Semester III

17BPU302	CORPORATE LAW	L	T	P	C
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Scope

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

Objective

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

UNIT I

Introduction to Company: Company – Definition – Characteristics – Types – Lifting of corporate veil - Formation of a company – Procedure – Certificate of Incorporation – Effects of Registration – Promoters – Pre-incorporation Contracts – Certificate of Commencement.

UNIT II

Company Documents: Memorandum of association – Contents – Alteration - Articles of Association – Contents – Alteration – Doctrine of Ultra Virus – Legal effect of Memorandum and Articles - Constructive Notice of Memorandum and Articles - Doctrine of Indoor Management

UNIT III

Shares and Debentures: Prospectus – Definition – Abridged Prospectus – Statement in Lieu of Prospectus – Information Memorandum – Contents – Misstatement in Prospectus – Issue of Shares – Types – Application and Allotment of Shares, Share Certificate, Share Warrant - Transfer and Transmission of Shares – Buyback of Shares – Debentures – Meaning and Types – Procedure for Declaration of Dividends.

UNIT-IV

Company Management: Company Management – Board of Directors – Managing Director – Qualification, Appointment, Vacation of Office – Position – Powers, Duties and Liabilities – Board of Director's Meetings – General Meetings – Kinds of Meetings and Resolutions – Procedure relating to Convening and Proceedings in General Meetings.

UNIT-V

Company Winding up: Winding up – Meaning Modes of Winding up – Compulsory Winding up by the Court – Voluntary Winding up – Types of Voluntary Winding up – Members Voluntary Winding up – Creditors Voluntary Winding up – Winding up subject to Supervision

of the Court – Consequences of Winding up (general).Liquidator – Powers and Duties. Limited liability Partnership-Definition- Features- Registration - E-filing.

Suggested Readings

Text Book

1. Kapoor N.D(2013), "Elements of Company Law", Sultan Chand and Sons, New Delhi.

References

1. Chawla R.C.and Garg K.C(2014),"Commercial and Company Law", Kalyani Publishers, New Delhi.
2. Kapoor N.D(2013) ,"Company Law and Secretarial Practice", Sultan Chand and Sons, New Delhi.
3. Ramaiya A(1998), "Guide to the Companies Act", Wadhwa and Co, Nagpur.

KARPAGAM ACADEMY OF HIGHER EDUCATION

(Deemed to be University)
(Established under section 3 of UGC Act 1956)
Coimbatore-641021
Department of Commerce

Name: **M RAM KUMAR**
Department: **Commerce**
Subject Code: **17BPU302** Semester: **V** Year: **2017-20 Batch**
Subject: **Corporate Law - Lesson Plan**

UNIT – 1

Sl.no	Lecture duration	Topics to be covered	Support materials
1	1	Company introduction and overview	R1-2
2	1	Nature and Characteristics of company	R1-3
3	1	Types of company and its features	R1-35
4	1	Lifting of corporate veil and its effects	R1-23
5	1	Formation of companies - introduction	R1-67
6	1	Procedure to be followed to form a company	R1-67
7	1	Explanation of Certificate of incorporation	R1-70
8	1	Effect of registration	R1-72
9	1	Promoters – Meaning and their duties	R1-61
10	1	Concept of Pre-incorporation contract	R1-113
11	1	Explanation of Certificate of commencement	R1-113
12	1	Recapitulation of important question	
		Total No. of Hours planned for Unit 1	12

Text Books:

T1 – Kapoor N.D 2013 “Elements of Company Law” Sultan and sons NewDelhi.

Reference Books:

R1 – “Company Law” Paper – 1 Module, The Institute of Company Secretaries of India”

UNIT – 2

Sl.no	Lecture duration	Topics to be covered	Support materials
1	1	Memorandum of Association – Meaning, Purpose and Forms	R1-74
2	1	Contents of Memorandum of Association	R1-75
3	1	Alteration of Memorandum of Association	R1-85
4	1	Article of Association – Meaning Purpose	R1-95
5	1	Contents of Article of Association	R1-97
6	1	Alteration of Article of Association	R1-98
7	1	Concept of Doctrine of ultra vires and its effects	R1-80
8	1	Legal effects of Memorandum of Association	R1-101
9	1	Constructive Notice of Memorandum of Association	R1-102
10	1	Constructive Notice of Article of Association	R1-102
11	1	Concept of Doctrine of Indoor Management	R1-104
12	1	Recapitulation of Important questions	
Total No. of Hours planned for Unit 2			12

Text Books:

T1 – Kapoor N.D 2013 “Elements of Company Law” Sultan and sons NewDelhi.

Reference Books:

R1 – “Company Law” Paper – 1 Module, The Institute of Company Secretaries of India”

UNIT – 3

Sl.no	Lecture duration	Topics to be covered	Support materials
1	1	Overview of Shares and debentures, prospectus – Definition	R1-124, R1-162
2	1	Concept of Abridged prospectus - Explanation	R1-168
3	1	Statement in lieu of Prospectus and information memorandum	R1-163, R1-167
4	1	Contents of lieu of Prospectus and information memorandum	R1- 167
5	1	Misstatement in prospectus	R1-174
6	1	Issue of shares, types	R1-125
7	1	Application and allotment of shares, share certificate, share warrant	R1-222, R1-236,R1-231
8	1	Transfer and transmission of shares	R1-264
9	1	Explain the concept of Buy back share, and debentures	R1-156, R1-185
10	1	Meaning and types Buy back share, and debentures	R1-187
11	1	Procedure for declaration of dividends	R1-632
12	1	Recapitulation of important question	
Total No. of Hours planned for Unit 3			12

Text Books:

T1 – Kapoor N.D 2013 “Elements of Company Law” Sultan and sons NewDelhi.

Reference Books:

R1 – “Company Law” Paper – 1 Module, The Institute of Company Secretaries of India”

UNIT – 4

Sl.no	Lecture duration	Topics to be covered	Support materials
1	1	Company management-Meaning and duties	R1-308
2	1	Board of directors – Meaning and their duties	R1-308
3	1	Meaning and duties of Managing directors	R1-309, 405
4	1	Qualification, appointment, vacation of office	R1-313,319
5	1	Position of interested director	R1-311
6	1	Powers, duties, and liabilities of board of directors	R1-365
7	1	Board of directors meeting – Meaning and procedure	R1-467
8	1	General meeting – Procedure and Meaning	R1-468
9	1	Kinds of meeting and resolution	R1-469
10	1	Procedure relating to convening	R1-494
11	1	Proceedings in General meeting	R1-493
12	1	Recapitulation of Important questions	
		Total No. of Hours planned for Unit 4	12

Text Books:

T1 – Kapoor N.D 2013 “Elements of Company Law” Sultan and sons NewDelhi.

Reference Books:

R1 – “Company Law” Paper – 1 Module, The Institute of Company Secretaries of India”

UNIT – 5

Sl.no	Lecture duration	Topics to be covered	Support materials
1	1	Meaning and modes of winding up	R1-835
2	1	Compulsory winding by the court	R1-857
3	1	Voluntary winding up and types	R1-861
4	1	Members voluntary winding up and creditors voluntary winding up	R1-862,863
5	1	Winding up subject to supervision of the court	R1-863
6	1	Consequences of winding up (general)liquidator	R1-870
7	1	Powers and Duties of Liquidator	R1-875
8	1	Limited liability partnership – definition and features	R1-813, 814
9	1	Restriction in Electronic filing	R1-824
10	1	Recapitulation of important questions	
11	1	Revision of previous year questions paper	
12	1	Revision of previous year questions paper	
Total No. of Hours planned for Unit 5			12

Text Books:

T1 – Kapoor N.D 2013 “Elements of Company Law” Sultan and sons NewDelhi.

Reference Books:

R1 – “Company Law” Paper – 1 Module, The Institute of Company Secretaries of India”

UNIT-I-INTRODUCTION TO COMPANY

SYLLABUS

Introduction to Company: Company – Definition – Characteristics – Types – Lifting of Corporate Veil – Formation of a Company – Procedure – Certificate of Incorporate – Effects of Registration – Promoters – Pre-incorporation Contracts – Certificate of Commencement.

COMPANY

Company – Latin word Com – with or together, Panis – bread.

The company has assumed greater importance. It denotes a joint stock enterprise in which the capital is contributed by large no of people. A company denotes an association of likeminded persons formed for the purpose of carrying on some business or undertaking.

It is called body corporate because the people composing it are made into one body by incorporating it according to the law and closing it with legal personality.

Corporation is derived from Latin term –corpus which means body. Corporation is a legal person created by the process other than natural birth.

DEFINITION

Companies Act 2013, Lord Justice James has defined a company as an association of many persons who contribute money or money's worth to common stock and employs it in some trade or business and who share the profit and loss arising there from.

NATURE AND CHARACTERISTICS OF A COMPANY

Since a corporate body (i.e.) a company is the creation of law. It is not human being. It is an artificial person. (I.e. created by law)

It is clothed with many rights obligation, powers and duties prescribed by law. It is called person.

It possesses only the properties confessed upon it by its Memorandum of Association which is charter of the company.

Corporate Personality

- The company incorporated under the Act is vested with a corporate personality quite distinct from individual who are its members.
- Being a separate legal entity it bears its own name and acts under a corporate name.
- It has seal of its own.
- Its assets are separate and distinct from those of its members.
- It is also a different person from the members who compose it.
- As such it is capable of owning property, incurring debts borrowing money, having a bank account, employing people, entering into contracts and suing or being sued in the same manner as an individual.
- Its members are its owners but they can be its creditors simultaneously as it has a separate legal entity.
- The shares holders cannot be held liable for the acts of the company even if he holds virtually the entire share capital.
- The share holders are not the agents of the company and so they cannot bind it by their acts.
- Thus incorporation is the act of forming legal corporations as juristic person.

Company as a person

- Company is an artificial person created by law.
- It is not a human being but it acts only through human beings.
- It is considered as a legal person. It can enter into contracts, possess properties on its own name sue and can be sued by others etc.
- It is called an artificial person since it is invisible, intangible existing only in the contemplation of law.
- It is capable of enjoying rights and being subject to duties.

Limited Liability

- The privilege of limited liability for business debts is one of the principal advantages of doing business under the corporate form of organization.
- The company being a separate person is the owner of its assets and bound by its liabilities.

- The liability of a member as shareholder extends to contribution to the assets of the company up to the nominal value of shares held and not paid by him.
- Members even as a whole are neither the owner of company's undertaking nor liable for its debts.
- In other words a shareholder is liable to pay the balance, if any due on the shares held by him, when called upon to pay and nothing more even if the liabilities of the company far exceed its assets.
- This means that the liability of a member is limited.
- For Ex. If A holds shares of total nominal value of Rs.1000 and has already paid Rs.500 (or 50% of value) as part payment at the time of allotment, he cannot be called upon to pay more than Rs.500, The amount remaining unpaid on his shares.
- If he holds fully paid shares, he has no further liability to pay even if the company is declared insolvent.
- In the case of company limited by guarantee, the liability of members is limited or a specified amount mentioned in the memorandum.

Perpetual Succession

- An incorporated company never dies except when it wound up as per law.
- A company being a separate legal person is unaffected by death or departure of any member and remains in the same entity, despite total change in the membership.
- A company's life is determined by the terms of its Memorandum of Association.
- It may be perpetual or it may continue for a specified time to carry on task or object as laid down in the Memorandum of Association.
- Perpetual succession therefore means that the membership of a company may keep changing from time to time but that does not affect its continuity.
- The membership of an incorporated company may change either because one share holder has transferred his shares to another or his shares devolve on his legal representatives on his death or he ceases to be a member under some other provisions of the companies Act.

Separate property

- A company being a legal person and entirely distinct from its members is capable of owning, enjoying and disposing of property in its own name.
- The company is the real person in which all its property is vested and by which it is controlled, managed and disposed off.
- No member can claim himself to be the owner of the company's property during its existence or in its winding up. A member does not even have an insurable interest in the property of the company.

Transferability of shares

- The capital of a company is divided into parts, called shares. The shares are said to be movable property and subject to certain condition, freely transferable so that no share holder is permanently or necessarily wedded to a company.
- When the joint stock companies were established. The object was that their shares should be capable of being transferred.
- Section 82 of Companies Act 1956 enunciates the principle by providing that the shares held by the members are movable property and can be transferred from one person to another in the manner provided by the articles.
- A member may sell his shares in the open market and realize money invested by him. This provides liquidity to a member (as he can freely sell his shares) and ensures stability to the company facility for the sale and purchase of shares.

Common Seal

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

- So, it should be safe in custody.

Capacity to sue and be sued

- A company being a body corporate can sue and can be sued in its own name.
- To sue means to institute legal proceedings against (a person) or to bring a suit in a court of law.
- All legal proceedings against the company are to be instituted in its own name.
- Similarly, the company may bring an action against any one in its own name.
- A company's right to sue arises when some loss is caused to the company.
- i.e. to the property of the personality of the company
- Hence the company is entitled to sue for damages in libel or slander as the case may be. A company as a person separate from its members may even sue one of its own members for libel.
- A company has a right to seek damages a defamatory material published about it, affect its business.
- Where video cassettes were prepared by the workman of a company showing their struggle against the company's management.
- It was held to be not actionable unless shown that the cassette would be defamatory.
- The court did not restrain the exhibition of the cassette.
- The company is not held liable for contempt committed by its officer.

Contractual rights

- A company, being a separate legal entity different from its members, can enter into contracts for the contact of the business in its own name.
- A share holder cannot enforce a contract made by his company. He is neither a party to the contract, nor entitled to the benefit of it. As a company is not trustee for its shareholders.
- Likewise, a shareholder cannot be sued on contracts made by his company.
- The distinction between a company and its members is not confined to the rules of privity, however, it permeates the whole law of contract.

- Thus, if a director fails to disclose a breach of his duties to his company and in consequence a shareholder is induced to enter into a contract with the director which he would not have entered into had there been disclosure, the share holder cannot rescind the contract.
- Similarly, a member of a company cannot sue in respect of torts committed against the company not can be sued for torts committed by the company.
- Therefore, the company as a legal person can take action to enforce its legal rights or be sued for breach of its legal rights or be sued for breach of its legal duties. It rights and duties are distinct from those of its constituent members.

Limitation of Action

- A company cannot go beyond the power stated in the MOA.
- The MOA of company regulates the powers and fixes. The objects of the company and provides the edifice upon which the entire structure of the company rests.
- The actions and objects of the company are limited within the scope of its MOA.
- In order to enable it to carry out its actions without such restrictions in most cases sufficient powers are granted in the MOA
- But once the powers have been laid down, it cannot go beyond these power unless the MOA is itself altered prior to doing so.

Separate Management

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

Voluntary Association for Profit

- A company is voluntary association for profit. It is formed for the accomplishment of some public goals and whatsoever profit is gained is divided among its share holders or restored for the future expansion of the company.

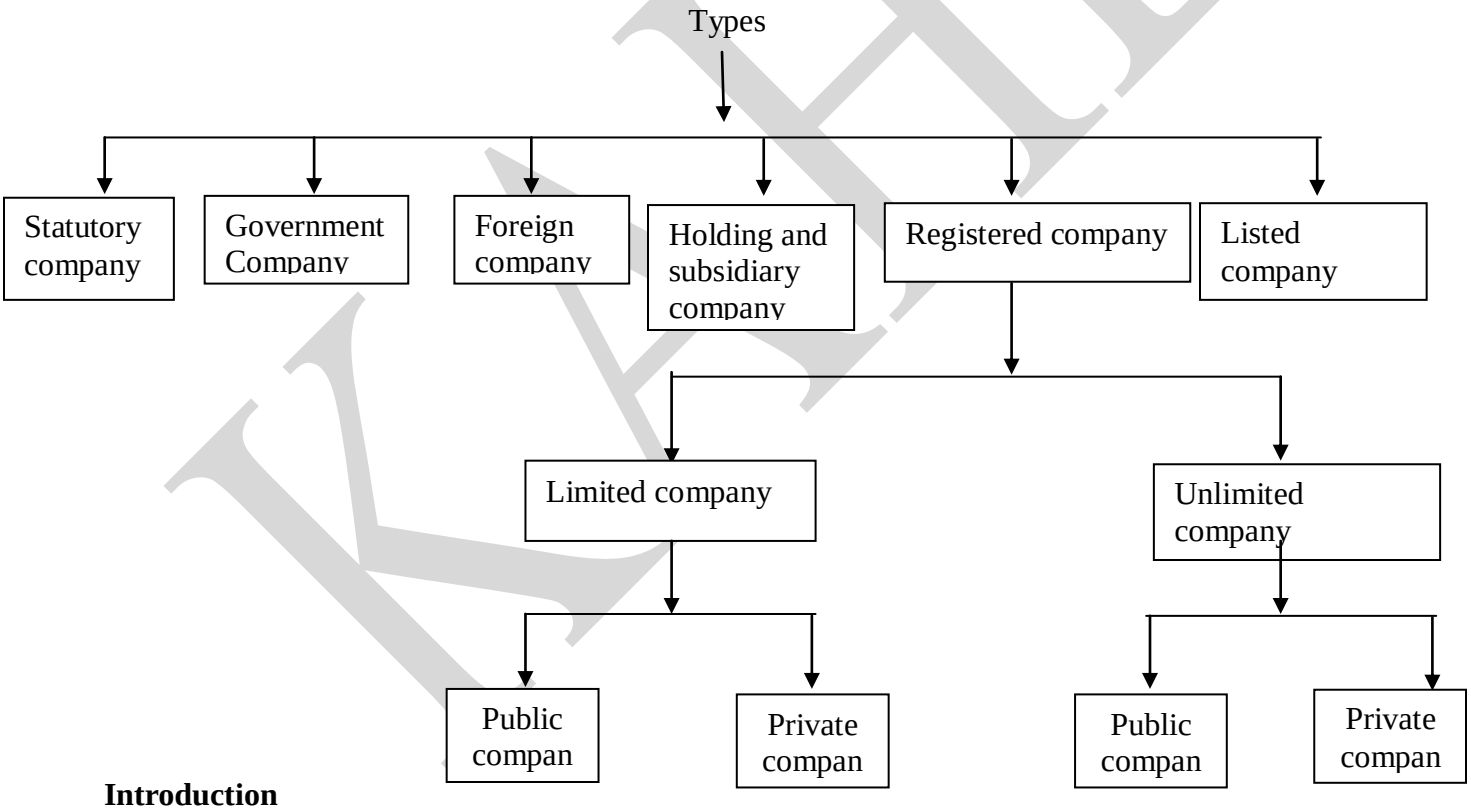
- Only a section 25 company can be formed with no profit motive.

Termination of existence

- A company, being an abstract and artificial person does not die a natural death.
- It is created by law. Carries on its affair according to law throughout it s life and ultimately is effected by law.
- Generally, the existence of company is terminated by means of winding up.
- However, to avoid winding up sometimes companies adopt strategies like, reorganization, reconstruction and amalgamation.

To sum up a company is a voluntary association for profit with capital divisible into transferable shares with limited liability, having corporate entity and a common seal with perpetual succession.

TYPES OF COMPANY



Introduction

The companies Act, 1956 provides for the kinds of companies that can be promoted and registered under the Act.

Statutory Company

- It is a company which is formed under particular act like special act of parliament

- LIC, RBI Act, Food Corporation of India, National Highway Authority of India.
- Comptroller and Auditory General of India.

Government Company

- Government Company is a company in which the Government wholes 51% or more of the share capital of company
- Which government makes wholes – it may be central of state government or partly sate government and partly central government
- Any company it is a subsidiary of government is called government company
- Auditors Appointed by the Comptroller and Audit General
- Ex. Air India, NTPC, HMT

Foreign Company

- Foreign company is a company which is incorporated outside India but has the place of business in India.
- Ex. Coco Cola, McDonalds , Pizza Hut

Registered Company

- Companies Act 1956
- Companies Act 2013

Companies are incorporated entities. They are always Registered Company.

Subsidiary Company

- It is controlled by holding company which holds 51% of share capital on subsidiary company.
- Holding company controls Board of Director of subsidiary company
- Subsidiary of subsidiary company is also subsidiary of holding company.
- Subsidiary of foreign company is also called subsidiary company.
- It is company which is actually controlled by other company which is called holding company

LIFTING OR PIERCING OF CORPORATE VEIL

What is corporate veil?

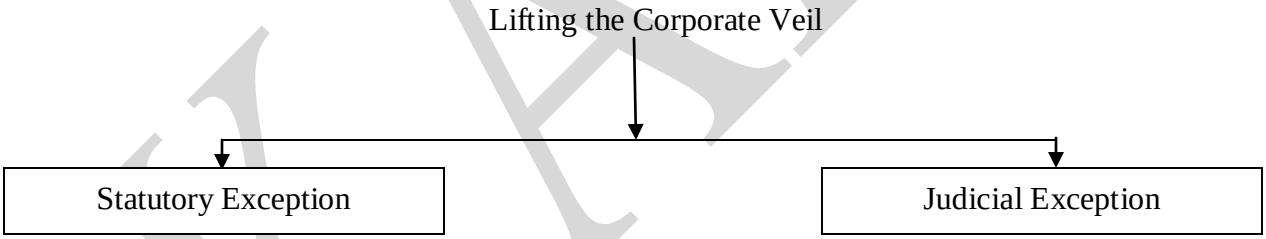
After an incorporation of a company, the company itself and the members in it are treated as separate legal entity. There is a veil that divides the company and its members.

Legal concepts that separate the personality of corporation from the personalities of its shareholders and protects them being personally liable for the company's debts and other obligations. This protection is not impenetrable. Where a court determines that company's business was not conducted in accordance with the provisions of corporate legislation (or that it was just façade for illegal activities) it may hold the shareholders personally liable for the company's obligation under the legal concept of lifting the corporate veil.

Lifting the corporate veil

The court will break through the corporate veil by applying the principle of lifting the corporate veil happen. When there's any fraudulent and dishonest use made of the legal entity that members who committed the wrong liable will not be allowed to take shelter behind the company and they will be personally liable for those debts and obligations.

Lifting the corporate veil can be applied under 2 Exceptions



Judicial Exceptions:

- Fraud or Improper purpose
- Avoidance of contractual obligation
- Group of companies
- Public policy
- Company employed as an agent or alter ego is controller
- Protection of Revenue

Statutory Exceptions:

- Misrepresentation in prospectus
- Solvency statement
- Payment of dividends
- Signing of instruments

Lifting of Corporate Veil under Judicial Interpretation

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

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

CASE EXAMPLE

In Jones v. Lipman, (1962) I. W.L.R. 832

A agreed to sell certain land to B. Pending completion of formalities of the said deal, A sold and transferred the land to a company which he had incorporated with a nominal capital of £100 and of which he and a clerk were the only shareholders and directors. This was done in order to escape a decree for specific performance in a suit brought by B. The Court held that the company was the creature of A and a mask to avoid recognition and that in the eyes of equity A must complete the contract, since he had the full control of the limited company in which the property was vested, and was in a position to cause the contract in question to be fulfilled.

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

CASE EXAMPLE

In Re. R.G. Films Ltd. (1953) 1 All E.R. 615

An American company produced a film in India technically in the name of a British Company, 90% of whose capital was held by the President of the American company which financed the production of the film. Board of Trade refused to register the film as a British film which stated that English company acted merely as the nominee of the American corporation.

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

CASE EXAMPLE

In Connors Bros. v. Connors (1940) 4 All E.R. 179

The principle was applied against the managing director who made use of his position contrary to public policy. In this case the House of Lords determined the character of the company as enemy" company, since the persons who were de facto in control of its affairs, were residents of Germany, which was at war with England at that time. The alien company was not allowed to proceed with the action, as that would have meant giving money to the enemy, which was considered as monstrous and against "public policy".

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

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

CASE EXAMPLE

Re. Sir Dinshaw Manakjee Petit, A.I.R. 1927 Bombay 371

The facts of the case are that the assessee was a wealthy man enjoying large dividend and interest income. He formed four private companies and agreed with each to hold a block of investment as an agent for it. Income received was credited in the accounts of the company but the company handed back the amount to him as a pretended loan. This way he divided his income in four parts in a bid to reduce his tax liability. But it was held "the company was formed by the assessee purely and simply as a means of avoiding super- tax and the company was nothing more than the assessee himself. It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans". The Court decided to disregard the corporate entity as it was being used for tax evasion

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

CASE EXAMPLE

The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar v. The Associated Rubber Industries Ltd., Bhavnagar and another, A.I.R. 1986 SC 1.

The facts of the case were that a new company was created wholly by the principal company with no assets of its own except those transferred to it by the principal company, with no business or income of its own except receiving dividends from shares transferred to it by the principal company i.e. only for the purpose of splitting the profits into two hands and thereby reducing the obligation to pay bonus. The Supreme Court of India held that the new company was formed as a device to reduce the gross profits of the principal company and thereby reduce the amount to be paid by way of bonus to workmen. The amount of dividends received by the new company should, therefore, be taken into account in assessing the gross profit of the principal company.

Statutory Recognition of Lifting of Corporate Veil

Misstatement in Prospectus

The Companies Act, 2013 itself contains some provisions [Sections 7(7), 251(1) and 339] which lift the corporate veil to reach the real forces of action. Section 7(7) deals with punishment for incorporation of company by furnishing false information; Section 251(1) deals with liability for making fraudulent application for removal of name of company from the register of companies and Section 339 deals with liability for fraudulent conduct of business during the course of winding up.

Prospectus is statement which is delivered by company having share capital to the registrar for registration, at lease three days before its first allotment of shares under conditions of;

- Where company does not issue prospectus
- Company issued prospectus but does have proceed to allot any of its shares

- It is a statement in writing signed by all of the directors.
- It states as regards the company's situation at the date of statement.
- Required for the reduction of shares capital unless the reduction is solely by way of cancellation of any paid up share capital which is unrepresented by available assets.

Payment of Dividend

Under the companies Act 2013 the rules on dividend have been tightened under section 13 a company may only make payment to the shareholder out of profits of the company available if the company is solvent. However in section 137(2) liability of the director who willfully pays payment of any cash dividend in contravention of the dividend rules will be liable not to company's creditors but to the company itself, payment of dividend not of the company's profit or without full filling the solvency test is found in section 133(2).

Signing of Instruments

A company executes its documents by affecting its common seal subject in the constitution and signature in accordance with section 66 execution of documents with subsection (2) a document signed shall have same effect as if the document is executed under the common seal of the company.

FORMATION OF COMPANY

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

(a) seven or more persons, where the company to be formed is to be a public company;

(b) two or more persons, where the company to be formed is to be a private company; or

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

PROCEDURE

(a) Application for Availability of Name of company

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

(a) the name of the proposed company; or

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

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

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

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

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

(b) Preparation of Memorandum and Articles of Association

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

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

(a) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company

(b) the State in which the registered office of the company is to be situated;

(c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;

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

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

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

Filing Of Documents With Registrar Of Companies

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

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

Memorandum and Articles of Association of the company duly signed

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

(c) Declaration from the professional

Section 7(1)((b) requires filing of a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

Rule 14 of The Companies(Incorporation) Rules 2014 states that for the purposes of clause (b) of sub- section (1) of section 7, the declaration by an advocate, a Chartered Accountant, Cost accountant or Company Secretary in practice shall be in Form No. INC.8.

(d) Affidavit from the subscribers to the Memorandum

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

(e) Furnishing verification of Registered Office

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

Where the location of the registered office is finalised prior to Incorporation of a company by the promoters, the promoters can also file along with the Memorandum and Articles, the verification of its Registered office in Form no INC 22.

(f) Particulars of subscribers

Section 7(1)(e) requires the filing of the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;

Rule 16 of Companies (Incorporation) Rules states that Particulars of every subscriber to be filed with the Registrar at the time of incorporation.

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

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

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

(c) Nationality:

(d) Date of Birth:

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

(f) Educational qualification:

(g) Occupation:

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

(j) Email id of Subscriber;

(k) Phone No. of Subscriber;

(l) Fax no. of Subscriber (optional)

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

For Indian Nationals:

− PAN Card (mandatory) and any one of the following

− Voter's identity card

− Passport copy

− Driving License copy

− Unique Identification Number (UIN) For Foreign nationals and Non Resident Indians

− Passport

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

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

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

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

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

(i) Name of the company;

(ii) Corporate Identity Number;

(iii) Whether interested as a director or promoter;

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

(2) Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the Registrar-

(a) Corporate Identity Number of the Company or Registration number of the body corporate, if any

(b) GLN, if any;

(c) the name of the body corporate

(d) the registered office address or principal place of business;

(e) E-mail Id;

(f) if the body corporate is a company, certified true copy of the board resolution specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed by the body corporate, and the name, address and designation of the person authorized to subscribe to the Memorandum;

(g) if the body corporate is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum;

(h) the particulars as specified above for subscribers in terms of clause (e) of sub-section (1) of section 7 for the person subscribing for body corporate;

(i) in case of foreign bodies corporate, the details relating to-

(i) the copy of certificate of incorporation of the foreign body corporate; and

(ii) the registered office address.

(g) Particulars of first directors along with their consent to act as directors

Section 7(1)(f) requires filing of the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed.

Section 7(1)(g) states that the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

(h) Power of Attorney

With a view to fulfilling the various formalities that are required for incorporation of a company, the promoters may appoint an attorney empowering him to carry out the instructions/requirements stipulated by the Registrar. This requires execution of a Power of Attorney on a non-judicial stamp paper of a value prescribed in the respective State Stamp Laws.

Issue of Certificate of Incorporation by Registrar

Section 7(2) states that the Registrar on the basis of documents and information filed under sub-section (1) of section 7, shall register all the documents and information referred to in that sub-section in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

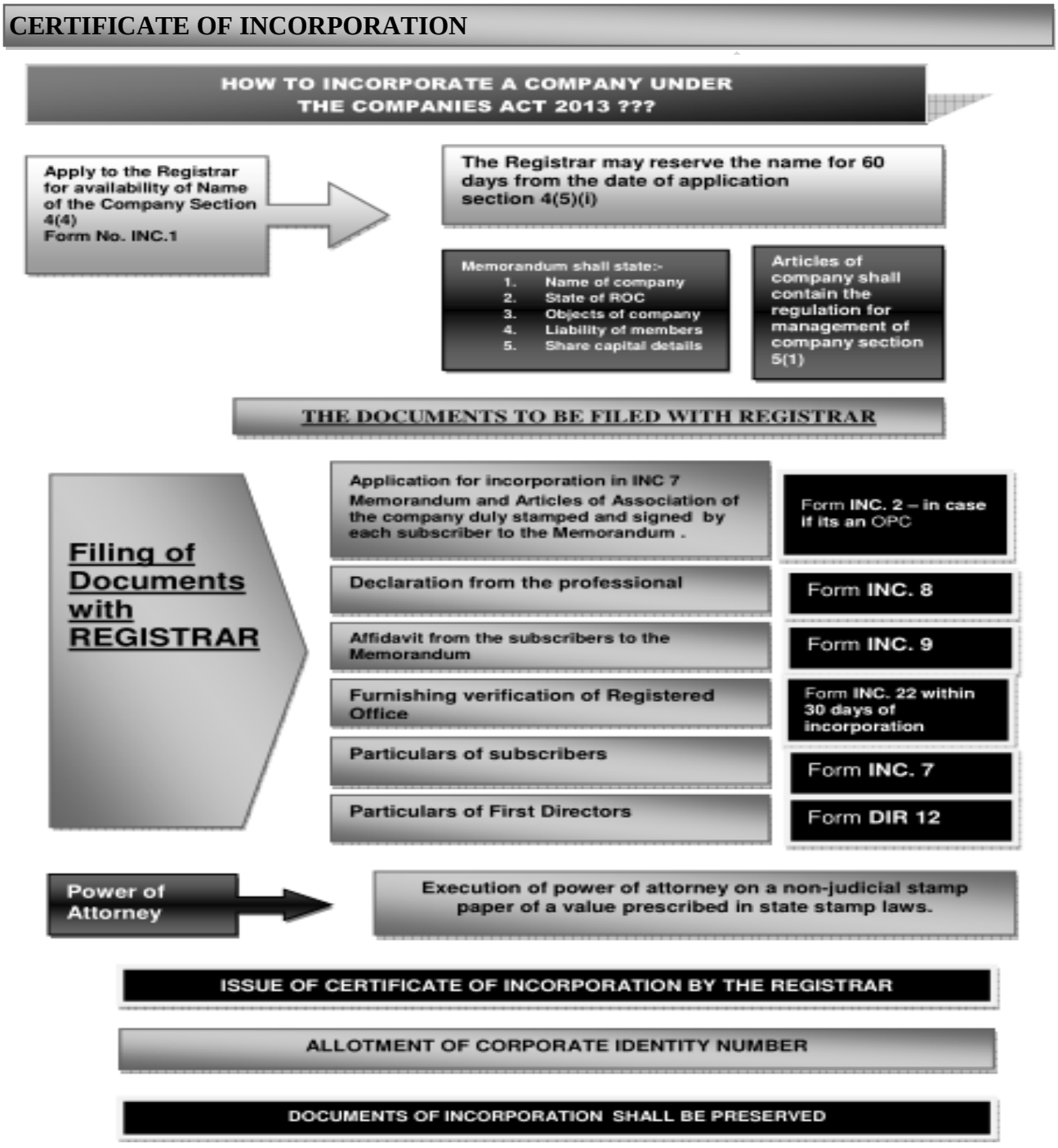
From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name. (Section 9). The subscribers would become the members of the company.

Conclusive Evidence

A Certificate of Incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under the Act. The Certificate of Incorporation is conclusive evidence that everything is in order as regards registration and that the company has come into existence from the earliest moment of the day of incorporation stated therein with rights and liabilities of a natural person, competent to enter into contracts[Jubilee Cotton Mills Ltd. v. Lewis, (1924) (A.C. 958)]. The validity of the registration cannot be questioned after the issue of the certificate.

Allotment of Corporate identity number

Section 7(3) states that on and from the date mentioned in the certificate of incorporation issued under sub- section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.



PROMOTERS

Promotion

The term 'promotion' is a term of business and not of law. It is frequently used in business. Haney defines promotion as " the process of organizing and planning the finances of a business enterprise under the corporate form". Gerstenberg has defined promotion as "the discovery of business opportunities and the subsequent organization of funds, property and managerial ability into a business concern for the purpose of making profits therefrom." First of all the idea of carrying on a business is conceived by promoters. Promoters are persons engaged in, one or the other way; in the formation of a company. Next, the promoters make detailed study to assess the feasibility of the business idea and the amount of financial and other resources required.

When the promoters are satisfied about practicability of the business idea , they take necessary steps for assembling the business elements and making provision of the funds required to launch the business enterprise. Law does not require any qualification for the promoters. The promoters stand in a fiduciary position towards the company about to be formed. From the fiduciary position of promoters, the following important results follow:

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

Promoter's Remuneration

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

Promoter's Liability

If a promoter does not disclose any profit made out of a transaction to which the company is a party, then the company may sue the promoter and recover the undisclosed profit with interest Otherwise, the company may set aside the transaction i.e., it may restore the property to promoter and recover its money. Besides, Section 62 (1) holds the promoter liable to pay compensation to every person who subscribes for any share or debentures on the faith of the prospectus for any loss or damage sustained by reason of any untrue statement included in it. Section 62 also provides certain grounds on which a promoter can avoid his liability. Similarly Section 63 provides for criminal liability for misstatement in the prospectus and a promoter may also become liable under this section.

PRE-INCORPORATION CONTRACTS

In Pennington's Company Law, the position is stated as under:

- "Although a contract made before the company's incorporation cannot bind the company, it is not wholly denied of legal effect.
- It takes effect as a personal contract with the persons who purport to contract on the company's behalf and they are liable to pay damages for failure to perform the promises made in the company's name, even though the contract expressly provides that only the company's paid-up capital shall be answerable for performance".
- Preliminary contracts are contracts purported to be made on behalf of a company before its incorporation.
- Before incorporation, a company is non-existent and has no capacity to contract. Consequently, nobody can contract as agent on its behalf because an act which cannot be done by the principal himself cannot be done by him through an agent.
- Hence, a contract by a promoter purporting to act on behalf of a company prior to its incorporation never binds the company because at the time the contract was concluded the company was not in existence.
- Therefore it has no legal existence. Even if the parties act on the contract it will not bind the company. [Northumberland Avenue Hotel Co., (1886) 33 Ch.D.16 (CA)]. Further even after incorporation such a purported contract cannot be ratified by the company (Kelner v. Baxter

(1866) L.R. 2 C.P. 174]. The persons purporting to act as agents on behalf of the company would be personally liable.

- In Kelner v. Baxter (ibid) three persons A, B and C purported to enter into a contract as agents on behalf of a company before its incorporation for the purchase of certain goods from Kelner and signed it : "A, B and C, Directors".
- The company later obtained the certificate of incorporation but collapsed before the money was paid for the goods which were supplied to it by Kelner.
- It was held that A, B and C were personally liable on the agreement and no subsequent ratification by the company would relieve them from that liability without the assent of Kelner.
- Even if the company takes some benefit from a contract purported to have been made before its formation, the contract is not binding on the company.
- The promoters alone, therefore, remain personally liable for any contract they purport to make on behalf of the company, unless the company enters into the contract in terms of such agreement after incorporation.
- A company cannot ratify a pre-incorporation contract, but it is open to it to enter into a new contract after its incorporation to give effect to a contract made before its formation [Howard v. Patent Ivory Co. (1888) 38 Ch.D.]
- Since the pre-incorporation contract is a nullity, even the company cannot sue the vendor of property if he fails to carry out such a contract. In India, however, Sections 15 and 19 of the Specific Relief Act, 1963, have considerably alleviated the difficulty.
- Section 15(h) provides that where the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of incorporation, the company may, if it has accepted the contract, and has communicated such acceptance to the other party to the contract, obtain specific performance of the contract. Under Section 19(e) under similar circumstances, specific performance may be enforced against the company by the other party to the contract.
- A company cannot acquire shares prior to its incorporation. Where a company was named as the transferee in the share transfer forms prior to its incorporation, it was held that such transfers could not be registered. [Inlec Investment (P) Ltd. v. Dynamatic Hydraulics Ltd.,

(1989) 3 Comp LJ 221, 225 (CLB)]. Any pre-incorporation agreement to subscribe to shares of a company to be formed, cannot be enforced and is usually revocable unless accepted by the company after its formation.

CERTIFICATE OF COMMENCEMENT

Introduction

- There are certain rules and regulations you need to follow while establishing anything and everything. These rules and regulations help you form a strong base for your work.
- These rules are especially mandatory when dealing with any legal venture. Similarly, when you set up your business, you need to follow certain rules and regulations, prescribed by the Government. It gives your entity a legal identity as well as provides you with other benefits. Obtaining Certificate of Commencement of Business is one of the steps you need to follow between registering and running your business.
- It was a mandatory step until Companies Act, 2015 was introduced. The Act has now removed the previous compulsion of having this certificate. Now, it depends on you whether to obtain one or not. Howsoever, discussed below is what is a certificate of commencement of business.
- The certificate of commencement of business was a mandatory step under Companies Act, 2013. It was mandatory for public companies with share capital. The certificate is issued by the registrar of joint stock companies.
- The certificate of commencement of business was important because only after obtaining the certificate were you allowed to start any business related activities. Before that, you were not allowed to exercise any kind of powers or benefits which come along with company registration.

Steps to obtain Certificate Of Commencement

- First, file e-Form 20 (a declaration).
- Attach the statement in the prospectus of your company (a legal document which provides all the securities you offer to the public upon the purchase of your product in written).
- File it with the registrar after which a verification will take place.
- After the successful verification, you are issued with the Certificate of Commencement of Business.

While registering the above documents you will need some other documents too;

- Identity and Address Proof.
- DSC (Digital Signature Certificate).
- Certificate of Registration (which is issued by RBI in the case of non-banking financial companies only).
- A consent letter from all the Directors (Director Declaration as well as board resolution).
- All these documents are submitted along with prescribed fees.

The application for the Certificate of Commencement of Business is generally applied within one hundred and eighty days of incorporation of the company. Previously, there were consequences of doing business without the certificate of commencement of business, including penalty as well as cancellation of registration of the company. However, with the new Companies Act, 2015 in power, there are no such consequences. It is your will to have the certificate or not. We, at LegalRaasta, can help you to obtain this certificate as well with the company formation.

KARPAGAM ACADEMY OF HIGHER EDUCATION, COIMBATORE

Class: II B.COM(BPS) **UNIT - I** **Course Name: Corporate Law**

Course Code: 17BPU302 **Semester: III** **Batch: 2017-20**

s.no	UNIT -I	Option A	Option B	Option C	Option D	**ANSWERS**
1	The company is derived from the _____ word	French	Greek	Spanish	Latin	**Latin**
2	A company is an association of both _____ and _____ persons incorporated under the existing law of country	Judicial and Statutory	Law and Legal	Artificial and Natural	legal and illegal	**Artificial and Natural**
3	The new companies Act is amendment in the year of_____	2012	2014	2013	2015	**2013**
4	In the special case liability of the share holder in company is_____	Limited	Unlimited	Limited By Guarantee	Limited by Share capital	**Unlimited**
5	The new companies Act is amendment in the year of_____	2012	2014	2013	2015	**2013**
6	The person who are in control of the issuer is known as_____	Holder	Subsidiary	Promoters	Directors	**Promoters**
7	Government company is known as the 51% of shares hold by the_____	Central Government	Ministry of Corporate Affiars	Registrar of a company	Private Concern	**Central Government**

8	The company is created by legally is known as _____	Business	Corporate	Industry	incorporate	**incorporate**
9	In the special case liability of the share holder in company is_____	Limited	Unlimited	Both a and b	None of the above	**Unlimited**
10	The availability of company names is issued by_____	Ministry of Finance	Ministry of Commerce	Ministry of Industry	Ministry of Corporate Affairs	**Ministry of Corporate Affairs**
11	The first step in the formation of a company is to prepare a document called_____	Article of Association	Memorandum of Association	Prospectus	Memorandum of Understanding	**Memorandum of Association**
12	How many members are allowed in the private limited company as per company's Act 2013_____	50	150	200	250	**200**
13	The court breaks the corporate veil of the company is known as_____	Lifting of corporate veil	Piercing of corporate veil	Corporate Veil	Lifting and piercing of Corporate Veil	**Lifting and piercing of Corporate Veil**

14	Under which of the following circumstances does not the court permit lifting of the corporate veil_____	Evasion of tax	Conflicts with public policy	Fraud	Repayment of Loan	**Repayment of Loan**
15	_____ contains the rules and regulations relating to the internal management of the company	Prospectus	Memorandum of Association	Article of Association	Both Article and Memorandum	**Article of Association**
16	E-Form No.18 in Formation of company is related with	Particulars of Director	Notice of Registered address	Director Identification Number	Certificate of incorporation	**Notice of Registered address**
17	A private company which is a subsidiary of a public company is treated as a_____	a. Private Company	b. Limited Company	c. Public Company	Loan	**Capital**
18	A _____ is a company which is incorporated in a country outside India but has a place of business in India	a. Government Company	b. Investment Company	c. Foreign Company	Debenture holders	**Subscribers to the memorandum**
19	Which one is not included in the characteristics of the company_____	a. Corporate Personality	b. Company as Person	c. Limited Liability	two – third	**two – third**

20	The power of the company to borrow is exercised by its	a. Directors	b. Members	c. Shareholders	Legal Deed	**Transmission**
21	Director has to acquire qualification shares within _____ after his appointment	six months	three months	one month	two months	**two months**
22	The approval of the _____ is required for the appointment or re-appointment of a managing director	Central Government	Promoters	Shareholders	Board of Directors	**Central Government**
23	___ is a person who is incompetent to enter into any contract	Minor	Foreigners	Trustee	Married Women	**Minor**
24	A manager can only be _____	a firm	a body corporate	an individual	HUF	**an individual**
25	A person can be the manager in _____ company at a time	three	ten	twenty	one	**one**
26	The business of the Company is regulated and controlled by the _____	Central Government	Company Law Board	Shareholders	Board of Directors	**Board of Directors**
27	The person who holds the share or shares of a company is called	a shareholder	a debenture holder	creditors	debtors	**a shareholder**

	_____					
28	Preference shares are shares, which have _____	preferential rights	voting right	right o attend meeting	right to call for meeting	**preferential rights**
29	_____ are those, which are not preference shares	Preference shares	Equity shares	debenture	redeemable preference shares	**Equity shares**
30	Equity shares are also called as _____	preferential shares	Ownership shares	creditorship shares	debenture	**Ownership shares**
31	Any excess profit paid over the preference shares are distributed to _____	equity shareholders	board of directors	debenture holders	chairman	**equity shareholders**
32	The rate of dividend on preference shares remains _____	flexible	minimum	fixed	maximum	**fixed**
33	Equity share capital is considered as _____ capital	risk free	safe	secured	risk	**risk**
34	Bonus shares are shares issued only to _____	existing shareholders	new shareholders	creditors of the company	financial institutions	**existing shareholders**

35	A _____ is a document issued by a company under its common seal specifying the number of shares held by a member	share transfer certificate	register	share certificate	list of members	**share certificate**
36	A shareholder is a person who buys and holds shares in a company having a _____	profit	share capital	members	capital	**share capital**
37	Members of the company may delegate certain powers to the company's _____ to run the company on their behalf	secretary	government	directors	chairman	**directors**
38	Any person who is_____ may become member of a company	competent	lunatic	insolvent	unsound mind	**competent**
39	The subsequent directors are elected by the _____ at the general meeting	directors	shareholders	secretary	chairman	**shareholders**
40	The directors have right to recommend the payment of _____	share capital	dividend	interest	profit	**dividend**

41	The duties of directors may be classified in to _____ categories	four	five	two	three	**two**
42	The position of directors in respect of the property of the company is that of a _____	agent	security	promoters	trustee	**trustee**
43	If there is any misstatement in the prospectus., in such case, directors may be awarded _____ imprisonment and a fine of Rs.5,000/-	two years	ten years	five years	seven years	**two years**
44	The companies Act defines a managing director under Section _____	265	262	267	269	**267**
45	The sanction of the _____ is required for any change in the managing director's agreement	State Government	Shareholders	Board of Directors	Central Government	**Central Government**
46	A person cannot be appointed as a managing director of more than _____ public companies at a time	two	five	three	Seven	**Two**

47	The directors are appointed for a period not exceeding _____ at a time	two years	five years	three years	seven years	**three years**
48	The managing director is considered as an _____ of the board of directors	servant	brokers	dealers	agent	**agent**
49	The directors are considered as agents of the _____ of the company	Creditors	shareholders	debenture holders	bankers	**shareholders**
50	A company can appoint a _____ along with a managing director or a manager.	secretary	part time secretary	chairman	whole time director	**whole time director**
51	The appointment of a managing director does not require the consent of the _____	employees	manager	shareholders	member	**shareholders**
52	A managing director must be a _____ of the company.	director	Member	employee	manager	**director**
53	The remuneration of manager must not exceed _____ of the net profits	3%	10%	2%	5%	**5%**

54	A manager is appointed by the _____	managing director	board of directors	secretary	chairman	**board of directors**
55	A managing director is a _____ of the board and can participate in board meetings	servant	employee	member	officer	**member**
56	A manager is only an _____ of the company and cannot be a member of the board	employee	servant	agent	dealer	**employee**
57	The 2013 Act increases the limit for number of directorships that can be held by an individual from 12 to _____	13	14	15	16	**15**
58	The _____ in the draft rules has prescribed the minimum number of independent directors in case of public companies	central government	Company Law Board	promoters	state government	**central government**
59	The 2013 Act requires every listed public company to have at least _____ of the total number of directors as	one-fourth	two – fourth	one-third	two-third	**one-third**

	independent directors					
60	The _____ Act makes an attempt to distinguish between the liability of an independent director and non-executive director from the rest of the board	2003	2013	2015	1993	**2013**

UNIT-II- COMPANY DOCUMENTS

SYLLABUS

Company Documents: Memorandum of association –Contents –Alteration – Articles of Association – Contents – Alteration – Doctrine of Ultra Virus – Legal effect of Memorandum and Articles – Constructive Notice of Memorandum and Articles – Doctrine of Indoor Management

MEMORANDUM OF ASSOCIATION

The formation of a public company involves preparation and filing of several essential documents. Two of basic documents are :

1. Memorandum of Association
2. Articles of Association

The preparation of Memorandum of Association is the first step in the formation of a company. It is the main document of the company which defines its objects and lays down the fundamental conditions upon which alone the company is allowed to be formed. It is the charter of the company. It governs the relationship of the company with the outside world and defines the scope of its activities. Its purpose is to enable shareholders, creditors and those who deal with the company to know what exactly is its permitted range of activities. It enables these parties to know the purpose, for which their money is going to be used by the company and the nature and extent of risk they are undertaking in making investment. Memorandum of Association enable the parties dealing with the company to know with certainty as whether the contractual relation to which they intend to enter with the company is within the objects of the company.

Form of Memorandum (Sec. 14)

Companies Act has given four forms of Memorandum of Association in Schedule

I. These are as follows :

Table B Memorandum of a company limited by shares

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

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

Table E Memorandum of an unlimited company

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

Printing and signing of Memorandum (Sec. 15).

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

CONTENTS

1. Name clause

Promoters of the company have to make an application to the registrar of Companies for the availability of name. The company can adopt any name if :

i) There is no other company registered under the same or under an identical name;

ii) The name should not be considered undesirable and prohibited by the Central Government (Sec. 20). A name which misrepresents the public is prohibited by the Government under the Emblems & Names (Prevention of Improper use) Act, 1950 for example, Indian National Flag, name pictorial representation of Mahatma Gandhi and the Prime Minister of India, name and emblems of the U.N.O., and W.H.O., the official seal and Emblems of the Central Government and State Governments.

Where the name of the company closely resembles the name of the company already registered, the Court may direct the change of the name of the company.

iii) Once the name has been approved and the company has been registered, then

a) the name of the company with registered office shall be affixed on outside of the business premises;

b) if the liability of the members is limited the words “Limited” or “Private Limited” as the case may be, shall be added to the name; [Sec 13(1) (1)]:

Omission of the word 'Limited' makes the name incorrect. Where the word' Limited" forms part of a company's name, omission of this word shall make the name incorrect. If the company makes a contract without the use of the word "Limited", the officers of the company who make the contract would be deemed to be personally liable [Atkins & Co v Wardle, (1889) 61 LT 23] The omission to use the word 'Limited' as part of the name of a company must have been deliberate and not merely accidental. Note the following case in this regard:

Dermatine Co. Ltd. v Ashworth, (1905) 21 T.L.R. 510. A bill of exchange drawn upon a limited company in its proper name was duly accepted by 2 directors of the company. The rubber stamp by which the word of acceptance were impressed on the bill was longer that the paper of the bill and hence the word 'Limited' was missed. Held, the company was liable to pay and the directors were not personally liable.

(c) the name and address of the registered office shall be mentioned in all letter- heads, business letters, notices and Common Seal of the Company, etc. (Sec. 147). In Osborn v The Bank of U. A. E., [9 Wheat (22 US), 738]; it was held that the name of a company is the symbol of its personal existence. The name should be properly and correctly mentioned. The Central Government may allow a company to drop the word "Limited" from its name.

2. Registered Office Clause

Memorandum of Association must state the name of the State in which the registered office of the companmy is to be situated. It will fix up the domicile of the company. Further, every company must have a registered office either from the day it begins to carry on business or within 30 days of its incorporation, whichever is earlier, to which all communications and notices may be addressed. Registered Office of a company is the place of its residence for the purpose of delivering or addressing any communication, service of any notice or process of court of law and for determining question of jurisdiction of courts in any action against the company. It is also the place for keeping statutory books of the company. Notice of the situation of the registered office and every change shall be given to the Registrar within 30 days after the date of incorporation of the company or after the date of change. If default is made in complying with these requirements, the company and every officer of the company who is default shall be punishable with fine which may extend to Rs. 50 per during which the default continues.

3. Object Clause

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

In the case of companies which were in existence immediately before the commencement of the Companies (Amendment) Act. 1965, the object clause has simply to state the objects of the company. But in the case of a company to be registered after be amendment, the objects clause must state separately.

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

ii) Other objects: This sub-clause shall state other objects which are not included in the above clause. Further, in case of a non-trading company, whose objects are not confined to one state, the objects clause must mention specifically the States to whose territories the objects extend. (Sec. 13)

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

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

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

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

i) The objects of the company must not be illegal, e.g. to carry on lottery business.

ii) The objects of the company must not be against the provisions of the Companies Act such as buying its own shares (Sec. 77), declaring dividend out of capital etc.

iii) The objects must not be against public, e.g. to carry on trade with an enemy country.

iv) The objects must be stated clearly and definitely. An ambiguous statement like "Company may take up any work which it deems profitable" is meaningless.

v) The objects must be quite elaborate also. Note only the main objects but the subsidiary or incidental objects too should be stated.

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

4. Capital Clause

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

5. Liability Clause

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

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

Any alteration in the memorandum of association compelling a member to take up more shares, or which increases his liability, would be null and void. (Sec 38). If a company carries on business for more than 6 months while the number of members is less than seven in the case of public company, and less than two in case of a private company, each member aware of this fact, is liable for all the debts contracted by the company after the period of 6 months has elapsed. (Sec. 45).

6. Association or Subscription Clause

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

ALTERATION

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

1. Change of name

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

By ordinary resolution. If through inadvertence or otherwise, a company is registered by a name which, in the opinion of the Central Government, is identical with or too nearly resembles the name

of an existing comapany, it may change its name by an ordinary resolution and with the previous approval of the Central Government signified in writing. [Sec. 22(1) (a)].

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

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

2. Change of Registered Office

This may involve :

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

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

c) Change of Registered Office from one State to another State to another State. Section 17 of the Act deals with the change of place of registered office form

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

Special Resolution

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

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

The Central Government before confirming or refusing to confirm the change will consider primarily the interests of the company and its shareholders and also whether the change is bonafide and not against the public interest. The Central Government may then issue the confirmation order on such terms and conditions as it may think fit.

3. Alteration of the Object Clause

The Company may alter its objects on any of the grounds (I) to (vii) mentioned in Section 17 of the Act. The alteration shall be effective only after it is approved by special resolution of the members in general meeting with the Companies Amendment Act, 1996, for alteration of the objects clause in Memorandum of Associations sanction of Central Government is dispensed with.

Limits of alteration of the Object Clause

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

i) to enable the company to carry on its business more economically or more effectively;

ii) to enable the company to attain its main purpose by new or improved means;

iii) to enlarge or change the local area of the company's operation;

iv) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;

v) to restrict or abandon any of the objects specified in the memorandum

vi) to sell or dispose of the whole, or any part of the undertaking of the company;

vii) to amalgamate with any other company or body of persons.

Alterations in the objects is to be confined within the above limits for otherwise alteration in excess of the above limitations shall be void. A company shall file with the registrar a special resolution within one month from the date of such resolution together with a printed copy of the memorandum as altered. Registrar shall register the same and certify the registration. [Sec. 18].

Effect of non Registration with Registrar

Any alteration, if not registered shall have no effect. If the documents required to be filed with the Registrar are not filed within one month, such alteration and the order of the Central Government and all proceedings connected therewith shall at the expiry of such period become void and

inoperative. The Central Government may, on sufficient cause show, revive the order on application made within a further period of one month [Sec. 19]

4. Alteration of Capital Clause

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

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

5. Alteration of Liability Clause

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

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

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

ARTICLES OF ASSOCIATION

Every company is required to file Articles of Association along with the Memorandum of Association with the Registrar at the time of its registration.

Companies Act defines 'Articles as Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies Acts. They also include, so far as they apply to the company, those in the Table A in Schedule I annexed to the Act or corresponding provisions in earlier Acts. Articles of Association are the rules, regulations and bye-laws for governing the internal affairs of the company. They may be described as the internal regulation of the company governing its management and embodying the powers of the directors and officers of the company as well as the powers of the shareholders. They lay down the mode and the manner in which the business of the company is to be conducted. In framing Articles of Association care must be taken to see that regulations framed do not go beyond the powers of the company it self as contemplated by the Memorandum of Association nor should they be such as would violate any of the requirements of the companies Act, itself. All clauses in the Articles ultra vires the Memorandum or the Act shall be null and void.

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

CONTENTS OF ARTICLE OF ASSOCIATION

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

Model form of Articles

Different model forms of memorandum of association and Articles of Association of various types of companies are specified in Schedule I to the Act. The schedule is divided into following tables. Table A deals with regulations for management of a company limited by shares.

Table B contains a model form of Memorandum of Association of a company limited by shares.

Table C gives model forms of Memorandum and Articles of Association of a company limited by guarantee and not having a share capital.

Table D gives model forms of Memorandum and Articles of Association of a company limited by guarantee and having a share capital. The Articles of such a company contain in addition to the information about the number of members with which the company proposes to be registered, all other provisions of Table A.

Table E contains the model forms of memorandum and Articles of Association of an unlimited company. A Public Company may have its own Article of Association. If it does not have its own Articles, it may adopt Table A given in Schedule I to the Act. Adoption and application of Table A (Section 28). There are 3 alternative forms in which a public company may adopt Articles :

1. It may adopt Table A in full
2. It may wholly exclude Table A, and set out its own Articles in full
3. It may frame its own Articles and adopt part of Table A.

In other words, unless the Articles of a public company expressly exclude any or all provisions of Table A shall automatically apply to it.

ALTERATION

Section 31 grant power to every company to alter its articles whenever it desires by passing a special resolution and filing a copy of altered Articles with the Registrar. An alteration is not invalid simply because it changes the company's constitution. Thus in Andrews v Gas Meter Co., A company was allowed by changing articles to issue preference shares when its memorandum was silent on the point.

Alteration of articles is much easier than memorandum as it can be altered by special resolution. However, there are various limitations under the Companies Act to the powers of the shareholders to alter the articles.

In case of conversion of a public company into a private company, alteration in the articles would only be effective after approval of the Central Government [Section 31]. The power are now vested with the Registrar of Companies.

Alteration of the articles shall not violate provisions of the Memorandum. It must be made bonafide the benefit of the company. All clauses in the articles ultra vires the Memorandum shall be null and void, and the articles shall be held inoperative. Alteration must not contain anything illegal and shall not constitute fraud on the minority.

Alteration in the articles increasing the liability of the members can be done only with the consent of the members.

The Court may even restrain an alteration where is likely to cause a damage which cannot be adequately compensated in terms of money. Similarly, a company cannot by altering articles, justify a breach of contract. Any alteration so made shall be valid as if originally contained in the articles.

Where a special resolution has been passed altering the articles or an alteration has been approved by the Central Government where required, a printed copy of the articles so altered shall be filed by the company with the Registrar of Companies within one month of the date of the passing of special resolution.

DISTINCTION BETWEEN MOA AND AOA

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

1. Memorandum of association is the charter of the company and defines the fundamental conditions and objects for which the company is granted incorporation. Articles of association are the rules and regulations framed to govern this internal management of the company.

2. Clauses of the memorandum cannot be easily altered. They can only be altered in accordance with the mode prescribed by the Act. In some of the cases, alteration requires the permission of the Central Government or the Court. In the case of articles of association, members have a right to alter the articles by a special resolution. Generally there is no need to obtain the permission of the Court or the Central Government for alteration of the articles.

3. Memorandum of association cannot include any clause contrary to the provisions of the Companies Act. The articles of association are subsidiary both to the Companies Act and the memorandum of association.

4. The memorandum generally defines the relation between the company and the outsiders, while the

articles regulate the relationship between the company and its members and between the members inter se.

5. Acts done by a company beyond the scope of the memorandum are absolutely void and ultra vires and cannot be ratified even by unanimous vote of all the shareholders. But the acts of the directors beyond the articles can be ratified by the shareholders.

DOCTRINE OF ULTRA VIRES

In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires * . As a result, an act which is ultra vires is void, and does not bind the company.

Neither the company nor the other contracting party can sue on it. Also, as stated earlier, the company cannot make it valid, even if every member assents to it.

The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form [Rajendra Nath Dutta v. Shilendra Nath Mukherjee, (1982) 52 Com Cases 293 (Cal.)].

The rule is meant to protect shareholders and the creditors of the company. If the act is ultra vires (beyond the powers of) the directors only, the shareholders can ratify it. If it is ultra vires the articles of association, the company can alter its articles in the proper way.

CASE LAW

The doctrine of ultra vires was first enunciated by the House of Lords in a classic case, Ashbury Railway Carriage and Iron Co. Ltd. v. Riche, (1878) L.R. 7 H.L. 653.

The memorandum of the company in the said case defined its objects thus: —The objects for hich the company is established are to make and sell, or lend or hire, railway plants..... to carry on the business of mechanical engineers and general contractors.....‖.

The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation of this contract by the company on the round of its being ultra vires, Riche brought a case for damages on the ground of breach of contract, as according to him the words —general

contractors‖ in the objects clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. More so, because the contract was ratified by majority of shareholders.

The House of Lords held that the contract was ultra vires the company and, therefore, null and void. The term —general contractor‖ was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. The Court held that if every shareholder of the company had been in the room and had said, —T hat is a contract which we desire to make, which we authorise the directors to make‖, still it would be ultra vires. The shareholders cannot ratify such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

LEGAL EFFECT OF THE MEMORANDUM AND ARTICLES

The memorandum and articles, when registered, bind the company and its members to the same extent as if they have been signed by the company and by each member to observe and be bound by all the provisions of the memorandum and of the articles. Also, all moneys payable by any member to the company under the memorandum or articles shall be a debt due from him to the company (Section 36).

We shall examine the extent to which the memorandum and articles bind:

(a) the members to the company;

(b) the company to the members;

(c) the members inter se; and

(d) the company to outsiders.

Members Bound to the Company

The memorandum and articles constitute a contract binding the members of the company. The members, as members, are bound to the company. Each member must, therefore, observe the provisions of the memorandum and articles.

Each member is bound by the covenants of the Memorandum as originally made and as altered from time to time [Malleson v. National Insurance Co.]. In another case, the shareholders could not enter

into an agreement which was contrary to or inconsistent with the articles of association of the company [V.B. Rangaraj v. V.B. Gopalkrishnan (1992) 73 Com Cases 201 (SC)].

CASE LAW

In Boreland's Trustee v. Steel Brother and Co. Ltd. (1901) 1 Ch. 279, the articles of a company contained a clause that on the bankruptcy of a member his shares would be sold to other persons and at a price fixed by the directors. B, a shareholder was adjudicated bankrupt. His trustee in bankruptcy claimed that he was not bound by these provisions and should be at liberty to sell the shares at their true value. It was held that the trustee was bound by the articles, as the shares were purchased by B in terms of the articles.

Company Bound to the Members

Since the articles constitute a contract binding the company to its members in their capacity as members, a member can bring an action against the company for infringement by it of the memorandum or articles. For example, an individual member can sue the company for an injunction restraining it from improper payment of dividend [Hoole v. Great Western Railway (1867) 3 Ch. D. 262]. Further, the company is bound to individual members in respect of their ordinary rights as members, e.g. the right to receive share certificate in respect of shares allotted to them, or to receive notice of general meeting, etc. Normally, action for breach of articles against the company can be brought only by a majority of the members. Individual or minority members cannot bring such a suit except when it is intended for enforcement of personal rights of members or to prevent the company from doing any ultra vires or illegal act, fraud, or oppression and mismanagement.

Member Bound to Member

As between the members inter se each member is bound by the articles to the other members but that does not mean the memorandum and articles create an express contract among the members of the company. Thus, a member of a company has no right to bring a suit to enforce the articles in his own name against any other member or members. It is the company alone which can sue the offender so as to protect the aggrieved member. It is in this way that the rights of members inter se are regulated. A shareholder may, however, sue in his own name to restrain another, or others from doing fraudulent or ultra vires acts. Articles do not affect or regulate the rights arising out of a commercial

contract, with which the members have no concern, i.e., rights completely outside the company's relationship.

Company not Bound to Outsiders

The term ―ou tsider‖ signifies a person who is not a member of the company even if he is a director of or solicitor to the company. Even in regard to members, the articles bind the company to them in their capacity as members.

As between outsiders and the company, neither the memorandum nor the articles would give any contractual rights to outsiders against the company or its members even though the names of outsiders are mentioned in those documents in connection with the arrangements that the company might have contemplated for carrying on its business. The articles do not confer any contractual rights even upon a member in a capacity other than that of a member. To succeed, the party suing must prove a contract outside and independent of the articles [Eley v. Positive Life Insurance Co., (1876) 1 E.X.D. 88].

In this case the articles provided that the solicitor to the company would not be removed from office except for misconduct. Eley acted as solicitor to the company and also became a member of the company. The company discontinued his services and then he sued the company for damages for breach of contract. It was held that he had no cause of action because the articles did not constitute any contract between the company and himself. His action was dismissed.

This rule, however, proved to be rather harsh and so the Courts later on modified it. The modified rule is as follows:

While the articles cannot create a contract between the company and any person other than a member in his capacity as a member, they may indicate the basis upon which contracts may be made by the company. If such a contract is entered into whether with a member of the company or any other person, the conditions stated in the articles will be tacitly adopted by that contract, unless expressly negatived or varied by the contract itself.

The question sometimes arises as to whether directors are bound by whatever is contained in the articles. In case the directors contravene the provisions in the articles, the directors render themselves liable to an action by members. On the other hand, members can also ratify acts of directors. If any loss is incurred by the company, directors are liable to reimburse to the company any loss so incurred.

CONSTRUCTIVE NOTICE OF MEMORANDUM AND ARTICLES

- The memorandum and articles, when registered, become public documents and can be inspected by anyone on payment of nominal fee.
- Therefore, every person who contemplates entering into a contract with a company has the means of ascertaining and is consequently presumed to know, not only the exact powers of the company but also the extent to which these powers have been delegated to the directors, and of any limitations placed upon the exercise of these powers.
- In other words, every person dealing with the company is deemed to have a ―constructive notice‖ of the contents of its memorandum and articles.
- In fact, he is regarded not only as having read those documents but also as having understood them according to their proper meaning [Griffith v. Paget, (1877) Ch. D. 517]. Consequently, if a person enters into a contract which is beyond the powers of the company, as defined in the memorandum, or outside the limits set on the authority of the directors, he cannot, as a general rule, acquire any rights under the contract against the company [Mohony v. East Holyfrod Mining Co., (1875) L.R. 7 H.L. 869].
- For example, if the articles provide that a bill of exchange to be effective must be signed by two directors, a person dealing with the company must see that it is so signed; otherwise he cannot claim under it.
- In another case, the articles required that all documents should be signed by the managing director, secretary and the working director on behalf of the company.
- A deed of mortgage was executed by the secretary and the working director only and the Court held that no claim would lie under such a deed.
- The Court said that the mortgagee should have consulted the articles before the deed was executed. Therefore, even though the mortgagee may have acted in good faith and the money borrowed applied for the purpose of the company, the mortgage was nevertheless invalid [Kotla Venkataswamy v. Rammurthy, AIR 1934 Mad 579].
- The doctrine of indoor management protects third parties who are entitled to an assurance that all the procedural aspects of a transaction are carried out.
- Outsiders dealing with incorporated bodies are bound to take notice of limits imposed on the corporation by the memorandum or other documents of constitution.

- Nevertheless they are entitled to assume that the directors or other persons exercising authority on behalf of the company are doing so in accordance with the internal regulations as set out in the Memorandum & Articles of Association.
- The impact of this doctrine on practical relations is thus stated in HALSBURY: ―A company is subject to the rule that, where the conduct of a party charged with a notice shows that he had suspicions of a state of facts the knowledge of which would affect his legal rights, but that he deliberately refrained from making inquiries, he will be treated as having had notice, though he is not entitled to claim for his own advantage,‖ [Jones v. Smith, (1841) 1 Hare 43].

DOCTRINE OF INDOOR MANAGEMENT

While the doctrine of _constructive notice‖ seeks to protect the company against the outsiders, the principal of indoor management operates to protect the outsiders against the company. According to this doctrine, as laid down in Royal British Bank v. Turquand, (1856) 119 E.R. 886, persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum and articles, are not bound to inquire the regularity of any internal proceedings. In other words, while persons contracting with a company are presumed to know the provisions of the contents of the memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see that the company carries out its own internal regulations.

CASE LAW

In Royal British Bank v. Turquand, the directors of a banking company were authorised by the articles to borrow on bonds such sums of money as should from time to time, by resolution of the company in general meeting, be authorised to borrow. The directors gave a bond to Turquand without the authority of any such resolution. It was held that Turquand could sue the company on the strength of the bond, as he was entitled to assume that the necessary resolution had been passed. Lord Hatherly observed : ―Outsiders are bound to know the external position of the company, but are not bound to know its indoor management".

be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by

reason or any defect or disqualification or had terminated by virtue of any provisions contained in this Act or in the articles:

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

The object of the section is to protect persons dealing with the company - outsiders as well as members by providing that the acts of a person acting as director will be treated as valid although it may afterwards be discovered that his appointment was invalid or that it had terminated under any provision of this Act or the

Articles of the company [Ram Raghubir Lal v. United Refineries (Burma) Ltd., (1932) 2 Com Cases 359; AIR 1931 Rang 139].

Relation of company with members and outsiders

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

it clear that a director was not duly qualified to act, this will not oust the effect of the Section 290 (British Asbestos case) (supra). Similarly in Boschoek Proprietary Co. Ltd., v. Fuke, (1906) 1 Ch 148, a resolution of a general meeting convened by de facto directors was upheld.

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

Directors not aware of their disqualification

The allotment and forfeiture of shares made by the directors who continued to act even after they were disqualified but were not aware of it, were saved by the Section 292. [Shiromani Sugar Mills Ltd. v. Debi Prasad, (1950) 20 Com Cases 296: AIR 1950 All 508]. Where this section does not save the situation, the company may in general meeting ratify allotment of shares even if made by de

facto directors with mala fide intentions [Bamford v. Bamford, (1969) 39 Com Cases 838 : (1969) 2 WLR (1107) (CA) and an appeal (1969) : 1All ER 969].

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

It is important to remember that the doctrine of ―constructive notice‖, can be invoked by the company and it does not operate against the company. It operates against the person who has failed to inquire but does not operate in his favour. But the doctrine of ―ind oor management‖ can be invoked by the person dealing with the company and cannot be invoked by the company.

An outsider is entitled to act on a certified copy of the resolution of the Board of directors delegating the powers of borrowing money to the managing director subject to the limitation mentioned therein [C.K. Siva Sankara Panicker v. Kerala State Financial Corporation, (1980) 50 Com Cases 817 (Ker.)].

KARPAGAM ACADEMY OF HIGHER EDUCATION, COIMBATORE

Class: II B.COM(BPS) **UNIT - II** **Course Name: Corporate Law**

Course Code: 17BPU302 **Semester: III** **Batch: 2017-20**

Sl.No	UNIT - II	Option A	Option B	Option C	Option D	**Answer**
1	The power of the company to borrow is exercised by its	directors	members	shareholders	manager	**Directors**
2	Limit of the borrowings of the company is laid down in sec. _____ of the companies act.	180(1)(c)	180(1)(	180(1)(a)	180(1)(	**180(1)(c)**
3	According to provisions of the act the borrowings of the company does not exceed _____.	Total paid up share capital	Total free reserves	authorised capital	total paid up capital and free reserves	**Total paid up capital and free reserves**
4	The minimum number of persons required to form a private company is _____.	7	2	3	4	**2**
5	According to provisions of the act the borrowings of the company does not exceed _____.	Total paid up share capital	Total free reserves	Authorised capital	Total paid up capital and free reserves	**Total paid up capital and free reserves**
6	The debentures, which are payable to the registered debenture holders is _____.	Naked debentures	Registered debentures	Secured debentures	Bearer debentures	**Registered debentures**
7	_____ is a vital document in a company	Article of Association	Memorandum of Association	Prospectus	Memorandum of understanding	**Memorandum of Association**
8	The situation clause is related with_____	Capital Structure	Subscriber	Location of the company	objectives of the company	**Location of the company**
9						
10	The minimum number of persons required to form a private company is _____.	7	2	3	4	**2**
11	The _____of a company contains the fundamental provisions of the company‘s constitution	Memorandum of Association	Article of Association	Prospectus	Memorandum of understanding	**Memorandum of Association**

12	The liability clause is regarding_____	Subscriber	Capital Structure	objectives of the company	Liability of the company	**Liability of the company**
13	_____ is required to be issued when issue is for Employees under Employee stock option scheme	Memorandum of Association	Article of Association	Prospectus	Memorandum of understanding	**Prospectus**
14						
15	Borrowings which are beyond the powers of the company is	Ultra-vires borrowings	Intra-vires borrowings	Unapproved borrowings	Unauthorised borrowings	**Ultra-vires borrowings**
16	The _____ is a document which sets out the constitution of the company	Memorandum of Association	Article of Association	Prospectus	Memorandum of understanding	**Memorandum of Association**
17	The Section 14 is related with	Forms of MoA	Definition of MoA	Directors qualification	Company objectives	**Forms of MoA**
18	The capital clause is regarding_____	Capital structure	Objective of the company	Subscriber	Location of the company	**Capital structure**
19	A mortgage requires registration under _____.	a. Companies Act 2013	b. companies act 1956	c. Transfer of Property Act 1882	d. Indian contract act 1872	**c. Transfer of Property Act 1882**
20	_____ defines the scope of the company‘s activities and its relations with the outside world	a. Memorandum of Understanding	b. Prospectus	c. Memorandum of Association	d. Article of Association	**b. Prospectus**
21	The Name Clause is related with_____	a. Name of the company	b. Capital Structure	c. Objectives of the company	D. Subscriber	**a. Name of the company**
22	_____Company need not issue prospectus	a. Public	b. Private	c. One Person Company	d. limited Liability Company	**b. Private**
23	_____ helps the secretary in guiding the chairman and board of	Impressive personality	General Knowledge	Knowledge of the Industry	Knowledge of Mercantile	**General Knowledge**

	directors, and in performing his duties confidently				Law	
24	The Companies Act also states that no individual can hold the office 'of 'secretary in more than _____ such company	five	fifteen	one	ten	**one**
25	A company having paid-up capital of Rs. 2 crores must have a _____secretary	whole time	part time	routine	executive	**whole time**
26	If the person appointed as secretary functions as secretary in any other company, he has to notify the other company within _____ of his appointment	15 days	20 days	30 days	45 days	**20 days**
27	A Secretary cannot be appointed as _____	director	Chairman	auditor	managing director	**auditor**
28	The services of a secretary may be terminated by giving him _____ as per the terms of the service agreement	intimation	notice	instruction	letter	**notice**
29	A secretary being a servant of the company, his suspension and dismissal are governed by the normal law applicable to _____	owner and servant	management and staff	employer and employee	supervisor and employee	**employer and employee**
30	The services of the secretary may be terminated without notice if he makes _____ secretly	incomes	profits	records	books	**profits**
31	The rights of a company secretary mostly flow out of his _____ agreement with the company	loan	share	dividend	service	**service**
32	A company secretary is not only a servant of	government	directors	law	Shareholders	**law**

	the company but also a servant of the _____					
33	Under _____, the secretary has to arrange for timely submission of returns and payment of tax	Income Tax Act	Sales-tax Act	Indian Stamp Act	Companies Act 1986	**Sales-tax Act**
34	As the _____ are the owners of the company, the secretary has to safeguard their interest	shareholders	debenture holders	creditors	debtors	**shareholders**
35	The_____ has to function as a medium of communication between the directors and the general public consisting of debenture holders, bankers, solicitors, creditors and the 'prospective investors	chairperson	directors	Secretary	members	**Secretary**
36	_____ liabilities refer to all those liabilities imposed on the secretary by the Companies Act	General	Statutory	Universal	Common	**Statutory**
37	Under _____ the company secretary is responsible for collection and payment of income tax	Companies Act 1956	Indian Stamp Act	Income Tax Act, 1961	Finance Act	**Income Tax Act, 1961**
38	The Secretary has to file various returns and statements with the _____ of Companies as per the requirements of the Companies Act	director	Registrar	chairman	members	**Registrar**
39	In actual practice, a _____ occupies a position of importance in the administrative set-up of the company	Board of Directors	Chairman	managing director	company secretary	**company secretary**
40	In the company set up, both the board of directors and the: secretary play .a	substitute	unlike	complementary	unusual	**complementary**

	_____ role to each other					
41	The board of directors is responsible for the overall management of the company's _____	business	shares	shareholders	meeting	**business**
42	The directors are the _____ of the company, the secretary is its eyes, ears and hands of the company.	head	nose	heart	brain	**brain**
43	It is the secretary who carries out the orders of the _____	chairperson	board of directors	shareholders	members	**board of directors**
44	The company secretary is in close touch with the work of the board and has access to the _____ matters of the company	public	civic	confidential	open	**confidential**
45	The secretary possess a thorough knowledge of the various legislative enactments relating to _____	firm	HUF	sole proprietorship	companies	**companies**
46	In matters relating to staff, shareholders and. outsiders, generally, the secretary is allowed .to exercise his _____	discretionary power	compulsory power	mandatory power	fixed power	**discretionary power**
47	The Secretary acts as the agent of the board of directors and carries out the instructions of the _____	manager	Managing Director	board of directors	chairman	**board of directors**
48	The Secretary is also required to act as a _____of the company and improve the image of the company in the minds of the public	confidential officer	Public liaison officer	public relations officer	an adviser	**public relations officer**
49	The Secretary acts as a _____ and ensures that the	Public liaison officer	confidential officer	an adviser	an executive officer	**confidential officer**

	confidential matters of the company are not leaked out					
50	The Secretary acts as a _____ between the board of directors on the one side and the staff, shareholders and the general public on the other side	liaison officer	an adviser	an executive officer	confidential officer	**liaison officer**
51	The Secretary acts as _____ and advises the directors and the chairman on important matters affecting the business of the company	an co-ordinator	an officer	an adviser	an executive officer	**an adviser**
52	Generally speaking, the role of a secretary is _____	three – fold	two - fold	five - fold	six - fold	**three – fold**
53	Under the _____ secretary is responsible for the duties of a secretary and such other ministerial and administrative duties as may be assigned to him	Income Tax Act	Companies Act	Indian Stamp Act	Customs Act	**Companies Act**
54	The important responsibilities of the company concerning to statutory as well as legal commitments vest within the hands of _____	The directors	the Secretary	the Chairman	the members	**the Secretary**
55	Under the _____ it is duty of a secretary to see that the documents such as letter of allotment, share certificate, debenture and mortgages are issued duly stamped	Companies Act 1956	Income Tax Act	Customs Act	Indian Stamp Act	**Indian Stamp Act**
56	In _____ co – ordination the secretary has to make a link between Shareholders, Government and the Society	domestic	internal	external	inner	**external**

57	In _____ co – ordination the secretary has to link Management level such as Chairman, Board of Directors, Managing Director, employees of the business, auditors	external	exterior	internal	outdoor	**internal**
58	_____ is considered as the link between the Company, Shareholders, Society and the Government	Board of Directors	Company Secretary	Chairman	Registrar	**Company Secretary**
59	The secretary has to report the day to day affairs of the company to the _____	managing director	Chairman	Secretary	Board of Directors	**Board of Directors**
60	As an _____, secretary is the person who has to look after every aspect of the business such as financial, functional and other human relations inside the organization	administrative officer	personnel officer	Co - ordinator	Statutory Officer	**administrative officer**
61	The personnel administration of the secretary is a _____ role	easy	difficult	simple	primary	**difficult**
62	The _____ administration of the secretary includes recruitment, training, promotion, discharge and dismissal of the staff in case of any mischievous behavior	official	legal	Personnel	individual	**Personnel**

UNIT-III-SHARES AND DEBENTURES

SYLLABUS

Shares and Debentures: Prospectus – Definition – Abridged Prospectus – Statement in Lieu of Prospectus – Information Memorandum – Contents – Misstatement in Prospectus – Issue of Shares – Types – Application and Allotment of Shares, Share Certificate, Share Warrant – Transfer and Transmission of Shares – Buyback of Shares – Debentures – Meaning and Types – Procedure for Declaration of Dividends.

PROSPECTUS

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

DEFINITION

Section 2(36) defines a prospectus an "any document described as issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting orders from the public for the subscription or purchase of any share in, or debentures of, a body corporate".

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

(a) There must be an invitation to the public;

(b) The invitation must be made "by or on behalf of the company or in relation to an intended company";

(c) The invitation must be "to subscribe or purchase";

(d) The invitation must relate to shares or debentures or such other instrument.

When prospectus is not required to be issued?

In the following cases although the shares are offered and application forms issued, a prospectus containing all the details required under Section 56 is not necessary:

(i) Where a person is a bona fide invitee to enter into an underwriting agreement with regard to shares or debentures; [Section 56(3)].

(ii) Where the shares or debentures are not offered to public; [Section 56(3)].

(iii) Where the issue relates to shares or debentures uniform in all respects, with the shares or debentures already issued and dealt in or quoted at a recognised stock exchange; [Section 56(5)].

(iv) Where the shares or debentures are offered to the existing holders of shares or debentures respectively; [Section 56(5)].

(v) where any prospectus is published as a newspaper advertisement ordinarily called prospectus announcement, it shall not be necessary to specify the contents of the memorandum, or the names etc. of the signatories to the memorandum, or the number of shares subscribed for by them (Section 66). However, the guidelines issued by SEBI as to the code of advertisement must be adhered to.

ABRIDGED PROSPECTUS

The Central Government has simultaneously with the revision of Schedule II prescribed that salient features of prospectus for the purposes of Section 56(3) of the Act. For the purpose, Rule 4CC has been inserted in the Companies (Central Government‟s) General Rules and Forms, 1956. As per rule 4CC, the salient features required to be included in the abridged prospectus shall be in Form 2A.

Form 2A requires information to be given under nine heads detailed below besides the statements on refund of application money in the event the minimum subscription is not received or on payment of interest if there is delay in refund of excess application money.

I. General Information

II. Capital Structure of the Company

III. Terms of the Present Issue

IV. Particulars of the Issue

V. Company, Management and Project

VI. Financial Performance of the Company for the last 5 years

VII. Payments/Refunds

VIII. Particulars of Companies under the same Management

IX. Management's Perception of Risk Factors

Declaration from directors as to minimum subscription and refund of money.

STATEMENT IN LIEU OF PROSPECTUS

All public companies either issue a prospectus or file a statement in lieu of prospectus. A private company as such does not produce either document. But when a private company converts itself into a public company it must either file a prospectus if issued or file statement in lieu of prospectus.

Section 70(1) states that a public company having a share capital which:

(a) Does not issue a prospectus on or with reference to its formation; or

(b) has issued a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures, it has delivered to the Registrar a statement in lieu of prospectus in accordance with Schedule III of the Act duly signed by every person named therein as a director or proposed director of the company or by his agent authorised in writing.

The provisions of this section do not apply to private companies.

The statement in lieu of prospectus should contain similar particulars as are required for a prospectus and it should also fulfill similar conditions as applicable for issue of prospectus. No minimum subscription is required to be given for issue of statement in liew of prospectus, as this document does not relate to an offer to issue a fixed number of shares at a fixed price to the subscribers.

If a statement in lieu of prospectus is not delivered, the company and every director shall be liable to a fine up to ` 10,000. Section 70(5) imposes exactly the same criminal liability, penalties and defences as applicable for prospectus. The common law remedy of damages for deceit and equitable remedy of recession also apply in the same way.

INFORMATION MEMORANDUM

A public company making an issue of securities may circulate information memorandum to the public prior to filing of Prospectus. A company inviting subscription by an information memorandum shall be bound to file a prospectus prior to the opening of the subscription lists and the offer as a red-herring prospectus, at least three days before the opening of the offer. The information memorandum and red herring prospectus shall carry same obligations as are applicable in case of a prospectus and any variation in this regard has to be highlighted as variations by the issuing company.

CONTENTS

The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

In this respect, the red-herring prospectus, shelf prospectus and prospectus shall contain:

(i) the disclosures specified in Schedule II of the Companies Act, 1956; and

(ii) the disclosures specified in Part A of Schedule VIII of SEBI (Issue and Capital and Disclosure Requirements), Regulations, 2009 subject to the provisions of Parts B and C thereof.

The letter of offer shall contain disclosures as specified in Part E of Schedule VIII of SEBI (Issue and Capital and Disclosure Requirements), Regulations, 2009.

Further, the abridged prospectus shall contain the disclosures of the memorandum prescribed under sub- section (3) of section 56 of the Companies Act, 1956 and additional disclosures as specified in Part D of Schedule VIII of SEBI (Issue and Capital and Disclosure Requirements), Regulations, 2009.

Also, the abridged letter of offer shall contain the disclosures as specified in Part F of Schedule VIII of SEBI (Issue and Capital and Disclosure Requirements), Regulations, 2009.

Students are advised to refer the Bare Act of Corporate Laws for Schedule II of the Companies Act, 1956 and Schedule VIII of SEBI (Issue and Capital and Disclosure Requirements), Regulations, 2009.

MISSTATEMENT IN PROSPECTUS

It is essential to know as to what constitutes an untrue statement. To protect the interests of prospective investors in the shares or debentures of a company, the law prescribes a wider meaning to this term. Whether a statement is untrue or not is to be judged by the context in which it appears and the totality of impression it would create. Thus, Section 65 of the Act provides that a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included.

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

(i) The misrepresentation was of a fact;

(ii) It was in respect of a material fact. What is a material statement of fact will depend upon the circumstances of each case.

(iii) He acted on the misrepresentation; and

(iv) He suffered damages in consequence.

ISSUE OF SHARES

Meaning And Nature Of A Share

Section 2(46) of the Act defines a share as "a share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied.

When a company has been registered and has received the Certificate of Incorporation from the Registrar of Companies, it is ready to raise capital sufficient to commence business and to carry on its business satisfactorily.

A company raises its share capital in the first instance by issuing shares. Initially it is mostly raised from the promoters/directors of the company and their friends/ relatives. It may repeat this process of raising capital as many times as required during its existence and for expansion of its business. A private company obtains the necessary capital from promoters, friends and relatives by private placements/ arrangement as public at large cannot be invited to subscribe to its share capital but where, large amount of capital is needed to run an enterprise, a public company is formed and the promoters normally intend to approach the general public for a greater part of the capital required by the company. But public companies raise major portion of their capital from the public at large on account of its various advantages.

TYPES

Issue of shares/securities at a Premium

A company may issue securities at a premium when it is able to sell them at a price above par or above nominal value, e.g. `100 shares at a price of `110, thereby earning a premium of `10 per share irrespective of the fact whether the securities are listed on Stock Exchange or not (Section 78).

The Companies Act, 1956, does not stipulate any conditions or restrictions regulating the issue of securities by a company at a premium. However, the Companies Act does impose conditions regulating the utilization of the amount of premium collected on securities. Firstly, the premium cannot be treated as profit and as such the amount of premium is not available for distribution as dividend. Secondly, the amount of premium whether received in cash or in kind must be kept in a separate account, known as the "Securities Premium Account". Thirdly, the amount of premium is to be maintained with the same sanctity as the share capital.

Where a company issues shares at a premium, even though the consideration may be other than cash, a sum equal to the amount or value of the premium must be transferred to the securities premium account. [Head (Henry) & Co. Ltd. v. Ropner Holding Ltd. (1951) 2 All ER 994: (152) Ch 124 (Ch D)].

In accordance with the provisions of Section 78(2) of the Act, the securities premium can be utilised only for:

(a) issuing fully paid bonus shares to members;

(b) writing off the balance of the preliminary expenses of the company;

(c) writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company; and

(d) for providing for the premium payable on redemption of any redeemable preference shares or debentures of the company.

Issue of shares at discount

A company may issue shares at a price less than the nominal value of shares i.e. at a discount. However, the Companies Act discourages issue of shares at a discount. Allotment of shares at a discount without complying with the stringent requirements of the Act is ultra vires and the allottees who have been put on the register of members become liable to pay the full value of their shares. Section 79 provides that a company may issue shares at a discount provided it satisfies the following conditions:

(a) the shares must be of the class already issued;

(b) at least one year must have elapsed since the company became entitled to commence business;

(c) the issue must be authorised by resolution of the general meeting of the company specifying maximum rate of discount at which shares are to be issued;

(d) the resolution must be confirmed by the Company Law Board.

(e) the rate of discount cannot exceed 10 per cent or such higher percentage as is permitted by the Company Law Board in special cases;

(f) the shares must be issued within two months of the sanction by the Company Law Board or within such extended time as the Company Law Board may allow; and

(g) every prospectus relating to the issue of shares must contain the particulars of the discount allowed on the issue of the shares, or of so much of that discount as has not been written off at the time of issue of the prospectus.

Issue of Sweat Equity at discount

Issue of sweat equity shares to employees and directors at a discount under section 79A is outside the scope of this section. Sanction of the Company Law Board is not required even if the issue is at a discount.

It may be noted that provision is made for allowing a higher discount than ten per cent in proper cases, where the permission of the Company Law Board is obtained therefor.

It is no longer necessary to disclose the issue of such shares or particulars of the discount allowed thereon, in any balance-sheet of the company, issued subsequent to the issue of the shares.

Where shares are issued at a price lower than the market price but above nominal value, such an issue is not an issue at a discount. "At a discount" means a price less than the nominal value.

The fact that the market quotation for the shares is already below par would not justify issuing shares at a price less than the nominal value.

Where shares are issued at a discount contrary to the provisions of the section 79, not only the directors authorising the unathorised issue but also the allotees, if their names have been entered in the register of members and they have accepted the allotment, will be liable to the company for the full amount of the shares. Full value of the shares can be recovered by the liquidator in the winding up of the company. [Welton

v. Saffrey, (1897) AC 299]. Where share certificates have been issued showing full payment and the shares have been transferred to a bona fide transferee, the company would have to treat him as a fully paid shareholder and in such a case the company can receive from the directors an amount equal to the discount allowed on those shares. [Hirsche v. Sims (1894) AC 654 (PC) See also. London Trust Co. v. Mackenzie(1893) 62 LJ Ch. 870].

APPLICATION AND ALLOTMENT OF SHARES, SHARE CERTIFICATE, SHARE WARRANT

Allotment of shares

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

Notice of Allotment

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

General Principles Regarding Allotment

The following general principles should be observed with regard to allotment of shares:

(1) **The allotment should be made by proper authority**, i.e. the Board Directors of the company, or a committee authorised to allot shares on behalf of the Board.

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

(3) **The allotment should be absolute and unconditional.** Shares must be alloted on same terms on which they were applied for and as they are stated in the application for shares. Allotment of shares subject to certain conditions is also not valid. Similarly, if the number of shares alloted is less than those applied for, it cannot be termed as absolute allotment.

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

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

(6) **Allotment should not be in contravention of any other law** — If shares are allotted on an application of a minor, the allotment will be void.

Statutory Provisions Regarding Allotment

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

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

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

(c) Where such certificate has already been obtained, until the entire amount payable on application for shares in respect of the minimum subscription, as provided in the prospectus, has been received by the company.

Share application money collected should be kept deposited in a separate account with bankers to the issue only [Rich Paints Ltd. v. Vadodara Stock Exchange Ltd. (1998) 15 SCC 128/92-Com Cases 8 (Guj.)].

If the above conditions are not fulfilled within 120 days of the first issue of prospectus, all moneys shall be refunded forthwith. If not refunded within 130 days, the directors are jointly and severally liable to repay the amount together with interest @ 6% p.a. from the expiry of the one hundred and thirtieth day.

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

(e) Closing of the Subscription List — SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 provide that the subscription list must be kept open for at least 3 working days and not more than 10 working days. In case of Rights issue, the SEBI ICDR Regulations provide that the issue shall remain open for at least 15 days and not more than 30 days.

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

Ultra Vires Allotment

Where the directors have no authority under the company's Articles of Association to make an allotment, the allotment would be irregular and may be ratified by the company. But it would be void where the company itself has no power to make an allotment. At common law any subscription money was returnable to the allottee. [Waverly Hydropathic Co. v. Barrowman, 1895 23 R. 136].

SHARE CERTIFICATE

What is a share certificate

A share certificate is a certificate issued to the members by the company under its common seal specifying the number of shares held by him and the amount paid on each share. According to Section 83 of the Companies Act, 1956 each share of the share capital of the company shall be distinguished with a distinct number for its individual identification. However, such distinction shall not be required, as per proviso to Section 83, if the shares in a company are held in depository form.

Time of issue of Share Certificate

Under Section 113(1) of the Act where shares have been allotted to an applicant or where a valid transfer of shares by a shareholder to another person has been lodged with the company, the company (unless prohibited by any provision of law or any order of any Court, Tribunal or other authority) must deliver within three months after the allotment and within two months after the receipt of the applications for registration of transfers, a certificate or certificates evidencing the title of the allottee or transferee to the shares allotted or transferred. However, such period may be extended upto a further period of nine months by the Company Law Board for issuing debenture certificates [See proviso to Section 113(1)].

Where the Securities are dealt in a depository system, the company shall intimate the details of allotment of securities to a depository immediately on allotment of such securities under Section 113(4) inserted by the Depositories Act, 1996.

As per Rule 8 of the Companies (Issue of Share Certificate) Rules, 1960, all blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board of directors.

If default is made in complying with these provisions, the company and every officer of the company who is in default, shall be liable to fine upto ` 5,000 for every day during which the default continues. A person entitled to the certificate may give notice to the company to make good the default and if the company fails to do so, he may apply to the Company Law Board (CLB). The CLB will then ask the company to make good the default within a specified period of time and pay costs of and incidental to, the application.

Significance of Share Certificate

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

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

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

Also the company cannot dispute the amount mentioned on the certificate as already paid. [Bloomenthal vs. Ford (1897) AC 156 (HL)].

Issue of Share Certificates

The Companies (Issue of Share Certificate) Rules, 1960 provides that when a company issues any capital, no share certificate shall be issued except-

(i) In pursuance of a Board resolution and;

(ii) On surrender to the company of its letter of allotment or its fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares.

Provided that if the letter of allotment is lost or destroyed the Board may impose such reasonable conditions as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence as the Board thinks fit.

SHARE WARRANT

A share warrant is a bearer document of title to the specified shares. As per Sections 114 and 115 of the Companies Act, a public company, if authorised by its articles, may, in respect of fully paid shares, issue under its common seal, and with the previous approval of the Central Government, a share warrant stating that the bearer thereof is entitled to the shares specified therein. The payment of future dividends is made by coupons or otherwise. Shares specified in the warrant are transferable like negotiable instruments by mere delivery of the warrant. A private company cannot issue share warrants.

Position of the Holder of a Share Warrant

When a share warrant is issued in respect of any shares, the company must strike out from the register of members the names of the members who held the shares, now comprised in the share warrant and should enter into the register:

(a) the fact of the issue of share warrant;

(b) a statement of the shares included in the warrant, distinguishing each share by its number; and

(c) the date of the issue of the warrant.

Since the name of the shareholder has been removed from the register of members, the company is no more in a position to know who the shareholder is and who is entitled to the dividends. For this reason, dividend „coupons" are attached to each share warrant showing the dates on which dividends, if declared, will become payable during several years following the issue of the share warrant, and the dividend will be paid on such date to the person who produces the appropriate coupon.

The holder of a share warrant is not strictly a member of the company, but the articles usually provide that the holder of a share warrant could be treated as member of the company and can attend

the company meetings, have the powers of voting etc., as if he was on the register of members provided he surrenders or

deposits the share warrants against a receipt within the stipulated time (at least two days before the meeting). But the holder of a share warrant cannot qualify himself as a director of the company (in cases where qualification shares are required for directorship).

Section 115(2) of the Act entitles the bearer of a share warrant to surrender it for cancellation and, on payment of a fee prescribed by the Board of directors and subject to the articles of the company, to have his name entered as a member in the register in respect of the shares which were included in the warrant and to have a share certificate issued in his name.

Section 115(6) provides that if default is made in complying with the provision of Section 115, the company and every officer in default shall be punishable with fine which may extend to ` five hundred for every day during which the default continues.

Difference between share certificate and share warrant

S.No	*Share Certificate*	*Share Warrant*
1	The holder of a share certificate is a registered member of the company.	The bearer of a share warrant is not a registered member of the company.
2	Holder of a share certificate is essentially a member of the company.	The bearer of a share warrant can be a member only if the articles so provide and only for the purposes as defined in the articles.
3	The issue of a share certificate does not require the approval of the Central Government.	Share warrant can be issued only if the articles authorise its issue and the Central Government has accorded its previous approval.
4	Both public and private companies must issue share certificates.	Share warrants can be issued only by public companies.
5	A share certificate is issued in respect of partly or fully paid shares.	A share warrant can be issued only in respect of fully paid shares.
6	The shares specified in a share certificate can be transferred by the execution of a transfer deed and its delivery along with the share certificate to the transferee to enable him to get himself registered as a member.	In case of share warrants the shares are transferable by mere delivery of the warrant.
7	A share certificate is not a negotiable instrument.	A share warrant is a negotiable instrument.

8	The holder of share certificate is qualified as a director of the company (where qualification shares are prescribed).	The holder of a share warrant is not qualified as a director of the company (where qualification shares are prescribed).
9	The holder of a share certificate can present a petition for winding up.	The holder of a share warrant cannot present a petition for winding up.
10	Stamp duty is payable on transfer of shares specified in a share certificate.	No stamp duty is payable on transfer of a share warrant.
11	In the case of issue of share certificate a nominal stamp duty is payable.	Heavy stamp duty is payable at the time of issue of share warrant itself.
12	No permission of RBI is required for issue of Share Certificate.	Since a share warrant is a negotiable instrument, previous permission of the Reserve Bank of India is also required for issuing share warrants.

TRANSFER AND TRANSMISSION OF SHARES

Transfer of Shares

The shares in a company are movable property and they can be transferred in the manner provided by the articles of the company. A private company with a share capital, by its very nature as provided by Section 3(1)(iii) of the Act restricts the right of transfer in shares by its articles. Transfer of shares is less strict in a public company. In a public company, every shareholder has right to transfer his shares to any person without the consent of other shareholders subject to such express restrictions as are found in the articles of the company. A restriction on transfer of shares which is not specified in the articles is not binding on the company or the shareholders. A transfer of share is valid if it is not forbidden under the articles of the company, even if it has been made with the object of escaping liability on the shares.

Procedure for Transfer of Shares

Ordinarily, shares can be transferred by a person whose name appears in the register of members and who is the holder thereof. As per Section 109, a legal representative of a deceased member, although not a member at the time of transfer, can also transfer shares. Shares may be transferred by executing an instrument of transfer (called the 'transfer deed'). The instrument of transfer must be in the prescribed form. Before it is signed by or on behalf of the transferor and before any entry is made

therein, it shall be presented to the prescribed authority which shall stamp or otherwise endorse on it the date of presentation.

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

(i) Where the shares of the company are listed/dealt in/quoted on a recognised stock exchange, the instrument of transfer must be presented for registration at any time before the register of members is closed for the first time after the date of presentation of the instrument to the prescribed authority or within 12 months thereof, whichever is later.

(ii) In any other case, the instrument of transfer shall be presented to the company within 2 months of the date of presentation to the prescribed authority. [Section 108 (1A)] The Central Government may, however, on application extend the period by such further time as it may think fit to avoid any hardship [Section 108 (1-D)]

When a duly executed and stamped transfer deed is delivered to the company within the prescribed time, the transfer is complete irrespective of whether the company registers it or not. But the transferee becomes a member only when the transfer is registered. Pending registration, the transferor is a trustee of the shares for the transferee. The transferor continues to be the holder of the shares until his name is struck off the register and that of the transferee substituted in its place. The transferor must pay over to the transferee any dividends or other rights which he may receive from the company after the date of the transfer deed. The application for transfer of shares may be made either by the transferor or the transferee. In case any application is made by the transferor and relates to partly paid shares, the transfer shall not be registered unless the company gives notice of application to the transferee and the later raises no objection to the transfer within two weeks from the receipt of such notice. No such notice needs to be given where fully paid shares are transferred or where the application for the registration of transfer is made by the transferee.

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

The transferor or the transferee may prefer an appeal to the Central Government within 2 months of the receipt of such notice of refusal. In case the notice of refusal has not been given by the company,

the appeal must be filed within 4 months from the date on which the instrument of transfer was delivered to the company. On its appeal, the Central Government must give an opportunity to the company, the transferor and the transferee to make their representation before issuing any order. If the refusal of the company seems to be unjustified, the Central Government may issue an order to the company to register the transfer.

Issue of new share certificate (Sec. 113)

On the approval of the transfer, the company shall cancel the old share certificate and issue a new one made out in the name of the transferee. Normally, it is done by making an endorsement on the back of the share certificate. The transfer when registered has retrospective effect from the time when the transfer was first made. It should be noted that the seller of the shares is not bound to procure registration. He will simply hand over to the transferee a duly executed transfer form and the share certificate or the letter of allotment.

Power of Directors to refuse transfer

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

(a) Power must be exercised by the directors in the interest of the company as a whole and not in the interest of a section of shareholders.

(b) For rejection, the conditions given in the articles must be followed.

(c) Refusal must be exercised within a reasonable time.

(d) Refusal must be exercised by the board and not by one of the directors.

(e) The court cannot compel the directors to supply the reasons of rejection but if supplied can examine and if inadequate can reject the order of the directors.

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

(a) If partly paid up shares are being transferred and transferee is known to be financially incapable of paying balance calls.

(b) Where partly paid up shares are being transferred to a minor incapable of entering into a contract.

(c) When the transferor is a debtor of the company and the company has lien on such shares.

(d) When the transferor has not paid the due call money.

(e) Where the instrument of transfer is incomplete, irregular and defective and not properly stamped.

(f) On any other reasons which are just and equitable and are in the general interest of the company.

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

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

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

(a) Where there are defects or deficiencies in the transfer deed, i.e., instrument of transfer is not proper or the certificate relating to the securities has not been delivered to the company or that any other requirement under the law relating to registration of such transfer has not been complied with. This is a technical ground on which transfer of shares can be refused.

(b) The transfer of shares is likely to result in such a change in the composition of the Board of Directors as would be prejudicial to the interests of the company or to the public interest.

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

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

Certification of transfer

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

evidences the title to the transferor has been produced to the company. It gives neither warranty of the transferor's title nor any guarantee on the part of the company.

Forged Transfer

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

(i) If the true owner has been removed from the register, he can compel the company to replace him.

(ii) If the company has issued a new certificate to the so called transferee, it can not deny his title to the shares, the certificate stops it (the company) from doing so.

(iii) The person lodging the transfer must indemnify the company against loss by forgery.

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

Blank Transfer

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

(i) this helps in avoiding or reducing liability of tax thereon; and

(ii) these may act as clear security for creditors.

But blank transfer does not confer the ownership of shares on the transferee. If he wants to retain the shares, he can fill in his name and date in the transfer deed and get himself registered as shareholder. Until such registration, the original transferor continues to be the owner and remains liable for any amount remaining unpaid on the shares. Morally, he is a trustee for the dividends declared and received. But it does not confer any right on the transferee to prefer any claim against the company in the event of the transferor's failure to pay him the dividends etc. A blank transfer, however, can remain in circulation only for 12 months after its signing by the prescribed authority or up to the time of closure of the register of members by the company, whichever is later. This provision has been made to curb the abuse of this system.

B. Transmission of shares

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

Transmission of death : When a registered shareholder dies, his shares vest in his legal representative. If they wish, they may ask the company to register them as the holder of these shares and for this purpose no instrument of transfer is required and the company is bound to accept the probate of will or letters of administration as sufficient evidence of the title to those shares. When they are registered as the holder of these shares and their names are put on the company's register of members, they become personally liable on the shares. Thus if the shares are not fully paid, they will be liable to pay the unpaid value of the shares. However, if the legal representatives do not wish to be registered as the holder of the shares, they may transfer them without being so registered. Section 109 enables the legal representative to transfer the shares even if he is not himself a member of the company. Thus the transfer of shares of a deceased member made by his legal representative, although the legal representative does not get himself registered as the holder of these shares, (i.e., the member of the company) is perfectly valid and the transferee acquires a good title to the shares.

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

Distinction Between Transfer And Transmission of Shares

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

(a) A transfer is a deliberate act of the holder, while transmission results by operation of law.

(b) A transfer requires an execution of an instrument of transfer, while transmission requires evidence showing the entitlement of the transferee.

(c) For the execution of transfer, stamp duty is payable, while no stamp duty is payable in case of transmission.

(d) The company charges for registering a transfer, while no charges are levied for registering a transmission.

(e) In case of transfer, the liability of the transferor ceases as soon as the transfer is complete, while in transmission, the shares continue to be subject to original liabilities.

BUYBACK OF SHARES

The Companies (Amendment) Act, 1999 had introduced the provisions which allow the companies to buy- back their own shares. For this purpose, Sections 77A, 77AA and 77B were inserted in the Companies Act, 1956.

Section 77A (1) provides that, Notwithstanding anything contained in this Act, but subject to the provisions of Sub-section (2) of this section and Section 77B, a company may purchase its own shares or other specified securities (hereinafter referred to as "buy-back") out of:

(i) Its free reserves; or

(ii) The securities premium account; or

(iii) The proceeds of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities. The buy-back of shares or securities may be in any one or more of the following modes:

(i) Purchasing from existing security holders on a proportionate basis (tender offer method).

(ii) Purchasing from the open market (through Stock Exchanges).

(iii) Purchasing from odd-lot holders.

(iv) Purchasing from securities issued to employees under Scheme of Stock Option or Sweat Equity Negotiated buy-back transactions are not permitted i.e. all shareholders must have same right of participation in the buy-back operations and it cannot be restricted to any shareholder or group of shareholders.

Conditions for Buy-back

The conditions for buy-back of shares are as under:

(a) The buy-back is authorised by its articles;

(b) a special resolution has been passed in general meeting of the company authorizing the buy-back; However, the said special resolution shall not be required to be passed if the following conditions are satisfied:

(i) The buy back is less than 10% of the total paid up equity capital and free reserves of the company, and

(ii) A resolution authorizing the buy back is passed at a meeting of the Board. Provided that no company can come out with a fresh proposal to buy back its shares within a period of 365 days from the date of the preceding offer of buy back.

(c) the buy-back is or less than twenty-five per cent of the total paid-up capital and free reserves of the company:

Provided that the buy-back of equity shares in any financial year shall not exceed twenty-five per cent of its total paid-up equity capital in that financial year;

(d) The ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back: Provided that the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies. Explanation: For the purposes of this clause, the expression "debt" includes all amounts of unsecured and secured debts;

(e) All the shares or other specified securities for buy-back are fully paid-up;

(f) The buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board of India in this behalf;

(g) The buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with the guidelines as may be prescribed.

DEBENTURES

A debenture is a document given by a company under its seal as an evidence of a debt to the holder usually arising out of a loan and most commonly (but not necessarily) secured by a charge. A document which, either creates a debt or acknowledges it, is a debenture. It is an evidence of a debt to the holder, which is normally but not necessarily secured by a charge over the property. It is an acknowledgement of (or an instrument) a debt by a company to some person or persons. It does not carry any voting rights at any general meeting of the company (Section 117).

Characteristics of Debentures

The usual features of a debenture are as follows:

1. A debenture is usually in the form of a certificate (like a share certificate) issued under the common seal of the company.

2. The certificate is an acknowledgement by the company of its indebtedness to a holder.

3. A debenture usually provides for the payment of a specified principal sum at a specified date. But that is not essential. A company may issue perpetual or irredeemable debentures with no undertaking to pay. Section 120 of the Act states that debentures are not invalid simply because they are made irredeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

4. A debenture usually provides for payment of interest until the principal sum is paid back.

5. A debenture is, as a rule, one of a series, although a single debenture is not uncommon. There may be a single debenture issued to one person.

6. A debenture generally contains a charge on an undertaking of the company, or on some class of its assets or on some part of its profits. Again, this is not an essential element. A debenture which creates no such charge is perfectly valid.

7. The debentures carry no voting rights at any meeting of the company (Section 117).

8. Fixed deposit is not debenture — The Department of Company Affairs, now Ministry of Corporate Affairs, has clarified that a fixed deposit receipt may be regarded as a security but not as a debenture within the meaning of this sub-section [Department's Letter No. 8/2/58-PR, dated 10-12-1958].

KINDS OF DEBENTURES

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

(A) Non Convertible Debentures (NCD): These instruments retain the debt character and cannot be converted into equity shares.

(B) Partly Convertible Debentures (PCD): A part of these instruments are converted into Equity shares in the future at notice of the issuer. The issuer decides the ratio for conversion. This is normally decided at the time of subscription.

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

(D) Optionally Convertible Debentures (OCD): The investor has the option to either convert these

debentures into shares at price decided by the issuer/agreed upon at the time of issue.

2. On the basis of Security, debentures are classified into:

(A) Secured Debentures: These instruments are secured by a charge on the fixed assets of the issuer company. So if the issuer fails on payment of either the principal or interest amount, his assets can be sold to repay the liability to the investors.

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

3. On the basis of Redeemability, debentures are classified into:

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

(B) Perpetual or Irredeemable Debentures: A Debenture, in which no time is fixed for the company to pay back the money, is an irredeemable debenture. The debenture holder cannot demand payment as long as the company is a going concern and does not make default in making payment of the interest. But all debentures, whether redeemable or irredeemable become payable on the company going into liquidation.

4. On the basis of Registration, debentures may be classified as

(A) A Registered Debentures: Registered debentures are made out in the name of a particular person, whose name appears on the debenture certificate and who is registered by the company as holder on the Register of debenture holders. Such debentures are transferable in the same manner as shares by means of a proper instrument of transfer duly stamped and executed and satisfying the other requirements specified in Section 108 of the Act.

(B) Bearer debentures: Bearer debentures on the other hand, are made out to bearer, and are negotiable instruments, and so transferable by mere delivery like share warrants. The person to whom a bearer debenture is transferred become a ―holder in due course‖ and unless contrary is shown, is entitled to receive and recover the principal and the interest accrued thereon. [Calcutta Safe Deposit Co. Ltd. v. Ranjit Mathuradas Sampat (1971) 41 Com Cases 1063].

PROCEDURE FOR DECLARTION OF DIVIDENDS

A dividend when declared becomes a debt and a shareholder is entitled to sue for recovery of the same after expiry of the period of 30 days prescribed under Section 207, in Re Severn and Wye & Severn Bridge Rly. Co. (1896) 1, Ch 559. A dividend when proposed does not become a debt but only becomes debt when declared (Kastur Chand Jain v. Gift Tax Officer AIR 1961 Cal. 649).

The Act does not specifically provide who shall declare final dividend. But under Section 173(1), the declaration of a dividend has been shown as ordinary business at an annual general meeting of a company.

Similarly there is a reference to dividend in Section 217 whereunder directors are required to mention in their report to the shareholders the amount, if any, which they recommend by way of dividend. Therefore, it could be assumed that the intention of the legislature is to empower the annual general meeting to declare final dividend. In Raghunandan Neotia v. Swadeshi Cloth Dealers Ltd. (1964) 34 Comp Cases 570 (Cal.) the Calcutta High Court held that the cumulative effect of all the provisions of the Act is that the declaration of dividends should be made at the annual general meetings. In Kantilal v. CIT, (1956) 26 Comp Cases 357 (Bom.), the Bombay High Court has held that it is well established and the law is quite clear that a dividend can only be declared by the shareholders of the company. Articles of companies usually contain provisions with regard to declaration of dividends. These will be on the pattern of Regulations 85-94 of Table „A" of Schedule I to the Act. It would be seen that under Regulation 85 the power to declare a dividend vests with the general meeting, but it has no power to declare a dividend exceeding the amount recommended by the Board.

But if a dividend is so declared at the general meeting, the company cannot declare a further dividend for the same year (Circular No. 2 issued by the Ministry of Corporate Affairs erstwhile Department of Company Affairs dated 25.10.75) There can be no declaration of dividend for past years in respect of which the amounts have already been closed at previously held annual general meeting. [Raghunandan Neotia v. Swadeshi Cloth Dealers Ltd. (Supra)]. Under Section 205(1A) of the Act, the Board of directors is authorized to declare interim dividend. Hence, if articles does not provide otherwise, Board may declare interim dividend.

Revocation of Declared Dividend

As already stated earlier, a dividend including interim dividend once declared becomes a debt and cannot be revoked, except with the consent of the shareholders.

If a dividend is declared and paid to shareholders, the character of the payment cannot be altered by a subsequent resolution.

But where a dividend has been illegally declared, the directors will be justified in revoking the declared dividend. If an illegally declared dividend is paid then the directors shall be responsible, liable and accountable to the company personally.

Payment of Dividend in Cash or in Kind

According to Section 205(3), dividend can be paid only in cash, not in kind. The articles may provide that any meeting of the company declaring a dividend may resolve that the dividend be paid wholly or partly by distribution or issue of paid-up shares. In the absence of such express authority dividends may not be paid otherwise than in cash. In one case, where the dividend was paid by allotting shares, it was held that the market value of the shares on the date of the declaration of dividend was to be taken into consideration for computing the income of shareholders for the purposes of tax.

According to Section 205(3), dividend can be paid only in cash, not in kind.

Liability of Directors, Shareholders and Auditors for Improper Dividend

The directors are personally liable to account for improper payment of dividend to the extent to which it has caused loss to the company. If for instance they have paid dividend out of capital they have to compensate the company for the loss. On the other hand, if a member received dividend knowing that it is paid out of capital he is liable to make good the loss to the company and the directors can recover the amount so paid.

At the instance of any individual shareholder, the directors can be restrained from going ahead with the payment of an improper and illegal dividend [Hoole v. Great Western Rly Co. (1867) 3 Ch. App. 262].

An auditor who is party to the payment of dividend which is improper is liable to be proceeded against and the amount which is improperly paid may be recovered from him.

Shareholders Right to Dividend

Once a dividend is declared a shareholder has the right to claim dividend against the company. (Bacha F. Guzadar (Mrs.) v. CIT (1955) 25 Com. Cases 1: AIR 1955 SC 74). A shareholder cannot compel the company by any process of law to declare a dividend. The usual practice is for the Board to recommend the divided and the annual general meeting to declare the dividend. The annual general meeting will have the power, subject to the provisions of the Act to determine the amount of dividend to be distributed.

KARPAGAM ACADEMY OF HIGHER EDUCATION, COIMBATORE

Class: II B.COM(BPS) **UNIT – III** **Course Name: Corporate Law**

Course Code: 17BPU302 **Semester: III Batch: 2017-20**

Sl.no	UNIT - III	Option A	Option B	Option C	Option D	**Answer**
1	The share capital of a company may be reduced by_____.	an ordinary resolution	a special resolution	a resolution of the board of directors .	the company law board	**A special resolution**
2	Debenture holders are _____.	owners of the company	creditors of the company	debtors of the company	none of the above	**Creditors of the company**
3	All monies received with the application of shares are to be deposited_____.	with the controller of capital issues	in the companys bank account	a scheduled bank for the purpose	with the registrar of companies	**A scheduled bank for the purpose**
4	A company shall not proceed to allot shares until the beginning of the _____day from the date of issue of prospectus	second	third	A fifth	seventh.	**Second**
5	_____ is not required to be issued when sweat equity shares are issued to directors and employees	Article of Association	Memorandum of Association	Prospectus	Memorandum of understanding	**Prospectus**
6	_____are the prospectus issued instead of full prospectus	Abridged	Statement in lieu	Shelf	Red herring	**Abridged**
7	_____ is the liability not delivering that can be imposed for statement in lieu of prospectus	Fine – 10,000	Imprisonment – 2 years	Both Fine and imprisonment	No Action	**Fine – 10,000**
8	Validity period of information memorandum is _____	1 year	2 years	3 years	4 years	**1 year**
9	Which one of the following has not a right to claim compensation for any loss due to _____misstatement in prospectus	Purchasing shares in Primary Market	Secondary Market	Subscribers to memo	By Transferring share from another person	**Transferring share from another person**

10	_____ are the prospectus issued by the issuing house	Deemed prospectus	Shelf prospectus issued by the issuing house	Red herring	None of the above	**Deemed prospectus**
11	_____ Prospectus were issued in order to test the market before finalizing issue size price.	Deemed	Shelf	Red herring	Lieu of	**Shelf**
12	Section _____ of the Companies Act, 1956 is related with statutory meeting	Section 165	Section 164	Section 163	Section 162	**Section 165**
13	When there is a untrue statement in a prospectus who can sue	Subscribed in primary market	Subscribed in secondary market	Rights issue	None of the above	**Subscribed in primary market**
14	_____ years of imprisonment will be imposed in case of issue of prospectus with untrue statements	1	2	3	4	**2**
15	_____ prospectus were issued in case securities were issued in stages	Deemed	Shelf	Red herring	Lieu of prospectus	**Shelf**
16	If there is any variation in case of R.H.P _____ days should be given for withdrawal of application	1	3	5	7	**7**
17	The company is derived from the _____ word	a. French	b. Greek	c. Spanish	d. Latin	**d. Latin**
18	Definition of prospectus was given under which section of_____	a. 2 (30)	b. 2 (32)	c. 2 (34)	d. 2 (36)	**d. 2 (36)**
19	_____includes an engineer, valuationer, accountant	a. Expert	b. Promoter	c. Auditor	d. Director	**a. Expert**
20	_____are required to file prior to making second and subsequent issue	a. Information	b. Information articles	c. Form 13	d. Information Understanding	**a. Information**

	of securities incase shelf prospectus are filed:	memorandum				**memorandum**
21	_____ refers to the minimum number of members who must be present at a meeting in order to constitute a valid meeting	Proxy	Member	Quorum	Motion	**Quorum**
22	Unless the articles of a company provide for larger quorum, _____ should personally present in the case of a public company	2 members	7 members	5 members	3 members	**5 members**
23	Unless the articles of a company provide for larger quorum, _____ should personally present in the case of a private company	7 members	5 members	3 members	2 members	**2 members**
24	A proper meeting must have a _____ to chair the proceedings	chairperson	secretary	proxy	directors	**chairperson**
25	The chairman is the _____ of the meeting	head	chief	principal	executive	**head**
26	Generally, the chairman of the _____ is the Chairman of the general meeting	Management meeting	Committee Meeting	steering group	Board of Directors	**Board of Directors**
27	_____ is the presiding officer of the meeting	The secretary	the board of directors	Chairman	Manager	**Chairman**
28	_____ may terminate the chairman's appointment at any time	The directors	The Secretary	the central government	The Shareholders	**The directors**

29	Chairman must ensure that business is taken in the order set out in _____	agenda	notice	minutes	list	**agenda**
30	_____ will decide, that who shall first address the meeting	Secretary	Directors	Chairman	Shareholders	**Chairman**
31	The purpose of the _____ is to convey the information to a group of people	meeting	resolution	Motion	notice	**notice**
32	The minimum full period of notice for all meetings is _____	21 days	14 days	30 days	60 days	**14 days**
33	The term _____ means things to be done	Notice	minutes	Agenda	Motion	**Agenda**
34	_____ are the Official record of the proceedings of a meeting	Agenda	resolution	Special Notice	Minutes	**Minutes**
35	The minutes are taken by the _____	Manager	Managing Director	Secretary	Board	**Secretary**
36	The Secretaries original rough notes are called as _____	temporary minutes	rough draft	transcribed minutes	tentative minutes	**temporary minutes**
37	Temporary minutes are replaced by the _____	tentative minutes	transcribed minutes	temporary minutes	minutes	**transcribed minutes**
38	The both temporary minutes and transcribed minutes shall be marked as	transcribed minutes	minutes	tentative minutes	temporary minutes	**tentative minutes**
39	Minutes of the meeting _____ the memory of the members who were present at the meeting	refresh	creates	discuss	intimate	**refresh**
40	Minutes should be as_____ as possible	complex	simple	brief	long	**brief**
41	The minutes should be presented for	current	previous meeting	boards meeting	next meeting	**next meeting**

	approval at the _____ of a similar kind	meeting				
42	_____ is the minimum number of persons required to be present at a meeting	Quorum	proxy	agenda	Motion	**Quorum**
43	The quorum is usually set as a _____ of the membership	ratio	proportion	percentage	fraction	**percentage**
44	In the case of a company limited by shares or guarantee and having only one member,_____ person present at a meeting is a quorum	no qualifying	three qualifying	five qualifying	one qualifying	**one qualifying**
45	The quorum for a meeting of the Board of directors of a company is _____ of its total strength	two-third	one-third	three - fourth	two - fourth	**one-third**
46	Any person appointed on behalf of the member to attend the meeting is called as _____	proxy	quorum	Motion	resolution	**proxy**
47	Proxy form must be in _____	oral	typed	writing	both oral and typed	**writing**
48	A proxy is not entitled to vote except on a _____	show by hands	secret ballots	poll	gestures	**poll**
49	_____ means a proposal to be discussed at a meeting by the members	Conflict	Issue	Motion	resolution	**Motion**
50	A motion, on being passed as a _____ becomes a decision	resolution	motion	report	Minutes	**resolution**
51	A motion must be in writing and signed by the mover and put to the vote of the meeting by the	Members	employee	directors	chairman	**chairman**

	_____					
52	If the motion is passed, it becomes a _____	resolution	order	instruction	rule	**resolution**
53	Generally, the chairperson does not put forward motions, because he or she is primarily the _____ of the meeting	convener	facilitator	principal person	bridging agent	**facilitator**
54	Resolutions mean _____ at a meeting	discussions	providing information	decisions taken	giving suggestion	**decisions taken**
55	An ordinary resolution is one which can be passed by a _____ majority	maximum	simple	minimum	cent percent	**simple**
56	A special resolution is one which is passed by a _____ majority	75%	50%	49%	51%	**75%**
57	The intention to propose a resolution as a special resolution must be specifically mentioned in the _____ of the general meeting	resolution	report	statement	notice	**notice**
58	A poll may be ordered by the _____ of his own motion	directors	shareholders	secretary	Chairman	**Chairman**
59	The word _____ means an expression of a wish or opinion in an authorized formal way for or against any proposal	Quorum	motion	vote	discussion	**vote**
60	The _____ of the meeting to be prepared and sent to all members of the meeting	agenda	minutes	statement	report	**agenda**

UNIT-IV-COMPANY MANAGEMENT

SYLLABUS

Company Management: Company Management – Board of Directors – Managing Director – Qualification, Appointment, Vacation of Office – Position – Powers, Duties and Liabilities – Board of Director's Meetings – General Meetings – Kinds of Meetings and Resolutions – Procedure relating to Convening and Proceedings in General Meetings.

COMPANY MANAGEMENT

The company is an artificial person and is managed by the human beings. The humans who runs it are known as Board of Directors. Directors acting collectively are known as Board. The directors play a very important role in the day to day functioning of the company. It is the board, who is responsible of the company's overall performance. Company is a legal person but it is not a living person. To attain the objectives prescribed in Memorandum of Association of the company, company depends on Board of Directors (collectively) and directors (individually). Directors of a Company are its eyes, ears, brain, hands and other essential limbs. After reading this lesson, you will be able to understand the concept of director, their qualifications, appointment, removal, remuneration, etc.

BOARD OF DIRECTORS

The supreme executive authority in the control of a company and its affairs resides in persons known as _Board of directors'. Section 253 of the Act provides that only an individual, and not a body corporate, association or firm, shall be appointed as director.

Section 2(13) defines a _director' as including ―a ny person occupying the position of director by whatever name called.

The Board of Directors is the apex body constituted by the shareholders for overseeing the overall functioning of the company. It is necessary to note that the directors can act only as a collective body and except where any functions or powers are conferred on or delegated to individual directors, or committees of directors. A director as such cannot act on behalf of the company and the Board acts by resolution passed at meetings or by circulation, the case may be. The Board of Directors shall

meet in regular intervals. The Board has to establish different Committees in discharging its responsibility. The Companies Act, 1956 provides for formation of different Committees by the Board, like Audit Committee, Remuneration Committee (required under Schedule XIII) etc.

MANAGING DIRECTOR

Section 2(26) of the Companies Act, 1956 gives the definition of Managing Director as –

—managing director means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or article of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called.

QUALIFICATION

Apart from the disqualifications enumerated under Section 274, Section 267 of the Act makes a specific prohibitory provision with regard to the appointment of certain persons as managing directors. The section lays down that no company shall appoint or employ or continue the appointment or employment of any person as its managing director who—

(a) is an undischarged insolvent or has at anytime been adjudged as insolvent;

(b) suspends or has at any time suspended payment to his creditors, or makes, or has at any time made, a composition with them; or

(c) is or has at any time been, convicted by a Court of an offence involving moral turpitude.

Apart from this, Part I of Schedule XIII contains five conditions which must be satisfied by a person to be eligible for appointment as managing director without the approval of the Central Government. These conditions are as below:

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:-

(i) the Indian Stamp Act, 1899 (2 of 1899),

(ii) the Central Excise Act, 1944 (1 of 1944),

(iii) the Industries (Development and Regulation) Act, 1951 (65 of 1951),

(iv) the Prevention of Food Adulteration Act, 1954 (37 of 1954),

(v) the Essential Commodities Act, 1955 (10 of 1955),

(vi) the Companies Act, 1956 (1 of 1956),

(vii) the Securities Contracts (Regulation) Act, 1956 (42 of 1956),

(viii) the Wealth-tax Act, 1957 (27 of 1957),

(ix) the Income-tax Act, 1961 (43 of 1961),

(x) the Customs Act, 1962 (52 of 1962),

(xi) the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969),

(xii) the Foreign Exchange Regulation Act, 1973 (46 of 1973), [This Act has been repealed and FEMA, 1999 has been enacted].

(xiii) the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986),

(xiv) the Securities and Exchange Board of India Act, 1992 (15 of 1992),

(xv) the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974);

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval;

(c) he has completed the age of 25 years and has not attained the age of 70 years: Provided that where—

(i) he has not completed the age of 25 years, but has attained the age of majority; or

(ii) he has attained the age of 70 years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

(d) where he is a managerial person in more than one company he draws remuneration from one or more companies subject to the ceiling provided in Section III of Part II;

(e) he is resident in India. Explanation: For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India:

(i) for taking up employment in India, or

(ii) for carrying on a business or vocation in India.

But this condition shall not be applicable to the companies in Special Economic Zones, as may be notified by Department of Commerce from time to time.

However, a person, being a non-resident in India, shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and the terms and conditions of such person‟s appointment.

APPOINTMENT

A managing director is generally appointed by the company‟s Board of directors, which is, generally authorised by the articles. In Nelson v. James Nelson & Sons, (1914) 2 KB 770: (1914-15) All ER Rep 433 CA, Swinfen Eady, LJ. Said: "Unless there is a power given to the directors by the articles to appoint a managing director, it is not competent for them to make such an appointment. The articles may give a power to the directors to appoint one of their members to be managing director. Where the power to appoint a managing director is vested in the Board, the members cannot exercise it. [Thomas Logan Ltd. v. Davis, (1911) 104 LT 914, affirmed (1911) 105 LJ 419 (CA)]. If the articles vest the power in the shareholders the appointment of managing director must be made by the shareholders.

The Department of Company Affairs (now Ministry of Corporate Affairs) has clarified that a managing director may be appointed in any one of the five ways, namely,

1. By virtue of an agreement with the company.
2. By virtue of a resolution passed by the company.
3. By virtue of a resolution passed by the Board of directors.
4. By virtue of the memorandum of association.
5. By virtue of the Articles of Association.

With effect from 18.9.1990, it is obligatory for a public company or a private company which is a subsidiary of a public company having a paid-up share capital of rupees five crores or more, to appoint a managing director or whole-time director or manager [Section 269(1) read with Rule 10A of the Companies (Central Government‟s) General Rules and Forms, 1956].

Sub-Section (2) of Section 269 provides that no appointment of a person as a managing director (or whole-time director or manager) in a public company or a private company which is a subsidiary of a public company shall be made except with the approval of the Central Government. However,

approval of the Government is not necessary if the appointment is made in accordance with the conditions specified in Parts I and II of Schedule XIII (the said parts being subject to the provisions of Part III of the said schedule) and a return in the prescribed form viz. e-Form 25C is filed with Registrar within 90 days from the date of such appointment.

VACATION OF OFFICE

Section 283 of the Companies Act, provides that the office of a director shall become vacant, if—

(a) he fails to obtain within two months from the date of his appointment or ceases to hold at any time thereafter, the share qualification, if any required of him by the articles of the company;

(b) he is found to be unsound mind by a Court of competent jurisdiction;

(c) he applies to be adjudicated an insolvent;

(d) he is adjudged an insolvent

(e) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;

(f) he fails to pay any call in respect of shares of the company held by him, whether along or jointly with other within six months, from the last date fixed for the payment of the call unless the Central Government has, by notification in the Official Gazette removed the disqualification incurred by such failure;

(g) he absents himself from three consecutive meeting of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board. Where there was no proof that notices of Board meetings were served on directors, directors could not be removed on ground that they abstained from attending meetings [Vijay Krishna Jaidka v. Jaidka Motor Co. Ltd. [1996] 10 SCL 244 (CLB-Delhi)].

(h) He (whether by himself or by any person for his benefit or on his account) or any firm in which he is a partner or any private company of which he is a director, accepts a loan, or any guarantee security for a loan from the company in contravention of Section 295;

(i) He fails to disclose to the Board his interest in any contract or arrangement entered into by the company as required by Section 299;

(j) He becomes disqualified by an order of the Court under Section 203 which restrains fraudulent persons from managing companies.

(k) He is removed in pursuance of Section 284.

(l) He becomes director by virtue of an office or employment in the company, on ceasing to hold that office or employment.

POWERS

A managing director acts subject to the superintendence, direction and control of the Board of directors of the company and also subject to the provisions of the Act. He derives powers from the company or its Board. Sub-section (26) of Section 2 of the Companies Act, 1956 gives sufficient indication as to the sources of power of a managing director. Generally, the Articles of the company contain provisions regarding the powers of managing director. The managing director shall have general conduct and management of the whole of the business and affairs of the company except in matters which may be specifically required to be done by the Board of directors either by the Act or by the Articles. The agreement or Board resolution appointing the managing director may also confer various powers to the managing director like, buying fixed assets, selling assets, borrowings, investing, entering into contracts, appointment of senior personnels etc.

POSITION

On a private company becoming a public company, the provisions of the Companies Act, which are applicable to public companies, become applicable to the company, including the provisions of all the sections, governing appointment and remuneration of managing director/whole-time director or manager, namely Sections 269, 198, 309, 310, Schedule XIII etc. and therefore such a company must comply with these provisions.

However, a question arises, whether the appointment and remuneration approved and effectuated prior to the company becoming a public company would remain unaffected and need not therefore be altered for the remainder of the term for which the managing director was appointed. The Department of Company Affairs (Now, Ministry of Corporate Affairs) has clarified that the provisions of Section 269 will not apply to a person who has been holding the office of a managing director or whole-time director in a private company immediately before its conversion into a public company, as no fresh appointment is involved. It may, however, be added that this view cannot be extended to Sections 198, 255, 309, 310, 311, etc., the restrictions contained in these sections will automatically apply to the company from the date of its conversion into a public company [Letter: No. 8/11/43A/61-PR-dated 25.1.1961].

The Department of Company Affairs (Now, Ministry of Corporate Affairs) has further clarified that the existing appointment of managing director or whole-time director would not require the approval of the Central Government now but it will be necessary at the time of the next appointment. In case the existing appointment is for an indefinite period i.e. until further orders. Then unless the appointment is terminated earlier, the period of appointment will be taken as five years from the date of the company becoming a public company [Letter: No. 32/13/75-Cl - III dated 25-6-75].

From the above, it appears that the appointment of managing and whole-time director made prior to the private company becoming a public company, voluntarily shall remain unaffected for a period for which the appointment was made or five years from the date of the company becoming a public company, whichever is less. When the office of a director is terminated, his appointment as a managing director would also terminate with it but when he is removed from managing directorship only, his appointment as a director would remain effective and when this happens on the conversion of a private company into a public company he would remain a director till he is rotated out at the next annual general meeting of the company [Swapan Das Gupta v. Navin Chand Suchanti, (1988) 64 Com Cases 562, 582: (1988) 3 Comp LJ 76 (Cal) (DB)].

DUTIES

The duties and responsibilities of a managing director are set out in detail in the document by which he is appointed, i.e. either in the articles of association of the company or in the Board resolution or company resolution through which he is appointed or by the agreement which he enters into with the company.

The Companies Act lays down that the managing director of a company is entrusted with substantial powers of management. However, he exercises his powers subject to the superintendence, control and directions of the Board of directors of the company. He is fully answerable to, and functions under the overall supervision, guidance and control of the Board of directors. The Board cannot divest itself of the powers it has to exercise under the Act and under the memorandum and articles of association of the company by delegating all its powers to the managing director.

LIABILITIES

The managing director is liable for breach, whether willful or unintentional, of any of the duties and powers entrusted to him under the terms and conditions of his appointment, or under any provisions of the Companies Act, or by virtue of any provisions of the memorandum and articles of association

of the company or under the provisions of any other law which he is bound as managing director to honour and to comply with. He is liable for fraudulent conduct of business of the company, for improper use of the company‟s funds and properties. He is also liable both in a prospectus issued by the company during his tenure as managing director and which he has signed as managing director before its release. His name is included as an 'officer in default' under Section 5 of the Act and can be made liable accordingly.

MEETING

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

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

MEANING

A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. There must be atleast two persons to constitute a meeting. Therefore, one shareholder usually cannot constitute a company meeting even if he holds proxies for other shareholders. However, in certain exceptional circumstances, even one person may constitute a meeting.

It is to be noted that every gathering or assembly does not constitute a meeting. Company meetings must be convened and held in perfect compliance with the various provisions of the Companies Act, 1956 and the rules framed there under.

KINDS OF MEETING

The meetings of a company are of three kinds :

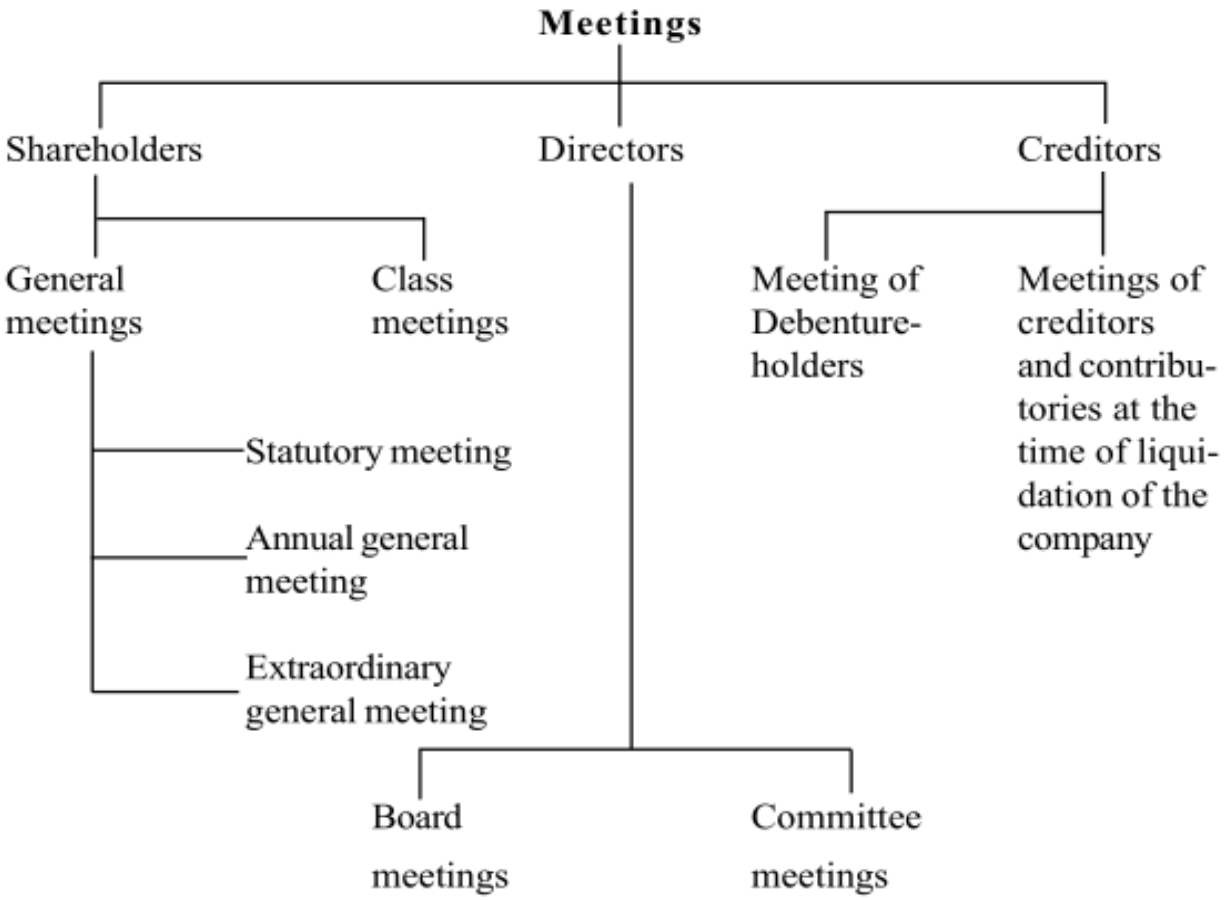
1. Meetings of the shareholders

(i) General meetings

(ii) Class meetings

2. Meetings of the Directors

3. Meetings of the Creditors



Statutory Meeting

Every public company limited by shares and every company limited by guarantee and having a share capital, shall, within a period of not less than one month nor more than six months from the date on which the company is entitled to commence business hold a general meeting of the members of the company. This meeting is called 'the statutory meeting'. [Sec. 165 (1)]

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

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

(1). If it becomes a public company after 6 months of its incorporation, it is not required to hold the statutory meeting.

Notice

The company must give notice to its members 21 days before the holding of the statutory meeting. The notice convening the statutory meeting must specifically state that the meeting is the statutory meeting.

The time, date and place of the meeting must be mentioned in the notice. However, a shorter notice may be sufficient if consent is accorded by the members of the company :

(a) If the company has a share capital, holding not less than 95% of such part of the paid up share capital of the company as gives a right to vote at the meeting.

(b) If the company has no share capital, holding not less than 95% of the total voting power exercisable at the meeting.

Statutory Report

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

The statutory report is required to be certified as correct by at least two directors of the company, one of whom must be a Managing Director, if there is any. Thereafter the auditor must certify the report to be correct in so far as it relates to the shares allotted by the company, the cash received in

respect of such shares and the receipts and payments of the company [Section 165(4)]. A copy of the report must be sent to the Registrar also [Section 165(5)].

Contents of Statutory Report

The statutory report shall set out :

(a) The total number of shares allotted, distinguishing those allotted as fully or partly paid-up otherwise than in cash, the extent to which they are partly paid up and the consideration for which they have been allotted.

(b) The total amount of cash received by the company in respect of all the shares allotted.

(c) An abstract of the receipts and payments made thereout up to a date within 7 days of the date of the report.

(d) The name, address and occupations of the directors of the company and of its auditors and also if there be any, of its manager and secretary.

(e) The particulars of any contract which , or the modification or the proposed modification of which is to be submitted to the meeting for its approval.

(f) The extent to which each underwriting contract (if any) has not been carried out and the reason therefore.

(g) The arrears due on cash from every director and from the manager.

(h) Particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director.

Procedure at the meeting

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

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

Adjournment of Statutory Meeting

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

Penalty

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

Objects

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

Annual General Meeting

Every company must in each year hold in addition to any other meeting a general meeting, as its annual general meeting and must specify the meeting as such in the notices calling it [Section 166 (1)]. The annual general meeting is to be held in addition to any other general meeting that might have been held in a year. It appears that holding of an annual general meeting in every calender year is a statutory necessity. Calender year is to be calculated from Ist January to 31st December and not twelve months from the date of incorporation of the company.

First annual general meeting

A company must hold its first annual general meeting within a period of not more than 18 months from the date of its incorporation and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year [Section 166(1)]. For example a company is incorporated in October 1994. Its first annual general meeting is required to be held within 18 months from the incorporation, i.e. up to

March 1996 and if such a meeting is held within this period, no other meeting will be necessary either for 1995 or 1996.

Subsequent annual general meeting

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

In the case of Shree Meenakshi Mills Company Limited v. Astt. Registrar of Joint Stock Companies Madurai AIR 1938 Mad. 640, the annual general meeting of a company called in December 1934 was adjourned and held in March 1935. The next annual general meeting was held in January, 1936, no other meting being held in 1935. The company was prosecuted for failure to call the annual general meeting in 1935. It was held that there should be one meeting per year and as many meetings as there are years. The Registrar can, for any special reason, extend the time within which any annual general meeting is required to be held by a period not exceeding 3 months but the time for holding the first annual general meeting cannot be so extended. [Sec. 166(1)]

Power to convene an annual general meeting

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

Notice

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

Date, time and place of holding the annual general meeting

Every annual general meeting shall be called at any time during the business hours, on a day that is not a public holiday. It shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated

[Section 166(2)]. The Central Government may exempt any class of companies from the provisions of Sec. 166 subject to such conditions as it may impose.

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

Adjournment

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

Holding of annual general meeting where the annual accounts are not ready According to Central Government instructions, in case the annual accounts are not ready for laying at the appropriate annual general meeting, the company must hold the annual general meeting within the time limit, transact all business other than the consideration of the accounts, announce when the accounts are expected to be ready for laying and pass a suitable resolution adjourning the said annual general meeting to a specific date or to a date to be specified later on. Thus the company cannot take the plea that the annual general meeting was not held because the accounts were not ready.

Power of Central Government to call annual general meeting

The Central Government may, on the application of any member of the company, call or direct the calling of a general meeting of the company. However, it is to be noted that the Court has no power to call such meeting. A general meeting held in pursuance of this order will be deemed to be an annual general meeting of the company. The Central Government may direct that only one member of the company present in person or by proxy shall be deemed to constitute a meeting. [Section 167]

Penalty

If a default is made in holding an annual general meeting in accordance with the above provisions or in complying with the directions given by the Central Government, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 5000 and in the

case of a continuing default, with a further fine which may extend to Rs. 250 for every day after the first during which the default continues. (Section 168)

Importance

It is the annual general meeting at which the shareholders can exercise control over the affairs of the company. At this meeting some directors retire and come up for re-election and thereby the shareholders find an opportunity to refuse to re-elect a director of whose action and policy they disapprove. Appointment of auditors is also made at this meeting. Annual accounts are presented at this meeting for the consideration of the shareholders and the shareholders can ask any question relating to the account. It is at this meeting that dividends are declared. At this meeting the shareholders can discuss any other matters relating to the company's business.

Extra Ordinary General Meeting

Regulation 47 of the Table A provides that all general meetings other than annual general meetings shall be called extraordinary general meetings. An extraordinary general meeting is called to consider those transactions or business which cannot be postponed till the next annual general meeting. Hence, it is a meeting of a company which is held between two consecutive annual general meetings for transacting some urgent or special business. An extraordinary general meeting may be convened :

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

1 Extraordinary meeting convened by the Board of Directors

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

in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board".

(B) On the requisition of members

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

(i) in the case of a company having a share capital, by the holders of at least one-tenth paid up capital having the right to vote on the matter of requisition ; or (ii) in the case of a company not having a share capital, by members representing not less than one-tenth of the total voting power in regard to the matter of requisition. The Board of Directors is under a legal obligation to proceed within 21 days of the deposit of the requisition to call a meeting. The meeting shall be held within 45 days of such deposit of the requisition with the company [Sec. 169(6)]. On receipt of the requisition, the Board shall send out notices for the meeting giving not less that 21 days' time.

3. Extraordinary meeting covered by the Central Government

If due to any reason it is impracticable to call or conduct an extraordinary general meeting, the Central Government may, either on its own or on the application of any director or any member who would be entitled to vote, order a meeting to be called, held and conducted in such manner as the Central Government thinks fit and may give such directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting. Any meeting called, held and conducted in accordance with any such order of the Central Government will, for all purposes, be deemed to be a meeting of the company duly called, held and conducted. The word 'impracticable' may be taken to mean impossible to hold a peaceful or useful meeting. It has been held that the word 'impracticable' should be taken to mean impractical from a reasonable point of view. In Opera Photographic Ltd. Re; 1989 BCL [763 (1989)] case, there were only two directors and one of them who was holding 51% of the shares wanted to remove his fellow director. The Articles required the quorum of two. The fellow director did not attend the meeting to frustrate him. The Central Government ordered a meeting to be called with the presence of one as a sufficient quorum.

Class Meetings

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

RESOLUTIONS

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

TYPES OF RESOLUTIONS

Resolutions are of the following types :

1. Ordinary Resolutions ;
2. Special Resolutions ; and
3. Resolutions requiring special notice.

Ordinary Resolution

At a general meeting of which notice has been given, if votes cast in favour of the resolution by members exceed the votes, if any, cast against the resolution by members, the resolution so passed is an ordinary resolution [Sec. 189(1)] Unless the Companies Act or the memorandum or the articles expressly require a special resolution or resolution requiring special notice, an ordinary resolution is sufficient to carry out any matter. Transactions where ordinary resolution is required Important maters for which an ordinary resolution is enough are as follows :

(i) Issue of shares at a discount (Sec. 79)

(ii) Alteration of the share capital (Sec. 94)

(iii) Approval of the statutory report (Sec.165)

(iv) The consideration of accounts, the Balance Sheet and the report of the Board of Directors and of the auditors (Sec. 210)

(v) Appointment of auditors and fixation of their remuneration [Sec. 224(1)].

(vi) Appointment of the first directors who are to retire by rotation [Sec. 255(1)].

(vii) Increase or decrease in the number of directors within the limits prescribed by the Articles [Sec. 258].

(viii) Adoption of the appointment of sole selling agents [Sec. 294].

(ix) Removal of a director and appointment of another director in his place [Sec. 284(1)].

(x) Declaration of dividend [Sec. 205].

(xi) Appointment of liquidator in case of voluntary winding up and fixing his remuneration [Sec. 490(1)].

(xii) To rectify the name of company [Sec. 22].

(xiii) To cancel or redeem debentures [Sec. 21].

(xiv) To cancel directors by rotation [Sec. 256].

(xv) To approve the remuneration of directors [Sec. 309].

(xvi) To fill the vacancy in the office of Liquidator [Sec. 492].

Special Resolution

The resolution is a special resolution, if (i) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting ;

(ii) the notice required has been duly given of the general meeting; and

(iii) the votes cast in favour of the resolution by members are three times the number of the votes, if any, cast against the resolution by the members [Sec. 189 (2)].

A copy of the special resolution must be filed with the Registrar within 30 days of its passing.

Special Resolution Matters

In addition to the matters given in the articles of the company, the Companies Act specifies certain matters for which a special resolution must be passed ; for example,

(i) to alter the memorandum of the company [Sec. 17];

(ii) to alter the articles of the company [Sec. 31];

(iii) to issue further shares without pre-emptive rights [Sec. 81];

(iv) for creation of a reserve capital [Sec. 99];

(v) to reduce the share capital [Sec. 100];

(vi) to pay interest out of the capital to members [Sec. 208],

(vii) for authorising a director to hold an office or place of profit [Sec. 314];

(viii) for voluntary winding-up of a company [Sec. 484].

Resolutions Requiring Special Notice

A resolution requiring special notice is not an independent class of resolutions. It is a kind of ordinary resolution, with the only difference that here the mover of the proposed resolution is required to give a special notice of 14 days to the company before moving the resolution, and the company shall then immediately give its members notice of the resolution in the same manner as it gives notice of the meeting. If that is not practicable, the company shall give not less than seven days notice before the meeting either by advertisement in a newspaper or in any other mode allowed by the articles (Sec. 190). In addition to the purposes enumerated in the articles requiring special notice, under the Act, special notice has to be given for the following matters :

(a) for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor and for a resolution providing expressly that a retiring auditor shall not be re-appointed (Sec. 225).

(b) for certain persons who shall not be eligible for appointment as directors whose period of office is liable to determination by retirement of directors by rotation (Sec. 261).

(c) for removing a director before the expiry of his period of office; and

(d) of any resolution to appoint a director in place of a director so removed (Sec. 284).

PROCEDURE FOR CONVENING AND CONDUCT OF GENERAL MEETINGS

The business at a meeting is said to have been "validly transacted" if the members of the organisation or body concerned, whether or not they were present, are bound by the decision made there at. They cannot be so bound unless the meeting is validly held. The essentials of a valid meeting are that the meeting should be:

(a) Properly convened:, i.e. a proper notice must be sent by the proper authority to every person entitled to attend.

(b) Properly constituted, i.e. the proper person must be in the chair, the rules as to quorum must be observed, and the regulations governing the meeting must be complied with.

(c) Properly conducted, i.e. the chairman must conduct the proceeding in accordance with the law relating to general meetings as per the Companies Act (Sections 101 to 109 of the Companies Act, 2013), the Company's own Articles of Association or, in respect of any specific matter, by the common law relating to meetings.

KARPAGAM ACADEMY OF HIGHER EDUCATION, COIMBATORE

Class: II B.COM(BPS) **UNIT – IV** **Course Name: Corporate Law**

Course Code: 17BPU302 **Semester: III** **Batch: 2017-20**

Sl.No	UNIT - IV	Option A	Option B	Option C	Option D	**Answer**
1	A meeting held prior to the statutory period of one month from the date of entitlement of a company to commence business cannot be called the _____	Statutory Meeting	General Meeting	Board of Director Meeting	Manager Meeting	**Statutory Meeting**
2	The company must give notice to its members _____ days before the holding of the statutory meeting	30	23	25	21	**21**
3	The Board of Directors is required to prepare a report which is known as the_____	Statuary Report	Obligatory Report	Primary Report	Secondary Report	**Statuary Report**
4	The _____constitute the top administrative organ of the company.	general manager	shareholders	board of directors	advisory panel	**Board of directors**
5	In a company, there must be at least _____ persons to constitute a meeting	Two	Three	Four	Five	**Two**
6	The scheme of the Companies Act contemplates that there shall be at least _____ annual general meeting in the course of one year	Three	Two	One	Four	**One**
7	The directors shall exercise their powers bona fide and in interest of the company.	Managing Director	Director	Board of Director	Manager	**Director**
8	A person can be a Managing Director in any number of Private companies	Public Companies	Government companies	Private Companies	Limited Liability Companies	**Private Companies**
9	_____ who have issued notice of Annual General Meeting for a particular date	Board of Directors	Managing Director	Director	Manager	**Director**
10	_____ means offering assets to a lender as collateral for a loan	Mortgage	Pledge	Hypothecation	Home Loan	**Pledge**
11	_____ can control of the Board of directors of the company and also subject to	Board of Directors	Managing Director	Director	Manager	**Director**

	the provisions of the Act.					
12	The _____ of a company is not the same thing as the insolvency of a company.	Acquisition	Liquidation	Insolvent	Winding-Up	**Winding-Up**
13	A meeting held before the statutory period of one month could not be called a statutory meeting	One	Two	Three	Four	**One**
14	a statutory meeting, must be given at least 21 clear days before the meeting	21	22	23	24	**21**
15	_____stands for Extraordinary General Meeting	EGM	ExGM	EGeM	EGMe	**EGM**
16	A _____ duty of the directors is to attend Board Meeting.	Obligatory	Statutory	Primary	Secondary	**Statutory**
17	_____ is the best method for meeting the minds	a. Orientation	b. Seminar	c. Meeting	d. Conference	**Meeting**
18	_____ of companies contain provisions with regard to the calling of extraordinary general meetings.	a. Article of Association	b. Memorandum of Association	c. Prospectus	d. Memorandum of Understanding	**Article of Association**
19	_____ have acted for improper motive or arbitrarily or capriciously.	a. Board of Directors	b. Managing Directors	c. Manager	d. Directors	**Directors**
20	A person who, by virtue of an agreement with the company is known as _____	a. Board of Directors	b. Managing Directors	c. Manager	d. Directors	**Managing Directors**
21	The AGM for a public limited company must be held _____	at every six months	annually	at every ten months	every fifteen months	**annually**
22	Statutory meeting is compulsory in case of a _____	Public Limited Company	Sole Proprietorship	Private Limited Company	Partnership Firms	**Public Limited Company**
23	A proxy need not be a _____ of that company	manager	employee	member	number	**member**
24	A proxy form should be enclosed with the	Minutes	notice	agenda	resolution	**notice**

	_____					
25	The proxy forms are required to be submitted to the company at least _____ before the meeting.	12 hours	24 hours	48 hours	60 hours	**48 hours**
26	Any meeting other than the Statutory meeting and the annual general meeting of the company is called _____	Management meeting	Committee Meeting	steering group	extraordinary general meeting	**extraordinary general meeting**
27	The notice convening an Extraordinary general meeting must be accompanied by an _____	Explanatory Statement	profit and loss account	annual report	Financial Statements	**Explanatory Statement**
28	Explanatory Statement is necessary for each item of _____	special businesses	ordinary business	meeting	every meeting	**special businesses**
29	The Board should meet at least once in every _____ months	two	one	three	four	**three**
30	The Board should meet at least with a maximum interval of _____ between any two Meetings	60 days	120 days	30 days	80 days	**120 days**
31	Board meeting should be held at least _____ times in each year	three	two	one	four	**four**
32	When the proceedings start the Chairman requests the secretary to read the _____ of the last meeting.	minutes	notice	agenda	resolution	**minutes**
33	As soon as the 'minutes' are read and approved as correct, _____ will sign the 'minutes'	The secretary	the board of directors	the Chairman	the members	**the Chairman**
34	The Minutes of proceedings of a Meeting should be entered in the _____	form	notice	Minutes Book	register	**Minutes Book**
35	The proceedings of a Meeting should be recorded in the Minutes Book within _____ from the conclusion of the	fifteen days	forty-five days	thirty days	ninety days	**thirty days**

	Meeting					
36	The date of entering the Minutes should be specified in the _____ by a Director or the Secretary	Minutes Book	register	notice	resolution	**Minutes Book**
37	The Minutes of Meetings of the Board can be inspected only by the _____	Auditor	Directors	Chairman	Secretary	**Directors**
38	Extracts of the Minutes should be given only after the Minutes have been duly _____	signed	approved	typed	verified	**signed**
39	The names of_____ who dissented or abstained from the decision should be recorded	the member	auditors	the Directors	the additional directors	**the Directors**
40	An _____ Director should not participate in the discussion or vote.	interested	additional	retired	disinterested	**interested**
41	The Minutes of all Meetings should be preserved _____	permanently	temporarily	for five years	for three years	**permanently**
42	If a company wants to make any change in the terms of security or if they wish to modify the rate of interest of debentures, the company will call for _____ meeting	debenture holders	shareholders	creditors	extraordinary	**debenture holders**
43	Debenture holders meeting is held in order to protect the interest of the _____	shareholders	creditors	bankers	debenture holders	**debenture holders**
44	If the authorities want to make a scheme of arrangements with its creditors then meeting will be conducted by the authority exclusively with the _____ of the company	creditors	shareholders	debenture holders	secretary	**creditors**
45	_____ has to prepare the	The	the board of	The Manager	The Managing	**The secretary**

	agenda (in consultation with the Chairman) and the notice of the Board meeting.	secretary	directors		director	
46	The agenda and the notice of the Board meeting should be prepared by the secretary in consultation with the _____	Chairman	board	auditor	manger	**Chairman**
47	It is the duty of the secretary to keep in mind the time limit prescribed by the Act for holding _____	the debenture holder meeting	the shares	the Statutory Meeting	the extraordinary meeting	**the Statutory Meeting**
48	A certified copy of the report must also be filed with _____	the Registrar	the local government	the central government	the auditor	**the Registrar**
49	The secretary has to prepare a _____ showing names, addresses and the number of shares held by each one of them for placing before the meeting	list of directors	list of members	list of chairman	list of registers	**list of members**
50	If directed by the chairman, the secretary has to read the _____	statutory report	agenda	notice	minutes	**statutory report**
51	The secretary has to see that the duly authorized Balance Sheet and Profit and Loss Account are audited and certificate by the _____	board	auditors	chairman	creditors	**auditors**
52	The secretary is the one to authorize the bank to open a separate _____ account	dividend	current	joint	savings	**dividend**
53	The secretary has to close the 'share transfer register' and notify the same in _____	notice	television media	radio	newspapers	**newspapers**
54	The secretary has to look after the preliminary work of _____ distribution	profit	capital	dividend	loss	**dividend**
55	The changes made in the Register of Directors should be notified with the	30 days	90 days	60 days	15 days	**30 days**

	Registrar within _____ of the meeting					
56	The annual return prepared should be filed with Registrar along with necessary fee within _____ of the meeting	60 days	15 days	45 days	90 days	**60 days**
57	The secretary has to execute the _____ passed at the meeting	motion	decision	resolution	conclusion	**resolution**
58	The Secretary has to arrange for collecting the _____at the gate of the Meeting Hall	Admission Cards	Voting card	membership card	proxy form	**Admission Cards**
59	The Secretary has to prepare a _____ and make necessary arrangements for taking poll	list of directors	list of members	list of shareholders	list of proxies	**list of proxies**
60	The Secretary has to prepare the minutes of the meeting and get them approved and signed by	directors	chairman	manager	managing director	**Directors**

UNIT-V-COMPANY WINDING UP

SYLLABUS

Company Winding Up: Winding up – Meaning – Modes of Winding up – compulsory Winding up by the Court – Voluntary Winding Up – Types of Voluntary Winding up – Members voluntary Winding up – Creditors voluntary Winding up – Winding up subjects to supervision of the Court – Consequences of Winding up (General). Liquidator – Power and Duties – Limited liability Partnership – Definition – Features – Registration –E-filing.

WINDING UP – MEANING

Winding up (which is more commonly called liquidation in Scotland) is proceeding for the realisation of the assets, the payment of creditors, and the distribution of the surplus, if any, among the shareholders, so that the company may be finally dissolved. Professor Gover in his book Principles of Modern Company Law has described the winding up of a company in the following words : ‘‘Winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. An administrator called a liquidator is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.’’

Thus winding up is the last stage in the life of a company. It means a proceeding by which a company is dissolved.

Winding up should not be taken as if it is dissolution of a company. The winding up of a company precedes its dissolution. Prior to dissolution and after winding up, the legal entity of the company remains and it can be sued in a Court of law. On dissolution the company ceases to exist, its name is actually struck off from the Register of Companies by the Registrar and the fact is published in the official Gazette**.**

MODES OF WINDING UP

A company can be wound up in three ways :

1. Compulsory winding up by the Court;

2. Voluntary winding up : (i) Members' voluntary winding up; (ii)

Creditors' voluntary winding up;

3. Voluntary winding up subject to the supervision of the Court

[Sec. 425].

Winding Up By The Court

A company may be wound up by an order of the Court. This is called compulsory winding up or winding up by the Court. Section 433 lays down the following grounds where a company may be wound up by the Court. A petition for winding up may be presented to the Court on any of the grounds stated below :

1. Special resolution

A company may be wound up by the Court if it has, by a special resolution, resolved that it be wound up by the Court. But it is to be noted that the Court is not bound to order for winding up merely because the company by a special resolution has so resolved. Even in such a case it is the discretion of the Court to order for winding up or not.

2. Default in filing statutory report or holding statutory meeting

If a company has made a default in delivering the statutory report to the Registrar or in holding the statutory meeting, a petition for winding up of the company may be presented to the Court. A petition on this ground may be presented to the Court by a member or Registrar (with the previous sanction of the Central Government) or a creditor. The power of the Court is discretionary and generally it does not order for winding up in first instance. The Court may, instead of making an order for winding up, direct the company to file the statutory report or to hold the statutory meeting but if the company fails to comply with the order, the Court will wind up the company.

3. Failure to commence business within one year or suspension of business for a whole year

Where a company does not commence its business within one year from its incorporation or suspends its business for a whole year, a winding up petition may be presented to the Court. Even if the business is suspended for a whole year, this by itself does not entitle the petitioner to get the company wound up as a matter of right but the question whether the company should be wound up or not in such a circumstances entirely in the discretion of the Court depending upon the facts and circumstances of each case. Even if the work of all the units of the company has been suspended then too it will still be open to the Court to examine as to whether it will be possible for the company to continue its business. Before the order of winding up on this ground the Court is required to see what are the possibilities of resumption of the business of the company. The suspension of the

business, for this purpose, must be the entire business of the company and not a part of it. The Court will not order for winding up on the grounds, if :

(a) suspension of business is due to temporary causes ; and

(b) there are reasonable prospects for starting of business within a reasonable time.

4. Reduction of membership below the minimum

When the number of members is reduced, in the case of a public company, below 7 and in the case of a private company, below 2, a petition for winding up of the company may be presented to the Court.

5. Company's inability to pay its debts

A winding up petition may be presented if the company is unable to pay its debt. 'Debt' means definite sum of money payable immediately or at future date. A company will be deemed to be unable to pay its loan in the following conditions (Section 434) :

(a) a creditor of more than Rs. 500 has served, on the company at its registered office, a demand under his hand requiring payment and the company has for three weeks thereafter neglected to pay or secure or compound the sum to the reasonable satisfaction of the creditor ; or

(b) execution or other process issued on a judgement or order in favour of a creditor of the company is returned unsatisfied in whole or in part ; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts, taking into account its contingent and prospective liabilities, i.e. whether its assets are sufficient to meet its liabilities.

6. Just and Equitable [Sec. 433(f)]

The Court may also order to wind up of a company if it is of opinion that it has just and equitable that the company should be wound up. What is 'just and equitable' depends on the facts of each case. The words 'just and equitable' are of wide connotation and it is entirely discretionary on the part of the Court to order winding up or not on this ground. Thus the Court itself works out the principles on which the order for winding up under the section is to be made. Winding up by the Court on 'just and equitable' grounds may be ordered in the cases given below :

(a) When the substratum of the company has gone : In the words of Shah, J. in Seth Moham Lal v. Grain Chambers Ltd. the "substratum of the company is said to have disappeared when the object for which it was incorporated has substantially failed, or when it is impossible to carry on the business

of the company except at a loss, or the existing and possible assets are insufficient to meet the existing liabilities. The substratum of a company will be deemed to have gone when (i) The object for which it was incorporated has substantially failed or has become impossible or (ii) it is impossible to carry on business except at a loss or (iii) the existing and possible assets are insufficient to meet the existing liabilities of the company.

(b) When there is oppression by the majority shareholders on the minority, or there is mismanagement.

(c) When the company is formed for fraudulent or illegal objects or when the business of the company becomes illegal.

(d) When there is a deadlock in the management of the company. When there is a complete deadlock in the management of the company, it will be wound up even if it is making good profits. In Re Yenidjee Tobacco Co. Ltd. A and B the only shareholders and directors of a private limited company became so hostile to each other that neither of them would speak to the other except through the secretary. Held, there was a complete deadlock and consequently the company be wound up.

(e) When the company is a 'bubble', i.e. it never had any real business.

Persons Entitled To Apply For Winding Up

The Court does not choose to wind up a company at its own motion. It has to be petitioned. Section 439 of the Companies Act enumerates the persons those can file a petition to the Court for the winding up of a company. The petition for winding up may be brought by any one of the following :

1. Petition by Company

A company can make a petition only when it has passed a special resolution to that effect. However, it has been held that where the company is found by the directors to be insolvent due to circumstances which ought to be investigated by the Court, the directors may apply to the Court for an order of winding up of the company even without obtaining the sanction of the general meeting of the company.

2. Petition by Creditors

The word 'creditor' includes secured creditor, debenture holder and a trustee for debenture holder. A contingent or prospective creditor (such as the holder of a bill of exchange not yet matured or of debentures not yet payable) is also entitled to petition for a winding up of the company. Before a petition for winding up of a company presented by a contingent or prospective creditors is admitted,

the leave of the Court must be obtained for the admission of the petition. Such leave is not granted (a) unless, in the opinion of the Court, there is a prima facie case for winding up the company; and (b) until reasonable security for costs has been given.

Notice that a creditor has a right to winding up order if he can prove that he claims an undisputed debt and that the company has failed to discharge it. When a creditors' petition is opposed by other creditors, the Court may ascertain the wishes of the majority of creditors.

3. Contributory Petition

The term 'contributory' means every person who is liable to contribute to the assets of the company in the event of its being wound up. Section 428 makes it clear that it includes the holder of fully-paid shares. A fully-paid shareholder will not, however, be placed on the list of contributors, as he is not liable to pay any contribution to the assets, except in cases where surplus assets are likely to be available for distribution.

A contributory is entitled to present a petition for winding up a company if :

(a) the number is reduced, in the case of a public company below seven and in the case of private company below two; and

(b) the shares in respects of which he is a contributory either were originally allotted to him or have been held by him; and

(c) the shares have been registered in his name, for at least six months during the period of 18 months immediately before the commencement of the winding up; and

(d) the shares have been devolved on him during the death of a former holder [Sec. 439(4)].

4. Registrar's Petition

The Registrar can present a petition for winding up a company only on the following grounds, viz.,

(a) if a default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(b) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;

(c) if the number of members is reduced, in the case of a public company below seven and in the case of a private company below two ;

(d) if the company is unable to pay its debts; and

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

Note that the Registrar can file a petition for winding up only with prior approval of the Central Government. The Central Government before sanctioning approval must give an opportunity to the company for making its represent actions, if any. Again a petition on the ground of default in delivering the statutory report or holding the statutory meeting cannot be presented before the expiration of 14 days after the last day on which the statutory meeting ought to have been held.

5. Petition by any Person Authorised by the Central Government

If it appears to the Central Government from any report of the inspectors appointed to investigate the affairs of the company, that it is expedient to wind up the company because its business is being conducted with intent to defraud creditors, members or any other person, or its business is being conducted for a fraudulent or unlawful purpose, or the management is guilty of fraud, misfeasance or other misconduct, the Central Government may authorise any person to present to the Court a petition for winding up of the company that is just and equitable that the company should be wound up.

COMPULSORY WINDING UP BY THE COURT

Winding up by the Court or compulsory winding up is initiated by an application by way of petition to the appropriate Court for a winding up order. A winding up petition has to be resorted to only when other means of healing an ailing company are of absolutely no avail. Remedies are provided by the statute on matters concerning the management and running of company. The extreme and irretrievable step of winding up must be resorted to only in very compelling circumstances. [Daulat Makanmal Luthrid v. Solatire Hotels (1993) 76 Comp. Cas. 215 (Bom. HCD)]. It is primarily the High Court which has the jurisdiction to wind up companies under Section 10 of the Companies Act, 1956 in relation to the place at which registered office of the company concerned is situated except to the extent to which jurisdiction has been conferred on any District or District Courts subordinate to the High Court. The Central Government may empower any District Court to exercise that jurisdiction, presumably to reduce the burden of the High Court, only in respect of small companies with the paid-up capital of less than one lakh rupees and having their registered office within the District, with a view to achieving expeditious and efficient disposal of winding up proceedings.

Sections 435 to 438, confers wide powers upon the High Court to regulate the conduct of such proceedings. Accordingly the High Court which is the winding up Court may direct a District Court to retain and continue winding up proceedings which should not really have been commenced in that

Court (Section 437). It may also withdraw any winding up which is in progress in a District Court from that Court and proceed with the winding up itself, or transfer it to another District Court (Section 436), and with respect to all proceedings subsequent to its own order of winding up, direct them to be had in a District Court or with the consent of any other High Court, in such High Court or in a District Court subordinate to that High Court, whereupon the Court in respect of which such direction is given shall be deemed to be the Court with all powers and jurisdiction of the High Court under the Act (Section 435). Lastly, the High Court can pass orders under any of the foregoing sections at any time and at any stage, whether or not an application in that behalf is made by any of the parties to the proceedings (Section 438). There must be strong reasons to order winding up as it is a last resort to be adopted. Temporary difficulty cannot be ground for liquidating company when company is on path of revival. D. Ashokan v. S.T. Reddiar & Sons (2002) 40 SCL (Ker. HC DB).

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

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

(a) the company has passed a special resolution of its being wound up by the Court; or

(b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

or

(c) it does not commence business within a year from its incorporation or suspends business for a whole year; or

(d) the number of its members in the case of a public company is reduced below seven and in the case of a private company, below two; or

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

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

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

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

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

Provided that the tribunal shall make order for winding up of a company under clause (h) on application made by the Central Government or a State Government.

The winding up petition is not a legitimate means of seeking to enforce payment of debt, which is bonafide disputed by the company.

CASE LAW

In Shakti Agencies v. Manshuk Bhai Industries Ltd. [(2007), 74 SCL 332 (RAJ), decided on 14.8.2006, Petitioner firm filed a winding up petition against the respondent company for the recovery of a debt which was disputed by the respondent company. The Petition was dismissed. The instant case was of bona fide disputed debt. Even from the petition for winding up, it was evident that for the payment of ` 10,50,000, the petitioner firm agreed to purchase shares of the respondent company. In the additional affidavit filed by the respondent company, it was stated that application form was signed by the proprietor of petitioner with a sole view to settle the outstanding account pursuant to which the respondent proceeded to allot 70,000 shares to the petitioner and the certificates were dispatched, which were received by the representative of petitioner. The respondent disputed the debt and it could not be held that it neglected to pay the debt within the meaning of section 433(1)(a). The winding up petition is not a legitimate means of seeking to enforce payment of debt, which is bona fide disputed by the company. The principles, on which the Court should act is disposing of winding up petition, may be deduced thus: (i) if the debt is not disputed on some substantial ground, the Court may make the order, (ii) if the debt is bona fide dispatched, there cannot be „neglect to pay" within the meaning of section 433(i)(a) and petition for winding up is not maintainable, (iii) dispute with regard to payment of interest is not a bona fide dispute, (iv) the defence of respondent company should be in good faith, one of substance and likely to succeed in point of law.

VOLUNTARY WINDING UP

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

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

(b) if the company passes a special resolution that the company be wound up voluntarily [Section 484(1)]. Thus, a company may be wound up voluntarily on the expiry of the term fixed for duration of the company or on the occurance of the event as provided in its articles. In these two cases only an ordinary resolution may be passed in the general meeting of the company. Apart from these two cases, a company may be voluntarily wound up for any other reason for which a company has to pass a special resolution. A proper notice required for the respective meetings must be given to all the members and in the latter case the text of the special resolution to be passed together with the reason to wind up voluntarily must be explained therein.

The resolution (whether ordinary or special), when passed, must be advertised within 14 days of the passing of the resolution in the Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situated. A default in complying with the above requirements renders the company and every officer of the company, who is in default, liable to a penalty which may extend to five hundred rupees for every day during which the default continues. A liquidator of the company is deemed to an officer of the company for the purposes of the above requirements (Section 485).

A voluntary winding up commences from the date of the passing of the resolution for voluntary winding up. This is so even when after passing a resolution for voluntary winding up, a petition is presented for winding up by the Court.

The effect of the voluntary winding up is that the company ceases to carry on its business except so far as may be required for the beneficial winding up thereof. The corporate status and the powers of the company, however, continue until it is dissolved [Section 487].

TYPES OF VOLUNTARY WINDING UP

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

(i) Members‟ voluntary winding up; and

(ii) Creditors‟ voluntary winding up.

Members' Voluntary Winding Up

When the company is solvent and is able to pay its liabilities in full, it need not consult the creditors or call their meeting. Its directors, or where they are more than two, the majority of its directors may, at a meeting of the Board, make a declaration of solvency verified by an affidavit stating that they have made full enquiry into the affairs of the company and that having done so they have formed an opinion that the company has no debts or that it will be able to pay its debts in full within such period not exceeding three years from the commencement of the winding up as may be specified in the declaration. In Shri Raja Mohan Manucha v. Lakshminath Saigal (1963) 33 Comp. Cas. 719, it was held that where the declaration of solvency is not made in accordance with the law, the resolution for winding up and all subsequent proceedings will be null and void. Such a declaration must be made within five weeks immediately preceding the date of the passing of the resolution for winding up the company and be delivered to the Registrar for registration before that date. The declaration must be accompanied by a copy of auditor‟s report on the balance sheet and profit & loss account as at the latest practicable date before the making of the declaration and also embody a statement of the company‟s assets and liabilities as at that date. . Any director making a declaration without having reasonable grounds for the aforesaid opinion, shall be punishable with imprisonment extending up to six months or with fine extending up to ` 50,000 or with both [Section 488]. A winding up in the case of which such a declaration has been made and delivered in accordance with Section 488 is referred to as “a member‟s voluntary winding up”.

CREDITORS VOLUNTARY WINDING UP

In creditors' voluntary winding up, it is the creditors who move the resolution for voluntary winding up of a company, and there is no solvency declaration made by the directors of the company. In other words, when a company is insolvent, that is, it is not able to pay its debts, it is the creditors' voluntary winding up.

Special provisions Relating to Creditors' Voluntary Winding up There are certain special provisions to be completed with creditors' voluntary winding up. They are :

1. Meeting of Creditors (Sec. 500)

The company must call a meeting of the creditors of the company on the same day or on the next following day on which the general meeting of the company is held for passing a resolution for voluntary winding up. The company must send the notice of the meeting to the creditors by post simultaneously with the sending of the notices of the meeting of the company. The company must also cause the notice of the meeting of the creditors to be advertised once at least in the official Gazettee and once at least in two newspapers circulating in the district where the registered office or principal place of business of the company is situated. At the creditors' meeting, one of the directors shall preside. The board of directors is required to lay before the meeting of the creditors(a) a full statement of the position of the company's affairs and (b) a list of creditors of the company with the estimated amount of their claims.

2. Notice of Registrar [Sec. 501]

Notice of any resolution passed at a creditors' meeting shall be given by the company to the Registrar within 10 days of the passing thereof.

3. Appointment of Liquidator (Sec. 502)

The creditors and the company at their respective meetings may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company. If the creditors and the company nominate different persons, the persons nominated by the creditors shall be the liquidator. If no person is nominated by the creditors, the person, if any, nominated by the company shall be the liquidator.

4. Committee of Inspection

The creditors at their first or any subsequent meeting may, if they think fit, appoint a committee of inspection of not more than five members. If such committee is appointed, the company may, either

at the meeting at which the winding up resolution is passed or at a later meeting, appoint not more than five persons to serve on the committee. If the creditors object to persons appointed by the company, then the matter will be referred to the Court for the final decision. The powers of such committee are the same as those of a committee of inspection appointed in a compulsory winding up.

5. Remuneration [Sec. 504]

The committee of inspection or if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator or liquidators. Where the remuneration is not fixed, it will be determined by the Court. Any remuneration fixed by the committee of inspection or creditors or the Court shall not be increased.

6. Board's Power to Cease (Sec. 505)

On the appointment of a liquidator, all the powers of the board of directors shall cease, except in so far as the committee of inspection, or if there is no such committee, the creditors in a general meeting, may sanction the continuance thereof.

7. Vacancy in the Office of Liquidator (Sec. 506)

If a vacancy occurs by death, resignation, or otherwise in the office of the liquidator (other than a liquidator appointed by or by the direction of the Court), the creditors in a general meeting may fill the vacancy.

8. Final Meeting and Dissolution (Secs 508-509)

The liquidator must call a general meeting of the company and a meeting of the creditors every year within three months from the close of the liquidation year, if the winding up continues for more than one year. He must lay before the meeting an account of his acts and dealings and of the conduct of winding up during the preceding year and position of winding up. He must call, in the same manner, a final meeting when the affairs of the company are fully wound up and place the same statements before it, as he does in the case of a members' meeting in a members' voluntary winding up under Sections 496 and 497.

Distinction between Members' and Creditors' Voluntary Winding Up

The main differences between the two are as follows:

1. A member‟s voluntary winding up results where, before convening the general meeting of the company at which the resolution of winding up is to be passed, the majority of the directors file with

the Registrar a statutory declaration of solvency. A creditors‟ voluntary winding up is one where no such declaration is filed.

2. In a member‟s voluntary winding up, the creditors do not participate directly in the control of the liquidation, as the company is deemed to be solvent; but in a creditors‟ voluntary winding up, the company is deemed to be insolvent and, therefore, the control of liquidation remains in the hands of the creditors.

3. There is no meeting of creditors in a members‟ voluntary winding up and the liquidator is appointed by the company; whereas in a creditors‟ voluntary winding up, meetings of creditors have to be called at the beginning and subsequently the liquidator is appointed by the creditors.

4. In a members‟ voluntary winding up the liquidator can exercise some of his powers with the sanction of a special resolution of the company; but in a creditors‟ voluntary winding up he can do so with the sanction of the Court or the Committee of Inspection or of a meeting of creditors.

WINDING UP SUBJECT TO SUPERVISION OF THE COURT

Voluntary winding up may be under the supervision of the Court. At any time after a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court. The Court may give such liberty to creditors, contributories or others to apply to the Court and generally on such terms and conditions as the Court thinks just (Sec. 522).

A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall be deemed to be a petition for winding up by the Court (Sec. 523).

The Court will not in general make a supervision order on the petition of a contributory, unless it is satisfied that the resolution for winding up was so obtained that the minority of members were overborne by fraud or improper or corrupt influence. Where the company is insolvent, the wishes of the creditors only are regarded or the investigation is required.

If a company is being wound up voluntarily or subject to supervision of the Court, a petition for its winding up by the Court may be presented by :

(a) any person authorised to do so under Sec. 439 (which deals with provisions as to applications for winding up), or

(b) the official liquidator [Sec. 440(1)].

Where a supervision is made, the Court may appoint an additional liquidator or liquidators, or remove any liquidator at any time and fill any vacancy. The Court may also appoint the official liquidator as an additional liquidator or to fill any vacancy. The Registrar is also given power to apply to the Court for the removal of a liquidator and the Court may do so (Sec. 524). The liquidator appointed by the Court will act as a voluntary liquidator (Sec. 525). In a voluntary liquidation brought under the Court's supervision, the liquidator's remuneration cannot be increased.

A liquidator appointed by the Court has the same powers, is subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of the Companies Act with respect to the appointment of liquidators in voluntary winding up (Sec. 525).

CONSEQUENCES OF WINDING UP

The consequences of winding up may be discussed under the following heads :

1. Consequences as to Shareholders

A shareholder is liable to pay the full amount upto the face value of the shares held by him. Not only the present, but also the past members are liable on the winding up of the company. The liability of a present member is the amount remaining unpaid on the shares held by him, while a past member can be called upon to pay if the present contributory is unable to pay.

2. Consequences as to Creditors

A company, whether solvent or insolvent, can be wound up under the Act. In case of a solvent company, all claims of its creditors when proved are fully met. But in case of an insolvent company, the rules under the law of insolvency apply.

A secured creditor need not prove his claim against the company. He may realise his security and satisfy the debts. For deficiency, if any, he may put his claim before the liquidator. The secured creditor has also the option to relinquish his security and to prove the amount as if he were an unsecured creditor.

Where an insolvent company is being wound up, the insolvency rules will apply and only such claims shall be provable against the company as are provable against an insolvent person. (Section 529). When the list of claims is settled the liquidator has to commence making payments. The assets available to the liquidator are applied in the following order :

a. Secured creditors .

b. Cost of the liquidation.

c. Preferential payments.

d. Debenture holders secured by a floating charge.

e. Unsecured creditors

f. Balance returned to the contributories.

3. Consequences as to servants and officers

A winding up order by a Court operates as a notice of discharge to the employees and officers of the company except when the business of the company is continued. The same principle will apply as regards discharge of employees in a voluntary winding up. Where there is a contract of service for a particular period, an order for winding up will amount to wrongful discharge and damages will be allowed as for breach of contract of service.

4. Consequences of proceedings against the company

When a winding up order is made, or an official liquidator has been appointed as provisional liquidator no suit or legal proceedings can be commenced and no pending suit or legal proceeding continued against the company except with the leave of the Court and on such terms as it may impose. In the case of a voluntary winding up, the Court may restrain proceedings against the company if it thinks fit. It may be noted that law does not prohibit proceedings being taken by the company against others including directors, or officers or other servants of the company.

5. Consequences as to costs

Where the assets of the company are insufficient to satisfy the liabilities, the Court may make an order for payment out of the assets of the costs, charges and expenses incurred in the winding up. The Court may determine the order of priority in which such payments are to be made (Section 476).

6. Consequences as to documents

When a company is being wound up whether by or under the supervision of the Court or voluntarily, the fact must be made known to all those having any dealing with the company; every document in the nature of an invoice, order for goods or business letter issued in the name of the company, after the commencement of winding up must contain a statement that the company is being wound up (Sec. 547).

Where a company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters

recorded therein (Sec. 548). Where an order for winding up of the company by or subject to the supervision of the Court is made, any creditor or contributory of the company may inspect the books and the papers of the company, subject to the provisions made in the rules by the Central Government in this behalf.

LIQUIDATOR

In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of collecting the company's assets and distributing the proceeds among creditors and contributories. If a vacancy occurs by death or resignation or otherwise in the office of the liquidator the company in general meeting may fill the vacancy. [Section 490 and 492].

In the case of a creditors' voluntary winding up, the creditors and the members at their respective meetings, may nominate a person to be the liquidator of the company. However, the creditors are given a preferential right in the matter of the appointment of the liquidator with a power to the Court to vary the appointment on application made within seven days by a director, member or creditor. (Section 502).

POWER AND DUTIES

Powers

The powers of the liquidator in voluntary winding up are just the same as those of the official liquidator in case of winding up by the Court. In the case of members' voluntary winding up with the sanction of a special resolution of the company and in the case of creditors' voluntary winding up with the sanction of the Court or committee of inspection or the meeting of the creditors if there is no committee of inspection, the liquidator may (a) institute or defend any suit, prosecution or other legal proceedings in the name and on behalf of the company ; (b) carry on the business of the company so far as may be necessary for the beneficial winding up of the company ; (c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract; and (d) raise any money required on the security of the assets of the company (Section 512). Besides, a liquidator in voluntary winding up may, without any sanction whatever, exercise any of the other powers given by this Act to the liquidator in a winding up by the Court. In addition to these powers, a liquidator in voluntary winding up exercise (i) the power of the Court of settling a list of contributories ; (ii) the power of the Court of making calls; (iii) the power of calling general meetings of the company.

Duties

As Section 512 provides a liquidator in voluntary winding up is required to pay the debts of the company and to adjust the rights of the contributories among themselves.

LIMITED LIABILITY PARTNERSHIP

Limited Liability Partnership (LLP) is an incorporated partnership formed and registered under the Limited Liability Partnership Act 2008 with limited liability and perpetual succession. The Act came into force, for most part, on 31st March 2009 followed by its Rules on 1st April 2009 and the registration of the first LLP on 2nd April 2009.

The arrival of the much-desired and long-awaited LLP Act was result of efforts of several expert committees which recommended its introduction starting with the Bhatt Committee of 1972, Naik Committee of 1992, Abid Hussain Committee of 1997, Gupta Committee of 2001, Naresh Chandra Committee of 2003 and the JJ Irani Committee of 2005.

LLP is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its partners the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.

The LLP form would enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP would also be a suitable vehicle for small and medium enterprises and for investment by venture capitalists.

FEATURES

The salient features of the Limited Liability Partnership are as follows:—

(i) The LLP is a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a Limited Liability Partnership. The LLP has a perpetual succession;

(ii) The mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the proposed legislation. There would be flexibility to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the proposed legislation;

(iii) A LLP is a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be tangible or intangible in nature or both tangible and intangible in nature. No partner would be liable on account of the independent or un-authorized acts of other partners or their misconduct;

(iv) Every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India.

(v) A LLP shall maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government;

(vi) The Central Government has power to investigate the affairs of an LLP, if required, by appointment of competent inspector for the purpose;

(vii) The Indian Partnership Act, 1932 shall not be applicable to LLPs. A partnership firm, a private company and an unlisted public company may convert themselves to LLP in accordance with provisions of the proposed legislation;

(viii) The Central Government has made rules for carrying out the provisions of the LLP Act.

Distinction Between LLP and Partnership

The principle points of difference between a company and a partnership are as follows:

1. LLP is a separate legal entity and therefore, can be sued or it can sue others without involving the partners. A partnership firm is not distinct from the several persons who compose it.

2. The partners of a LLP would have limited liability i.e. they would not be liable beyond the money contributed by them. Whereas, partners of a firm would have unlimited liability.

3. The retirement or death of a partner would not dissolve the LLP. On the other hand, the death or retirement of a partner would dissolve the partnership firm.

4. In a partnership, the property of the firm is the property of the individuals comprising it. In a LLP, it belongs to the LLP and not to the individuals comprising it.

5. Whereas a partnership can be formed either orally or by a deed of agreement whether registered or not, LLP is formed by an incorporation document and an LLP agreement, thus, giving it a legality.

6. Whereas a registered or unregistered partnership cannot have more than 20 partners, LLP can have more than that number since no upper limit has been laid down by the Act.

7. A LLP has perpetual succession, i.e. the death or insolvency of a shareholder or all of them does not affect the life of the LLP, whereas the death or insolvency of a partner dissolves the firm, unless otherwise provided.

8. Whereas an individual partner would not be able to conduct business transaction with the partnership firm of which he is a partner, a partner of LLP in his separate capacity as a legal person can do business with the LLP since the LLP is a separate legal entity by itself.

REGISTRATION

Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received. [(Section 13(1)] Rule 17 (1) of the Limited Liability Partnership Rules, 2009 provides that the limited liability partnership may change its registered office from one place to another by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide for such procedure, consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place: Provided that where the change in place of registered office is from one state to another state, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

E-FILING

The designated partner would be responsible for filing the following information in the prescribed Forms mentioned against each:-

(i) Incorporation document and statement in Form No. 2 (under Rule 2).

(ii) Information with regard to Limited Partnership Agreement and changes, if any, made therein in Form 3 (under Rule 21).

(iii) Notice of Appointment of Partners/designated partner and changes among them, intimation of DPIN by LLP to Registrar and consent of Partner to become partner/Designated Partner in Form No. 4 [under Rules 8, 10(8), 22(2) and 22(3)].

(iv) Notice of change of name of LLP in Form No. 5 [under Rule 20(2)].

(v) Intimation of particulars of name or address of a partner/change in such particulars by a Partner to the Limited Liability Partnership in form 6 [under Rule 22(1)]

(vi) Statement of Account & Solvency in Form 8 (under Rule 24).

(vii) Consent to act as Designated Partners in Form No. 9 [under Rule 7 and 10(8)].

(viii) Intimation of changes in particulars of Designated Partners in form DIN-4

(ix) Annual Return of Limited Liability Partnership in Form 11 [under Rule 25(1)].

(x) For intimating other address for service of documents in Form 12 [under Rule 16(3)].

(xi) Application to the Registrar for striking off name in form 24 [under Rule 37(1)(b)].

(xii) Application for compounding of an office under the Act in Form 31 [under Rule 41(1)].

The Designated Partner, unless otherwise expressly provided in the Act, shall be—

(1) Responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of the Act including filing of any document, return, statement and the like report pursuant to the provisions of the Act and as may be specified in the Limited liability partnership agreement,

(2) liable to all penalties imposed on the LLP for the contravention of the provisions of the Act and in the LLP agreement.

In conformity with the duty designated above, a designated partner of an LLP is also required to sign the following :

— Annual Accounts of the LLP (section 34)

— Annual Return of the LLP (section 35)

— Form 3 – Information with regard to Limited Partnership Agreement and changes, if any, made therein.

— Form 4 – Notice of Appointment of Partners/designated partner and changes among them, intimation of DPIN by the LLP to the Registrar and consent of partner to become a partner/designated partner.

— Form 5 – Notice of change of name.

— Form 8 – Statement of Account and Solvency.

— Form 11 – Annual Return of LLP.

— Form 12 – Intimating other address for service of documents.

— Form 18 – Application and statement for conversion of a private limited company/unlimited public company into LLP.

KARPAGAM ACADEMY OF HIGHER EDUCATION, COIMBATORE

Class: II B.COM(BPS) **UNIT - V** **Course Name: Corporate Law**

Course Code: 17BPU302 **Semester: V Batch: 2017-20**

SL.no	UNIT - V	Option A	Option B	Option C	Option D	**Answer**
1	Persons responsible to maintain books is/ or _____.	Managing director	Manager	Employer	Employee	**Managing director**
2	Disqualifications of a director are mentioned in sec. ____	164	161	168	177	**164**
3	Which of the following is not the optional books?	register of certification	share application and allotment books	log book	minutes book	**Minutes book**
4	Sec____ to Sec._____ deal with winding up by the national company law Tribunal.	271, 303	272, 303	271, 304	271, 305	**271, 303**
5	A liquidator collects its debts and finally distributes any surplus among the members in accordance with their rights.	Director	Liquidator	Managing Director	Board of Director	**Liquidator**
6	Voluntary winding up is an easier process of winding up	Voluntary winding up	Compulsory Winding up	Winding up by the creditors	winding up by the court	**Voluntary winding up**
7	Section 433 lays down the grounds on which a company may be wound up, in compulsory winding up	Section 334	Section 433	Section 434	Section 434	**Section 433**
8	Section 488 is referred to as “a members voluntary winding up”.	Section 484	Section 848	Section 884	Section 488	**Section 488**
9	_____ divides voluntary winding up into two kinds	Section 488(2)	Section 488(3)	Section 488(4)	Section 488(5)	**Section 488(5.**
10	_____ specifies the persons by whom a petition for winding up of a company may be presented to the Court (tribunal) in compulsory winding up.	Section 439	Section 440	Section 441	Section 442	**Section 439**
11	A _____ commences from the date of the	Winding up	Voluntary	Winding	Compulsory	**Compuls**

	passing of the resolution for voluntary winding up.	by the court	winding up	up by the creditors	Winding up	**ory Winding up**
12	_____ of the Companies Act provides for the provisions relevant to commencement of winding up	Section 441	Section 442	Section 443	Section 444	**Section 441**
13	_____ is initiated by an application by way of petition to the appropriate Court for a winding up order	Winding up by the court	Winding up by the company	Winding up by the creditors	Compulsory Winding up	**Winding up by the court**
14	_____ is only a process while the dissolution puts an end to the existence of the company	Acquisition	Liquidation	Insolvent	Winding-Up	**Winding-Up**
15	When a company is wound up by the members or the creditors without the intervention of Court (tribunal), it is called as _____	Winding up by the court	Voluntary Winding up	Winding up by the creditors	Compulsory Winding up	**Winding up by the court**
16	_____ specifies the circumstances in which a company may be wound up voluntarily.	Section 484	Section 848	Section 884	Section 448	**Section 484**
17	_____ of a company is the last stage of putting an end to the life of a company	a. Acquisition	b. Liquidation	c. Insolvent	d. Winding-Up	**d. Winding-Up**
18	_____ is initiated by an application by way of petition to the appropriate Court for a winding up order	a. Winding up by the court	b. Winding up by the company	c. Winding up by the creditors	d. Compulsory Winding up	**d. Compulsory Winding up**
19	In a company, there are _____ modes of winding up	a. Three	b. Two	c. Five	d. Six	**a. Three**
20	_____ divides voluntary winding up into two kinds	a. Section 884	b. Section 488	c. Section 484	d. Section 848	**b. Section 488**
21	AOB stands for _____	An Order book	Any other business	Any order Book	Any other Board	**Any other business**
22	The _____ are usually written from the notes taken by the chairman and secretary during the course of the meeting	Minutes	motion	agenda	resolution	**Minutes**

23	The minutes must be recorded in _____ serially numbered	lines	paper	paragraphs	note	**paragraphs**
24	Each paragraph in minutes should preferably given by a _____	Para	title	space	heading	**heading**
25	All the resolutions passed at the meeting should be in the same order at the _____	notice	agenda	declaration	resolution	**agenda**
26	If certain matters could not be discussed in the meeting, because of lack of time, that fact must also be stated in the _____	agenda	notice	Minutes	report	**Minutes**
27	An agenda is a list of meeting activities in the order in which they are to be taken up, by _____ with the call to order	end	middle	last	beginning	**beginning**
28	Minutes are the _____ record of an organization	formal	usual	official	normal	**official**
29	Written minutes are distributed to board members _____ each meeting for member's review	after	before	end of	in-between	**before**
30	Minutes for the previous meeting should be reviewed right away in the _____ meeting	next	same	current	board	**next**
31	At every business meeting the secretary of the board or any other appointed person usually takes _____during meetings	minutes	notes	records	drafts	**minutes**
32	The body of the minutes should include, with each motion being a separate _____	note	book	paragraph	line	**paragraph**
33	If the vote was counted, the count should be _____	stored	registered	verified	recorded	**recorded**
34	The _____ officer states “Are there any corrections to the minutes as printed?”	residing	presiding	visiting	assistant	**presiding**

35	After the minutes have been corrected and approved by the membership, they should be signed by the _____ and can be signed by the president	chairman	board	secretary	director	**secretary**
36	Formal and corporate meetings include approval of previous minutes, and all _____	minutes	resolutions	agenda	notice	**resolutions**
37	Before proceeding to regular business at the annual general meeting the chairman usually makes a brief _____ speech	clear	short	concise	prefactory	**prefactory**
38	The chairman also comments on the _____	Auditors' Report	Directors' Report	Minutes	resolution	**Directors' Report**
39	_____ explain the future development schemes of the company	The Chairman	The Secretary	The Manager	The Managing Director	**The Chairman**
40	The directors are required to prepare and send to every member a document known as the _____	Statutory Report	Directors' Report	Notice	minutes	**Statutory Report**
41	The report should be certified as correct by at least two directors, one of whom shall be the _____	Additional Director	manager	secretary	managing director	**managing director**
42	The notice become legally valid only if it is signed by proper authority along with the _____	shareholders sign	company's seal	agenda	minutes	**company's seal**
43	Ordinary business to be discussed _____ in the meeting	second	last	first	middle	**first**
44	Every resolution should get started with a word _____	Resolution	Decided That	Resolved that	Resolved	**Resolved that**
45	If the minutes have been distributed to the members before the next meeting then the approval process can be _____	short	very short	long	very long	**very short**

46	Statutory meeting notice should be forwarded to members of the company before _____ days of the meeting	7	14	21	30	**21**
47	Annual General meeting notice should be forwarded to members of the company before _____ days of the meeting	7	14	21	30	**21**
48	Extra-ordinary Annual General meeting notice should be forwarded to members of the company before _____ days of the meeting	7	14	21	30	**21**
49	___can act as a chairperson for a meeting	Shareholder	Chairman	directors	Secretary	**Chairman**
50	Annual General meeting may be convened by ____	Directors	Creditors	Bankers	Shareholders	**Directors**
51	Preparation of Agenda is work of ____	Director	Secretary	Managing Director	Part-time Director	**secretary**
52	Statutory report shall be certified as correct by at least by _____	Directors	Secretary	Auditors	Chairman	**Directors**
53	In ___ meeting progress made by the company during the year is discussed among shareholders	Board	Annual General	Extra-ordinary General	Statutory	**Annual General**
54	First annual general meeting shall be held within_____ months of its incorporation of the company	6	9	12	18	**18**
55	Duration between first annual general meeting and next annual general meeting should not exceed____ montsh	12	15	18	24	**15**
56	___meeting are called in emergencies or on special occassions	Extraordinary General	Annual General	Borad	Statutory	**Extra-ordinary General**
57	Board Meeting should be conducted once in ____	Two	Three	Four	Six	**Three**

	calendar months					
58	Minimum quorum required for convening a Board Meeting is____	One-third	One-fourth	Two-third	Three-fourth	**One-Third**
59	____ is eligible to avail casting vote	Shareholder	Director	Secretary	Chairman	**Chairman**
60	Minimum ____members forms a quorum for public limited company annual general meeting	Two	Three	Four	Five	**Five**