Companies Act, 1956, as amended up – to – date
14. Make necessary seating arrangement for shareholders and others. He should make arrangements to segregate the ordinary shareholders from preference shareholders and proxies, and should make them sit in separate enclosures, as under the law the proxies cannot vote on a show of hands, and cannot speak at the meeting and the preference shareholders can vote only on matters which directly affect their rights
15. Arrange for tea etc.,

**AT THE MEETING :**

- 16. Arrange for collecting the Admission Cards at the gate of the meeting hall and see that no unauthorized person gets entry therein
- 17. Help the Chairman in ascertaining whether a quorum is present or not
- 18. Read the notice convening the meeting with the permission of the Chairman

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

19. Read the Auditors' Report, and also to read the Director's Report unless it is taken as read
20. Advise the Chairman regarding points that may be raised and assist him in the case of poll, if necessary
21. Take note of the proceedings of the meeting and resolutions passed thereat

**AFTER THE MEETING :**

22. Brief the press, where necessary
23. Prepare the minutes and get them signed by the Chairman of the same meeting within 30 days of the conclusion of the meeting
24. Make necessary changes in the Register of Directors and notify the same to the Registrar within 30 days of the meeting.
25. Send intimations of appointment to the directors and auditors
26. See that the Balance Sheet, Profit and Loss Account, special resolutions adopted unanimously are filed with the Registrar within 30 days of the meeting
27. Arrange for the issue of dividend warrants, if any, within 42 days from the date of declaration of dividend
28. Prepare the 'annual return' and file it with Registrar along with necessary fee within 60 days of the meeting

**SECRETARIAL WORK RELATING TO EXTRAORDINARY GENERAL MEETING**

The duties of a secretary relating to the holding of Extraordinary general meeting may be enumerated as follows :

**BEFORE THE MEETING :**

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

1. Where the meeting is sought to be convened by the Board on its own without requisition from the members, the Secretary must advise the Board, if it is not already aware, on the urgency of the matter, i.e., the matter cannot be deferred till the next annual general meeting and convene a Board meeting in consultation with the Chairman for fixing the date, time, place and agenda for the extraordinary general meeting
2. If a requisition is received from members, the secretary has to convene a Board meeting in consultation with the chairman to consider the question of holding the extraordinary general meeting
3. If the Board decides to hold meeting, the secretary has to assist the Board in preparing the draft resolutions and the explanatory statement
4. Next, the Secretary has to draft a notice for calling the meeting the paying particular attention to the following points :
  - (a) The notice must state whether it is a requisitioned meeting
  - (b) It must contain the text of resolutions which is / are proposed to be passed with or without modification
  - (c) It should also state whether the resolution is to be passed at a special or ordinary resolution
  - (d) The notice must be accompanied by an explanatory statement mentioning all material facts concerning the items of business
5. He must arrange for the printing of notices of the meeting and the Explanatory Statement, proxy forms and admission cards
6. He should see that the notices along with the Explanatory Statement, proxy forms etc., are duly posted to the registered address of each member well in time so that at least 21 clear days notice to given to them. The notice must also be advertised in press.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

7. The secretary should prepare the agenda of the meeting in consultation with the Chairman.
8. He has to prepare a list of proxies and make necessary arrangements for taking poll,
9. He has to make necessary seating arrangement for shareholders and others. He should make arrangements to segregate the ordinary shareholders from preference shareholders and proxies and should make them sit in separate enclosures, as under the law the proxies cannot vote on a show of hands, and cannot speak at the meeting and the preference shareholders can vote only on matters which directly affect their rights

**AT THE MEETING**

10. He has to arrange for collecting the Admission Cards at the gate of the Meeting Hall
11. He has to give necessary explanations and supply documents as required by the Chairman
12. He has to ascertain the quorum and read the notice of the meeting
13. He has to take down detailed notes of the proceedings of the meeting

**AFTER THE MEETING :**

14. He has to prepare the minutes of the meeting and get them approved and signed by the chairman of the same meeting within 30 days of the conclusion of the meeting
15. He has to file the copies of the special resolutions, if any, passed at the meeting with the Registrar within 30 days
16. He has to execute the resolution passed at the meeting.

**DRAFTING OF CORRESPONDENCE RELATING TO THE MEETINGS**

**INTRODUCTION**

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

Writing in its broad sense - as distinct from simply putting words on paper - has three steps: thinking about it, doing it, and doing it again (and again and again as often as time will allow and patience will endure). The first step, “thinking” involve choosing a subject, exploring ways of developing it, and devising strategies of organization and style. The second step, “doing” is usually called “drafting”; and the third, “doing again”, is “revising”. Writing is a complex activity. The ability to communicate clearly is crucial. It is similarly important in the non-working aspects of life. The written word (whether on paper or a PC screen) is still a major channel of communication.

Writing clearly, whether essays, letters, memos or reports, is a key skill. One could be more confident and competent in expressing in an understanding manner. You could usefully develop your ability to structure your writing, whether of essays or reports by looking at how use the basic forms of written communication and whether you are writing, attention to your writing style is likely to help you communicate better.

The ability to communicate clearly in writing is important in virtually all aspects of life. This implies that for a variety of practical reasons it's through the mastery of writing that the individual comes to be fully effective in intellectual organization, not only in the management of everyday affairs, but also in the expression of ideas and arguments. The mere fact that something is written conveys its own message, for example of permanence and authority. Certain people write and certain things get written. It is for such reasons that writing comes to be associated with status and power. By writing we can have control not only of information but of people. Learning to write well in a foreign language is one of the most difficult challenges facing the language learner. Finding the right word, using an appropriate style, respecting conventional formats and correct

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

spelling are just a few areas to consider. Effective writing plays an increasingly important role in today's world. A clear and concise style ensures that essential information is both understood and acted upon.

### **DRAFTING OF NOTICES**

Notice of every meeting of company must be sent to all members entitled to attend and vote at the meeting. Notice of the AGM must be given to the statutory auditor of the company.

A notice calling a meeting must state the place, day and hour of the meeting and must contain the agenda of the meeting. If the meeting is a statutory or annual general meeting, notice must describe it as such. Where any items of special business are to be transacted at the meeting, an explanatory statement setting out all materials facts concerning each item of the special business including the concern or interest, if any, therein of every director and manager is any, must be annexed to the notice. If it is intended to propose any resolution as a special resolution, such intention should be specified.

A notice convening an AGM must be accompanied by the annual accounts of the company, the director's report and the auditor's report.

It is equally important that a notice should be drafted in a manner that it must communicate the message to shareholders, director's and auditor's. So it should be in a simple language and easily understandable from shareholder to auditor.

It should convey the information directly without complicated words and sentences. If it is not so then it will create a major problem in conducting the meeting. Because before arriving the meeting the shareholders and others should

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

have thorough knowledge about of the meeting like agenda, business that should be discussed etc.,

The notice should contain the following

- At the top of the notice, kind of meeting should be mentioned (Notice of Annual General Meeting).
- Next to the title the name and registered address of the company should be entered.
- Subsequently, the day, date, time and place of meeting with clear address where the meeting is to held is to be declared
- Followed by that, ordinary business that should be transacted in the meeting should be given
- After that the special business that is to be discussed should be given
- The notice become legally valid only if it is signed proper authority along with the company's seal
- Followed that is should give notes for certain important matters such as appointment of proxy, register of members etc.,
- It should also contain the explanatory statement
- At the end of the annexure an authority should sign along with place and date.

**SPECIMEN NOTICE OF ANNUAL GENERAL MEETING**

**NOTICE OF ANNUAL GENERAL MEETING**

**XYZ INDIA LIMITED**

Registered Office: 45 A, Sir Mathuradas Vasanji Road, Andheri East, Mumbai 400 093

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

**NOTICE** IS HEREBY GIVEN that the Fifty-eighth Annual General Meeting of the Members of XYZ India Limited will be held on Tuesday, 29th April 2015 at 3.30 p.m. at M.C. Ghia Hall, Gen. J. Bhosale Marg, near Sachivalaya Gymkhana, Nariman Point, Mumbai 001 to transact the following business :

**Ordinary business**

1. To receive, consider and adopt the audited Balance Sheet as at 31st December 2014 and the Profit and Loss Account for the year ended on that date and the Reports of the Directors and Auditors thereon.
2. To consider and, if thought fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution :

**"RESOLVED THAT** an Interim Dividend for the year ended 31st December 2014 of Rs. 10 per Equity Share of Rs. 10 paid to the Members whose names appeared on the Register of Members on 6th August 2014, be and the same is hereby approved and confirmed".

**"RESOLVED FURTHER THAT** a Final Dividend for the year ended 31st December 2014 of Rs. 35 per Equity Share of Rs. 10 be paid to:

- i) those Members whose names appear on the Register of Members of the Company on 29th April 2015; and
- ii) those whose names appear as beneficial owners as at the close of business on 17th April 2015, as per details to be furnished by the National Securities Depository Limited and Central Depository Services (India) Limited."

3. To consider and, if thought fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution :

"RESOLVED that Mr. S. R. Sharma who retires by rotation and who is eligible for re-election be and is hereby re-appointed a Director."

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

4. To consider and, if thought fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution :

**"RESOLVED that** Mr. J. M. James who retires by rotation and who is eligible for re-election be and is hereby re-appointed a Director."

5. To consider and, if thought fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution :

**"RESOLVED THAT** M/s. A B C & Co. LLP, Chartered Accountants, be and are hereby appointed Auditors of the Company to hold office from the conclusion of this Meeting till the conclusion of the next Annual General Meeting as the retiring Auditors, M/s. S. R. B & Co. LLP have given the Company notice, in writing, expressing their unwillingness to be re-appointed as Auditors on their retirement at the ensuing Annual General Meeting.

**"RESOLVED FURTHER THAT** the Board of Directors be and is hereby authorised to fix the remuneration payable and the reimbursement of out-of-pocket expenses, if any, to the said Auditors."

**Special Business**

6. To consider and, if thought fit, to pass, with or without modification, the following Resolution as a Special Resolution :

**"RESOLVED THAT** the Company hereby accords its approval and consent under Sections 198, 269, 309 and 314 of the Companies Act, 1956 and all other applicable provisions, if any, and provisions of the Companies Act, 2013 as and when notified and made applicable, to the appointment of Ms. Joshna (Alternate to Mr. A. Ajay) as Wholetime Director of the Company for the period from 1st May 2014 to 9th February 2015 and to her receiving remuneration, benefits and amenities as Wholetime Director of the Company upon the terms and conditions and stipulations contained in an Agreement to be entered into between the

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

Company and Ms. Joshna, a draft whereof is placed before the Meeting and which, for the purposes of identification, is initialled by the Chairman of the Meeting. Provided that the aforesaid approval and consent shall not be impaired by reason of Mr. A. Ajay returning to the State of Maharashtra and Ms. Joshna being appointed as Alternate Director to Mr. Ajay”

**“RESOLVED FURTHER THAT** the remuneration including benefits, amenities and perquisites as set out in the said draft Agreement shall nevertheless be paid and allowed to Ms. Joshna as the minimum remuneration for any financial year in case of absence or inadequacy of profits for such year, subject to the approval of the Central Government, if required but shall not in any such year exceed the ceiling laid down in this behalf in Schedule XIII to the Companies Act, 1956, from time to time”.

**“RESOLVED FURTHER THAT** the Board of Directors be and is hereby authorised to take such steps and do all such acts, matters and things as may be considered necessary, proper and expedient to give effect to this Resolution.”

7. To consider and, if thought fit, to pass, with or without modification, the following Resolution as a Special Resolution :

"RESOLVED THAT the Company hereby accords its approval and consent under Sections 198, 269, 309 and 314 of the Companies Act, 1956 and all other applicable provisions, if any, and provisions of the Companies Act, 2013 as and when notified and made applicable, to the re-appointment of Mr. M. G. Raj (presently Alternate to Mr. J. M. James) as Wholetime Director of the Company for the period from 6th September 2014 to 5th September 2015 and to his receiving remuneration, benefits and amenities as Wholetime Director of the Company upon the terms and conditions and stipulations contained in an Agreement to be entered into between the Company and Mr. Raj, a draft whereof is placed before

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

the Meeting and which, for the purposes of identification, is initialled by the Chairman of the Meeting.

Provided that the aforesaid approval and consent shall not be impaired by reason of Mr. J. M. James returning to the State of Maharashtra and Mr. Raj being appointed as Alternate Director to Mr. James or Mr. Raj being appointed as Alternate Director to any other Director or Mr. Raj filling in any casual vacancy or being appointed as Additional Director or as a Director in his own right by the Company in General Meeting.

**“RESOLVED FURTHER THAT** the remuneration including benefits, amenities and perquisites as set out in the said draft Agreement shall nevertheless be paid and allowed to Mr. Raj as the minimum remuneration for any financial year in case of absence or inadequacy of profits for such year, subject to the approval of the Central Government, if required but shall not in any such year exceed the ceiling laid down in this

behalf in Schedule XIII to the Companies Act, 1956, from time to time.

RESOLVED FURTHER THAT the Board of Directors be and is hereby authorised to take such steps and do all such acts, matters and things as may be considered necessary, proper and expedient to give effect to this Resolution."

8. To consider and, if thought fit, to pass, with or without modification, the following Resolution as a Special Resolution :

**"RESOLVED THAT** pursuant to the provisions of Sections 198, 309(4) and other applicable provisions, if any, of the Companies Act, 1956, and provisions of the Companies Act, 2013 as and when notified and made applicable, the Company's Directors other than the Managing

Director or Wholtime Directors or Directors who are employees of XYZ or companies of the XYZ Group, in addition to sitting fees paid to them for attending

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

the Meetings of the Board of Directors or its Committees, be paid every year for a period of five years from 1st January

2014, commission of an amount as may be determined by the Board of Directors from time to time, subject to a ceiling of one per cent of the net profits of the Company computed in the manner laid down in Section 198(1) of the Companies Act, 1956, with authority to the

Board of Directors to distribute the commission amongst such Directors in such manner as the Board of Directors may from time to time decide."

By Order of the Board

COMPANY SECRETARY

Registered Office:

45/A, Sir Mathuradas Vasanji Road

Andheri East

Mumbai 400 093

Mumbai, 3rd March 2014

### **NOTES**

1. A Member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself. A proxy need not be a Member of the Company. The Proxy form, in order to be effective, must be received at the Registered Office of the Company not less than 48 hours before the Annual General Meeting.

2. The Register of Members of the Company shall remain closed from Friday, 18th April 2015 to Tuesday, 29th April 2015 (both days inclusive).

3. The relevant Explanatory Statement in respect of Item Nos. 6 to 8 of the Notice is annexed to and forms part of the Notice.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

4 (i) The Company has transferred all unclaimed dividends upto the financial year ended 31st March 1995 to the General Revenue Account of the Central Government as required under Section 205A of the Companies Act, 1956. Members who have not encashed their dividend warrants for the said years are requested to claim the amount from the Registrar of Companies, Maharashtra.

(ii) Pursuant to Section 205A and 205C of the Companies Act, 1956, unclaimed dividends upto the First Interim Dividend for the year ended 31st December 2006 have been transferred to the Investor Education and Protection Fund. In terms of Section 205A and 205C, any dividend remaining unclaimed for a period of seven years from the due date of payment is required to be transferred to the Investor Education and Protection Fund. Once unclaimed dividends are so transferred, Members will not be entitled to claim these dividends. Members who have not encashed their dividend warrants towards the Second Interim Dividend for the year ended 31st December 2006 or thereafter are requested to write to the Company's Registrars and Transfer Agents.

5. Members seeking any information or clarifications on the Annual Report are requested to send in written queries to the Company at least one week before the date of the Meeting. This would enable the Company to compile the information and provide replies at the Meeting.

**PROFILE OF DIRECTORS BEING APPOINTED**

As required by Clause 49 of the Listing Agreement, the particulars of Directors who are proposed to be appointed are given below:

1. Name :  
Age :  
Qualifications :  
Experience :

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

2. Name :

Age :

Qualifications :

Experience :

3. Name :

Age :

Qualifications :

**EXPLANATORY STATEMENT**

1. Item No.

Pursuant to Section 102(1) of the Companies Act, 2013

The following Explanatory Statement sets out all material facts relating to Item Nos. 6 to 8 of the accompanying Notice of the Annual General Meeting to be held on 29th April 2015:

Ms. Joshna was appointed as Alternate to Mr. A. Ajay with effect from 1st May 2014 by a Resolution passed by the Board of Directors at its Meeting held on 30th April 2014. Ms. Joshna, being an employee of the Company, was appointed Wholtime Director from the said date, subject to the approval of the Shareholders and the Central Government. The approval of the Central Government has since been received.

Special Resolution.

The remuneration paid and the perquisites provided to her are set out below :

- i) Salary - Rs. 126,000 per month
- ii) Increments - Such increments as may be fixed by the Board of Directors from time to time in the salary range of Rs. 126,000 to Rs. 300,000 per month.
- iii) Special Allowance of Rs. 34,800 per month and such higher amount as may be decided by the Board from time to time.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

- iv) Performance Bonus with a target payout of Rs. 527,760 for the financial year ending 31st December 2014 and a payout range of 0% to 200% of target amount to be paid at the end of the financial year, as may be determined by the Board of Directors.
- v) Housing - The Company to provide rent free partially furnished, airconditioned, residential accommodation and partial reimbursement of salary of servant with telephone, gas and electricity, the monetary value of which may be evaluated as per the Income-tax Rules, 1962.
- vi) Medical Aid - Medical aid benefits for self and family as applicable to the Officers of the Company, subject to the condition that the cost of medical benefits to the Company shall not exceed one month's salary per year.
- vii) Free use of the Company's car and reimbursement of salary of driver for use on the Company's business as well as for own use.
- viii) The Company to pay the premium for the Personal Accident Insurance Policy taken for Ms. Joshna along with other Officers of the Company.

(All the above perquisites shall be evaluated as per Income-tax Rules, wherever applicable. In the absence of any such Rule, perquisites shall be evaluated at actual cost.)

**MINIMUM REMUNERATION**

**OTHER TERMS AND CONDITIONS**

**2. Item No. 7**

The above remuneration (including perquisites) shall be paid to Ms. Potts as the minimum remuneration in the event of absence or inadequacy of profits in any financial year of the Company.

- a) She shall not be paid any sitting fees for attending Board/Committee Meetings.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

b) She shall not become interested or otherwise concerned directly or through her husband and / or minor children in any selling agency without prior approval of the Central Government.

c) The appointment may be terminated by the Company or by Ms. Joshna by giving not less than three months' prior notice in writing. The Directors are of the opinion that Ms. Joshna knowledge and experience was of benefit to the Company. The Board, therefore, recommends the acceptance of the resolution set out in item No. 6 of the Notice convening the Meeting.

The said draft agreement referred to in the resolution is available for inspection by the Members at the Registered Office of the Company on any working day between 11 a.m. and 1 p.m. prior to the date of the Annual General Meeting.

No Director is concerned or interested in the resolution set out in item No. 6 of the Notice convening the Meeting.

By Order of the Board

Registered Office:

45/A, Sir Mathuradas VasANJI Road

Andheri East

Mumbai 400 093

Mumbai, 3rd March 2015

COMPANY SECRETARY

XYZ INDIA LIMITED

PROXY FORM

XYZ INDIA LIMITED

ATTENDANCE SLIP

Registered Office : 45/A, Sir Mathuradas VasANJI Road, Andheri East, Mumbai 400 093

**KARPAGAM ACADEMY OF HIGHER EDUCATION**

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

Reg. Folio No. / DP Id No. / Client Id No.

.....  
.....

I/We

.....  
.....of.....  
.....  
.....

.....i

n the district

of.....

..... being a member/members of the above

named Company hereby appoint

.....  
.....of.....  
.....

in the district of.....or failing him

.....  
.....

of.....in the district

of.....

.....

as my/our proxy to vote for me/us on my/our behalf at the FIFTY-EIGHTH  
ANNUAL GENERAL MEETING of the Company to be held on 29th April 2015 and  
at

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

any adjournment(s) thereof.

Signed this.....day of.....

Signature.....

Note: This form in order to be effective should be duly stamped, completed and signed and must be deposited at the Registered Office of the Company, not less than 48 hours before the Meeting.

Registered Office : 54/A, Sir Mathuradas Vasanji Road, Andheri East, Mumbai 400 093

Fifty-eighth Annual General Meeting - 29th April 2014

Reg. Folio No. / DP Id No. / Client Id No. ....

I certify that I am a registered shareholder / proxy for the registered shareholder of the Company.

I hereby record my presence at the FIFTY-EIGHTH ANNUAL GENERAL MEETING of the Company at M.C. Ghia Hall, Near Sachivalaya

Gymkhana, General J. Bhosale Marg, Mumbai 400 021 on Tuesday, 29th April 2015.

.....  
Member's/Proxy's name in full Member's/Proxy's Signature

Note : Please fill in this attendance slip and hand it over at the ENTRANCE OF THE MEETING HALL

15 paise

Revenue

Stamp

**DRAFTING OF AGENDA OF THE MEETINGS OF SHAREHOLDERS**

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

**An agenda** is a list of meeting activities in the order in which they are to be taken up, by beginning with the call to order and ending with adjournment. It usually includes one or more specific items of business to be discussed. It may, but is not required to, include specific times for one or more activities.

Creating an effective agenda is one of the most important elements for a productive meeting. Here are some reasons why the meeting agenda is so important. The Agenda communicates important information such as:

- 1) Topics for discussion
- 2) Presenter or discussion leader for each topic
- 3) Time allotment for each topic (advisable);
- 4) Provides an outline for the meeting (how long to spend on which topics)
- 5) Can be used as a checklist to ensure that all information is covered
- 6) Lets participants know what will be discussed if it's distributed before the meeting.

This gives them an opportunity to come to the meeting prepared for the upcoming

discussions or decisions.

- 7) Provides a focus for the meeting (the objective of the meeting must be clearly stated in

The agenda) to follow it during the meeting!

**Points on a typical agenda may include:**

- Welcome/open meeting
- Apologies for absence
- Approve minutes of the previous meeting
- Matters arising from the previous meeting

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

- A list of specific points to be discussed — this section is where the bulk of the discussion as well as *decisions* in the meeting usually takes place
- Any other business (AOB) — allowing a participant to raise another point for discussion.
- Arrange/announce details of next meeting
- Close meeting

**DRAFTING OF MINUTES OF THE MEETINGS OF SHAREHOLDERS**

The Minutes are usually written from the notes taken by the chairman and secretary during the course of the meeting. They must be drafted in such a manner that there is no ambiguity in interpretation. The minutes must be recorded in paragraphs serially numbered. Each paragraph should preferably be given a heading.

**CONTENTS :**

The minutes must incorporate the following facts

- The nature of the meeting – annual general meeting or extraordinary general meeting
- The number of the meeting, say, the eighth Annual General Meeting
- The name of the Company
- The date, time and place of the meeting
- The names of the Chairman and Secretary
- The names of the members present at the meeting with a view to indicating the presence of a quorum. Where the attending members

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

are very large in number, it would suffice to state that all the shareholders were present or that so many(actual number) members are present

- All the resolutions passed at the meeting. They will of course be in the same order at the agenda
- Vote of thanks
- Chairman's signature with date in his own hand. The secretary should also initial the minutes

The minutes should also state matters on which no formal decisions were made, e.g., that the notice was read, that the auditors' report was read, that the directors' report and accounts were read or were taken as read. If certain matters could not be discussed because of want of time, that fact must also be stated therein.

**DRAFTING OF AGENDA OF THE MEETINGS OF DIRECTORS**

**An agenda** is a list of meeting activities in the order in which they are to be taken up, by beginning with the call to order and ending with adjournment. It usually includes one or more specific items of business to be discussed. It may, but is not required to, include specific times for one or more activities.

Creating an effective agenda is one of the most important elements for a productive meeting. Here are some reasons why the meeting agenda is so important. The Agenda communicates important information such as:

- 1) Topics for discussion
- 2) Presenter or discussion leader for each topic
- 3) Time allotment for each topic (advisable);
- 4) Provides an outline for the meeting (how long to spend on which topics)

CLASS : II B. Com. (CS)

COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE

COURSE CODE : 16COU402

BATCH : 2016 - 2019

UNIT: III (Company Meetings)

---

- 5) Can be used as a checklist to ensure that all information is covered
- 6) Lets participants know what will be discussed if it's distributed before the meeting. This gives them an opportunity to come to the meeting prepared for the upcoming discussions or decisions.
- 7) Provides a focus for the meeting (the objective of the meeting must be clearly stated in The agenda) to follow it during the meeting!

**Points on a typical agenda may include:**

- Welcome/open meeting
- Apologies for absence
- Approve minutes of the previous meeting
- Matters arising from the previous meeting
- A list of specific points to be discussed — this section is where the bulk of the discussion as well as *decisions* in the meeting usually takes place
- Any other business (AOB) — allowing a participant to raise another point for discussion.
- Arrange/announce details of next meeting
- Close meeting

**DRAFTING OF MINUTES OF THE MEETINGS OF DIRECTORS**

At every business meeting the secretary of the board or any other appointed person usually takes **minutes** during meetings. The task of that person is to note down all the important points made at the meeting and later prepare a summary of what was said and decided. Minutes are the official record of an organization. It is crucial that they are accurate since they are the legal record of the proceedings and actions of the organization.

There is no standardized level of content and format for board minutes so when writing minutes, you should follow the standard format which differs

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

according to the kind of an organisation and meeting or the format set by the organisation, but typical minute format should include the following components:

- The name of the organization
- Subject
- Date, time and place of the meeting
- List of participants and if there is a quorum
- Summary of the chairperson's introduction
- Summary of opinions, suggestions and all motions made
- Any conflicts of interest or abstainments from voting
- Action points decided upon, people assigned to each action and deadlines given,
- When the meeting ended
- Date and time of next meeting
- Who developed the minutes.

Written minutes are distributed to board members before each meeting for member's review. Minutes for the previous meeting should be reviewed right away in the next meeting. Any changes should be amended to the minutes and a new version submitted before the next meeting where the new version is reviewed to be accepted. Minutes should be retained in a manual and shared with all board members.

**PROCEDURE TO WRITE AND KEEP MEETING MINUTES**

**Content**

**First paragraph:** Kind of meeting (regular, special, etc.); the name of the organization; the date, time and place of the meeting; the name of the presiding officer and secretary; approximate number of members present; establishment of a quorum; and recording of the action taken on the minutes of the previous meeting.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

### **The body**

Should include, with each motion being a separate paragraph,:

- The exact wording of motions, whether passed or failed, and the way they were disposed of, along with the name of the maker
- If the vote was counted, the count should be recorded. Tellers reports, if there are any, are included. In roll call votes the record of each person's vote is included
- Notices of motions – previous notice is sometimes required e.g. amendments of the bylaws
- Points of order and appeals

**Last paragraph:** hour of adjournment

**N.B.** Not included

- The opinion or interpretation of the secretary
- Judgmental phrases e.g. "heated debate" "valuable comment"
- Discussion: Minutes are a record of what was done at the meeting, not what was said at the meeting
- Motions that were withdrawn
- Name of seconder is unnecessary

### **Attachments**

The official copy of the minutes should have attached to it the original signed copy of:

- Committee Reports
- Officers Reports

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

- Written Motions
- Tellers Reports
- Correspondence

### **Approval**

If the minutes have been distributed to the members before the next meeting then the approval process can be very short. The presiding officer simply states “Are there any corrections to the minutes as printed?” If there are none, or after all corrections have been made, the presiding officer may say “If there is no objection, the minutes will be approved as printed (or as corrected).”

### **Signature**

After the minutes have been corrected and approved by the membership, they should be signed by the secretary and can be signed by the president. The word “approved” and the date of the approval should also be included.

### **Points to be considered while drafting minutes:**

- Make sure that all of the essential elements are noted, such as type of meeting, name of the organization, date and time, name of the chair or facilitator, main topics and the time of adjournment. For formal and corporate meetings include approval of previous minutes, and all resolutions.
- Prepare an outline based on the agenda ahead of time, and leave plenty of white space for notes. By having the topics already written down, you can jump right on to a new topic without pause.
- Prepare a list of expected attendees and check off the names as people enter the room. Or, you can pass around an attendance sheet for everyone to sign as the meeting starts.
- To be sure about who said what, make a map of the seating arrangement, and make sure to ask for introductions of unfamiliar people.

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

- Don't make the mistake of recording every single comment, but concentrate on getting the gist of the discussion and taking enough notes to summarize it later. Remember that minutes are the official record of what happened, not what was said, at a meeting.
- Use whatever device is comfortable for you, a notepad, a laptop computer, a tape recorder, a steno pad, shorthand. Many people routinely record important meetings as a backup to their notes.
- Be prepared! Study the issues to be discussed and ask a lot of questions ahead of time. If you have to fumble for understanding while you are making your notes, they won't make any sense to you later.
- Don't wait too long to type up the minutes, and be sure to have them approved by the chair or facilitator before distributing them to the attendees.
- Don't be intimidated, you may be called upon many times to write meeting minutes, and the ability to produce concise, coherent minutes is widely admired and valued.

**DRAFTING OF CHAIRMAN'S SPEECH**

Before proceeding to regular business at the annual general meeting the chairman usually makes a brief prefatory speech. In his address the chairman makes expression of condolence or congratulations and points out the repercussions of various economic and political problems on the company's working. He also comments on the Directors' Report and explain the future development schemes of the company.

\* \* \* \* \*

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

**POSSIBLE QUESTIONS**

**PART – A (1 MARKS)**

**(ONLINE EXAMINATION)**

**PART – B (2 MARKS)**

1. What is a Notice.
2. List out any four powers of Chairman.
3. Define Agenda.
4. What are the kinds of Share holders Meeting?
5. What is an Extra ordinary General Meeting?
6. What is meant by quorum?
7. What is meant by meeting?
8. Define minutes
9. What is an extra ordinary general meeting?
10. List out the requisites of a valid meeting.

**PART – B (6 MARKS)**

1. Discuss the duties of the Company Secretary in connection with the various meetings of a company.
2. What is a notice? What are the requisites for the valid notice?
3. State the different kinds of meetings of shareholders of a public limited company and discuss the work of the secretary in connection with each of them.
4. Explicate work that the secretary has to do before, at and after the meetings held in a company?

**CLASS : II B. Com. (CS)**

**COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE : 16COU402**

**BATCH : 2016 - 2019**

**UNIT: III (Company Meetings)**

---

5. What are the different kinds of meetings of the shareholders of a company?  
When and how are these meetings held?
6. Explain the statutory provisions relating to quorum for different kinds of company meetings?
7. Describe briefly the different classes of company meetings, mentioning the nature of business conducted at each one of them?
8. Define minutes and state the different methods of recording minutes
9. What is an extra ordinary general meeting? Draft a notice calling an extraordinary general meeting of a public company limited by shares.
10. Explain the scope and nature of different kinds of meetings and state how each is convened?

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A UNIT: III (COMPANY MEETINGS)

BATCH: 2016-2019

		OPTION1	OPTION2	OPTION3	OPTION4	ANSWER
1	which company can not issue prospectus	public company	private company	holding company	subsidiary company	<b>private company</b>
2	Prospectus is required to be issued when _____ are made	right issue	sweat equity	bonds	debentures	<b>right issue</b>
3	When there is a untrue statement in a prospectus who can sue	Subscribed in primary market	Subscribed in secondary market	Rights issue	Sweat equity issue	<b>Subscribed in primary market</b>
4	Definition of prospectus was given under which sec.	2 (30)	2 (32)	2 (34)	2 (36)	<b>2 (36)</b>
5	Which of the following are not required to issue prospectus?	holding company	bounus	Sweat equity issue	public company	<b>Sweat equity issue</b>
6	_____are the prospectus issued instead of full prospectus	Abridged	Statement in lieu	Red herring	Shelf	<b>Abridged</b>
7	Which one of the following has a right to claim compensation for any loss due to misstatement in prospectus	Purchasing shares in Primary Market	Secondary Market	Subscribers to memo.	through intermediars	<b>Purchasing shares in Primary Market</b>
8	_____ years of imprisonment will be imposed in case of issue of prospectus with untrue statements	1	2	3	4	<b>2</b>
9	_____includes an engineer, valuationer, accountant	Expert	Promoter	Auditor	Director	<b>Expert</b>
10	What is the liability of an expert for misstatement _____	Fine – 50,000	Imprison – 2 years	Both (a) & (b)	fine 10,000	<b>Fine – 50,000</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE

COURSE CODE: 16PAU403A

UNIT: III (COMPANY MEETINGS)

BATCH: 2016-2019

11	What is the liability not delivering that can be imposed for statement in lieu of prospectus	Fine – 10,000	Imprisonment – 2 years	None of the above	Both (a) & (b)	<b>Fine – 10,000</b>
12	_____ are the prospectus issued by the issuing house	Deemed prospectus	Shelf prospectus issued by the issuing house	Red herring	certificate of incorporation	<b>Deemed prospectus</b>
13	_____ prospectus were issued in case securities were issued in stages	Deemed	Shelf	Red herring	certificate of incorporation	<b>Shelf</b>
14	_____ are required to file prior to making second and subsequent issue of securities in case shelf prospectus are filed:	Information memorandum	Information articles	Form 13	certificate of incorporation	<b>Information memorandum</b>
15	Information memorandum + shelf prospectus together constitutes _____	Memorandum	Articles	Prospectus	certificate of incorporation	<b>Prospectus</b>
16	Validity period of information memorandum is _____	1 year	2 years	3 years	4 years	<b>1 year</b>
17	_____ prospectus were issued in order to test the market before finalizing issue size/ price.	Deemed	Shelf	Red herring	both a & b	<b>Red herring</b>
18	If there is any variation in case of R.H.P _____ days should be given for withdrawal of application	1	3	5	7	<b>7</b>
19	In case of redherring prospectus the refund is made with an interest @ _____	12	13	15	16	<b>15</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE

COURSE CODE: 16PAU403A

UNIT: III (COMPANY MEETINGS)

BATCH: 2016-2019

20	When there is a untrue statement in the prospectus. The shareholder who subscribed in _____ market can sue the company	secondary	primary market	both a & b	money market	<b>secondary</b>
21	When there is any untrue statement in the prospectus. The shareholder who was A _____ to the memorandum can sue the company	subscriber	intermediar	promisor	owner	<b>subscriber</b>
22	Because of Misrepresentation in prospectus an expert will be _____ liable.	civil	criminally	both a & b	public	<b>criminally</b>
23	What is punishment for directors, promoters and other persons for Misrepresentation in prospectus	50,000	2 years imprisonment	Both of the above	10000	<b>Both of the above</b>
24	When a private company is converted into public company. In which form it should be	Schedule III	Schedule IV	Schedule VI	Schedule I	<b>Schedule IV</b>
25	A prospectus is to be issued within _____ days of registration.	30	60	90	120	<b>90</b>
26	.A company shall not proceed to allot shares until the beginning of the _____ day from the date of issue of prospectus	second	third .	Afifth.	seventh.	<b>second .</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE

COURSE CODE: 16PAU403A

UNIT: III (COMPANY MEETINGS)

BATCH: 2016-2019

27	All monies received with the application of shares are to be deposited_____.	with the controller of capital issues	in the companys bank account	in a special account opened in a scheduled bank for the purpose	with the registrar of companies	<b>in a special account opened in a scheduled bank for the purpose</b>
28	A letter of provide must be demanded in the transmission of shares when a person_____.	is declared insolvent	misbehaves .	. becomes of unsound mind	. has died .	<b>has died .</b>
29	A public company, having a share capital, is required to send the return of allotment to the Registrar of companies within _____days of the allotment of shares	15	30	45	60	<b>30</b>
30	The Return of document is to be filed with the Registrar in the case of _____.	allotment of debentures	reissue of forfeited shares	issue of shares	all of the above	<b>issue of shares</b>
31	.Since a company is regarded as an entity separate from its members, _____.	the property of the company is the property of its shareholders	the debts of the company are the debts of its shareholders.	the shareholders can enter into contracts with the company.	the shareholders have insurable interest in the property of the company	<b>he shareholders can enter into contracts with the company.</b>
32	.A Person ceases to be a companys members when _____.	he loses his share certificate	he becomes insolvent	his share certificate is converted into a share warrant	his shares are forfeited for nonpayment of call monies	<b>his shares are forfeited for nonpayment of call monies</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM    COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE

COURSE CODE: 16PAU403A

UNIT: III (COMPANY MEETINGS)

BATCH: 2016-2019

33	.Which of the following are characteristics of a company ?	It has unlimited liability	It exists only in contemplation of law	It has not a perpetual succession	It comes to an end on the death of all its members	<b>It exists only in contemplation of law</b>
34	.Since a company is regarded as an entity separate from its members, _____.	the property of the company is the property of its shareholders	the debts of the company are the debts of its shareholders.	the shareholders can enter into contracts with the company.	the shareholders have insurable interest in the property of the company	<b>the shareholders can enter into contracts with the company.</b>
35	.The Reserve Bank of India is an example of a _____.	registered company	statutory company .	chartered company .	unlimited company .	<b>statutory company .</b>
36	A shareholder purchased in the open market shares of a company whose prospectus contained some misstatements. He _____.	can rescind the contract only but cannot claim damages	can claim damages only but cannot rescind the contract.	has no remedy against the company.	has remedy against the directors responsible for the issue of the prospectus .	<b>has no remedy against the company.</b>
37	A statement in lieu of prospectus is required to be issued _____.	by all companies which issue shares or debentures	by public companies when shares are issued among friends and relatives.	by private companies as they do not issue shares to the public	by all companies	<b>by public companies when shares are issued among friends and relatives.</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A UNIT: III (COMPANY MEETINGS)

BATCH: 2016-2019

38	The underwriting commission paid or agreed to be paid must not exceed _____.	2 percent of the issue price of the shares	2.5 percent of the issue price of the shares	5 percent of the issue price of the shares.	10 percent of the issue price of the shares.	<b>5 percent of the issue price of the shares.</b>
39	When the shares are transferred to X from Y. Y will be a _____ of the company	Member	Shareholder	Partner	stake holder	<b>Shareholder</b>
40	Which of the given below members are not shareholders	Death of members	Insolvent	Share warrant holders	All of the above	<b>All of the above</b>
41	Which of the following is a right of the members of a company	Right to have share	Right Appoint Auditor	Right Appoint Director	All the above	<b>All of the above</b>
42	Which of the following is not a member of a company?	Partnership firm	Foreigner	Government	HUF	<b>Partnership firm</b>
43	A company can become a members of another company if it is so authorized by _____	MOA	AOA	Both (a) & (b)	certificate of incorporation	<b>MOA</b>
44	Which of the following is not true	Every member is a contributory	Every contributory is a member.	Both (a) & (b)	no members	<b>Every contributory is a member.</b>
45	Interest out of capital can be paid only if it is sanctioned by _____	MOA	AOA	NCLT	C.G	<b>AOA</b>
46	Forfeiture can be made only if it is authorized by _____	AOA	MOA	ROC	C.G	<b>MOA</b>
47	shelf prospectus issued by	Financial Institution	private company	Public Company	Holding Company	<b>Financial Institution</b>
48	an information of memorandum shall be issued to the public along with _____	Deemed prospectus	Shelf prospectus	prospectus	memorandum	<b>Shelf prospectus</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE

COURSE CODE: 16PAU403A

UNIT: III (COMPANY MEETINGS)

BATCH: 2016-2019

49	when an update of information memorandum is filled every time offer of _____ is made	paid up capital	securities	share warrents	debentures	<b>securities</b>
50	liability of misstatements in a prospectus	civil	criminal	public	both a &b	<b>both a &amp;b</b>
51	Acompany having a share capital, which does not issues a prospectus, can allot shares or debentures on ly when atleast_____ be fore the allotment	3 days	5 days	8 days	1 month	<b>3 days</b>
52	A company issuing a prospectus to the public must do it with in_____	90 days after the date of registration	30 days after the registration	60 days after the date of publication	60 days after the registration	<b>90 days after the date of registration</b>
53	a satement in liue of prospectus is required to be issued by	all companies which issues shares and debentures	public company when share is issued	private company	Holding Company	<b>public company when share is issued</b>
54	the underwriting commision paid to be paid must no exceed	2 percent	2.5 percent	5 percent	10 percent	<b>5 percent</b>
55	red herring prospectus the refund interest -----	10	15	20	25	<b>15</b>
56	Which of the following documents may be changed with retrospective effect?	Memorandum of association	prospectus .	Articles of association	Statement in lieu of prospectus	<b>Articles of association .</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE

COURSE CODE: 16PAU403A

UNIT: III (COMPANY MEETINGS)

BATCH: 2016-2019

57	prospectus means	invite offers from public	inviting capital	value of company	notice	<b>invite offers from public</b>
58	misrepresentation in the prospectus must be of fact	not of law	not of rules	not of standard	either no rules and no law	<b>not of law</b>
59	A shareholder purchased in the open market shares of a company whose prospectus contained some misstatements. He _____.	can rescind the contract only but cannot claim damages	can claim damages only but cannot rescind the contract.	has no remedy against the company.	has remedy against the directors responsible for the issue of the prospectus .	<b>has no remedy against the company.</b>
60	Which of the following companies must file a statement in lieu of prospectus?	A private limited company	A cooperative society	A company that has issued a prospectus	A public company that has not issued a prospectus .	<b>A public company that has not issued a prospectus .</b>

UNIT IV

SYLLABUS

Key Managerial Personnel (KMP) -Company Secretary -Meaning -Definition-Types -Positions -Qualities -Qualifications -Appointment and Dismissal-Power -Rights -Duties -Liabilities of a Company Secretary -Role of a Company Secretary

**Appointment of key managerial personnel**

(1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

- (i) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
- (ii) Company secretary; and
- (iii) Chief Financial Officer:

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

- (a) The articles of such a company provide otherwise; or
- (b) The company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time: Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel:

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

(5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

Company Secretary:

### **Introduction:-**

Company Secretary Appointment and his Rights and Obligations needs to understand the definitions and as per sub section 24 of section 2 of Companies Act 2013, Company Secretary means a Company Secretary define in clause C of sub section 1 of section 2 of the Company Secretaries Act 1980. And as per clause C of subsection 1 of section 2 of the Company Secretaries Act 1980 Company Secretary means a person who is a member of Institute of Company Secretary of India. Company Secretary is managerial personnel in a private sector company and in a public sector company. A Company Secretary is a person who can represent his company before any quasi-judicial body in relation to any legal dispute and other legal litigation.

### **Statutory guidelines for Appointment:-**

As per section 203 of Companies Act 2013 every listed Company and every public company having paid up share capital of rupees Five crore or more shall have whole-time Company Secretary in employment. And as per section 203 of Companies Act 2013 above specified company also need to appoint whole-time-key managerial personnel and as per Section 2(51) of the Companies Act 2013 Company Secretary also covered under the definition of Key managerial personnel.

If a company contravenes the provision regarding the appointment of Key Managerial personnel(K.M.P.) under Section 203 then the company shall be punishable with the minimum fine of rupees One lakh which may extend up to rupees Five lakh and every director and K.M.P. of the company who is in default shall be punishable with fine which may extend to rupees fifty thousand and if contravention is continuing in nature then with a further fine of rupees one thousand for every day after the first during which the contravention continues (sub section 5 of Section 203).

### **Procedure to be followed:-**

Regulation 77 of table F provides that a Company Secretary may be appointed by the board of director and can fix the remuneration and condition as it may think fit. Generally board appoints the company secretary soon after the incorporation. Board of director may appoint Company Secretary by passing the board resolution in the meeting and execute a service agreement between Secretary so appointed and the company.

### **Steps to be followed for appointment of Company Secretary:-**

- Ø Resolution should be passed by the board of director in their board meeting.
- Ø Agreement of service should be prepared.
- Ø Details of Company Secretary must be recorded in the register of Key Managerial Personnel.
- Ø A return in Form no DIR.12 shall be filed with the R.O.C. within 30 days from appointment and MGT 14 is also required to be filed along with fees.
- Ø A return in MR 1 shall be filed with the R.O.C. within 60 days from the appointment.

\*If such company is listed then give an intimation to all the Stock Exchange where the company's securities are listed.

### **Rights of the Company Secretary:-**

Company Secretary is a senior level officer. He enjoys the rights as per the agreement signed by him with the Company. Some rights are as follows-

- As a senior level officer Company Secretary can supervise, control and he can direct subordinate officers and employee.

- A Company Secretary can sign any contractor agreement on behalf of the company as a principle officer of a company, subject to the delegation of power by the board of the company.
- Company Secretary can issue guidelines for the employees on behalf of the company.
- Company Secretary can attend meeting of shareholders and the meeting of board of directors.
- During Winding up he can claim his legal dues as a preferential creditor of a company.
- He can sign and authenticate the proceeding of meetings (Board, Annual general or extra ordinary general meeting) and other documents on behalf of the company where common seal is not required.
- Company Secretary is a Compliance Officer and concise keeper of the company and he has a right to blow whistle whenever he finds the conduct of the officers or of the directors of the company are detrimental to the interest of the company.

### **Statutory Responsibility of the Company Secretary under the Companies Act, 2013:-**

The Companies Act, 2013 prescribed some responsibilities which are as follows:-

#### **\*Signing share certificate:-**

Share certificate of the company should be sign by the two director out of which one should be managing director or whole time director and Secretary of the company or any other person duly authorized by the board.

#### **\*Signing annual return:-**

As per Section 92 (1) of the companies act 2013 annual return to be filed with Registrar of companies has to be signed by a director and Company Secretary if company does not have a Company Secretary then the return can be signed by the Practicing Company Secretary.

#### **\* As Per Section 205 of Companies Act, 2013 the functions of company secretary include:-**

- Report to the board about the compliance with the provision of Companies Act and all other applicable laws to the company and the rules made under the respective laws.

- And make sure that the company complies with the applicable Secretarial Standards issued by ICSI.
- And perform all other duties as may be prescribed.

**Responsibilities of the Company Secretary:-**

As per Companies(Appointment remuneration of managerial personnel) rule, 2014 the central government has prescribed following responsibilities:-

- ü Company Secretary responsible to provide collectively and individually such guidance as may require by the directors of the company
- ü Company Secretary is responsible for convening of meetings and attend these meetings and maintain the minutes of these meetings.
- ü Obtain the necessary approval by the appropriate authority when required under the provision of company law.
- ü Represent his company before any authority or quasi-judicial body and other authorities under the act in connection with discharge of various function under the act.
- ü Assist the board and advise the board in ensuring the good governance and in complying with the requirement of good corporate governance.
- ü Advise the board in relation to applicable laws.
- ü And other duties as may be assigned by the board from time to time.

Note:-As per section 205 (2) provides that section 204 in relation to secretarial audit and section 205 in relation to functions of company secretary shall not affect the duties and functions of the director , managing director or whole time director under this act ,or any other law for the time being in force.

**Responsibility as per Corporate governance:-**

\*In Audit committee:-

As per clause 49 of the listing agreement regarding corporate governance, Company Secretary will be the Secretary of the audit committee which is required to be formed by listed companies.

\*Secretary as a compliance officer:-

Every listed company required to appoint the Company Secretary as a Compliance officer of the company who directly get in touch with SEBI, Stock exchange and the registrar of companies etc. (Clause 47 (a) of listing agreements)

\*As per section 432 of companies Act 2013 A Company Secretary can appear before national company law tribunal (N.C.L.T.) on behalf of the company.

### **Conclusion:-**

On the basis of above discussion we can say appointment of Company Secretary and his unique position in the company who is vested with bunch of legal rights and responsibilities as company secretary of any company. Company Secretary can add value to their role by making a good judgment and making quick accurate decision having commercial awareness in addition to their legal expertise.

Appointment of Company Secretary and Compliance Officer :  
Board Resolution Format

### **DRAFT BOARD RESOLUTIONS FOR THE APPOINTMENT OF COMPANY SECRETARY AND COMPLIANCE OFFICER:**

(1) In Case of Unlisted Company:

“RESOLVED THAT pursuant to the provisions of Section 203 of the Companies Act, 2013 and any amendments thereto, Shri /Ms. \_\_\_\_\_ an Associate/Fellow Member of the Institute of Company Secretaries of India, who possess the requisite qualification as prescribed under the Companies (Appointment and Qualifications of Secretary) Rules, 1988, be and is hereby appointed, on such terms and conditions as may be decided by the management, as the Company Secretary of the Company, w.e.f. \_\_\_\_ (Date), to perform the duties of a Secretary as required under the Companies Act, 2013 and any other duties assigned by the Board of Directors from time to time”.

“FURTHER RESOVLED THAT Shri A, Director and Shri B, General Manager - Finance be and are severally authorised to sign and submit e-form DIR-12 with the Registrar of Companies(ROC), \_\_\_\_ (city) and do all such acts, deeds and things as may be necessary to give effect to the above resolution.

(2) In Case of Listed Company:

The Resolution will be slightly different as a Listed Company is required to appoint the Company Secretary to act as Compliance Officer as per the Clause 47 (a) of the Listing Agreement with the Stock Exchanges. Format of Resolution as Follows:

“RESOLVED THAT pursuant to the provisions of Section 203 of the Companies Act, 2013 and any amendments thereto, Shri /Ms. \_\_\_\_\_ an Associate/Fellow Member of the Institute of Company Secretaries of India, who possess the requisite qualification as prescribed under the

Companies (Appointment and Qualifications of Secretary) Rules, 1988, be and is hereby appointed, on such terms and conditions as may be decided by the management, as the Company Secretary of the Company, w.e.f. \_\_\_\_ (Date), to perform the duties of a Secretary as required under the Companies Act, 2013 and any other duties assigned by the Board of Directors from time to time".

FURTHER RESOLVED THAT Shri / Ms. \_\_\_\_\_, Company Secretary, be and is hereby appointed/designated as the Compliance Officer of the Company as per Clause 47 (a) of Equity Listing Agreement entered with Stock Exchanges with effect from (Date). FURTHER RESOVLED THAT Shri A, Director and Shri B, General Manager - Finance be and are severally authorised to sign and submit e-form DIR-12 with the Registrar of Companies(ROC), \_\_\_\_\_ (city) and do all

(3) In Case of Unlisted Company, which got Listed in Stock Exchange(s): If the Company, already, has a Company Secretary: "RESOLVED THAT Shri / Ms. \_\_\_\_\_, Secretary of the Company, be and is hereby appointed/designated as the Compliance Officer of the Company as per Clause  
"

### **Private Limited Company:**

Requirement to appoint Company Secretary in Private Limited Company govern by the Provision of Rule- 8A of 'The Companies Appointment and Remuneration of Managerial Personnel, Rules 2014' Chapter XIII.

Time Period: The Act doesn't provide the time period in which a Company have to designate Company Secretary as KMP. But it's advisable to appoint a Company Secretary as KMP in first board meeting conduct after applicability of such provision. In this Case Rule 8A come into force from 9th June, 2014.

**Process to Designate as KMP:** Below given is process:

I. Call Board Meeting: Pass a Board Resolution for designation of Company Secretary as KMP as per section 203.

II. Consent to act as KMP: Receive consent from Company Secretary to act as KMP.

### **III. Filling of Form with ROC:**

**MGT-14:** As per provision of Section 179 (3) Rule 8(2): Company require to file MGT- 14 along within 30 days of passing of Board Resolution with, [Attachment: Consent Letter and CTC of Board Resolution].

**MR-1:** As per Rule 3 of Chapter XIII: Company required filing MR-1 at the time of appointment of KMP within 60 days of passing of Board Resolution, with [Attachment: CTC of Board Resolution and Consent Letter)

**Note:**

i. As per Section 170 (2) there is needed to file form DIR-12 for any change in particular of Director or KMP. So in the above case change is designation of KMP and director. But practically it's not possible to file e-form DIR-12 for change in particular. If we will try to file same then MCA will not accept the same.

ii. Above mention resolution for designation as KMP can't pass as Resolution by Circulation. There is need to hold Board Meeting for the same.

### **Public Limited Company:**

Requirement to appoint Company Secretary in Private Limited Company govern by the Provision of Rule- 8 of 'The Companies Appointment and Remuneration of Managerial Personnel, Rules 2014' Chapter XIII.

Time Period: The Act doesn't provide the time period in which a Company have to designate Company Secretary as KMP. But it's advisable to appoint a Company Secretary as KMP in first board meeting conduct after applicability of such provision. In this Case Rule 8 come into force from 1st April, 2014.

Process to Designate as KMP: Below given is process:

I. Call Board Meeting: Pass a Board Resolution for designation of Company Secretary as KMP as per section 203.

II. Consent to act as KMP: Receive consent from Company Secretary to act as KMP.

III. Filling of Form with ROC:

**MGT-14:** As per provision of Section 179 (3) Rule 8(2): Company require to file MGT- 14 along within 30 days of passing of Board Resolution with, [Attachment: Consent Letter and CTC of Board Resolution].

**MR-1:** As per Rule 3 of Chapter XIII: Company required filing MR-1 at the time of appointment of KMP within 60 days of passing of Board Resolution, with [Attachment: CTC of Board Resolution and Consent Letter)

Note:

i. As per Section 170 (2) there is needed to file form DIR-12 for any change in particular of Director or KMP. So in the above case change is designation of KMP and director. But practically it's not possible to file e-form DIR-12 for change in particular. If we will try to file same then MCA will not accept the same.

ii. Above mention resolution for designation as KMP can't pass as Resolution by Circulation. There is need to hold Board Meeting for the same.

### **B. APPOINTMENT OF COMPANY SECRETARY AS PER COMPANIES ACT, 2013:**

Requirement to appoint Company Secretary in Private Limited Company govern by the Provision of Rule- 8A and in Public / Listed Company by the provisions of Rule-8 of The

Companies “Appointment and Remuneration of Managerial Personnel” Chapter XIII under Section-203 of Companies Act, 2013.

Time Period: As per Section 203(4), if Company doesn't not have Company secretary before 01st April, 2014 and provision of Section 203 applicable on such company then such company has to appoint Company Secretary with in 6 (Six) month till 30th September, 2014 (from 1st April, 2014).

**Process to Appoint as Company Secretary:**

I. Call Board Meeting: As per Section- 203(2) Pass a Board Resolution for Appointment of Company Secretary. Board Resolution should contain the following

- Terms and Condition of Appointment.
- Remuneration
- Membership No.

II. Consent to act as Company Secretary: Receive consent from Company Secretary to act as Company Secretary.

III. Consent to act As Company KMP: Receive consent from Company Secretary to act as Company Secretary.

IV. Process for appointment of Company Secretary: Below given is process:

**MGT-14:** As per provision of Section 179 (3) Rule 8(2): Company require to file MGT- 14 along within 30 days of passing of Board Resolution with, [Attachment: Consent Letter and CTC of Board Resolution].

**MR-1:** As per Rule 3 of Chapter XIII: Company required filing MR-1 at the time of appointment of KMP within 60 days of passing of Board Resolution, with [Attachment: CTC of Board Resolution and Consent Letter)

**DIR- 12:** As per Section 170 (2) there is needed to file form DIR-12 for appointment of Director or KMP within 30 days of passing of Board resolution with (Attachment: Consent Letter, Appointment Letter, Self attested Copy of PAN card and CTC of Board Resolution).

Note:

A. Circular Resolution: Resolution for appointment of CS is given in Section 179(3) Read with rule 8(2). Every Resolution mention in 179(3) required to be passed by Meeting of Board of Director (Including Video Conferencing). So Appointment of Removal of Board of Director can't done by Circular Resolution.

B. Filling of Vacancy of Company Secretary: As per Section 203 In case of Vacancy at place of Company Secretary. Company will appoint another Company Secretary within 6 month from the date of resignation of Company Secretary.

C. Register Of Key Managerial Personnel: Section- 170(1) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed in Rule 17 of the Companies (Appointment and Qualification of

Directors) Rules 2014, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.

Rule 17 of the Companies (Appointment and Qualification of Directors) Rules 2014: prescribed every company shall keep at its registered office a register of its directors and key managerial personnel containing the following particulars, namely:-

- i. Director Identification Number (optional for key managerial personnel);
- ii. present name and surname in full;
- iii. any former name or surname in full;
- iv. father's name, mother's name and spouse's name(if married) and surnames in full;
- v. date of birth;
- vi. residential address (present as well as permanent);
- vii. nationality (including the nationality of origin, if different);
- viii. occupation;
- ix. date of appointment and reappointment in the company;
- x. date of cessation of office and reasons therefor;
- xi. Office of director or key managerial personnel held or relinquished in any other body corporate;
- xii. membership number of the Institute of Company Secretaries of India in case of Company Secretary, if applicable; and
- xiii. Permanent Account Number (mandatory for key managerial personnel if not having DIN);

In addition to the details of the directors or key managerial personnel, the company shall also include in the aforesaid Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding company and associate companies relating to-

- xiv. he number, description and nominal value of securities;
- xv. the date of acquisition and the price or other consideration paid;
- xvi. date of disposal and price and other consideration received;
- xvii. cumulative balance and number of securities held after each transaction;
- xviii. mode of acquisition of securities ;
- xix. mode of holding – physical or in dematerialized form; and
- xx. whether securities have been pledged or any encumbrance has been created on the securities.

xxi. date of the board resolution in which the appointment was made;

Note: There is no other prescribed format for the Register. Any format satisfying conditions of this Rules and containing all these information may be adopted by a company.

#### Power, Rights and Duties of Company Secretary:

The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice. Company secretary is a key managerial person in a company, responsible to ensure the effective and efficient administration of the company and certifying the company's compliance with the provision of the Act.

This article will highlight the differences in the role of company secretaries in employment and in practice as provided under the old company law and in new company law, and finally will enlist the strengthened role of company secretary in Companies Act, 2013.

#### **Role and need of company secretary under Companies Act 2013**

The present Companies Act has strengthened the role of company secretaries. Some of the key areas that have directly impact the role of company secretaries in employment or in practice due to this Act are as follows:

##### **1. Introduction of secretarial audit**

Secretarial Audit is the process to check whether the company is adhering to the legal and procedural requirements and a process to monitor the company's compliance with the requirements of the stated laws. The objective behind the introduction of secretarial audit is to improve corporate governance and compliance.

According to Section 204 of the Companies Act 2013, it is the duty of the Company Secretary in practice to perform secretarial audit of every listed company and any such other class of

prescribed companies. The Central Government has prescribed the such other class of prescribed companies as-

- Every public company with a paid-up share capital of Rs. 50 Crore or more.
- Every public company with a turnover of Rs. 250 Crore or more.

## 2. **Secretarial standards**

The objective behind the formulation of secretarial standards is to integrate, harmonize and standardization of diverse secretarial practices. The Companies Act, 2013 under Section 118 has made the compliance of Secretarial Standards compulsory on meeting of the Board of Directors and on general meetings.

## 3. **Annual return**

Annual return is a comprehensive document contains information regarding share capital, directors, shareholders, changes in directorships etc about the company. Under the old Companies Act of 1956 the annual return of the listed companies are required to be signed by the company secretary in practice. The new Companies Act, 2013 under Section 92 has widened this requirement by providing that annual returns of companies having such paid up capital and turnover to be signed and certified by the company secretaries in practice.

## 4. **Appointment of whole-time key managerial personnel**

Under Section 203 of the new Companies Act, 2013, the companies has to compulsorily appoint the whole time Key Managerial Personnel in respect of certain class of companies as prescribed by the Central Government to ensure good corporate governance and regulation. The company shall have the following whole-time Key Managerial Personnel (KMP):

- Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director.
- Company Secretary.
- Chief Financial Officer.

So this made the appointment of whole-time Company Secretary mandatory for better efficiency.

### 5. Functions of company secretary

According to Section 205 of the Companies Act, 2013 the Company Secretary shall discharge following functions and duties, this is the first time that the duties of the company secretary have been specified in the company law:

- To report to the Board about the compliance with the provisions of this Act.
- To ensure that the company complies with the applicable secretarial standards.
- To provide to the directors of the company the guidance they require in discharging their duties, responsibilities and powers.
- To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings.
- To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act.
- To assist the Board in the conduct of the affairs of the company.
- To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.

### **Difference between old and new company law relating to the issue of compliance certificate by company secretary**

Company Secretaries in practice are those persons who are independently carrying on public practice. Under the old Companies Act, 1956, these company secretaries in practice have a duty

to issue compliance certificate to the companies who have paid-up capital of more than 10lakh Rupees but not more than 5Lakh Rupees.

Whereas the new Companies Act, 2013 has enhanced the role of company secretaries in practice by providing with the opportunities such as promotion, formation and incorporation of companies, secretarial audit and certification services, signing of annual return, appointment of company liquidator, assistance to company liquidator, and many more.

### **Difference between old and new company law relating to the issue of employment of company secretary**

According to section 383A of the Old Companies Act, 1956, every company who has a paid up capital of about Rs. 5 Crore or more had to appoint a whole-time company secretary for the purpose of ensuring better administration of the company. If a company fails to comply with the aforesaid provision, then the directors and any other officer who is in default shall be liable for the penalty which may extend to Rs 500 per day till the default continues. But on the other hand, Companies Act 1956 had a big loophole in it for the appointment of company secretary. It provided that if a company is not in a position to appoint a whole-time company secretary due to financial problems they can be excused from the same.

Covering these defects, Companies Act 2013 came into effect on 1 April, 2013. According to Section 203 of the Companies Act 2013, every listed company and any other company including the public companies has the obligation to appoint a whole-time company secretary having a paid-up capital of Rs 10 Crore or more. If a company fails to appoint a whole-time company secretary, Companies Act 2013 imposes a heavy penalty both on company as well as its directors and every officer who is in default. The company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to Rs 5 lakh. And every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to Rs. 50,000 and where the contravention is continuing one, with a further fine which may extend to Rs. 1,000 for every day after the first during which the contravention continues.

**Duties:**

1. To guide the directors of the company as may require with regards to duties, responsibilities and powers and assisting the Board in the conduct of the affairs of the company;
2. To facilitate the convening of meetings and attend the board, committee and general meetings and at the same time to ensure that minutes of these meetings are maintained;
3. To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
4. To represent before various regulators, other authorities under the Act in connection with discharge of various duties under the Act;
5. To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
6. To discharge such other duties as have been specified under the Act or rules; and such other duties as may be assigned by the Board from time to time.

**Liabilities:**

**Legal Position of a Company Secretary**

The legal position of a company secretary may be explained as follows:

- (a) Servant of the company: The Secretary of a company is servant of the company, whose duty is to act in accordance within the instructions given to him by directors.
- (b) Agent of the company: The secretary of a company, being chief administrative officer of the company by virtue of his office, is also an agent of the company in a restricted sense. He also ostensible authority to enter into contracts on behalf of the company as regards matters connected with office administration.
- (c) Officer of the company: As an officer of the company, the secretary may incur personal liability to statutory penalties by reason of non-compliance with the requirements of Companies Act, 2013. Besides, he is a chief officer under whose supervision all ministerial and administrative work at registered office of the company is carried on.

POSSIBLE QUESTIONS  
PART B  
ANSWER ALL THE QUESTIONS

1. Define Key Managerial Personnel.
2. Define Company Secretary.
3. What are the types of Company Secretary?
4. What are the qualifications of Company Secretary?
5. What are the procedures in appointment in Company Secretary?
6. Define Liabilities of a Company Secretary.
7. What are the rights of a Company Secretary
8. What are the duties of a Company Secretary?

PART C  
ANSWER ALL THE QUESTIONS

1. Who is a secretary? Point out the importance of a secretary in the modern business world and discuss his legal and actual position.
2. What are the provisions of law and the procedure for the appointment of a secretary in a company? Also draw a resolution for the purpose.
3. Discusses the position of a company secretary and explain his rights and liabilities?
4. Enumerate the provisions of the Companies Act, 1956 regarding the appointment of Company Secretary and the powers and liabilities of a company secretary.
5. What are the different types of secretaries? What functions do they perform?
6. Define the term 'secretary'. How is a company secretary appointed in a company?
7. The secretary is a link between the directors and the shareholders of a company". Discuss. Also explain how and when the secretary of a company is appointed?
8. Describe the role of a secretary in a company organization and qualities which he is expected to possess.
9. A qualified and well-trained secretary is an asset to a company". Elucidate
10. Define a company secretary. What are his rights, duties and responsibilities?

**KARPAGAM ACADEMY OF HIGHER DEUCATION**

**CLASS: II B.COM    COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE: 16PAU403A**

**UNIT: IV (KEY MANAGERIAL PERSONNEL)**

**BATCH: 2016-2019**

		<b>OPTION1</b>	<b>OPTION 2</b>	<b>OPTION3</b>	<b>OPTION 4</b>	<b>ANSWER</b>
1	A company must inform the registrar about redemption of preference shares with in _____	21 days	15 days	30 days	25 days	<b>30 days</b>
2	Share premium amount is treated as the _____ capital of a company	issued	Reserve	Subscribe	paid up	<b>Reserve</b>
3	A company can create 'reserve capital' by passing _____	an ordinary resolution	a special resolution	a board resolution	Annual General Meeting	<b>a special resolution</b>
4	The capital which is part of the uncalled capital of the company which can be called up only in the event of its winding up it is called _____	Issued capital	Nominal capital	Authorised Capital	Reserve capital	<b>Reserve capital</b>
5	XYZ Co. is a holding of XZ Pvt. Company. XZ Co. issued deferred shares. The issue is valid or void	Valid	Void	Situation does not arise	enforcebl e	<b>Void</b>
6	What is the maximum period for redemption in case of preference shares issued by the company	10 years	15 years	20 years	12 years	<b>20 years</b>
7	Capital redemption reserve must be used for issue of _____	Fully paid bonus shares	Fully paid equity shares	Preference shares	upaid capital	<b>Fully paid bonus shares</b>
8	Part of the issued capital taken by public is called _____	Subscribed	Called – up capital	Un called capital	Paid up capital	<b>Subscribed</b>
9	Part of authorized capital which is offered by the company for subscription	subscribed	Issued	Un called	called up	<b>Issued</b>
10	Stamp duty on registration of the company is payable based on _____ capital.	Nominal	Authorize d	Both (a) & (b)	paid up	<b>Both (a) &amp; (b)</b>
11	Deferred shares are also known as _____ shares	Founders	Equity	Preference	debenture holders	<b>Founders</b>
12	_____ Preference shares carry the right to cumulate the dividends	Converted	Cumulativ e	Non-converted	redempti on	<b>Cumulative</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE

COURSE CODE: 16PAU403A

UNIT: IV (KEY MANAGERIAL PERSONNEL)

BATCH: 2016-2019

13	Paying back of capital is called	Redemption	Conversion	Participation	termination	<b>Redemption</b>
14	Premium amount on the securities are transferred to _____ account	Securities premium	Reserve fund	Capital Reserve	None	<b>None</b>
15	Maximum rate of discount that can be allowed on issue of shares	5%	10%	15%	20%	<b>10%</b>
16	To issue the shares at discount company at least how many years should complete how many years ____	1	2	3	4	<b>1</b>
17	_____are the shares issued by the company to it employees or directors for consideration other than cash	Bonus	Sweat	Right	ESOP	<b>Sweat</b>
18	Cumulative preference share holders have voting right if dividend are in arrears for years	1	2	3	4	<b>2</b>
19	_____ form is to be find in case of variation rights of share holders	23	19	18	20	<b>19</b>
20	_____ is an aggregate of fully paid share that have been legally consolidated.	Share	Stock	Both (a) & (b)	bond	<b>Stock</b>
21	_____ have fixed denomination	Share	Stock	Both (a) & (b)	bond	<b>Share</b>
22	_____ resolution should be passed by the company to offer shares to outsiders	Special resolution	Ordinary resolution	C.G	Both or b)	<b>Special resolution</b>
23	Company must pass _____ for reducing its share capital	OR	S.R	C.G permission	Both or b)	<b>S.R</b>
24	Court order the company to add _____ after reducing its share capital	And reduced	Ltd	Both (a) & (b)	pvt Ltd	<b>And reduced</b>
25	For reducing its share capital it should give notice to whom?	Debtors	Creditors	Both (a) & (b)	shareholders	<b>Creditors</b>
26	Reduction & diminution is done under which sec.	100 & 94	94 & 100	100 & 96	96 & 100	<b>100 &amp; 94</b>
27	Which of the following can be used for buy back of shares	Free reserves	Securities premium	Proceeds of fresh issue of shares	All of the above	<b>All of the above</b>

**KARPAGAM ACADEMY OF HIGHER DEUCATION**

**CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE: 16PAU403A**

**UNIT: IV (KEY MANAGERIAL PERSONNEL)**

**BATCH: 2016-2019**

28	Buy back by board resolution can only be upto _____	15	10	25	20	<b>10</b>
29	Buy back should be less than or equal to _____% of total paid up capital	25	30	35	40	<b>25</b>
30	In case of buy back debt equity ratio should be _____	1:02	2:01	3:01	1:03	<b>2:01</b>
31	Every buy back shall be completed with in _____ month from the date of passing the S.R.	6	8	10	12	<b>12</b>
32	The company must deliver share certificate within _____ if the shares allotted by company	2 months	3 months	4 months	8 months	<b>3 months</b>
33	The company must deliver share certificate within _____ if the shares applied for transfer	3 months	2 months	5 months	8 months	<b>2 months</b>
34	Share warrants can be issued with the prior approval of the _____	Company law board	Dept of company affairs	Registrar	None	<b>Registrar</b>
35	Stamp duty to be paid at the time of issue of share certificate is.	Nominal	High	Very high	low	<b>Nominal</b>
36	Stamp duty to be paid at the time of issue of share warrant.	Nominal	High	Very high	low	<b>Very high</b>
37	_____ specifies the time limit with in which share certificate is to be delivered	sec 110	sec 111	sec 112	sec 113	<b>sec 113</b>
38	_____ is a document showing title	Share certificate	Share warrant	Both (a) & (b)	Dividend warrant	<b>Both (&amp; (b))</b>
39	Extension of time limit is possible only in which of the following?	Shares	Debentures	Both (a) & (b)	Dividend	<b>Debentures</b>
40	In case of extension of time limit for issue of debenture certificate should be given by _____	NCLT	ROC	DCA	both b and c	<b>NCLT</b>
41	The period of extension granted by NCLT for issue of debenture certificate is _____	5	7	9	11	<b>9</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A UNIT: IV (KEY MANAGERIAL PERSONNEL)  
BATCH: 2016-2019

42	Which of the following can issue the share warrant	Public	Private	Both (a) & (b)	statutory company	<b>Public</b>
43	Voting Rights are available to share warrant holders.	Yes		No		<b>No</b>
44	Duplicate certificate obtained if original certificate lost in case of.	Share Certificate	Share warrant	Dividend warrant	both b and c	<b>Share Certificate</b>
45	Name of the member is struck off from the register in case of _____	Issue of share certificate	Share warrant	Forfeiture	both b and c	<b>Share warrant</b>
46	_____ Days be given for payment of call money from the date of service of notice	14	13	12	11	<b>14</b>
47	_____ arises in respect of debt due on shares as well as on other transactions	Forfeiture	Lien	Both (a) & (b)	bailee	<b>Lien</b>
48	Return of partly paid shares by the shareholders to the company is _____	Surrender	Forfeiture	Lien	bailee	<b>Surrender</b>
49	No consideration shall be paid by the company in exchange of _____ shares	Lien	Forfeited	Surrender	bailee	<b>Surrender</b>
50	Transfer deed should in form No.	6 B	5 B	7 B	8 B	<b>7 B</b>
51	_____ is voluntary passage of the rights and duties of member from a share holder.	Transfer	Transmiss ion	Both (a) & (b)	Blank transfer	<b>Transfer</b>
52	The person who transfer his rights and duties is called _____	Transferee	Transferor	Promisor	Promisee	<b>Transferor</b>
53	The person to whom the rights and duties are endorsed is called _____	Transferee	Transferor	Endorser	Endorsee	<b>Transferee</b>
54	_____ is an instrument of transfer signed by the transferor in which the name & date are not filled.	Forged transfer	Blank transfer	Both (a) & (b)	no transfer	

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A UNIT: IV (KEY MANAGERIAL PERSONNEL)  
BATCH: 2016-2019

55	_____ is issued in acknowledgement of any indebtedness	Debenture certificate	Share certificate	Share warrant	both b and c	<b>Debenture certificate</b>
56	Own funds are called _____	Debenture capital	Share capital	Loan capital	authorise d capital	<b>Share capital</b>
57	Incase of allotment Debenture Certificate is to be issued with in _____ months	1	2	3	4	<b>3</b>
58	Debenture holders are _____	Owners	Creditors	Debtors	Both (a) & (b)	<b>Creditors</b>
59	Return paid on shares is _____	Interest	Dividend	Commission	Both (a) & (b)	<b>Dividend</b>
60	Debentures payable to a holder of certificate is called _____	Bearer	Unregister ed	Secured	Both (a) & (b)	<b>Bearer</b>

UNIT V

SYLLABUS

Accounts of Companies -Audit and Auditors' -Prevention of Oppression and Mismanagement - Winding up-Official Liquidators -National Company Law Tribunal-E -Governance -Ministry of Corporate Governance.

Accounts of Companies:

The books of accounts showing true and fair financial statements and relevant papers shall be kept at the registered address of the company. The books shall be kept on accrual basis and according double entry system of accounting. The books of accounts and relevant papers may be kept at other place in India as BOD may decide. A seven days notice shall be given to ROC for communication of new address. The accounts can be kept in electronic mode.

The books of accounts related to to branch office can be kept at the branch however proper summarized returns shall be sent to registered office periodically.

The books of accounts shall be open for director's inspection at registered office or other place during business hours. The copies of financial information maintained outside India shall be produced for inspection. The inspection of subsidiary can be done only after authorization from BOD.

The books of accounts of the company shall be kept in good order for a period of 8 FYs and in case investigations ordered by CG it may direct a longer period.

MD, WTD in charge of finance, CFO and such other person charged by the BOD with compliance of this section, contravenes the provisions shall be punishable with imprisonment for maximum 1 year or with fine ( Rs. 50,000 to Rs. 5,00,000 ).

**Financial Statements ( Section 129 )**

The financial statement –

- shall be prepared in Schedule III format,
- shall comply with the accounting standards specified in section 133 and
- shall give a true and fair view of the state of affairs of the company
- shall be laid before AGM by BOD along with the consolidated financials ( prepared on the basis of same principles of stand alone ) in case of subsidiary , associate and JV.
- if do not comply with accounting standards, shall disclose the deviation, reasons and financial effect

Contravention of the provisions of this section; MD, WTD in charge of finance, CFO and such other person charged by the BOD with compliance of this section and in the absence of any such officers all the directors shall be punishable with imprisonment for maximum 1 year or with fine ( Rs. 50,000 to Rs. 5,00,000 ).

### **Reopening of accounts on court's or Tribunal's orders ( Sec. 130 )**

Application made by CG, Income tax authority, SEBI, any other regulatory body, authority or any person concerned and an order made by a court or the tribunal stating that the accounts were prepared in fraudulent manner and the affairs of the company were mismanaged during the relevant period casting a doubt the doubt on reliability of financial statements., then a company can re-open and recast its financial statements. Court or Tribunal shall give the notice to the specified authorities and the representations made by the applicant shall be considered before passing the order. The accounts revised or recast shall be final.

### **Voluntary revision of financial statements or Board's report ( Section 131 )**

If it appears to the directors of a company that the financial statements of the company or the board's report do not comply with the provisions of Section 129 or section 134, financial statements or the board reports for the 3 preceding financial years may be revised. For this purpose company shall make an application to Tribunal and Tribunal will pass an order. The order shall be filed with ROC by the company. Tribunal shall give notice to CG & Income Tax authorities and the representations shall be considered before passing an order by tribunal. Revised financials and report can be filed once in a financial year. Details of reasons for revision shall be stated. If the previous financial statement and board report copies are already sent to the members or ROC or laid in AGM the revision must be confined to the correction and consequential alterations.

### **Constitution of National Financial Reporting Authority ( Section 132 )**

CG may constitute NFRA.

NFRA shall –

- make recommendation to CG on formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors
- monitor and enforce compliance with accounting and auditing standards
- oversee the quality of service of the professionals associated with ensuring compliance with the standards

NFRA shall consist 1 chairperson having expertise in the field of accountancy, auditing, finance or law appointed by CG and other members maximum 15. Conflict of interest and lack of independence in respect of appointment shall be declared by the member. Chairperson and members in full time employment shall not be associated with any audit firm ( including consultancy firms ) during the course of their appointment after ceasing their appointment.

Powers of NFRA will be –

- To investigate professional or other misconduct done by member or firm of CAs. No other body or institute can investigate the same matter. NFRA shall have exclusive jurisdiction.
- Have the same powers as are vested in a civil court under the Code of Civil Procedures, 1908 while trying a suit
- To impose penalty ( Individual – Rs. 1 Lacs to 5 times of fees received Firms – Rs. 10 Lacs to 10 times of fees received ) or debar member or firm for a period of 6 months to 10 years, if professional or other misconduct is proved.

Any person aggrieved by any order of NFRA may prefer appeal before appellate authority as prescribed.

### **Central Government to prescribe accounting standards ( Section 133 )**

AS shall be prescribed by CG, recommended by ICAI in consultation with and after examination of the recommendations made by NFRA.

### **Financial Statements, board's report etc.**

FS including CFS ( if any ) shall be approved by BOD. FS shall be signed at least by the chairperson of the company or by two directors out of which one shall be MD and CEO if he is director , CFO and CS of the company. Auditors' report shall be attached with FS.

FS and board's report shall be laid before the company in AGM. Board's report shall include –

- Extract of annual return
- Number of meetings of the board
- Directors responsibility statement
- Statement on declaration given by independent directors
- Company's policy on directors' remuneration
- Comment on qualifications raised in statutory audit report or secretarial report
- Particulars of loans, guarantees or investments under section 186
- Particulars of contracts or arrangement with related parties mentioned in sec. 188
- State of the company's affairs
- Amounts proposed to be carried forward to reserves
- Recommended dividend
- Material changes and commitments affecting the financial position
- Conservation of energy, technology absorption, foreign exchange earnings and outgo
- Statement indicating development and implementation of a risk management policy
- Details of CSR policy developed & implemented
- Annual evaluation of the board

Board report shall be attached to FS. Board report shall be signed by Chairperson if authorised by board otherwise by at least two directors.

### **Corporate Social Responsibility ( CSR ) ( Section 135 )**

Company having net worth Rs. 500 crores or more, turnover Rs. 1000 crores or more net profit of Rs. 5 crores or more during any financial year shall constitute a CSR Committee of the board consisting of 3 or more directors, one shall be independent director.

### **Right of the member to copies of audited financial statement ( Section 136 )**

Financial Statements including Consolidated Financial Statements, auditors' report and other documents which are to be laid down before AGM shall be sent to every member and trustee of debenture holder and all other required persons at least before 21 days of AGM. In case of listed company these documents can be kept for inspection at least before 21 days of AGM.

### **Copy of FS to be filed with Registrar ( Section 137 )**

The financial statements including consolidated financial statements shall be filed with Registrar within 30 days from the date of AGM.

Audit and Auditors:

Section: 139 (Appointment of Auditors)

1. Every Company shall at the First Annual General Meeting appoint an Individual or firm as an Auditor who shall hold office from the conclusion of this meeting until the conclusion of sixth Annual general Meeting. Provided that Company shall place the matter relating to such appointment for ratification by members at every Annual General Meeting. Further provided that before such appointment Company should obtain the written consent from the Auditor and certificate which shall indicate the criteria as mentioned in Section.141. Company shall file the said appointment with the Registrar of Companies in e-Form ADT-1 within 15 days from the date of appointment.

2. No listed Company or a company belonging to such class or classes of companies as may be prescribed shall appoint or re-appoint: a. An Individual as an Auditor for more than one term of Five consecutive years. and b. An Audit firm as auditor for more than two terms of five consecutive years

Provided that an Individual or audit firm who has completed their term as mentioned in Sec. 139(2)(b) shall not be eligible for appointment as auditor in the same Company for five years from the completion of such term. Further provided that no audit firm having a common partner/Partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years. Every Company existing on or before the commencement of this act, which is required to Comply with this Section shall within three years from the date of commencement of said Act shall comply the provision of this Act.

3. Subject to the provisions of this Act, members of a company may resolve to provide that: a. In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members. b. The audit shall be conducted by more than one auditor.

4. The central government may by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sect. 139(2).

5. Notwithstanding anything contained in Sec. 139(1), the first auditors of the company other than the Government Company shall be appointed by the Board of Directors from the date of registration, in case of the Board to perform the said act they should inform to the members of the Company, who shall within 90 days at an Extra ordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the First Annual General Meeting.

6. In the case of Government Company as mentioned in Sec.139(5) Comptroller and Auditor General of India shall within 60days from the date of registration appoint the Auditor, if they fail to do so, the Board should appoint the Auditor within 30days, if Board is also unable to perform, then members should appoint the Auditors within 60 days atan Extra-Ordinary General Meeting who shall hold office till the conclusion of first annual general meeting.

I. In case of the Company other than Company as mentioned in Sec.135(5) be filled by the Board of Directors within 30days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next Annual general meeting.

II. In case of a Company whose accounts are subject to audit by an Auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within 30days.

7. Provide if the Comptroller and Auditor General of India doesn't not fill the vacancy within the said period , the Board shall fill the vacancy within the next 30 days.

8. Subject to the provisions of Sec. 139(1) and the rules made there under, a retiring auditor may be re-appointed at an annual general meeting, if: He is not disqualified for re-appointment He has not given the company a notice in writing of his unwillingness to be re-appointed; and A special resolution has not been passed at the meeting appointing some other auditor or expressly mentioning that he shall not be re-appointed.

9. Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the Company.

10. Whereas a Company which is required to form an Audit committee as required under section 177, then all the appointment including appointment of Auditor through Casual vacancy can be made, after taking into account the recommendation of such committee. Section.140: Removal, Resignation and giving of special notice

1. The auditor appointed under section.139 may be removed before the expiry of his tenure only by a special resolution of the company, after obtaining the previous approval of the Central Government. Provided before taking action as mentioned, the said Auditor should be given a reasonable opportunity of being heard.

2. The auditor who has resigned from the Company shall file within a period of 30 days from the date of resignation in e-form ADT-3 with the Registrar and in case of the Companies as mentioned in Sec.135(5), the auditor shall also file such statement with the comptroller and auditor-general of India, indicating the reason and other facts as may be necessary.

3. If the auditor doesn't comply with the above mentioned Section it will be punishable with fine which shall not be less than 30,000/- but which may extend to 5,00,000/-.

4. (i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor or proving that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or ten years as the case may be, as mentioned in Section.135(2).

(ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

(iii) Where notice is given of such a resolution and the retiring auditor makes representation in writing to the company (within the reasonable time) and request the Company to forward the same to the members unless the representation is received too late: a. Any notice of the resolution given to members of the Company, state the fact of the representation made by the Auditor. b. Send a copy of the representation to every member to whom notice has been sent. If the copy of the representation is not sent because it has been received too late or on behalf of the Company's default then the same thing has to be read at the ensuing meeting. If the copy of representation is not sent, then the same has to be filed with the registrar. If the tribunal is satisfied on an application by the Company or an auditor that the rights conferred by the auditor has been abused then copy of the representation need not be sent and need not be read out at the meeting.

5. The tribunal either suo motu or an application made to it by Central Government or by any person concerned , if it is satisfied that auditor has acted in fraudulent manner, it may

by order , direct the company to change the same and within 15 days direct the Company to appoint another Auditor.

Section.141: Eligibility, qualification and disqualification of auditors:

1. A person shall be appointed as an auditor of a Company only if he is a Chartered Accountant. A firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by the firm name.

2. Where a firm including a limited Liability Partnership is appointed as an auditor of a company, only the partners who are qualified Chartered Accountants shall be authorised to act and sign on behalf of the firm. A body corporate other than a LLP An officer or employee of the company. A person who is a partner or who is in the employment, of an officer or employee of the Company.

3. A person who is relative or partner: I. Is holding any security of or interest in the Company or its subsidiary or its holding or associate company or a subsidiary of such holding company, further provided that the relative may hold security or interest in the company of face value not exceeding 1000 or such sum as may be prescribed. II. Is indebted to the company or its subsidiary or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed. III. Has given guarantee or provided any security in connection with the indebtness to its holding, subsidiary and associate Company of such amount as may be prescribed. e. a person or a firm who, whether directly or indirectly has business relationship with the company or its subsidiary or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed.

4. Where a person appointed as an auditor of a company incurs any of the disqualification mentioned in Section.141(3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy.

Section.142 (Remuneration of auditors)

1. The remuneration of the auditor of a company shall be fixed in the general meeting or in such manner as may be determined therein. Provided the Board may fix the remuneration of first auditor appointed by it.

2. The remuneration under sub-section(1) shall be in addition to the fee payable to an auditor, including the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him by he Company. Section. 142 (Remuneration of Auditor) 1. The Remuneration of Auditor may be fixed in the general meeting or in such manner

as may be determined. Although the Board can fix the remuneration of First Auditor. 2. The Expenses which is paid to the auditor is in addition to the audit we he carries out in the Company. Section.143 (Power and duties of auditors and auditing standards) 1. Every auditor of a company shall have a right of access at all times to the books of accounts and vouchers of the company, whether kept at the registered office of the Company or at any other place and he shall be entitled to require from the officer such information as may be required. 2. The Auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this act , to be laid before the company in general meeting and the report shall after taking into account auditing standard and matters which is required shall be included in the audit report.

3. The auditor report shall state: a. Whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of audit. In case proper information are not received then the details thereof and effect of such information on the financial statement should be stated in the auditor's report b. Whether proper books of accounts as required by law is maintained or not and whether proper returns adequate for the purpose of audit have been received from the branches not visited by him or not. c. Whether the report in respect of a branch which is audited by the auditor other than company auditor has been sent to him d. Whether the company balance sheet and profit and loss account are in agreement with the books of accounts and returns e. Whether financial statement comply with the accounting standards f. The observations and comments of the auditor on the financial transactions or matters which have adverse effect on the company g. Whether any director is disqualified to be appointed as a director h. Any qualifications , reservations or adverse remarks in respect of the maintenance of the books of accounts or other matters connected herewith

i. Whether the company has adequate internal financial control system in place and operative effectiveness of such control. j. Whether the company has disclosed the impact of any pending litigation if any in the financial statement k. Whether the company has made provision in respect of any material foreseeable losses as required by law or accounting standards including the derivative contracts

l. Whether the company has made delay in transferring the amount required to be transferred to the Investor Education and Protection Fund by the company. Sec 143(4) Where any of the matters required to be included in the audit report under this section is answered in negative or with a qualification then in that case auditor is required to state the reasons of such reservations and negative remark Sec 143(5) In case of Govt company the C&AG will appoint the auditor to conduct the audit of the company. The C&AG will also give the directions and the manner in which the accounts of the govt company are required to be audited by the auditor. The auditor then after completing the audit will issue an audit report to the C&AG which will include

all the matters which are stated above. In additions to these matters the auditor of the govt company shall state in his audit report the direction issued by C&AG , the actions taken there upon and its impact on the accounts and financial statement of the company. SEC 143(6) On receipt of audit report of the govt company the C&AG can carry out supplementary audit with 60 days from the date of receipt of such audit report. He may also comment upon the audit report. The audit report should be sent to every person to whom copies of audited financial statement are sent and the copy of such audit report shall also be place at the AGM SEC 143(7) In case of Govt Company the C&AG may require that the test audit of the company should be conducted. SEC 143(8) Branch is in India - The audit of such branch can be done by the Company auditor or by any other person qualified to be appointed as an auditor as per Sec 139 Branch is in some other countries -The audit of such branch shall be conducted by an accountant or by any such person qualified to be appointed as an auditor as per the laws of that country. The branch auditor should prepare a report on the books of accounts of the branch audited by him and send a copy of such audit report to the company auditor. Sec 143(9) The auditor shall comply with the accounting standards. Sec 143(10) The Central Government may prescribe the standards of auditing, as prescribed by ICAI.. SEC 143(11) The Central Govt may in consultation with the National Financial Reporting Authority direct that the audit report in case of specific class of companies shall include a statement on such matters as may be specified therein. SEC 143(12) If an auditor of the company in the course of performance of his duties as auditor has reason to believe that an offence involving fraud is being or has been committed against the company by an officer or the employee of the company then the auditor should immediately report the matter to the central govt within such time and in such manner as may be prescribed. The auditor should forward his report to the board or the audit committee as the case may be immediately after he comes to know about the fraud seeking their reply or observations within 45 days. On receipt on such reply or observations of the board or the audit committee the auditor should forward his report along with the reply or observations of the board or the audit committee and his comments on such reply or observations to the central govt within 15 days. In case no reply or observations has been received by the auditor from the board or the audit committee then in that case the auditor should send the audit report along with a note containing the details of his report that was earlier forwarded to the board or the committee for which he has failed to receive any comments or observations Sec 143(14) The provision of this section shall apply to the cost auditor conducting cost audit and the company secretary doing secretarial audit Sec 143(15) If the Chartered accountant , company secretary or the cost auditor do not comply with any of the provisions of this act then he will be punishable with a fine which shall not be less than Rs. 1 lakh but which can be extend to Rs. 25 lakh. Sec 144 (Auditor not to render certain services) Any auditor appointed by the Company should provide only those services which will be approved by the Board of Directors or Audit committee, as the case may be, but which may not include the below mentioned services: Accounting and book keeping services. Internal audit Design and

implementation of any financial information system. Actuarial services. Investment advisory services. Investment banking services. Rendering of outsourced financial services. Management services. Any other kind of services as may be prescribed. Sec 145 (Auditor to sign audit reports) The person appointed as an auditor of the Company can sign the Auditor's report or sign or certify any other document of the Company and present the same before the general meeting and shall be open for member's inspection. Sec 146 (Auditors to attend general meeting) All the notices and other communications relating to the general meeting shall be forwarded to auditor and he can attend either by himself or through his authorised representative and has the right to be heard at such meeting.

#### Sec 147 (Punishment for contravention)

If any of the provisions of Sec 139 to 146 is contravened, the Company shall be punishable with Fine which shall not be less than 25,000/- but which may extend to 5,00,000/- and every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to one year or fine of not less than 10,000/- which may extend to 1,00,000/- or with both.

COMPANIES (AUDIT AND AUDITORS) RULES, 2014 Sub-section (2) of section 139 of the Companies Act, 2013 (the Act) has introduced a novel concept for the rotation of auditors in listed companies and in such class or classes of companies as may be prescribed. In exercise of the powers conferred on the Central Government, the Central Government in the Ministry of Corporate Affairs has prescribed in rule 5 of the Companies (Audit and Auditors) Rules, 2014 (Audit Rules) that this concept of rotation of auditors would also apply to the following classes of companies excluding one person companies and small companies : All unlisted public companies having paid-up share capital of Rs.10 crore or more All private limited companies having paid-up share capital of Rs.20 crore or more All public and private limited companies having a paid-up share capital of less than the threshold limit set out above but having public borrowings from financial institutions, banks or public deposits of Rs. 50 crore or more. It should be noted that the limit of Rs.50 crore on public borrowings would apply to the aggregate borrowing from financial institutions, banks and public deposits and not to borrowings of Rs.50 crore prescribed, individually from each of the categories listed.

CONCEPT OF ROTATION OF AUDITORS IN LISTED COMPANIES Sub-section (2) of section 139 of the Act reads as under :

No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint – an individual as auditor for more than one term of five consecutive years; and an audit firm as auditor for more than two terms of five consecutive

years: Provided that – an individual auditor who has completed his term under clause (a ) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term; an audit firm which has completed its term under clause (b ), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term: Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years: Provided also that every company, existing on or before the commencement of this Act which is required to comply with provisions of this sub-section, shall comply with the requirements of this sub-section within three years from the date of commencement of this Act. Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.” Rule: 7 (Removal of the auditor before expiry of his term) (1) The application to the Central Government for removal of auditor shall be made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014. (2) The application shall be made to the Central Government within thirty days of the resolution passed by the Board. (3) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution. Rule: 8 (Resignation of Auditor) For the purposes of sub-section (2) of section 140, when an auditor has resigned from the company, he shall file a statement in Form ADT-3. Rule: 11 (Other Matters to be included in the Audit Report) The auditor’s report shall also include their views and comments on the following matters, namely:- (a) Whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement; (b) Whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts; (c) Whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

#### Rule: 13 (Reporting of Fraud by Auditor)

(1) For the purpose of sub-section (12) of section 143, in case the auditor has sufficient reason to believe that an offence involving fraud, is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than sixty days of his knowledge and after following the procedure indicated herein below: (i) Auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within forty-five days; (ii) On receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central

Government within fifteen days of receipt of such reply or observations; (iii) In case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.

(2) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed post followed by an e-mail in confirmation of the same.

(3) The report shall be on the letter-head of the auditor containing postal address, e-mail address and contact number and be signed by the auditor with his seal and shall indicate his Membership Number.

(4) The report shall be in the form of a statement as specified in Form ADT-4.

### **Oppression and Mismanagement under the Companies Act:**

A bird's eye view of the present scenario reveals increasing concern about improving the performance of the Board. This is without a doubt a very imperative issue, but a close analysis of the ground reality would force one to conclude that the Board is not really central to the corporate governance malaise in India. The central problem in Indian corporate governance is not a conflict between management and owners, but a conflict between the dominant shareholders and the minority shareholders. The Board cannot even in theory resolve this conflict, as it is composed of those very dominant shareholders upon whom this control needs to be exercised.

**Oppression** as per Section 397(1) of Companies Act 1956 has been defined as '*when affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members*'.

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

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

The primary provision dealing with the Oppression in this act is Sec.397, which was modeled in the likeness of Sec. 210 of the English Companies Act 1948. The section prescribes criteria for maintainability of application for relief in cases of oppression. The impugned act should be prejudicial to the interest of the company or oppressive upon a member or group of members; or the act may be prejudicial to general "public interest". It is also the burden of the applicant to satisfy before the Board that winding up the company would "unfairly prejudice" him or the class he is representing; but otherwise the facts prima facie would justify that the company be wound up on just and equitable grounds. The right to apply is given to members as specified in the definition of "minority". Both conditions under this section should subsist in order to entail relief from the Board. Where there are no allegations to support a winding up, a petition u/s 397 cannot be entertained.

Right to apply to the Company Law Board in case of oppression and/or mismanagement is provided U/S 399 to the minority shareholders meeting the ten percent shareholding or hundred

members or one-fifth members limit, as the case may be. However, the Central Government is also provided with the discretionary power to allow any number of shareholders and/or members to apply for relief under Section 397 and 398 in case the limit provided under Section 399 is not met.

On the other hand, CA 2013 provides for provisions relating to oppression and mismanagement under Sections 241-246. Section 241 provides that an application for relief can be made to the Tribunal in case of oppression and mismanagement. Under CA 2013, the Tribunal may also waive any or all of the requirements of Section 244(1) and allow any number of shareholders and/or members to apply for relief. This is a huge departure from the provisions of CA 1956 as the discretion which was provided to the Central Government to allow any number of shareholders to be considered as minority is, under the new CA 2013 been given to the Tribunal and therefore is more likely to be exercised.

Briefly examining a few provisions of Companies Act 1956 vis-à-vis the provisions of Companies Act 2013, we get-

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

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

- (a) restrictions on the transfer or allotment of the shares of the company;
- (b) removal of the managing director, manager or any of the directors of the company;

- (c) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilization of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;
- (d) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company;
- (e) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct; and
- (f) imposition of costs as may be deemed fit by the Tribunal.

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

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

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

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

Meetings and those who can muster sufficient number of proxies and can demonstrate their voting power. Government Companies is an exception.

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

In other companies however, the shareholders democracy is dependent upon the voting strength of shareholders and also to a great extent on the availability of members attending their General Meetings either by themselves or through their proxy. This again depends on the proximity of Registered Office of the company to the place of residence of the shareholders. Apart from this most of the shareholders do not have enough time to spare from their busy schedules to concern themselves with the affairs of the company in which they have invested. Besides, they are not always educated enough and experienced enough to be conversant with the working of the joint stock companies.

For achieving the shareholders' democracy, the shareholders have to unite and organize themselves on national, state and district levels and get their associations registered under the Societies Registration Act or any other applicable statute so that their voice is heard and they can assert themselves and safeguard the interests of their members. Constitution of such associations should be suitably amended so as to insist upon all the non-Government companies to allot a minimum number of shares to such associations of shareholders so that these associations can attend the Annual General Meetings of all the companies and make sure that the directors elected to company Boards reflect a fair representation.

### **Winding Up of A Company Under Company Law Act, 2013:**

Since we believe in Going Concern Assumption, as we want our business to flourish more & more, but at some point of time due to several reasons one has to close down his business and that stage is known as winding up of a company. It is the last stage of company in which its existence for past several years is dissolved and all its assets are used to pay off the creditors, shareholders and other liabilities.

As per section 270 of the Companies Act 2013, the procedure for winding up of a company can be initiated either –

- a) By the tribunal or,
- b) Voluntary.

### **I. WINDING UP OF A COMPANY BY A TRIBUNAL:-**

As per Companies Act 1956, a company can be wound up by a tribunal on the basis of the following reasons:

1. Suspension of the business for one year from the date of incorporation or suspension of business for whole year.
2. Reduction in number of minimum members as specified in the act (2 in case of private company and 7 in case of public company)

### **Online GST Certification Course by Taxguru & GST Professionals- Last 3 Days to Register**

But with the introduction of new Companies Act 2013, these above stated grounds for winding up have been deleted and some new situations for winding up have been inserted.

As per new Companies Act 2013, a company can be wound up by a tribunal in the below mentioned circumstances:

1. When the company is unable to pay its debts
2. If the company has by special resolution resolved that the company be wound up by the tribunal.
3. If the company has acted against the interest of the integrity or morality of India, security of the state, or has spoiled any kind of friendly relations with foreign or neighboring countries.
4. If the company has not filled its financial statements or annual returns for preceding 5 consecutive financial years.
5. If the tribunal by any means finds that it is just & equitable that the company should be wound up.
6. If the company in any way is indulged in fraudulent activities or any other unlawful business, or any person or management connected with the formation of company is found guilty of fraud, or any kind of misconduct.

### **II. FILING OF WINDING UP PETITION:-**

Section 272 provides that a winding up petition is to be filed in the prescribed form no 1, 2 or 3 whichever is applicable and it is to be submitted in 3 sets. The petition for compulsory winding up can be presented by the following persons:

- The company
- The creditors ; or
- Any contributory or contributories
- By the central or state govt.
- By the registrar of any person authorized by central govt. for that purpose

At the time of filing petition, it shall be accompanied with the statement of Affairs in form no 4. That petition shall state the facts up to a specific date which shall not more than 15 days prior to the date of making the statement. After preparing the statement it shall be certified by a Practicing Chartered Accountant. This petition shall be advertised in not less than 14 days before the date fixed for hearing in both of the newspapers English and any other regional language.

### **III. FINAL ORDER AND ITS CONTENT:-**

The tribunal after hearing the petition has the power to dismiss it or to make an interim order as it think appropriate or it can appoint the provisional liquidator of the company till the passing of winding up order. An order for winding up is given in form 11.

### **IV. VOLUNTARY WINDING UP OF A COMPANY:-**

The company can be wound up voluntarily by the mutual decision of members of the company, if:

Ø The company passes a Special Resolution stating about the winding up of the company.

Ø The company in its general meeting passes a resolution for winding up as a result of expiry of the period of its duration as fixed by its Articles of Association or at the occurrence of any such event where the articles provide for dissolution of company.

### **V. PROCEDURE FOR VOLUNTARY WINDING UP:-**

1. Conduct a board meeting with 2 Directors and thereby pass a resolution with a declaration given by directors that they are of the opinion that company has no debt or it will be able to pay its debt after utilizing all the proceeds from sale of its assets.

2. Issues notices in writing for calling of a General Meeting proposing the resolution along with the explanatory statement.

Ads by ZINC

3. In General Meeting pass the ordinary resolution for the purpose of winding up by ordinary majority or special resolution by 3/4th majority. The winding up shall be started from the date of passing the resolution.

4. Conduct a meeting of creditors after passing the resolution, if majority creditors are of the opinion that winding up of the company is beneficial for all parties then company can be wound up voluntarily.

5. Within 10 days of passing the resolution, file a notice with the registrar for appointment of liquidator.
6. Within 14 days of passing such resolution, give a notice of the resolution in the official gazette and also advertise in a newspaper.
7. Within 30 days of General meeting, file certified copies of ordinary or special resolution passed in general meeting.
8. Wind up the affairs of the company and prepare the liquidators account and get the same audited.
9. Conduct a General Meeting of the company.
10. In that General Meeting pass a special resolution for disposal of books and all necessary documents of the company, when the affairs of the company are totally wound up and it is about to dissolve.
11. Within 15 days of final General Meeting of the company, submit a copy of accounts and file an application to the tribunal for passing an order for dissolution.
12. If the tribunal is of the opinion that the accounts are in order and all the necessary compliances have been fulfilled, the tribunal shall pass an order for dissolving the company within 60 days of receiving such application.
13. The appointed liquidator would then file a copy of order with the registrar.
14. After receiving the order passed by tribunal, the registrar then publish a notice in the official Gazette declaring that the company is dissolved.

Official Liquidators:

### **Company Liquidators and their appointments**

(1) For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained under sub-section (2) as the Company Liquidator.

(2) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and such other professionals as may be notified by the Central Government or from a firm or a body

corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters.

(3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.

(4) The Central Government may remove the name of any person or firm or body corporate from the panel maintained under sub-section (2) on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence: Provided that the Central Government before removing him or it from the panel shall give him or it a reasonable opportunity of being heard.

(5) The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.

(6) On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.

(7) While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (c) of sub-section (1) of section 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

### National Company Law Tribunal

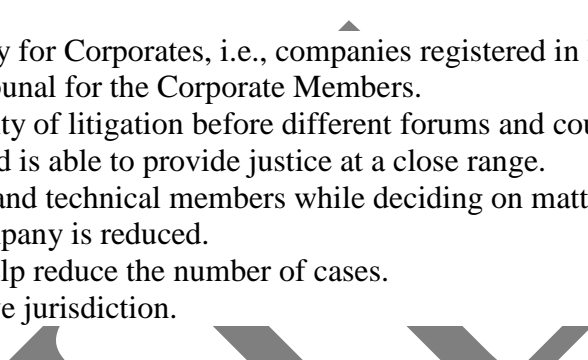
The National Company Law Tribunal was setup by the Central Government in 2016 under Section 408 of the Companies Act, 2013. The National Company Law Tribunal has been setup as a quasi-judicial body to govern the companies registered in India and is a successor to the Company Law Board. In this article, we look at the National Company Law Tribunal, its functions and powers in detail.

### Scope of National Company Law Tribunal

The National Company Law Tribunal (NCLT) consolidates the corporate jurisdiction of the Company Law Board, Board for Industrial and Financial Reconstruction (BIFR), The Appellate Authority for Industrial and Financial Reconstruction (AAIFR) and the powers relating

to winding up or restructuring and other provisions, vested in High Courts. Hence, the National Company Law Tribunal will consolidate all powers to govern the companies registered in India. With the establishment of the NCLT and NCLAT, the Company Law Board under the Companies Act, 1956 has now been dissolved.

#### Advantages for National Company Law Tribunal

- NCLT is a specialized court only for Corporates, i.e., companies registered in India.
  - This will be no more than a Tribunal for the Corporate Members.
  - NCLT will reduce the multiplicity of litigation before different forums and courts.
  - NCLT has multiple branches and is able to provide justice at a close range.
  - NCLT consists of both judicial and technical members while deciding on matters.
  - The time taken to windup a company is reduced.
  - Speedy disposal of cases will help reduce the number of cases.
  - NCLT & NCLAT have exclusive jurisdiction.
- 

#### E Governance:

#### INTRODUCTION

In this age of well-developed information technology and telecommunications, the Electronic Governance of all business-related activities, administrative activities, and managerial functions of the corporate world, can certainly be very convenient, efficient, transparent, and fully accountable and responsible. Therefore, undoubtedly, e-governance in the corporate sector is an imperative and highly prudent requirement in every country of the world, inevitably including India. As India is one of the major, fast-progressing, and highly influential economies of the world, this e-governance is absolutely essential and beneficial to Indian corporate world, especially in present-day world of cutthroat corporate competition, and ever-increasing need for greater transparency and accountability in the corporate sector. Considering these highly significant facts and business scenarios, the Government of India has rightly promulgated the provisions for e-governance in the corporate sector of the country, in its latest Companies Act of 2013.

E-Governance or Electronic Governance is basically proper and efficient utilization of the technologies of the information technology and telecommunications, for performing various functions and activities by an organization. Such use of Information and Communication Technologies [ICTs] can preferably be made at all levels of a business corporation also, in order to obtain faster and more efficient business activities, greater customer satisfaction, more

accountable and transparent corporate administration and management, better profits and satisfaction of the shareholders, and the best possible progress and growth of the corporation.

## **MAJOR E-GOVERNANCE PROVISIONS UNDER COMPANIES ACT 2013**

### **(A) Maintenance, Security, and Inspection of Books and Records in Electronic Form**

Regarding the account keeping and maintenance of records and books related with the business activities of a company, and the well-rounded security and efficient and transparent inspection of these documents, the new Companies Act of India has proper provisions, suggestions, and recommendations. These prudent provisions and recommendations are provided in the Section 120 of the Indian Companies Act of 2013, and the Companies (Management and Administration) Rules of 2014. The Section 120 facilitates that a company must keep a safe account of all business and management related documents, records, registers, minutes, etc., preferably in the electronic forms, in such a manner that these could easily be inspected or reproduced whenever necessary. Again, the Rules ranging from Rule 27 to Rule 29 of the Indian Companies (Management and Administration) Rules of 2014, further clarify things in this context, as follows: ---

- As per Rule 27, every listed company, or any other company with 1000 or more shareholders and security holders, must maintain its all such secretarial records and documents preferably [but not necessarily or mandatorily] in the electronic form. The Ministry of Corporate Affairs [MCA] vide its Notification dated 24<sup>th</sup> July, 2014, has substituted the word 'shall' by the word 'may' in Rule 27 of Companies (Management and Administration) Rules of 2014, and thereby, the task of maintaining such records strictly in the electronic form has been made optional, for time being. However, it will be wise to convert these data and records to the electronic form [from the physical form] as quickly as possible.
- The Rule 28 dictates that the MD, CS, or any other Director or Officer of the company shall be made responsible for proper and safe keeping of all records and documents of the company in electronic or physical form.
- While the Rule 29 provides provision for inspection of all electronic records and reproduction of these as per requirements, the charge for any such reproduction shall not be more than ten rupees per page.

### **(B) Service of Documents (Section-20)**

This advocates that every presentation, submission, or despatch of company-related documents should preferably be made through electronic means, to the concerned officials, shareholders, or the Registrar.

### **(C) Notice of Meetings**

The notices of the Board Meetings and the General Meetings, are also to be sent by electronic means and in the prescribed manner, as are described in the Section 173(3), and Section 101, respectively. Also, the Rule 18 of the Indian Companies Rules of 2014 recommends that a record of any failed transmissions of such notices and subsequent re-sending of these, must be retained by the company as "Proof of Sending". Notices to shareholders, directors, or auditors regarding electronic voting on a resolution and participation in a general meeting, may also be published on the website of the company. In addition to presenting all details about the concerned meeting, the company has also to clearly mention that the facility of voting through electronic means is available. More information about the sending of notices for general meetings and the electronic voting, is provided in the sections below.

### **(D) Payment of Dividend**

As per Section 123, any dividend payable in cash, can also be remitted in any electronic mode to the entitled shareholders, besides being paid by Cheques or Warrant.

### **(E) Admissibility of Certain Documents as Evidence**

Any document reproduced from returns, or any document related with the administration, management, or business activities of a company formally filed with the Registrar on paper or in electronic form and duly authenticated by the Registrar, shall be admissible to any proceedings of the company, without any further proof or production of the original documents as evidence.

### **(F) Voting Through Electronic Means [Electronic Voting System]**

Voting through electronic means at the general meetings of a company, is one of the highly significant provisions introduced by the new Indian Companies Act of 2013, to support e-management and governance. Section 108, New Revised Clause 35B of the Listing Agreement of SEBI, and the Rule 20 of the Companies (Management and Administration) Rules of 2014, all emphasize that every listed company or a moderately big company with at least 1000 shareholders, should utilize preferably the facility of voting electronically by the shareholders and members at the general meetings of the company, for passing any resolution (Ordinary/Special).

However, the Ministry of Corporate Affairs [MCA, Govt. of India] vide its Circular dated 17<sup>th</sup> June, 2014, thoughtfully and liberally decided not to treat the specified provisions for voting through electronic means [electronic voting system], as mandatory till December 31, 2014.

Swift Electronic Voting offers certain exclusive advantages to both the company [and its share transfer agents] and the shareholders, provided it is fully secured and unbiased. Some of the most significant and outstanding advantages of electronic voting [e-voting] are the following: ---

- It is Fast and Cost-Effective
- Full Authenticity
- Reduces Paperwork and Eliminates the Need of Storing the Physical Ballot Papers
- Quick and Accurate Counting of Votes
- Votes are not Delayed or Lost in Transit
- Voting from Everywhere in any time
- Increased Efficiency and Transparency

### **Processes To Be Followed by the Company for Electronic Voting**

A public limited company which opts for providing the electronic voting facility to its shareholders and members, with a view to make the task of voting faster, cost-effective, and transparent, on any resolution, now has to follow the following provisions and processes: ---

- Such a company is essentially required to send notices to its all shareholders, members, directors, or auditors as per the Section 101, through electronic or postal means, for the purpose of voting on any certain resolution electronically. Notices regarding invitation for such a voting to all the members, should also be published on the website of the company. The provision given in the Rule-18 is also applicable for such notices sent electronically.
- Any such notice must explicitly inform the procedure and manner for voting electronically, time schedule for voting, logging information [login ID], and measures and techniques for casting one's vote conveniently and fully securely.
- The company is legally required to publish a self-illustrative advertisement regarding the sent notice of voting and general meeting, in the most popular newspaper in the concerned areas, at least five days before the beginning of the voting period, in order to ensure participation of all members of the company in the voting process. Such an advertisement should include the following matters-objectives of the general meeting; the date of completion of sending of notices by company; the date and time of the commencement and ending of voting through the electronic mode only; any agency for offering information about the meeting; any responsible person or agency for receiving grievances connected with electronic voting; etc.
- The process of casting votes electronically shall remain open for at least one full working day, and a maximum of three days. The closing date of voting must fall before the date of pertinent general meeting by three clear days. Depending upon the receipt of sufficient votes, any resolution is deemed to be passed on the predetermined date for the general meeting.
- A shareholder [holding shares in physical or dematerialized form] is entitled to cast a vote on any specific resolution only once, he is not legally permitted to change his

opinion subsequently. Again, casting of a vote is not allowed after the end of voting period.

- To scrutinize the electronic voting process in an unbiased, fair, and transparent manner, the Board of Directors shall appoint an independent, dignified and expert scrutinizer, who is not an employee of the company. Well-versed in the system of e-voting, such a scrutinizer shall present his impartial and judicious report [in favor of or against the resolution] to the Chairman of the company, within a period of three working days counted from the closing date of e-voting period. Any such scrutinizer may avail support of one or more persons or witnesses [who are not in employment of the company], for performing scrutiny blamelessly. This Scrutinizer may be a practicing Chartered Accountant, a Company Secretary, a Costs Accountant, or an Advocate. The final result of the voting, along with the scrutinizer's report is to be necessarily published on the website of the company, within two days of passing of the specified resolution at the relevant general meeting of shareholders and members. The scrutinizer is also responsible for maintaining a register of detailed information about each shareholder, the number of shares held by him, the nominal value of shares, his reaction to the voting, and certain other valuable pieces of information regarding the shareholders, in interest of the company.



## CONCLUSION

Thus, the provisions for e-governance stipulated by the new company law of India, the Companies Act of 2013, comprehensively cover all areas of activities of a company, especially the public limited companies, and are really highly elegant for making all vital tasks of a company, such as the proper maintenance and inspection of documents, conduction of efficient business activities, and flawless corporate administration and management, rather easy and cost-effective, amply transparent, and fully accountable and trustworthy. Actually, such ingenious and bright provisions for highly efficient and transparent e-governance were imperative in the thriving corporate world of India, in order to equip it for prospering fast in today's intensely competitive national and international businesses in all economic sectors. Naturally, the listed companies and the big public limited companies will be the very first to adopt these provisions for e-governance; as is mentioned above, the Government of India has given them broad and clear hints for the quickest possible [no time-limit yet fixed] conversion of their statutory books of accounts and records to the electronic mode from the physical mode.

Corporate Governance under the Companies Act, 2013:

### Emergence of Corporate Governance in India

Corporate Governance is the new golden term coined in the corporate sector in the late 1990's by the Industry Association On Confederation of Indian Institute which was the first initiative in India as a voluntary measure to be adopted by Indian companies. It has outlined a series of voluntary recommendations to integrate best-in-class practices of corporate governance in listed companies which touches the four cornerstones of fairness, transparency, accountability and responsibility in managing the affairs of the company. The second major initiative was taken by Security Exchange of India (SEBI) as Clause 49 of the Listing Agreement. The third key initiative to effectively introduce Corporate Governance was taken by Naresh Chandra Committee and Narayana Murthy Committee who previewed Corporate Governance model working in companies from the viewpoint of shareholders, investors and other stakeholders of the company. Corporate governance guidelines both mandated and voluntary have evolved since 1998, due to the sincere efforts of several committees appointed by the Ministry of Corporate Affairs (MCA) and the SEBI. The real change in the corporate sector could be felt with the introduction of 2009 Mandatory Corporate Governance Voluntary Guidelines which has to be comply by companies listed on stock exchange by Clause 49 of Listing Agreement including mandatory codes to be followed by companies pertaining to board of directors, audit committees and various disclosures with respect to related party transactions, whistleblower policies etc. The final assent to Corporate Governance practices in the effective management of the company can be seen as introduction to new significant provisions introduced in the Companies Act, 2013 in form of independent directors, women directors on the board, corporate social responsibility and mandatory compliance of Secretarial Standards issued by Institute of Company Secretaries of India as per Section 118 of Companies Act, 2013.

### Corporate Governance – Meaning and Definitions

Corporate Governance is a multi-faceted subject and difficult to comprehend in a concise definition. The main theme of corporate governance is to integrate sound management policies in the corporate framework in such a manner to bring economic efficiency in the organization in

order to achieve twin goals of profit maximization and shareholder welfare. Few comprehensive definition on Corporate Governance are discussed below.

Institute of Company Secretaries of India

“Corporate Governance is the application of best Management Practices, Compliance of Laws in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.”

Standard and Poor

“Corporate Governance is the way a company is organized and managed to ensure that all financial stakeholders receive a fair share of the company’s earnings and assets.”

Mathiesen [2002]

*“Corporate governance is a field in economics that investigates how to secure/motivate efficient management of corporations by the use of incentive mechanisms, such as contracts, organizational designs and legislation. This is often limited to the question of improving financial performance, for example, how the corporate owners can secure/motivate that the corporate managers will deliver a competitive rate of return” – www.encycogov.com,*

The Cadbury Committee U.K, defined corporate governance as follows

*“It is a system by which companies are directed & controlled”.*

Need of Corporate governance

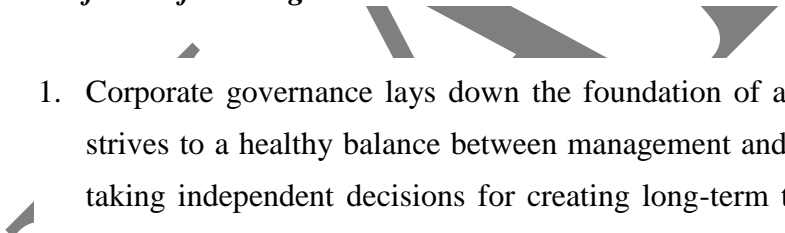
The collapse of international giants like Eronf, Worlcom, Tyco, AOL and financial scams like Satyam have been big eye-openers in the corporate arena to make realise the company’s

management, ownership and stakeholders the emergent need to comply with Corporate Governance principles in order to prevent themselves from paying huge corporate criminal liabilities in the future. These huge corporate giants paid the cost for lack of good corporate governance practices and corrupt policies adopted by management of these companies and their financial consulting firms

The significance of good corporate governance solutions has widened because of the increasing conflict between ownership and management disciplines, the non-compliance of financial reporting by auditors which inflicts heavy losses on investors and lack of fair and transparent culture in the company which shook's investor trust in the financial viability of the company and its ethical standards.

Good Corporate Governance – Corporate solutions

***Good corporate governance is embedded to the very existence of a sound company. It is important for the following reasons:***

- 
1. Corporate governance lays down the foundation of a properly structured Board and strives to a healthy balance between management and ownership which is capable of taking independent decisions for creating long-term trust between the company and external stakeholders of the company.
  2. It strengthens strategic thinking at the top management by taking independent directors on the board who bring intellectual experience to the company and unbiased approach to deal with matters related to companies welfare.
  3. It instils transparent and fair practices in the board management which results in financial transparency and integrity of the audit reports.
  4. It sets the benchmark for the company's management to comply with laws in true letter and spirit while adhering to ethical standards of the company for bringing out effective management solutions in order to discharge its responsibility for smooth functioning of the company.

5. It instils loyalty among investors as their interest is looked after in the best manner by a company who adopts good management practices.

### Scope of Corporate Governance

Corporate governance instils ethical standards in the company. It creates space for open dialogue by incorporating transparency and fair play in strategic operations of the corporate management. The significance of corporate governance lies in :

1. Accountability of Management to shareholders and other stakeholders
2. Transparency in basic operations of the company and integrity in financial reports produced by the company
3. Component Board comprising of Executive and Independent Directors
4. Checks & balances is an integral part of good corporate governance.
5. Adherence to the rules of company in law and spirit
6. Code of responsibility for Directors and Employees of the company
7. Open Dialogue between management and stakeholders of the company.
8. Investor Loyalty is a guarantor of good corporate governance practices

A Component board comprising of experienced professionals and active directorship who brings rich experience and intellectual vision on the board resulting in a greater economic efficiency of the company and enjoys the indispensable trust of the shareholders and key stakeholders of the company and they turn into trusted market players in the corporate sector enjoying everlasting market repute.

### Key market players involved in corporate governance

The Corporate management decisions have an impact on various people and entities associated with the company who are collectively known as stakeholders which include shareholders, directors, creditors, employees, suppliers, government agencies and society at large. But there are only key stakeholders like shareholders, directors, officers who are active participants in

corporate governance process and other stakeholders who themselves are not involved in corporate governance practices but rather are recipients of benefits derived from companies having good corporate governance practices.

The Key Participants are as following

### Shareholders

The shareholders are the principal owners of the company who provide capital to the company in lieu of return received by them in form of dividends on the earnings of the company. The individual shareholders participate in corporate governance procedures by exercising their voting rights on the key decisions of the company in in the interest of all stakeholders. The other institutional shareholders of the company like, insurance companies, trusts, investment banks, etc. who have greater shareholding than other shareholders actively have a greater role in monitoring corporate governance activities of the company as they are interested in market viability of the company in form of large market shares.

### Directors

The Board of Directors are key constitute players for formulating and implementing corporate governance practices in the heart of the company machinery by making key decisions pertaining to setting long term corporate strategy of the company, sharing high responsibility to run the company on good governance structure, bringing effective board leadership to tackle the company's operations at all levels and monitoring its performance in a fair and transparent manner.

### Officers and key managerial personnel

Key Managerial Personnel (KMP) and other officers of the company who serve the top – management level under the Companies Act, 2013 includes the Chief Executive Officer,

Managing Director or Manager; Whole Time Director; Company Secretary. The Key Managerial Personnel would advise the Boards to achieve the corporate goals and by adhering to Good Corporate Governance practices. KMP would also have to report to the Sectoral Regulators for the non-compliances made by the company.

**The new law bestows upon KMP's a significant role to run the company's operations in such a manner by adhering to laws in true letter and spirit in order to spell out the will of directors and other stakeholders effectively and efficiently in achieving company's twin objective of profit maximization and maximization of wealth.**

#### Role of Corporate Governance in banks

Bank and Financial Institutions are the backbones of the economic and financial system of any country. Banks are the richest source of economic wealth of the company any nation's progress report is depicted through healthy and sound functioning of the banking system of the country.

To strengthen the banking practices in India, RBI plays a leading role in formulating and implementing corporate governance norms for banking regime in India sector. Banking structure is the lifeblood of an economy to survive in this globalized scenario.

- The chapter on Corporate Governance in Banks in India elaborately discusses the role of
- RBI in regulating good corporate governance practices in banking sector in India.

#### Paper on – IIBF

“The RBI move to strengthen Corporate Governance led to seminal changes in the bank administration. The sustained profitability, lower level of non-performing assets, improved return on assets etc are some of the laud indicators of the sustaining policy of operating sound banking system. Moreover, the movement of share prices in the market, increased appetite of investors to look at banks for investment in bank centric equity market further speaks of broad

market opinion of bank's performance and reflection of market confidence. The corporate governance framework in banks has been strengthened through regulation, supervision and by maintaining constant interaction with the management. They cover identification of responsibilities of the Boards of banks, disclosure and transparency in published accounts, and shareholder and stakeholder rights and controls. The rating on management (M) which has been introduced as part of the CAMELS (Capital, Asset Quality, Management, Earnings, Liabilities and Systems) supervisory process takes into account the working of the board and its committees including the Audit committee, effectiveness of the management in ensuring regulatory compliance and adequacy of control exercised by the head/controlling offices. This model has been further modified to include risk based supervision. The new evolution is intended to manage influx of a range of financial risks entering the market with their nuances."

#### Role of proxy advisory firms in Corporate Governance

Proxy advisory firms is a very nascent terminology introduced in the corporate world which are basically independent research centers that evaluate the performance of corporate matters such as mergers, acquisitions, top appointments and CEO pay, on which shareholders are expected to vote on in AGMs, EGMs so that an informed decision can be taken by the shareholders about the corporate policies undertaken by these companies in order to increase their shareholding value. These firms engage in comprehensive analysis of the major activities of the company and submit detailed reports in order to guide the shareholders to take decisions which turn out to be beneficial to shareholders in the long run for safeguarding their interest with the company.

Proxy advisory firms charge fees from institutional investors and provide independent advisory services and voting recommendations to the shareholders and other institutional investors.

India has home grown proxy advisory firms such as Institutional Investor Advisory Services (IiAS), InGovern and Stakeholder Empowerment Services (SES) which provide more analytical, sophisticated and structured report to shareholding units leading to a change in the governance structure of the company.

### Role of corporate governance in Family Business

The history of Indian Corporate giants includes names like Tatas, Birlas, and now presently Reliance who all are listed public Indian companies enjoying biggest market share in the country are family promoted and managed companies. Nearly a third of the Sensex companies can be said to be family promoted, controlled and managed. Research and experience show that family ownership and control brings positive approach to the family business and its constituent shareholders. However it is also true and has been seen in many family owned business in India and abroad that these businesses also brings with itself magnitude of problems delineating ownership from family management and sometimes destroying the whole businesses where power play and conflicts take the first place and fair play and transparency in takes a back seat in family owned businesses.

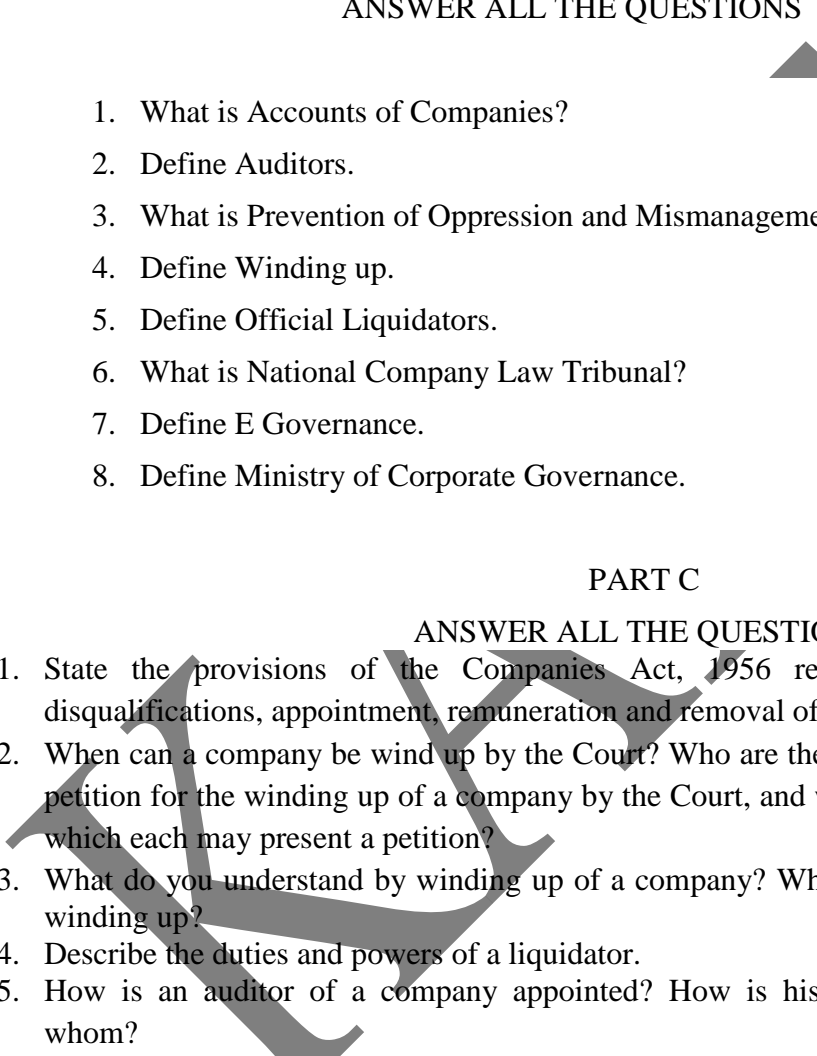

Corporate governance is the measuring rod which measures the long-term success of the company and keeps peace in the family.

Corporate governance regulates the family and business levels of the company and brings good solutions to family ownership challenges and often results in the long-term success of the family business and maintains peace and harmony in the controlling family and maintaining fair balance between family ownership and outside management control.

POSSIBLE QUESTIONS

PART B

ANSWER ALL THE QUESTIONS

- 
- 
1. What is Accounts of Companies?
  2. Define Auditors.
  3. What is Prevention of Oppression and Mismanagement?
  4. Define Winding up.
  5. Define Official Liquidators.
  6. What is National Company Law Tribunal?
  7. Define E Governance.
  8. Define Ministry of Corporate Governance.

PART C

ANSWER ALL THE QUESTIONS

1. State the provisions of the Companies Act, 1956 relating to the qualification, disqualifications, appointment, remuneration and removal of an auditor.
2. When can a company be wind up by the Court? Who are the persons entitled to present a petition for the winding up of a company by the Court, and what are the circumstances in which each may present a petition?
3. What do you understand by winding up of a company? What are the different modes of winding up?
4. Describe the duties and powers of a liquidator.
5. How is an auditor of a company appointed? How is his remuneration fixed and by whom?
6. In what cases may a company be wound up by the Court? Who may apply to the Court to exercise the power in this connection?
7. What are the duties of a company secretary in respect of the compulsory winding up of the company?
8. Explain the rights, powers and duties of an auditor?
9. What are the statutory restrictions on the appointment of the auditors of a company?
10. When can a company be voluntarily wind up? What are the consequences of such a winding up? What procedure is followed in case of such a winding up?

**KARPAGAM ACADEMY OF HIGHER DEUCATION**

**CLASS: II B.COM    COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE: 16PAU403A**

**UNIT: V (ACCOUNTS OF COMPANY)**

**BATCH: 2016-2019**

		<b>OPTION1</b>	<b>OPTION2</b>	<b>OPTION3</b>	<b>OPTION4</b>	<b>ANSWER</b>
1	Charge includes _____	Loans	Mortgage	Security	Hire	<b>Mortgage</b>
2	Commencement of winding up of a company does not affect the nature of _____	A fixed charge	A floating charge	Both (a) & (b)	b) Specific	<b>Both a &amp; b)</b>
3	Which of the following authorities is empowered to extent time for registration of charges _____?	CG	Company law board	Court	NCLT	<b>NCLT</b>
4	_____ is a charge when it is made specifically to cover assets	Fixed	Specific	Floating	Both (a) & (b)	<b>Specific</b>
5	_____ is a charge created on a class of assets related to ordinary course of business	Fixed	Specific	Floating	b) Specific	<b>Floating</b>
6	Which of the following charge is not registered with the ROC _____	Charge on immovable property	Charge on uncalled share capital	Charge on called made but not paid	Charge on call made but paid	<b>Charge on immovable property</b>
7	Unsecured debentures does not require any registration because it is not secured by _____	Fixed	Floating charge	Both (a) & (b)	Charge on uncalled share capital	<b>Both (&amp; (b)</b>
8	Incase of any default is made in filing the particulars related to charge then penalty is upto _____ thousands	5 to 10	10 to 15	15 to 20	20 to 25	<b>5 to 10</b>
9	_____ Sec. contains the provision relating to modification of a charge	130	135	140	145	<b>135</b>
10	Any charge is satisfied in full then which form is to be file with ROC _____	17	18	19	20	<b>17</b>
11	A charge requiring registration shall be filed with the registrar with in _____	21 days	30 days	45 days	40 days	<b>30 days</b>
12	When a charge become void., the money secured there under becomes repayable with in _____ months	1	2	10	immediately	<b>immediately</b>
13	What is the time limit for conducting statutory meeting?	1 to 5 months	1 to 6 months	1 to 9 months	1 to 12 months	<b>1 to 6 months</b>

**KARPAGAM ACADEMY OF HIGHER DEUCATION**

**CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE**

**COURSE CODE: 16PAU403A**

**UNIT: V (ACCOUNTS OF COMPANY)**

**BATCH: 2016-2019**

14	Notice of statutory meeting should be given with a period not less than	21 clear days	14 clear days	7 clear days	30 clear days	<b>21 clear days</b>
15	Notice of statutory meeting should be attested by at least.	3 directors	2 directors	3 directors	4 directors	<b>2 directors</b>
16	The time gap between two AGM's shall not exceed.	15 months	18 months	16 months	10months	<b>15 months</b>
17	First AGM must be held within _____ from the incorporation of the company	15 months	18 months	12 months	10months	<b>18 months</b>
18	XYZ co, incorporated on 1 <sup>st</sup> Jan 2005. The AGM should be held on 1 <sup>st</sup> July 2006. ROC extended that time to 1 <sup>st</sup> Sep.2006.Is the AGM valid.	Valid	Invalid	Situation does not arise	enforceble	<b>Invalid</b>
19	Every AGM must be held with _____ from the date of the Balance Sheet.	4 months	6 months	9 months	10months	<b>9 months</b>
20	First AGM must be held with in _____ from the date of the balance sheet	6months	9months	5months	10months	<b>9months</b>
21	AGM should be held at	Company	Registered office	Corporate office	other places	<b>Registered office</b>
22	Failure to convene AGM u/s 166 penalty will be	50,000+250 per every day	75,000+250 per every day	1,00,000+250 per every day	25,000+250 per every day	<b>50,000+250 per every day</b>
23	Length of notice in the case of AGM is 21 clear days. Articles provided 25 clear days for length of notice. Is the AGM valid	Valid	Invalid	void	enforceable	<b>Valid</b>
24	Length of notice in the case of AGM is 21 clear days. Articles provided that 15 clear days for length of notice. Is the AGM valid	Valid	Invalid	void	enforceable	<b>Invalid</b>
25	A shareholder appointed a proxy. The proxy must be a member of the company. Do you agree with this statement.	Agree	Disagree	not applicable	both a & b	<b>Disagree</b>
26	All special business can only be transected by passing a special resolution. Do you agree with this statement	Agree	Disagree	not applicable	both a & b	<b>Disagree</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE

COURSE CODE: 16PAU403A

UNIT: V (ACCOUNTS OF COMPANY)

BATCH: 2016-2019

27	In case of Public Company the quorum should be	5 members	7 members	2 members	8 members	<b>5 members</b>
28	In case of private company the quorum should be	2 members	3 members	4 members	8 members	<b>2 members</b>
29	Quorum should be present at the	Commencement of meeting	Middle of the meeting	d) End of the meeting	Any time during meeting.	<b>Commence ment of meeting</b>
30	_____ meeting given an opportunity to the member to know discuss on promotion & formation of the company.	General	EGM	Statutory	quartely	<b>Statutory</b>
31	_____ report is send by the directors to its members.	Statutory	Audit	Annual	quartely	<b>Annual</b>
32	In the given below who are not required to hold Statutory General Meeting	Private company	Government Company	Public company	Both (a) & (b)	<b>Both (&amp; (b)</b>
33	In case of Statutory General Meeting receipts & payments are prepared up to _____ days before the date of report	3	5	7	9	<b>7</b>
34	Who should certify that company allotted the shares and cash received in respect there of _____	Auditor	Director	Share holder	Members	<b>Auditor</b>
35	In the given below who are required to hold A.G.M _____	Public company	Private company	Government company	holding company	<b>Public company</b>
36	The time period for conduction of AGM is extended by ROC for how many months	1	2	3	4	<b>3</b>
37	Which of the following company can held the AGM on public holiday _____	Public company	Private company	Govt company	Association not for profits	<b>Association not for profits</b>
38	_____ may grant exemption to any class of companies with regard to the time & place of AGM	CG	ROC	NCLT	D.C.A	<b>C.G</b>
39	In case of failure to convene the AGM fine is upto Rs. _____	25,000	50,000	75,000	80,000	<b>50,000</b>
40	In case of continuing default to convene the AGM fine isRs. _____ for every day	250	300	350	400	<b>250</b>

CLASS: II B.COM      COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE  
COURSE CODE: 16PAU403A      UNIT: V (ACCOUNTS OF COMPANY)

41	The resolution passed at AGM are _____	Valid	Void	Voidable	Void abinitio	<b>Valid</b>
42	Every business transacted at an EGM is a _____ business	Ordinary	Special	Both (a) & (b)	void	<b>special</b>
43	M.M. Obtained, the incorporation on Jan 1, 1993 and C.C.B on June 1, 1993. The earliest date on which it can hold the statutory meeting is _____	1-Feb-93	1-Mar-93	1-Jul-93	1-Aug-93	<b>August 1, 1993</b>
44	Majority rule is not applicable when _____	The act done is illegal	The act done is ultra vires the company.	The act done constitutes a fraud	mistakes	<b>The act done is illegal</b>
45	A cost auditor makes his report to: _____	Members of company	Directors of company	Registrar	C. G.	<b>Directors of company</b>
46	A company not declare dividend at. _____	Statutory meeting	Annual general meeting	Extra ordinary G.M	quoram	<b>Statutory meeting</b>
47	If as a person is present in more than 1 capacity his presence will be counted as _____	1	2	3	4	<b>2</b>
48	In the absence of a quorum the proceedings of the meeting will be _____	Valid	Void	Voidable	enforceable	<b>Void</b>
49	If quorum is not present with in _____ time the meeting is stand dissolved.	½ Hr	1 Hr.	1 ½ Hr	2 Hr.	<b>½ Hr.</b>
50	In case of class or debenture holders quorum constitutes _____ members.	1	2	3	4	<b>1</b>
51	_____ Order to call a EGM even though 1 member present in person or by proxy.	ROC	C.G	NCLT	D.C.A	<b>C.G</b>
52	_____ can vote at the meeting even though not a member.	shareholder	President	Governor	both a & b	<b>All the above</b>

KARPAGAM ACADEMY OF HIGHER DEUCATION

CLASS: II B.COM COURSE NAME: COMPANY LAW AND SECRETARIAL PRACTICE

COURSE CODE: 16PAU403A

UNIT: V (ACCOUNTS OF COMPANY)

BATCH: 2016-2019

53	Voting right can't be exercised in case of _____	Calls in advance	Calls in arrears	Both (a) & (b)	no voting rights	<b>Calls in arrears</b>
54	Casting vote can be cast by whom only in case of equality of votes	Chairman	Director	Auditor	Manager	<b>Chairman</b>
55	The Chairman on his own motion _____ also order a poll	Must	Should	May	not required	<b>May</b>
56	Poll is conducted by Chairman with in _____ hrs from the demand.	24	48	72	36	<b>48</b>
57	Proxy need not be a _____ of the company	Shareholders b) Members		Both (a) & (b)	creditor	<b>Both and b)</b>
58	Depositing of proxy with the company should be made with in how many hours	24	48	36	72	<b>48</b>
59	If the notice contain a special business then an _____ statement shall be enclosed:	Explanatory	Enquiry	Both (a) & (b)	minuts	<b>Explanatory</b>
60	_____ is the official recording of the proceedings of a meeting	Quorum	Minutes	Both (a) & (b)	records	<b>Minutes</b>